

September 2018

Law and Justice Interim Committee
2017-2018

FINAL REPORT TO THE 66TH MONTANA LEGISLATURE

**SJ 25 FINAL REPORT:
STUDYING SOLITARY
CONFINEMENT IN MONTANA**

2017-2018

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This report is a summary of the work of the Law and Justice Interim Committee (LJIC) specific to the committee's 2017-2018 study of solitary confinement in Montana as outlined in the LJIC's 2017-2018 work plan and Senate Joint Resolution 25 (2017). This report is an effort to highlight key information and the processes followed by the LJIC. Members received additional information and public testimony on the subject, which is also available online. To review the additional information, including audio minutes and exhibits, visit the Law and Justice Interim Committee website: <http://leg.mt.gov/ljic>. Reports specific to the SJ 25 study can be found on the [SJ 25 study page](#) on the committee's website.¹

¹ The URL for the SJ 25 study web page is <https://leg.mt.gov/committees/interim/ljic/committee-topics/sjr-25/>

TABLE OF CONTENTS

Introduction.....	1
Draft Findings and Recommendations	2
Definitions and Data	3
Defining the Terms.....	3
Reasons for Use of Restricted Housing.....	4
Locked Housing in Montana’s State Prisons.....	4
How Common Is Restricted Housing?.....	5
Restricted Housing Standards and Guidelines for Adult Prisons	9
American Correctional Association Standards	9
Association of State Correctional Administrators Policy Guidelines	12
U.S. Department of Justice.....	13
National Commission on Correctional Health Care	15
Montana Policies and Procedures Related to Locked Housing Units.....	16
Committee Visit to the Montana Women’s Prison	17
Juveniles.....	18
Types of Facilities for Youth in Montana	19
Department Licensure of Youth Detention Facilities.....	21
National Standards and Guidelines	22
Committee Visit to Ted Lechner Youth Services Center.....	24
Other States’ Actions.....	24
County Detention Centers	25
Operation of Detention Centers.....	25
Montana Detention Standards	25
Jail Peer Reviews.....	27
Committee Visit to the Yellowstone County Detention Facility.....	27
Review of Other States’ Actions	27
Alternatives Explored in Other States	28
Legislative Involvement	30
Technical Assistance	30
Conclusion	31

SOLITARY CONFINEMENT IN MONTANA

INTRODUCTION

From 2011 to 2017, the Montana Legislature considered at least one bill each regular session related to the use of solitary confinement in state institutions. Some bills would have limited the practice when juveniles are in custody, while others would have limited or eliminated the practice for both adults and juveniles. Typically, the bills are withdrawn by the sponsor or tabled before a fiscal note can be provided. When a fiscal note accompanies the bill, the projected costs of implementing the bill's provisions can be steep.



The most recent of these bills, Senate Bill 257, was introduced in the 2017 regular session. SB 257 would have prohibited the use of solitary confinement for inmates with serious mental illness except for in specific situations and for limited periods of time. It also required the Montana Department of Corrections (DOC) to review the extent to which juveniles were housed in solitary confinement and develop recommendations to eliminate that

housing practice. The Senate Finance and Claims Committee tabled SB 257, which had a fiscal note describing significant long-term impacts to the corrections budget.

However, the 2017 Legislature did recommend that an interim committee conduct a study to determine the extent of the use of solitary confinement in state and county institutions. The Legislative Council assigned that study — Senate Joint Resolution 25 — to the 2017-2018 Law and Justice Interim Committee (LJIC). SJ 25 asked the LJIC to review:

- existing solitary confinement practices and reasons for the use of solitary confinement in state prisons, local jails, and youth detention facilities;
- state, local, and facility policies and procedures in place to govern the use of solitary confinement for juveniles and individuals with mental illness;
- changes that could be made to reduce or eliminate the use of solitary confinement in these facilities for youth and individuals with mental illness, including methods used by other states to achieve these ends; and
- other topics the committee considered relevant to a better understanding of this topic.

During the interim, the LJIC learned about the variety of terms used to describe solitary confinement; examined best practices, guidelines, and recommendations related to prisoner housing; reviewed how standards and practices differ for youths, adults, and inmates with mental illness; and traveled to three different types of Montana facilities that house adults or youths pretrial and posttrial.

SOLITARY CONFINEMENT IN MONTANA

FINDINGS AND RECOMMENDATIONS

The committee members discussed and revised a draft bill to establish a state policy, create definitions, and set certain limitations around the use of solitary confinement at their July and September 2018 meetings. However, after discussion and a vote at the September meeting, the committee declined to forward the draft bill to the 2019 Legislature for its consideration.

SOLITARY CONFINEMENT IN MONTANA

DEFINITIONS AND DATA

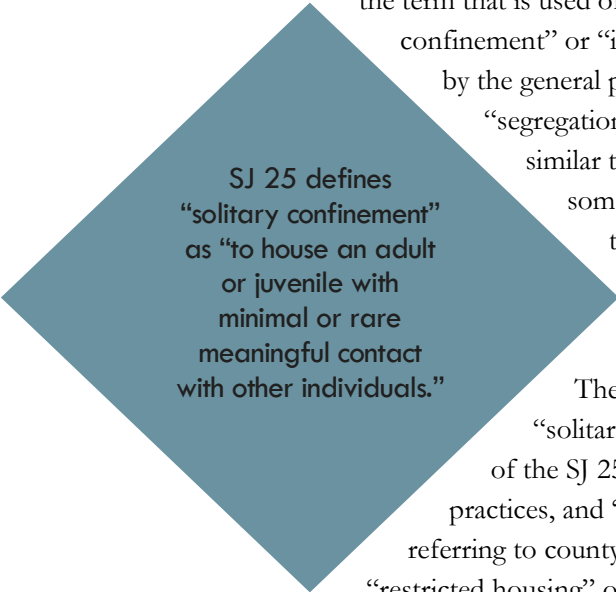
The LJIC launched the SJ 25 study by reviewing the terms used to describe solitary confinement, the typical or expected conditions of confinement, and several broad reasons the practice might be used in correctional or detention facilities. This initial stage also included an overview of the available data about the extent of the use of solitary confinement nationwide and in Montana.

Defining the Terms

The SJ 25 study resolution defines the term “solitary confinement” as “to house an adult or juvenile with minimal or rare meaningful contact with other individuals.” The definition does not specify a time length, provide a reason for the housing status, or describe what constitutes meaningful contact. The resolution also notes the variety of other words used for solitary confinement, “including administrative, protective, or disciplinary segregation, lockdown, and secure housing.”

A national overview of state and federal policies on the “long-term isolation” of inmates points out that how

the term that is used often differs by audience. Specifically, “solitary confinement” or “isolation” are terms used in discussion of the practice by the general public, but correctional facility policies tend to use “segregation,” “restricted housing,” “special management,” or similar terms such as “separation.”² Another report states that sometimes the terms are used interchangeably and at other times used very deliberately to distinguish between “critical nuances.”³ The DOC term is “locked housing.”⁴



SJ 25 defines “solitary confinement” as “to house an adult or juvenile with minimal or rare meaningful contact with other individuals.”

The LJIC research materials typically used the term “solitary confinement” when referring to the specific language of the SJ 25 study, “locked housing” when referring to DOC practices, and “segregation” or “administrative segregation” when referring to county detention center inmates. Otherwise, materials used “restricted housing” or “restrictive housing,” as did many of the documents

² Hope Metcalf et al., *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies*, Liman Public Interest Program at Yale Law School, June 2013, p. 1, available at [https://law.yale.edu/system/files/area/center/liman/document/Liman_overview_segregation_June_25_2013_TO_PO_ST_FINAL\(1\).pdf](https://law.yale.edu/system/files/area/center/liman/document/Liman_overview_segregation_June_25_2013_TO_PO_ST_FINAL(1).pdf) (last accessed May 31, 2018).

³ Nancy Rodriguez, Ph.D., “Introduction,” *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*, National Institute of Justice, Nov. 2016, p. v, available at <http://nij.gov/topics/corrections/institutional/Pages/restrictive-housing-in-the-us.aspx> (last accessed May 31, 2018) (hereafter *Restrictive Housing in the U.S.*).

⁴ Hearing on Senate Joint Resolution 25, 65th Montana Legislature, House Judiciary, April 21, 2017, minutes available at http://montanalegislature.granicus.com/MediaPlayer.php?view_id=21&clip_id=24129 (last accessed May 31, 2018).

SOLITARY CONFINEMENT IN MONTANA

used as sources, to refer to the concept of housing an inmate alone or with a cellmate in a locked cell for the majority of a day.

But whatever the term used, the basic practices that define restricted housing are similar: inmates are removed from the general population and are confined in a single or double-bunked cell for the majority of the hours in a day with restricted movements, activities, and contact with other individuals.⁵

Reasons for Use of Restricted Housing

Typically, several subtypes of restricted housing are practiced by a state or facility that houses inmates or detainees. The term used in a correctional setting for restricted housing often correlates with the reason the facility is using that practice to house an inmate. Researchers generally agree that there are three main purposes for a restricted housing placement:⁶

- **To protect** an inmate – Housing of this type is often called protective segregation or custody and serves to protect an inmate from other inmates in the facility. It can be open-ended in duration.
- **To discipline** an inmate – Housing of this type can be called disciplinary or punitive segregation and is a punishment for facility rule violations or misconduct. It is often, but not always, for a specific, limited period of time depending on the infraction.
- **To incapacitate** an inmate – Housing of this type can be called administrative segregation or confinement and is used to house an inmate who is viewed as a current or future risk to the orderly operation of a facility, to staff, or to other inmates. It can also be open-ended in duration.

