

# Prisons Within Prisons: The Use of Segregation in the United States



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### I. Prisons Within Prisons

Since the 1980s, departments of corrections have sharply increased the use of segregation as a discipline and management tool. For example, according to the U.S. Bureau of Justice Statistics, in just the five years between 1995 and 2000, the number of prisoners held in segregation beds increased 40 percent nationally.<sup>1</sup> By 2004, more than forty U.S. states reported having some form of supermax housing.<sup>2</sup> Based on the most recent data available from the Bureau of Justice Statistics census, in 2005 U.S. prisons held 81,622 people in restricted housing.<sup>3</sup>

Segregation is used for a variety of reasons, most commonly as a form of punishment for rule violations, as a way to remove prisoners from the general prison population who are thought to pose a risk to security or safety, and as a way to provide safety to prisoners believed to be at risk in the general prison population. Prisoners placed in segregation are moved to special housing units with high levels of restrictions and control. Prisoners may stay in segregated housing for years without the opportunity to engage in the types of interactions, treatment, and education experiences that would help them adjust when reentering either the general prison population or society. In effect, segregation is a secondary sentence imposed by the correctional facility—one that follows long after and usually is unrelated to the conviction for which the person is incarcerated.

The consequences of holding an individual in these conditions over time may include new or exacerbated mental health disturbances, assaultive and other anti-social behaviors, and chronic and acute health disorders. People who have been housed in segregation for long periods of time may also find it difficult to be in the company of others, whether in the general prison population or later in the community. In fact, studies show that prisoners who are released from segregation directly to the community reoffend at higher rates than general-population prisoners.<sup>4</sup>

Also, significant fiscal costs are associated with housing people in segregation. In the Ohio State Prison in 2003, it cost \$149 a day to house a supermax prisoner, compared with \$101 per day for maximum-security and \$63 per day for an average general-population prisoner.<sup>5</sup>

The majority of these higher costs come from the need for additional staff to monitor segregation units. In the Ohio State Prison, the supermax facility required one corrections officer for every 1.7 prisoners; maximum-security housing required one officer for every 2.5 prisoners.<sup>6</sup>

### A. The Emergence of Segregation in U.S. Prisons

The use of solitary confinement in the United States dates back to Pennsylvania in the late 1770s. At that time, the philosophy was that prisoners who were isolated would have time to repent and rehabilitate themselves. Although this system spread to other jurisdictions and survived for nearly a century, its use was reduced when the psychological and physical damage caused by this seclusion became apparent.<sup>7</sup> In 1890, a prisoner on death row in Colorado filed a writ of habeas corpus in the Supreme Court challenging his imprisonment under an ex post facto law that required all death row prisoners be held in solitary confinement. In a landmark decision, the Court noted some severe effects of this isolation, stating,

A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition . . . and others became violently insane; others still committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.<sup>8</sup>

Following these observations, the Court found that this prisoner's placement in solitary confinement "was an additional punishment of the most important and painful character," and thus the application of the new law to his situation violated the Constitution.<sup>9</sup>

This shift away from segregation was short lived, however, and reversed when the federal government opened Alcatraz Prison in 1934 and the United States Penitentiary in Marion, Illinois, in 1963. Both prisons were built to house the nation's worst criminals; they relied primarily on isolating prisoners who posed the greatest behavioral and management concerns in order to maintain control. States followed suit and began to add segregation units to house those they deemed dangerous

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and threatening. The first supermax prison, built solely to house prisoners in segregation, was Pelican Bay State Prison, opened in California in 1989.

