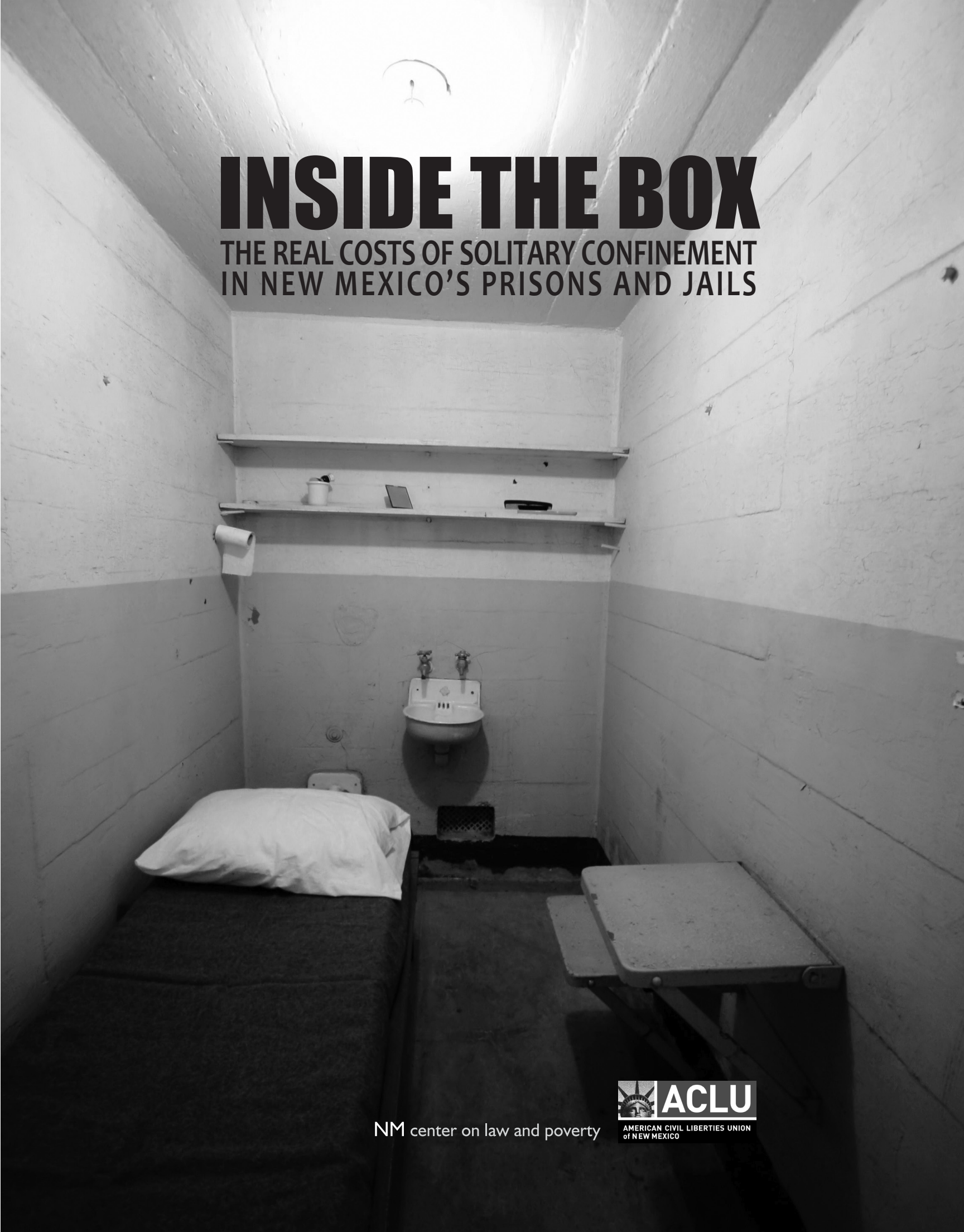


# INSIDE THE BOX

THE REAL COSTS OF SOLITARY CONFINEMENT  
IN NEW MEXICO'S PRISONS AND JAILS



NM center on law and poverty



# **INSIDE THE BOX**

## **THE REAL COSTS OF SOLITARY CONFINEMENT IN NEW MEXICO'S PRISONS AND JAILS**

A report by

The New Mexico Center on Law and Poverty  
&  
The ACLU of New Mexico

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NM center on law and poverty



## **Executive Summary**

Placing prisoners, especially those suffering from mental illness, in extreme isolation is costly, ineffective and inhumane. The New Mexico Center on Law and Poverty (NMCLP) and the American Civil Liberties Union of New Mexico (ACLU-NM) recently completed a year-long study of solitary confinement in the state. This report provides an overview of the facts discovered during the joint investigation, followed by several policy recommendations.