Another use of segregation is to confine an inmate temporarily pending a hearing or other institutional process that will be used to determine a longer-term placement for the inmate.

LOCKED HOUSING IN MONTANA'S STATE PRISONS

In Montana, the DOC uses “locked housing” as an umbrella term to describe the practice of separating inmates from the general population and housing them in a restricted setting.⁷ Under that umbrella, the

⁵ Metcalf et al., *Administrative Segregation, Degrees of Isolation, and Incarceration*, p. 2; Natasha A. Frost, Ph.D., and Carlos E. Monteiro, Ph.D., “Administrative Segregation in U.S. Prisons,” in *Restrictive Housing in the U.S.*, p. 7; and U.S. Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing*, Jan. 2016, p. 3, available at www.justice.gov/archives/dag/file/815551/download (last accessed May 31, 2018).

⁶ These classifications rely on information provided in Liman Program, Yale Law School, and the Association of State Correctional Administrators (ASCA), *Time-in-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison*, Aug. 2015, p. 1, available at https://law.yale.edu/system/files/area/center/liman/document/asca-liman_administrativesegregationreport.pdf (last accessed May 31, 2018); and Ryan M. Lebreccque, “The Use of Administrative Segregation and Its Function in the Institutional Setting,” *Restrictive Housing in the U.S.*, p. 51.

⁷ Information in this paragraph is from the September 2016 version of the Montana Department of Corrections Policy No. DOC 3.5.1: Locked Housing Unit Operations. The policy was updated in March 2018 after the LJIC had reviewed the previous version.

SOLITARY CONFINEMENT IN MONTANA

housing statuses generally conform to the general types discussed earlier at both the men’s and women’s prisons. Nonpunitive locked housing that is used to protect an inmate is called special management or administrative housing. “Disciplinary detention” is the term used to describe confinement that separates “offenders from the general population for serious rule violations.” Prehearing or temporary confinement is “to safely and securely control high-risk or at-risk offenders.” Administrative segregation is a “non-punitive housing status for offenders whose continued presence in the general population may pose serious threat to life, property, self, staff, other offenders, or to the facilities’ security or orderly operation.”

There are two locked housing units at Montana State Prison: LHU1 and LHU2. As of June 24, 2013, the facility operational capacity of the two locked housing units was a total of 106. Facility operational capacity is the “maximum facility or system population capacity at which daily operations may be conducted without compromising staff and offender safety and facility and public security.”⁸

These units are separated from the general offender populations, and each contains several blocks that further separate the different types of housing, such as prehearing confinement, special management, and administrative segregation. A housing unit on the High Side of the prison has a cell block that houses vulnerable inmates, while another unit serves as the mental health block.⁹ The terms used to describe the blocks seem to provide specificity as to why an inmate might be in locked housing, such as for disciplinary reasons, for the inmate’s protection, or for the protection of staff and other inmates.

The Montana Women’s Prison (MWP) has a total of 22 segregation cells¹⁰ on two levels of the facility.

How Common Is Restricted Housing?

Even when organizations or states use the same term to describe the practice of housing an inmate in a locked cell for the majority of time during the day, the details of what constitutes or defines restricted housing and the conditions it entails can differ. This reality can make finding good cross-state or cross-system data difficult, which also means drawing comparisons between facilities, systems, and states is tricky.¹¹

⁸ Information in this paragraph is from Montana Department of Corrections Policy No. DOC 2.2.1 (Facility Design/Capacity) and an attachment (Montana State Prison and Contract Facility Capacities). The policy was last revised in August 2011. The attachment used in the SJ 25 study was last updated June 2013. In March 2018, the DOC released an updated capacity chart. Both the updated policy and the capacity chart are available at <http://cor.mt.gov/Portals/104/Resources/Policy/Chapter2/2-2-1.pdf> (last accessed June 13, 2018).

⁹ See note 8.

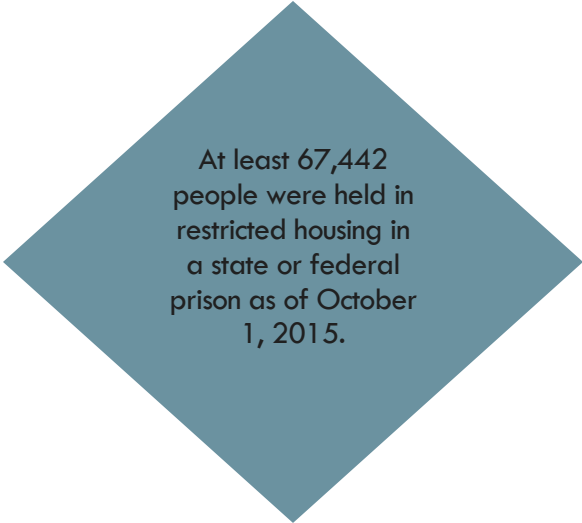
¹⁰ Montana Women’s Prison, “Prison Rape Elimination Act (PREA) Audit Report,” Feb. 3, 2018, p. 3, available at www.cor.mt.gov/Portals/104/Resources/Reports/PREA/Cycle2/MWPFinal%20Report02-03-2018.pdf (last accessed May 31, 2018).

¹¹ Allen J. Beck, Ph.D., “Use of Restrictive Housing in U.S. Prisons and Jails, 2011-2012,” Bureau of Justice Statistics, U.S. Department of Justice, Oct. 2015, p. 2, available at www.bjs.gov/content/pub/pdf/urhuspi1112.pdf (last accessed May 31, 2018).

SOLITARY CONFINEMENT IN MONTANA

State-Level Data

In an attempt to provide a baseline of data, the Association of State Correctional Administrators (ASCA) and the Arthur Liman Public Interest Program at Yale Law School conducted a national survey of correctional jurisdictions in 2015. The authors found that at least 67,442 people were held in restricted housing in a prison as of October 1, 2015. That number includes inmates in 48 state and federal prisons as well as in the District of Columbia and the U.S. Virgin Islands.



At least 67,442 people were held in restricted housing in a state or federal prison as of October 1, 2015.

Together, these prisons are believed to hold “about 96% of the nations’ prisoners convicted of a felony.”¹²

The survey defined restricted housing for the respondents as “individuals ... held in their cells for 22 hours or more each day, and for 15 continuous days or more at a time.”¹³ Using that definition, the survey reported an average of 4.9% of the prison population was held in restricted housing by those 48 jurisdictions; the median figure is 5.1%.¹⁴

Because one state did not respond and four others did not or could not report information, that 67,442 number is likely to be low. Like many studies attempting to quantify the use of restricted housing in the United States, the survey did not include people held in county jails or detention centers, juvenile facilities, or military or immigration detention facilities.¹⁵

In an attempt to capture numbers of inmates who spent significant hours each day in a cell, even if the total number of hours was less than 22, the same survey also asked state and federal prison administrators about prisoners who were confined in cells for 20 to 21 hours a day and for 16 to 19 hours a day. When those two subsets of prisoners were added to the original 67,442, the ASCA/Liman Reducing Time-In-Cell Report estimated at least 83,897 prisoners were held in a cell for at least 16 hours a day for 15 days or more.¹⁶ Again, because those numbers do not include responses from all of the states or about all jurisdictions that detain individuals, the report numbers are likely to be a floor rather than a ceiling.

¹² Association of State Correctional Administrators and Arthur Liman Public Interest Program at Yale Law School, *Aiming to Reduce Time-In-Cell*, Nov. 2016, p. 1, available at <https://law.yale.edu/system/files/area/center/liman/document/aimingtoreducetic.pdf>, last accessed June 13, 2018 (hereafter “ASCA/Liman Reducing Time-In-Cell Report”).

¹³ ASCA/Liman Reducing Time-In-Cell Report, p. 1.

¹⁴ ASCA/Liman Reducing Time-In-Cell Report, p. 21.

¹⁵ ASCA/Liman Reducing Time-In-Cell Report, p. 1.

¹⁶ ASCA/Liman Reducing Time-In-Cell Report, p. 24.

SOLITARY CONFINEMENT IN MONTANA

Montana Data

The ASCA/Liman Reducing Time-In-Cell Report also included state-specific information gathered from the states themselves. This section highlights several data points that relate to Montana.

As of October 1, 2015, Montana corrections officials reported holding 90 male state prisoners in restricted housing, which the survey administrators had defined as being housed “in ... [a cell] for 22 hours or more each day, and for 15 continuous days or more at a time” (see table 1). That number was about 3.5% of the total custodial population for the state.¹⁷ The ASCA/Liman tables and charts did not report any Montana data on female offenders held in restricted housing.

In addition to those 90 male prisoners, Montana reported 6 inmates who were held 20-21 hours in a cell for at least 15 consecutive days, for a total of 96 inmates — or 3.8% of the total custodial population — who spent at least 16 hours in a cell for 15 consecutive days or more.¹⁸ The state did not report any inmates in the 16- to 19-hour in-cell range.

Table 1: Numbers and Percentages of Men and Women in Custodial Population Held in a Cell for 16 or More Hours a Day and for 15 Consecutive Days or More by Jurisdiction

State	Total Custodial Population	22 Hours or More		20-21 Hours		16-19 Hours		Total 16-24 Hours	
Montana	2,554	90	3.5%	6	0.2%	0	0.00%	96	3.8%
Idaho	8,013	404	5.0%	0	0.0%	0	0.0%	404	5.0%
North Dakota	1,800	54	3.0%	0	0.0%	0	0.0%	54	3.0%
South Dakota	3,526	106	3.0%	0	0.0%	5	0.1%	111	3.1%
Wyoming	2,128	131	6.2%	0	0.0%	17	0.8%	148	7.0%

Data from Table 3 of the ASCA/Liman Reducing Time-In-Cell Report, with states selected for their proximity to Montana. A link to the report and complete table is available at <https://leg.mt.gov/css/committees/interim/2017-2018/Law-and-Justice/Committee-Topics/sj25-study.html>.