## B. Types of Segregation in U.S. Prisons

Segregation is used in minimum-, medium-, and maximum-security facilities and may have varying conditions and restrictions. Generally, prisoners in segregation are confined to a special housing unit—essentially prisons within prisons—unless they are sent to a supermax facility, which houses only prisoners in segregation. The following are the main types of segregation in the United States:

1. **Disciplinary segregation** is a form of punishment for rule violations occurring within the prison setting. For example, a prisoner may be sentenced to a year in segregation for assault or possession of contraband, or for a period of months for violation of a direct order.
2. **Administrative segregation** typically is used to remove prisoners from the general prison population who are thought to pose a threat to safety or security, or for prisoners who are believed to have information about an incident under investigation; this type of segregation is not a form of punishment for a specific violation. For example, a gang leader believed to be responsible for coordinating gang activities within the prison may be placed in administrative segregation even if that individual has not been found in violation of any rules. Administrative segregation usually lasts for an indeterminate period of time and, for those considered a threat to safety and security, may be of long duration. In some systems, prisoners are not told the reason for their transfer to administrative segregation, and options for reevaluation or release back to the general prison population may be few.
3. **Protective custody** is the use of segregation to provide safety for prisoners believed to be at risk in the general prison population, such as a prisoner who provides information to correctional staff about violations committed by others, or someone who is considered at risk due to physical characteristics or other individual factors. Although segregated for their own protection, restrictions on human contact and programming for prisoners in protective custody can be as severe as for prisoners in disciplinary or administrative segregation.
4. **Temporary confinement** is the use of segregation while a reported incident is being investigated; it usually lasts for a short period of time and begins immediately after a rule violation is identified but before a hearing is conducted.
5. **Supermax (or closed maximum-security) prisons** may hold both administrative and disciplinary segregation prisoners. All prisoners in supermax facilities are held in high levels of confinement, often for long periods of time. Architecturally, supermax prisons are built to restrict visual and

tactile stimulation for prisoners, as well as contact with others. Educational and programmatic activities are greatly restricted in these environments.

## C. Conditions of Confinement in Segregation

The use of segregation that began in the mid-1980s was accompanied by increasingly severe conditions of confinement, both in supermax facilities and in prison segregation units throughout the country. Conditions in segregation typically include intense isolation and control.

Prisoners usually spend at least twenty-three hours a day in their cells. The federal district court in 1995 in *Madrid v. Gomez* described a segregation cell at Pelican Bay State Prison in California in these words:

Each cell is 80 square feet and comes equipped with two built-in bunks and a toilet-sink unit. Cell doors are made of heavy gauge perforated metal; this design prevents objects from being thrown through the door but also significantly blocks vision and light. . . . [The] interior is designed to reduce visual stimulation. . . . The cells are windowless; the walls are white concrete. When inside the cell, all one can see through the perforated metal door is another white wall.<sup>10</sup>

Prisoners in segregation are generally taken out of their cells for only one hour out of every twenty-four hours, either for recreation or a shower. However, in some systems, prisoners are released only one day a week for a total of five hours. Before being taken to showers, recreation, or appointments, prisoners are cuffed and also may be shackled at the waist and placed in leg irons. Recreation times may occur anytime from 7:00 a.m. until 3:00 a.m. Typically, recreation takes place in either an open cage outdoors (called a yard) or an indoor area with an open barred top. Because exercise areas usually are exposed to the weather, prisoners must choose whether to use them during extreme weather conditions or remain in their cells. Periods of extreme weather may greatly reduce the amount of time prisoners are out of the cell, particularly when recreation periods are offered in five-hour blocks.

Except when overcrowding requires double celling, face-to-face human contact—except with corrections officers—is virtually eliminated in segregation. Meal trays are delivered through a slot in the door, visits with counselors and mental health staff also are usually conducted through the cell door, and exercise is taken alone. Segregation prisoners typically are not allowed contact with other prisoners, and visits with family members are curtailed or may be completely prohibited for a year or more. When family visits are allowed, they usually are conducted by speaker or telephone through a thick glass window, precluding the opportunity for human touch. Mental health and medical services are often extremely limited for prisoners in segregation as well, further reducing human contact.

