

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



**FINAL REPORT**

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## **Use of this Report**

This Report was drafted to provide an overview of restrictive housing in the American criminal justice system and propose recommendations for safely reducing the use of this practice. The Report is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Nothing in this Report, including the policy recommendations and the “Guiding Principles” included in Part Three, should be construed to impair or otherwise affect the authority granted by law to a department or agency, or the head thereof, or the functions of government officials relating to budgetary, administrative, or legislative proposals. Recommendations will be implemented only as consistent with applicable law and subject to the availability of appropriations. Both implementation and application of policy recommendations and Guiding Principles involve the exercise of judgment of relevant Department officials.

## Introduction

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

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

After completing this review, we have concluded that there are occasions when correctional officials have no choice but to segregate inmates from the general population, typically when it is the only way to ensure the safety of inmates, staff, and the public and the orderly operation of the facility. But as a matter of policy, **we believe strongly this practice should be used rarely, applied fairly, and subjected to reasonable constraints.** The Department believes that best practices include housing inmates in the least restrictive settings necessary to ensure their own safety, as well as the safety of staff, other inmates, and the public; and ensuring that restrictions on an inmate’s housing serve a specific penological purpose and are imposed for no longer than necessary to achieve that purpose. When officials determine that an inmate must be segregated from the general population, that inmate should be housed in safe, humane conditions that, ideally, prepare the individual for reintegration into both the general prison population and society at large.

The stakes are high. Life in restrictive housing has been well-documented—by inmates, advocates and, on occasion, correctional officials themselves.<sup>1</sup> In some systems, the conditions can be severe; the social isolation, extreme. At its worst, and when applied without regard to basic

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<sup>1</sup> See, e.g., Rick Raemisch, *My Night in Solitary*, N.Y. TIMES, Feb. 20, 2014, at A25; Leslie Linthicum, *New Mexico Prison Boss Does Solitary*, ALBUQUERQUE J., Jun. 8, 2014, at A1.

standards of decency, restrictive housing can cause serious, long-lasting harm. It is the responsibility of all governments to ensure that this practice is used only as necessary—**and never as a default solution.**

But just as we must consider the impact on inmates, so too must we consider the impact on correctional staff. These public servants work hard, often for long hours and under difficult conditions, and we must protect them from unreasonable danger. Correctional officers need effective tools to manage the most challenging inmates and protect the most vulnerable.

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

Some of the recommendations in this Report will be implemented in the near future; others will take additional resources or may be subject to collective bargaining. As this Report makes clear, the current budget environment complicates efforts to undertake widespread changes, especially at the Bureau. Over the past three decades, the federal prison population has expanded considerably, without commensurate increases in the number of correctional staff to manage prison facilities. For years, the Bureau has been asked to do more and more, putting strain on its officers and other staff. The inmate populations most affected by restrictive housing—the violent, the disruptive, the vulnerable, and those with mental illness—often require the greatest resources, and many new programs for these high-risk inmates will require money and manpower.

The Report proceeds in several parts. It begins with an overview of restrictive housing, including a definition of terms, a short history of the practice in America, and a summary of data collection and research issues. The bulk of the Report then focuses on the use of restrictive housing within the Bureau, with a description of its segregation units and alternatives to segregation. The Report then turns to other correctional systems at the federal, state, and local level. It starts by examining the Department's other detention program: the pre-trial housing of federal criminal defendants, overseen by the United States Marshals Service (USMS). The Report then considers a number of state and local jurisdictions that have implemented innovative reforms to reduce their reliance on restrictive housing, and examines how the Justice Department can spur widespread adoption of these practices. For comparison purposes, the Report also examines the use of restrictive housing in the immigration detention system, overseen by the Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE). The Report concludes with a statement of aspirational principles to guide the use of restrictive housing within the criminal justice system, as

well as a list of specific policy changes that the Justice Department is prepared to undertake to put those principles into effect.

## Overview of Restrictive Housing

Although virtually every correctional system in America segregates prisoners from the general inmate population under certain circumstances, there is little agreement on the terms used to describe the practice.<sup>2</sup> One of the goals of this document is to create a uniform set of definitions that permit cross-system comparisons.

The most recognizable term for inmate segregation—“solitary confinement”—is disfavored by correctional officials, in part because it conjures a specific, and in some cases misleading, image of the practice. Not all segregation is truly “solitary,” at least in the traditional sense of the word. Many prison systems, including the Bureau, often house two segregated inmates together in the same cell, a practice known as “double-celling.” To avoid this confusion, the Report adopts the more general terms, “restrictive housing” and “segregation.”

For the purposes of this Report, we define “restrictive housing” as any type of detention that involves three basic elements:

- Removal from the general inmate population, whether voluntary or involuntary;
- Placement in a locked room or cell, whether alone or with another inmate; and
- Inability to leave the room or cell for the vast majority of the day, typically 22 hours or more.

Even this definition, however, leaves substantial room for variation. Restrictive housing takes many forms, and an inmate’s experience in segregation can vary considerably depending on certain external factors, such as length of stay, conditions of confinement, and degree of social isolation, as well as factors specific to each inmate, such as age and psychological resiliency. As this Report makes clear, it is not enough to say that an inmate is in “restrictive housing” (or “solitary confinement,” for that matter); it is just as important to know the details of the placement.

## Subcategories of Restrictive Housing

Practitioners and academics have developed several ways to classify the many types and variations of restrictive housing. One of the most useful classifications focuses on the *purpose* of the segregation, which underscores the importance of linking the use of restrictive housing to a

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<sup>2</sup> Some commonly—and inconsistently—used terms are: “administrative close supervision,” “administrative confinement,” “administrative detention,” “administrative maximum,” “administrative segregation,” “departmental segregation,” “disciplinary segregation,” “inmate segregation,” “lockdown,” “seclusion,” “security control,” “security housing unit,” and “special management unit.”



specific penological justification. We have identified five “purpose-based” categories of segregation:

- **Investigative segregation.** Most correctional systems allow for the immediate placement of an inmate in restrictive housing while officials attempt to determine whether longer-term placement is appropriate for one of the reasons discussed below. Investigative segregation is considered non-punitive, much like pre-trial detention in a criminal proceeding. An inmate remains in investigative segregation until officials adjudicate the longer-term need for restrictive housing—at which point the inmate either remains in segregation for the specified reason or returns to the general population.
- **Disciplinary segregation.** Disciplinary segregation is designed to punish an inmate for violating a specific disciplinary rule. The inmate is typically placed in segregation for a determinate term—akin to a prison sentence in a criminal proceeding—and then either released back to general population or transferred to another facility. Disciplinary segregation is one of several types of punishment typically available in the prison disciplinary system, along with the revocation of inmate privileges and other sanctions.
- **Protective segregation (or protective custody).** Protective segregation is designed to protect an inmate from a real or perceived threat within the prison. The inmate is typically placed in segregation for an indeterminate term and returned to the general population once the threat dissipates.
- **Preventative segregation.** Preventative segregation is designed to prevent an inmate from threatening the safety and order of the institution. Unlike disciplinary segregation, this form of restrictive housing is not used to punish a specific disciplinary violation, but instead relies on the belief that an inmate is simply “too dangerous” to be housed in general population. The inmate is typically placed in preventative segregation for an indeterminate term, which lasts until prison officials conclude that the inmate can be housed safely in a less restrictive setting. (Some scholars refer to this practice as “administrative segregation,”<sup>3</sup> a phrase that we decline to use primarily to avoid confusion with “administrative detention,” the Bureau’s term for a broader range of non-punitive restrictive housing.)
- **Transitional segregation.** At the end of an inmate’s stay in restrictive housing for one of the reasons stated above, some institutions will keep the inmate in segregation for a period of time while waiting to transfer him or her to a new location, often when bed space is not

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<sup>3</sup> See, e.g., Hope Metcalf, et al., “Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies,” Liman Public Interest Program, Yale Law School, June 2013.

available at the destination facility. Transitional segregation is non-punitive and indeterminate, although typically relatively brief.