Solitary confinement – or segregation – is widely used in prisons and jails in New Mexico. While it costs more money to detain prisoners in isolation than in the general population, it does not improve public safety or reduce prison violence. In addition, solitary confinement as currently practiced in New Mexico infringes fundamental rights by isolating prisoners with serious mental illness and allowing for prolonged periods of isolation. The use of this procedure in New Mexico also lacks adequate transparency at both the state and local level.

New Mexico urgently needs to reform the practice of solitary confinement in its prisons and jails. The NMCLP and the ACLU-NM urge New Mexico to adopt the following reforms:

1. increase transparency and oversight of the use of solitary confinement
2. limit the length of solitary confinement to no more than 30 days
3. mandate that all prisoners are provided with mental, physical and social stimulation
4. ban the use of solitary confinement on the mentally ill
5. ban the use of solitary confinement on children

## The Use and Abuse of Solitary Confinement

Last year, a jury awarded former prisoner Stephen Slevin \$22 million after he was confined in a tiny padded cell in the Doña Ana County Detention Center for almost two years without a trial.<sup>1</sup> During his time in solitary confinement, Slevin developed bedsores and fungus. His toenails grew so long they curled under his toes. Denied dental care, he was even forced to extract one of his own teeth. Slevin entered solitary confinement with an existing mental illness that was made significantly worse due to isolation and lack of medical care. His pleas for help were ignored, and he never had an opportunity to see a judge.



*Left: Stephen Slevin before he was placed in solitary confinement.*

*Right: Slevin after being released from solitary confinement.*

Slevin's horrific story made headlines around the world. He has since become the poster child for the abuse of solitary confinement in the United States.

Solitary confinement typically involves locking an inmate alone in a cell for 23 hours per day, under conditions of extreme social isolation and forced idleness, and deprivation of virtually all meaningful environmental stimulation including restrictions on property, severe limitations on visitations and a total ban on group activities. In such instances, prisoners are usually confined to cells no bigger than the size of an ordinary parking space.<sup>2</sup>

Of course, separating violent or vulnerable prisoners from the general prison population is often essential to preserve detention facility

security. Yet imposing extreme isolation on prisoners, without allowing for social interaction, education and opportunities for rehabilitation, can have dire consequences. Countless studies have shown that otherwise mentally stable people can experience severely adverse effects from even short periods of enforced isolation. Symptoms can include social withdrawal, panic attacks, irrational anger, loss of impulse control, paranoia, severe depression, and hallucinations.<sup>3</sup> The effect on children and those already suffering from mental illnesses can be particularly devastating.

Since the 1980s, corrections administrators have increasingly relied on solitary confinement as a prison management tool. Institutions called "supermax prisons" have been built to house prisoners in conditions of extreme isolation, sometimes for years or even decades.

Thankfully, in recent years, many states have begun to acknowledge that solitary confinement is costly, ineffective and inhumane.<sup>4</sup> These states have taken steps to dramatically reduce the use of this practice while at the same time increasing public transparency regarding when and how it is used.

It's time for New Mexico to take similar steps.

# Solitary Confinement in New Mexico: Over-used and Under-reported

The New Mexico Center on Law and Poverty and the American Civil Liberties Union of New Mexico collaborated on a year-long investigation on the use of solitary confinement in New Mexico. This investigation involved detailed public records requests to the New Mexico Corrections Department (NMCD) and eight of the largest county jails in New Mexico.<sup>5</sup> Researchers engaged in dozens of meetings and calls with prison and jail officials across the state, culled through thousands of pages of ‘log’ books and formal policies, conducted visits with current and former prisoners, and toured segregation units in both the jails and prisons.

This research project illuminated just how difficult it is to acquire clear data on the use of solitary confinement in New Mexico. For example, it was impossible to determine with any degree of certainty either the percentage or raw numbers of prisoners held in solitary confinement in New Mexico jails because this data simply is not compiled in an accessible, uniform manner. However, we were able to glean certain critical information which makes it clear that solitary confinement in New Mexico needs reform, particularly because prisoners in New Mexico are regularly held in long-term solitary confinement (defined by the ABA as longer than 30 days)<sup>9</sup> and because the mentally ill are regularly held in solitary confinement.

