

BANNING TORTURE:

**Legislative Trends and
Policy Solutions for
Restricting and Ending
Solitary Confinement
throughout the
United States**

January 2023



ABOUT

The Unlock the Box Campaign is a coalition of organizations and movement leaders who partner with state and local campaigns across the United States with the common goal of ending the use of solitary confinement for all people. Unlock the Box pursues this goal by working simultaneously on national, state, and local levels with solitary survivors, family members, advocates, community and faith groups, legislators, healthcare and corrections experts, and others dedicated to ending state-sponsored torture. Learn more at unlocktheboxcampaign.org.

ACKNOWLEDGMENTS

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Data Contributions: [Unlock the Box Legislation Data Tracker](#), researched and developed by Gabrielle Watson and Della Maggio and designed by Empact Solutions.

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LETTER FROM JESSICA SANDOVAL
Executive Director, Unlock the Box Campaign



Dear Reader,

The state of our movement is strong.

When the Unlock the Box Campaign launched in 2018, we set a 10-year plan to abolish prolonged solitary confinement in all US prisons, jails, and youth facilities. We are just four years in and as a community, we've celebrated victories and uplifted each other in the face of setbacks. And on many occasions, we've turned temporary losses into triumphs — nearly one hundred bills restricting or banning solitary confinement have been signed into law since 2018.

This is UTB's first State Trends Report, which reflects the dramatic legislative shifts over the last five years. This analysis identifies the trends developing across the nation, while emphasizing policy solutions drafted by and with solitary survivors and other systems-impacted groups.

The headline: 500 bills in 44 states have been introduced over the last five years.

The trends: (1) ending solitary confinement for young people; (2) ending solitary confinement for subgroups like pregnant people, people living with physical and mental disabilities, and those with medical conditions; (3) implementing comprehensive legislative reform in line with the United Nations Nelson Mandela Rules' prohibition on solitary beyond 15 consecutive days; (4) creating reporting and independent oversight mechanisms to promote effective policy implementation; and (5) fully ending solitary confinement for all people.

It's been amazing to see a report on the incredible work that is being accomplished by movement makers across the country. Coming together in support of a single mission, advocates around the country are paving the way and setting the stage for more sweeping, comprehensive legislation and policy change. Individual commitment is transforming into shared commitment and state advancement has solidified a strong, national movement. A step for one is a step for all.

Because of this commitment, our goal is within reach. People are paying attention. A recent poll suggests that 71 percent of people believe solitary confinement should be used less and in accordance with the Nelson Mandela Rules to treat all incarcerated people with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment. Polling also suggests that 64 percent of people believe there should be a limit on solitary confinement to four hours, and only in emergencies.

President Biden and Vice President Harris are on board. During their campaign, they vowed to end solitary confinement. We are holding them to that promise and are moving forward at both the state and federal levels.

I remain encouraged and inspired by how far we've come and our path forward.

Yours in community,

Jessica Sandoval

EXECUTIVE SUMMARY

BANNING TORTURE: Legislative Trends and Policy Solutions for Restricting and Ending Solitary Confinement Throughout the United States

Unlock the Box Campaign, January 2023

There is a growing movement across the United States to end or restrict solitary confinement and to employ alternative interventions that improve safety and well-being. Fueling this surge in efforts at ending solitary is a recognition that solitary confinement is a form of torture. It inflicts terrible suffering and injury—physical, psychological, emotional, and social—on individuals who have experienced it or are currently subjected to it and has severe effects on their loved ones and on the wider community.

This horrific practice is in extensive use across the country, damaging or destroying untold lives.

Deeply disturbed by this reality, an increasing number of campaigns led by people who have survived solitary confinement and those with loved ones in solitary now or in the past have helped spur legislative and administrative policy changes to curb the use of solitary and to promote alternatives.

Between 2009 and 2022, in 45 states, 886 bills were introduced to restrict or end solitary confinement in some form; 40 states have passed at least one of these bills. In 2021 alone, 153 pieces of legislation were filed across 37 states to regulate some aspect of solitary confinement, the vast majority seeking to end at least some aspect of the practice in state prisons and jails, youth facilities, and other carceral settings.

An additional 74 bills were introduced in 2022, and 16 bills were passed in 2022, namely, in New York, Kentucky, Illinois, Connecticut, Louisiana, Virginia, Hawaii, Colorado, and Maryland, with additional bills to be acted on, as of the writing of this report. Anti-solitary efforts have also contributed to the closure of entire prisons, buildings, and units used to inflict solitary, most recently with the closure of supermax prisons in New York and Connecticut.

Since 2009, 45 states have introduced 886 bills to restrict or end solitary confinement in some form.

KEY STATE TRENDS

Since 2018, five key trends have emerged in legislative efforts to restrict or end solitary confinement. States and localities have introduced or adopted legislation to:

- 1) End solitary confinement for young people
- 2) End solitary confinement for other particularly vulnerable groups
- 3) Implement comprehensive legislation in line with the United Nations Mandela Rules prohibition on solitary beyond 15 consecutive days
- 4) Create reporting and oversight mechanisms to promote effective implementation
- 5) End solitary confinement completely for all people

BEST POLICY SOLUTIONS

In light of these emerging trends and best policy components from jurisdictions across the country, local, state, and federal policymakers should adopt policies to end solitary confinement and replace it with engagement- and program-based models. Not only should these policy changes end or at least dramatically restrict the use of solitary confinement, they should be carried out in a way that leads to the closure of entire prisons, buildings, and units dedicated to solitary. Specifically, for all prisons, jails, immigrant detention centers, youth facilities, and any other custodial sites, policymakers should:

- End solitary confinement for all people, other than for periods measured in minutes or hours for emergency de-escalation
- Implement alternatives that are the opposite of solitary, with full 14-hour days out of cell, with congregate programming and activities without restraints and in group settings and shared spaces conducive to meaningful human interaction
- Set firm time limits on alternatives and on any form of restrictive housing
- Prohibit any involuntary lock-in for those most vulnerable to isolation
- Restrict the justifications for solitary or alternatives to the most egregious, acute acts that pose an imminent risk of physical harm
- Provide due process protections before any separation, including access to independent decision makers and representation
- Ensure meaningful oversight, accountability, and enforcement

Implementing these policy changes is particularly critical and urgent given the claims by some officials that they are restricting or ending solitary while they are in fact implementing solitary by another name, and given the growing evidence of the devastating harms inflicted by solitary and the benefits of meaningful alternative intervention.

EXECUTIVE SUMMARY

TREND 1: Ending Solitary Confinement for Young People

With respect to ending solitary confinement for young people, some of the best policy components in the 156 bills that have been enacted or introduced in 30 states between 2018 and 2022 include (a) adopting some form of ban on solitary confinement; (b) applying bans to all forms of solitary, room confinement, seclusion, and isolation (“room confinement”); (c) having strict limits on room confinement, measured in hours; (d) restricting the reasons for placement in room confinement to true emergencies; (e) ending room confinement if it becomes harmful or when the emergency subsides; (f) improving the conditions in room confinement; (g) raising the age for bans on solitary to 21 or 25; and (h) banning solitary for young people in adult jails and prisons, in addition to youth facilities.

TREND 2: Ending Solitary for Other Vulnerable Groups

The best policy components for ending solitary for particularly vulnerable groups other than young people in the 133 bills enacted or introduced between 2018 and 2022 include (a) banning solitary confinement for pregnant people; (b) outlawing solitary during the postpartum period; (c) prohibiting solitary in the case of a recent miscarriage or pregnancy termination; (d) banning solitary for people with mental health needs and those living with disabilities; (e) using a broad definition of *people with mental health needs and disability*; (f) forbidding solitary for people with serious medical conditions; (g) disallowing solitary for those who are or are perceived to be members of the LGBTQI+ community; (h) banning solitary for people who are 55 and older; and (i) having initial and repeated assessments to determine if someone is at risk for self-harm or fits into one of the categories and should therefore be removed from solitary.

TREND 3: Imposing Mandela Rules 15-Day Limit as Part of Comprehensive Reform

The United Nations Mandela Rules set out a prohibition on solitary beyond 15 consecutive days; in line with the rules, the best policy components in the 42 bills enacted or introduced in 16 states between 2018 and 2022 include (a) prohibiting solitary beyond 10 or 15 consecutive days, without exception; (b) ensuring that the prohibition applies to all forms of solitary, regardless of the name, encompassing lock-ins at least beyond 17 hours a day;

(c) providing alternatives with at least seven hours of daily congregate programming and activities to avoid the equivalent of solitary by another name; (d) ensuring that protective custody is not solitary and instead mirrors general population, affording access to full days of out-of-cell programming and activities; (e) preventing repeated stints in solitary or situations in which people cycle right back into solitary; (f) restricting the conduct that can result in any separation; (g) ensuring improved conditions in solitary for even the 15 days permitted; (h) enhancing due process protections for getting in and out of solitary and time limits on alternatives; (i) preventing people from being released directly from solitary to the outside community; and (j) applying protections to jails as well as prisons.

TREND 4: Creating Reporting & Oversight Mechanisms

With the goal of increasing transparency, accountability, and effective implementation of any reforms, the best policy components in the 249 bills enacted or introduced in 35 states between 2018 and 2022 that involve some form of reporting and oversight include: (a) requiring periodic, comprehensive, and *public* data reporting, in some cases as frequently as monthly; (b) providing independent oversight over the use of solitary and alternatives; and (c) creating an ombuds-person for investigating complaints and providing oversight.

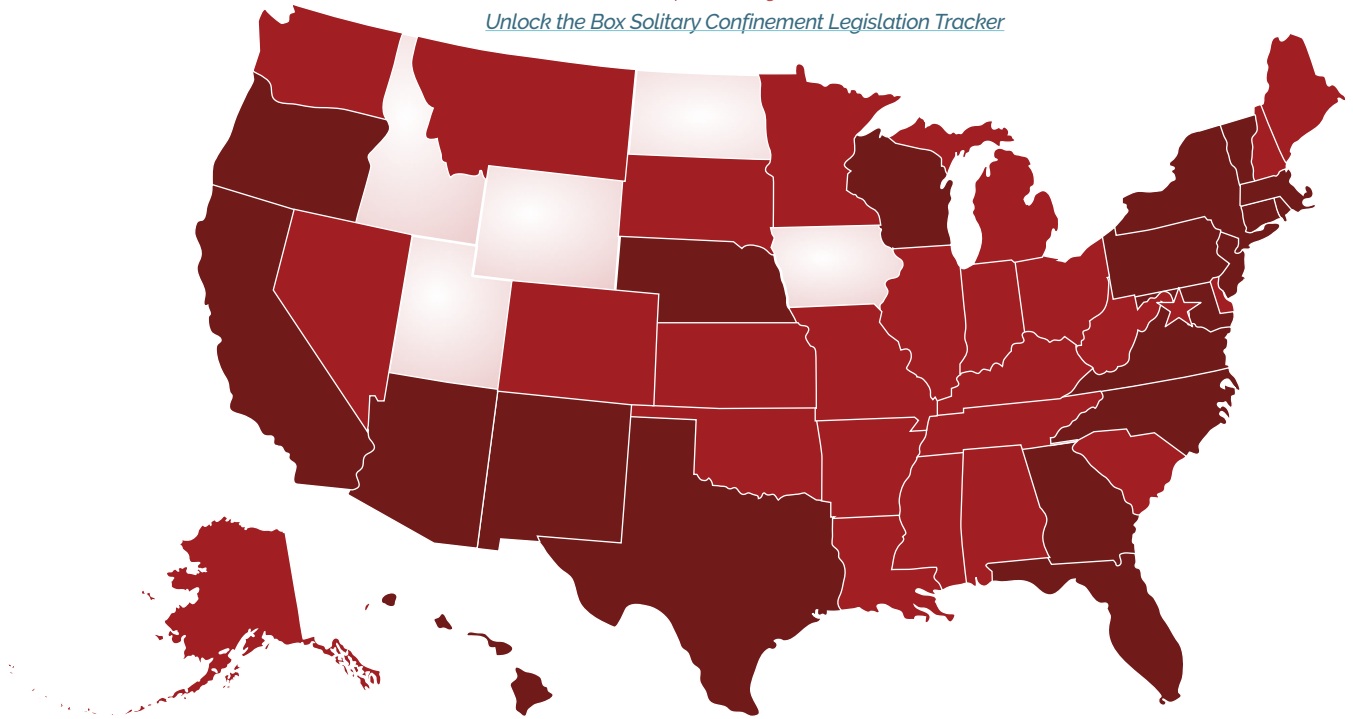
TREND 5: Fully Ending Solitary Confinement for All People

Anti-solitary movement leaders overall aim to bring solitary confinement to an end for all people. The best policy components in the 10 enacted or introduced bills in 9 states between 2018 and 2022 (building on practices in other institutional settings, including youth carceral facilities and noncarceral mental health facilities), include (a) banning all forms of solitary confinement, other than for emergency de-escalation purposes, measured in hours; (b) defining solitary confinement or restrictive housing as settings having any more restrictions than those applicable to confinement of the general prison, jail, or detention population; (c) ensuring that any alternatives to solitary involve at least nearly full daytime hours out of cell, upwards of 14 hours a day; (d) ensuring that any alternatives to solitary involve intensive out-of-cell congregate programming and treatment; (e) placing time limits on alternatives; and (f) imposing restrictions on the use of restraints.

NATIONAL LEGISLATIVE ACTION TO RESTRICT AND END SOLITARY CONFINEMENT

For Up to Date Figures Visit:

[Unlock the Box Solitary Confinement Legislation Tracker](#)



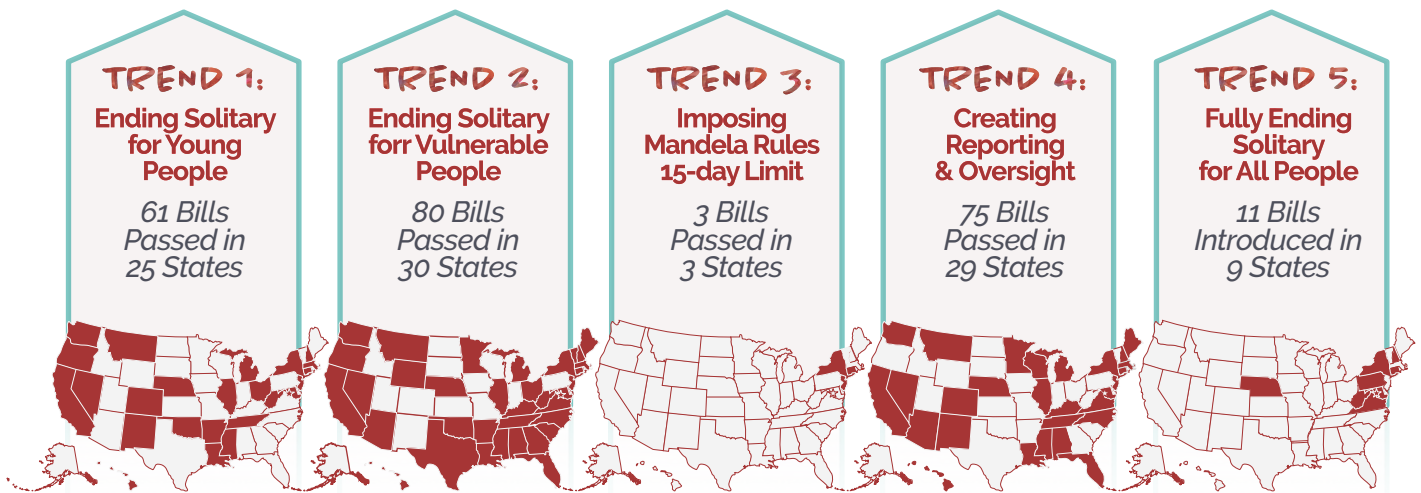
LEGISLATIVE MOMENTUM:

Since 2009, all but a handful of states have introduced or passed bills to restrict or end solitary confinement. The steady growth in the introduction of legislation significantly accelerated in 2019 and 2020, but action slowed in 2021 and 2022 due largely to COVID-19.

- 45 states have introduced bills to regulate, limit, or ban solitary confinement*
- 20 states have introduced bills to limit solitary to 15-days or less and 3 have passed
- Only 5 States have not introduced a single bill: Iowa, Idaho, Utah, North Dakota and Wyoming

**bills include the five Key trends below, plus study bills & bills ending solitary on death row*

LEGISLATIVE ACTIONS (PASSED) OVER FIVE MAJOR TRENDS:



SOLITARY IS LIKE A NEVER-
ENDING NIGHTMARE.
YOU CAN NEVER DECIPHER
WHAT TIME OF DAY OR
NIGHT IT IS NOR WHEN YOUR
NIGHTMARE MAY END....
IT FEELS AS THOUGH IT'S ONE
DARK, LONELY, DISMAL WALK
WITH NO SIGHT OF LIGHT OR
REPRIEVE AT THE END OF
THE TUNNEL.

Laura Berry

DecARcerate, End Solitary co-chair, and survivor of solitary

SPOTLIGHT ON STATE CAMPAIGNS

In 2017, campaigns funded by the Unlock the Box Campaign were in **four states** — that number has grown to **20 states** across the country. These campaigns are part of a growing number of anti-solitary confinement campaigns led by people who have survived solitary confinement, people who have family members in solitary, and people who have lost loved ones to solitary.



Arkansas Campaign

Recent campaign efforts led by DecARcerate have resulted in the Arkansas Department of Correction's collecting and disseminating data on solitary confinement in its quarterly public reporting and the 2021 passage of HB1470, which bans solitary confinement for young people who are pregnant, breastfeeding, within 30 days postpartum, suffering from a postpartum condition, or caring for a child in a facility, and places restrictions on the use of solitary for adults in the same circumstances. HB 1470 passed with unanimous bipartisan support in the Republican-controlled legislature by votes of 33–0 in the Senate (with 2 absent) and 95–0 in the House (with 5 not voting). The campaign's long-term goal is to eliminate solitary confinement and replace it with incentive-based and program-rich alternatives.

Learn more at: decarceratear.org



California Campaign

California Families to Abolish Solitary Confinement (CFASC) aims to stop the inhumane treatment of people who are incarcerated, especially those in solitary confinement and administrative housing units. Members of CFASC have loved ones who have been incarcerated. They came together in July 2011 to support the statewide hunger strike by people in California's prisons demanding an end to barbaric and unconstitutional conditions in solitary units. That hunger strike led to changes in California's prisons and helped spur on the national movement to end solitary confinement. CFASC's ultimate vision is an end to solitary confinement.

Learn more at: solitarywatch.org/cfasc



Connecticut Campaign

Campaign efforts led by the Stop Solitary CT coalition led to the state legislature passing, and the governor signing, the Protect Act in 2022. Among other provisions, the recently enacted law prohibits the use of solitary confinement beyond 15 days, creates a new Correction Advisory Committee, and requires extensive data reporting.

Learn more at: stopsolitaryct.org



District of Columbia Campaign

Campaign efforts led by DC Justice Lab aim to advance legislation to end solitary confinement and the use of Black Box restraints in the local detention facilities, while ensuring that policymakers, organizers, and the public understand that the use of solitary confinement does not make incarcerated people safer or healthier.

Learn more at dcjusticelab.org



Georgia Campaign

RestoreHER led the efforts that resulted in the 2019 passage of HB 345 to ban solitary confinement for pregnant women and women in the postpartum period. The bill passed the Republican-controlled legislature with unanimous bipartisan votes in the house and by a two-thirds majority in the senate. Now, an advocacy campaign led by RestoreHER and the Southern Center for Human Rights to end solitary confinement in Georgia is in its early stages. In 2021, they focused their efforts on coalition building and strengthening relationships with survivors of solitary confinement and other justice advocacy organizations.

Learn more at: restoreher.info & www.schr.org

SPLIGHT ON STATE CAMPAIGNS



Louisiana Campaign

Campaign efforts led by the Louisiana Stop Solitary Coalition resulted in changes to the law regarding solitary confinement in Louisiana for the first time in 150 years. Passed with bipartisan support in both houses of the legislature by a vote of 91–0 in the House (with 14 absent) and 36–0 in the Senate (with 3 absent), HB 344 generally bans—other than in situations involving serious bodily injury or death—the use of solitary for people who are pregnant, within the first eight weeks postpartum, or caring for a child in a correctional institution. In 2021, this campaign also achieved a phone call policy for people held in solitary in department of corrections facilities. In 2022, again with bipartisan support, both houses of the legislature passed legislation that would generally ban solitary confinement in youth facilities beyond 8 hours, with the possibility of extensions to a maximum of 24 hours and with required staff attempts at de-escalation and removal at least every hour.