Not all correctional systems use all (or any) of these terms. Most systems draw some sort of distinction between punitive and non-punitive segregation, although there is substantial variation in terminology and use. The Bureau, for example, allows the placement of inmates in segregation for all five of the reasons listed above, although the agency classifies most placements as either “administrative detention status” (which includes investigative, protective, preventative, and transitional segregation) or “disciplinary segregation status.” Other detention systems use the term “administrative segregation” to refer only to long-term, non-punitive segregation (which this Report calls preventative segregation). As discussed later, this lack of consistent definitions complicates efforts to collect reliable data about the use of segregation across multiple jurisdictions.

It is also possible to classify segregation units based on the *type and location* of the housing. We have identified three general categories:

- **“On-site” segregation units.** Many correctional facilities have dedicated, on-site restrictive housing units, typically in a wing or pod separated from the rest of the prison population. Oftentimes, these segregation units are used for multiple forms of restrictive housing (*e.g.*, investigative, disciplinary, protective, preventative, and transitional segregation) and often with only minimal differences in the conditions of confinement based on the reason for segregation. At the Bureau, these units are called “Special Housing Units” (SHU), which are located at 111 facilities and house the vast majority of federal prisoners in restrictive housing.
- **Specialized, or “mission-specific,” segregation units.** Many correctional systems also have specialized, or “mission-specific,” segregation units that house certain categories of inmates who pose particular management challenges within the general population (*i.e.*, gang members, law enforcement cooperators, sex offenders, inmates with serious mental illness). These units typically operate within a larger institution, but are separated from the general population and offer some degree of specialized services or programming.
  - It is important to note, however, that not all mission-specific units qualify as “restrictive housing.” Some require that inmates remain locked in their cells for 22 hours per day or more, while others impose considerably fewer restrictions and indeed serve as attractive alternatives to restrictive housing. This Report includes recommendations to expand several of the Bureau’s mission-specific units as a way to reduce the number of inmates housed in SHU.
- **“Supermax” facilities.** Many correctional systems operate one or more “supermax” facilities, which typically house the most disruptive and violent inmates in the prison

system, and often for longer periods of time than such inmates would normally be placed in on-site segregation units. Many supermax facilities do not include open, “general population” units; all inmates are housed in segregation conditions. The Bureau operates one supermax facility: the United States Penitentiary (USP) Administrative Maximum (ADX), in Florence, Colorado, which houses less than a quarter of a percent of all Bureau inmates at any given time.

It is important to distinguish between terms that describe the type of housing and the purpose of the segregation. Within the Bureau, for example, an inmate subject to “preventative segregation” could be housed in SHU or the ADX, depending on the circumstances. Similarly, an inmate could be placed in SHU for any number of punitive or non-punitive reasons.

## **A Short History of Restrictive Housing**

Restrictive housing has long been a feature of America’s prisons. The justifications for its use have varied over time, as has acceptance of the practice.

Solitary confinement gained popularity in the late 18th and early 19th century, when prison reformers in Pennsylvania promoted the practice as a pathway to repentance and rehabilitation. Led by the Quakers, this movement resulted in the opening in 1829 of the Eastern State Penitentiary in Philadelphia. Prisoners spent their days in silence, with virtually no human contact and little more than a Bible in their cell. At first, the institution was hailed as a symbol of progressive religious values, and the model spread to nearby states and to Europe. Over time, however, critics questioned whether the total isolation of the “Pennsylvania System,” as the method was called, actually promoted the rehabilitation its adherents promised.<sup>4</sup> Some claimed that the extreme practices caused mental illness. In 1842, Charles Dickens visited the Eastern State, writing afterwards that the isolation caused damage “worse than any torture of the body.”<sup>5</sup> Eventually, the Pennsylvania System fell into disfavor, superseded by penal methods that combined solitude with congregate labor.

In 1890, the U.S. Supreme Court issued an opinion criticizing the harsh methods of the Pennsylvania System, describing the “serious objections” to solitary confinement that emerged earlier in the century:

A considerable number of prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still committed suicide, while those who stood the ordeal better were

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<sup>4</sup> Barbara Belbot, *Eastern State Penitentiary*, in *ENCYCLOPEDIA OF PRISONS AND CORRECTIONAL FACILITIES* (Mary Bosworth ed., 2005).

<sup>5</sup> CHARLES DICKENS, *AMERICAN NOTES FOR GENERAL CIRCULATION 297* (Pollard & Moss 1884).

not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.<sup>6</sup>

Even as practice declined in use, some prisons still used segregated housing to isolate the most difficult and disruptive prisoners. In 1934, the federal government opened Alcatraz in San Francisco Bay. Most prisoners were permitted to eat and recreate together, although particularly dangerous inmates were housed in the “Treatment Unit,” better known as “D-Block,” where inmates were locked in their cells for 24 hours a day, typically with one hour in the recreation yard per week.

The 1970s and early 1980s marked the beginning of a “modern” era in restrictive housing. Several factors contributed to the trend. As the inmate population increased, so too did prison overcrowding. Many institutions were forced to scale back programming for prisoners, creating more idle time. Newly organized street gangs expanded their influence inside the prison system. Disturbances erupted into riots, sometimes consuming entire institutions. Correctional officers, already stretched thin, needed ways to control the inmate population, and placing the most disruptive inmates in restrictive housing was often considered the quickest and most effective solution.<sup>7</sup>

At the same time, the United States was in the middle of a decades-long transformation in how it treated people with serious mental illness. Inadequate community-based mental health and substance abuse treatment services, coupled with a lack of diversion programs, contributed to the increase in criminal justice involvement for individuals with mental illness. In subsequent years, correctional systems reported growing numbers of inmates with psychological disorders.<sup>8</sup> Providing intensive mental health services within correctional facilities put additional strain on limited resources.<sup>9</sup>

The various factors that drove the rising use of restrictive housing collided in the early 1980s. In October 1983, two correctional officers at USP Marion, in Illinois, were murdered in separate incidents on the same day. Around the same time, the prison experienced a number of inmate murders, as well as several high-profile escape attempts, including two involving hijacked aircraft. USP Marion was ultimately placed on permanent “lockdown,” and remained so for twenty-three years. In the following years, correctional systems across the country began constructing prisons designed solely to house inmates in long-term segregation. In 1989, California opened Pelican Bay

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<sup>6</sup> *In re Medley*, 134 U.S. 160, 168 (1890).