¹⁷ ASCA/Liman Reducing Time-In-Cell Report, pp. 1, 25.

¹⁸ ASCA/Liman Reducing Time-In-Cell Report, p. 25.

SOLITARY CONFINEMENT IN MONTANA

Montana officials provided demographic data for 83 of the 90 inmates because the other 7 were in “off-site detention.”¹⁹ While 75% of the general inmate population was white and 22% was “other” (which includes American Indian inmates), of the 83 inmates held in restricted housing 61% were white and 34% were other.

Although Montana reported only 90 prisoners in restricted housing for 22 hours or more each day at the time of the survey, it provided data for 134 inmates on the span of days a prisoner spent in restricted housing. Of the 134 inmates for whom length-of-time data was reported, 58 spent at least 15 days but less than 1 month in restricted housing. Another 67 spent 3 to 6 months. Two inmates had been in restricted housing for 6 months to 1 year, with another four inmates spending 1 to 3 years. Finally, three inmates had spent 6 or more years in restricted housing.²⁰

Large majorities of both Montana’s total population and its restricted housing population were between the ages of 18 and 49. The state reported that 73% of its total population was between the ages of 18 and 49, with the remaining 27% being age 50 or older. In the restricted housing population, 86% was between the ages of 18 and 49, with the rest being 50 or older.²¹

National Data from Inmates

Another estimate of the number of U.S. inmates held in restricted housing is provided by an inmate survey conducted by the Bureau of Justice Statistics (BJS) of the United States Department of Justice (U.S. DOJ). The survey is conducted as part of the U.S. DOJ’s compliance with the Prison Rape Elimination Act of 2003 (P.L. 108-79), but the survey also gathers data from inmates related to confinement conditions and experiences. Because it is also administered to jail inmates, the survey data provides a window into that type of facility, as well as the state facilities. Unlike the ASCA/Liman Reducing Time-In-Cell Report, the BJS survey of inmates did not provide a definition of administrative segregation or solitary confinement. Instead, it asked inmates for a description of where they had spent the previous night and offered those two terms as one of the seven descriptive options as possible answers.

The most recent survey, conducted in 2011 and 2012, found that on an average day up to 4.4% of state and federal inmates and 2.7% of jail inmates were housed in administrative segregation or solitary confinement.²² At least 1.9% of state and federal inmates and 2.2% of jail inmates self-reported that housing status. The higher estimate numbers include inmates who had to fill out a paper survey rather than an electronic one and inmates who were unavailable to take either form of the survey. The paper survey did not include a question about housing status. When those two types of inmates were added to the numbers of inmates who self-reported their housing status, the number reached the 4.4% and 2.7% totals that the survey highlighted.

¹⁹ ASCA/Liman Reducing Time-In-Cell Report, p. 90, footnote 171.

²⁰ ASCA/Liman Reducing Time-In-Cell Report, p. 27.

²¹ ASCA/Liman Reducing Time-In-Cell Report, p. 44.

²² Beck, “Use of Restrictive Housing in U.S. Prisons and Jails, 2011-2012,” pp. 1, 3.

SOLITARY CONFINEMENT IN MONTANA

Other findings highlighted from the survey results include the following:

- In the 12 months prior to the survey or since the inmates arrived at the facility, up to 20% of prison inmates and 18% of jail inmates reported they had spent time in administrative segregation or solitary confinement.²³
- Up to 10% of prison inmates and 5% of jail inmates reported they had spent 30 days or more in administrative segregation or solitary confinement.²⁴
- Nearly identical percentages of male prison or jail inmates reported spending any time in restricted housing (17.9% for male prison inmates and 17.4% for male jail inmates), while 20.4% of female prison inmates reported spending any time in restricted housing as compared to 17.4% of female jail inmates.²⁵
- A link existed between stays in restricted housing and inmate mental health problems, noting that “inmates who reported a [past mental health] problem were also more likely than other inmates to report that they had spent time in restrictive housing in the last 12 months or since coming to the facility, if shorter.”²⁶

RESTRICTED HOUSING STANDARDS AND GUIDELINES FOR ADULT PRISONS

The LJIC reviewed multiple standards from national organizations related to restricted housing in adult correctional facilities. Two sets of standards were from the American Correctional Association (ACA). The Association of State Correctional Administrators (ASCA) published a set of guiding principles for restrictive housing and a set of guidelines that covers treatment of the incarcerated mentally ill. The LJIC also reviewed the U.S. DOJ’s guiding principles for restrictive housing and the National Commission on Correctional Health Care’s position statement on solitary confinement.

American Correctional Association Standards

The American Correctional Association (ACA) is a professional organization of corrections staff. One of its goals is to “develop standards that are based on valid, reliable research and exemplary correctional practice.”²⁷ Those standards “represent fundamental correctional practices that ensure staff and inmate safety and security; enhance staff morale; improve record maintenance and data management capabilities; assist in

²³ Beck, “Use of Restrictive Housing in U.S. Prisons and Jails,” pp. 1, 5.

²⁴ Beck, “Use of Restrictive Housing in U.S. Prisons and Jails,” pp. 1, 5.

²⁵ Beck, “Use of Restrictive Housing in U.S. Prisons and Jails,” p. 4.

²⁶ Beck, “Use of Restrictive Housing in U.S. Prisons and Jails,” p. 6.

²⁷ American Correctional Association, “Vision Statement,” adopted Aug. 7, 2002, available at www.aca.org/aca_prod_imis/docs/aca_visionstatement.pdf (last accessed June 14, 2018).

SOLITARY CONFINEMENT IN MONTANA

protecting the agency against litigation; and improve the function of the facility or agency at all levels.”²⁸ The ACA publishes standards manuals for 22 areas of corrections practice, including adult correctional institutions, local detention facilities, and juvenile correctional facilities.²⁹ If a facility or program seeks accreditation from the ACA, the applicable standards are used to guide that process.

Accreditation is an optional process, but the standards are often cited by state correction agencies as sources and guides for their own specific department and facility policies and practices. As of June 14, 2018, the Crossroads Correctional Center operated by CoreCivic in Shelby is accredited by the ACA as an adult correctional institution.³⁰

The most recent standards for adult prisons are contained in two manuals: the *Standards for Adult Correctional Institutions*, 4th edition, published in 2003, and the *2016 Standards Supplement* (ACI standards). The Montana Legislative Library has a copy of each of the two manuals that form the ACI standards. The standards are not available online.

The ACI standards cover a wide range of topics related to administering and operating an adult prison. While not all of the standards specifically relate to restricted housing practices, neither are all of the standards that affect restricted housing practices and conditions contained in one section. Standards that guide inmate discipline, classification, inmate rights, and provision of health care can also play a role in the processes used to make housing decisions, the conditions that are present in a restricted housing unit, and services and treatment provided to offenders.

Section D of the ACI standards contains the standards for special management, which includes inmates placed in segregation. The ACI standards use the term “segregation” to include administrative segregation, protective custody, and disciplinary detention, all of which are defined terms used in the standards. Section D is organized around the following principle: “Inmates who threaten the secure and orderly management of the institution may be removed from the general population and placed in special units.”³¹

The first two standards set out general policy and practice for segregation units, including that:

- when a segregation unit exists in a facility, written policy and procedure govern the operation of the unit; and

²⁸ American Correctional Association, “Welcome to the Standards and Accreditation Department,” available at www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards_Accreditation/ACA_Member/Standards_and_Accreditation/SAC.aspx?hkey=7f4cf7bf-2b27-4a6b-b124-36e5bd90b93d (last accessed June 14, 2018).

²⁹ American Correctional Association, “Standards,” available at www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards_and_Accreditation/StandardsInfo_Home.aspx?hkey=7c1b31e5-95cf-4bde-b400-8b5bb32a2bad (last accessed June 14, 2018).

³⁰ American Correctional Association, “Search Accredited ACA Facilities,” available at www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards_and_Accreditation/SAC_AccFacHome.aspx?WebsiteKey=139f6b09-c150-4c56-9c66-284b92f21e51&hkey=f53cf206-2285-490e-98b7-66b5ecf4927a&CCO=2#CCO (last accessed June 14, 2018).

³¹ American Correctional Association, “Section D: Special Management,” *Adult Correctional Institutions*, 4th ed., 2003, p. 69.

SOLITARY CONFINEMENT IN MONTANA

- immediate segregation can be ordered by certain officials when it is necessary to protect the inmate or others. An order of immediate supervision is reviewed by an appropriate authority within a set number of hours.³²

Other special management topics covered in the ACI standards in section D include:

- Admission and Review of Status;
- Supervision;
- General Conditions of Confinement;
- Programs and Services;
- Access to Legal and Reading Materials;
- Exercise Outside of Cell;
- Telephone Privileges; and
- Administrative Segregation/Protective Custody.³³

In addition, one standard in section E (Health Care standards) describes when and how health care should be provided to an offender transferred to a segregation unit. Specifically, that standard provides that health care personnel will be informed immediately of the transfer and will assess and review as required by the health unit's protocols. The standard also provides that offenders in the unit will be visited at least daily by a health care provider unless more frequent attention is required.³⁴

Restrictive Housing Standards

As of August 2016, the ACA also provides a set of proposed performance-based standards specific to restrictive housing. Performance-based standards are being developed in all corrections topic areas, and they revise the elements that combine to form an ACA standard.³⁵

In the performance-based standards, restrictive housing is defined as “a placement that requires an inmate to be confined to a cell at least 22 hours per day for the safe and secure operation of the facility.”³⁶ There are 35 proposed standards and a definitions section. The majority of the performance-based standards have cross-references to existing ACI standards. Highlights of the sections without a cross-reference include the following:

³² American Correctional Association, “ACI Standard 4-4249 and 4-4250,” *Adult Correctional Institutions*, 4th ed., p. 69.