## II. A New Way Forward

Even with high fiscal costs and exposure to litigation related to conditions of confinement, prison officials fear that moving prisoners out of segregation will lead to violence and other serious violations. Two states—Ohio and Mississippi—have tested that concern. In the mid-2000s, Ohio and Mississippi reduced their supermax populations by 89 percent and 85 percent, respectively, while apparently decreasing violence and disruption. Mississippi went from 1,000 to 150 prisoners in segregation;<sup>11</sup> Ohio went from 800 to 90 prisoners.

Mississippi provides a particularly vivid example of multifaceted reform. In the early 1990s, reports on conditions in the Mississippi Department of Corrections' (MDOC) Parchman Unit 32 indicated that prisoners were severely isolated. The unit was filthy with excrement, and prisoners with mental illness created constant disturbances by starting fires, flooding the cells, and screaming all night.<sup>12</sup> Officers in the unit often responded to these disturbances with force. The unit also became infested with mosquitoes in the summer, forcing prisoners to keep cell windows closed, thereby exacerbating the poor conditions. In 2005, the American Civil Liberties Union filed suit against the MDOC related to conditions in Unit 32. In response, the MDOC convened a task force to address the issues identified, in particular the assignment of prisoners to segregation.

In 2007, the MDOC voluntarily implemented the task force's recommendations. Within a year, the department successfully reclassified and moved more than three quarters of its supermax prisoners to the general prison population. Prisoners remaining in Unit 32 were allowed to eat meals together and spend several more hours out of their cells each day. The MDOC also physically transformed Unit 32 by building program and recreation areas and providing access to educational programming and mental health treatment.

Mississippi successfully implemented these changes by dramatically revising its classification system and creating more restrictive criteria for placement in administrative segregation. Specifically, the new objective classification system allowed placement in Unit 32 only for prisoners who had committed a serious infraction, were active, high-level gang members, or had prior escapes or escape attempts from a secure facility. Only the commissioner had the authority to place an individual in segregation without these criteria. In addition, the MDOC implemented a step-down program so that prisoners with mental illness could transition out of segregation; participants received intensive mental health treatment and rewards for success in the program, and special training was provided to assist officers in dealing with mentally ill prisoners. These changes not only reduced the number of people held in segregation but also were associated with an almost 70 percent decrease in prisoner-on-prisoner and prisoner-on-staff violence, and use of force by officers in the unit plummeted.<sup>13</sup>

## III. Vera's Segregation Reduction Project

Inspired by the success of Ohio and Mississippi, and informed by the *Confronting Confinement* report issued by the Commission on Safety and Abuse in America's Prisons, the Vera Institute of Justice launched its Segregation Reduction Project (SRP) in 2010. The SRP seeks to safely reduce the number of prisoners held in segregation by facilitating policy changes that reassess violations qualifying a prisoner for segregation and that redefine prisoners' length of stay in segregation (especially for minor violations). The project also focuses on improving conditions of confinement in segregation and enhancing programming and support for transitions back to the general prison population. The overall goal of the SRP is to develop a national model that can be adapted for use in many jurisdictions.

To that end, Vera is currently collaborating with Illinois, Maryland, and Washington to implement the SRP in those states. Although the exact process varies depending on the specific challenges and concerns of each state corrections system, Vera staff do the following:

- conduct intensive site visits to supermax facilities and segregation units
- review policies and practices related to the use of segregation
- complete comprehensive analyses of segregated populations, violations resulting in segregation time, and new violations by prisoners moved to other levels of security
- provide data-based presentations to corrections officials about patterns in and outcomes of their use of segregation
- in consultation with corrections staff, recommend strategies to safely reduce segregation and improve conditions of confinement
- in close partnership with corrections staff, help pilot changes and track the outcomes of those changes on institutional safety and new violations over time.

