

**U.S. Department of Justice
Report and Recommendations
Concerning the Use of Restrictive Housing**



EXECUTIVE SUMMARY

January 2016

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In a July 14, 2015, speech at the NAACP National Convention, President Barack Obama announced that he had asked Attorney General Loretta Lynch to conduct a review of “the overuse of solitary confinement across American prisons.” The President directed that the purpose of the review be not simply to understand how, when, and why correctional facilities isolate certain prisoners from the general inmate population, but also to develop strategies for reducing the use of this practice throughout our nation’s criminal justice system. Over the past several months, a team of senior officials at the U.S. Department of Justice met regularly to study the issue of solitary confinement—or “restrictive housing,” to use the more general corrections term—and formulate policy solutions. This Report is the culmination of the Department’s review.

The Justice Department embraced this opportunity to think deeply about the use of restrictive housing in America. The issue strikes at some of the most challenging questions facing correctional officials and criminologists: How should prisons and other correctional facilities manage their most violent and disruptive inmates? How can they best protect their most vulnerable and victimized ones? And what is the safest and most humane way to do so? These questions are of particular importance to the Justice Department. Not only does the Department oversee the Federal Bureau of Prisons, the nation’s largest prison system, but it also provides funding and technical assistance to other correctional systems, through the National Institute of Corrections (NIC) and the Office of Justice Programs (OJP), and enforces the constitutional and statutory rights of state and local inmates through the Department’s Civil Rights Division.

After extensive study, we have concluded that there are occasions when correctional officials have no choice but to segregate inmates from the general population, typically when it is the only way to ensure the safety of inmates, staff, and the public. But as a matter of policy, **we believe strongly this practice should be used rarely, applied fairly, and subjected to reasonable constraints.** This Report includes a series of “Guiding Principles” that we believe should guide plans for limiting the use of restrictive housing across the American criminal justice system, as well as specific policy changes that the Federal Bureau of Prisons (the Bureau) and other Department components could undertake to implement these principles.

The stakes are high. Life in restrictive housing has been well-documented by inmates, advocates, and correctional officials. In some systems, the conditions can be severe; the social isolation, extreme. At its worst, and when applied without regard to basic standards of decency, restrictive housing can cause serious, long-lasting harm. It is the responsibility of all governments to ensure that this practice is used only as necessary—and **never as a default solution.** But just as we must consider the impact on inmates, so too must we consider the impact on correctional staff. These public servants work hard, often for long hours and under difficult conditions, and we must protect them from unreasonable danger. For years, the Bureau has been asked to do more and more, putting strain on its officers and other staff. Correctional officers need effective tools to manage the most challenging inmates and protect the most vulnerable.

We do not believe that the humane treatment of inmates and the safety of correctional staff are mutually exclusive; indeed, neither is possible without the other. In recent years, numerous correctional systems have succeeded in safely lowering the number of inmates in restrictive housing, including the Federal Bureau of Prisons, which has reduced its total restrictive housing population by nearly 25% since January 2012. Under the leadership of its outgoing Director, Charles E. Samuels, Jr., the Bureau has also developed a range of progressive alternatives to restrictive housing—and has done so while supporting and enhancing staff safety. This Report includes a number of proposals that would help continue the downward trends in the Bureau’s restrictive housing population, while also ensuring that those placed in segregation receive the support and rehabilitative services they need.

Definitions

Not all segregation is truly “solitary,” and many prison systems, including the Bureau, often house two segregated inmates together in the same cell, a practice known as “double-celling.” For the purposes of this report, we define “restrictive housing” as any type of detention that involves: (1) removal from the general inmate population, whether voluntary or involuntary; (2) placement in a locked room or cell, whether alone or with another inmate; and (3) inability to leave the room or cell for the vast majority of the day, typically 22 hours or more. Even this definition, however, leaves substantial room for variation. Restrictive housing takes many forms, and an inmate’s experience in segregation can vary considerably depending on certain external factors, such as the length of stay, conditions of confinement, and degree of social isolation, as well as factors specific to each inmate, such as age and psychological resiliency. As this report makes clear, it is not enough to say that an inmate is in “restrictive housing” (or “solitary confinement,” for that matter); it is just as important to know the details of the placement. [\[DOJ Report, pp. 3-6\]](#)