<sup>7</sup> CNA ANALYSIS & SOLUTIONS, FEDERAL BUREAU OF PRISONS: SPECIAL HOUSING UNIT REVIEW AND ASSESSMENT 25-28 (2014) (“CNA AUDIT”).

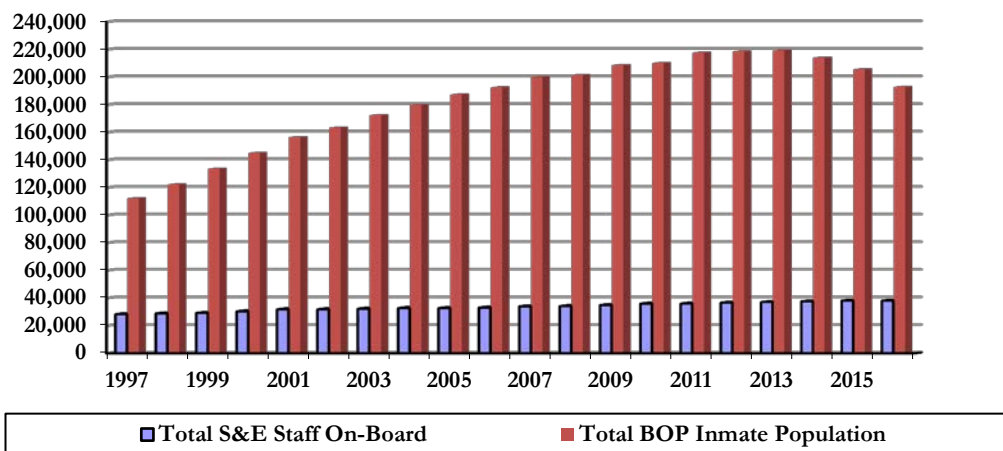
<sup>8</sup> Rich, J.D., et al., “Medicine and the Epidemic of Incarceration in the United States,” *New England Journal of Medicine*, (1991), 364:22, 2081-2083.

<sup>9</sup> H. Richard Lamb & Linda E. Weinberger, *The Shift of Psychiatric Inpatient Care from Hospitals to Jails and Prisons*, 33 J. AM. ACAD. PSYCHIATRY LAW 529, 532 (2005).

State Prison, one of the first supermax institutions. In 1994, the Bureau opened the ADX in Florence, Colorado, designed as a state-of-the-art facility for the “worst of the worst,” thus taking over the mission of USP Marion. By 1999, more than 30 states operated some form of supermax facility.<sup>10</sup>

In the 1990s and 2000s, correctional systems worked hard to manage their growing inmate populations. As with many other prison systems, the Bureau experienced a substantial increase in the total number of inmates—but without a corresponding increase in the number of correctional staff. The rising inmate-to-officer ratio put additional stress on the Bureau’s operations. Between 1997 and 2007, for example, the total number of inmates in the Bureau’s custody increased by more than 87,000 (approximately 78%), while the total number of Bureau staff increased by less than 5,700 (approximately 20%). The chart below demonstrates this trend:<sup>11</sup>

**Bureau Inmate Population, as Compared to Bureau Staff (1997-present)**



In the mid-2000s, the Federal Bureau of Prison experienced a spike in prison violence, including the murder of a correctional officer. In response, the Bureau implemented several additional measures, including harsher penalties for inmates who violated disciplinary rules. In addition, the Bureau created a new restrictive housing program, known as “Special Management Units” (SMU), to house particularly violent inmates, including gang members. By 2012, more than 2,000 inmates were housed in the SMU program.

<sup>10</sup> CHASE RIVELAND, NATIONAL INSTITUTE OF CORRECTIONS, SUPERMAX PRISONS: OVERVIEW AND GENERAL CONSIDERATIONS (1999).

<sup>11</sup> The chart compares the total number of Bureau employees funded by Congressional appropriations for salaries and expenses (“S&E”) with the total number of inmates in Bureau custody (*i.e.*, both Bureau-operated and private contract facilities).

The rising number of American inmates in restrictive housing has attracted the attention of Congress and the courts. In June 2012 and February 2014, the U.S. Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Human Rights, held hearings on the use of restrictive housing, with Bureau Director Samuels testifying at both. After the second hearing, Senator Richard Durbin (D-IL) asked the Bureau to conduct an independent audit of its restrictive housing practices, which the Bureau agreed to do. The Bureau retained CNA Analysis & Solutions, which published its findings and recommendations in December 2014 (the “CNA Audit,” a copy of which is included in the Appendix to this Report).

In March 2015, while testifying before the U.S. House of Representatives Committee on Appropriations, Subcommittee on Financial Services and General Government, U.S. Supreme Court Justice Anthony Kennedy criticized the use of “solitary confinement” in American prisons, stating that the practice “literally drives men mad.”<sup>12</sup> Four months later, in June 2015, Justice Kennedy issued a five-page concurrence in *Davis v. Ayala*, in which he criticized the practice of placing inmates in “near-total isolation.”<sup>13</sup> In that opinion, Justice Kennedy also raised the possibility that the Court could address the issue of restrictive housing more directly in the future, writing that, “[i]n a case that presented the issue, the judiciary may be required, within its proper jurisdiction and authority, to determine whether workable alternative systems for long-term confinement exist and, if so, whether a correctional system should be required to adopt them.”<sup>14</sup>

In recent years, a growing chorus of correctional officials, policymakers, and reform advocates has called for substantial limitations on the use of restrictive housing, in the United States and abroad. A number of correctional systems have modified their restrictive housing programs, resulting in significant declines in their segregation populations. (Several of these jurisdictions are discussed in the “Restrictive Housing in the States” section of this Report.) In the 2010s, the Bureau also experienced a decline in its restrictive housing population, which coincided with a reduction in inmate-on-staff assaults at Bureau facilities.

## **Data and Research on Restrictive Housing**

There are significant gaps in what we know about restrictive housing. These gaps begin at the most basic level, resulting from inconsistent terminology and unreliable methods of data collection, and extend to broader policy questions about the effectiveness of the practice and its effects on inmates and staff. Absent any national standards on what constitutes “restrictive housing,” it is extremely difficult to make the apples-to-apples comparisons necessary to understand how the practice varies by jurisdiction.

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<sup>12</sup> *Justice Kennedy’s Plea to Congress*, Editorial, N.Y. TIMES, Apr. 5, 2015, at SR10.

<sup>13</sup> 576 U.S. \_\_\_, 135 S. Ct. 2187, 2210 (2015) (Kennedy, J., concurring).