Learn more at: lastopsolitary.org



Maine Campaign

The Maine Prisoner Advocacy Coalition advocates for “ethical, positive, and humane changes in Maine’s prison system.” The coalition has been advocating for Maine to enact legislation fully banning the use of solitary confinement.

Learn more at:

mainepriisoneradvocacy.org



Maryland Campaign

Campaign efforts led by the ACLU-Maryland and other campaign partners helped passed legislation in 2019 to limit the use of solitary confinement for children and to report on the use of solitary on an annual basis. Further, pregnant people are prohibited from involuntary placement in medical isolation or solitary confinement. The campaign was also monitoring a legislative requirement that jails report on their use of solitary confinement. Other legislative efforts are underway.

Learn more at: aclu-md.org



Massachusetts Campaign

Massachusetts Against Solitary Confinement (MASC) helped pass Massachusetts’s strongest criminal law reform bill in decades; it included significant changes to the state’s solitary confinement policies and practices. SB 2371 overwhelmingly passed with bipartisan support, with votes of 148–5 in the House (with 4 not voting) and 37–0 in the Senate (with 2 absent). The law prohibited different groups of people from being locked in solitary and placed restrictions on solitary for all people. The Department of Correction has failed to implement the mandates. New legislation introduced in 2021 would end solitary beyond 15 days and ban solitary entirely for various groups of people.

Learn more at:

uumassaction.org/end-solitary



Michigan Campaign

Using a survivor- and family-led coalition, the goal of the Open MI Door campaign is to end solitary confinement in all Michigan prisons, jails, and juvenile detention facilities; bring the state into full compliance with the United Nations Mandela Rules; and implement safer alternatives.

Learn more at: openmidoor.org



Nebraska Campaign

Campaign efforts led by ACLU of Nebraska ended the horrific overreliance on youth solitary confinement. Nebraska’s law LB 230 passed in 2020 by a bipartisan vote of 44–0 (with 4 nonvotes and 1 absence) in a Republican-controlled legislature. This newly enacted law bans the use of room confinement, except to eliminate substantial, immediate risk of harm; requires release from confinement as soon as the risk is resolved; and requires higher-level review and reporting if room confinement exceeds one hour. The campaign is now focused on implementation and expanding reform to the adult system.

Learn more at: www.aclunebraska.org

SPLIGHT ON STATE CAMPAIGNS



Nevada Campaign

Campaign efforts led by ACLU of Nevada resulted in some restrictions on solitary in youth facilities and adult prisons. SB 402 passed in 2017 with overwhelming, bipartisan majorities in both houses of the legislature. The campaign is currently focused on ensuring proper implementation while also pushing for further restrictions on solitary.

Learn more at: aclunv.org



New Jersey Campaign

Campaign efforts led by the New Jersey Campaign for Alternatives to Isolated Confinement (NJ-CAIC), now New Jersey Prison Justice Watch, resulted in passage of the Isolated Confinement Restriction Act in 2019. Passed by the Democrat-controlled legislature with some Republican support, A314, among other provisions, restricts solitary beyond 20 days and bans solitary entirely for certain groups of people. Implementation efforts involve influencing the development of regulations, continuing public engagement and education, and building the “scaffolding” of institutional oversight.

Learn more at: njpjw.org



New Mexico Campaign

Campaign efforts led by ACLU-NM led to the 2019 passage of a bill, HB 364, which prohibits the use of solitary confinement for young people under 18 and pregnant individuals; restricts the use of solitary for people living with serious mental illness; requires jail and prison officials to collect data on who is housed in segregation and why; and requires all privately-operated detention facilities to reveal the monetary amount of settlements related to conditions of confinement. HB 364 overwhelmingly passed the Democrat-controlled legislature, with strong bipartisan support and votes of 61-2 in the House (with 7 absent) and 36-1 in the Senate (with 5 absent). Campaign efforts are currently centered on ensuring independent oversight of the Department of Corrections through the Corrections Ombudsman Act, introduced in 2021 as HB 191.

Learn more at: www.aclu-nm.org



New York Campaign

Campaign efforts led by the New York Campaign for Alternatives to Isolated Confinement (NYCAIC), or #HALTsolitary Campaign, resulted in the passage of the HALT Solitary Confinement Act in 2021. Passed with supermajorities in both houses of the Democrat-controlled legislature with some Republican support, HALT limits solitary to no more than 15 days for all people, bans it for young people and other groups, and creates alternatives with at least seven hours out-of-cell per day with congregate rehabilitative and therapeutic programming and activities. The Campaign is currently working toward HALT’s implementation and pushing New York City to go beyond the state law to fully end solitary confinement.

Learn more at: nycaic.org

SPOTLIGHT ON STATE CAMPAIGNS



North Carolina Campaign

Convened by Disability Rights North Carolina, the Stop Torture in NC Prisons campaign is aimed at ending the use of solitary confinement in North Carolina prisons. The campaign is currently pushing for implementation of recommendations made by a governor's task force in December 2020, which recommended ending solitary confinement beyond 15 days in line with the Mandela Rules, restricting the conduct that can result in solitary, and banning solitary entirely for certain groups of people.

Learn more at: disabilityrightsncc.org



Pennsylvania Campaign

Solidarity Not Solitary comes out of decades of grassroots organizing inside and outside Pennsylvania prisons. Its leaders are formerly incarcerated people and their families, and it also actively supports folks organizing inside prisons. The campaign is currently pushing for adoption of laws in line with the Mandela Rules—through HB 1037 and SB 685.

Learn more at: www.pacaic.org



Rhode Island Campaign

Campaign efforts led by the Close High Side Campaign are focused on shutting down Rhode Island's most restrictive facility, the High Security Center, also known as High Side. The campaign goals are to (1) close the High Security Center, (2) end the state's reliance on long-term solitary confinement, (3) pursue solutions that are informed by the perspectives of people who have been most directly impacted, (4) prevent the Rhode Island Department of Corrections from forcing High Security residents to transfer out of state, and (5) ensure no new beds and no new facilities.

Learn more at: stoptortureri.com/



Virginia Campaign

Campaign efforts led by the Virginia Coalition Against Solitary Confinement are pushing legislation aimed at prohibiting solitary confinement, with narrow, time-limited exceptions for lockdowns, imminent security risks, and the protection of an incarcerated person. As a result of the campaign's efforts, the state enacted legislation to convene a work group to provide recommendations by December 1, 2022, on how to reduce or end the use of solitary confinement beyond 14 days, with members of the coalition to be part of the work group.

Learn more at: interfaithactionhr.org



Washington State Campaign

Campaign efforts led by the ACLU of Washington drove the passage of the state's legislation banning solitary confinement for young people in 2020. Passed with over a two-thirds majority and bipartisan support, HB 2277 generally prohibits isolation or room confinement for more than four hours in any 24-hour period—with the possibility of extensions—for all young people under the age of 25 in youth facilities. The campaign is now focused on implementing this recent legislative victory and pushing to restrict or end the use of solitary in adult prisons through policy and legislative changes. Pending legislation introduced in 2022, HB 1756, would define solitary as any confinement more than 17 hours a day, prohibit solitary beyond 15 consecutive days and 45 total days in a year, fully ban solitary for various groups, restrict the criteria that can result in solitary, enhance due process protections, and expand out-of-cell time and social interaction.

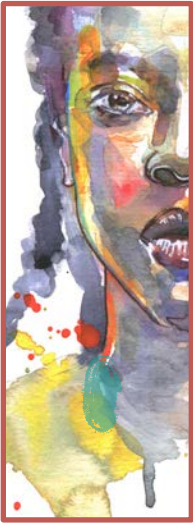
Learn more at: aclu-wa.org

FYODOR DOSTOYEVSKY SAID:
"THE DEGREE OF CIVILIZATION IN A SOCIETY
CAN BE JUDGED BY ENTERING ITS
PRISONS." WE MIGHT INTERPRET THIS TO
MEAN THAT THE DEGREE OF A SOCIETY'S
HEALTH, OR ITS ABILITY NOT TO ENGAGE IN
SELF-DESTRUCTIVE POLICIES, CAN BE
JUDGED BY HOW IT TREATS THE LEAST
IN ITS POPULATION.

WE ALREADY KNOW THAT SOLITARY
CONFINEMENT IS TORTURE. WE ALREADY
KNOW THAT IT MAKES INDIVIDUALS MORE,
NOT LESS, VIOLENT. WE KNOW THAT THERE
ARE EFFECTIVE PROGRAMS THAT SHOW US
HOW TO REDUCE VIOLENCE AND HUMANE
WAYS FOR SOCIETY TO HEAL. WHAT WE DO
WITH THIS KNOWLEDGE IS A MEASURE OF
OUR SOCIETAL HEALTH AND CIVILIZATION.

Bandy Lee, MD, MDIV, mental health and corrections expert

INTRODUCTION



Experts have long recognized solitary confinement as a form of torture. Disproportionately inflicted on Black people, Latino/a/x people, Native people, and other people of color, solitary is routinely inflicted for extensive periods. Solitary is also routinely inflicted for nonviolent and minor alleged rule infractions, in lieu of mental health care, for people who are particularly vulnerable, as retaliation for raising complaints and reporting abuse, and as a cover-up for brutality. The results are devastating and tragic, with solitary leading to substantial negative health and safety impacts, very high rates of suicide and suicide attempts, and too often, death.¹

This report examines emerging trends in legislation endeavoring to restrict or end the use of solitary confinement across the country and highlights the emerging best policies and policy components that jurisdictions should consider as they set forth bills to stop torture, save lives, undo racist state violence, improve safety for everyone, and spur prison closures and decarceration. Although ameliorating the dire situation in which so many individuals are held in solitary confinement across the country can seem daunting, there are signs of positive change. In recent years, through the work of people who have survived solitary, people who have had loved ones in or lost to solitary, elected officials, and other allies, many jurisdictions in all regions of the country have introduced and passed numerous bills that mandate restrictions and even complete bans on solitary. Progress is being made, even in such challenging contexts.

Decades of extensive research show that solitary confinement leads to psychosis, heart disease, neurological damage, severe anxiety, panic, paranoia, despair, depression, memory and concentration loss, and exacerbation and creation of other mental health challenges and medical conditions.² Solitary causes people to cut themselves, bang their heads against the wall, and engage in other acts of self-mutilation. Solitary has tragically taken far too many lives. People in solitary have extraordinarily high rates of attempts at and, most tragically, death by suicide.³ Even one or two days in solitary can have severe negative health impacts.⁴ Further, after release from incarceration, people who endured solitary are at higher risk of substance use; reincarceration; and death by overdose, suicide, and other causes.⁵

Solitary also has negative impacts on safety both in carceral settings and in the communities to which formerly incarcerated people return.⁶ Solitary causes people to become more, not less, likely to engage in disruptive behaviors.⁷ While some falsely justify solitary on safety

grounds, evidence shows that the exact opposite of solitary—full days of out-of-cell pro-social programming and engagement—is the approach that most effectively improves safety.⁸

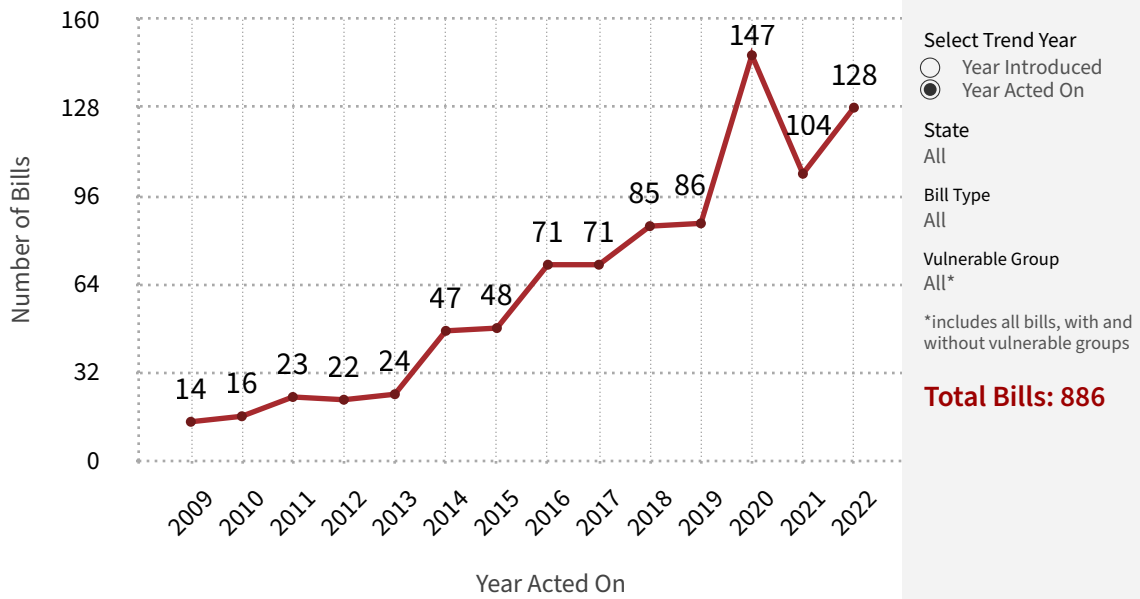
Despite the severe harm and the lack of safety benefits, hundreds of thousands of people are locked in solitary each year in prisons, jails, immigrant detention centers, and youth facilities across the United States.⁹ People are locked in solitary for periods ranging from hours to days, weeks, months, years, and even decades. People are regularly sent to solitary as retaliation for raising complaints, for minor rule violations, or even for their own “protection.”

Solitary confinement is referred to by different terms, including: *special housing units (or SHU)*, *administrative segregation*, *disciplinary confinement*, *disciplinary segregation*, *isolated confinement*, *keeplock*, *restricted housing*, *restrictive housing*, *room confinement*, *segregated confinement*, *segregated housing*, *solitary*, *solitary confinement*, and *protective custody*. Corrections administrators often rely on obtuse or overly technocratic language to obscure the extent of their use of solitary confinement.

This massive government program of torture was born out of, contributed to, and continues to drive mass incarceration and the racism and punishment paradigm that fuel it.¹⁰ As such, efforts to end solitary must be part of work to dismantle the incarceration system as a whole. If done effectively, replacing solitary with pro-social program- and engagement-based interventions can contribute to decarceration, both by decreasing the number of people who return to incarceration after release and by demonstrating that engagement rather than punishment and isolation lead to better outcomes for everyone.

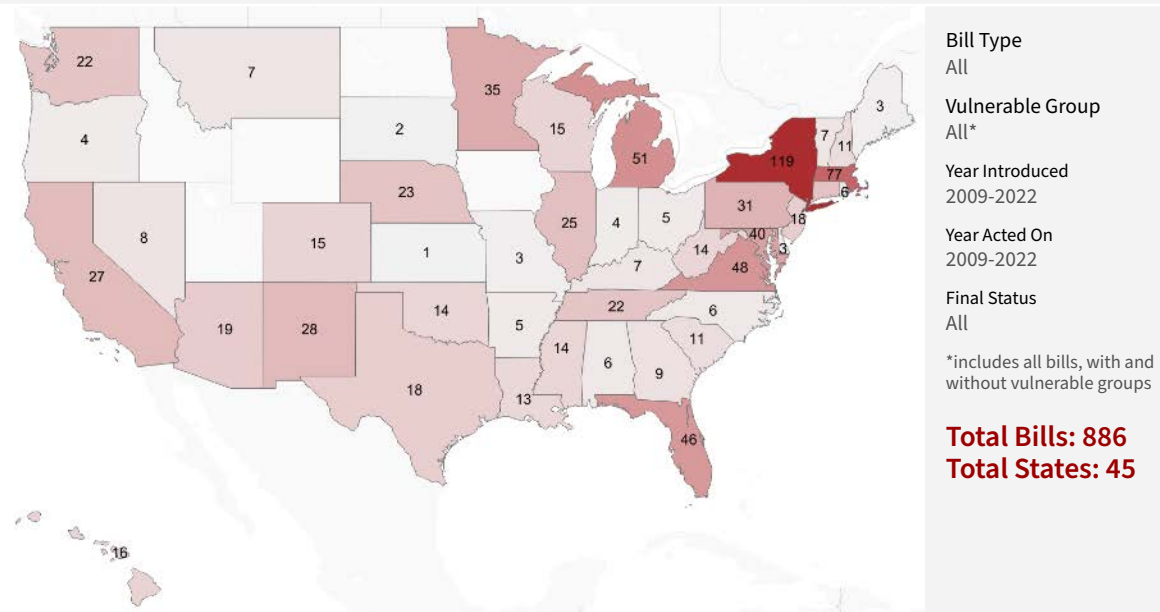
There is clear progress across the country in efforts to end or restrict solitary confinement. [See Figure 1](#) showing the years the bills were acted on. Since 2009, the introduction of 886 bills has occurred in 45 states. Forty states have passed legislation covering some aspect of solitary confinement. In 2021 alone, 153 pieces of legislation were introduced across 37 states to outlaw some aspects of solitary confinement in state prisons and jails, youth facilities, and other carceral settings. In conjunction with these legislative efforts, and at times because of them, several jurisdictions have closed entire prisons, buildings, and units dedicated to solitary confinement. For example, partly as a result of the enactment of the HALT Solitary Confinement Law, New York State closed Southport Correctional Facility, one of the state’s two supermax prisons dedicated to solitary confinement with a well-documented history of torture and brutality.¹¹ Similarly, efforts by anti-solitary activists in Connecticut led to the closure of Northern Correctional Institution, the state’s only supermax prison.¹² These recent closures have followed closures of other supermax prisons and units in recent years, including the Tamms Correctional Center in Illinois and the Colorado State Penitentiary II.¹³

Figure 1. Trend of Bills Filed To Restrict or End Solitary Confinement, 2009-2022



For Up-to-Date Figures Visit:
[Unlock the Box Solitary Confinement Legislation Tracker](#)

Figure 2. States That Have Introduced Bills To Restrict or End Solitary Confinement, 2009-2022



For Up-to-Date Figures Visit:
[Unlock the Box Solitary Confinement Legislation Tracker](#)

President Joe Biden and Vice President Kamala Harris pledged to fully end solitary confinement, and multiple jurisdictions are claiming to have ended solitary.¹⁴ There was indeed near unanimous support for abolishing solitary confinement among leading Democratic presidential candidates during the 2020 primary. While support has been higher among Democratic policymakers, positive momentum for legislation exists in even overwhelmingly Republican states, a sign that a wave of serious changes in solitary confinement may be coming ([see Figure 2](#)).

A 2021 in-depth survey by the Program for Public Consultation at the University of Maryland revealed that 86 percent of registered voters—84 percent of Republicans and 90 percent of Democrats—supported changes to solitary confinement policies and practices in US prisons and jails.¹⁵

A 2022 poll released by Data for Progress also showed widespread bipartisan support for various restrictions on solitary confinement. Specifically, voters support banning solitary beyond four hours and only for emergency situations involving serious physical injury by a +32-point margin, with 78 percent of Democrats, 61 percent of Independents, and 51 percent of Republicans supporting it. Other restrictions on solitary also had widespread bipartisan support, including banning solitary entirely for people with mental health needs (78 percent support) and other particular groups, ending prolonged solitary for all people in line with international prohibitions on torture and respect for the inherent dignity of all human beings (71 percent support), ending solitary for currently routine reasons such as talking back to an officer (73 percent support) or raising complaints (64 percent support), implementing rehabilitative interventions focused on programs and counseling rather than punishment (65 percent support), and creating a new office to investigate corruption and mismanagement in U.S. prisons (86 percent support).

There are growing numbers of anti-solitary confinement campaigns throughout the country led by people who have survived solitary confinement, people who have family members in solitary, and people who have lost loved ones to solitary.

In 2017, campaigns funded by the Unlock the Box Campaign were in 4 states. Now that number has grown to 20, in states across the country including: Arkansas, California, Connecticut, District of Columbia, Georgia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Pennsylvania, Rhode Island, Virginia, and Washington State. ([See Spotlight on State Campaigns](#))

Through education, organizing, and advocacy, these campaigns are helping to fuel a national movement to end solitary confinement at the local, state, and federal levels. Their dramatic success has led to major policy changes, discussed throughout this report.

The report captures the clear trends toward restricting and ending solitary confinement, focusing on legislation enacted or introduced between 2018 and 2022.