## Solitary confinement is widely used in New Mexico.

New Mexico’s “supermax” is located at the Penitentiary of New Mexico in Santa Fe, where several hundred prisoners are kept in Level V and Level VI facilities (*see* “A Quick Look at New Mexico Prisons”). Several hundred more are held in isolation in ‘disciplinary’ cells across the state. Prisoners suffering from mental illnesses, in particular, are often warehoused in solitary confinement, because detention facilities – especially at the local level – typically lack the resources to treat or confine them appropriately.

### A QUICK LOOK AT NEW MEXICO PRISONS

The New Mexico Corrections Department (NMCD) manages 11 prisons, five of which are privately operated. In general, prisons are designed to detain prisoners who have already been convicted of a crime. NMCD facilities house roughly 6,700 prisoners. Approximately 10 percent of these prisoners are women.<sup>6</sup> NMCD uses a step-down custody system to house its prisoners, with Level I being the lowest security and Level VI the highest. For purposes of this report, Levels V and VI are NMCD’s solitary confinement units, where prisoners are on 23-hour per day lockdown and banned from any out-of-cell activity involving social interaction, including shared meals, educational opportunities and recreation.

### A QUICK LOOK AT NEW MEXICO JAILS

New Mexico counties operate 29 jails. In general, jails are designed to house prisoners who are still awaiting trial. The largest of New Mexico’s jails is the Metropolitan Detention Center in Bernalillo County, which houses approximately 2,500 prisoners – but was designed to house a maximum of 2,236.<sup>7</sup> New Mexico is one of only a handful of states in which local jails hold more than or nearly equal to the population of prisoners in our state prisons.<sup>8</sup> Research conducted for this report revealed that every county jail in New Mexico, with the possible exception of one, uses solitary confinement in some form or another.

**This research project illuminated just how difficult it is to acquire clear data on the use of solitary confinement in New Mexico.**

According to the New Mexico Department of Corrections, approximately 16 percent of New Mexico's prison population is housed in some form of solitary confinement. This includes prisoners housed in Levels V and VI, as well as those placed in segregation for disciplinary reasons or because they were suffering from a mental illness.<sup>10</sup>

It is more difficult to calculate the number of New Mexicans held in solitary confinement in the county jails because data simply is not compiled in an accessible, uniform manner. We do know, however, that according to the public information officer at the Metropolitan Detention Center, the largest jail in the state, more than 300 prisoners are held there in solitary confinement at any one time. We also know, based on public records requests and interviews with jail administrators, that every jail in the state, with the possible exception of one, uses isolation and segregation as a method of detention, with some of the smaller jails transferring prisoners to segregation cells at larger jails in order to isolate them.

Likewise, up-to-date information comparing New Mexico's use of solitary confinement with other states is not available. Whatever the case, a rate of 16 percent of prisoners being housed in solitary confinement in New Mexico's prisons is very high. This could suggest an increase in the use of solitary confinement over the last decade.<sup>11</sup>

A survey was published in 2004 by the U.S. Department of Justice's National Institute of Corrections. At that time, for the 40 states reporting data, the average percentage of prisoners kept in solitary confinement was five percent, and New Mexico was ranked second-worst state in the country, with 13 percent in solitary confinement, behind West Virginia at 16 percent.<sup>12</sup> By comparison, a recent study found that the percentage of prisoners held in solitary confinement in federal detention facilities is 7 percent.<sup>13</sup>

NMCD is now looking at new ways to reduce the use of solitary confinement in its facilities. In June 2012, the NMCD invited the Vera Institute of Justice ([www.vera.org](http://www.vera.org)) to



*A segregation unit operated by NMCD.*

conduct a comprehensive assessment on its use of solitary confinement at state detention facilities. This process will hopefully lead to a sensible reduction in the use of solitary confinement in New Mexico prisons with corresponding taxpayer savings and an increase in prison and public safety.

“We got in the habit of making it too easy to lock down prisoners,” says Jerry Roark, NMCD Director of Adult Prisons. “Right now, we have way too many non-predatory prisoners in segregation. We need to change that, and we’re working on it.”

