

# What Can Reforming Solitary Confinement Teach Us About Reducing Mass Incarceration?

**It's not about non-violent offenders. And it won't be cheap.**

By Taylor Pendergrass. Posted on Tuesday, October 13, 2015 at 7:15 a.m.

Although it would have been hard to believe even several years ago, reform of solitary confinement is starting to look inevitable. For decades, a small movement of the incarcerated and their families, advocates, medical and mental health professionals, and forward-thinking corrections leaders labored against solitary confinement with only rare, incremental, and quiet success. Compare that to the last few years: two of the largest prison systems in the country (California and New York) announced major solitary reforms, solitary confinement was front and center at three U.S. Senate hearings, 15 states considered reform legislation last year, Justice Anthony Kennedy all but invited a constitutional challenge to the practice, President Obama advocated reform, and the national organization of corrections executives called solitary a “grave problem.”

Anyone looking seriously at solitary confinement is no longer debating whether it is a massive and tragic failure. Instead, the critical questions have become: what are the solutions, and how far will they go?

In every important respect, the search for a way out of solitary confinement mirrors the effort to reduce mass incarceration. While there is much low-hanging fruit, the ultimate success of both movements — curbing the use of solitary and seriously reducing prison populations — will come down to the same question: can we respond to violence differently?

The expansion of solitary confinement in the U.S. exploded alongside new prison construction, both driven by “tough on crime” politics. Just as “zero tolerance” policing and harsh sentencing practices flooded jails and prisons, the same philosophies inside prisons swelled the population of people in solitary — who are disproportionately young, black men. As the mentally ill were incarcerated in the absence of treatment, prisons had neither the resources nor the disposition to do anything other than to put them into solitary, their own “prison-within-a-prison.”

Today, solitary units are simply a microcosm of our prisons: a mix of non-violent rulebreakers, individuals with mental illness, the vulnerable, activists, innocents, and people who have committed dangerous, sometimes deadly acts. Everyone suffers, many get worse, and then they are released back to the general prison population or to the streets.

There seems to be an emerging consensus that the most vulnerable — juveniles and the mentally ill — and people engaged in non-violent behaviors — such as substance abuse, petty rule violations, or mere gang affiliation — should not be in solitary.

But limiting reforms to the most vulnerable and least menacing would leave untouched the underlying cause of violence, and would do little to guard against a future resurgence of solitary confinement should political winds shift

again. It would be a short-lived victory.

The reality is that most correctional systems are woefully unprepared to respond to violence in any way other than segregation. Like the criminal justice system as a whole, American corrections has long emphasized punishment over rehabilitation, and solitary confinement is the bedrock of that system. This is why corrections officers fiercely resist solitary reforms, despite widespread evidence that well-implemented reforms to solitary do not decrease safety and result in higher staffing ratios and better working conditions for staff. (Notably, not all unions are opposed). Some corrections staff simply cannot imagine a safe prison environment where solitary confinement is not readily at their disposal. This lack of vision is regrettably understandable given that little attention has been paid to any other kind of response.

Eliminating solitary confinement will require more than just a policy change or closing a cell block. A comprehensive approach to eliminating solitary confinement will require a cultural change touching every part of the corrections system. It must begin by reorienting corrections away from punishment and dehumanization, and toward rehabilitation and dignity. That will require extensive retraining, better compensation, and additional staffing. It will require robust oversight ensuring that corrections officers are imposing far more proportionate discipline balanced with positive reinforcement, and that they are intervening and de-escalating disputes well before long-term isolation is even a consideration.

Even in the best of futures, there will still be incidents of serious violence inside prisons. In these rare cases, there is a clear need to temporarily separate someone who poses a direct threat. There is no justification, however, for maximizing isolation and deprivation as we do in solitary confinement units.

The widespread use of solitary confinement reflects a longstanding philosophical belief that the highest-risk, hardest-to-handle individuals merit the least attention and the fewest resources. To eliminate solitary confinement, we will need to do the exact opposite. To actually reduce the risk of future violence in these cases — rather than just locking someone up in a concrete box for 23 hours a day and ignoring the problem — requires nuanced assessment and attention from highly trained professionals. States rethinking solitary confinement have shown it is effective to treat high-risk individuals humanely in units that deliver targeted rehabilitative programming and that maximize out-of-cell contact in an environment that *requires* social interaction, as opposed to modern solitary units that do everything possible to limit human contact. These approaches have proven successful in reformed juvenile justice systems in the United States and correctional systems in Europe that have long had lower recidivism rates with far shorter prison sentences.

This approach takes resources, some of which can be reallocated as the vulnerable and non-violent are removed and solitary units are depopulated and closed down. The “justice reinvestment” principle — ensuring that savings from reducing mass incarceration are reallocated back into the system in order to improve safety — is equally applicable when it comes to reducing solitary confinement. Corrections systems must be permitted to retain and reinvest a significant portion of the savings from reducing solitary back into their own systems, as an incentive for reform and to achieve the fundamental shift described above that will benefit long-term public safety. We invested hundreds of millions of dollars in constructing prison cells that were built for solitary confinement. It should come as no surprise that additional money will be required to deconstruct these punitive environments and create the physical spaces necessary for effective and humane alternatives.

Given the current momentum to reform solitary confinement, and the fact that these practices can often be changed by correctional agencies without the need for any legislation, there is good reason to believe reforms to solitary confinement will proceed more quickly than reforms to mass incarceration. Successfully reforming solitary could

show the way for a more radical downsizing of our prisons and jails, by persuading crime victims, policymakers, and the public that a less punitive strategy — shorter sentences, real rehabilitation — can deliver both safety and accountability.

Just as removing the vulnerable and non-violent from extreme isolation units will not eliminate solitary confinement, removing drug users and other non-violent offenders will not solve the problem of mass incarceration. In both cases, to achieve the sweeping reforms we need, there must be a new approach to violence.

*Taylor Pendergrass is a senior staff attorney at the New York Civil Liberties Union. The views expressed here are his own.*

**The Marshall Project**

156 West 56th Street, Suite 701

New York, NY 10019

212-803-5200