³³ American Correctional Association, “Section D: Special Management,” pp. 69-74; and American Correctional Association, *2016 Standards Supplement*, 2016, pp. 69-71.

³⁴ American Correctional Association, “ACI Standard 4-4400,” *Adult Correctional Institutions*, 4th ed., 2003, p. 122.

³⁵ American Correctional Association, “Performance-Based Standards Explained,” *Adult Correctional Institutions*, 4th ed., 2003, p. xxii.

³⁶ American Correctional Association (ACA), “Restrictive Housing Performance Based Standards,” August 2016, p. 3, available at

http://www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards_Accreditation/Standards/Restrictive_Housing_Committee/Restrictive_Housing_Committee/Restrictive_Housing_Committee.aspx?hkey=458418a3-8c6c-48bb-93e2-b1fcbca482a2 (last accessed Sept. 20, 2017).

SOLITARY CONFINEMENT IN MONTANA

- An agency’s policies, procedures, and practices limit the placement of an inmate in restricted housing to circumstances “that pose a direct threat to the safety of persons or a clear threat to the safe and secure operations of the facility” (4-RH-0001).³⁷
- An agency’s policies, procedures, and practices attempt to ensure an offender is not released directly to the community from restricted housing (4-RH-0030).
- The agency will not place a person with a serious mental illness into extended restrictive housing (4-RH-0031). The standards consider the practice of isolating an offender from the general population and restricting the offender to a cell for at least 22 hours a day for more than 30 days to be extended restrictive housing. The definition of serious mental illness includes psychotic disorders, bipolar disorders, and major depressive disorder, along with “any diagnosed mental disorder ... currently associated with serious impairment in psychological, cognitive, or behavioral functioning that substantially interferes with the person’s ability to meet the ordinary demands of living and requires an individualized treatment plan by a qualified mental health professional(s).”³⁸
- An agency’s policies, procedures, and practices offer “step down programs” that meet specified basic standards to assist inmates in returning to either the prison general population or the community (4-RH-0032).
- Pregnant inmates will not be placed in extended restrictive housing (4-RH-0033).
- Placing inmates under age 18 in extended restrictive housing is prohibited (4-RH-0034).
- An inmate will not be placed in restrictive housing solely on the basis of gender identity (4-RH-0035).

The other standards cover topics similar to the ACI standards: how inmates are placed in and removed from restricted housing, living conditions in restricted housing, access to services and programs, visits from correctional and mental health staff, and status reviews of placements.

Association of State Correctional Administrators Policy Guidelines

The Association of State Correctional Administrators is composed of leaders of the state correctional agencies as well as similar officials from several cities, U.S. territories, the District of Columbia, and the U.S. Bureau of Prisons. The association’s goal is to “to increase public safety by utilizing correctional best practices, accountability, and providing opportunities for people to change.”³⁹ ASCA has established two sets of guiding principles that relate to the SJ 25 study of solitary confinement: one on restrictive housing specifically and the other on the treatment of the incarcerated mentally ill. Complete lists of each set of guiding principles are available on the LJIC’s [study resources web page](#) for the SJ 25 study.

Guiding Principles for Restrictive Housing Status

In 2013, a subcommittee established by ASCA released a set of guiding principles related to restrictive housing practices. The principles are not required of member agencies but “are recommended for

³⁷ ACA, “Restrictive Housing Performance Based Standards,” p. 6.

³⁸ ACA, “Restrictive Housing Performance Based Standards,” p. 3.

³⁹ Association of State Correctional Administrators, website, available at www.asca.net (last accessed Sept. 5, 2017).

SOLITARY CONFINEMENT IN MONTANA

consideration by correctional agencies for inclusion in agency policy.”⁴⁰ ASCA defines restrictive housing as “a form of housing for inmates whose continued presence in the general population would pose a serious threat to life, property, self, staff or other inmates, or to the security or orderly operation of a correctional facility. This definition does not include protective custody.”⁴¹ The 13 guidelines include recommendations about:

- processes used to review decisions on when an offender is placed into and removed from restrictive housing, including incentives for positive offender behavior, basing length of stay on threat levels and rule compliance rather than set time periods, and an objective review of an offender’s housing status to inform the continued placement of the offender in restrictive housing;
- mental health reviews and access to medical and mental health staff and services;
- conditions of life in restrictive housing, including opportunities for exercise and visitation, and the ability to maintain proper hygiene;
- transition back to the general population or the community;
- data collection; and
- staff training specific to restrictive housing.

Guiding Principles for the Treatment of the Incarcerated Mentally Ill

Another set of guiding principles developed by an ASCA subcommittee relates to treatment of individuals with a mental illness who are incarcerated. Although the guiding principles document itself is undated, the version of the principles used in this report was uploaded to the ASCA website at the end of August 2017.⁴² The principles provide guidance in 16 different categories, including assessment, individualized treatment planning, coordination of services and providers, reentry planning, incentive-based programs, and data-driven programs and practices.

The principles include one specific to restrictive housing: “Use restrictive housing only as a last resort and follow the ASCA’s Resolution 24 Restrictive Housing Guiding Principles.”⁴³

U.S. Department of Justice

In January 2016, the U.S. Department of Justice issued a final report on its study of restrictive housing, which it undertook at the request of then President Obama. The study request directed that the U.S. DOJ examine the background and current use of restricted housing as well as “develop strategies for reducing the use” of restricted housing. The report uses the terms “restrictive housing” and “segregation,” which are defined as “detention that involves three basic elements: removal from the general population, whether voluntary or

⁴⁰ Association of State Correctional Administrators (ASCA), “Restrictive Status Housing Policy Guidelines,” Aug. 9, 2013, p. 2, available at www.asca.net/pdffdocs/9.pdf (last accessed June 18, 2018).

⁴¹ ASCA, “Restrictive Status Housing Policy Guidelines,” p. 1.

⁴² Association of State Correctional Administrators (ASCA), “Guiding Principles for the Treatment of the Incarcerated Mentally Ill,” Aug. 30, 2017, available at www.asca.net/pdffdocs/24.pdf (last accessed June 18, 2018).

⁴³ ASCA, “Guiding Principles for the Treatment of the Incarcerated Mentally Ill.”

SOLITARY CONFINEMENT IN MONTANA

involuntary; placement in a locked room or cell, whether alone or with another inmate; and inability to leave the room or cell for the vast majority of the day, typically 22 hours or more.”⁴⁴

The report noted the importance of the issue in terms of its impact on not only inmates but also correctional staff. It concluded that, at times, “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 and the orderly operation of the facility” but that restrictive housing “should be used rarely, applied fairly, and subjected to reasonable constraints.”⁴⁵

Guiding Principles for All Correctional Systems

The U.S. DOJ report also includes “guiding principles,” which the authors intend to be “best practices” for prisons in U.S. jurisdictions. Understanding that not all of the principles could be implemented immediately or without collaboration with correctional staff and officers,⁴⁶ the report’s executive summary describes the principles as “aspirational principles ... designed to serve as a roadmap for correctional systems seeking direction on future reforms.”⁴⁷ There are 50 principles that cover such topics as how and when inmates should be placed in restrictive housing, the conditions of that housing, staff training, how and when an inmate should be returned to the general population or to the community, treatment of inmates with a mental illness or who are juveniles or pregnant, and data collection.

The report’s summary of the principles provided in the executive summary follows:⁴⁸

“This 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.

⁴⁴ U.S. Department of Justice (U.S. DOJ), “Report and Recommendations Concerning the Use of Restrictive Housing,” Jan. 2016, p. 3, available at www.justice.gov/archives/dag/report-and-recommendations-concerning-use-restrictive-housing (last accessed June 18, 2018).

⁴⁵ U.S. DOJ, “Report and Recommendations Concerning the Use of Restrictive Housing,” p. 1.

⁴⁶ U.S. DOJ, “Report and Recommendations Concerning the Use of Restrictive Housing,” p. 2.

⁴⁷ U.S. DOJ, “Executive Summary of the Report and Recommendations Concerning the Use of Restrictive Housing,” p. 2.

⁴⁸ The full list of principles is available online at www.justice.gov/archives/dag/file/815556/download.

SOLITARY CONFINEMENT IN MONTANA

- 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.”⁴⁹

National Commission on Correctional Health Care

The National Commission on Correctional Health Care (NCCHC) is a national nonprofit organization whose mission is to “improve the quality of health care in jails, prisons, and juvenile confinement facilities.”⁵⁰ To that end, the NCCHC provides accreditation and certification programs, education programs, research, and technical assistance to correctional facilities.

The NCCHC adopted a position statement on solitary confinement in April 2016. The statement defines solitary confinement as “the housing of an adult or juvenile with minimal to rare meaningful contact with other individuals.”⁵¹ (This definition is also used in the preamble of the SJ 25 study resolution.) The NCCHC definition also includes that individuals in solitary confinement “often experience sensory deprivation and are offered few or no educational, vocational, or rehabilitative programs” and notes that correctional jurisdictions use a variety of terms to refer to the practice.⁵² The purpose of the position statement is to “assist health care professionals in addressing the use of solitary confinement in the facilities in which they work.”⁵³

After providing background and outlining various research into the effects of solitary confinement, the position statement reviews international standards related to the practice. In total, the NCCHC provides 17 principles as guidance for correctional health professionals. The principles include the duties of correctional health professionals to their patients, when and for what purposes solitary confinement should be used, the

⁴⁹ U.S. DOJ, “Executive Summary of the Report and Recommendations Concerning the Use of Restrictive Housing,” p. 3 (bold highlighting in the original report removed).