<sup>14</sup> *Id.*

One of the simplest questions about restrictive housing is also among the most difficult to answer: How often is it used? Estimates vary substantially, in part due to differing definitions. Before discussing recent studies, however, it is helpful to review the various ways one can measure the use and extent of restrictive housing in American prisons. The most common type of information is “prevalence” data, which provides a snapshot of the inmate population at a specific moment in time. But prevalence data alone says little about the number of inmates exposed to segregation over time; for that information, it is necessary to collect information on the “incidence” of restrictive housing, as well as data on the “length of stay.” The three are summarized below:

- **Prevalence.** Prevalence data refers to the number of inmates in restrictive housing at a particular moment in time—a “snapshot” of segregation. Prevalence data might show, for example, that a prison housed 30 inmates in segregation on January 15, and that it also housed 30 inmates in segregation on July 15. The drawback of prevalence data is that, absent additional information, it is impossible to know if all 30 of the January 15 inmates remained in segregation through July 15, or if some of them cycled out of segregation and were replaced by a new set of inmates.
- **Incidence.** Incidence data captures the number of new inmates placed in restrictive housing during a period of time; the “inflow” and “outflow” of segregation. Incidence data solves the problem identified above: if a prison knows that no new inmates entered segregation between January 15 and July 15, then it can conclude that the 30 inmates housed in segregation on January 15 remained there six months later. Incidence data is useful because it provides the “turnover” rate, which in turn reveals how often the prison is placing inmates in restrictive housing. In calculating incidence data, it is also important to know the number of “unique” placements in restrictive housing. A prison might make 30 segregation “placements” during a six-month period, but that statistic, taken alone, does not account for repeat offenders.
- **Length of stay.** Length of stay describes how long an inmate is continuously housed in segregation. In calculating this number, it is important that correctional systems account for changes in an inmate’s status while in segregation. Consider an inmate who gets into a fight while in general population. The inmate might spend 20 days in “investigative segregation” while officials attempt to determine responsibility; if the inmate is ultimately found guilty of the violation, he or she might receive an additional 40-day term of “disciplinary segregation.” Some prisons might capture this as two, distinct placements in segregation (20 days and 40 days), but the true length of stay is 60 days.

In August 2015, the Liman Program at Yale Law School partnered with the Association of State Correctional Administrators (ASCA) to produce one of the most comprehensive estimates in recent years on the prevalence of restrictive housing nationwide (the “2015 ASCA-Liman Survey”). Among other things, the survey asked jurisdictions for the total number of prison inmates in *any* form of restrictive housing as of a specific date in fall 2014. Thirty-two states, the

District of Columbia, and the Bureau of Prisons responded, reporting a combined 66,522 inmates in restrictive housing, or approximately 6.3% of their combined inmate population. If those numbers were illustrative of the jurisdictions that did not respond, ASCA-Liman extrapolated, then the number of inmates in restrictive housing nationwide would be approximately 80,000 to 100,000, not counting jails, juvenile facilities, or immigration and military detention.<sup>15</sup> The survey also found that approximately 32,000 inmates across 41 jurisdictions were housed in “administrative segregation,” which ASCA-Liman defined as housing “inmates in a cell (either alone or with a cellmate) for most of their day (approximately 22-23 hours a day), and lasting thirty days or more, but excluding those placed in punitive segregation and protective custody.”<sup>16</sup>

In October 2015, the Justice Department’s Bureau of Justice Statistics (BJS) released its own report on the use of restrictive housing in the United States. The study used data collected from the most recent National Inmate Survey (NIS), which was administered to more than 91,000 inmates in American jails and prisons between February 2011 and May 2012. Based on the results, the study estimated that, on an average day in 2011-12, up to 4.4% of inmates in state and federal prisons and up to 2.7% of jail inmates were held in “administrative segregation or solitary confinement.”<sup>17</sup>

But the BJS survey went further than prevalence rates; it also calculated the percentage of inmates who had spent *any* time in restrictive housing during a 12-month period,<sup>18</sup> as well as the amount of time they spent there. For example, when asked whether they had spent any time in “disciplinary or administrative segregation, or solitary confinement” during the past 12 months, 18.1% of prison inmates responded “yes.” More than half of the prisoners responding affirmatively—or 9.5% of the total prison respondents—stated that they had spent 30 days or more in segregation.<sup>19</sup> The survey found that certain categories of prison inmates were particularly likely to have reported spending time in restrictive housing during the past 12 months, including prisoners who were aged 18-19 (30.9%); who reported suffering from serious psychological distress (28.9%); who identified

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<sup>15</sup> LIMAN PROGRAM & ASSOCIATION OF STATE CORRECTIONAL ADMINISTRATORS: TIME-IN-CELL: THE ASCA-LIMAN 2014 NATIONAL SURVEY OF ADMINISTRATIVE SEGREGATION IN PRISON 3 (2015).

<sup>16</sup> *Id.* at 7, 10.

<sup>17</sup> ALLEN J. BECK, BUREAU OF JUST. ASSISTANCE, USE OF RESTRICTIVE HOUSING IN U.S. PRISONS AND JAILS, 2011-12, at 1 (2015). As used throughout this Report, “jail” refers to a locally operated, short-term facility that hold inmates awaiting trial or sentencing, or for short terms of incarceration, typically shorter than a year; while “prison” refers to a correctional facility designed primarily to house inmates for their terms of incarceration, typically a year or longer.

<sup>18</sup> Or the total amount of time the inmate had spent in the facility, if less than twelve months.

<sup>19</sup> *Id.* at 3. For jail inmates, 17.4% percent responded that they had spent some time in restrictive housing during the past 12 months, of which nearly a third reported that the segregation lasted 30 days or longer.



as lesbian, gay, or bisexual (27.8%); or who were held for a violent crime other than a sex offense (24.6%).<sup>20</sup>

Although these estimates provide valuable insight into the widespread use of segregation, they cannot answer important policy questions: Does restrictive housing make prisons safer? Does the practice facilitate or inhibit an inmate's rehabilitation? What are the long-term effects on inmates? What are the practice's effects on staff?

Researchers have investigated the behavioral and psychological effects of restrictive housing over the years. We have included a list of frequently cited studies in the Appendix. The purpose of this Report, however, is not to synthesize the body of scientific research in this area; our goal, instead, is to identify ways to reduce the use of restrictive housing in American prisons and jails.

In October 2015, the National Institute of Justice—the research, development, and evaluation agency of the Justice Department—sponsored a two-day meeting on the use of restrictive housing in America. This meeting brought together stakeholders from across the nation, including leaders from departments of corrections, criminal justice and correctional scholars, advocacy and special interest groups, as well as federal partners, to identify key issues in the practice of restrictive housing. At the conclusion of the meeting, participants identified key research questions:

- How do jurisdictions differ in their use of restrictive housing? What are the different policies and practices?
- What data is required to build a prediction/risk assessment tool that can accurately identify the inmates likely to be placed in segregation?
- What factors contribute to the disruptive inmate behaviors that typically trigger placement in restrictive housing?
- What is the impact of segregation on inmates, staff, and society at large?
- What is the relative effectiveness of alternatives to segregation?
- How can correctional systems better screen inmates for mental illness and divert those individuals from segregation?

In the coming months, NIJ will issue a solicitation for innovative research proposals relating to restrictive housing issues, among other issues. NIJ will seek proposals for research that assesses the use of restrictive housing in prisons and jails, as well as the impact of the practice on inmates and staff. NIJ anticipates that up to \$8 million may become available for awards under this solicitation. This research will serve an important role as policymakers and correctional officials consider how to most effectively minimize the use of restrictive housing in American prisons and jails.

This Report now turns to how the practice is actually used at the nation's largest correctional system: the Federal Bureau of Prisons.

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<sup>20</sup> *Id.* at 4, 6.

## **Part One**

### Restrictive Housing in the Federal Bureau of Prisons

## Restrictive Housing in the Federal Bureau of Prisons

The Bureau oversees 135 institutions, 122 of which are managed by the Bureau, and 13 of which are run by private contractors. Most Bureau facilities include space dedicated for restrictive housing. The large majority of Bureau inmates placed in segregation are housed in Special Housing Units (SHU), although the Bureau also operates two additional restrictive housing programs: the Special Management Units (SMU), a four-phase program for inmates with heightened security concerns, and the USP Administrative Maximum (ADX), in Florence, Colorado.