**Solitary confinement in New Mexico prisons is lengthy, lasting for months and even years.**

The American Bar Association defines long-term solitary confinement as longer than 30 days.<sup>14</sup> According to the NMCD, in 2013 the combined average length of stay for prisoners confined to Levels V and VI in New Mexico’s “supermax” is 1,072 days – that is, *almost three years*.<sup>15</sup>

As for New Mexico’s county jails, as noted above, we found it difficult to compile up-to-date information about the use of solitary confinement. In most counties, records simply are not compiled on prisoners kept in solitary confinement, so we know very little about the practice. However, in addition to knowing solitary confinement is widely used in jails across the state, we also know that county jails in New Mexico routinely hold prisoners in solitary confinement for months at a time.<sup>16</sup> Interviews with jail administrators across the state revealed that prisoners classified as “high-risk” can serve their entire jail sentence in total segregation, i.e. isolation.<sup>17</sup> A vast majority of county jails impose long-term segregation for prisoners awaiting a murder sentence, attempted escapees, violent offenders, and prisoners with mental health issues. Also, a review of public records revealed that, in the Santa Fe County Jail, on December 21, 2012, almost 20 percent of the prisoners – five out of 28 – had been held in solitary confinement for more than 6 months.<sup>18</sup> At the Doña Ana County jail, seven male prisoners were recently kept in solitary confinement or periods (respectively) of 95 days, 272 days, 145 days, 237 days, 93 days, 193 days, and 393 days.<sup>19</sup> The average length of stay in solitary confinement for female prisoners at the Doña Ana County jail, for the second half of 2012, was 45 days.<sup>20</sup>

**The mentally ill are held in solitary confinement in New Mexico.**

The NMCD has reported that “1 in every 4 prisoners (25 percent) in NMCD prisons is in treatment for serious mental illness on any given day.”<sup>21</sup> On average, researchers estimate that across the country at least 30 percent of the prisoners held in solitary confinement are mentally ill.<sup>22</sup> Thus, we can assume that at least 25 percent of solitary confinement prisoners in the New Mexico prison system are seriously mentally ill. This means that serious mental illness afflicts hundreds of prisoners now languishing in isolation in New Mexico’s prisons and jails.

**We got in the habit of making it too easy to lock down prisoners. Right now, we have way too many non-predatory prisoners in segregation. We need to change that, and we’re working on it.**

**- Jerry Roark,  
NMCD Director  
of Adult Prisons**

Under the advice of the Vera Institute, the NMCD has decided to close down its 48-bed “Alternative Placement Area” (APA) at the Central New Mexico Correctional Facility in Los Lunas, which is a solitary confinement unit designed to care for seriously mentally ill prisoners in the state prison system that are high security risks.<sup>23</sup> The tentative plan is to move these prisoners to PNM and to secure adequate psychiatric, nursing, staffing and programmatic resources to meet these prisoners’ needs.

As far as the counties, again we just don’t have much information. That said, the Metropolitan Detention Center in Bernalillo County estimates that almost a third of MDC’s prisoners are suffering from some form of mental illness.<sup>24</sup> It is reasonable to assume that the percentage of MDC prisoners in solitary confinement suffering from mental illness is at least that high. Likewise, other jails in the state are known to house mentally ill prisoners in isolation.

### **Children have been held in solitary confinement in New Mexico.**

Recently, Orlando Salas sued the Curry County Detention Center for being held in solitary confinement for approximately eight months when he was 15 years old. After prolonged litigation, the county jail settled for \$450,000.<sup>25</sup> Advocates for children report that this is not the only incident of children being held in solitary confinement in New Mexico. The American Bar Association has noted that “[i]solation can be particularly damaging to youthful prisoners.”<sup>26</sup> The U.N. has called for a ban on detaining children in solitary confinement altogether.<sup>27</sup> Likewise, several states have banned the use of solitary confinement in juvenile facilities.<sup>28</sup>

### **Almost all prisoners held in solitary confinement are released to society.**

It is crucial to note that 95 percent of prisoners are eventually released to the public.<sup>29</sup> How these prisoners are treated while detained plays a substantial role in determining how they will adjust to public life and whether or not they re-engage in criminal activity once released. Those who have experienced extreme solitary confinement, and especially those with mental illness, re-enter society ill-equipped to handle the “free world” in a healthy, constructive way.<sup>30</sup>



## Changing Views

Across the United States, policymakers are recognizing that long-term solitary confinement is inhumane and an unnecessary drain on resources. At the same time, there is rising awareness that the use of solitary confinement can undermine public safety. Maine and Mississippi, in particular, have taken proactive roles in reducing their solitary confinement populations.

