



245 SECOND STREET, NE
WASHINGTON, DC 20002-5761
PHONE (202) 547-6000

FRIENDS COMMITTEE ON NATIONAL LEGISLATION

... a Quaker lobby in the public interest

Statement on behalf of the Friends Committee on National Legislation
Ruth Flower, Associate Executive Secretary
submitted for the hearing on

Reassessing Solitary Confinement II: The Human Rights, Fiscal and Public Safety Consequences

United States Senate Judiciary Subcommittee
on the Constitution, Civil Rights and Human Rights

February 25, 2014

Thank you, Chairman Durbin, Ranking Member Cruz and members of the subcommittee for holding this important hearing on the use of solitary confinement and its consequences.

The Friends Committee on National Legislation is a Quaker lobby in the public interest. Grounded in the faith values of the Religious Society of Friends, we are active in our public witness and advocacy for a world that more closely reflects these values –shared not just among Quakers, but also among people of many faiths and persuasions. We offer testimony today because we are concerned by the continued and expanded use of solitary confinement and the consequences of this practice.

Quakers are often credited with inventing solitary confinement. Actually, we borrowed the idea from other faith leaders in the 18th century, who promoted it as an alternative to the widespread use of the death penalty and an improvement over other punishments which maimed, debased and otherwise utterly humiliated accused criminals. But history does record that the first prison in the U.S. entirely constructed for the purpose of solitary confinement – the first “supermax” – was largely designed and operated under the leadership of Quakers. The Eastern Pennsylvania Penitentiary opened in 1829, 185 years ago.

Think of all that has changed since 1829, when that first super-max prison was built. As a nation we have completely re-invented our ways of being in society with one another. We have learned more about almost every aspect of living – very little has been left unchanged in that time. Think of how we teach and learn in schools; how we communicate – both person to person and in mass media; how we get around –in our cities, state to state, and globally. Think about advances in food and medicine, the

eradication of diseases, better understanding of psychology and neurology; the explosion of knowledge in the sciences and the expanding boundaries of the “known world” through space exploration. The society we all live in now is nothing that any of us could have imagined 185 years ago.

And yet, we've kept solitary confinement and even increased its use.

Quakers moved away from solitary confinement within a few years of the opening of the Eastern Pennsylvania Penitentiary. By 1838, leading Quaker Elizabeth Fry was already speaking out against solitary confinement. She lobbied the British House of Commons and she traveled in England and Scotland to meet with policy makers and public audiences, to call out the dangers of this practice. Even before the fields of psychology and neurology developed, she pointed to the deprivations inherent in being completely alone for so long a time and called specific attention to suicides that she learned of in her visits to women's prisons.ⁱ

In the intervening decades, Quakers have been active in movements for criminal justice reform, seeking alternatives to prison, drug addiction treatment, diversion of mentally ill arrestees out of the criminal justice process and into treatment options, an end to mandatory and lengthy sentences, improved conditions in prisons and jails, education and training for prisoners, support for families of people who are in prison, assistance for ex-prisoners when they return to the community, reconciliation between victims and offenders, and a reduction of violence in prison and in communities.

Why the increase in solitary confinement?

Super max prisons grew out of super maxed sentences. In the last 30 years, long and mandatory prison terms, primarily for drug related crimes, have increased the federal prison population by a factor of nine. The federal prison population in 1980 was about 24,000. By 1989, the population had doubled to 58,000, and in the 1990s, it *more* than doubled again – to 136,000. By now, the federal prison population is over 215,000 and still growing.

The Bureau of Prisons (BOP) reportsⁱⁱ that just over half of its inmates are serving time for drug related crimes. Eleven percent are imprisoned for immigration offenses, with less than seven percent for violent crimes including homicide, aggravated assault, kidnapping and robbery. The largest group – nearly half – are serving sentences from five to fifteen years.

Both prison overcrowding and the length of sentences frustrate rehabilitative programs that enable inmates to work toward a shorter, rational release date. Languishing in prison for long terms, prisoners are less engaged in activities that they find useful, and prison staff turn more attention to the management of the population. With inadequate funds for programs and privileges to use as disciplinary rewards and sanctions, prison systems turn to more restrictions, and as a result, increase the risk for prison staff. Ironically, states that cut funding for prison education programs, vocational training, and work opportunities have found ways to support capital projects for super max prisons, and

for the ongoing cost of more intense staffing. States that turn to solitary confinement to manage more prisoners are repeating an experiment that failed 180 years ago.