“Guiding Principles” for All Correctional Systems

The Report includes more than 50 “Guiding Principles,” which are intended as best practices for correctional facilities across the American criminal justice system.¹ These aspirational principles are designed to serve as a roadmap for correctional systems seeking direction on future reforms, and address a range of topics, including the use of disciplinary segregation, protective custody, and long-

¹ These Guiding Principles do not have the force of law and do not create or confer any rights, privileges, or benefits to past, current, or future inmates or detainees within any American correctional or detention system, including the Federal Bureau of Prisons. The Guiding Principles were developed for correctional systems that detain or incarcerate inmates in connection with criminal proceedings in civilian courts. Other correctional or detention systems may wish to review these Guiding Principles to determine which are applicable to their unique circumstances and to make appropriate changes accordingly. Both implementation and application of these Guiding Principles involve the exercise of judgment of relevant Department officials. Nothing in these Guiding Principles should be construed to limit the authority of the Department, the Attorney General, or any other government official.

term preventative segregation; the conditions of confinement in restrictive housing; and the treatment of certain categories of inmates, including juveniles (under 18), young adults (18 to 24), inmates with medical needs, pregnant women, LGBTI inmates, and inmates with serious mental illness. [pp. 94-103]

The Report's "Guiding Principles" include:

- Inmates should be housed in the **least restrictive setting necessary** to ensure their own safety, as well as the safety of staff, other inmates, and the public.
- Correctional systems should always be able to **clearly articulate the specific reason(s)** for an inmate's placement and retention in restrictive housing. The reason(s) should be supported by objective evidence. Inmates should remain in restrictive housing for no longer than necessary to address the specific reason(s) for placement.
- Restrictive housing should always serve a **specific penological purpose**.
- An inmate's initial and ongoing placement in restrictive housing should be regularly reviewed by a **multi-disciplinary staff committee**, which should include not only the leadership of the institution where the inmate is housed, but also medical and mental health professionals.
- For every inmate in restrictive housing, correctional staff should develop a **clear plan for returning the inmate to less restrictive conditions** as promptly as possible. This plan should be shared with the inmate, unless doing so would jeopardize the safety of the inmate, staff, other inmates, or the public.
- All correctional staff should be **regularly trained** on restrictive housing policies. Correctional systems should ensure that compliance with restrictive housing policies is reflected in employee-evaluation systems.
- Correctional systems should establish standing committees, consisting of high-level correctional officials, to **regularly evaluate existing restrictive housing policies** and develop safe and effective alternatives to restrictive housing.
- Absent a compelling reason, prison inmates **should not be released directly from restrictive housing to the community**.
- Correctional systems should seek ways to **increase the minimum amount of time that inmates in restrictive housing spend outside their cells** and to offer enhanced in-cell opportunities. Out-of-cell time should include opportunities for recreation, education, clinically appropriate treatment therapies, skill-building, and social interaction with staff and other inmates.

Policy Recommendations for the U.S. Department of Justice

The Report also includes a series of policy recommendations to ensure that the Department of Justice lives out the principles described above.² As the Report makes clear, the Department can and should use the full range of its powers to safely reduce the use of restrictive housing in the United States. The Department is prepared not only to direct the Federal Bureau of Prisons to change its own policies and practices, but also to use the many tools at the Department's disposal to encourage other correctional systems to do the same.

Some of these policy proposals will be implemented in the near future; others will require additional resources and, in the case of the Bureau, may be subject to collective bargaining. As noted in the Report, the current budget environment complicates efforts to undertake widespread changes, especially at the Bureau. After three decades during which the inmate population grew at a far faster rate than the number of correctional officers and other staff, the Bureau is stretched thin, which presents particular challenges when addressing the high-needs, high-risk inmate population that often resides in restrictive housing.

