



Committee: Committee on Public Safety, Intergovernmental, and Military Affairs
Hearing Date/Time: Tuesday, January 30, 1:15 p.m.
Place: Conference Room 229

Re: Testimony of the ACLU of Hawai'i in support of S.B. 2859,
Relating to Administrative and Disciplinary Segregation

Dear Chair Nishihara, Vice Chair Wakai, and Members of the Committee on Public Safety, Intergovernmental, and Military Affairs:

The American Civil Liberties Union of Hawai'i writes in **support** of S.B. 2859, which sets statutory standards for the use of segregation in Hawai'i's correctional institutions. We support reforming the use of solitary confinement in Hawai'i, because long-term isolation does not help rehabilitate prisoners, exacerbates mental illness—or even causes it in prisoners who were healthy when they entered solitary, and is also expensive.

Prisoners deprived of normal human contact cannot properly reintegrate into society, resulting in higher recidivism rates.¹ Additionally, building and operating solitary confinement units cost significantly more than conventional cells. Most importantly, solitary confinement causes and exacerbates mental illness, leading prisoners in solitary to attempt suicide at significantly higher rates than those in the general prison population.

While S.B. 2859 is a step in the right direction, we respectfully request that your Committee consider the following amendments, which adapt and adopt the U.S. Department of Justice's 2016 Report and Recommendations Concerning the Use of Restrictive Housing.²

First, inmates that are members of a vulnerable population should not be placed on administrative or disciplinary segregation except in emergency situations and never on the basis of their status as a member of a vulnerable population. Instead, such inmates should be placed in alternative housing with conditions comparable to those of the general population or, when

¹ Presidential Memorandum, Limiting the Use of Restrictive Housing by the Federal Government, 81 Fed. Reg. 11,997 (Mar. 1, 2016) ("A growing body of evidence suggests that the overuse of solitary confinement and other forms of restrictive housing in U.S. correctional systems undermines public safety and is contrary to our Nation's values."), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-03-07/pdf/2016-05232.pdf>.

² Available at <https://www.justice.gov/archives/dag/file/815561/download>.

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appropriate, in a secure mental health unit of other residential psychology program separate and distinct from any unit used for segregation.

Second, all hearings concerning use of administrative or disciplinary confinement should provide adequate due process protections including requiring the Department of Public Safety (“**DPS**”) to establish the need for segregation by a preponderance of the evidence, ensuring the inmate receives 48-hour notice before any hearing explaining the basis for segregation, allowing the inmate to personally appear before the reviewing committee, allowing the inmate to call and cross-examine witnesses and to submit evidence, making interpreters available when necessary, allowing the inmate to retain an attorney, recording any such hearings, requiring that the committee issue a written decision, allowing the inmate the right to appeal a segregation decision, and ensuring that the reviewing committee is impartial.

Third, restrictions on inmates in administrative segregation should be the least restrictive to reasonably maintain the safety of the inmate and the institution. At a minimum, any such inmate shall be offered access to educational and programming opportunities consistent with the inmates’ safety and security and any federal and state law requirements; at least four hours a day of out-of-cell time, including a minimum of one-hour of out-of-cell daily exercise that includes access to outdoor recreation; access to personal property, including TVs and radios; access to books, magazines, and other printed material; access to daily showers; and access to the same number of visits and phone calls allowed for general population inmates.

Fourth and finally, inmates subject to segregation should require a re-socialization process before they are released back into the community. Such a re-socialization program shall take place in phases, starting at least six months before the end of an inmate’s criminal sentence. All inmates held in isolated confinement shall be included in this re-socialization program without exception. The re-socialization program shall include medical and mental health staff, including but not limited to mental health clinicians, social workers, education and habilitative staff to provide counseling and life skills to prepare inmates for safe release to the community.

Thank you for the opportunity to testify.

Sincerely,



Mateo Caballero
Legal Director
ACLU of Hawai'i

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The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, January 30, 2018

1:15 pm

Room 229

SUPPORT INTENT w COMMENTS - SB 2859 - ADMINISTRATIVE/DISCIPLINARY SEGREGATION

Aloha Chair Nishihara, Vice Chair Wakai and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the approximately 5,500 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that approximately 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

SB 2859 establishes procedures for the use of administrative and disciplinary segregation in correctional institutions.

Community Alliance on Prisons wants to thank the committee for raising this important subject. As the data show, 72% of the people imprisoned by the state are in for the lowest offenses and violations. We are deeply concerned about the use of administrative and disciplinary segregation by the Department of Public Safety.

The research shows that placing people diagnosed with severe and persistent mental illness (SPMI) in segregation only results in their getting worse (decompensating). In fact, even those without the express SPMI diagnosis decompensate. We personally know people who have been in segregation for years. We also know that segregation is used as retaliation for someone who files grievances, asks for too make medical appointments, or just someone that is not liked. This is why we need an INDEPENDENT OVERSIGHT BOARD.