It highlights five key trends in legislation:

- 1) Ending solitary confinement for young people
- 2) Ending solitary confinement for particularly vulnerable groups other than young people
- 3) Imposing a 15-day limit as part of comprehensive solitary confinement reform
- 4) Creating reporting and oversight mechanisms
- 5) Ending solitary confinement completely

For each trend, the report sets out some of the best policies and policy components that have been enacted or introduced.¹⁶

Partly in response to the success of movements pressing to end or restrict solitary confinement, some officials and jurisdictions have attempted to implement "solitary by another name" to undermine the tide of change. Jurisdictions from Virginia to New York City to Massachusetts have asserted that they ended solitary confinement while they continued to lock people up alone for up to 20 to 24 hours a day and failed to provide meaningful out-of-cell group programming, activities, or engagement.¹⁷

Campaigns and movements continue to push back against, and overcome, institutional resistance, contending, for instance, that ending solitary confinement does not mean adding an extra hour or two of out-of-cell time, but rather requires a fundamentally different approach that involves full days of out-of-cell group programming and activities in truly out-of-cell spaces conducive to meaningful engagement. It is imperative that all legislation, policies, and practices—those described in this report and beyond—are carefully scrutinized to determine whether they actually bring about meaningful change or instead continue to follow harmful practices of isolation and deprivation simply under a different name.

Based on an analysis of emerging trends in legislation that has been enacted and introduced in recent years, the report offers detailed recommendations for policies at the local, state, and federal level to effectively curtail and eliminate solitary confinement.

THE BEST WORD I COULD
USE TO DESCRIBE IT IS
TORTUOUS. THE SMELLS,
THE URINE AND FECES
ALL OVER THE WALL,
BLOOD, WRITINGS ON THE
WALL, YOU CAN FEEL THE
PAIN AND SENSE IT LIKE
IT'S A PART OF THE CELL.

*Daniel "Danny" Jones, Open MI Door,
mediator, facilitator, speaker, and organizer,
who was formerly incarcerated with a life
sentence as a young person*

TREND 1: ENDING SOLITARY CONFINEMENT FOR YOUNG PEOPLE

In the past several years, the federal government as well as states and localities—whether controlled by Democrats or Republicans—have banned or restricted the use of solitary confinement (in this context often called *room confinement*, *seclusion*, *isolation*, solitary confinement, and other terms) for young people in youth facilities and in adult jails and prisons (see Figure 3).¹⁸

Just since 2018, after various states had adopted such bans or restrictions, 16 states, and the federal government, have banned or significantly restricted the use of solitary for young people, including in Arkansas, Colorado, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Montana, Nebraska, New Jersey, New Mexico, New York, Tennessee, and Washington.¹⁹ Further, 156 bills in 30 states, among them Connecticut, Florida, Illinois, Massachusetts, and Washington, have been introduced since 2018 to ban, or strengthen a ban on, solitary confinement for young people.²⁰ All these measures follow those in 32 states that had previously introduced at least 155 bills, passing at least 28 that banned or restricted solitary for young people prior to 2018.

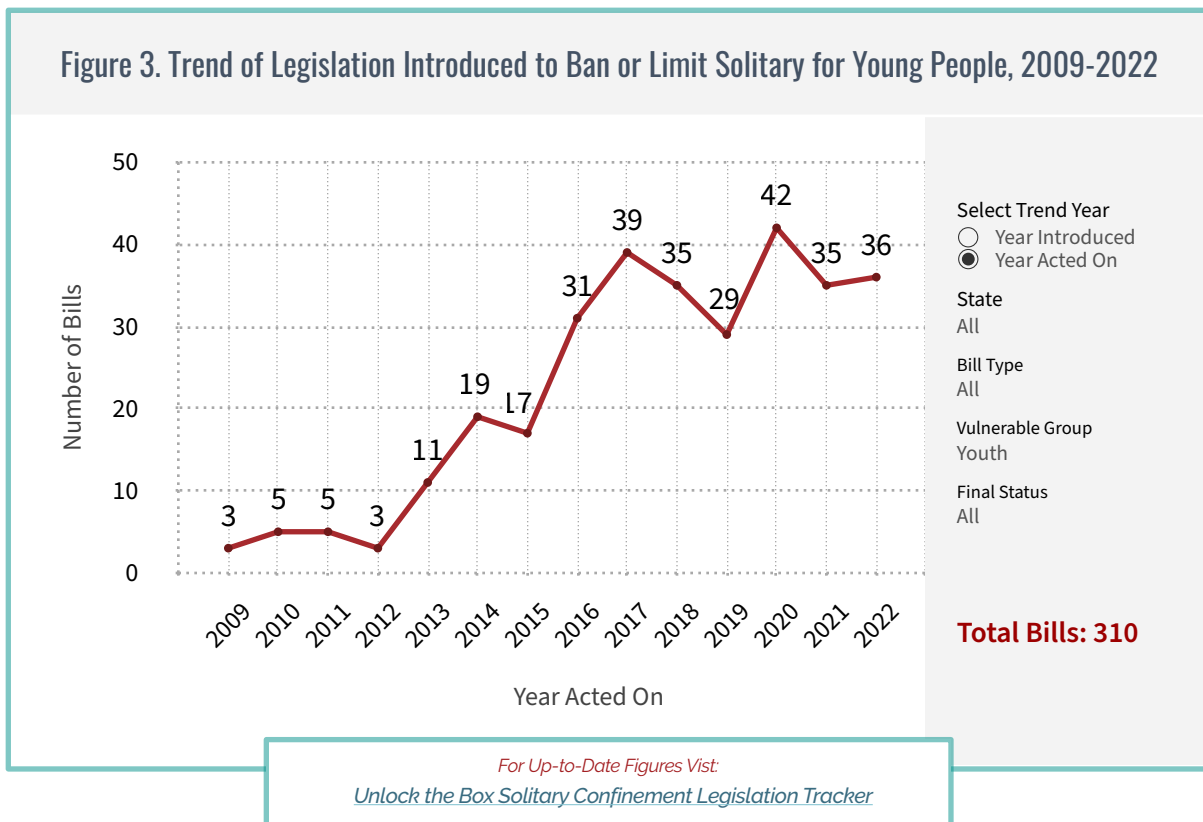
There is a growing recognition that solitary confinement can have particularly destructive impacts on young people, whose brains are still developing.²¹ Even short periods—minutes or hours—can be damaging.²²

Since the brain continues to develop into a person's mid-20s, raising the age to which anti-solitary protections for young people—and alternatives to incarceration more generally—should apply is of urgent importance.²³

In response, some of the best policy components of bans on solitary confinement for young people include:

- A. Adopting some form of ban on solitary confinement
- B. Applying bans to all forms of solitary confinement, room confinement, seclusion, and isolation
- C. Having strict time limits on solitary/room confinement of at most four hours
- D. Restricting the reasons for any period in solitary/room confinement to true emergencies
- E. Ending solitary/room confinement if it becomes harmful or when the emergency subsides
- F. Improving the conditions in solitary/room confinement
- G. Raising the age for bans on young people in solitary to 25 or 21
- H. Banning solitary for young people in adult prisons and jails

These best policy components are described below.



A. Adopting Some Form of Ban on Solitary Confinement

BEST POLICY COMPONENTS

- ✓ **Banning the use of solitary confinement for young people (in youth facilities, adult prisons and jails, and other carceral sites, including other than for periods measured in minutes or hours rather than days). (Arkansas, Colorado, Hawaii, Illinois, Louisiana, Maine, Maryland, Montana, Nebraska, New Jersey, New Mexico, New York, Tennessee, Washington, US)**

A growing list of jurisdictions—at least 14 since 2018—have in some form banned the use of solitary confinement for young people, including in youth facilities, in adult prisons and jails, or in both. These prohibitions have followed those in other jurisdictions that had banned solitary prior to 2018.²⁴ In 2022 Louisiana and Hawaii generally banned solitary confinement in youth facilities and in 2021 Tennessee banned the use of solitary for children in youth facilities and Illinois banned the use of room confinement for discipline in youth facilities.²⁵ Washington generally banned room confinement beyond four hours in youth facilities in 2020.²⁶ Montana disallowed restrictive housing in youth facilities in 2019, other than permitting protective custody for a maximum of 24 hours.²⁷ New Jersey in 2019 and New York in 2021 banned solitary confinement for young people age 21 and younger in their adult prisons and jails.²⁸ Arkansas, Colorado, Illinois, Maryland, Massachusetts, Nebraska, and New Mexico also implemented some form of prohibition on solitary for young people.²⁹ In 2018, the federal First Step Act outlawed the use of solitary/room confinement in federal youth facilities and the Juvenile Justice Reform Act created incentives for states to restrict the use of solitary in youth facilities and to report on such use.³⁰

B. Applying Bans to All Forms of Solitary Confinement, Room Confinement, Seclusion, and Isolation

BEST POLICY COMPONENTS

- ✓ **Having solitary confinement, room confinement, seclusion, isolation, or any other term for isolation include any and all circumstances in which a young person is involuntarily kept in any room or space for any length of time. (Nebraska, Tennessee, Washington, US)**

To ensure that the bans and restrictions on solitary cover all forms of isolation, various states have used expansive definitions of *solitary*, *room confinement*, *seclusion*, *isolation*, and other related terms. The federal First Step Act's youth solitary ban defined *room confinement* as any "involuntary placement... alone in a cell, room, or other area for any reason."³¹ Under Nebraska's law, *room confinement* covers any situation in which a young person is kept alone in any type of room other than for sleeping

purposes at night.³² Tennessee's law defines *seclusion* as any involuntary separation from the rest of the population "regardless of the reason" and includes when other children can still be seen or heard.³³ Washington's 2020 law separately defines *solitary confinement*, *isolation*, and *room confinement*.³⁴ Under that law, solitary confinement is being placed in a separate room for longer than 15 minutes for punitive purposes and is fully banned. Isolation is being involuntarily placed for more than 15 minutes in a separate room that is not the room a person is sleeping in. Room confinement is being involuntarily placed in the room the person is assigned to for sleeping other than for normal sleep and rest hours without an amount of time designated.

Legislation enacted in Louisiana in 2022 defines solitary confinement as "the involuntary placement . . . alone in a cell, room, or other area, except during regularly scheduled sleeping hours," including but not limited to "any behavioral intervention, seclusion, isolation, room isolation, segregation, administrative segregation, or room confinement."³⁵

C. Having Strict Time Limits on Solitary/Room Confinement of at Most Four Hours

BEST POLICY COMPONENTS

- ✓ **Placing a strict limit on the amount of time that a young person is kept in room confinement, such as a maximum of three or four consecutive hours and four hours in a 24-hour period. (California; Colorado; Connecticut; District of Columbia, Massachusetts; Nebraska, US)**
- ✓ **Preventing repeated consecutive placements in room confinement and placing a limit on room confinement of eight hours in a 48-hour period without a court order in conjunction with a limit of four hours in a 24-hour period. (Colorado, Connecticut, Nebraska, Tennessee, Washington)**

Experts and a growing number of jurisdictions have recognized that solitary confinement for young people beyond minutes or hours is harmful and should be banned. The leading authority on youth facility monitoring and assessments, the Juvenile Detention Alternatives Initiative, supported by the Annie E. Casey Foundation and working in more than 250 sites in 39 states, has noted since at least 2014 that there should be an absolute maximum of four hours for such confinement because of the harm that solitary/isolation can cause.³⁶ Similarly, in 2017, the American Bar Association called for the same four-hour limit on such confinement for young people.³⁷

At least 10 jurisdictions have limited the time in solitary in youth settings to hours or less. The federal First Step Act fully banned the use of solitary/room confinement in youth facilities, other than for up to a maximum of 30 minutes in instances where there was a risk of self-harm and up to a maximum of three hours in instances where

there was a risk of harm to others.³⁸ Legislation enacted in Hawaii in 2022, generally bans room confinement for young people beyond three hours, requiring the young person to return to general population after that time. Hawaii's legislation does allow for longer periods of time if an on-call judge grants at most one extension of an additional three hours, or if the young person poses a danger to self or others, provided that any time a young person is held beyond three hours there must be a hearing in family court the next business day at which the young person must be provided representation and after which the young person must be returned to general population or transferred to another location or facility without the use of room confinement.³⁹

Tennessee's 2021 law had a complete ban on the use of solitary beyond six hours in any 24-hour period as well as a prohibition on more than two consecutive periods of seclusion.⁴⁰ In 2018 Connecticut placed an outright ban on the use of solitary beyond six hours in all circumstances for children under 18 in community correctional facilities and lockups.⁴¹ In 2020, Nebraska required higher-level approval and extensive review and reporting for anyone placed in room confinement for more than one hour.⁴² In that state also, consecutive periods of room confinement is prohibited. In 2022 Louisiana prohibited solitary confinement beyond eight hours, with the possibility of extensions if recommended by a mental health professional, and with an absolute maximum of 24 hours, but also with requirements of staff engagement and attempts at de-escalation and removal within the first hour and each subsequent hour and with a requirement for the facility to contact the young person's parents and attorney within the first two hours.⁴³ Washington's 2020 law generally prohibits room confinement and isolation beyond four hours in any 24-hour period, with the possibility of extensions, particularly if subsequent incidents occur (although the law does allow a facility superintendent or designee to extend the confinement every four hours in specified circumstances and allows such confinement to exceed 24 hours if authorized by the secretary of the Department of Children, Youth, and Families or the juvenile court administrator).⁴⁴ Legislation introduced in South Carolina in 2022 would ban solitary beyond six hours for children in adult detention.⁴⁵

These bills come on the heels of the enactment in at least four other states of bans on solitary confinement, measured in hours, for young people across the country in the years prior to 2018. A 2016 California law went into effect in 2018 that generally prohibits room confinement beyond four hours for young people in youth facilities, and in 2016, Colorado generally prohibited room confinement beyond a total of four hours absent emergency circumstances and prohibited room confinement for a total of eight hours over any two-day period without a court order.⁴⁶ In 2016, Washington, DC imposed an absolute ban on room confinement beyond six hours.⁴⁷ These past policies have effected dramatic reductions in the use of solitary in practice to periods of minutes or hours. For example, Colorado has reduced room

confinement to the point of having an average duration of roughly one hour (with dramatic reductions in the number of times a person is placed in room confinement) and Massachusetts has an average duration of less than 40 minutes, with positive impacts on safety and well-being.⁴⁸

D. Restricting the Reasons for Any Period in Solitary/Room Confinement to True Emergencies

BEST POLICY COMPONENTS

- ✓ **Banning any length of time (minutes or hours) of room confinement imposed for reasons of punishment, retaliation, harassment, noncompliance, staff shortages, and other nonemergency safety reasons. (Hawaii, Illinois, Louisiana, Massachusetts)**
- ✓ **Restricting room confinement to situations of immediate risk of significant harm and only when other less restrictive interventions were tried and were not successful. (Florida, Hawaii, Illinois, Louisiana, Nebraska)**
- ✓ **Requiring high-level approval, including from outside the facility or a court, for the use of room confinement or extensions of such confinement even up to hours at a time. (Florida, Hawaii, Illinois)**

At least four jurisdictions have drastically restricted the justifications for and circumstances in which any form, level, and length of time of isolation can take place. Legislation enacted in Hawaii in 2022, prohibits room confinement other than for an imminent escape risk or unless the young person engages in behavior posing "an immediate and substantial risk of danger" to self or another, or a "serious and immediate threat" to the safety and operation of the facility. Hawaii also explicitly prohibited the use of room confinement for purposes of punishment, discipline, coercion, convenience, retaliation, or staff shortages.⁴⁹ In Nebraska, room confinement is prohibited as punishment, for staff shortages, or as retaliation.⁵⁰ In 2018 Massachusetts banned room confinement in youth facilities for purposes of punishment, noncompliance, harassment, or retaliation.⁵¹ That change followed earlier restrictions on room confinement made by the Department of Youth Services, including higher facility-level approval for room confinement up to three hours, and approval from outside the facility for room confinement beyond three hours.⁵²

In 2022 Louisiana prohibited any form of solitary confinement for young people for "purposes of discipline, punishment, administrative convenience, retaliation, protective custody, suicide intervention, general behavior management, rule violations, in response to staffing shortages, or for any other reason that is not an emergency response to behavior that poses a serious and immediate threat of physical harm." Similarly, legislation introduced in 2021 in Illinois would prohibit room confinement for "discipline, punishment, retaliation, or any

reason other than as a temporary response to a juvenile's behavior that poses a serious and immediate risk of physical harm to any individual."⁵³ Further, such room confinement could be used only after other less restrictive interventions were exhausted. Legislation introduced in Florida in 2021 would have prohibited solitary for young people age 19 and younger in the Department of Corrections for disciplinary reasons and would have allowed emergency confinement only if a nonphysical intervention would not work, there is an imminent risk of physical harm or major property destruction that would compromise security or safety, and all less restrictive interventions were exhausted.⁵⁴

E. Ending Solitary/Room Confinement if it Becomes Harmful or When the Emergency Subsides

BEST POLICY COMPONENTS

- ✓ **Requiring immediate release from room confinement if it would harm a person's health and separately once a young person has regained control and is no longer engaging in behavior that poses a substantial and immediate risk of harm. (Illinois, Louisiana, Nebraska, Washington, US)**

Recognizing the harms of solitary confinement and how it should, at most, be employed only if absolutely necessary in as limited circumstances as possible, various states have created mechanisms for young people to get out of solitary. Under Nebraska's law, young people cannot be held in room confinement for any period that would compromise or harm their mental or physical health and they must be "released immediately upon regaining sufficient control so as to no longer engage in behavior that threatens substantial and immediate risk of harm to self or others."⁵⁵ Under Washington's 2020 law, a person must be released from isolation or room confinement if the purpose of the confinement was met, the desired behavior is evident, or a professional has determined that the young person is no longer an imminent threat to self, staff, or other incarcerated people.⁵⁶ Under the federal First Step Act, a person must be released from room confinement when the person has "sufficiently gained control so as to no longer engage in behavior that threatens serious and immediate risk of physical harm to himself or herself, or to others." Louisiana's 2022 law, similarly requires removal from solitary once a young person has "regained self-control and is no longer engaging in behavior that threatens serious and immediate harm to himself or others."⁵⁷

Legislation introduced in 2021 in Illinois would require that young people be released immediately once they have gained control such that they are no longer engaging in behavior that threatens serious and immediate risk of harm.⁵⁸ Under that bill, if young people continue to pose a serious and immediate risk of physical harm to themselves after 30 minutes or to others after three hours,

they can be held in room confinement for a maximum of 24 hours but must be released at the end of that time, and if they continue to pose such a risk they must be transferred to another facility or location or referred to another location.⁵⁹ Legislation introduced in Florida in 2021 and 2022 would have required a mental health clinician to evaluate a person placed in emergency confinement within one hour to ensure that the confinement is not detrimental to the young person's physical or mental health and every subsequent two hours or four hours to determine whether the young person should remain in emergency confinement.⁶⁰

F. Improving the Conditions in Solitary/Room Confinement

BEST POLICY COMPONENTS

- ✓ **Having the least restrictive environment possible for young people in a room confinement setting, including continuing access to parents and legal guardians and to educational programming, medical and mental health care, and other services. (Hawaii, Nebraska, Washington)**
- ✓ **Carrying out frequent safety checks on young people in solitary or room confinement, including as often as every four minutes (Massachusetts, Washington)**
- ✓ **For young people in adult prisons and jails, ensuring that any alternatives to solitary confinement involve many hours of out-of-cell time and congregate programming with other people, including access to at least seven hours of out-of-cell congregate programming and activities. (New York)**

While also limiting the use of solitary, at least five states have enacted policies to improve conditions for young people locked in solitary. In Nebraska and Hawaii, during room confinement young people are required to have "the same access" to parents or legal guardians and to educational programming and medical and mental health services as they would in general population.⁶¹ Massachusetts' 2018 law followed earlier restrictions on room confinement made by the Department of Youth Services, including checks every four minutes during the first hour.⁶² Under Washington's 2020 law, during isolation or room confinement, staff has to visually check the person at least every 15 minutes; attend to the needs of the person; and attempt to engage the person, to offer encouragement on the goals that lead to release.⁶³ Also during isolation or room confinement in Washington, a person generally has to have access to mental health services, reading and treatment material, medication, a shower at least daily, and other basic needs.