- **Special Housing Units (SHU).** Approximately 84% of all Bureau inmates placed in segregation are housed in SHUs. Most Bureau institutions have their own SHU, which houses inmates for both disciplinary and non-disciplinary reasons. There are 111 SHUs nationwide, with a total capacity of 14,576 beds. Most inmates in SHU are double-celled.
- **Special Management Units (SMU).** The SMU is a special-purpose, non-punitive segregation unit for inmates who present heightened security concerns due their history of violent prison misconduct and/or gang activity. Inmates proceed through four “levels,” allowing them to earn greater privileges at each level, with the goal of eventually returning the inmates to the general population, typically after 18 to 24 months. Currently, the Bureau houses the majority of its SMU inmates at USP Lewisburg, in Pennsylvania, and the remainder at USP Allenwood, also in Pennsylvania. Most inmates in SMU are double-celled.
- **Administrative Maximum Security (ADX).** The ADX houses inmates who require the tightest controls and supervision because of the nature of their offense or their behavior while in prison. Opened in 1994, it is the Bureau’s only administrative maximum facility and the Bureau’s only institution where all inmates are single-celled. The rated capacity for the ADX is 490 inmates, although the ADX’s population of between 400 and 450 inmates has remained relatively stable over the past two decades, even as the Bureau’s total prison population has grown considerably.

This section describes the policies and practices associated with each of these three programs. The section begins by discussing the various ways that the Bureau uses its SHUs—for disciplinary, protective, preventative, investigative, and transitional segregation—as well as some of the alternatives the Bureau has developed to reduce the need for such restrictive housing. The section then reviews the SMU program and the ADX, including the placement criteria for each. Finally, the section examines several categories of inmates who may require special consideration with regards to all forms of restrictive housing, namely, inmates with serious mental illness, inmates with medical needs, young adults (age 18-24 at time of conviction), and juveniles (under 18 at time of adjudication).

As noted throughout this section, the Bureau has recently taken a number of steps to reduce both the number of inmates placed in restrictive housing and the length of time they stay there. The chart below compares the number of inmates in segregation to the total prison population, as well as an illustration of the recent decline.

<b>OVERVIEW OF BUREAU'S RESTRICTIVE HOUSING</b> (Adapted from Bureau's SENTRY Recordkeeping System)				
<b>Type of Housing</b>	<b>01/28/12</b>	<b>12/05/15</b>	<b>Change (01/28/12 to 12/05/15)</b>	
			<b>Total</b>	<b>% Decline</b>
All Bureau inmates <sup>21</sup>	175,733	161,517	<b>13,848 ↓</b>	<b>8.09% ↓</b>
<b>Total in Restrictive Housing</b>	<b>13,196</b>	<b>9,914</b>	<b>3,282 ↓</b>	<b>24.87% ↓</b>
Special Housing Units (SHU)	11,106	8,251	<b>2,855 ↓</b>	<b>25.71% ↓</b>
Special Management Unit (SMU)	1,647	1,260	<b>387 ↓</b>	<b>23.50% ↓</b>
Administrative Maximum (ADX)	443	403	<b>40 ↓</b>	<b>9.03% ↓</b>

Before discussing each program, it is helpful to briefly review the legal and policy documents that govern the Bureau's restrictive housing programs. Federal law grants the Bureau broad authority to develop procedures regarding the safety of its facilities and the designation of its inmates, *see, e.g.*, 18 U.S.C. §§ 3621(b), 4042(a)(2)-(3), which the Bureau implements by promulgating federal regulations, including rules governing its disciplinary program and its SHU policy, *see, e.g.*, 28 C.F.R. § 541.10, *et seq.* (Inmate Discipline Program); 28 C.F.R. § 541.20, *et seq.* (SHU policy). The Bureau's primary policy documents are known as "Program Statements," which codify the agency's internal policies on specific issues. Oftentimes, these Program Statements quote relevant federal statutes or regulations, and include instructions on the interpretation and implementation of those laws.

Nearly 300 Program Statements are currently in effect, and a number of them either directly address or indirectly affect the operation of the Bureau's restrictive housing programs. Examples include:

- PS 5100.08, Inmate Security Designation and Custody Classification
- PS 5212.07, Control Unit Programs
- PS 5217.01, Special Management Units
- PS 5270.09, Inmate Discipline Program
- PS 5270.10, Special Housing Units
- PS 5310.16, Treatment and Care of Inmates with Mental Illness

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<sup>21</sup> "All Bureau inmates" refers to inmates housed in the 122 institutions managed by the Bureau, and not the 13 facilities managed by private contractors. Data on private contractors is reported separately later in this section.

- PS 5324.08, Suicide Prevention Program
- PS 5330.11, Psychology Treatment Programs
- PS 6010.03, Psychiatric Evaluation and Treatment

In addition, individual institutions publish local directives, known as “Institution Supplements.” Some Program Statements mandate the development of Institution Supplements to specify how the national requirements will be implemented at the local level. In addition, some Institution Supplements provide additional guidance due to the unique needs of a particular facility. For example, the ADX has published several of its own Institution Supplements, including one governing the treatment and care of inmates with mental illness at the facility. Similarly, USP Lewisburg has developed an Institution Supplement that addresses, among other things, its management of the SMU program.

The Bureau’s 13 private contract facilities have instituted restrictive housing policies similar to the ones in use at Bureau-run facilities. The contract facilities’ policies incorporate the standards of the American Correctional Association, as well as Bureau directives published in the Code of Federal Regulations. All policies established by contract facilities must be approved by the Bureau’s Privatization Management Branch to ensure compliance with the Bureau’s objectives. As noted later in the Report, as of November 23, 2015, these private contract facilities had a combined average daily population of 23,083 inmates, of which 924 (approximately 4.0%) were housed in SHU.

## Special Housing Units (SHU)

The Bureau's 111 SHUs serve as the primary mechanism for housing federal prisoners in segregation. The SHUs are governed by regulation (28 C.F.R. § 541.20, *et seq.*) and a Program Statement (PS 5270.10, Special Housing Units), which was most recently updated in July 2011. The regulations establish two categories of SHU inmates:

- **Disciplinary Segregation (DS) status.** DS status applies to inmates who have been found guilty of violating a Bureau disciplinary rule. An inmate can only be placed in DS status by a "Discipline Hearing Officer" (DHO), who serves as the impartial adjudicator of an inmate's disciplinary hearing.
- **Administrative Detention (AD) status.** AD status encompasses investigative, protective, preventative, and transitional segregation. The Bureau considers all forms of AD status to be non-punitive, insofar as this status never applies to an inmate serving punishment for a specific rule violation. The regulations permit placement in AD status when an inmate's presence in the general population "poses a threat to life, property, self, staff, other inmate, the public, or to the security or orderly running of the institution," and one of the following conditions applies:
  - The inmate is under investigation for violating a Bureau regulation or criminal law;
  - The inmate is pending transfer to another institution;
  - The inmate requested protection, or Bureau staff determined such protection was needed; or
  - The inmate is ending confinement in disciplinary segregation status, and his or her return to the general population "would threaten the safety, security, and orderly operation of a correctional facility, or public safety."