The responses to questions we asked in the Environmental Impact Statement Preparation Notice are interesting and informative¹:

36. *How many people are diagnosed as seriously mentally ill (SMI) at each custody level?*

Response: A gross estimate, based on the average daily census of Severe and Persistently Mentally Ill (SPMI), is approximately 696. There are also about 38 people who would be considered mentally ill, but not severe or persistent.

37. *How many people have mental health disorders yet are not diagnosed as SMI at each custody level?*

Response: Inmates with mental disorders other than SPMI, are estimated at about 80% of the entire population; most of whom suffer from either Antisocial and/or Borderline Personality Disorders, together with Substance Use and Abuse Disorders.

38. *How is the uniformed staff trained to interact with people suffering from mental health issues?*

Response: With respect to mental health treatment: staff are required to have 10 hours in initial Basic Correctional Training (BCT) and in Civilian Familiarization Training (CFT), followed by 4 hours every other year for both groups.

39. *What are people suffering from mental health issues provided with upon release from OCCC? If medication, for how long? Referrals to treatment centers? Anything else?*

Response: PSD's mental health staff create discharge plans that link or re-link inmates to the Department of Health (DOH), Adult Mental Health Division (AMHD) and/or the Department of Human Services (Medicaid) system of care. PSD's Reentry Office is establishing a system where offenders, prior to release, are put in touch with various agencies, service providers and faith-based organizations, based on their needs, so that upon release, there is no lag time for securing housing, medical/mental health coverage, proper identification, etc.

40. *How many suicides have taken place at OCCC per month over the last 18 months at each custody level?*

Response: There has been one suicide at OCCC over the last two years. The person was at a community custody level.

The department has Policies and Procedures (P&Ps) on Inmate Segregation – COR.11.01, EFFECTIVE 11.28.14 - <http://dps.hawaii.gov/wp-content/uploads/2014/12/COR.11.01.pdf>, however we are glad that the Senate is investigating what is actually going on inside our facilities. Hawai'i does not have the death penalty, but we have too many people dying in our facilities. At least **six individuals** at **five different facilities** (WCCC, Halawa, HCCC, MCCC, WCCC) have **allegedly committed suicide** in the last 6 months. We have been told that there were seven suicide attempts at WCCC alone in 2017. Something is very wrong.

¹ EISPN for OCCC, Appendix A, pages 275-276.

https://dps.hawaii.gov/wp-content/uploads/2017/11/Appendix-Volume-1_A-F.pdf



Stuart Grassian, a board-certified psychiatrist and a former faculty member at Harvard Medical School, has interviewed hundreds of prisoners in solitary confinement. In one study, he found that roughly a third of solitary inmates were “actively psychotic and/or acutely suicidal.” Grassian has since concluded that solitary can cause a specific psychiatric syndrome, characterized by hallucinations; panic attacks; overt paranoia; diminished impulse control; hypersensitivity to external stimuli; and difficulties with thinking, concentration and memory. Some inmates lose the ability to maintain a state of alertness, while others develop crippling obsessions.²

A 2003 report by Human Rights Watch found that anywhere from one-fifth to two-thirds of prisoners in solitary confinement are believed to have some form of mental illness.

In a study of inmates at California’s Pelican Bay State Prison, psychologist Craig Haney found that prisoners “lose the ability to initiate or to control their own behavior, or to organize their own lives. What results is chronic apathy, lethargy, depression and despair. In extreme cases, prisoners may literally stop behaving.” Haney, a professor at the University of California at Santa Cruz, attributed this loss to the near total lack of control that prisoners have over their day-to-day lives in solitary.

“I’ve had prisoners tell me that the first time they’ve been given an opportunity to interact with other people, they can’t do it,” [Haney told FRONTLINE](#). “They don’t come out of their cell ... And obviously this social atrophy, the anxiety which surrounds social interaction can be extremely disabling and problematic for people who are released from solitary confinement, either released back into the larger prison community, or even more poignantly, released from solitary confinement into the larger society.”³

WHAT CORRECTIONS OFFICIALS AND OTHERS HAVE SAID ABOUT ISOLATION

Here are some thoughts by corrections officials:

- The Association of State Correctional Administrators issued a report calling prolonged isolation of inmates in jails and prisons “**a grave problem in the United States**.”⁴
- **Inmates sent to solitary should be prisoners “we’re afraid of, not mad at,”** said Gary Mohr, director of the Ohio Department of Rehabilitation and Correction.⁵

Charles Dickens visited the Eastern State Penitentiary in Pennsylvania in 1842, and the editors call him “one of the earliest—and still one of the most eloquent—critics of solitary confinement.” He described the penitents there as men “**buried alive**.”