In adult prisons and jails, New York State's ban on solitary for young people requires that people in alternative units to solitary—residential rehabilitation units, or RRUs—generally have access to at least seven hours, seven days a week of out-of-cell congregate programs, services, treatment, recreation, activities, and meals in the company

of others with programs and work assignments comparable with those in the general prison or jail population; a presumption against the use of restraints; and programming led by staff, peers, or community volunteers.⁶⁴

G. Raising the Age for Bans on Young People in Solitary to 25 or 21

BEST POLICY COMPONENTS

- ✓ **Raising the age to which any bans or restrictions on solitary or room confinement for young people apply, up to age 25. (Illinois, Massachusetts, New Jersey, New York, Rhode Island, Washington)**

Given the growing awareness that young people's brain development continues at least through their mid-20s, three states since 2018 have raised the ages to which they are applying their bans and restrictions on solitary for young people. Washington State's 2020 law prohibits solitary for young people under 25 in youth facilities.⁶⁵ New York State and New Jersey both prohibit the use of solitary for young people age 21 and younger in adult correctional facilities.⁶⁶

At least another four states have introduced legislation raising the age for banning solitary for young people. Legislation introduced in 2021 in Washington State would prohibit solitary for any young person age 25 or younger in its adult correctional facilities.⁶⁷ Rhode Island's legislation introduced in 2021 and 2022 would generally prohibit solitary for those age 22 and younger.⁶⁸ Similarly, legislation introduced in 2021 in Massachusetts would prohibit solitary for young people 21 and younger, and pending legislation in Illinois would prohibit solitary for those under 21.⁶⁹

H. Banning Solitary for Young People in Adult Prisons and Jails

BEST POLICY COMPONENTS

- ✓ **Prohibiting one day of solitary confinement in adult prisons and jails for young people age 21 and younger (or 25 and younger in pending legislation) and requiring alternatives to solitary to include out-of-cell congregate programming and activities. (Alaska, Colorado, Illinois, Massachusetts, New Jersey, New Mexico, New York, Rhode Island, Washington)**

While there have been more widespread bans and restrictions on the use of solitary for young people in youth facilities, recent years have seen five states enact prohibitions on the use of solitary in adult prisons, jails, and detention centers as well. New York State prohibits solitary for young people 21 and younger in prisons and jails.⁷⁰ New Jersey has the same limit, other than for protective custody in specifically defined circumstances.⁷¹ Arkansas' 2019 law generally prohibited children in youth

facilities *and* state correctional facilities from being locked in solitary confinement beyond 24 hours for punishment, other than in cases of physical or sexual assault, escape or escape attempts, or direct or clear threats of harm.⁷² New Mexico banned solitary for those under 18 in adult prisons and jails and youth facilities in 2019 and Colorado did the same in adult jails in 2021.⁷³

At least four other states introduced such prohibitions in 2021. Legislation introduced in 2021 in Washington State would prohibit solitary for young people 25 and younger in its state prisons.⁷⁴ Rhode Island's proposed ban on solitary for those 22 and younger would apply to state prisons.⁷⁵ Legislation introduced in Illinois in 2021 would prohibit solitary for young people under 21 in prisons, jails, and youth facilities, and legislation introduced in Massachusetts would impose that same age limit on solitary in prisons.⁷⁶

THE HARDEST PART OF
LIVING IN SOLITARY IS
TRYING NOT TO LOSE HOPE.
EACH MORNING THAT I WOKE
UP IN SOLITARY I WOULD
QUOTE THE SAME SERENITY
PRAYER I REMEMBER
MY FATHER RECITING WHEN I
WAS YOUNG: "GOD, GRANT
ME THE SERENITY TO ACCEPT
THE THINGS I CANNOT
CHANGE, THE COURAGE TO
CHANGE THE THINGS I CAN,
AND THE WISDOM TO KNOW
THE DIFFERENCE."

Kiana Calloway, Executive Director of Roots of
Renewal and survivor of solitary as a teenager

TREND 2: ENDING SOLITARY FOR OTHER VULNERABLE GROUPS



In tandem with the growing trend toward ending solitary confinement for young people, jurisdictions have been moving to curtail or end solitary for other vulnerable groups, on whom, as for young people, solitary can have especially deleterious effects. Since 2018, bills have been introduced in 44 states to prohibit solitary confinement for people who are pregnant or in the postpartum period, are elderly, have mental health needs, have physical disabilities, have serious medical conditions, or identify as LGBTQI+.

Thirty-three states have passed these bills.

See Figure 4, which shows the trend since 2009 in legislation focused not on only young people but also these other particularly vulnerable groups.

New Jersey's law prohibits solitary entirely for people 21 years old or younger, 65 or older, with a mental health need, with a developmental disability, with a serious medical condition that cannot be effectively treated in solitary, with a significant auditory or visual impairment, who are pregnant or in the postpartum period or have recently suffered a miscarriage or terminated a pregnancy, or who are perceived to be LGBTQI+.⁷⁷

Similarly, New York's law bans solitary entirely for young people 21 and younger, people 55 and older, pregnant women, new mothers, and people with mental health needs and other disabilities.⁷⁸

Legislation introduced in 2021 in Washington would have prohibited solitary for anyone 25 or younger; 60 or older; with a mental disability (relatively broadly defined); with a developmental disability; with a serious medical condition that cannot be effectively treated in solitary; with a physical disability that cannot be accommodated in solitary; with a significant auditory or visual impairment; or who is pregnant, is in the postpartum period, or suffered a miscarriage or terminated a pregnancy.⁷⁹

Legislation introduced in 2021 in Pennsylvania would prohibit solitary for anyone 21 or younger; 55 or older; who is perceived to be LGBTQI+; with a mental health need; with a physical or intellectual disability; or who is pregnant, is in the postpartum period, or suffered a miscarriage or terminated a pregnancy.⁸⁰

Similarly, legislation introduced in 2021 and 2022 in Rhode Island would generally prohibit solitary for anyone 22 or younger, 55 or older; with a serious and persistent mental illness; with a developmental disability; with a significant auditory or visual impairment; with a serious medical condition that cannot be accommodated in restrictive housing; or who is pregnant, is in the postpartum period, or suffered a miscarriage or terminated a pregnancy.⁸¹

Taken together, some of the best policy components for prohibitions on solitary confinement for more vulnerable people, besides young people, include:

- A. Banning solitary confinement for pregnant people
- B. Banning solitary confinement during the postpartum period, following a miscarriage or pregnancy termination, and for caregivers of their children
- C. Banning solitary confinement for people with any mental health needs broadly defined, disabilities, serious medical conditions, or substance use issues
- D. Banning solitary for people who are 55 and older
- E. Banning solitary for people who are or are perceived to be members of the LGBTQI+ community
- F. Having initial and repeated assessments for risk of self-harm and for determination of whether a person fits into one of the listed categories and should be removed from solitary

The best policy components are described below.

A. Banning Solitary Confinement for Pregnant People

BEST POLICY COMPONENTS

- Fully banning solitary confinement for any period during pregnancy. (Alaska, Colorado, Florida, Georgia, Kentucky, Louisiana, Maryland, Massachusetts, Montana, New Jersey, New York, North Carolina, South Carolina, Texas)
- Applying the ban to all forms of solitary confinement or restrictive housing that have limitations on movement, behavior, or privileges. (Florida, New York, North Carolina)
- Applying the ban to all sites of detention, encompassing youth and adult prisons, jails, residential centers, and reentry centers. (Florida, Georgia, Kentucky, North Carolina)

Just since 2018, 24 states, across the political spectrum—including Arkansas, Colorado, Florida, Georgia, Kentucky, Louisiana, Maryland, Montana, Massachusetts, New Jersey, New York, South Carolina, Texas, and North Carolina—have legislated some form of prohibition on placing pregnant people in solitary confinement.⁸² Nine other states have introduced legislation to do the same.

New York's ban applies to any form of cell confinement for more than 17 hours a day; and Florida's ban, although it has exceptions, applies to any form of restrictive housing, defined as any housing separate from the general population with restrictions on movement, behavior, and privileges.⁸³

North Carolina's ban applies to any prison, jail, youth facility, or other site of detention, and Kentucky's ban similarly applies to any "jail, penitentiary, or local or state correctional or detention facility, residential center, or reentry center."⁸⁴ Georgia's prohibition applies to any place of confinement for young people or adults who are accused of, convicted of, or adjudicated for violating a law or ordinance.⁸⁵

B. Banning Solitary Confinement for Those Recently Pregnant

BEST POLICY COMPONENTS

- ✓ **Banning solitary during the postpartum period for up to eight weeks (Arkansas, Georgia, Kentucky, Louisiana, Maryland, Missouri, New Jersey, New York, North Carolina, Texas)**
- ✓ **Banning solitary for people who are breastfeeding (Arkansas)**
- ✓ **Banning solitary for people caring for a child in a correctional institution (Louisiana, New York)**
- ✓ **Banning solitary for people who recently suffered a miscarriage or terminated a pregnancy (New Jersey)**

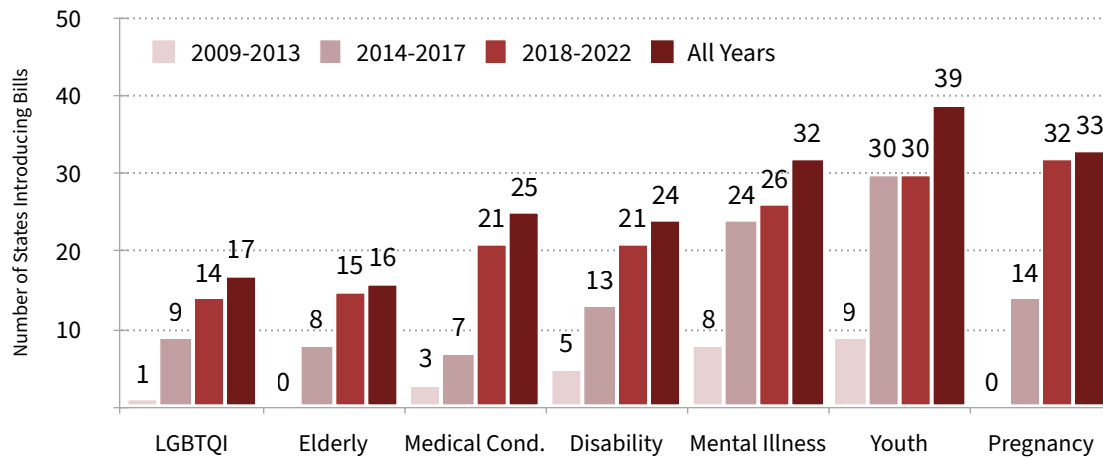
In addition to banning solitary for people while they are pregnant, nine jurisdictions have prohibited solitary in the postpartum period, for people breastfeeding or caring for a child in a correctional facility, and for people who recently suffered a miscarriage or terminated a pregnancy. New York State's law prohibits solitary for up to eight weeks postpartum and prohibits solitary for people who are caring for their children in a correctional institution,

including generally up to one year and up to 18 months if the person is soon to be paroled.⁸⁶ Louisiana's law, with exceptions involving serious bodily injury or death, also prohibits solitary for up to eight weeks postpartum and for people caring for their children in a correctional institution.⁸⁷

Similarly, Maryland's law, with exceptions involving serious and immediate risk of harm or credible flight risk, prohibits solitary for up to eight weeks postpartum.⁸⁸ New Jersey's law prohibits solitary for up to 45 days postpartum and North Carolina's law prohibits solitary for at least six weeks, with the possibility of longer if so determined by the person's health care professional.⁸⁹ Kentucky's, Georgia's, and Montana's laws prohibit solitary postpartum, for a period of at least six weeks, with the possibility of the time being extended by a physician if the individual experiences birth-related complications.⁹⁰ Arkansas' ban on solitary for people who are pregnant, although it has exceptions, applies for up to 30 days postpartum for people who are not breastfeeding and an indefinite period for people who are breastfeeding or who are under a physician's care for postpartum depression or other postpartum condition.⁹¹ Texas's prohibition is in effect for up to 30 days postpartum.⁹² Other states, among them Alabama, introduced legislation in 2022 that would also ban solitary for people who are pregnant or in the postpartum period.⁹³

New Jersey's law also prohibits solitary confinement for people who recently suffered a miscarriage or terminated a pregnancy.⁹⁴ Legislation introduced in 2021 in Washington State, Pennsylvania, Rhode Island, and Congress would have the same bans.⁹⁵

Figure 4. Trend in Number of States Introducing Bills Addressing Vulnerable Groups, 2009–2022



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C. Banning Solitary Confinement for People with Any Mental Health Needs Broadly Defined, Disabilities, Serious Medical Conditions, or Substance Use Issues

BEST POLICY COMPONENTS

- ✓ Banning solitary for people with any mental health needs, broadly defined (New Jersey, New York)
- ✓ Banning solitary for people with physical or developmental disabilities (New Jersey, New York)
- ✓ Banning solitary for people with serious medical conditions (New Jersey)
- ✓ Banning solitary for people with opioid and other substance use issues (Colorado)

Building on the long-standing trend to restrict solitary for people who have more narrowly defined "serious mental illness," a movement is growing to ban solitary for anyone who has mental health needs as well as those living with physical and developmental disabilities or suffering from serious medical conditions that would be exacerbated by solitary confinement. Since 2018, there have been 37 bills passed to prohibit or restrict solitary confinement of people with mental health needs in 14 states, eight bills passed for people living with disabilities in seven states, and five bills passed for people with significant medical conditions in five states.

New Jersey's law prohibits solitary confinement for people with a disability based on mental illness, people with developmental disabilities, and people with significant auditory or visual impairments.⁹⁶ New York's law prohibits solitary confinement for all people with any mental health need or any disability.⁹⁷

Both New Jersey's and New York's solitary bans for people with mental health needs apply to all people with mental health needs, rather than more restrictively to only people with "serious mental illness"; the bans also dictate relatively broad definitions of other designated disabilities.⁹⁸ For example, New York's ban applies to any disability defined as "a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques." In addition, New Jersey's law prohibits solitary confinement for people with serious medical conditions that cannot effectively be treated in solitary.⁹⁹

Colorado enacted a law in 2020 prohibiting the use of solitary confinement for any person in a substance use treatment facility.¹⁰⁰ Legislation introduced in 2021 and 2022 in Washington would prohibit solitary for people with a mental disability, developmental disability, serious medical condition that cannot be effectively treated in solitary, physical disability that cannot be accommodated in solitary, or significant auditory or visual impairment,

among other groups.¹⁰¹ Similarly, legislation that passed both houses of the legislature but was vetoed by the governor in Connecticut in 2021 would have prohibited solitary for people with a physical disability, a mental disability, a history of psychiatric hospitalization, recent self-harming conduct, a serious medical condition that cannot be effectively treated in solitary, or a significant auditory or visual impairment, among other groups.¹⁰² Legislation introduced in 2021 and 2022 in Rhode Island would prohibit solitary for people with a serious and persistent mental illness, a developmental disability, a significant auditory or visual impairment, or a serious medical condition that cannot be accommodated in restrictive housing.¹⁰³ Legislation introduced in 2021 in Nebraska would prohibit solitary for people with a developmental disability, traumatic brain injury, or serious mental illness.¹⁰⁴

D. Banning Solitary for People Who Are 55 and Older

BEST POLICY COMPONENTS

- ✓ Banning solitary for older people, including age 55 and older (New York, New Jersey)

There is increasing awareness that solitary confinement can have significant negative impacts on people who are older. Solitary has been found to cause or exacerbate chronic health conditions, among them heart disease, respiratory disease, Alzheimer's and other conditions causing memory loss, diabetes, and mental health issues, and can lead to earlier death.¹⁰⁵ The lack of sunlight in solitary can lead to a greater risk of breaking bones. Sensory deprivation can precipitate greater confusion, memory loss, and mental health challenges. Hearing and visual impairments can exacerbate the isolation and lead to the other negative health impacts. Limits on mobility can have negative effects related to various conditions. Since nearly three-quarters of people in prison over age 50 experience at least one chronic health condition, people who are older are at particular risk of harm from solitary. Of note, there is widespread recognition that people in prison age 50 or 55 are considered medically geriatric because in that environment people age in a much more accelerated manner than in the outside community.¹⁰⁶

Thirty-six bills have been introduced since 2018, with two enacted into law, that prohibit the use of solitary confinement for people considered elderly. In acknowledgment of the harms that solitary inflicts on older people, New York's law prohibits solitary for any person age 55 or older.¹⁰⁷ New Jersey's law prohibits solitary for anyone 65 or older.¹⁰⁸ Legislation introduced in Connecticut, Massachusetts, Pennsylvania, Rhode Island, Washington, and Congress in 2021 would prohibit older people from being locked in solitary, with ages ranging from 55 to 65.¹⁰⁹

E. Banning Solitary for People Who Are or Are Perceived to Be Members of the LGBTQI+ Community

BEST POLICY COMPONENTS

- ✓ Banning solitary confinement for people who are or are perceived to be LGBTQI+ (New Jersey, Pennsylvania)
- ✓ Prohibiting solitary for protective custody and ensuring that protective custody involves out-of-cell congregate programming and activities comparable with those of the general population (New York)

Members of the LGBTQI+ community are disproportionately sent to solitary, often purportedly for their own protection, and are far too often subject to additional physical, sexual, and other abuse while in solitary. Since 2018, 37 bills have been introduced in 14 states banning solitary for members of the LGBTQI+ community and two states have passed laws that protect against LGBTQI+ people being placed in solitary purportedly for their own protection. For example, New Jersey's 2019 law prohibits solitary for any person perceived to be lesbian, gay, bisexual, transgender, or intersex.¹¹⁰ Massachusetts's 2018 law prohibits people from being placed in solitary on the grounds that they are lesbian, gay, bisexual, transgender, queer, or intersex or have a gender identity or expression or sexual orientation uncommon in general population.¹¹¹ While New York's 2021 law does not explicitly prohibit solitary for members of the LGBTQI+ community, it forbids the use of solitary for people generally in protective custody and requires that those in protective custody have all the protections of people in alternatives to solitary, including access to at least seven hours of out-of-cell congregate programming and activities.¹¹²

Legislation introduced in 2021 in Pennsylvania would prohibit solitary for people perceived to be lesbian, gay, bisexual, transgender, or intersex.¹¹³ Pending legislation in Washington would prohibit people being held in solitary based on their "affectional or sexual orientation" as part of a more comprehensive prohibition on placement in solitary based on "race, creed, color, national origin, nationality, ancestry, age, marital status, domestic partnership or civil union status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding status, sex, gender identity or expression, disability, or atypical hereditary cellular or blood trait."¹¹⁴

F. Having Initial and Repeated Assessments for Risk of Self-Harm and for Determination of Whether a Person Fits into One of the Listed Categories and Should Be Removed from Solitary

BEST POLICY COMPONENTS

- ✓ Requiring repeated assessments to determine if a person should be removed from solitary (New Jersey, Washington)
- ✓ Prohibiting solitary for people who recently engaged in self-mutilation or other conduct indicating the need for evaluation for mental health needs (New Jersey)

To ensure that the prohibitions on solitary for people who are most vulnerable to its harms are applied effectively and also in recognition that solitary can cause people to deteriorate or develop mental health or medical needs, states have adopted policies to guarantee that repeated assessments are done and people are removed from solitary if they fit into one of the categorical exclusions. At least three states have introduced specific provisions to require repeated assessments for vulnerabilities that would prohibit using solitary confinement. New Jersey's law, for example, explicitly extends the ban on solitary for people with mental health needs to people who have a history of psychiatric hospitalization or who recently carried out serious self-mutilation or other conduct indicating the need for further observation or evaluation to determine the presence of mental illness.¹¹⁵ Legislation introduced in 2021 and 2022 in Washington would require a medical provider to conduct a daily mental and physical exam of each person in solitary confinement, and anyone who is determined to be in one of these categories must be immediately removed.¹¹⁶ Similarly, legislation vetoed in 2021 in Connecticut would have prohibited solitary for anyone who had recently exhibited self-harm conduct.¹¹⁷

I AM CHEERED BY THE GROWING CONSENSUS IN CORRECTIONS THAT SOLITARY CONFINEMENT DOES NOT ACCOMPLISH IMPROVED BEHAVIOR NOR REDUCED VIOLENCE BEHIND BARS, BUT IT DOES CAUSE SEVERE PSYCHOLOGICAL DAMAGE AND MAKES IT MUCH LESS LIKELY PEOPLE WHO HAVE BEEN IN SOLITARY WILL SUCCEED AT "GOING STRAIGHT" AFTER THEY RETURN TO THE COMMUNITY. THAT CONSENSUS IS FUELING A TURN AWAY FROM SOLITARY CONFINEMENT AND TOWARD REIMAGINING ROBUST REHABILITATION BEHIND BARS, WHICH, ALONG WITH REDUCED SENTENCES AND REDUCED PRISON POPULATIONS, DOES HELP FORMERLY INCARCERATED PEOPLE SUCCEED.