The Friends Committee on National Legislation joins with people of many faiths and with people devoted to respecting the human rights of all, to call for an end to solitary confinement as it is used today.

How is solitary confinement used today?

Far too many people are held in solitary confinement. As of 2012, about 81,000 people were held in solitary confinement nationwide.ⁱⁱⁱ The GAO reported in 2013 that 12,460 people were held in “segregation” in the Bureau of Prisons (BOP) system. The BOP decreased that number by about 25 percent by the end of last year^{iv} by changing the criteria for transfers into Secure Housing Units (SHU). The Bureau is engaged in consultations on best practices to further reduce the number of people held in isolation. We urge the committee to ensure that the Bureau does not increase its capacity for solitary confinement, while discerning additional ways to *reduce* the population in these units.

It’s easy to get in, and hard to get out. Prisoners are assigned to secure or segregated or restricted units for three types of reasons: (1) for discipline, (2) because they are mentally ill, or (3) because they belong (or are alleged to belong) to a group or a class that is segregated. A few individuals are disciplined in solitary confinement due to violent behavior toward staff or other inmates. But most disciplinary isolation is due to a violation of prison rules, such as failing to stand for the “count,” possessing contraband (such as having more than five dollars without authorization), ignoring orders or using profanity. In cases in Virginia and California, men were placed in solitary confinement because they refused to cut their hair because to do so would violate their religious beliefs. In Virginia, the men had been in solitary confinement for 10 years before a suit was brought.

Mentally ill prisoners constitute another large group of prisoners held in solitary, as identified by Professor Haney in a presentation to the American Academy for the Advancement of Sciences.^v In the past 30 years, the options for treatment of mental illness have diminished, bringing unacceptable and sometimes bizarre behavior to the attention of local law enforcement. Lacking other options, local courts often sentence these individuals to prison. Once in prison, these individuals – who have perhaps more difficulty than anyone conforming to institutional expectations – are frequently placed in isolation. Haney estimates that as many as a third of isolated prisoners are mentally ill.

Classification also leads to the isolation of many inmates. When inmates are identified as a member of a gang by another inmate, even if their behavior in prison has been exemplary, the accused inmate can spend his or her entire sentence in solitary. In California, more than half of the prisoners in the Secure Housing Unit (SHU) are being held for up to six years for “gang validation.” If a tattoo, or a chance comment, marks them as gang members, they will be held for an indeterminate time until they agree to tell to gang investigators everything they know about gang activities. In these coerced “debriefing sessions,” inmates often point to each other, or to rivals, further increasing the population of the SHU.

If they insist that they know nothing about gang activity, they will be held for six years in solitary confinement, when their case will be reviewed to determine whether they are “inactive” gang members.^{vi}

If an inmate has a “history of violence,” he or she can be segregated, whether or not the prison staff has seen any evidence of violence in prison, and whether the “history” comprises convictions or hearsay. The determinations of the appropriateness of segregated placements are made internally, by staff, generally without external oversight and often without objective criteria.

No way to earn a ticket out. Once confined to the segregated unit, a prisoner cannot work at a prison job, attend education or vocational training classes, or participate in other programming that could result in “good time” reductions of the person’s sentence. The staff decision to isolate the prisoner, therefore, has the effect of extending his or her sentence – without an opportunity for appeal or a judicial review of the need for isolation. As a result, a significant percentage of inmates serve out their entire sentence in isolation, and then are released directly to the street, without any education, training or support, and without human contact over the last several years. In Colorado, executive director of corrections estimated that this happened with about 40 percent of inmates held in long-term isolation.

People spend way too long in solitary confinement. Since time in solitary is largely unregulated and inconsistently reported, investigators do not have a clear picture of the amount of time spent in solitary confinement, whether for punishment, administrative classification, or non-voluntary protection. The California Department of Corrections and Rehabilitation released a count of the inmates in the SHU as of September 2011. Of 1,111 inmates, 78 had already served more than 20 years in that unit; another 435 had been there longer than 10 years, but less than 20; 544 had been isolated for at least 5 years. In the Arizona supermax units, the average term is 5 years. The supermax in Virginia (Red Onion State Prison) records an average term of 2.7 years, with terms ranging from 2 weeks to 7 years.

We know better now.

Best practices are being discovered and developed in many states. As this committee heard in 2012, Mississippi is a standout case. In 2007, after a rash of serious violence in the prisons, the state prison commissioner Christopher Epps ordered a lifting of restrictions instead of more lockdowns. Instead of spending more on higher security units, Epps invested in common areas, recreation, and program opportunities. Examining the files of each person in long term isolation, the prison staff ultimately released 70 percent of them to the general population. Violence has gone down and the state has saved millions of dollars.