² What Does Solitary Confinement Do To Your Mind? APRIL 22, 2014 / by JASON M. BRESLOW
<https://www.pbs.org/wgbh/frontline/article/what-does-solitary-confinement-do-to-your-mind/>

³ Ibid.

⁴ Rethinking solitary: National prisons group pushes changes, Andrew Welsh-Huggins, AP Legal Affairs Writer, January 16, 2016. <http://www.seattlepi.com/news/us/article/Rethinking-solitary-National-prisons-group-6763615.php>

⁵ Id.



RESEARCH

Bureau of Justice Statistics:

The Department of Justice⁶ reports that **Hawai'i has the 7th highest number of prison suicides in the nation.** Isn't this a clarion call for reform? If it isn't, how many people have to die in state correctional facilities before something is done to reform a broken system?

The Eighth Amendment to the United States Constitution requires that prison officials "ensure that inmates receive adequate food, clothing, shelter, and medical care" and "take reasonable measures" to guarantee their safety.

Vera Institute of Justice:

Policy changes⁷ 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

*United Nations Special Rapporteur of the Human Rights Council*⁸

The Special Rapporteur stresses that solitary confinement is a harsh measure which may cause serious psychological and physiological adverse effects on individuals regardless of their specific conditions. He finds solitary confinement to be contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society. The Special Rapporteur defines prolonged solitary confinement as any period of solitary confinement in excess of 15 days.

RECOMMENDATIONS

- The Special Rapporteur recommends that States conduct regular reviews of the system of solitary confinement.

⁶ Bureau of Justice Statistics, Mortality in State Prisons, 2001-2014 Statistical Tables, December 2016, NCJ 250150, Table 13 Number of state and federal prisoner deaths, by cause and jurisdiction, 2001–2014, page 12.
<https://www.bjs.gov/content/pub/pdf/msp0114st.pdf>

⁷ Prisons Within Prisons: The Use of Segregation in the United States, Federal Sentencing Reporter • Vol. 24, No. 1 • October 2011. <http://archive.vera.org/sites/default/files/resources/downloads/prisons-within-prisons-segregation.pdf>

⁸ SEEING INTO SOLITARY REPORT:
http://www.weil.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf

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- The Special Rapporteur calls upon States to ensure that all persons deprived of their liberty are treated with humanity and respect for the inherent dignity of the human person as protected by article 10, paragraph 1, of the International Covenant on Civil and Political Rights.
- The Special Rapporteur urges States to prohibit the imposition of solitary confinement as punishment – either as a part of a judicially imposed sentence or a disciplinary measure. He recommends that States develop and implement alternative disciplinary sanctions to avoid the use of solitary confinement.
- States should take necessary steps to put an end to the practice of solitary confinement in pretrial detention.
- States should abolish the use of solitary confinement for juveniles and persons with mental disabilities.
- Indefinite solitary confinement should be abolished.
- It is clear that short-term solitary confinement can amount to torture or cruel, inhuman or degrading treatment or punishment; it can, however, be a legitimate device in other circumstances, provided that adequate safeguards are in place. In the opinion of the Special Rapporteur, prolonged solitary confinement, in excess of 15 days, should be subject to an absolute prohibition.
- The Special Rapporteur reiterates that solitary confinement should be used only in very exceptional circumstances, as a last resort, for as short a time as possible.

GUIDING PRINCIPLES

- Throughout the period of detention, the physical conditions and prison regime of the solitary confinement, and in particular the duration of confinement, must be proportional to the severity of the criminal or disciplinary infraction for which solitary confinement is imposed.
- The physical conditions and prison regime of solitary confinement must be imposed only as a last resort where less restrictive measures could not achieve the intended disciplinary goals.
- Solitary confinement must never be imposed or allowed to continue except where there is an affirmative determination that it will not result in severe pain or suffering, whether physical or mental, giving rise to acts as defined in article 1 or article 16 of the Convention against Torture.
- All assessments and decisions taken with respect to the imposition of solitary confinement must be clearly documented and readily available to the detained persons and their legal counsel. This includes the identity and title of the authority imposing solitary confinement, the source of his or



her legal attributes to impose it, a statement of underlying justification for its imposition, its duration, the reasons for which solitary confinement is determined to be appropriate in accordance with the detained person's mental and physical health, the reasons for which solitary confinement is determined to be proportional to the infraction, reports from regular review of the justification for solitary confinement, and medical assessments of the detained person's mental and physical health.

Since there is so much data and research on the AVOIDABLE harms caused by segregation, Community Alliance on Prisons recommends that this draconian practice be eliminated entirely for Hawai'i's incarcerated individuals in light of the fact that the majority of our imprisoned people do not present a great risk to the facility or the community.