### Maine

In 2010, the Maine Legislature required the Department of Corrections to review its use of solitary confinement and report its findings back to the Legislature. The report, issued in March 2011, called for improvements in mental health care and alternatives aimed at “behavioral intervention” in the general prison population. Later in 2011, Corrections Commissioner Joseph Ponte proposed a limit on the use of solitary confinement in the state’s correctional facilities, which led to a 60-70 percent reduction of prisoners held in isolation. In the past, the Special Management Unit of Maine’s State Prison, a supermax facility, often had its 100 strict-isolation cells filled. It now confines on average 40-45 prisoners. “A quarter of these prisoners stay for fewer than 72 hours. For those who remain longer, the stays average around 25 days.”<sup>31</sup>

### Mississippi

In 2007, the ACLU filed suit against Mississippi’s Department of Corrections Commissioner Christopher Epps, challenging the inhumane conditions of solitary confinement at Unit 32 – the state’s supermax facility. In the midst of legal proceedings, Unit 32 began to loosen its restrictions by allowing group dining, additional physical activity, access to work opportunities, and rehabilitative services, which resulted in a decrease in violent incidents and a 70 percent drop in the number of prisoners held in solitary



confinement.<sup>32</sup> As part of the settlement agreement in 2010, Epps closed Unit 32 and began to question the use of solitary confinement across the state.<sup>33</sup> The amount saved in operational costs for daily housing of prisoners in solitary confinement (\$102) versus general population (\$42) was a major benefit of closing Unit 32. The state saved \$6 million per year.<sup>34</sup>

### Other States

Other states are also taking action. In January 2013, Illinois governor Pat Quinn closed Tamms Correctional Facility – a supermax prison known for holding the mentally ill in solitary confinement for several years at a time. One major factor for the closure was the expense of maintaining a supermax facility and its drain on public resources.<sup>35</sup> Recently, legislation limiting the use of solitary confinement has been enacted or considered in several states, including Colorado,<sup>36</sup> Texas,<sup>37</sup> Nevada,<sup>38</sup> Montana, California, New York,<sup>39</sup> Florida,<sup>40</sup> Massachusetts,<sup>41</sup> New Hampshire, and Virginia.<sup>42</sup>

## **Federal Government**

The federal government is also getting involved. In June of last year, the U.S. Senate held hearings on solitary confinement – the first such hearings ever by either branch of Congress. Following that hearing, the U.S. Bureau of Prisons said it planned to immediately reduce its use of solitary confinement by 25 percent.<sup>43</sup> Also, in May of this year, the Government Accountability Office released a report recommending extensive reforms and greater oversight in the use of solitary confinement in facilities operated by the Bureau.<sup>44</sup> U.S. Immigrations and Customs Enforcement (ICE) also recently announced new restrictions on the use of solitary confinement on immigrant detainees.<sup>45</sup>

## **International**

At the international level, the United Nations Special Rapporteur on Torture, Juan E. Méndez, recently called for an absolute global ban on putting vulnerable populations – children, the mentally ill or mentally disabled – in solitary confinement.<sup>46</sup> Earlier this year, the Inter-American Commission on Human Rights criticized the United States for its misuse and abuse of solitary confinement.<sup>47</sup>

## **Experts**

A growing movement of experts and scholars is now challenging solitary confinement. The American Psychiatric Association (APA) was founded in 1844 and is the world's largest psychiatric organization, representing more than 33,000 psychiatric physicians from the United States and around the world. Last December, the APA joined the chorus with its own position statement opposing solitary confinement in certain circumstances: "Prolonged segregation of adult prisoners with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such prisoners. If an inmate with serious mental illness is placed in segregation, out-of-cell structured therapeutic activities (i.e., mental health/ psychiatric treatment) in appropriate programming space and adequate unstructured out-of-cell time should be permitted. Correctional mental health authorities should work closely with administrative custody staff to maximize access to clinically indicated programming and recreation for these individuals."<sup>48</sup> The American Bar Association has also issued standards which call for greater accountability and care in the use of solitary confinement and recommending limitations on its use.<sup>49</sup>

## Solitary Confinement is Costly

It is well established<sup>50</sup> – and commonsensical – that it costs more to incarcerate maximum security prisoners, compared to low security prisoners. Staffing costs are much higher in solitary confinement facilities. Prisoners are usually required to be escorted by two or more officers any time they leave their cells, and work that is often performed by prisoners – such as cooking and cleaning – must be done by paid staff.