Terry A. Kupers, MD, MSP, mental health and corrections expert

TREND 3: IMPOSING MANDELA RULES 15-DAY LIMIT ON SOLITARY CONFINEMENT AS PART OF COMPREHENSIVE REFORM

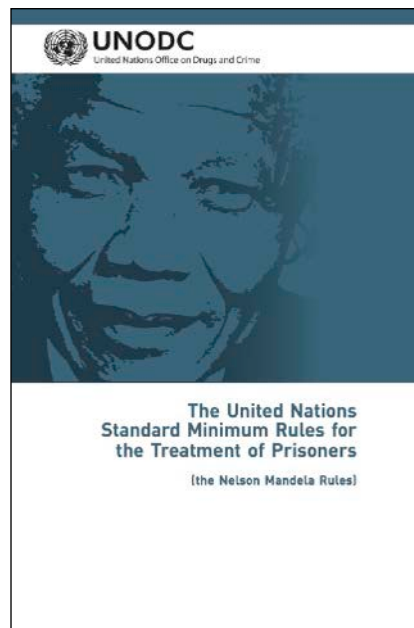
More states are adopting or introducing comprehensive legislation in line with the prohibition on solitary confinement beyond 15 consecutive days set out in the United Nations Nelson Mandela Rules (see [Figure 5: Trend in Number of Comprehensive Reform Bills Introduced, 2009-2022](#)).

Comprehensive legislation as discussed in this section encompasses provisions such as transparency and oversight, addressing particularly vulnerable groups, and the general conditions of confinement. Since 2018, three major comprehensive pieces of legislation have been enacted: in New York State (2021), Connecticut (2022), and New Jersey (2019).¹¹⁸ Thirteen other states have introduced 39 pieces of similar legislation, among them Arizona, California, Florida, Hawaii, Illinois, Massachusetts, Nebraska, Nevada, Pennsylvania, Rhode Island, and Washington, and such legislation has been introduced in Congress.¹¹⁹ This legislation follows the practices of some states' making administrative changes in line with the Mandela Rules. Colorado, for instance, administratively implemented a 15-day limit on the use of solitary confinement in its state prisons.¹²⁰ North Dakota also administratively dramatically reduced its use of solitary confinement as part of a broader effort to overhaul its incarceration system.¹²¹

The Mandela Rules—named for Nelson Mandela and otherwise known as the *The United Nations Standard Minimum Rules for the Treatment of Incarcerated People*—were adopted by the entire United Nations General Assembly in December 2015. They are intended to provide the basic floor for how people in prisons, jails, and detention facilities should be treated around the world. The Mandela Rules contain many provisions relevant to policies on and practices for solitary confinement and alternatives, notably in the rules' prohibition on solitary confinement beyond 15 consecutive days, as well as the approach taken toward and the overall environment of incarceration in which solitary and alternatives take place.¹²²

In its stipulation against prolonged solitary confinement, the Mandela Rules followed the 2011 determination by Juan Méndez, the United Nations Special Rapporteur on Torture, that “any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment” and called for “an absolute prohibition” on solitary beyond 15 days for all people.¹²³ Of note, the Special Rapporteur also called for a complete ban on solitary if it was imposed as punishment or disciplinary sanction for any length of time, on children or people with mental health needs for any length of time, indefinitely, or during pre-trial detention.

Dimensions of the Mandela Rules addressing transparency and oversight are detailed separately, in the section [“Trend 4: Creating Reporting and Oversight Mechanisms.”](#)



See [“Key Provisions”](#) pullout on next page.

Some of the best policy components pulled from enacted and pending legislation aimed at ending prolonged solitary confinement include:

- A. Prohibiting solitary beyond 10 or 15 consecutive days, without exception
- B. Ensuring the prohibition applies to all forms of solitary, regardless of the name, including lock-ins at least beyond 17 hours a day
- C. Providing alternatives with access to at least seven hours of daily congregate programming and activities to avoid the equivalent of solitary by another name
- D. Ensuring that protective custody is not solitary and instead mirrors general population and affords access to full days of out-of-cell programming and activities
- E. Preventing repeated stints in solitary or people from cycling right back into solitary
- F. Restricting the conduct that can result in any separation
- G. Ensuring improved conditions in solitary
- H. Enhancing due process protections for getting in and out of solitary and time limits on alternatives
- I. Preventing release directly from solitary or alternatives to the outside community
- J. Applying protections to jails as well as prisons

These best policy components are detailed below.

Key Provisions of the United Nations Nelson Mandela Rules

Rule 1 requires that all people who are incarcerated “shall be treated with the respect due to their inherent dignity and value as human beings” and protects all incarcerated persons from “torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.”

Rule 4 requires that incarceration be used to for purposes of reintegrating a person who is incarcerated back into society upon release, and thus requires corrections departments to provide individually tailored education, vocational training, and work, as well as other programs and activities, including “those of a remedial, moral, spiritual, social and health- and sports-based nature.”

In a directly related manner, **Rule 5** calls on corrections departments “to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the [incarcerated persons] or the respect due to their dignity as human beings” and to ensure that people “with physical, mental, and other disabilities have full and effective access to prison life on an equitable basis.” Similarly, emphasizing the goal of having people return to society, **Rules 87 and 88** focus on having the treatment of incarcerated people reflect their continuing part of the community, rather than their exclusion from it, using community agencies to support social rehabilitation, and requiring social workers charged with maintaining and improving relations with family and outside social agencies. **Rule 91** requires that the purpose of the treatment of people in prison be to support people’s ability to live self-supporting lives after release and requires that such treatment encourage self-respect and a sense of responsibility. In turn, **Rule 92** requires the use of individualized religious care, education, vocational programming, social casework, employment counseling, physical development, and strengthening of moral character.

Rule 38 encourages corrections departments to use “conflict prevention, mediation or any other alternative dispute resolution mechanism to prevent disciplinary offences or to resolve conflicts.” Rule 38 also envisions separation without isolation, requiring that for incarcerated people who are, or have been, separated, the prison administration take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison.

Rule 39 requires due process protections, prohibits a person being sanctioned twice for the same act or offense, requires consideration of how a person’s mental health issues or developmental disability contributed to the conduct in question, and prohibits any sanctions for conduct considered to be a direct result of such conditions. **Rule 41** specifies more due process protections, including timely notification of accusations, the opportunity for defending oneself, access to legal assistance, and opportunities for judicial review.

Rule 43 explicitly prohibits any restrictions or disciplinary sanctions to involve torture or other cruel, inhuman, or degrading treatment and specifically prohibits indefinite solitary, prolonged solitary (defined by **Rule 44** as being in excess of 15 consecutive days), placement in a dark or constantly lit cell, corporal punishment, reduction in a person’s diet or drinking water, and collective punishment. Rule 43 also prohibits restraints as a sanction and explicitly states that sanctions or restrictive measures shall not include the prohibition of family contact, allowing at most restrictions on family conduct for a limited period and only as strictly required.

Rule 45 limits the use of solitary to exceptional cases as a last resort, for as short a time as possible, subject to independent review, pursuant to authorization by a competent authority, and never as part of a prison sentence. Rule 45 also prohibits solitary for groups of people most vulnerable to the harms of solitary, including young people, people with mental health needs and physical disabilities when such confinement would exacerbate their conditions, pregnant women, women with infants, and breastfeeding mothers.

Rule 46 prohibits healthcare personnel from having any role in the imposition of disciplinary sanctions or other restrictive measures; requires them to pay particular attention to the health of people under any form of involuntary separation, including through daily visits, prompt medical care, and care upon request; requires them to report any adverse physical or mental health effects of any sanction or restrictive measures and advise if such separation should end because of those effects; and provides authority to recommend changes to involuntary separation to ensure that it does not exacerbate medical conditions or mental or physical disabilities.

Rule 47 prohibits the use of “chains, irons or other instruments of restraint which are inherently degrading or painful” and restricts use of any restraints to purposes of preventing escape or when ordered by the prison director to prevent injury or property damage, with **Rule 48** requiring that only the least intrusive restraint be used, only for the time period required with restraints removed as soon as possible, and only when no lesser interventions would be effective.

Rule 57 requires that all “allegations of torture or other cruel, inhuman or degrading treatment or punishment . . . shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority.” **Rules 83 to 85** require external inspections by independent entities, including international and regional bodies with qualified experts, among them healthcare professionals, with full access to information, unannounced visits to any facilities, and private and fully conditional interviews with people incarcerated and staff. The rules require public written reporting on such inspections and recommendations to relevant authorities.

The rules also provide, among other relevant protections, requirements for staff training; restrictions on searches of incarcerated people and their living spaces; mechanisms for people incarcerated as well as their legal advisers and family members to raise complaints; access to communication, visits—including conjugal visits—with family and friends, as well as visits with legal representation; being incarcerated close to people’s home or “their places of social rehabilitation”; access to libraries and religious life; communication and investigation of deaths and injuries; quality and qualifications of staff; utilization of sufficient numbers of psychiatrists, psychologists, social workers, teachers, and trade instructors; and additional protections for people under arrest or awaiting trial, including the ability of people to procure their own food from outside, wear their own clothing, work for pay, and be treated by their own doctor or dentist.

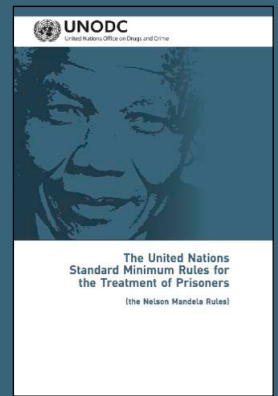
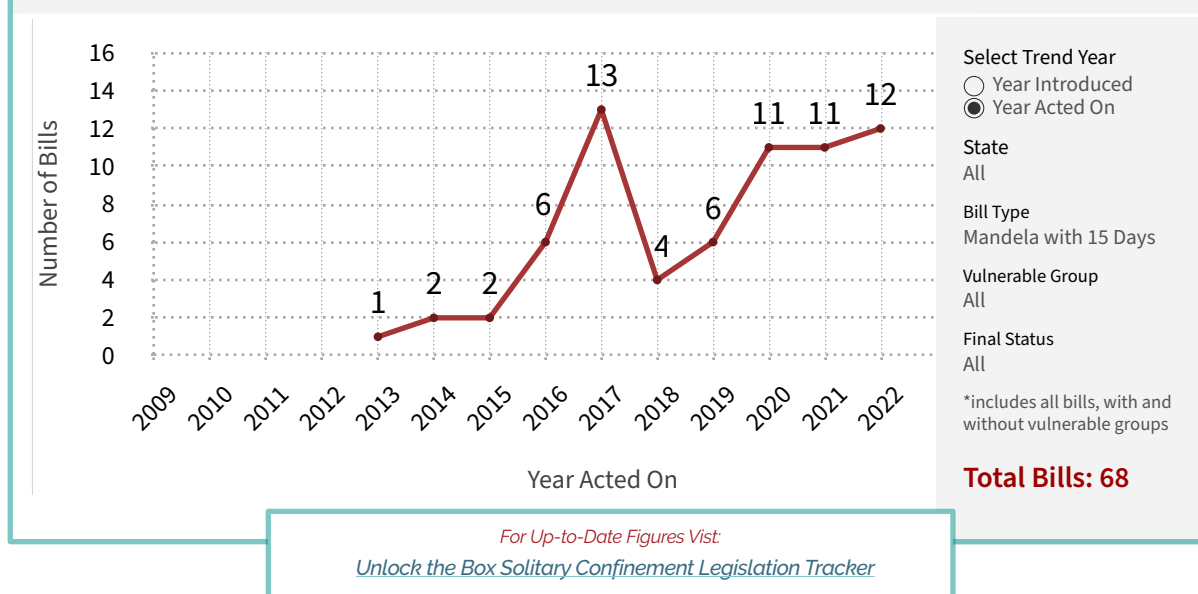


Figure 5. Trend in Bills Introduced to Limit Solitary to 15-Days or Less, 2009–2022



A. Prohibiting Solitary Beyond 10 or 15 Consecutive Days, Without Exception

BEST POLICY COMPONENTS

- Banning solitary confinement beyond 10 or 15 consecutive days (California, Connecticut, Florida, Illinois, Massachusetts, Nebraska, New York, Pennsylvania, Rhode Island, Washington, US)

Directly in line with the prohibition on prolonged solitary confinement, states have banned or introduced legislation to ban solitary in adult prisons and jails beyond 15 consecutive days or comparable periods. Legislation enacted in New York and Connecticut prohibit solitary beyond 15 consecutive days, in accord with the Mandela Rules, and New Jersey’s enacted law forbids solitary beyond 20 consecutive days.¹²⁴ To elicit recommendations on how to reduce or end the use of solitary confinement beyond 14 days, Virginia enacted legislation in 2022 to convene a work group composed of at least one psychologist, three people formerly in solitary, three prison department representatives, three youth facilities department representatives, and three members of the Virginia Coalition on Solitary Confinement. The work group’s recommendations were due by December 1, 2022.¹²⁵

Legislation introduced in 2021–2022 in California, Washington, Nebraska, Massachusetts, Pennsylvania, Rhode Island, Florida, and the U.S. Congress would all prohibit solitary beyond 15 consecutive days, in accord with the Mandela Rules. The California bill passed both houses of the legislature but was vetoed by the Governor.¹²⁶ Legislation introduced in Illinois would prohibit solitary beyond 10 consecutive days.¹²⁷

B. Ensuring the Prohibition Applies to All Forms of Solitary, Regardless of the Name, Including Lock-Ins At Least Beyond 17 Hours a Day

BEST POLICY COMPONENTS

- Applying prohibitions to all forms of solitary confinement, regardless of the name given to the practice (Connecticut, New York, New Jersey, Pennsylvania, Washington)
- Applying prohibitions to disciplinary confinement, administrative segregation, protective custody, confinement in special housing units, keeplock, investigative confinement, or the same practice under other names (Connecticut, New Jersey, New York, Pennsylvania, Washington)
- Applying prohibitions to any confinement that involves 17 hours a day locked in (California, New York, Washington)

To prevent prisons and jails from circumventing bans on prolonged solitary or imposing solitary by another name, jurisdictions have defined solitary based on the experiences of people living in solitary and under this definition specifying the number of out-of-cell hours. New York’s law defines solitary confinement as “*any form* of cell confinement for more than *17 hours a day* other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment” (emphasis added).¹²⁸

As such, the law applies to all forms of solitary confinement and units—disciplinary confinement, administrative segregation, protective custody, special housing units, step-down units, long-term keeplock units,

keeplock in a general population cell, and any other iteration of solitary in existence now or in the future would be covered.

Legislation passed by both houses of the California legislature in 2022 and introduced in 2022 in Washington likewise define solitary as any confinement for more than 17 hours a day.¹²⁹ New Jersey's enacted legislation, although involving fewer required out-of-cell hours, explicitly states, as does legislation introduced in 2021 in Washington and Pennsylvania, that people in all forms of cell confinement are covered, whether held alone or with other people in a cell or a similar holding space for disciplinary, administrative, protective, investigative, medical, or other reasons.¹³⁰ Legislation introduced in Nebraska defines restrictive housing as confinement that provides limited contact with other people, strictly controlled movement while out of cell, and less than 70 hours a week of out-of-cell time (an average of 10 hours a day).¹³¹

C. Providing Alternatives with at Least Seven Hours of Daily Congregate Programming and Activities to Avoid the Equivalent of Solitary by Another Name

BEST POLICY COMPONENTS

- ✓ Ensuring people in alternatives have access to at least seven hours a day out of cell (California, New York)
- ✓ Ensuring people have such out-of-cell time seven days a week (New York)
- ✓ Ensuring out-of-cell time involves *congregate* programming and activities with other people (New York, Rhode Island)
- ✓ Creating conditions and programs in alternatives comparable with those in general population (New York, Rhode Island)

To limit the possibility that alternatives to solitary would replicate the harms of isolation and to instead provide meaningful interventions that will better support people and better improve safety, jurisdictions are adopting or introducing policies to promote enhanced conditions for people in alternative settings, including related to out-of-cell time and opportunities for congregate programming and activities. New York State law now requires that people in units that are alternatives to solitary—residential rehabilitation units (RRUs)—generally have access to at least seven hours, seven days a week of “out-of-cell congregate programming, services, treatment, recreation, activities, and/or meals” with other people. In alternative settings, programs and work assignments must be comparable with those in the general prison or jail population. Also, there is a presumption against the use of restraints in alternative settings, and programs can be led

by peers or volunteers, as well as staff, and there must be staff-led therapeutic programming at least five days a week.¹³²

Legislation passed by both houses of the legislature in California in 2022 would similarly require that after a person is in solitary confinement for 15 days, the person has to be transferred to an appropriate setting with access to at least seven hours of daily out-of-cell congregate programming, services, treatment, meals, and recreation.¹³³ Rhode Island's legislation introduced in 2021 and 2022 would generally require that living conditions in restrictive housing approximate those in the general population, such as equal access to programming and services, contact with family, access to the library and reading materials, personal belongings in cell, and medical and mental health care.¹³⁴ There must be access to programming “substantially similar” to programming in general population and there must be access to “additional out-of-cell, trauma-informed therapeutic programming aimed at promoting personal development, addressing underlying causes of problematic behavior resulting in placement in restrictive housing, and helping prepare for discharge from restrictive housing to general population and to the community.” The legislation would also require that people in step-down programs and transitional housing have access to at least six hours of daily out-of-cell time with conditions that mirror those of general population.

D. Ensuring That Protective Custody Is Not Solitary and Instead Mirrors General Population and Affords Access to Full Days of Out-of-Cell Programming and Activities

BEST POLICY COMPONENTS

- ✓ Ensuring conditions in protective custody are comparable with those of general population, or at least as good as best practices in alternatives to solitary (Connecticut, New York, Pennsylvania, Washington)

Because protective custody units frequently have conditions that are those of solitary confinement, new policies aim to ensure that protective custody is not in fact solitary and instead provide conditions at least closer to those of the general population in terms of out-of-cell time and access to congregate programming and activities. Both New York's and Connecticut's enacted laws prohibit solitary confinement for purposes of protective custody, although Connecticut allows a person to be in isolation for up to five business days for determining whether protective custody is appropriate.¹³⁵ New York's enacted law additionally requires that conditions in protective custody are at least as good as those of the alternative-to-solitary units outlined in the law, including access to at least seven hours of daily out-of-cell congregate programming and activities with other people,

and programming comparable with that of the general population.

Legislation introduced in 2021 in Washington would prohibit solitary beyond 72 hours for involuntary protective custody and require that all people in protective custody have access to activities and social interaction comparable with those of the general population.¹³⁶ Similarly, legislation passed by both houses of the legislature in 2022 in California would prohibit the use of solitary for protective custody, and legislation introduced in 2021 in Pennsylvania would require people in protective custody to have opportunities for activities, movement, and social interaction comparable with those in the general population.¹³⁷

E. Preventing Repeated Stints in Solitary or People from Cycling Right Back into Solitary

BEST POLICY COMPONENTS

- ✓ **Preventing repeat cycles into solitary by using additional time limits, such as 20 days in a 60-day period (New York)**
- ✓ **Prohibiting total cumulative time in solitary, such as 30 days in a six-month period or 45 days in one year (Illinois, Nebraska, New York, Washington)**

To guarantee that the prohibition on solitary beyond 15 consecutive days is real and not able to be circumvented, jurisdictions are also adopting limits on the ability of people to be quickly locked back in solitary after they are released at the designated time limits. New York's law generally prohibits people from being locked in solitary confinement for more than 20 days in any 60-day period, to avoid people being repeatedly placed back into solitary.¹³⁸ New Jersey's and Connecticut's laws similarly prohibit people being in solitary for more than 30 days in any 60-day period.¹³⁹ Adopted regulations in New York would prohibit people in local jails from spending more than 30 days total in solitary in any six-month period.¹⁴⁰

Additional legislation introduced in 2021 would be more protective against repeated placements in solitary than are current laws. For example, legislation introduced in 2021 in Illinois would prohibit any person from being in solitary for more than 10 days in any 180-day period.¹⁴¹ Legislation introduced in 2021 and 2022 in Washington State would prohibit solitary for more than 45 total days in a year (in addition to prohibiting solitary beyond 15 consecutive days), and legislation passed by both houses of the legislature in 2022 in California would prohibit solitary for more than 45 days in a 180-day period.¹⁴² In Nebraska legislation introduced in 2021 would generally prohibit restrictive housing for more than 90 days in a calendar year, with exceptions in specified individual circumstances.¹⁴³

F. Restricting the Conduct that Can Result in Any Separation

BEST POLICY COMPONENTS

- ✓ **Limiting the reason for placement in solitary or alternatives to the most egregious conduct (New Jersey, New York, Rhode Island, Washington)**
- ✓ **Ensuring the restricted conduct applies to both solitary and alternatives to solitary (New York)**

Because solitary is so often used in response to minor rule violations or even as retaliation, jurisdictions are placing limits on the justifications for placement in solitary or alternatives to solitary.