Most these topics are discussed at multiple locations in the Report. Citations to information about current practices are marked as **(b)**; citations to policy proposals are marked as **(p)**.

FEDERAL BUREAU OF PRISONS

Since January 2012, the Bureau has reduced the total number of inmates in restrictive housing by nearly a quarter. The Department believes that the Bureau can build on existing programs and further reduce its restrictive housing population through a multi-prong strategy, as described below. The Department estimates that the policy recommendations outlined in this Report, if fully adopted, will result in additional substantial reductions in the Bureau's restrictive housing population. Although it is impossible to quantify the exact size of the future reductions, the Department notes that other state and local correctional systems implementing reforms, including those jurisdictions discussed in the Report, have reported reductions in their restrictive housing populations in recent years by nearly 50 percent or more, depending on the metrics used. **[pp. 72-78, 104-05]**

The Report recommends that the Bureau:

- End the practice of placing juveniles in restrictive housing, pursuant to the standards proposed in the Sentencing Reform and Corrections Act of 2015. **[pp. 61-62 (b); 114 (p)]**
- Expand the Bureau's ability to divert inmates with serious mental illness to mental health treatment programs, by increasing the capacity of existing secure mental health units and requesting funding for substantial expansion in future years. **[pp. 46-57 (b); 112-14 (p)]**

² These recommendations are subject to the same caveats and limitations that apply to the Guiding Principles. *See supra* note 1. Recommendations will be implemented only as consistent with applicable law and subject to the availability of appropriations.

- Expand the Bureau’s ability to divert “protective custody” inmates to less restrictive forms of housing, by building “Reintegration Housing Units” (RHU) at multiple Bureau locations. **[pp. 23-25 (b); 110-11 (p)]**
- Significantly limit the use of restrictive housing as a form of punishment. Recommended changes include: across-the-board reductions of maximum penalties for disciplinary segregation (as noted in the chart below); an outright ban on the use of restrictive housing for low-level offenses; and limitations on the use of pre-adjudication “investigative” segregation, including a new requirement that routine investigations be completed within 7 days and all other investigations be completed within 30 days, absent compelling circumstances. **[pp. 18-23 (b); 107-110 (p)]**

Offense Type	Current Maximum Penalties		Proposed Maximum Penalties	
	First Offense	Subsequent	First Offense	Subsequent
100-Level (Greatest)	365 days	545 days	60 days	90 days
200-Level (High)	180 days	365 days	30 days	60 days
300-Level (Moderate)	90 days	180 days	none	15 days
400-Level (Low)	none	30 days	none	none

- Establish policies to discourage the placement of inmates in restrictive housing during the final 180 days of their prison terms, and to provide targeted re-entry programming for inmates who require restrictive housing during that time. **[pp. 106-07 (p)]**
- Cut in half the length of the four-phase “Special Management Unit” (SMU) program, thereby reducing the total time for inmates to complete the program from approximately 18 to 24 months, to approximately 9 to 12 months, with additional incentives for high-performing inmates. **[pp. 34-37 (b); 111-12 (p)]**
- Direct wardens to develop institution-specific plans for expanding out-of-cell time for inmates in restrictive housing, based on staffing and resource capacity. **[pp. 28-30 (b); 115-16 (p)]**
- Enhance transparency by publishing system-wide restrictive housing statistics on a monthly basis on the Bureau’s public website, and finalize upgrades in data collection software to improve tracking of restrictive housing inmates. **[pp. 31-33 (b); 116-17 (p)]**
- Codify in Bureau policy documents the presumption that inmates should be housed in the least restrictive setting necessary to ensure safety, and that inmates in restrictive housing should be returned to general population as soon as it is safe to do so. **[pp. 105-06 (p)]**

U.S. MARSHALS SERVICE

The U.S. Marshals Service (USMS) is responsible for the housing and transportation of federal pre-trial detainees. USMS houses detainees in several types of facilities, including private detention facilities and state, county, and local jails. Although detainees remain in USMS custody on average for less than 100 days, USMS nonetheless has several tools to limit the use of restrictive housing during that time. The Report recommends that USMS:

- Revise the detention standards that USMS applies to private contract facilities, to incorporate the restrictive housing policies discussed in this Report. [pp. 70-71 (b); 117-18 (p)]
- Require that the state, county, and local jails that house USMS detainees provide DOJ with certain data on restrictive housing placements. [pp. 70-71 (b); 117-18 (p)]

CIVIL RIGHTS DIVISION

The Civil Rights Division is responsible for enforcing a number of civil rights laws pertaining to individuals confined in restrictive housing. The Report recommends that the Division:

- Continue to ensure lawful and safe restrictive housing practices in state and local correctional facilities, including the treatment of juveniles and persons with mental illness, through investigations and litigation under CRIPA, the ADA, and Section 504 of the Rehabilitation Act. [pp. 83-87 (b)]

U.S. ATTORNEY'S OFFICES

The Department's 94 U.S. Attorney's Offices (USAOs) are responsible for enforcing federal criminal law in their Districts, including through the prosecution of criminal activity that occurs on federal property. The Report recommends that USAOs:

- Continue to support the Bureau's efforts to ensure that inmates who engage in serious criminal activity while incarcerated—especially those who assault or kill correctional staff—face criminal prosecution when appropriate. [p. 110 (p)]

NATIONAL INSTITUTE OF CORRECTIONS

The National Institute of Corrections (NIC) provides training, technical assistance, and information services to federal, state, and local correctional agencies. The Report recommends that NIC:

- Incorporate this Report's Guiding Principles into existing multi-day training on restrictive housing policies for state leaders. [pp. 79-81 (b); 118 (p)]
- Provide technical assistance and other support to state and local correctional agencies seeking to safely reduce their restrictive housing populations. [pp. 79-81 (b); 118 (p)]

BUREAU OF JUSTICE ASSISTANCE

Housed within the Department's Office of Justice Programs (OJP), the Bureau of Justice Assistance (BJA) provides direct grants and technical assistance to both correctional systems and non-profit organizations that support BJA's mission. The Report recommends that BJA:

- Expand BJA's ongoing partnership with Vera Institute of Justice's "Safe Alternatives to Segregation" Initiative, which provides support to state and local correctional systems undertaking restrictive housing reforms. [\[pp. 81-82 \(b\); 118-19 \(p\)\]](#)

NATIONAL INSTITUTE OF JUSTICE

Also housed within OJP, the National Institute of Justice (NIJ) serves as the Department's research, development, and evaluation agency. The Report recommends that NIJ:

- Solicit innovative research proposals to assess restrictive housing policies, with up to \$8 million available for grants. [\[pp. 82 \(b\); 119-20 \(p\)\]](#)

At a Glance: Restrictive Housing at the Federal Bureau of Prisons

The Bureau oversees 135 institutions, 122 of which are managed by the Bureau, and 13 of which are run by private contractors.³ Most Bureau inmates placed in segregation are housed in “Special Housing Units” (SHU), which serve as general purpose, on-site segregation units at 111 Bureau facilities. [pp. 17-33] The Bureau also operates several “Special Management Units” (SMU), which offer a four-phase program for inmates who present heightened security concerns due to their history of violent prison misconduct and/or gang activity. [pp. 34-37] Finally, the Bureau operates the United States Penitentiary (USP) Administrative Maximum (ADX), in Florence, Colorado, which houses approximately 400 inmates (or 0.25% of all Bureau inmates) who require the tightest controls and supervision because of the nature of their offense or their behavior while in prison. [pp. 38-45]

OVERVIEW OF BUREAU’S RESTRICTIVE HOUSING				
(Adapted from Bureau’s SENTRY Data)				
Type of Housing	01/28/12	12/05/15	Change (01/28/12 to 12/05/15)	
			Total	% Decline
All Bureau inmates ⁴	175,733	161,517	13,848 ↓	8.09% ↓
Total in Restrictive Housing	13,196	9,914	3,282 ↓	24.87% ↓
Special Housing Units (SHU)	11,106	8,251	2,855 ↓	25.71% ↓
Special Management Unit (SMU)	1,647	1,260	387 ↓	23.50% ↓
Administrative Maximum (ADX)	443	403	40 ↓	9.03% ↓