Sometimes in response to lawsuits, sometimes under court orders, and sometimes by their own policy and fiscal decisions, more states are finding ways to ease the pressure of overcrowding in the prisons, and reviewing the necessity of keeping such a large population in isolation units. These states include Colorado, Ohio, Washington, Maine, and New York. The concept is still hotly debated, however. The governor of Illinois closed the state’s only maximum security prison in 2013, but found that without a

way to ease overcrowding, and without the support of correctional staff, the prison's future is not yet settled.

What should Congress do?

Congress can help turn this picture around, for the Federal Bureau of Prisons, and for state prisons and local jails.

In direct oversight and budgeting role for the Federal Bureau of Prisons, Congress should

- develop a framework of standards for conditions, limits, accountability, and transparency for solitary confinement;
- ensure that the BOP has access to the funds it needs to support education, training and recreational programming in federal prisons, in order to reduce recidivism (and thus reduce pressures on prison population) and to support a full range of management options. Solitary confinement should not be necessary as a disciplinary option;
- address the mental needs of people with illnesses who end up in the prison system for lack of other options. These individuals should be diverted out of the criminal justice system at the time of arrest or arraignment, but once in the system, they should receive treatment, not punishment for their illness; and finally,
- end mandatory minimum sentences and reduce the length of sentences for drug related crimes.

Through training, incentives, and technical support, Congress can and should help states to move away from abuse of solitary confinement. Congress can provide incentives to state and local jurisdictions by conditioning grants on the adoption of solitary confinement standards consistent with new federal standards.

Standards for solitary confinement should include:

- a disciplinary system built on privileges and sanctions, rather than isolation;
- separation from the general prison population only to the degree necessary for the physical safety of staff and other inmates;
- a strict limit on the amount of time that a prisoner may be confined in isolation;
- an end to forced "cell extractions"
- conditions of solitary confinement that includes access to natural light and air, human contact, an ability to occupy time, and other identified factors that mitigate the psychological destruction that occurs in solitary, even in short periods of time;
- daily monitoring of placements in solitary confinement by a third party not employed by the prison system;
- a review of each isolation, the reasons for it, and the inmate's own version of events (without retaliation) by the prison warden, with records to be open to an outside reviewing authority.

Maine's Department of Corrections has adopted most of these standards, and has cut the number of people held in isolation nearly in half.

In keeping with the recommendations of Juan Mendez, the UN Special Rapporteur on Torture and Cruel, Inhuman, and Degrading Treatment in March 2012, certain individuals should never be placed in solitary confinement: juveniles and those with mental illness or a mental disability. The state of New York has just agreed to limit its use of solitary confinement; it also includes pregnant women in its list of people who should never be isolated.

It's a 185-year-old experiment. It failed. It's time to turn it around as Mississippi did, as Maine is doing, as other states are considering. This society knows how to require each other to be accountable for our actions, without destroying the people inside our prisons.

Thank you for holding this important hearing and providing the opportunity for non-governmental organizations to contribute ideas about how to curtail and end the widespread use solitary confinement.

ⁱ Elizabeth Gurney Fry, Katharine Fry, Rachel Elizabeth Cresswell, *Memoir of the Life of Elizabeth Fry: With Extracts from Her Letters and Journal*, p. 365. <https://archive.org/details/memoirlifeeliza06cresgoog>

ⁱⁱ Bureau of Prisons, Inmate Population Report. http://www.bop.gov/about/statistics/population_statistics.jsp

ⁱⁱⁱ Angela Browne, Alissa Cambier and Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, Federal Sentencing Reporter, Vol. 24 No. 1, October 2011, pp. 46-49. <http://www.jstor.org/stable/10.1525/fsr.2011.24.1.46>

^{iv} Testimony of Charles E. Samuels, Director, BOP, Senate Committee on the Judiciary Oversight Hearing, November 6, 2013, <http://www.judiciary.senate.gov/pdf/11-6-13SamuelsTestimony.pdf>

^v Joseph Stromberg, "The Science of Solitary Confinement," *Smithsonian Magazine*, February 19, 2014. <http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/>

^{vi} Laura Magnani, "Buried Alive: Long Term Isolation in California's youth and Adult Prisons," American Friends Service Committee, May 2008. <http://afsc.org/sites/afsc.civactions.net/files/documents/Buried%20Alive%20%20PMRO%20May08%20.pdf>