In addition, AD status can apply to inmates held in SHU pending classification after arriving at a new facility, or if held in "holdover status" during transfer to a designated institution. *See* 28 C.F.R. § 541.23.

Bureau regulations require that an inmate receive notice of his or her placement in SHU, and that Bureau staff regularly review the placement to determine whether continued segregation is necessary. These reviews are conducted by a Segregation Review Official, who is assigned to review the status of each inmate in SHU at the institution. The regulations require the following:

- **3-day review.** Within three work days of placement, the Segregation Review Official reviews the records supporting the inmate's SHU placement. (This does not apply to disciplinary cases, and a slightly different policy applies to protective custody inmates.)

- **7-day review.** Within seven calendar days of placement, the Segregation Review Official reviews the inmate’s status at a hearing, which the inmate may attend. Subsequent reviews occur every seven days.
- **30-day review.** After every thirty calendar days of continuous placement, the Segregation Review Official reviews the inmate’s status at a hearing, which the inmate may attend. (In addition, the Bureau requires a psychological review for SHU inmates every 30 days.)

Additional reviews apply to protective custody inmates, which are described later in this section. All SHU inmates may submit formal grievances challenging their placement through the Bureau’s Administrative Remedy Program.

In addition, all Bureau facilities conduct “SHU Weekly Reviews,” during which the warden and an interdisciplinary team of prison officials, including psychological staff, review all inmates currently housed in that facility’s SHU. The following staff attend: Warden, Associate Wardens, Captain, Case Management Coordinators, Unit Managers, Special Investigative Agent/Special Investigative Supervisor, SHU Lieutenant, Psychologists, Health Systems Administrator, and Discipline Hearing Officer. During the meeting, each inmate will be reviewed individually to ensure all staff are aware of the inmate’s status, proposed plan of action, recommendation for transfer or reintegration into the general population, discipline status, and a review of their current behavior as well as physical and mental health.

## **SHU Disciplinary Segregation**

Disciplinary segregation is one of several types of sanctions available for inmates who violate the Bureau’s rules. To understand this form of restrictive housing, it is necessary to summarize the Bureau’s inmate disciplinary program.

In some ways, the Bureau’s disciplinary system resembles the stages of a criminal proceeding: after officers learn of an alleged violation, Bureau officials investigate the matter, conduct a factual hearing to determine responsibility, and then impose a penalty on those deemed responsible. Like a criminal proceeding, Bureau officials must make two types of detention decisions: during the investigative phase, usually immediately following the alleged violation, and as a post-adjudication sanction. Not all disciplinary violations result in segregation, either during the investigative stage or post-adjudication, and some infractions are resolved informally at the staff-to-inmate level, without triggering the formal disciplinary process and without resort to restrictive housing.

The Bureau has codified approximately 90 types of disciplinary violations, or “prohibited acts,” which are divided into four categories based on severity: Greatest (100-level); High (200-level); Moderate (300-level); and Low (400-level). *See* Table 1, PS 5270.09, Inmate Discipline Program. The disciplinary process begins as soon as staff observe or otherwise learn of a potential violation. If the matter is relatively minor, or if the inmate does not have a history of violations, the officer

will typically try to resolve the incident informally. In more serious cases, the officer will draft an incident report and submit it to his or her lieutenant.

The filing of an incident report triggers several rounds of supervisory review. Once a lieutenant approves the incident report, Bureau staff assigns an “Investigating Officer,” who conducts an independent investigation of the case. The Investigating Officer submits his file to a Unit Discipline Committee, which consists of two or more staff members at the institution. If the offense is particularly serious (*i.e.*, Greatest or High severity levels), it is then forwarded to a “Discipline Hearing Officer” (DHO), who conducts a formal hearing on the matter.<sup>22</sup> (To encourage impartiality, the DHO operates outside traditional reporting lines within the institution, and instead reports to the Regional Disciplinary Hearing Administrator.) The inmate receives notice of this hearing and is entitled to present evidence and call witnesses. Once the hearing is complete, the DHO makes a factual finding and, if necessary, imposes a penalty. In deciding the appropriate punishment, the DHO relies on a chart of available sanctions, which in most cases can include (but does not require) a term of disciplinary segregation. Inmates may appeal the factual finding or the penalty through the Bureau’s Administrative Remedy Program.<sup>23</sup>

As noted above, an inmate may be placed in restrictive housing at two stages during this process: during the investigative stage and as a post-adjudication sanction. The Bureau treats these as distinct types of restrictive housing—the first is classified as non-punitive AD status, the second, as DS status. For both, however, the inmate is typically housed in a SHU cell at the institution where the violation occurred.

The first segregation decision is made shortly after the triggering incident. As soon as Bureau officers neutralize any immediate threats (*e.g.*, breaking up a fight, confiscating a weapon), they must decide whether one or more of the inmates involved should be placed in investigative segregation. In making this decision, staff rely on the general standard that governs non-punitive SHU placement, namely, whether the inmate’s “presence in the general population poses a threat to life, property, self, staff, other inmates, the public, or to the security or orderly running of the institution.” As a matter of practice, the responding officer must obtain approval from a lieutenant or other supervisor before placing the inmate in investigative segregation, and the lieutenants are trained on the standards for such placements.

Once in the SHU, the inmate is subject to the protections outlined earlier: the inmate receives formal notice of placement (via an “administrative detention order”); the Segregation Review

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<sup>22</sup> In the most serious cases, the Bureau may refer the case to a U.S. Attorney’s Office for criminal prosecution. When such a referral occurs, the Bureau pauses the internal disciplinary review.

<sup>23</sup> As discussed later in this Report, Bureau policy requires that the DHO refer the matter to a Bureau psychologist for a competency and responsibility determination if the inmate has a history of mental health issues, and requires that the DHO take mental health issues into account when determining what, if any, penalty should apply.



Officer conducts three-, seven-, and thirty-day reviews; and the Warden oversees the multi-disciplinary “SHU Weekly Reviews.” In some cases, an inmate will remain in AD status until the time of his or her disciplinary hearing; in other cases, the inmate will be returned to the general population at some point before the adjudication. Current Bureau policy does not require that Bureau staff complete disciplinary investigations within a certain amount of time.

The second segregation decision is made after the disciplinary hearing. As noted above, if an inmate is found guilty of committing the prohibited act, the DHO is responsible for fashioning an appropriate sanction. Bureau policies outline a list of available sanctions, which vary depending on severity level and include not only punitive segregation, but also forfeiture of good time credit, loss of privileges, monetary fines, removal from program or group activity, confiscation of property, or extra duty. For each severity level, Bureau policies dictate the maximum term an inmate may be placed in restrictive housing, both for a first offense and for second or subsequent offenses, although DHOs may exercise their discretion and sentence an inmate to a shorter, determinant term of segregation or, when appropriate, no segregation at all. The sanctions are codified in PS 5270.09, Inmate Discipline Program.

The chart below summarizes the maximum terms of segregation under current Bureau regulations, listed by severity level.