Prior to January 2013, the Bureau had only limited ability to track inmates housed in SHU. Among other things, the Bureau’s electronic system could not distinguish between inmates in “disciplinary segregation” (DS) or “administrative detention” (AD) status, nor could it identify the specific reasons an inmate was placed in SHU. Starting in early 2013, however, the Bureau implemented a new, automated tracking system, known as the “SHU Application,” which now operates at all Bureau-operated facilities. In its current form, the SHU Application can provide Bureau staff with information about the number of inmates placed in DS status, as well as several “subcategories” of AD status (e.g., “protective custody,” “pending transfer,” or “pending investigation”).

³ The Bureau’s 13 private contract facilities have instituted restrictive housing policies similar to the ones in use at Bureau-run facilities. The contract facilities’ policies incorporate the standards of the American Correctional Association, as well as Bureau directives. As noted in the Report, as of November 2015, these private contract facilities had a combined average daily population of 23,083 inmates, of which 924 (approximately 4.0%) were housed in SHU. [pp. 17, 32-33]

⁴ “All Bureau inmates” refers to inmates housed in the 122 institutions managed by the Bureau, and not the 13 facilities managed by private contractors.

There are, however, limitations to the data collected by the SHU Application. At present, the SHU Application can only provide a “snapshot” of all inmates in SHU at a particular moment; it cannot track information about individual inmates. The chart below includes two such “snapshots”: one from May 2013, the first month when the SHU Application could track the total number of inmates housed in the SHU for longer than 90, 180, and 364 days; and one from November 23, 2015. Among other things, the chart reveals a decline in the Bureau’s total SHU population over the two-and-a-half year period (14.5%), even when compared to the reduction in the Bureau’s overall inmate population (7.9%). The most substantial reductions have been in long-term SHU placements: the number of inmates housed in SHU more than 180 days have declined nearly 60 percent during this period, and the number housed more than 364 days have declined by more than 50 percent. [pp. 31-33]

SHU PLACEMENT OVER TIME (BUREAU-RUN FACILITIES) (Adapted from SHU Application “Dashboard”)				
Type of Placement	05/27/13	11/23/15	Change (05/27/13 to 11/23/15)	
			Total	% Change
All Bureau inmates	176,176	162,339	13,991 ↓	7.93% ↓
Total in Security Housing Units (SHU)	10,086	8,625	1,461 ↓	14.48% ↓
In SHU more than 90 days	1,655	1,071	584 ↓	35.29% ↓
In SHU more than 180 days	778	338	440 ↓	56.56% ↓
In SHU more than 364 days	155	77	78 ↓	50.32% ↓
Disciplinary Segregation (DS) Status	2,041	1,417	624 ↓	30.57% ↓
Administrative Detention (AD) Status	8,045	7,208	837 ↓	10.40% ↓
AD: Pending Investigation (BOP Violation)	3,308	3,422	114 ↑	3.45% ↑
AD: Pending Hearing (BOP Violation)	937	782	155 ↓	16.54% ↓
AD: Pending Investigation (Criminal Trial)	110	115	5 ↑	4.54% ↑
AD: Protective Custody (Inmate Requested)	1,600	848	752 ↓	47.00% ↓
AD: Protective Custody (Involuntary)	254	73	181 ↓	71.26% ↓
AD: Protective Custody (Any over 30 Days)	1,358	436	922 ↓	67.89% ↓
AD: Pending Transfer/Holdover	676	1,180	504 ↑	74.56% ↑
AD: Terminating DS, Ordered to AD	465	231	234 ↓	50.32% ↓
AD: Pending Classification	573	342	231 ↓	40.31% ↓
Separatee Assignment	6,760	5,838	922 ↓	13.64% ↓

The Bureau is currently developing the capacity to better track inmates as they progress through restrictive housing. In late 2016, the Bureau expects to release an upgraded version of the SHU Application, which will allow the Bureau to collect far more information about individual inmates and identify trends across institutions.