It does make one wonder why so many people score "high risk" on the Risk Assessments Hawai'i uses. This has been puzzling to people in the know. Is it to justify building more facilities?

Finally, we would like to STRONGLY RECOMMEND that the department establish a "Buddy System" for those individuals contending with mental health challenges. Just as there are individuals who care for other incarcerated individuals who are ill, establishing a buddy system can do the same. It would be a great training program for people to learn skills the necessary for employment in the health care field while helping out a person who needs assistance. A win-win for both individuals and for the facility.

The community wants a JUSTICE system, not merely a PROCESSING system to mark people for life.

We urge the committee to carefully consider the research and who is in our correctional system and to demand that changes be made NOW before more people die while in the "care and custody" of the department.

*Solitary confinement is too terrible a punishment to inflict on any human being,
no matter what his crime. Hardened criminals in the men's prisons,
it is said, often beg for the lash instead.*

Emmeline Pankhurst



COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

LATE

DATE: Tuesday, January 30, 2018
TIME: 1:15 PM
PLACE: Conference Room 229

Dear Honorable Committee Members,

Support with amendments – Relating to Corrections

We support the elimination of administrative and disciplinary segregation in our state correctional institutions. An abundance of research evidence exists on segregation, which isolates imprisoned people, indicating far reaching negative consequences on segregated individuals (Gordon, 2014. “Solitary Confinement, Public Safety, and Recidivism.” *University of Michigan Journal of Law Reform* 47(2): 495-528).

Segregating imprisoned people is ultimately harmful for our community’s safety. The transition for these returning individuals becomes increasingly difficult because of the emotional trauma caused by isolation.

If this measure is passed, its description of a “vulnerable person” should be expanded to include “any individual who has been treated with psychotropic medication in the facility within the last two weeks.” Furthermore, the length of time segregated individuals spend isolated should not be for more than 48 hours at a time. The emotional trauma caused by isolation has long-term negative effects.

We suggest that if segregation is used, a “companion program” should be developed to provide support by other incarcerated individuals trained in communication skills and conflict management, similar to the US Bureau of Prisons program for segregated mental health detainees (https://www.bop.gov/policy/progstat/5324_008.pdf). England and Wales also have a “listener program” for incarcerated people (https://www.samaritans.org/sites/default/files/kcfinder/files/Samaritans%20prison%20Listener%20scheme_finalSeptember%202016.pdf). In Hawai’i trained listeners should be allowed to sit outside of the isolated individual’s cell to keep them company for determined amounts of time.

Finally, if isolation is allowed a “step-down” program that allows the segregated imprisoned individuals a way to earn their way out of isolation similar to what Virginia provides should be developed and provided (https://vadoc.virginia.gov/news/press-releases/16mar3_DOJ.shtm).

Hawai’i Friends of Restorative Justice is a 30+ year old non-profit dedicated to improving our justice system. We design, implement and measure pilot projects using applied learning in an effort to generate evidence-based knowledge of what works to increase civic behavior, help people desist from crime, and assist those harmed by crime and social injustice. We have worked with imprisoned people since 2004. Numerous articles about our work including assisting imprisoned people reenter the community have been published and disseminated. Others, nationally and internationally, frequently contact us for assistance with reentry programs and policies.

Mahalo for your public service. Please contact me at (808) 218-3712 and lorenn@hawaiiifriends.org for any questions about our work and this testimony. Aloha, Lorenn Walker, JD, MPH

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SB-2859

Submitted on: 1/29/2018 11:54:06 PM
Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans		Comments	No

Comments:

More and more research shows the negative effects of administrative and disciplinary segregation which is really "solitary confinement". This bill is not strong enough in limiting the use of solitary confinement. Please do more research and seek input from experts to further limit the use of this harmful practice or ban its use in Hawaii completely.

Thank you-

Raelyn Reyno Yeomans

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SB-2859

Submitted on: 1/30/2018 11:34:16 AM

Testimony for PSM on 1/30/2018 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carrie Ann Shirota		Support	Yes

Comments:

Hawai'i Justice Coalition supports SB 2859 which establishes statutory standards for the use of segregation in Hawai'i's correctional institutions, and any correctional institutions that Hawai'i contracts with - including Core Civic (previously known as Corrections Corporation of America).

**In short, Solitary Confinement in jails and prisons is Torture.
It's ineffective, immoral, dangerous and very expensive!**

The devastating impacts of solitary confinement has long been studied, and confirmed on all populations, but particularly those most vulnerable - women and persons with mental health conditions.

The enactment of statutory guidelines for the use of segregation in Hawai'i's jails and prisons consistent with the Department of Justice's 2016 Report and Recommendations Concerning the use of Restrictive Housing is long overdue.

Please pass SB 2859.