⁵⁰ National Commission on Correctional Health Care, website, available at www.ncchc.org (last accessed June 18, 2018).

⁵¹ National Commission on Correctional Health Care (NCCHC), “Solitary Confinement (Isolation),” position statement, April 2016, available at www.ncchc.org/solitary-confinement (last accessed June 18, 2018).

⁵² NCCHC, “Solitary Confinement (Isolation).”

⁵³ NCCHC, “Solitary Confinement (Isolation).”

SOLITARY CONFINEMENT IN MONTANA

availability of reentry programs, the conditions of confinement that should exist when an inmate is placed in isolation, and how and when health staff should be involved with patients, such as initial evaluations upon an individual's placement in isolation. Specifically, the principles include that solitary confinement should not exceed 15 days and that juveniles, mentally ill individuals, and pregnant women should be excluded from the practice.⁵⁴

MONTANA POLICIES AND PROCEDURES RELATED TO LOCKED HOUSING UNITS

As requested in SJ 25, the LJIC reviewed DOC policies and state prison procedures related to the use of locked housing in the state.

The DOC defines a policy directive as “a Department of Corrections internal management document that provides the standards by which Department divisions, facilities, and programs will operate.” Policies provide the broader umbrella of how the department conducts its activities and provides services. A procedure fits in under any broad policy umbrella and is a more specific document often developed for a particular corrections facility or program to “provide staff with direction on how to implement a Department policy, required action, or program.” Policies and procedure topics range widely and include how staff is to be trained and evaluated, how programs and facilities are to be operated, and how offenders are to be managed.⁵⁵

Policy development is handled by the DOC Quality Assurance office in the central DOC office, while procedures are developed by divisions, facilities, or programs. For example, the Montana State Prison develops procedures to flesh out additional details not contained in a more general policy directive. Policies guide procedures, and both are put into effect by the actual practices of DOC staff and contractors as they work each day with offenders.

Table 2 outlines the interconnected web of department policies and procedures that describe the expected living conditions experienced by inmates in a locked housing unit and the services or programs available to those inmates. These are the policies and procedures reviewed by the LJIC.

Most referenced policies and procedures are not entirely specific to locked housing practices. However, when examined in combination with each other, they provide detail and structure to the DOC's inmate housing practices. The policies generally apply to state-run and contracted facilities, although each policy also has a specific applicability section that lists the extent of its reach. The DOC's contract with the private prison in

⁵⁴ NCCHC, “Solitary Confinement (Isolation),” guidelines 1, 2, and 5.

⁵⁵ The quotes, definitions, and general information about policies and procedures in this section are taken from the following policy directive, unless otherwise noted. Montana Department of Corrections Policy No. DOC 1.1.2: Policy Management System, revised July 27, 2015, available at www.cor.mt.gov/Portals/104/Resources/Policy/Chapter1/1-1-2%20Policy%20Management%20System%2007_27_15.pdf (last accessed June 18, 2018).

SOLITARY CONFINEMENT IN MONTANA

Shelby includes an inventory of DOC policies and MSP procedures that the private prison must either adopt entirely or comply with substantially.

Table 2: Policies and Procedures Related to Offenders in Locked Housing Units

General Subject	Related DOC Policy (Revision Date)	Related MSP Procedure(s) (Revision Date)
Discipline (offender and institutional)	DOC 3.4.1: Offender Disciplinary System (9/9/2016)	MSP 3.4.1: Institutional Discipline (1/4/2017) MSP 3.4.100: Pre-hearing Confinement (9/27/2004)
Locked housing units	DOC 3.5.1: Locked Housing Unit Operations (9/9/2016)	MSP 3.5.1: Locked Housing Operations (10/25/2013) ⁵⁶
Behavior management plans	DOC 3.5.5: Behavior Management Plans (6/15/2009)	MSP 3.5.5: Behavior Management Plans (2/27/2013)
Offender classification	DOC 4.2.1: Offender Classification System (2/22/2012) DOC 4.2.2: Special Needs Offenders (2/22/2012)	MSP 4.2.1: Inmate Classification System (11/12/2013) MSP 4.2.200: Special Management of Atypical Inmates (10/16/2000) MSP 4.2.202: Inmate Separation Needs (11/21/2013)
Locked housing health assessments and services	DOC 4.5.21: Locked Housing Offender Health Assessment and Services (3/21/2016)	

Committee Visit to the Montana Women’s Prison

In March 2018 and in conjunction with a regular committee meeting, the LJIC members toured the Montana Women’s Prison in Billings. The committee visited the offender intake and screening area, cafeteria, and

⁵⁶ The LJIC received the Oct. 25, 2013, version of this procedure as part of the materials for its January 2018 meeting. After the January 2018 meeting, the DOC posted online a revised procedure version dated March 23, 2018. The LJIC did not review this updated procedure. However, Montana State Prison staff described elements of the procedure, including the locked housing status review plan for each inmate and the six incentive levels, during a presentation at the January meeting.

SOLITARY CONFINEMENT IN MONTANA

library as well as areas where medical, religious, treatment, and education services are provided. They also spent time at a vacant locked housing unit to view the size and nature of those cells.

JUVENILES

SJ 25 requested that the LJIC review “facility, state, or county policies” related to solitary confinement of juveniles.

The Montana Youth Court Act governs most interactions that individuals who are under age 18 would have with the criminal justice system in general. The legislative purposes of the act are to:

- preserve family unity when possible;
- provide for the protection and care of youth who are under the jurisdiction of the act;
- prevent and reduce youth delinquency; and
- provide structure and court processes to achieve the purposes of the act.

The act “does not seek retribution” but instead includes among its purposes “immediate, consistent, enforceable, and avoidable consequences” and “a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders.”

Several terms related to the SJ 25 study are defined in the act, including “youth,” “detention facility,” and “correctional facility”:

- A **youth** is “an individual who is less than 18 years of age without regard to sex or emancipation.”
- A **detention facility** is “a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.” Further definitions are provided in the act for those three types of facilities.
- A **correctional facility** is “a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.” The law further defines the term “state youth correctional facility” as the Pine Hills Youth Correctional Facility in Miles City and the Riverside Youth Correctional Facility in Boulder.

Detention facilities are limited to providing temporary housing of certain youth who are alleged to have committed specified acts that would be considered a crime if committed by an adult but before a court has adjudicated the matter under the Youth Court Act. Youth may also be held in a detention facility in several other cases as long as criteria set out in Montana law are met. Those other criteria include when a delinquent youth has escaped from a correctional facility or a detention facility, poses a threat to people or property, or might not appear for a future court hearing, or when a sanction for a violation of a parole agreement or court order or for contempt of court is needed.

Youth correctional facilities house youth after a court has adjudicated them to be delinquent youth. “Delinquent youth” is the term for a youth that has been adjudicated by a court as provided in the Youth

SOLITARY CONFINEMENT IN MONTANA

Court Act for an offense that would have been considered a criminal offense if the youth had committed it as an adult or for a delinquent youth who has violated a probation condition.

Types of Facilities for Youth in Montana

Youth Detention Facilities

Counties are responsible for providing youth detention services, including detention facilities, but the statute offers a county many options to fulfill the requirement, including establishing its own detention center, operating one in cooperation with other counties, or contracting for those services with another county, a private party, another state or political subdivision of a state, or an Indian tribe. The DOC is required to adopt administrative rules and to license detention facilities operated by counties, whether the facility is operated by a single county or by a group of counties as a regional detention facility. Although the Youth Court Act authorizes or refers to other types of facilities that may house youth (for example, a foster home, a youth assessment center, or a shelter care facility), the DOC is only responsible for licensing detention centers and operating state correctional facilities.⁵⁷

Currently, there are three licensed detention facilities for youth in Montana:⁵⁸

- the Missoula County Juvenile Detention Facility;
- the Cascade County Juvenile Detention Facility, which also houses youth from 11 other counties;⁵⁹ and
- the Ted Lechner Youth Services Center in Yellowstone County, which also offers other services for youth, such as shelter care.

In late 2015, the Flathead County Commission agreed with the county sheriff's plan to close its juvenile detention facility and transport the county's youth offenders to the Missoula County facility. The Flathead facility is now used to house adult female inmates who would otherwise have been held in that county's adult detention center.⁶⁰

⁵⁷ See the Montana Youth Court Act, available at https://leg.mt.gov/bills/mca/title_0410/chapter_0050/parts_index.html; and Montana Department of Corrections, "The Montana Youth Resources Directory," updated Jan. 30, 2013, previously available at www.cor.mt.gov/Portals/104/YouthServices/YthResDir.pdf. Hard copy available at the Legislative Services Division.

⁵⁸ Montana Department of Corrections, "Montana Youth Resources Directory," p. 33; and conversation with Youth Services Division administrator.

⁵⁹ Cascade County, Montana, "Juvenile Detention Center," available at www.cascadecountymt.gov/departments/juvenile-detention-center (last accessed June 13, 2018). The 11 counties are Toole, Blaine, Hill, Pondera, Chouteau, Broadwater, Glacier, Lewis and Clark, Teton, Phillips, and Liberty.

⁶⁰ Justin Franz, "Flathead County to Close Juvenile Detention Center," *Flathead Beacon*, Nov. 2, 2015, available at www.flatheadbeacon.com/2015/11/02/flathead-county-to-close-juvenile-detention-center (last accessed June 13, 2018).