A 2007 estimate in Arizona put the annual cost of placing someone in a supermax facility at \$50,000 compared to only \$20,000 for the average prisoner. In Texas it costs 45 percent more to house prisoners in solitary confinement than in conventional prison cells.<sup>51</sup>

Here in New Mexico, the fiscal impact of the use of solitary confinement is less clear. Yet examining the *staffing* data by custody level is illuminating. The Penitentiary of New Mexico facility in Santa Fe holds roughly the same number of prisoners at the lower security Level II as it does in the higher security Level V and Level VI, but the number of custody staff required at the three levels is 52, 143, and 151, respectively. The solitary confinement levels in New Mexico state prisons require almost *three times* the staffing, and presumably three times the staffing costs.



*Exercise cages for prisoners at the Penitentiary of New Mexico near Santa Fe.*

As noted above, the cost of solitary confinement is a major reason why other states are reexamining its use.

## Solitary Confinement Undermines Public Safety

Studies show that solitary confinement does not improve public safety or reduce prison violence.<sup>52</sup> In fact, it often has the exact opposite effect.<sup>53</sup> Again turning to the example of Mississippi, corrections administrators there have acknowledged that the misuse of solitary confinement in their state made violence *more* prevalent in their detention facilities. The state found that it not only saved millions of dollars by dramatically reducing the use of solitary confinement, it also experienced a 70 percent drop in prison violence.<sup>54</sup>

In 1980, New Mexico experienced one of the deadliest riots in the nation's history. A study of events leading to the prison riot "attributed the riot directly to the strategy of isolating prisoner leaders, which led to the fragmentation of prisoner solidarity and in turn led to growing violence."<sup>55</sup>

Finally, as was stated earlier, the vast majority of those held in solitary confinement in New Mexico's prisons and jails will eventually return to society,<sup>56</sup> many with higher levels of aggression and mental instability as a result of being confined in extreme forms of isolation. We may expect prisoners deprived of normal human contact for extended periods to find it challenging to properly reintegrate into society, resulting in higher recidivism rates.<sup>57</sup>

## **Solitary Confinement Violates Fundamental Rights**

There is broad consensus<sup>58</sup> among mental health experts that deep psychological harm can result from prolonged solitary confinement. The American Bar Association defines an excessive term in solitary confinement as more than 30 days. The United Nations Special Rapporteur on Torture defines an excessive term as more than 15 days.

Research demonstrates that the clinical impacts of isolation can actually be similar to that of physical torture.<sup>59</sup> As a California prison psychiatrist told Human Rights Watch in 2002: “It’s a standard psychiatric concept, if you put people in isolation, they will go insane ... Most people in isolation will fall apart.”<sup>60</sup>

A study of long-term isolation by one of the country’s leading experts on solitary confinement, Dr. Craig Haney, found extraordinarily high rates of psychological trauma. More than four out of five prisoners suffered from anxiety and nervousness, headaches, troubled sleep, lethargy or chronic tiredness. Over 50 percent complained of nightmares, heart palpitations, and fear of impending nervous breakdowns, while a similar percentage reported specific psychopathologic effects of isolation, such as obsessive ruminations, confused thought processes, irrational anger and social withdrawal. Over half also reported violent fantasies, emotional flatness, mood swings, chronic depression, and overall deterioration. Nearly half had suffered hallucinations or perceptual distortions, and a quarter of all prisoners had experienced suicidal thoughts.<sup>61</sup>

Because of an evolving understanding that solitary confinement constitutes cruel and unusual punishment, it is being challenged in courtrooms across the country more than at any other time. Class action lawsuits are now pending against the practice in Colorado, California, and Arizona. Major settlements have been reached in litigation challenging solitary confinement in Massachusetts, Wisconsin, Connecticut, and Mississippi. Several courts have already ruled that putting mentally ill prisoners in solitary confinement violates the Eighth Amendment’s prohibition against cruel and unusual punishment. United States District Court Judge Thelton Henderson wrote that solitary confinement “may well hover on the edge of what is humanly tolerable,” and that for those who have been diagnosed mentally ill, “placing them in [solitary confinement] is the mental equivalent of putting an asthmatic in a place with little air.”<sup>62</sup> Here in New Mexico, the Stephen Slevin case resulted in a huge financial cost to Doña Ana County as restitution for the horrendous psychological and physical cost to Mr. Slevin.