<b>MAXIMUM TERMS FOR DISCIPLINARY SEGREGATION</b> (Adapted from Program Statement 5270.90, Inmate Discipline Program)			
<b>Severity Level</b>	<b>Code</b>	<b>First Offense</b>	<b>Subsequent</b>
Greatest	100-level	365 days	545 days
High	200-level	180 days	365 days
Moderate	300-level	90 days	180 days
Low	400-level	Not permitted	30 days

As noted above, however, not all violations result in disciplinary segregation. The chart on the following page includes a sample list of offenses, along with the frequency that a term of DS status was imposed for those offenses during fiscal year 2014. (Note that this only includes segregation imposed following the disciplinary hearing, and not whether the inmate was housed in investigative segregation immediately following the incident.)

<b>% OFFENSES RESULTING IN DISCIPLINARY SEGREGATION</b> (Sample Offenses; All Bureau-run facilities; FY2014)			
<b>Code</b>	<b>Offense</b>	<b>Total Guilty Findings</b>	<b>Resulting in DS Term</b>
--	All 100-Level Offenses	17,398	63.91%
100	Killing	14	100.00%
101	Assaulting with Serious Injury	294	74.83%
102	Escape (More than 4 hours)	689	30.04%
103	Setting a Fire	64	67.19%
104	Possessing a Dangerous Weapon	3,463	75.77%
--	All 200-Level Offenses	26,521	52.52%
201	Fighting with Another Person	5,679	71.49%
203	Threatening Bodily Harm	2,097	68.53%
205	Engaging in Sexual Acts	2,052	77.68%
218	Destroying Property ≥ \$100	487	45.38%
226	Possessing Stolen Property	1,095	22.47%
228	Tattooing or Self-Mutilation	1,844	32.38%
--	All 300-Level Offenses	62,043	6.1%
300	Indecent Exposure	385	16.62%
302	Misusing Authorized Medication	548	5.66%
303	Possessing Unauthorized Money	90	6.67%
325	Conducting a Gambling Pool	145	6.21%
329	Destroying Property ≤ \$100	1,553	6.05%
330	Being Unsanitary/Untidy	1,689	1.78%
332	Smoking in Unauthorized Area	286	22.38%
--	All 400-Level Offenses	712	0.14%
402	Malingering/Feigning Illness	50	0.00%
404	Abusive/Obscene Language	198	0.51%
407	Violating Visiting Regulations	137	0.00%
409	Unauthorized Physical Contact	291	0.00%

If sanctioned to a term of disciplinary segregation, the inmate enters DS status. As a practical matter, DS status is largely indistinguishable from AD status, and the inmate is subject to many of the same procedural protections that applied during investigative segregation: three-, seven-, and thirty-day reviews, as well as SHU Weekly Reviews. Under current regulations, inmates serving a term of disciplinary segregation do not receive credit for any time served in investigative segregation prior to their DHO hearing.

Generally speaking, an inmate sanctioned to a determinative term of disciplinary segregation is likely to serve most or all of his or her disciplinary sentence in the SHU. In some cases, however, Bureau staff might conclude that continued segregation is unnecessary, and decide to release the inmate from the SHU before the end of the sentence term.

If an inmate commits additional disciplinary violations while in the SHU, he or she could be subject to further disciplinary sanctions, following the same process described above. If a DHO determines that the additional violations should be punished with a term of segregation, that sentence will be added onto whatever term the inmate is presently serving, thus extending the total time in restrictive housing. Although Bureau regulations impose maximum penalties for individual disciplinary violations, there is currently no limit on the cumulative amount of time an inmate can spend in disciplinary segregation.

As an inmate's term of disciplinary segregation nears its end, Bureau officials must decide where to send the prisoner next. Most of the time, the inmate is returned to the general population of the facility where he or she was originally housed. In other cases, if officials believe that the inmate is likely to pose a continuing threat to institutional safety, they might decide to redesignate the prisoner to a higher-security facility. (Once at the new facility, the inmate would likely be released into general population, although with the greater restrictions that come with a higher-security institution.) In other cases, Bureau officials may decide to transfer the inmate to the SMU program or, in the most extreme cases, to the ADX.

Most of the time, Bureau officials transfer an inmate to his or her new housing unit as soon as the disciplinary term ends. In other cases, there is a temporary delay, typically due to unavailability of bed space at the destination facility. When that happens, the inmate remains in the SHU until the transfer is completed. The Bureau classifies this transitional housing as non-punitive AD status, because it is not directly tied to the punitive term of disciplinary detention that just completed, even though the conditions of confinement remain the same.<sup>24</sup> While in transitional segregation, the inmate is subject to the same procedural protections, including reviews, as described before.

### ***Bureau Alternatives***

The Bureau's disciplinary policy permits the Unit Discipline Committee or DHO to impose a variety of sanctions other than punitive segregation. Below is a chart of the available sanctions, according to offense severity level.

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<sup>24</sup> Thus, it is theoretically possible for an inmate to be classified three different ways over the course of a single disciplinary violation: first, a period of AD status during the investigation; then, DS status for the defined term of punishment; and, finally, another round of AD status while the placement decision is made. Although the classification changes, the inmate remains in the SHU.

<b>ALTERNATIVES TO DISCIPLINARY SEGREGATION</b> (Adapted from Program Statement 5270.90, Inmate Discipline Program)				
<b>Type of Sanction</b>	<b>Greatest 100-level</b>	<b>High 200-level</b>	<b>Moderate 300-level</b>	<b>Low 400-level</b>
Rescission/delay of parole date	Y	Y	Y	N
Forfeit good time and good conduct time	Up to 100%	Up to 50% or 60 days	Up to 25% or 30 days	Up to 12.5% for year
Monetary restitution	Y	Y	Y	Y
Monetary fine	Y	Y	Y	Y
Loss of privileges (visiting, phone, etc.)	Y	Y	Y	Y
Change housing (quarters)	Y	Y	Y	Y
Remove from program or group activity	Y	Y	Y	Y
Loss of job	Y	Y	Y	Y
Impound inmate's personal property	Y	Y	Y	Y
Confiscate contraband	Y	Y	Y	Y
Restrict to quarters	Y	Y	Y	Y
Extra duty	Y	Y	Y	Y

## **SHU Protective Custody**

The Bureau also uses the SHU to house inmates who require protective custody. An inmate could face threats for any number of real or perceived reasons, including:

- gang affiliation;
- prison conduct, such as unpaid debts;
- ties to law enforcement, either as a prison informant or a former law enforcement officer;
- notoriety of prior criminal conduct, especially those convicted of child sex abuse; or
- gender identity or sexual orientation.

Most inmates in protective custody voluntarily seek removal from the general population; in a minority of cases, Bureau staff will involuntarily commit an inmate who is unable or unwilling to seek appropriate protection. In addition, a small number of inmates report a preference for solitary housing and will occasionally request protective custody to avoid residing in the general population. To limit long-term placement in protective custody, Bureau staff will often transfer inmates out of the institution where the threat exists, either to the general population of another facility or to a special-purpose institution that houses similarly situated inmates under less restrictive conditions.

As with disciplinary segregation, Bureau regulations establish a process for investigating, adjudicating, and reviewing the need for protective custody. Following a threat, an inmate can enter AD status and remain there while officials investigate the matter. Within two working days,

the Warden or his or her designee must review the placement to determine whether ongoing protection is necessary. Within seven days of placement, the inmate receives a hearing, following the same procedures used when conducting a 7-day review in disciplinary cases. If officials determine there is no need for protection, the inmate is instructed to return to general population. If officials determine there is a continuing need for protection, the Warden decides whether to keep the inmate in AD status (subject to the standard 30-day reviews), or transfer the inmate to another institution where protection may not be necessary.