SOLITARY CONFINEMENT IN MONTANA

According to Montana Judicial Branch statistics for calendar year 2016, the number of youth placed in detention at the time of an arrest was 778.⁶¹

Youth Correctional Facilities

A small number of youth involved in the juvenile system need to be placed in a secure correctional facility. A Judicial Branch report on youth courts notes that for calendar year 2016, “of the 3,711 youth referred to Youth Court, 48 were committed to DOC for placement in a youth correctional facility.” That is about 1% of the youth involved in youth court proceedings.⁶²

As of June 2018, the DOC operates one youth correctional facility and contracts with a second. The Pine Hills Youth Correctional Facility in Miles City houses male youth, whereas female youth are placed in a facility in Idaho under a contract with the DOC.⁶³ Female youth were previously held in the Riverside facility in Boulder, which is now used to house and treat adult female offenders.⁶⁴ In FY 2016, the average daily population at Pine Hills was 43 youth; at Riverside, it was five.⁶⁵

Until May 18, 2018, the department also operated the Youth Transitional Center in Great Falls, which served adjudicated male youth who had failed in a community placement or who needed a transition from Pine Hills before reentering the community.⁶⁶ The average daily population of the center in FY 2016 was six youth.⁶⁷

During FY 2016, the average stay for a male youth in a secure facility was 224 days, while for a female youth it was 189 days.⁶⁸

⁶¹ Montana Judicial Branch, “Youth Court At-a-Glance,” 2016 report, p. 12, available at https://courts.mt.gov/portals/189/dcourt/yth_court/docs/2016reportcard.pdf (last accessed June 13, 2018).

⁶² Montana Judicial Branch, “Youth Court At-a-Glance,” p. 12.

⁶³ Contract between the Youth Services Division of the Montana Department of Corrections and 5-C Juvenile Detention Center, signed August 2017, available at www.cor.mt.gov/Portals/104/Resources/Contracts/a/5-C%20Juvenile%20Detention%20%2817-003-YSD%29%20FY18.pdf (last accessed June 13, 2018).

⁶⁴ Montana Department of Corrections, “Riverside Recovery and Reentry Program,” available at www.cor.mt.gov/ProbationParole/Riverside (last accessed June 13, 2018).

⁶⁵ Montana Department of Corrections, “2017 Biennial Report,” p. D-2, available at www.cor.mt.gov/Portals/104/Resources/Reports/2017BiennialReport.pdf (last accessed June 13, 2018).

⁶⁶ At the time the LJIC reviewed information relating to youth detention and correctional facilities, the DOC operated the Great Falls facility. This report reflects that update, while previous materials do not. Montana Department of Corrections, “Youth Transition Center in Great Falls to Close,” press release, April 18, 2018, available at www.cor.mt.gov/Publications/Article/youth-transition-center-in-great-falls-to-close (last accessed June 13, 2018).

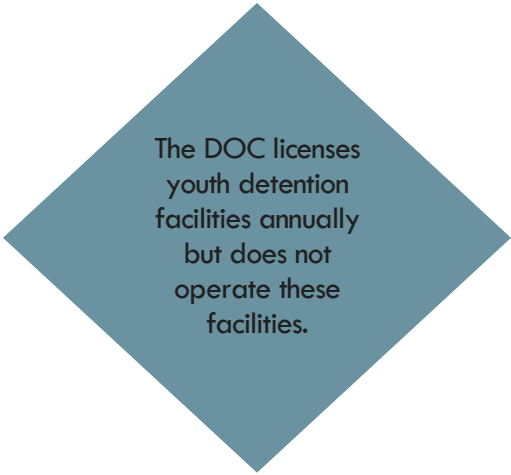
⁶⁷ Montana Department of Corrections, “2017 Biennial Report,” p. D-2.

⁶⁸ Montana Department of Corrections, “2017 Biennial Report,” p. D-3.

SOLITARY CONFINEMENT IN MONTANA

Department Licensure of Youth Detention Facilities

Section 41-5-1802, MCA, requires the DOC to adopt administrative rules governing the licensure of youth detention facilities in broad terms. Again, these are facilities that are licensed by the department but not operated by it. Rather, they are operated or contracted for by a county or a group of counties. The statutory delegation of rulemaking authority requires that those rules must include how a licensed facility will provide educational programs to youth. The resulting rules set out the requirements a facility must meet in order to be licensed by the department. Licensure occurs annually.⁶⁹



The DOC licenses youth detention facilities annually but does not operate these facilities.

The rules govern a wide range of topics, including license or renewal applications, required staffing and training, adherence to the requirements of the Prison Rape Elimination Act, education, recordkeeping and required reports, and visitation or telephone privileges. Safety and security policies and procedures must be written to comply with standards set by the American Correctional Association.⁷⁰

The rules require a facility to have written policies and procedures covering how youth are admitted to the facility, treated during their stay, and provided services such as medical care. Minimum staffing ratios are also set in rule: at least one staff member for every 8 youth from 7 a.m. to 11 p.m., with at least two staff members on duty, and at least one staff member for every 12 youth from 11 p.m. to 7 a.m., with additional staff on call.

Under admission rules, the detention facility is allowed to segregate a youth from other youth for not more than 24 hours to assess and evaluate the youth. If a youth is segregated for this reason, the rule requires certain things to be provided to the youth, including clothing or a uniform, a fire-retardant mattress, a pillow, a pillow case, sheets and blankets, and a towel.

Administrative Segregation and Disciplinary Detention

The rules require that if a facility uses administrative segregation or disciplinary detention, the facility must have written policies that comply with ACA standards. Administrative segregation is defined in the rule as “a method of housing and managing youth whose continued presence in the general population poses a serious

⁶⁹ ARM 20.9.603: Facility License, available at www.mtrules.org/gateWay/Print_RV.Asp?RV=3983 (last accessed June 13, 2018).

⁷⁰ The American Correctional Association produces multiple standards related to juveniles. The standards are for juvenile community residential facilities, juvenile correctional facilities, juvenile detention facilities, juvenile correctional boot camp programs, juvenile day treatment programs, and small juvenile detention facilities. See American Correctional Association, “Standards,” available at http://www.aca.org/ACA_Prod_IMIS/ACA_Member/Standards_and_Accreditation/StandardsInfo_Home.aspx?hkey=7c1b31e5-95cf-4bde-b400-8b5bb32a2bad (last accessed June 13, 2018).

SOLITARY CONFINEMENT IN MONTANA

threat to life, property, self, staff, or other youth.”⁷¹ Administrative segregation may be used when a youth is “a serious threat to life, property, self, staff, or other youth.”⁷²

A youth may be placed in disciplinary detention as a sanction for a “serious rule violation,” which must be described in facility policy, and then only for a maximum of 23 hours a day for a maximum of 4 consecutive days.⁷³ While in detention, the youth must be given the opportunity to exercise at least 1 hour a day. The facility staff must provide the youth with a due process hearing within 48 hours of the placement in detention. The facility’s written policies must also include the criteria it uses for this type of detention and the processes used to conduct the due process hearing and to provide the youth an appeal of any decision.

National Standards and Guidelines

There are several organizations that have adopted standards, guidelines, or best practices related to housing youth in confinement. The LJIC received information about the following standards, guidelines, or best practices:

- the Council of Juvenile Correctional Administrators’ position statement on the use of isolation for juveniles;
- standards adopted by the Annie E. Casey Foundation’s Juvenile Detention Alternatives Initiative; and
- recommendations from the U.S. DOJ’s review of its use of restricted housing that relate to juveniles.

In addition to written materials related to these standards, guidelines, and best practices, the LJIC received a presentation from DOC staff about the use of room confinement at Pine Hills and the development and use of Performance-based Standards (or PbS).

⁷¹ARM 20.9.602: Definitions, available at www.mtrules.org/gateway/ruleno.asp?RN=20%2E9%2E602 (last accessed June 13, 2018).

⁷² ARM 20.9.629: Administrative Segregation and Disciplinary Detention, available at www.mtrules.org/gateWay/Print_RV.Asp?RV=14861 (last accessed June 13, 2018).

⁷³ ARM 20.9.629: Administrative Segregation and Disciplinary Detention.

SOLITARY CONFINEMENT IN MONTANA

Performance-Based Standards

PbS “is a data-driven improvement model grounded in research that holds juvenile justice agencies, facilities and residential care providers to the highest standards for operations, programs and services.”⁷⁴ The standards model was developed in the mid-1990s by the Council of Juvenile Correctional Administrators, which is a membership organization of “juvenile justice system administrators and directors.”⁷⁵ The standards



are voluntary and are designed to help “improve conditions, services and overall operations” of youth facilities and programs. As of 2014, at least 200 facilities and programs in 32 states use the standards.⁷⁶

The standards cover multiple facets of operating a youth facility or program, including safety, security, order, health and mental health services, justice and legal rights, programming, and reintegration planning.⁷⁷ Part of complying with the standards includes participation in routine facility reports of data and surveys of youth, staff, and families to provide accountability and data to make cross-state and facility comparisons and to enable facilities to measure progress in

meeting standards and providing services.⁷⁸

The standards are specific as to the use of isolation or room confinement: “isolating or confining a youth to his/her room should be used only to protect the youth from harming himself or others and, if used, should be brief and supervised.”⁷⁹ The definition of “isolation” is “any instance a youth is confined alone for cause or punishment for 15 minutes or more in his or her sleeping room or another room or separation unit. Exceptions are made for protective isolation, medical isolation, or when requested by a youth. The time measured begins when the youth is placed in the room and continues until when he or she leaves, including sleeping time when extending over night.”⁸⁰

⁷⁴ Performance-based Standards Learning Institute (PbS), “About Us,” available at <https://pbstandards.org/about-us> (last accessed June 13, 2018).