The U.S. Department of Justice (“DOJ”) has the authority under the Civil Rights of Institutionalized Persons Act (CRIPA)<sup>63</sup> to review conditions and practices within state and local corrections facilities. In May 2013, the DOJ issued a findings letter detailing the results of its investigation into the use of solitary confinement on prisoners with serious mental illness at the Pennsylvania State Correctional Institution at Cresson. The department found that Cresson’s use of prolonged and extreme forms of solitary confinement on prisoners with serious mental illness, many of whom also have intellectual disabilities, violated constitutional and statutory rights. Although Cresson itself will now be shut down, the DOJ “is expanding the investigation to include all prisons in the Pennsylvania Department of Corrections to determine whether these other prisons also engage in the unlawful use of prolonged and extreme isolation of prisoners with serious mental illness and intellectual disabilities.”<sup>64</sup>

# Reforming Solitary Confinement in New Mexico

The ACLU of New Mexico and the New Mexico Center on Law and Poverty urge policymakers to take the following steps.

## 1. Increase Transparency and Oversight of Segregation Practices

One of the key findings from this report is that most jails and prisons do not collect consistent information on who they place in isolation, why, under what conditions, or for how long. The little information we obtained about solitary confinement is dwarfed by the amount of information we lack – particularly for county jails in New Mexico. Many facilities do not even provide clear policies explaining what prisoners must do in order to work their way out of solitary confinement.

Without clear and consistent data about the use of solitary confinement, lawmakers, correctional officials and the public are unable to assess the costs of putting prisoners in segregation and hold public officials accountable when the practice is being abused. Based on our assessment, we believe all detention facilities in the state should report annually on the use of solitary confinement and collect the following data for each prisoner placed in solitary confinement for more than 24 hours:

- the specific reason for their placement
- the duration of their placement
- the age of the prisoner
- any diagnosis of, and treatment for, mental and/or physical illness during their confinement
- whether the prisoner is awaiting a competency hearing
- whether the prisoner attempted or committed suicide during their stay in isolation

Of course, the current absence of statistics should not be used to justify delays to reforms that must be implemented immediately so that NM's jails and prisons satisfy state and federal constitutional requirements and rapidly evolving national attitudes towards solitary confinement.

We note that the New Mexico Corrections Department was very responsive to our public records inquiries, providing information even beyond what we requested. Furthermore, their internal policies encourage transparency. They granted us extensive access to their top administrative officials, and provided us with lengthy tours of their segregation facilities.

## 2. Guarantee Mental, Physical and Social Stimulation for Segregated Prisoners

As we have discussed, corrections and mental health experts agree that prolonged periods of sensory deprivation in the corrections setting can have deeply detrimental effects on prisoners' mental health, tantamount to torture.

**The little information that we obtained about solitary confinement is dwarfed by the amount of information we lack — particularly for county jails in New Mexico.**

We believe that New Mexico corrections facilities should be held to a consistent set of standards guaranteeing that prisoners placed in segregated housing are provided with meaningful forms of stimulation, including:

- in-cell programming for prisoners who are not permitted to leave their cells
- additional out-of-cell time, taking into account the size of the prisoner's cell and the length of time the prisoner has been housed in this setting
- opportunities to exercise in the presence of other prisoners, separated by security barriers if necessary
- weekly mental health monitoring
- meaningful daily face-to-face interaction with both uniformed and civilian staff
- access to radio or television for programming or mental stimulation, although such access should not substitute for human contact

#### COUNTY STANDARDS

The New Mexico Adult Detention Professional Standards Council approved a set of voluntary standards for county jails in April 2010 and published a revised version in January 2013. While these standards cover all of the operations and management of detention facilities, a few standards focus exclusively on solitary confinement, largely addressing access to health care and screening for prisoners with mental illness who are confined to segregation. If implemented, these standards might help reduce, or at least reform, the use of solitary confinement in county jails. Of the 29 counties with jails in NM, two have now been accredited (Chaves and San Juan), with two more counties (Lea and San Miguel) at the final stages of the accreditation process.

### **3. Limit the Use of Solitary Confinement to No More Than 30 Days**

Given the extreme negative effects on prisoners that is associated with the use of solitary confinement, we urge a ban on its use for periods longer than 30 consecutive days.

### **4. Ban the Use of Solitary Confinement on Prisoners Suffering from Mental Illnesses**

Placing a prisoner with a mental health condition in solitary confinement should be a rare and unusual event. This should only occur when a prisoner is acting violently or engaging in menacing conduct or when the prisoner requires protective custody to guarantee his or her own safety. Likewise, no prisoner should be placed in solitary confinement for more than 24 hours without a mental health screening by a qualified mental health professional. If the screening reveals the presence of a mental illness, the prisoner should be placed in an environment conducive to treatment.