New York's law restricts the categories of behavior that can result in solitary beyond three days or can result in alternatives to solitary to specified acts of serious conduct, such as causing, attempting, or threatening serious physical injury; compelling a person to engage in a sexual act; engaging in extortion or coercion by force or threat, inciting a riot; procuring a deadly weapon or dangerous contraband that poses a serious threat; and escaping or attempting or facilitating an escape.¹⁴⁴ In addition, to result in solitary or alternatives, these listed acts must be "so heinous or destructive" that the person remaining in general population poses a "significant risk of imminent serious physical injury" *and* "an unreasonable risk" to security.

New Jersey's law prohibits solitary for nondisciplinary reasons and only permits solitary if a correctional facility establishes by clear and convincing evidence that there is reasonable cause to believe individuals would create a substantial risk of serious harm to themselves or another, as evidenced by recent threats or conduct, and a less restrictive intervention would be insufficient to reduce this risk.¹⁴⁵ Pending legislation in Washington State employs an analogous though slightly stricter criterion for restriction by requiring a substantial risk of *immediate* serious harm.¹⁴⁶

Legislation introduced in 2021 and 2022 in Rhode Island would only permit solitary confinement in circumstances involving violence, escape, or a threat to institutional safety through a person's encouraging others to engage in violence or escape, and legislation introduced in 2022 in Georgia would only permit solitary in circumstances involving a very serious incident resulting in a facility-wide lockdown, such as a terrorist threat or a death in the facility; a substantiated threat of imminent physical harm based on recent evidence; or a request by an incarcerated person for the person's own protection (with additional protections in those circumstances).¹⁴⁷

G. Ensuring Improved Conditions in Solitary

BEST POLICY COMPONENTS

- ✓ Including out-of-cell time and programming for people in solitary in the 15-day period before they must be released from solitary (California, New York, Pennsylvania, Washington)

Since even one or two days in solitary can cause significant harm, jurisdictions allowing up to 15 days in solitary are adopting or introducing policies to ameliorate conditions during that time in solitary. Besides the out-of-cell and program requirements for alternative units, New York's law mandates improved conditions in solitary itself. Specifically, the law now requires that people in solitary confinement for any amount of time, up to the 15-day limit, have at least four hours of out-of-cell programming a day.¹⁴⁸

Similarly, legislation passed by both houses of the legislature in California in 2022 would require that all people in segregated confinement (for up to the 15-day limit) have access to at least four hours of daily out-of-cell programming, including programming led by program or therapeutic staff comparable with that of the general facility population.¹⁴⁹ Legislation introduced in 2021 and 2022 in Washington State would require that out-of-cell time in solitary be maximized and that people have access to outdoor and indoor recreation, education, therapy, skills-building activities, social interaction with staff and with other incarcerated people, medical care, and basic necessities.¹⁵⁰ In Pennsylvania in 2021 legislation was introduced that requires facilities to maximize out-of-cell time for a person placed in solitary by providing access to recreation, education, therapy, skill-building activities, and social interaction with staff and with other incarcerated people.¹⁵¹ In Florida, introduced legislation would require that people in solitary have access to at least four hours out of cell per day, with access to meaningful programming opportunities and privileges consistent with those in general population, as practicable, including individually or in a classroom setting, as well as meaningful interaction with others, as practicable, including other incarcerated people.¹⁵²

H. Enhancing Due Process Protections for Getting in and out of Solitary and Time Limits on Alternatives

BEST POLICY COMPONENTS

- ✓ Creating presumption against pre-hearing confinement and requiring hearings quickly following confinement, such as within 72 hours (New Jersey, New York)
- ✓ Providing for the right to representation at a hearing that can result in solitary or an alternative (New Jersey, New York)

Recognizing the severe consequences of what it means to be locked in solitary or alternative units, jurisdictions are enhancing due process protections for people facing the possibility of these placements. New Jersey's enacted law requires a hearing within 72 hours of placement in solitary confinement, to determine if a person can be held in solitary, with an independent decision maker and with the right to representation at the hearing.¹⁵³ Legislation introduced in 2021 in Pennsylvania and Washington contains those same due process protections, while the legislation introduced in 2021 in Washington also would have created a presumption against placement in solitary pending investigation into the alleged disciplinary offense, requiring a pre-hearing placement review every 24 hours and requiring that a person who has shown good behavior during that time be released.¹⁵⁴

To determine whether a person has committed an act that meets the criteria for being placed in solitary *or an alternative*, New York's enacted law has a presumption of hearings prior to such placement or if someone is held in solitary before a hearing, requires the hearing to take place within five days of placement.¹⁵⁵ At hearings that can result in solitary or alternatives, New York's law permits people to have representation, such as by attorneys, paralegals, law students, or other incarcerated people.¹⁵⁶ New York's law also requires additional training for staff and hearing officers.¹⁵⁷

To ensure that alternatives do not warehouse people in abusive environments, New York's law has multiple mechanisms for release from alternatives, among them the expiration of disciplinary sanctions, 60-day meaningful reviews with program and health staff involved in the decisions, completion of program requirements, and generally an outside one-year limit for alternatives.¹⁵⁸ At the reviews, if people are denied discharge from the unit they must be told what they need to do to be discharged, be enabled to complete whatever tasks they are told to do, and be discharged if they complete them.¹⁵⁹

I. Preventing Release Directly from Solitary or Alternatives to the Outside Community

BEST POLICY COMPONENTS

- ✓ Requiring discharge from solitary with substantial time before release to the community, in some cases up to 180 days prior to release (Nebraska, New York, Pennsylvania, Washington)

States are taking steps to address the long-standing problem of people being released from prisons and jails directly from solitary to the outside community, without transitional support or preparation. New York's enacted law generally requires that people be discharged from one of the alternative-to-solitary units if they are within 60 days of release from prison, unless they had recently committed one of the enumerated serious acts of misconduct listed in the law.¹⁶⁰

Legislation introduced in 2021 and 2022 in Washington would restrict people from being released directly from solitary to the community, unless it was necessary for safety.¹⁶¹ Similarly, legislation introduced in 2021 in Pennsylvania would generally prohibit people from being in solitary during their last 180 days prior to release to the community, unless necessary for safety.¹⁶² Legislation introduced in 2021 in Nebraska would prohibit release from long-term restrictive housing to the community, requiring the Department of Correctional Services to provide people in long-term restrictive housing with at least 120 days outside of restrictive housing to transition to the community.¹⁶³

J. Applying Protections to Jails as Well as Prisons

BEST POLICY COMPONENTS

- ✓ Applying all protections to local jails in addition to prisons (California, Colorado, New Jersey, New Mexico, New York)

Because the use of solitary confinement is widespread in jails, states are applying protections to their jails as well as their prisons, as New York does in its HALT Solitary Confinement Law.¹⁶⁴ Jail systems with a combined capacity of fewer than 500 people are exempt from one piece of HALT—creating the alternative residential rehabilitation units discussed above—but all other provisions of the law apply, among them the 15-day limit on solitary, the ban on special populations, access to counsel, restricted criteria, reporting requirements, and oversight.

New Jersey's protections apply to prisons and local jails as well, with some modifications for the latter, and New Mexico's legislation, noted above, while not imposing a 15-day limit on solitary, prohibited solitary in jails as well as prisons for young people, pregnant people, and people with serious mental illness.¹⁶⁵ Colorado's legislation, also previously referred to above, prohibited solitary in jails for people who are young, have mental health needs, have significant auditory or visual impairment, are pregnant, have neurocognitive impairments, or have an intellectual or emotional disability.¹⁶⁶ Legislation passed by both houses of the legislature in 2022 in California would apply its protections to prisons, jails, detention facilities, and "any facility in which individuals are subject to confinement or involuntary detention."¹⁶⁷

STUDIES SHOW SOLITARY CONFINEMENT IS NEITHER A SAFE NOR AN EFFECTIVE MEANS TO CHANGE A PERSON'S BEHAVIOR, HENCE THE NEED FOR A NEW APPROACH, OR REHABILITATIVE ALTERNATIVES. . . .

(CRUCIALLY, THESE ALTERNATIVES MUST ACTUALLY SERVE THOSE NEEDING INTERVENTIONS TO ADDRESS TRULY PROBLEMATIC BEHAVIOR, NOT SIMPLY REPLICATING THE ISOLATION OF SOLITARY WITH A NEW, FRIENDLIER NAME.

THAT IS WHY PEOPLE LIKE US WHO HAVE HAD DIRECT EXPERIENCE WITH THIS TORTURE SHOULD BE A PART OF THE DEVELOPMENT AND FACILITATION OF NEW PROGRAMMING."

Victor Pate and Jerome Wright, co-directors of the New York #HALTsolitary Campaign (Victor Pate and Jerome Wright, "Commentary: New York Must Set Up Alternatives to Solitary Confinement," Albany Times Union, August 4, 2021, <https://www.timesunion.com/opinion/article/Commentary-New-York-must-set-up-alternatives-to-16361614.php>).

TREND 4: CREATING REPORTING AND OVERSIGHT MECHANISMS



Increasingly jurisdictions have been attempting to create more transparency in and oversight of the use of solitary confinement and alternatives and to ensure effective implementation of restrictions on solitary (see Figure 6).

As noted above, the Mandela Rules set out provisions on transparency, reporting, and oversight. With solitary confinement practices happening in virtual secrecy, and obtaining even basic information about them so difficult, the need for greater transparency and independent oversight of prisons, jails, and other sites of detention is clear.

Since 2018, 23 states have passed 42 bills expanding reporting requirements in some form. Maryland, New Jersey, Connecticut, and New York adopted provisions to create or expand public reporting, oversight, or both, on the use of solitary and alternatives.¹⁶⁸ From 2018 to the present, 35 states have introduced 249 pieces of legislation to expand transparency and oversight, notably Arizona, Arkansas, Illinois, Massachusetts, Minnesota, Mississippi, Missouri, New Mexico, and Washington¹⁶⁹ (see Figure 7).

Some of the best policy components from enacted and introduced legislation include:

- A. Requiring periodic, comprehensive, and public data reporting as frequently as monthly
- B. Providing outside oversight over the use of solitary and alternatives
- C. Creating an ombudsperson for investigating complaints and providing oversight

These best policy components are detailed below.

A. Requiring Periodic, Comprehensive, and Public Data Reporting as Frequently as Monthly

BEST POLICY COMPONENTS

- ✓ Requiring periodic reporting, as frequently as monthly (California, Maryland, New Jersey, New York)
- ✓ Including a comprehensive list of data points to be reported on (California, Maryland, New Jersey, New York)
- ✓ Ensuring that the data reported is made public and easily accessible online (California, Maryland, New Jersey, New York)

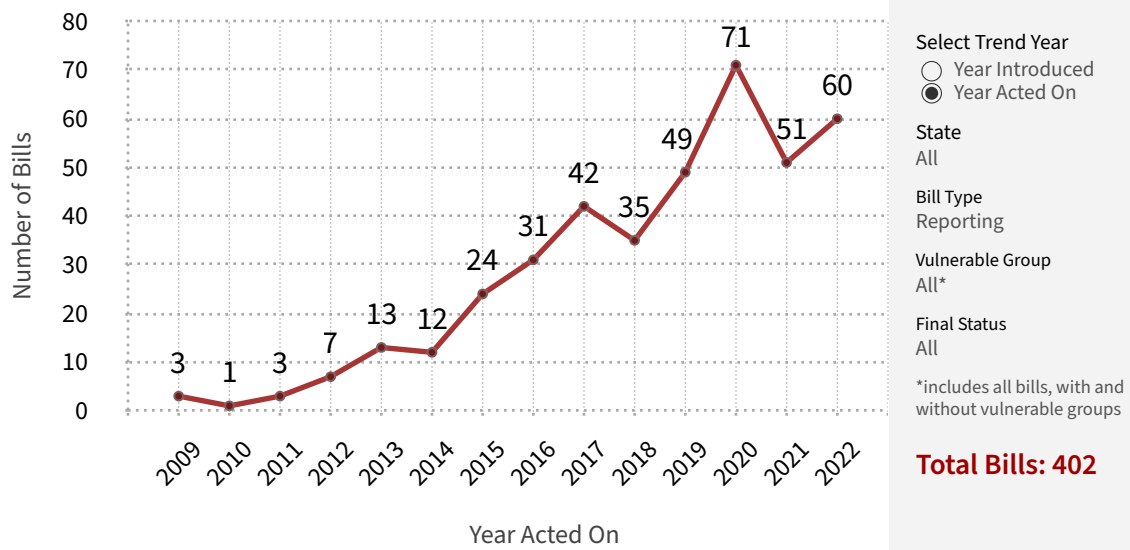
A number of states are requiring corrections departments to publish periodic reports and data on the use of solitary and alternatives. Since 2018, 21 states have passed 38 bills requiring corrections departments to track and report on

the use of solitary confinement. New York State's law requires the state prison department and local jails to publish monthly online public reports, as well as cumulative semiannual and annual reports, on the use of solitary and alternatives, setting out how many people are in the units and offering breakdowns by race, age, gender, mental health level, pregnancy status, special needs, length of stay, basis for placement, and other data points.¹⁷⁰ New Jersey's law requires quarterly public online reports, along with an annual cumulative report, on the use of solitary confinement, providing breakdowns by age, sex, gender identity, ethnicity, incidence of mental illness, and type of confinement status, as well as incidents of self-harm, suicide, and assault in any isolated confinement unit.¹⁷¹ Connecticut's 2022 law requires annual reports on the use of solitary confinement, broken down by facility, race, age, and sex; on suicides, suicide attempts, assaults on staff, and assaults between incarcerated people; and on grievances, programs, internal work assignments, and external jobs; as well as monthly reports on staff use of force on incarcerated people, such as physical force, restraints, chemical agents, and cell extractions.

A law enacted in Maryland in 2019 requires the state prison department, state youth facilities department, and each local jail to annually report to the governor's office, which in turn must make the information public on its website, data on the use of restrictive housing, including the numbers of people in restrictive housing and breakdowns by age, race, gender, classification of housing, basis for placement, pregnancy status, mental health status, and average and median lengths of stay.¹⁷² Maryland's law requires reporting on the number of incidents of death, self-harm, and attempts at self-harm by people in restrictive housing, as well as the number of people released directly to the community from restrictive housing.

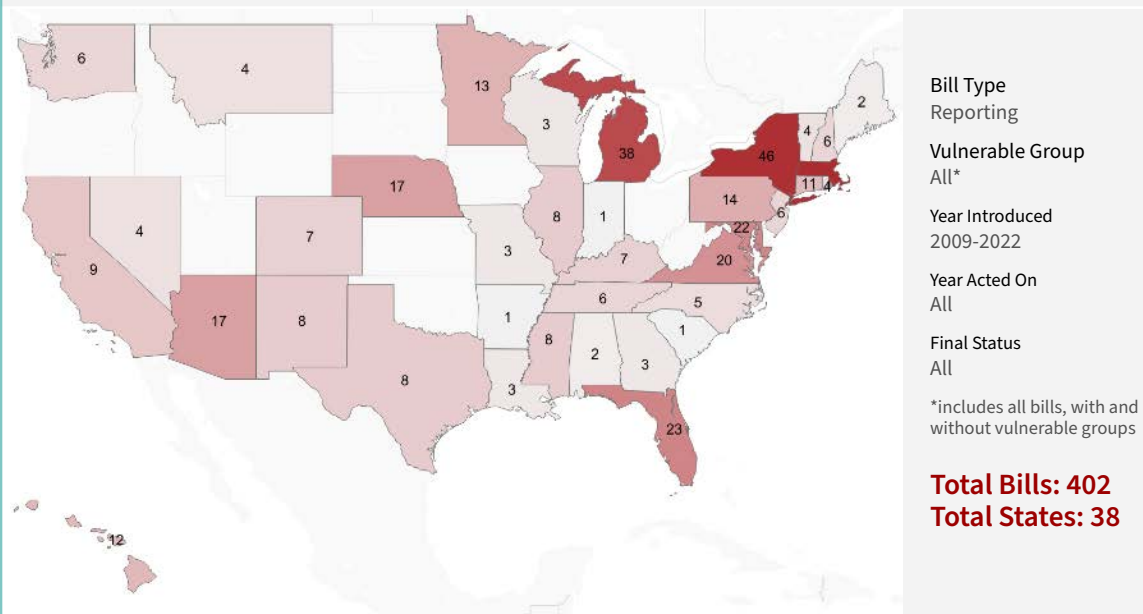
Legislation introduced in 2021 and 2022 in Washington would require public monthly reports on the Department of Corrections website regarding the use of solitary, encompassing demographic breakdowns, mean and median lengths in solitary by facility, instances of self-harm and suicide, assaults in solitary, and use of lockdowns and emergency confinement.¹⁷³ The Washington bill also would require monthly reports from jails on the use of solitary. Legislation introduced in 2021 in Massachusetts would require reporting of similar data points, quarterly for the state prisons and biannually for local jails; legislation introduced in 2021 in Pennsylvania would require annual reporting on similar data points and further data on recidivism rates; and legislation passed by both houses of the legislature in 2022 in California would require monthly public reporting as well as semiannual and annual cumulative public reporting.¹⁷⁴ Legislation introduced in 2021 in Illinois and Arkansas requires quarterly reporting on similar data, and legislation introduced in 2022 in Louisiana requires local jails to report various types of data, including on the use of solitary confinement.¹⁷⁵

Figure 6. Trend of Introduced Bills Expanding Reporting and Oversight, 2009–2022



For Up-to-Date Figures Visit:
[Unlock the Box Solitary Confinement Legislation Tracker](#)

Figure 7. States With Introduced Bills Expanding Reporting and Oversight, 2009–2022



For Up-to-Date Figures Visit:
[Unlock the Box Solitary Confinement Legislation Tracker](#)

B. Providing Outside Oversight over the Use of Solitary and Alternatives

BEST POLICY COMPONENTS

- ✓ **Creating oversight by state agencies independent of prisons and jails (California, New York)**
- ✓ **Creating independent oversight by people who have been incarcerated, people who have had family members inside, other advocates, service providers, and medical and mental health professionals (Arizona, Connecticut, Georgia, Mississippi, Virginia)**

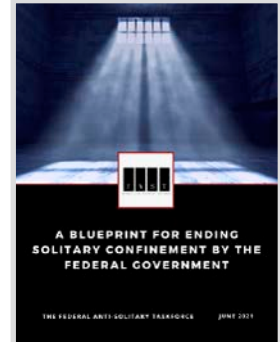
Beyond requiring reporting by corrections departments, 21 bills introduced in 10 states since 2018 provide for outside oversight by independent bodies. New York State's law requires outside oversight and reporting by two separate independent state agencies, one to oversee the state prisons and the other to oversee local jails.¹⁷⁶ These agencies must assess compliance with, and issue at least annual public reports with recommendations related to, all the key components of the HALT Solitary Law, among them policies and practices concerning placement in solitary and alternatives; groups that are fully banned from solitary; lengths of time spent in solitary and alternatives; due process protections; and programs, treatment, and conditions in solitary and alternatives.

Connecticut's enacted law created a corrections advisory committee, composed of people who have lived through incarceration or had a family member incarcerated, other experts on the rights of incarcerated people, and medical and mental health experts.¹⁷⁷ The committee is tasked with recommending candidates for a previously established corrections ombudsperson; reviewing the actions of the ombudsperson; consulting on the ombudsperson's services, findings, and recommendations; and holding semiannual hearings on these services, findings, and recommendations.