⁷⁵ PbS, “About Us”; and Council of Juvenile Correctional Administrators, “CJCA Toolkit for Reducing the Use of Isolation,” p. 1, available at <http://cjca.net/index.php/resources/cjca-publications/107-toolkit/751-cjca-toolkit-for-reducing-the-use-of-isolation> (last accessed June 13, 2018).

⁷⁶ Performance-based Standards Learning Institute (PbS), “Performance-based Standards: Data-driven Improvement Model for Juvenile Corrections, Detention and Assessment Facilities and Community-based Programs,” brochure, 2014, available at <https://pbstandards.org/cjcaresources/219/PbS-Brochure-2014.pdf> (last accessed June 13, 2018).

⁷⁷ PbS, “Performance-based Standards,” brochure.

⁷⁸ PbS, “Performance-based Standards,” brochure.

⁷⁹ Performance-based Standards Learning Institute (PbS), “Reducing Isolation and Room Confinement,” Sept. 2012, p. 2, available at www.pbstandards.org/uploads/documents/PbS_Reducing_Isolation_Room_Confinement_201209.pdf (last accessed June 13, 2018).

⁸⁰ PbS, “Reducing Isolation and Room Confinement,” p. 3.

SOLITARY CONFINEMENT IN MONTANA

A facility must document times when a youth is confined for 15 minutes or more and report the event in PbS statistics that are tracked over time and between facilities. Other statistics relating to isolation or confinement that the standards track include:

- the number of uses of isolation, confinement, or segregation/special management units;
- the average duration of those uses;
- the percentage of cases terminated in 4 hours or less; and
- the percentage of cases terminated in 8 hours or less.⁸¹

The Pine Hills Youth Correctional Facility is a member of the Performance-based Standards Learning Institute and uses the standards in the facility.⁸²

Committee Visit to Ted Lechner Youth Services Center

In March 2018 and in conjunction with a regular committee meeting, the LJIC members toured the Ted Lechner Youth Services Center. Operated by Yellowstone County, the center is a secure detention facility for juveniles who need to be held pretrial. The center also provides treatment programs and operates a shelter care facility. While the committee focused on the detention facility aspect of the center, it also toured and heard about other services offered through the center. During their several hours spent at the center, LJIC members learned that:

- the majority of youth admitted to secure detention are released within 3 days;
- 80% of the youth have some involvement with drugs or alcohol; and
- center staff work both in both the detention and the shelter care sides of the center.⁸³

Other States' Actions

According to materials from the National Conference of State Legislatures that were provided to the LJIC during the SJ 25 study, at least 12 states “prohibit the use of unnecessary restraints” through law, rule, or court ruling.⁸⁴ The materials also noted that, as of January 2016, the federal prison system is banned from using solitary confinement for juvenile offenders in that system.

⁸¹ PbS, “Reducing Isolation and Room Confinement,” p. 2.

⁸² Montana Department of Corrections, “2017 Biennial Report,” p. 38.

⁸³ Ted Lechner Youth Services Center, “Fact Sheet,” available at <http://leg.mt.gov/content/Committees/Interim/2017-2018/Law-and-Justice/Meetings/Mar-2018/Exhibits/TedLechner-FactSheet.pdf> (last accessed June 13, 2018).

⁸⁴ Anne Teigen, “States That Limit or Prohibit Juvenile Shackling and Solitary Confinement,” National Conference of State Legislatures, June 2018, available at www.ncsl.org/research/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement635572628.aspx (last accessed June 6, 2018).

SOLITARY CONFINEMENT IN MONTANA

COUNTY DETENTION CENTERS

Through written materials, panel presentations, and a facility tour, the LJIC learned about various standards related to if, when, and how an inmate in a local jail or in a prison may be housed separately from other individuals in the general population. They also heard about the current voluntary peer review process that county sheriffs and deputies use to evaluate the conditions in detention centers.

Operation of Detention Centers

Although “jail” is the term commonly used to refer to a county facility that holds adult individuals who have been arrested and are waiting for the resolution of a criminal charge, Montana statutes use the term “detention center” instead. “Detention center” is defined in Title 7, chapter 32, part 21 (the local government law enforcement statutes), as “a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.” Detention centers also hold individuals who have been sentenced by a court and are to be transferred to a state or other facility to serve their sentences. An appropriate entity is typically a county governing body or a group of governing bodies that either establish and operate or contract for the operation of a detention center, though a municipal authority may also establish a detention center.

Montana Detention Standards

The Montana Association of Counties and the Montana Sheriffs and Peace Officers Association (MSPOA) have developed and currently maintain a set of detention standards for Montana detention centers.⁸⁵

Although the standards cover a wide range of administrative and operational practices, chapter 8 of the standards relates specifically to special management inmates. Special management inmates are “persons whose behavior presents a serious threat to the safety or security of the facility, the inmate, the staff, or the general inmate population” and for whom “special handling and/or housing is required to regulate their behavior.”

The chapter sets out parameters for treatment of inmates placed in segregation, which is “the confinement of an inmate to an individual cell that is separated from the general population.” The term includes administrative segregation, protective custody, and disciplinary detention, all of which are defined terms.

The standards include that a detention center must have written policy and procedures to govern inmates in segregation, and they describe when and how an inmate may be placed into a type of segregation. The facility administrator can order an inmate into segregation immediately “when it is necessary to protect the inmate or others,” and that order must be reviewed within 72 hours “by the appropriate authority.”

⁸⁵ Montana Sheriffs and Peace Officers Association and the Montana Association of Counties, “Detention Standards,” 2016, available at <https://leg.mt.gov/content/Committees/Interim/2017-2018/Law-and-Justice/Meetings/Nov-2017/Exhibits/montana-jail-standards-update-2016.pdf> (last accessed July 2, 2018).

SOLITARY CONFINEMENT IN MONTANA

If an inmate is placed in disciplinary detention, the standards include parameters for that placement. It should be made only for a violation of the rules “after a hearing” and if there is not an “adequate alternative disposition” to address the behavior. The maximum placement for all violations related to a single incident is 60 days. A facility administrator must review and approve any placement that lasts longer than 30 continuous days.

For inmates in administrative segregation or protective custody, a status review should be held every 7 days for the first 2 months and every 30 days after that time. A review process should also be used to release the inmate from those types of segregation.

The standards provide that an inmate in special management is personally observed by an officer at least every 30 minutes, with more frequent observation needed for those who are “violent or mentally disordered or who demonstrate unusual or bizarre behavior.”

Additional standards relate to the living conditions in segregated housing, including that access to mail and reading materials, laundry, showers, and other personal hygiene resources should be the same as for the general population unless a documented reason for an exception exists. Access to legal counsel may not be restricted. Exercise opportunities outside the cell should be offered for at least 1 hour each day for 5 days a week unless a safety or security concern requires that time to be restricted.

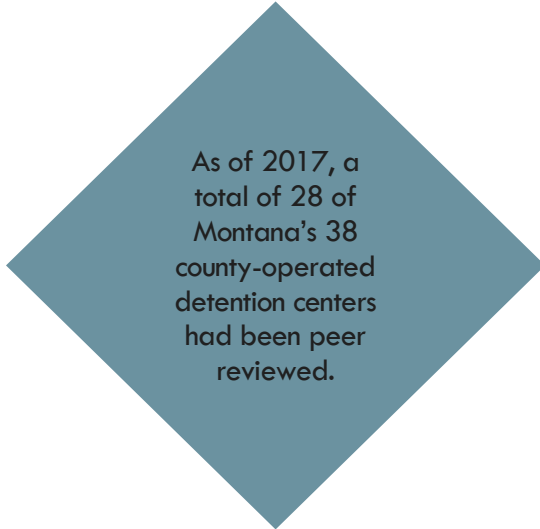
Inmates in segregated units or cells should have “similar access” to health care services, and health care personnel should be informed immediately when an inmate is placed in segregation. The standards provide that the health care personnel will provide an assessment and review “as indicated by the protocols established by the health authority.” A separate chapter of the detention standards provides standards specific to the provision of health care services in the detention center.

The standards also include that a log should be kept of information related to the inmate and the time in segregation, including but not limited to information about when the inmate was admitted, for what reasons, a tentative release date, and medication or other special problems or needs.

SOLITARY CONFINEMENT IN MONTANA

Jail Peer Reviews

After several of its member sheriffs presented to the LJIC about the detention center standards, the MSPOA provided additional information about the peer review process that county sheriffs and deputies conduct in Montana detention centers. As of 2017, a total of 28 of Montana's 38 county-operated detention centers had been peer reviewed. Another three of the eight 72-hour holding facilities that are operated by counties had also participated in the process.



As of 2017, a total of 28 of Montana's 38 county-operated detention centers had been peer reviewed.

Committee Visit to the Yellowstone County Detention Facility

As part of its scheduled trip to Billings, the LJIC toured the Yellowstone County Detention Facility. The facility houses more than 400 individuals who are usually waiting for a court to resolve criminal charges pending against them. The facility also holds offenders while they await transportation to a DOC facility or wait for a federal agency to take custody of them. The Yellowstone County sheriff and detention center staff led the LJIC members through the various parts of the facility, including the booking area, the

unit for female detainees, and the area used to hold offenders who are in disciplinary detention or are being held away from the general population. The members also walked through the facility's new wing, which was in the final stages of construction.

REVIEW OF OTHER STATES' ACTIONS

Because of language in SJ 25 and at the request of LJIC members in March, the committee took a closer look at the actions taken in other states to reduce the use of solitary confinement in state facilities. In addition to written materials, the LJIC members heard from a North Dakota state prison warden and the director of clinical services about changes their team has implemented to administrative segregation practices in that state. In addition, staff from the Association of State Corrections Administrators discussed the ASCA guidelines and recent efforts to revise segregated housing practices in Idaho and Florida.