### **5. Ban the Use of Solitary Confinement on Children**

For this report, we only looked at adult facilities. The NMCD claims to have no prisoners under age 18 in its facilities. That said, the evidence is clear that solitary confinement can be particularly damaging to the mental and social development of children. And, children's attorneys report having clients held in solitary confinement in New Mexico. The American Bar Association has noted that "[i]solation can be particularly damaging to youthful prisoners."<sup>65</sup> For this reason, policymakers are urged to pass a statewide ban on the placement of people under age 18 in solitary confinement.

## Notes

- 1 On appeal, Slevin settled for \$15.5 million.
- 2 A note on terminology: The New Mexico Corrections Department (NMCD) uses the term “administrative segregation” when referring to conditions of solitary confinement, as defined in this report. The American Bar Association uses the term “segregated housing.”
- 3 Stuart Grassian, “Psychopathological Effects of Solitary Confinement,” *American Journal of Psychiatry* (1983)
- 4 See [www.aclu.org/files/assets/stop\\_solitary\\_-\\_two\\_pager.pdf](http://www.aclu.org/files/assets/stop_solitary_-_two_pager.pdf)
- 5 The counties covered in this report are Bernalillo, Curry, Doña Ana, Eddy, San Juan, San Miguel, Santa Fe and Taos.
- 6 New Mexico Sentencing Commission, “New Mexico Prison Population Forecast: FY2013-FY2022” (June 2012), <http://nmsc.unm.edu/reports/2012/2012-prison-prison-population-projection.pdf>
- 7 Dan McKay, “Jail Crowding Will Not Be Alleviated By Transfers,” *Albuquerque Journal* (April 10, 2013). <http://www.abqjournal.com/main/187152/news/jail-crowding-will-not-be-alleviated-by-transfers.html>
- 8 See interim legislative Courts, Corrections and Justice committee minutes (July 2007) <http://www.nmlegis.gov/lcs/minutes/ccjminjul25.07.pdf>; See also “New Mexico Prison Population Forecast, FY2012-FY2022,” New Mexico Sentencing Commission (June 2012) <http://nmsc.unm.edu/reports/2012/2012-prison-prison-population-projection.pdf>
- 9 See ABA Standard 23-2.7. [www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_treatmentprisoners.html](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html)ABA
- 10 NMCD presentation before interim legislative Courts, Corrections and Justice committee (August 2013). In a subsequent conversation with Jerry Roark, NMCD Director of Adult Prisons, Roark suggested that this figure might be an over-estimate. In any case, the current number is definitely over 10 percent.
- 11 U.S. Department of Justice National Institute of Corrections, “Classification of High Risk and Special Management Prisoners: A National Assessment of Current Practices ” (June 2004), <http://static.nicic.gov/Library/019468.pdf> (see p.49)
- 12 Id.
- 13 United States Government Accountability Office, “Bureau of Prisons: Improvements Needed in Bureau of Prisons’ Monitoring and Evaluation of Impact of Segregated Housing” (May 2013) <http://www.gao.gov/assets/660/654349.pdf>
- 14 See ABA Standard 23-2.7. [www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_treatmentprisoners.html](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html)ABA
- 15 Email from Jerry Roark, September 2013. On file with the ACLU-New Mexico. Also see interim legislative Courts, Corrections and Justice Committee minutes, August 22-23, 2011. <http://www.nmlegis.gov/lcs/minutes/CCJminaug22.11.pdf>
- 16 The New Mexico Center on Law and Poverty contacted every jail in the state during the months of August and September 2013 and learned that every jail in the state, with the possible exception of one, uses solitary confinement for long periods of time. Further information was provided through responses to public records requests to several of the major jails in the state.
- 17 We found that jails either had policies in place that permit this, or had no policies in place to prohibit this.
- 18 Santa Fe County Jail response to public records request, on file with NM Center on Law and Poverty
- 19 Dona Ana County Jail response to public records request, on file with NM Center on Law and Poverty
- 20 Id.
- 21 New Mexico Corrections Department, “Strategic Plan: 2010-2011.” [http://corrections.state.nm.us/pio/docs/2010-2011\\_SP.pdf](http://corrections.state.nm.us/pio/docs/2010-2011_SP.pdf), at page 16

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