## IV. Making a Positive Change in Segregation in U.S. Prisons

Given the current fiscal crisis, many jurisdictions now are looking for new and effective paths forward, away from reliance on this expensive form of incarceration. Especially with the current U.S. recession, states can no longer afford these unsustainable costs. Illinois—with approximately 46,000 men and women in state prisons in February 2010—provides one example of why it is important to reassess the use of segregation in the nation's prisons. Although only about 5 percent of the prison population was in segregation on any given day, more than half (56 percent) had spent some time in segregation during that prison stay. Reducing the use of segregation and improving conditions of confinement in segregation nationally will affect thousands of individuals.

With this project, Vera hopes to demonstrate that it is possible for states to reduce the numbers of prisoners they hold in segregation without jeopardizing institutional or public safety, as well as create a replicable model that can be adapted for use in other jurisdictions. Based on observations and analyses so far, it seems clear that segregated populations in U.S. prisons *can* be dramatically reduced in a safe way. A substantial number of prisoners are being sent to segregation for relatively nonserious types of behavior, such as unauthorized movement, failure to report to work or school, insolence or talking back, and disobeying a direct order. Confinement to segregation is often out of scale for these violations, especially when alternative sanctions (e.g., restricted movement in their current housing and reduction of other privileges) are available. Policy changes that will reduce the use and long-term impact of segregation include the following:

- using alternative sanctions for minor violations
- reducing segregation time for certain categories of violations
- employing standardized incentivized reductions in segregation time for sustained good behavior
- providing opportunities for gradual resocialization to the general prison population

Changes in Mississippi and Ohio segregation practices suggest that this change can be made safely, without loss of staff positions, and with cost savings. Enhancing the programming available to individuals held in segregation also has the potential to decrease violence and disturbances and increase prisoners' positive adjustment. The provision of safe and healthy conditions in segregation will benefit not only the staff and prisoners in these units

but also ultimately the well-being of facilities, systems, and the community.

#### Notes

- <sup>1</sup> JOHN J. GIBBONS & NICHOLAS DE B. KATZENBACH, *CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA'S PRISONS* (Vera Institute of Justice, 2006); JENNIFER C. KARBERG & JAMES J. STEPHAN, *CENSUS OF STATE AND FEDERAL CORRECTIONAL FACILITIES, 2000* (Bureau of Justice Statistics, U.S. Department of Justice, August 2003).
- <sup>2</sup> Daniel P. Mears, *A Critical Look at Supermax Prisons*, 30 *CORRECTIONS COMPENDIUM* 6–7, 45–49 (2005).
- <sup>3</sup> JAMES J. STEPHAN, *CENSUS OF STATE AND FEDERAL ADULT CORRECTIONAL FACILITIES, 2005* (Bureau of Justice Statistics, U.S. Department of Justice, October 2008).
- <sup>4</sup> See David Lovell, L. Clark Johnson, & Kevin C. Cain, *Recidivism of Supermax Prisoners in Washington State*, 53 *CRIME DELINQUENCY* 633–56 (2007); DAVID LOVELL & CLARK JOHNSON, *FELONY AND VIOLENT RECIDIVISM AMONG SUPERMAX PRISON INMATES IN WASHINGTON STATE: A PILOT STUDY* (University of Washington, 2004), available at <http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidivism-4-19-04.pdf>.
- <sup>5</sup> DANIEL P. MEARS, *EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS* (Urban Institute Justice Policy Center, 2005), available at <http://www.urban.org/publications/411326.html>.
- <sup>6</sup> *Id.*
- <sup>7</sup> Bruce A. Arrigo & Jennifer L. Bullock, *The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What Should Change*, 52 *INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY* 622–40 (2007).
- <sup>8</sup> *In re Medley*, 134 U.S. 160, 168 (1890).
- <sup>9</sup> *In re Medley*, 134 U.S. at 171.
- <sup>10</sup> *Madrid v. Gomez*, 889 F. Supp. 1146, 1228 (N.D.Cal. 1995).
- <sup>11</sup> Terry Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 *CRIM. JUST. & BEHAV.* 1037–50 (2009).
- <sup>12</sup> *Id.*
- <sup>13</sup> *Id.*