SOLITARY CONFINEMENT IN MONTANA

The LJIC learned that the reasons a state or facility may undertake revisions to its restricted housing statutes, policies, and practices are as varied as the states themselves. At times, changes are sparked by lawsuits and at other times by initiatives led by an individual at the corrections agency or even at the facility level. At other times, changes result from a combination of litigation and agency or legislative interest.



Whatever the reason for change, the actual results vary as well. What is feasible in a state with a large offender population and multiple state-operated facilities might not fit in a state with a smaller incarcerated population and fewer physical facilities. While one state might be able to dedicate nearly 500 beds spread over two facilities to provide treatment to mentally ill male offenders, other states with smaller offender populations might not be able to implement that exact change. One state might begin change as a pilot project at one institution, while another will immediately roll out changes statewide.

While the methods states use to change statutes, policies, and practices related to restricted housing — as well as the initial impetus for those changes — might differ, one commonality stands out: these changes do not happen overnight or all at once. Instead, there are often many stages, with state leaders retooling initial changes after evaluation and reflection. Whether as a result of self-evaluation, litigation, legislation, pressure from advocacy groups or inmates themselves, or a combination of these forces, several states have gone through more than one revision, including Colorado, Washington, and Virginia. The ongoing nature of these types of changes can make comparisons to other states tricky but highlights the fact that implementing alternatives is often a complicated, multistep process spread over a span of years rather than months.

Alternatives Explored in Other States

Regardless of the reasons for or the results of state efforts to change restrictive housing practices, some common threads exist between the efforts. Those commonalities are discussed below. A list of resources on this topic is available in a [summary](#) of state-level changes the LJIC received in March 2018. That summary is available on the LJIC's [study resources web page](#).

Step-down/incentive programs: Several states have created or revised step-down programs. These programs use incentives to help offenders learn behaviors or practice skills that can keep them from further rule violations which might result in a placement in restricted housing and that can help them succeed in general population units. Typically, as an offender completes required programming and demonstrates certain behaviors, the inmate acquires more privileges and “steps down” to a lower level of supervision. The programs vary in the number of levels, with some states combining the various levels into units at one facility, while others spread the programs or units across several facilities. Incentives can include additional or more

SOLITARY CONFINEMENT IN MONTANA

frequent phone privileges and visitations and access to recreation equipment, television or other audiovisual equipment, additional canteen items, or personal items in the cell.

High-level corrections staff involvement in placement decisions: Several states have implemented policies that require high-level managers (the prison warden and, in some states, the corrections department director or director's office staff) to be involved in reviews of inmates who have spent longer amounts of time in restricted housing or to review and approve movement to or from a restricted housing status. Most of the reviews are ongoing in nature, that is, they are conducted as needed or required by policy. But at least one state, Colorado, had a deputy director conduct reviews of inmates who had been placed in administrative segregation for more than 1 year to determine if any of those inmates could be safely housed in less restrictive units.⁸⁶

Limits on time in segregation: Some states, through policy or statute, limit the amount of time an inmate may be placed in restricted housing. The specific time limits vary from state to state, and some have qualifiers that allow for longer placements if certain circumstances exist.

Limited criteria for placement in restricted housing: A number of states limit the reasons for which an offender can be placed in a segregated cell or unit to the ones that present the most risk to the security of the institution or to the safety of staff and other offenders. This type of revision is often combined with the creation of a team to review placement decisions or the assignment of a higher-level corrections staff member to review the decisions. This change can be accompanied by a corresponding revision in disciplinary procedures to allow for more structure and consistency in disciplinary decisions in a prison or statewide.

Prohibitions on certain classes of persons in restricted housing: The most common restrictions are on juveniles or pregnant women being placed in restricted housing, as well as restrictions or prohibitions on inmates with serious mental illness.

Corrections staff involvement: Many recitals of states' experiences stress the need to involve and engage correctional staff in developing alternatives to ensure that their perspectives and needs are considered as well as to communicate to them consistently to ensure revised policies are carried out in the actual units every day. Several states offer or require additional training, such as developing skills to interact more effectively with inmates with mental illnesses.

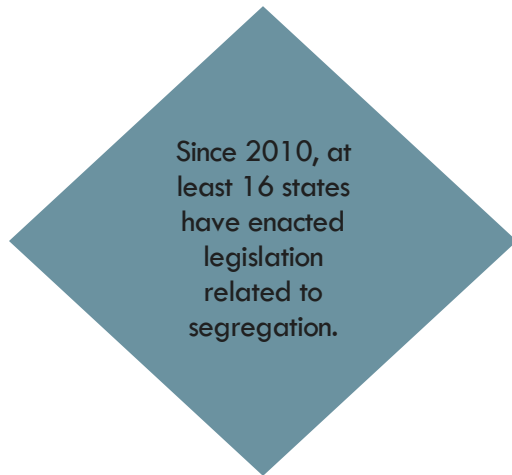
Alternative units: States or facilities developed specialized units to house inmates who require protective custody or to house and treat inmates who need mental health or behavioral health treatment. Alternative units can also be similar to step-down programs, giving offenders different treatment, programming, and privileges if they demonstrate certain behaviors or complete certain programs.

⁸⁶ Colorado Department of Corrections, "SB 11-176 Annual Report: Administrative Segregation for Colorado Inmates," Jan. 2017, p. 2, available at <https://leg.mt.gov/content/Committees/Interim/2017-2018/Law-and-Justice/Meetings/Mar-2018/Exhibits/sj25-colorado-adseg-report-fy2016.pdf> (last accessed June 11, 2018).

SOLITARY CONFINEMENT IN MONTANA

Specific to a prison or piloted smaller projects: Several states piloted a program in one facility and then spread it to others or made resources available to others after a successful test period.

Legislative Involvement



Legislative involvement in the types of changes made in a state also vary widely.⁸⁷ At least 16 states have enacted legislation related to administrative segregation since 2010. Some state legislatures banned facilities from housing youth or pregnant women in restricted housing. Others either created study entities to provide insight and direction on the future of restricted housing or required the state’s corrections department to do so. Another common legislative decision is to enact data collection and reporting requirements. A 2015 Nebraska bill even defined and banned “solitary confinement,” while also defining and creating restrictions for the state’s use of “restrictive housing.” A recent Nevada bill limited the use of solitary confinement and added certain protections for

inmates believed to have a mental illness or other health condition related to the behavior that resulted in a placement in solitary confinement.

The National Conference of State Legislatures has compiled a list of state enactments related to administrative segregation. A link to that report is available on the LJIC’s [web page](#) for the SJ 25 study.

Technical Assistance

Several states enlisted the help of outside organizations to examine existing segregation practices and to make recommendations for improvements. For example, South Dakota conducted its review in conjunction with the Crime and Justice Institute at Community Resources for Justice with funding provided by the federal Bureau of Justice Assistance.⁸⁸

Other states have worked or are working with the Vera Institute for Justice, an organization that works with local and state governments to provide research and technical assistance to implement criminal justice system

⁸⁷ Information in this section summarized from Alison Lawrence, “Administrative Segregation: State Enactments,” National Conference of State Legislatures, Jan. 2018, available at <https://leg.mt.gov/content/Committees/Interim/2017-2018/Law-and-Justice/Meetings/Mar-2018/Exhibits/sj25-state-enactments-2018-ncsl.pdf> (last accessed June 18, 2018).

⁸⁸ Barbara Pierce Parker and Michael Kane, “Reshaping Restrictive Housing at South Dakota State Penitentiary,” Crime and Justice Institute at Community Resources for Justice, Dec. 2015, pp. 3-4, available at www.crj.org/assets/2017/07/8_Reshaping_Restrictive_Housing_-_South_Dakota.pdf (last accessed June 11, 2018).

SOLITARY CONFINEMENT IN MONTANA

changes.⁸⁹ Starting in 2010, the organization worked with five states to review existing processes and recommend changes. Those states were Illinois, Maryland, New Mexico, Pennsylvania, and Washington. A second round of states became subjects of the Vera's Safe Alternatives to Segregation Initiative. Those three states were Nebraska, North Carolina, and Oregon. Recently, a third group of states began work on this topic: Nevada, Utah, Minnesota, Louisiana, and Virginia.⁹⁰

Based on its work with Nebraska, North Carolina, Oregon, and two local governments, Vera made four recommendations on restricted housing. Restrictive housing “should be used only:

- As a last resort;
- As a response to the most serious and threatening behavior;
- For the shortest time possible; and
- With the least restrictive conditions possible.”⁹¹

CONCLUSION

At its July 2019 meeting, the LJIC discussed and revised a draft of potential legislation it could recommend to the 2019 Legislature. The language was drafted for discussion purposes only and would require a positive vote from the majority of the LJIC members to be drafted as an official bill draft proposal to the 2019 Legislature.

At its September 2018 meeting, the LJIC members declined to recommend the draft bill to the 2019 Legislature.

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⁸⁹ Vera Institute of Justice, “About Us,” <https://www.vera.org/about>, and the organization’s Form 990 from 2014, available at <https://storage.googleapis.com/vera-web-assets/downloads/about/financials/2015/990-and-Charities-Filing-6-30-2015.pdf> (last accessed June 11, 2018).

⁹⁰ Vera Institute of Justice, “About Us.”

⁹¹ Mary Crowley and Sara Sullivan, “Momentum Builds in 2017 to Reduce the Use of Solitary Confinement,” Vera Institute of Justice, Dec. 20, 2017, available at <https://www.vera.org/blog/addressing-the-overuse-of-segregation-in-u-s-prisons-and-jails/momentum-builds-in-2017-to-reduce-the-use-of-solitary-confinement> (last accessed Sept. 25, 2018).