Legislation passed by both houses of the legislature in 2022 in California would require the state Office of the Inspector General to assess each correctional facility's compliance with the legislation's restrictions on solitary confinement.¹⁷⁸ Legislation introduced in 2021 in Arizona and Mississippi and in 2022 in Mississippi, Georgia, and Virginia, besides creating an independent ombudsperson (see the section on ombudspersons, below), would form a correctional oversight committee containing members of the state senate and house of representatives as well as people who were formerly incarcerated, representatives of an advocacy group and service provider, medical and mental health professionals, a family member of a person who had been incarcerated, at-large public members, and a nonvoting representative of corrections staff.¹⁷⁹ The committee would be required to hold at least quarterly public hearings and an annual public hearing.¹⁸⁰ Under Arizona's and Virginia's proposed legislation, the

committee would have the authority and mandate to inspect correctional facilities; the power to issue subpoenas to obtain documents, data, and records; and the ability to have confidential communications with incarcerated people.¹⁸¹ Legislation introduced in Colorado in 2022 would create a commission—composed of people who had been incarcerated or family members; advocates for LGBTQI+ people, people living with disabilities, and communities of color; a mental health professional; jail administrators; a public defender and a district attorney; and others—to oversee operations of local jails, including those related to discipline of incarcerated people.¹⁸²

In *A Blueprint for Ending Solitary Confinement by the Federal Government*, the Federal Anti-Solitary Taskforce proposes requiring various layers of outside oversight. In addition to creating an ombudsperson, the blueprint would establish a community oversight body composed of people who have been in solitary or had loved ones in solitary, faith leaders, medical and mental health professionals, civil and human rights advocates, and other community leaders and would have the authority to make unannounced visits with unfettered access and make recommendations that require a remedial action plan.¹⁸³ The blueprint would also enhance media access to federal prisons and detention centers. Further, it would ensure that people who are incarcerated would have a private cause of action related to the use of solitary and alternatives, thereby ensuring outside oversight by incarcerated people and the courts.¹⁸⁴



C. Creating an Ombudsperson for Investigating Complaints and Providing Oversight

BEST POLICY COMPONENTS

- ✓ **Creating an office of the ombudsperson to investigate individual complaints, provide systematic oversight, and offer technical assistance to people who are incarcerated and administrators (Arizona, Georgia, Minnesota, Mississippi, Missouri, New Mexico, Virginia)**
- ✓ **Providing authority to investigate, report on, and require remedial action regarding the use of solitary confinement, as well as other abuses and issues of concern. (Arizona, Georgia, Minnesota, Mississippi, Missouri, New Mexico, Virginia)**
- ✓ **Granting the ombudsperson unfettered access to prisons, jails, and detention centers (Arizona, Georgia, Minnesota, Mississippi, Missouri, New Mexico, Virginia)**

- ✓ **Providing full access to data and information, including through subpoena powers (Arizona, Georgia, Minnesota, Mississippi, Missouri, New Mexico, Virginia)**
- ✓ **Allowing for confidential communications with people who are incarcerated and staff, including by phone, email, and mail; in person; and through a confidential hotline (Arizona, Georgia, Minnesota, Mississippi, Missouri, New Mexico, Virginia)**
- ✓ **Requiring periodic public reporting to which the corrections department has to respond and providing a remedial action plan and taking action in response to recommendations. (Arizona, Georgia, Minnesota, Mississippi, Missouri, New Mexico, Virginia)**

At least four states, Connecticut, Massachusetts, Michigan, and Minnesota, have enacted laws since 2018 creating corrections ombudspersons. At least six other states, Arizona, Virginia, Mississippi, Georgia, Missouri, and New Mexico, introduced pending legislation in 2021 or 2022 that would create ombudspersons related to solitary and corrections more generally.

The law enacted in Minnesota in 2019 reinstated an ombudsperson with significant powers. Specifically, the Minnesota ombudsperson for corrections has broad powers to investigate decisions, acts, and other matters related to state prisons, local jails, youth facilities, and other detention sites.¹⁸⁵ Under Minnesota's law, the ombudsperson has access to corrections, detention, and medical data and is empowered to obtain confidential information from incarcerated people through personal conversations, phone calls, and correspondence. The ombudsperson has the authority to investigate any action of an administrative agency, obtain access to all records of an administrative agency, enter and inspect at any time, and subpoena documents and personal testimony. The ombudsperson can also make recommendations, and the administrative agency in question must inform the ombudsperson of the action taken in response or the reasons for not complying with a recommendation. The ombudsperson may also refer any unlawful conduct by a public official or employee to other authorities and is required to issue at least an annual report.

Legislation introduced in 2021 or 2022 in Arizona, Virginia, Mississippi, Georgia, Missouri, and New Mexico would create an independent corrections ombudsperson to monitor, investigate, report on, examine individual complaints about, provide technical assistance to incarcerated people and corrections agencies related to, and create uniform systems of reporting on a wide range of issues, including solitary confinement as well as denial of people's rights, physical or sexual abuse by staff or other incarcerated people, medical and mental health care, educational and rehabilitative programming, visitation, and grievances.¹⁸⁶

In Missouri, the ombudsperson would also monitor, and investigate complaints about, parole board decisions, and in New Mexico the ombudspersons would do so about complaints related to parole as well as probation.¹⁸⁷ In Missouri, an additional separate bill introduced in 2022 would create a Department of Corrections oversight committee, which would have oversight responsibilities similar to those of the proposed ombudsperson bill, among them investigating complaints and covering the systemic issue areas noted above, but would be composed of members of both houses of the legislature as well as a person who was formerly incarcerated in the department, a physician, an attorney, a law or criminal justice professor, a member of the clergy, and a Department of Corrections director or director's designee.¹⁸⁸

For the proposed legislation in each of those states, the office of the ombudsperson could have confidential communications with incarcerated people by telephone, mail, and electronic communication and in person; in Arizona, New Mexico, Virginia, and Georgia be required to create a hotline for complaints and information from people who are incarcerated, family members, advocates, employees, and contractors; in Georgia, Virginia, and Arizona be required to create online forms for family members and currently incarcerated people to raise complaints; and in Arizona and Virginia have subpoena power to obtain documents and records.¹⁸⁹ While not related to an ombudsperson, legislation introduced in New Jersey in 2022 would require the corrections department to create mechanisms for confidential reporting of complaints of staff abuse and prohibit retaliation, including the use of solitary confinement, against anyone who files a complaint.¹⁹⁰ The office of the ombudsperson in legislation introduced in Arizona, Mississippi, Missouri, and New Mexico would have access to all facilities with or without prior notice, and in Arizona, Mississippi, and Missouri would be required to inspect each facility.¹⁹¹ In Arizona, Mississippi, and Missouri, the office would have to publish on the internet periodic facility reports and an annual systemwide report, all of which the corrections department would have to respond to, including with a corrective action plan and action taken in response to the ombudsperson's recommendations or reasons for not complying.¹⁹² Further, in all five states, the office of the ombudsperson would be required to investigate and render decisions about individual complaints.¹⁹³

TREND 5: FULLY ENDING SOLITARY CONFINEMENT FOR ALL PEOPLE

Beyond the many legislative actions taken to curtail solitary confinement, there are a growing number of efforts to fully end the practice. Legislation that would generally eliminate solitary confinement has been introduced in at least 12 jurisdictions. Chicago, New York City, and Allegheny County have claimed to adopt measures ending solitary confinement, and legislation introduced in New York City, the District of Columbia, Kentucky, Pennsylvania, Virginia, West Virginia, Maine, Connecticut, New Hampshire, and Maryland would move toward an end to solitary (see Figure 8).¹⁹⁴ President Biden and Vice President Harris both pledged to end solitary confinement during their campaigns, and the Federal Anti-Solitary Taskforce released their *Blueprint for Ending Solitary by the Federal Government* in June 2021.¹⁹⁵

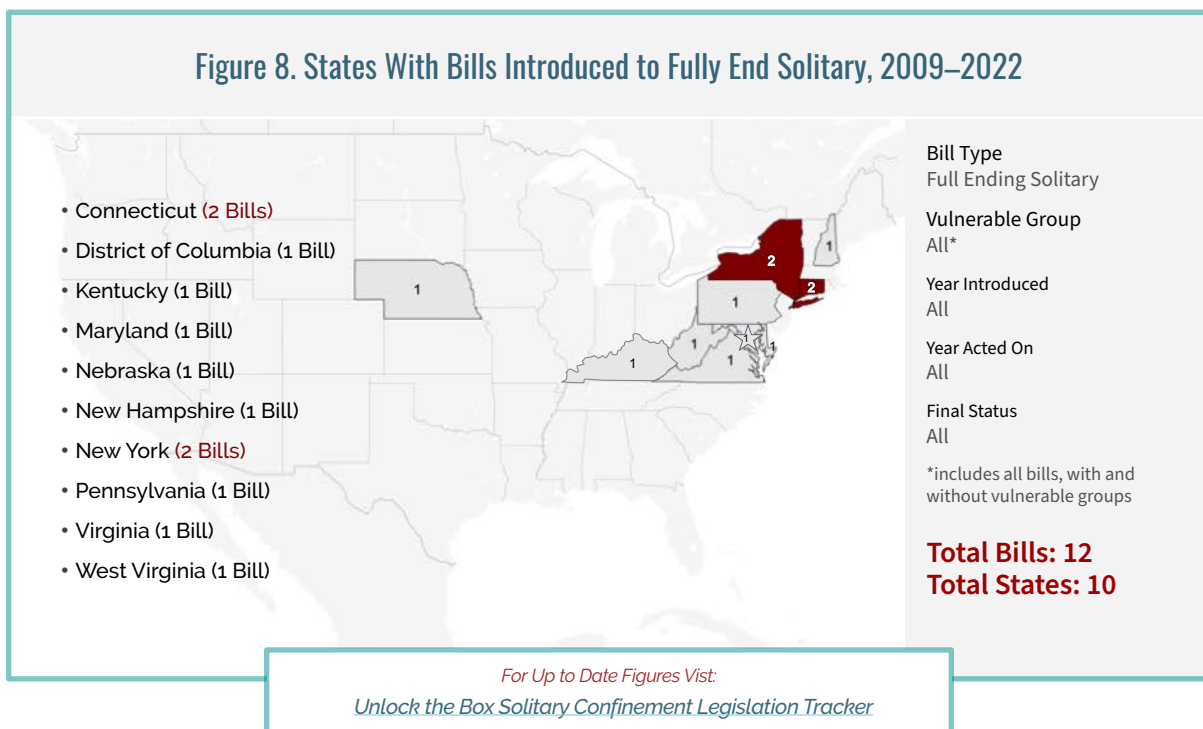
These multiplying efforts to fully end solitary confinement derive from a widening realization of the severity of solitary’s negative effects even for short periods, let alone weeks, months, or years. Recent research from Cornell University found that even a short stretch in solitary—as short as one or two days—leads to a significantly heightened risk of death by accident, suicide, violence, and other causes.¹⁹⁶ On her final day in solitary confinement, Layleen Polanco had been locked in her cell for only two to three hours before she died.¹⁹⁷ In settings outside of adult prisons and jails, including in youth settings and adult mental health settings, it is recognized that even hours in solitary can have

damaging impacts. It is becoming more apparent that people can be separated from the general facility population without being isolated, and any such separation is most effective at addressing violence if it is the opposite of solitary confinement, involving full days of out-of-cell programming and engagement.

While, as discussed above, a danger exists that jurisdictions are creating solitary by another name, there is a growing trend to go even further to attempt to fully end solitary confinement. Some of the best policy components from recent adopted initiatives and from pending legislation include:

- A. Banning all forms of solitary confinement, other than for emergency de-escalation measured in hours
- B. Defining solitary confinement or restrictive housing as having any more restrictions than those of the general population
- C. Ensuring that any separation and alternatives to solitary involve access to at least 14 hours a day out of cell
- D. Ensuring that any alternatives to solitary involve out-of-cell congregate programming and activities, as well as services, comparable with those of the general population
- E. Placing time limits on alternatives
- F. Placing restrictions on the use of restraints

These best policy components are detailed below.



A. Banning All Forms of Solitary Confinement, Other Than for Emergency De-escalation Measured in Hours

BEST POLICY COMPONENTS

- ✓ **Ending all forms of solitary confinement, other than for emergencies, with such placement measured in hours (Allegheny County, District of Columbia, Kentucky, New York City)**

Multiple jurisdictions have adopted or introduced legislation at least aimed at ending solitary confinement, other than for emergency de-escalation. Allegheny County's referendum banned solitary, other than for facility lockdowns, emergencies up to 24 hours, or *voluntary* protective custody.¹⁹⁸ New York City's adopted regulations—which as of August 2022 the city administration has unlawfully put on hold—purportedly ended all solitary confinement, other than in emergency lock-ins for entire housing areas or facilities or for de-escalation confinement for up to six hours with an initial period of three hours, the possibility of reauthorization for up to another three hours, and the possibility of declaring an emergency variance in order to go beyond six hours.¹⁹⁹

Legislation introduced in 2022 in New York City, and currently with veto-proof supermajority support in the City Council, would prohibit solitary confinement, other than for up to four hours, for de-escalation of conflict, housing area lockdowns, or facility lockdowns.²⁰⁰ Legislation introduced in DC would ban solitary confinement, defined as being confined for more than 18 hours in a 24-hour period.²⁰¹ A bill introduced in Connecticut in 2021 would fully prohibit the use of solitary confinement; legislation introduced in West Virginia in 2022 would generally prohibit solitary—defined as any form of cell confinement for more than 17 hours a day—for more than three days; and legislation introduced in Kentucky in 2022 would ban solitary confinement other than to prevent imminent and significant physical harm after less restrictive alternatives were unsuccessful, and even in such circumstances would prohibit solitary confinement beyond eight hours.²⁰² In Pennsylvania, legislation introduced in 2021 would prohibit solitary confinement for all purposes, although the bill defines solitary as approximately 20 hours a day locked alone or with other people in a cell or similar holding or living space.²⁰³ In Georgia, legislation introduced in 2022 would ban solitary beyond 72 hours, although it defines solitary as 22 or more hours a day of cell confinement.²⁰⁴ Legislation introduced in Maryland would ban solitary unless there was a substantial and immediate risk of harm.²⁰⁵

Legislation introduced in 2021 in Virginia would generally prohibit solitary confinement, except up to 48 hours if a person poses an "imminent threat of physical harm," with the possibility of an additional 48 hours if the imminent threat is "ongoing and realistic."²⁰⁶

Legislation introduced in 2021 in Maine would prohibit solitary confinement, although with a definition—having contact with another person less than three times a day—that would still allow other forms of solitary confinement by another name.²⁰⁷ Legislation introduced in 2021 in New Hampshire would eliminate solitary confinement as a form of discipline or punishment.²⁰⁸

B. Defining Solitary Confinement or Restrictive Housing as Having Any More Restrictions than Those of the General Population

BEST POLICY COMPONENTS

- ✓ **Defining solitary confinement and restrictive housing as involving any housing more restrictive than that of the general prison or jail population (Louisiana, New York City)**
- ✓ **Defining restrictive housing as involving anything less than 14 hours of daily out-of-cell time (Nebraska, New York City)**

To cover all forms of solitary and restrictive housing, and to avoid the use of solitary by another name, policies are increasingly setting out definitions of solitary and restrictive housing as involving any forms of housing that are more restrictive than those of the general facility population in terms of out-of-cell time or access to programs or services.

New York City's adopted rules define restrictive housing as any housing where people are separated from the general population and have less than 14 hours of daily out-of-cell time or people have more restricted access to services, are housed alone in a unit, or are in a unit where more than four people cannot congregate in a dayroom.²⁰⁹ Pending legislation in New York City with supermajority support defines restrictive housing as "any housing area that separates incarcerated individuals from the general jail population or that poses restrictions on programs, services, interactions with other incarcerated individuals or other conditions of confinement.

Legislation introduced in 2021 in Louisiana, although not a full ban on solitary, defines solitary confinement as "any form of disciplinary, preventative, or administrative housing or segregation that limits meaningful access to social interaction, counseling, medical care, visitation, outdoor recreation, or other therapeutic programming in a manner more restrictive than for the general population."²¹⁰ Similarly, pending legislation in Nebraska that would restrict and not ban solitary confinement requires that people in general population have access to at least 103 hours a week out of cell, or an average of just over 14 hours a day.²¹¹ Legislation vetoed in Connecticut in 2021 originally defined solitary as being locked in more than 16 hours a day.²¹²

C. Ensuring that Any Separation and Alternatives to Solitary Involve Access to At Least 14 Hours a Day Out of Cell

BEST POLICY COMPONENTS

- ✓ Ensuring that alternatives to solitary involve access to full days of out-of-cell time, including at least 14 hours of daily out-of-cell time (New York City)

With the aim of ensuring that alternatives to solitary do not amount to solitary by another name and actually provide environments more supportive of individuals' well-being and more likely to improve safety, policies create alternatives with full days of out-of-cell time. New York City's adopted regulations provide people at least 10 or 12 hours of daily out-of-cell time.²¹³ Although the 2021 administration indicated that so-called out-of-cell time could take place locked alone in a cell extension, the 2022 jail administration indicated that, when implemented, out-of-cell time will actually involve being out of cell, in the same shared space with other people, with access to out-of-cell congregate programming.

The legislation introduced in 2022 in New York City, currently with veto-proof supermajority support, would require that all people in the city jails, including those in restrictive housing, have access to at least 14 hours of daily out-of-cell time.²¹⁴ Particularly in light of the city's previous attempt to claim that people being locked alone in a cell extension is being out of cell, this legislation would require that all out-of-cell time take place "in a group setting with other people all in the same shared space without physical barriers that is conducive to meaningful and regular social interaction."²¹⁵ The Federal Anti-Solitary Taskforce's Blueprint for Ending Solitary Confinement by the Federal Government proposes that people in alternatives to solitary or any form of restrictive housing have access to at least 14 hours out of cell a day.²¹⁶

D. Ensuring that Any Alternatives to Solitary Involve Out-of-Cell Congregate Programming and Activities, as Well as Services, Comparable with those of the General Population

BEST POLICY COMPONENTS

- ✓ Requiring programming in alternatives (New York, New York City, Rhode Island)
- ✓ Requiring programming that is congregate, with other people in a shared space (New York, New York City)
- ✓ Requiring programming that is comparable with programs in the general population (New York, New York City)
- ✓ Allowing visits, including contact visits, with family, friends, and loved ones (Connecticut, New York City)
- ✓ Ensuring access to books, writing materials, recreation, commissary, and other services (Connecticut, Rhode Island)

Reflecting the goal that alternatives to solitary support well-being and actually address the reasons that a person is separated, adopted and introduced policies provide for out-of-cell congregate programming and other activities comparable with those of the general facility population. As discussed in the section on ending prolonged solitary confinement, "[Trend 3: Imposing Mandela Rules 15-Day Limit on Solitary Confinement as Part of Comprehensive Reform](#)," New York State's law requires that all people in alternatives generally have access to at least seven hours of daily congregate programming and activities, with programming and work assignments comparable with those of the general population, plus additional programming aimed at addressing the reasons a person had to be separated.²¹⁷ New York State's law also generally prohibits limitations on services, such as commissary or library access, as a form of punishment, generally requires people in alternatives to have access to all their personal property, and generally requires access to congregate recreation in alternatives.²¹⁸

Under adopted rules in New York City, people in alternatives to solitary must be given five hours of daily programming that is "evidence-informed, age-appropriate, and tailored to each person's individual behavior support plan" and "aimed at facilitating rehabilitation, addressing the root causes of violence, and minimizing idleness." People must also be provided with additional "productive activities."²¹⁹ The problem with these program requirements under the plan of the previous New York City administration is that they could take place while the person was locked alone in the cell; again, the current administration has stated that people will have programming and activities actually out of cell with other people in the same shared space.

Adopted rules in New York City also state that people in alternative units, as in the rest of the jail population, have access to contact visits unless it is determined at a hearing at which the person is permitted to be represented by counsel that a visit would pose a threat to safety and security based on specific acts committed during previous visits or on verified information that harmful acts will take place at the next visit.²²⁰ These rules also end the automatic imposition of a \$25 penalty—deducted from individuals' commissary accounts—for rule violations, allow a fine only as an option for restitution for destruction of property, and require that any such fine take into account a person's ability to pay.²²¹

The legislation introduced in 2022 in New York City would require that during their 14 hours of daily out-of-cell time, people in any form of restrictive housing must be afforded "comparable interaction with other individuals and have access to comparable congregate programming and comparable amenities to those housed outside restrictive housing."²²² Further, people would be provided with programming that addresses their unique needs, have the ability to "congregate with others and move about their housing area freely during out-of-cell time and . . . have access to education and programming," including access to at least seven hours a day of out-of-cell congregate programming or activities.

As discussed above, legislation introduced in 2021 and 2022 in Rhode Island would generally require that living conditions in restrictive housing approximate those in the general population, among them equal access to programming and services, contact with family, access to the library and reading materials, personal belongings in cell, and medical and mental health care.²²³ The legislation vetoed in 2021 in Connecticut would generally have required that access to social contact visits be allowed for all incarcerated people, except individuals with repeated contraband violations or if it is found at a hearing by clear and convincing evidence that denial of contact visits is necessary to protect against a substantiated threat of imminent physical harm or to prevent the introduction of contraband.²²⁴

E. Placing Time Limits on Alternatives

BEST POLICY COMPONENTS

- ✓ **Placing time limits on alternatives to solitary, such as 30 consecutive days and 60 days total in a year (New York City)**

With the intention of preventing warehousing of people in alternatives to solitary and in recognition that alternatives—even when protections are put in place—can become abusive or isolating, policies place time limits on alternatives. Adopted rules in New York City impose durational time frames with exceptions for each of the two levels of its alternative units, although the exceptions overtake the limits and make them ineffective. The city's adopted rules presume that people should move through

level 1 of the alternatives within 15 days and move through both of the two levels within 30 days, but the correction department can continually extend the time in each level every seven days if "the facility head and the Chief of the Department" determine that there is "specific, documented intelligence or information that the person poses a serious threat to safety if they were to leave that level."²²⁵

Legislation introduced in 2022 in New York City would have fixed durational limits in restrictive housing (involving access to 14 hours of daily out-of-cell time), without exception, of 30 consecutive days and 60 days total in any 12-month period.²²⁶ The bill would also require a multidisciplinary review within 15 days of placement in restrictive housing and mandate discharge if the person "has not engaged in behavior that presents a specific, significant, and imminent threat to the safety and security of other persons during the previous 15 days." As noted above, legislation introduced in 2021 in Nebraska—although not in the context of fully ending solitary—would generally prohibit restrictive housing for more than 90 days in a calendar year, with exceptions in specified individualized circumstances.²²⁷

F. Placing Restrictions on the Use of Restraints

BEST POLICY COMPONENTS

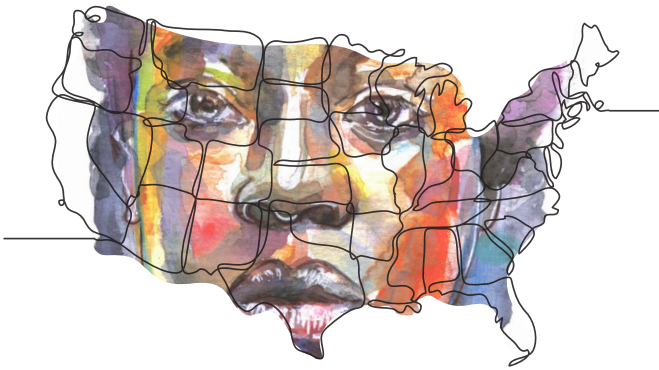
- ✓ **Prohibiting the use of restraints during out-of-cell time unless an individual caused serious physical harm or posed a threat of imminent physical harm**

To help ensure that alternatives to solitary create therapeutic and rehabilitative environments conducive to meaningful engagement and growth, and to avoid the dehumanization of keeping people in various forms of chains, policies have placed limits on the use of restraints. Adopted rules in New York City prohibit the use of restraints, including restraint desks, during out-of-cell lockout time, unless a person had recently caused serious physical injury to another person.²²⁸ As noted above, New York State law places a presumption against the use of restraints in alternative units, prohibiting restraints during out-of-cell activities unless an individual assessment is made that they are required because of a significant and unreasonable risk. Among other measures putting extensive restrictions on restraints, legislation vetoed in 2021 in Connecticut generally would have prohibited the use of physical restraints other than for purposes of transportation or in response to a "substantiated threat of imminent physical harm to another person as evidenced by recent conduct" only after de-escalation attempts, never during showers or exercise, and with a medical professional checking on the person and the restraints every two hours.²²⁹ Similarly, legislation introduced in 2021 in Pennsylvania would prohibit the use of restraint desks and shackles, as well as chemical agents.²³⁰

IN A SENSE, ONE CAN LOOK AT SOLITARY CONFINEMENT AS A MICROCOSM OF THE WHOLE SYSTEM.... AND HOW CAN ONE EXPECT TO CREATE ANY KIND OF REHABILITATION, WHICH UN-FORTUNATELY PRISONS STILL CLAIM THAT THEY REHABILITATE, IN THE CONTEXT OF THE KIND OF ISOLATION THAT HAPPENS IN THESE INSTITUTIONS? SO, SOLITARY CONFINEMENT NEEDS TO BE ABOLISHED, YES, BUT I THINK THAT IS A STRONG ARGUMENT FOR THE ABOLITION OF IMPRISONMENT AS THE DOMINANT MODE OF PUNISHMENT.

Angela Davis, quoted on Democracy Now (Angela Davis, Amy Goodman, and Juan González, "Part 2: Angela Davis on Solitary Confinement, Immigration Detention, and 12 Years a Slave," Democracy Now, March 6, 2014, (democracynow.org/2014/3/6/part_2_angela_davis_on_solitary.)

POLICY SOLUTIONS



With the groundwork laid by the best policies from jurisdictions across the country, and backed by growing evidence and public understanding of the devastating harms of solitary and the benefits of alternative interventions, local, state, and federal policymakers should adopt policies to end solitary confinement and provide more humane program-based models that better support individual well-being, transformation, and overall safety.

Specifically, policymakers should:

- 1) End solitary confinement for all people, other than for periods of minutes or hours for emergency de-escalation, and close prisons, jails, and other sites of detention dedicated to solitary confinement**
- 2) Implement alternatives that are the opposite of solitary and provide proven forms of separation involving full days of out-of-cell group program-based interventions**
- 3) Provide firm time limits on alternatives and on any form of restrictive housing**
- 4) Prohibit any involuntary lock-in for people who are most vulnerable to isolation**
- 5) Restrict the justifications for solitary or alternatives to the most egregious, acute acts that pose an imminent risk of physical harm**
- 6) Provide due process protections before any separation, including access to independent decision makers and representation**
- 7) Ensure meaningful oversight, accountability, and enforcement**

1) End Solitary Confinement for All People, Other Than for Periods of Minutes or Hours for Emergency De-escalation, and Close Prisons, Jails, and Other Sites of Detention Dedicated to Solitary Confinement

Given that even a brief time in solitary can cause devastating harm—without any benefit—and that solitary in fact worsens safety for everyone, policymakers should finally and fully end solitary confinement for all people, other than for periods of minutes or hours for purposes of emergency de-escalation. As discussed in this report, a large and growing number of jurisdictions have taken that approach in youth facilities, and several are claiming to fully end solitary confinement in adult incarceration. Also of note, over the past few decades a growing and now accelerated movement in adult mental health settings has caused the abandonment of the once very widespread practice of seclusion, a term for solitary confinement, because of the recognized harm of isolation. For example, in the 1990s, Pennsylvania's mental health hospitals dramatically restricted the use of seclusion to very few incidents, with an average length of just over one hour, and in the following decades they reduced it to the point of fully eliminating it—reporting shows that seclusion has not been used in Pennsylvania hospitals since 2013.²³¹ The reductions in seclusion (and in the use of restraints) were correlated with *fewer* assaults by patients.

Policymakers should adopt these approaches in adult prisons, jails, immigration detention centers, and other carceral settings, as well as in youth and mental health facilities. Based on best practices, there should be no involuntary lock-in other than at most eight hours at night for sleep and two hours during the day for count and other operations of the facility, regardless of the name of the unit or status a person is in. Beyond those time limits, involuntary confinement only should occur in an emergency situation as a last resort to de-escalate immediate conflict that has resulted in serious physical injury or makes imminent injury likely. Such confinement should last for only as short a time as is necessary to de-escalate such conflict and should not exceed four hours total immediately following such conflict, with staff rounding at least every 15 minutes and staff engagement at least every hour. Further, no one should be held in such confinement for more than four hours total in any 24-hour period or more than 12 hours total in any seven-day period. In turn, this elimination of solitary should be done in such a way as to close entire prisons, jails, and sites of detention currently used to inflict solitary.

2) Implement Alternatives That Provide Proven Forms of Separation Involving Full Days of Out-of-Cell Group Program–Based Interventions

In light of evidence about alternative interventions that not only are more humane than solitary but also actually work to improve safety, policymakers should implement alternatives that are the opposite of solitary confinement, with full 14-hour days out of cell involving congregate programming and activities without restraints and in group settings and shared spaces conducive to meaningful human interaction. Policymakers should adopt alternatives based on models proved to be effective that use separation without isolation. People should have access to the core programs, activities, and services available to people in the general facility population, with additional programming, services, and interventions designed to address the reasons why a person needs to be separated. Restricting out-of-cell time does nothing to improve safety, and inflicting catastrophic harm and causing people to deteriorate makes it more, not less, likely that people will engage in violent or difficult conduct.

By contrast, pro-social engagement- and program-based alternatives that involve full days out of cell lead to dramatic reductions in violence and improvements in safety. Examples like the Resolve to Stop Violence Project (RSVP) in San Francisco jails that involve full days of out-of-cell congregate programming and engagement show dramatic reductions in violence in carceral settings and in outside communities after people return home, as well as financial savings.²³² The RSVP program—which encompassed people convicted of assault, sexual violence, and other violent acts and people *repeatedly* convicted of “heinous crimes”—led to a precipitous drop in violence among participants, to zero incidents over an entire one-year period. Similarly, the Merle Cooper program in New York State was the opposite of solitary—with full days out of cell, extensive programming, and the ability to earn the right to not be locked in at night. It had positive outcomes on violence and was praised by staff, administrators, and participants.²³³ The CAPS program in the New York City jails is an alternative to solitary that is based on therapeutic approaches rather than punitive ones or isolation. The program provides full days out of cell and has shown positive outcomes for reducing violence and self-injury.²³⁴

To avoid “solitary by another name” and to actually improve safety, the formula of full days out of cell, with congregate programming and activities, should apply to all alternatives, separation, protective custody, and any form of housing that is more restrictive than that of the general facility population in hours out of cell, programming, services, congregate engagement with other people, visits, communications, amenities, or any other aspect of daily living.

3) Provide Firm Time Limits on Alternatives and on Any Form of Restrictive Housing

With people too often held in solitary confinement and alternative units for months, years, and even decades, policymakers should adopt firm time limits on the use of any and all alternatives to solitary or other forms of housing that are more restrictive than housing of the general facility population. Should there be implementation of the other recommendations, discussed above, such as ending solitary other than for brief periods immediately following an incident and ensuring that alternatives involved 14 hours out of cell with congregate programming and activities, there would still be still a need for firm time limits on those alternatives to ensure that people do not languish in them and that they do not become abusive environments. The length of the time limits on these units may depend on the nature of the units. If the units were in compliance with the other recommendations above and truly involved full days of out-of-cell time and congregate programming and activities in line with proven models, the time limit should be on the order of 60 to 90 days in any 12-month period with an individualized treatment plan for each participant. If, on the other hand, the units were more akin to solitary by another name, or had restrictions on out-of-cell time, programming, communications, visits, or other components, then the time limits should be more in line with the Mandela Rules’ maximum of 15 consecutive days in addition to total time limits in a 12-month period.

4) Prohibit Any Involuntary Lock-In for People Who Are Most Vulnerable to Isolation

Taking into account the particularly extreme harm of solitary for certain groups of people and given the growing number of states and localities that are prohibiting solitary for such categories of people discussed above, policymakers should have additional protections for people who are most vulnerable to the harms of isolation, including prohibiting any involuntary lock-in for these groups and providing the use of programming designed specifically for each subgroup. Specifically, policymakers should put in place additional protections for people 25 or younger, 55 or older, with mental health needs, with serious medical conditions, with disabilities, who are LGBTQI+, and who are pregnant, have recently been pregnant, or are new mothers.

Further, policymakers should require meaningful screenings and assessments to determine if someone is at risk for self-harm or fits into one of the categories and should be removed from solitary. Screening is needed to determine if a person being considered for some form of isolation is at risk for self-harm or whether the environment in which they would be placed is not safe for

them. In addition, there needs to be an assessment to determine individual needs, services, and programs, as well as whether people are or are not appropriate candidates for isolation or separation because they do not meet the criteria for separation or whether they may have a medical or mental health condition that could result in harm even if they were in isolation for a very short time period.

5) Restrict the Justifications for Solitary or Alternatives to Acts that Pose an Imminent Risk of Physical Harm

To forestall people being abusively sent to solitary, even for periods of hours, or to alternatives, and to ensure that resources needed for intensive alternative interventions are reserved for those who actually need such interventions, there should be clear restrictions on the justifications for placement in solitary and alternatives to the most egregious, acute conduct that causes, or poses a great imminent risk of causing, physical harm to another person.

People are often sent to solitary confinement or alternatives for relatively minor rule violations that do not pose a risk of harm to other people, such as, very commonly, allegedly refusing a staff order and, most absurdly, having too many postage stamps or slices of bread. People are also often sent as retaliation for filing grievances or otherwise standing up for their rights or those of other incarcerated people. Not only is separating a person from the general facility population for these reasons inappropriate, but also this type of conduct does not require an intensive intervention as outlined in the alternatives above.

Following an immersive experience with Norway's prison system, North Dakota took steps away from solitary confinement—limiting the practice to only serious violence that resulted in injury; enhancing mental health screenings and placement reviews to remove additional people from solitary; shifting from the imposition of rule violations to positive behavior reports; using alternative treatment-based units with enhanced out-of-cell time; and changing staffing credentials, training, and roles. Although the result is still a work in progress, the changes have led to reductions in the use of solitary, better relations between incarcerated people and staff, less use of crisis intervention, and generally positive impacts on violence.²³⁵

6) Provide Due Process Protections Before Separation, Including Access to Independent Decision Makers and Representation

Because the processes that result in solitary confinement and other forms of restrictive housing are often arbitrary, unfair, and infused with racial and other bias, there should be strong due process protections in effect before any such placements. For example, people facing the prospect of being separated from the general facility population should have the right to representation, including a right to appointed counsel, and should have a hearing before a neutral decision maker, one who is not employed by a corrections department or related entity. There are already examples of jurisdictions that currently allow for representation, such as New York State and New Jersey, noted above, as well as Washington DC, and Massachusetts.²³⁶

In addition, people in custody and any attorney of record should receive proper and timely notice of the charges against those who are accused and all relevant evidence. Further, given a history of staff falsely stating that people have refused to attend their hearings, with the result that those people are found guilty in absentia, any refusal by a person in custody to attend hearings should be videotaped and made part of the record. A failure to provide such notice or to enter into the record videotaped evidence of an alleged refusal to attend by a person in custody should constitute a procedural violation warranting dismissal.

7) Ensure Meaningful Oversight, Accountability, and Enforcement

To make certain that any and all protections related to solitary, restrictive housing, and alternatives are effectively implemented, and given the growing number of jurisdictions seeking oversight mechanisms, policymakers should implement meaningful oversight, transparency, accountability, and enforcement mechanisms.

Prisons, jails, youth facilities, immigration detention centers, and other carceral settings are public entities, or private entities contracted to operate with public funds. They are also systems that by their very nature are known to be ripe for abuse. Yet these settings are generally entirely closed institutions cut off from the rest of society with very little ability for the public to assess what is happening inside. While evidence recorded by individual cell phones in the outside community has given the general public an enhanced sense of the racist state violence inflicted by police departments, people who are incarcerated generally do not have that kind of access. There must be greater transparency, accountability, and enforcement to ensure that policies to restrict or end solitary actually bring about changes in practice.

There should be meaningful complaint mechanisms and a private cause of action—the right to bring suit—for incarcerated people to assert their rights and receive review and redress related to their placement and treatment in solitary and restrictive housing. Incarcerated people also should have access to at least some form of cell phone or tablet that allows them to easily communicate with the outside community and also to record abuses that happen in prisons, jails, youth facilities, immigration detention centers, and other carceral settings.

Moreover, all prison, jail, and detention systems should provide extensive public reporting requirements on the use of solitary confinement, alternatives, and other forms of restrictive housing, related to how many people are in solitary and alternatives and, at a minimum, lengths of stay; reasons for placement; number of separate admissions of a person during the reporting period; number of disciplinary charges issued to participants in alternative programs and sanctions imposed; demographics, including race, age, gender, and LGBTQI+ identification; mental health and medical status; special needs; pregnancy status; incidents of self-harm; suicide attempts and suicides; and deaths and causes of deaths. Public reporting should be done frequently, ideally monthly with semiannual and annual cumulative reporting.

There should be multiple oversight mechanisms to bring about effective implementation in addition to judicial oversight through strengthening rights of incarcerated people to sue, noted above. Media, as well as members of the legislature and their staff, should be granted access to prisons, jails, youth facilities, immigration detention centers, and other carceral settings and to the people incarcerated in those facilities as well as staff. Similarly, there should be ombudspersons with the ability to investigate both individual complaints and systemic issues. There should also be independent, nonstate, designated community oversight bodies composed of people who have lived through solitary, people who have had loved ones in solitary or lost loved ones because of solitary, faith leaders, medical and mental health professionals, civil and human rights advocates, and other community leaders. The media, legislators, ombudsperson offices, and community oversight bodies should have unfettered access to all facilities—and to all their areas—the ability to make unannounced visits, the right to confidential interviews with people who are incarcerated as well as staff and administrators, and full and timely access to data and information. For ombudsperson offices and the community oversight bodies, corrections agencies should be required to respond in writing to any findings of these bodies and to implement remedial actions in response to recommendations.

CONCLUSION

The United States is at a pivotal moment with respect to solitary confinement. Local, state, and federal carceral systems across the country continue to inflict torture on a massive scale. At the same time, there is a growing movement led by people who have lived through solitary and people who have, or have lost, loved ones in solitary, along with their allies in the faith, mental health, medical, human rights, and racial justice communities, to end this systemic abuse and promote alternatives that treat people more humanely and produce better outcomes for everyone. In turn, states and localities are introducing an increasing number of policy changes across the country. The depth and pace of these reforms is accelerating and spreading to more and more jurisdictions every year.

With the growing successes of this movement, some officials are right now attempting to co-opt its rhetoric and goals without actually making changes. A few jurisdictions are claiming that they have ended or are ending solitary confinement, but as has often happened previously, they are continuing the same practices of solitary confinement but using different names or making minor tweaks that do not address the root harms of solitary, namely, the social isolation imposed.

A tremendous opportunity is available to build off the growing momentum and widespread, bipartisan support for ending solitary confinement. Local, state, and federal officials must heed the call of this large national movement and adopt and implement policies that truly and fully end solitary confinement and replace it with practices that better promote individuals' well-being and improve safety inside carceral settings and in outside communities.

Implementing real and meaningful restrictions and bans on solitary confinement will help terminate this form of government torture, relieve immense suffering, save lives, better support people while they are incarcerated and in preparation for their return home, and improve safety for everyone. If done in a real and transformational way, ending solitary will also help support efforts at decarceration and must be one part of a broader effort to dismantle the racist and abusive incarceration system.

Now is the moment to act.



Learn more about reform progress and resources to end solitary confinement at: unlocktheboxcampaign.org

ACCORDING TO THE DATA, SOLITARY CONFINEMENT/RESTRICTIVE HOUSING IS USED IN A RACIALLY DISCRIMINATORY MANNER, WITH PEOPLE OF COLOR REPRESENTING MORE THAN 70 PERCENT OF PEOPLE IN SUCH CONFINEMENT.

WE MUST CONTINUE TO RESIST THESE SYSTEMS OF SEGREGATION, WORKING TOGETHER TO IMPROVE THE POLICIES. CORRECTIONS SHOULD BE FOCUSED ON REHABILITATION AND MORE ACCESS TO PROGRAMS THAT WILL RETURN PEOPLE BETTER TO OUR COMMUNITIES.

SOLITARY BY ANY NAME MUST END. REAL ALTERNATIVES, NOT TORTURE, IS THE GOAL. CHANGING NAMES OF THE TORTURE WILL NOT CHANGE THE OUTCOME.

Cassandra Bensahih, formerly incarcerated mother
and coordinator of Massachusetts Against Solitary Confinement

ENDNOTES

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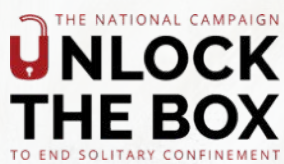
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The Unlock the Box Campaign is a coalition of organizations and movement leaders who partner with state and local campaigns across the United States working to end the use of solitary confinement for all people.

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