### ***Bureau Alternatives***

In recent years, the Bureau has developed several alternative housing programs for inmates who require protective custody. These specialized programs allow the Bureau to divert a number of protective custody inmates away from the SHU and into facilities where they can live safely and with fewer restrictions:

- **Reintegration Housing Unit (RHU).** The Bureau currently operates one RHU unit, which opened in February 2014 at FCC Oakdale, in Louisiana. The program is designed for protective custody inmates with more than six months remaining on their sentence who are designated for medium- or high-security facilities, do not require substantial medical or mental health treatment, and consistently refuse to enter general population at multiple institutions. The goal is to help inmates eventually re-integrate with general population over the course of a three-phase program, which typically takes six to eight months. Participants live, work, and program in a residential unit, in which they are allowed to move freely. Inmates also engage in activities outside the unit—eating in the dining hall, recreating in the yard, and attending pill lines—albeit separated from the general population. Inmates participate in biweekly meetings and other programming designed to improve coping skills and help them interact with other prisoners. The program is staffed with correctional officers, a psychologist coordinator, and treatment specialists. The RHU Unit at FCC Oakdale can currently house a maximum of 128 inmates at a time. Inmates housed within the RHU are out of the cell for 16 hours per day.
- **Sex Offender Management Program (SOMP).** SOMP is a multi-component program designed for inmates convicted of sex offenses, who may be targets of threats from other prisoners. SOMP comprises risk assessments, treatment programming, and specialized correctional management services. Unlike the RHU, which is a special-purpose unit that only houses protective custody inmates, SOMP allows inmates to be housed in general population, albeit at specific institutions where sex offenders make up a sizeable percentage (*i.e.*, 40-70%) of the prisoners. Each SOMP offers sex offender treatment for either “high risk” or “low to moderate risk” individuals, depending on the security level of the institution. Both forms of treatment involve intensive cognitive behavioral therapy under the supervision of psychologists and treatment specialists. Participation in the sex

offender treatment component of SOMP is voluntary; however, placement at a SOMP facility is not voluntary. Inmates are placed in these facilities at the discretion of the Bureau. At present, the Bureau operates 9 SOMPs, with the ability to house approximately 4,500 sex offenders.

- **Security Threat Group Drop-Out Units (STG Drop-Out).** The Bureau operates three STG Drop-Out units, which launched in 2013 and now exist at USP Terre Haute, in Indiana; USP Coleman, in Florida; and FCI Otisville, in New York. The program allows gang members to formally “disassociate” from (or quit) their gang, and then move into a general population unit where everyone else has done the same. The Bureau operates a rigorous review process to determine the sincerity of each member’s disassociation and each placement must be approved by the Bureau’s Intelligence Section. Once inside the program, inmates receive extensive programming on anger management, conflict resolution, and other life skills that will assist their re-entry into general population. Approximately 250 inmates are currently housed in the three STG drop-out units, and approximately 75 more are going through the disassociation process.

## **SHU Preventative Segregation**

In limited cases, the Bureau also uses the SHU for what this Report calls “preventative segregation.” This phrase refers to segregation based not on a specific disciplinary violation, but on a determination that an inmate is simply too dangerous or disruptive to be housed in the general population.

As noted earlier, Bureau regulations allow staff to place an inmate in AD status upon concluding that the inmate “threaten[s] the safety, security, and orderly operation of a correctional facility, or public safety.” This policy permits staff to use segregation as a form of short-term incapacitation—a way of keeping the inmate away from others, before he or she can cause further disruption. Unlike a disciplinary violation, which results in a determinant term of punishment, preventative segregation is more open-ended, and so the Bureau must make arrangements to transfer these inmates to other forms of housing.

The Bureau closely monitors these cases. The Bureau requires, for example, that when an inmate completes his or her term of disciplinary segregation, staff may not simply continue housing the inmate in administrative detention without a separate hearing to establish the basis for the ongoing SHU placement. The justification for post-disciplinary AD status cannot be based solely on the findings of the disciplinary hearing that resulted in the inmate’s DS status. Even if Bureau staff conclude that ongoing segregation is necessary, the inmate is subject to the standard reviews required for those placed in AD status.

Generally speaking, the Bureau requires that any inmate held in post-disciplinary AD status for more than 90 days must either be transferred to a new facility or returned to the general population, except in extenuating circumstances. After 90 days, the Regional Director who

oversees the institution assumes responsibility for the ongoing SHU placement, and must receive approval from the Bureau's Assistant Director of Correctional Programs Division every 60 days.

### ***Bureau Alternatives***

The Bureau has developed numerous programs and alternative housing units for particularly disruptive and violent inmates. In recent years, the SMU program has served as one of the primary mechanisms for addressing this category of inmates, with its intensive, four-part program that seeks to correct inmates' violent behavior and prepare them for a return to the general population. In addition, in the most extreme cases, the Bureau can designate an inmate to the ADX, although space is generally limited to those who require the most significant restrictions.

More often, however, the Bureau will return inmates to general population. If a need for further intervention is noted, inmates may be encouraged to enroll in one of the many available self-improvement programs. These self-improvement programs serve a preventative function and are made available to inmates with a need for treatment, regardless of whether they have engaged in behavior leading to placement in restrictive housing. One objective of these programs is to prevent inmates from engaging in the type of behavior that will necessitate placement in restrictive housing. Therefore, inmates may be placed in these programs after a stay in restrictive housing, in an effort to ensure they do not return. While some programs offer open enrollment, others are intended for inmates who meet specific diagnostic criteria. Some of the most widely used programs are listed below:

- **Mental Health Step-Down Program.** The Mental Health Step-Down Program offers residential care for inmates with serious mental illness (typically a psychotic or mood disorder) who do not require inpatient treatment, but lack the skills to function in a general population setting and have a history of serious violence. The goals of Step-Down Programs are to provide evidence-based treatment to inmates with mental illness, maximize their ability to function, minimize relapse and the need for inpatient hospitalization, and support their ability to transfer to less restrictive environments, as appropriate. Step-Down Programs are offered in general population and secure settings, as discussed in greater depth later in this Report.
- **Steps Towards Awareness, Growth, and Emotional Strength (STAGES).** The STAGES Program is a residential treatment program for male inmates with serious mental illnesses and a primary diagnosis of personality disorder. The program uses an integrative model which includes a modified therapeutic community, cognitive behavioral therapies, and skills training. The program is designed to increase the time between disruptive behaviors, foster living within the general population or community setting, and increase pro-social skills. It is offered in both a general population setting and a secure setting, as discussed in greater depth later in this Report.

- **Skills Program.** A 12- to 18-month residential treatment program designed to improve the institutional adjustment of male inmates with intellectual disabilities and social deficiencies. The program uses an integrative model, which includes a modified therapeutic community, cognitive-behavioral therapies, and skills training. The goal of the program is to increase the academic achievement and adaptive behavior of cognitively impaired inmates, thereby improving their institutional adjustment and likelihood of successful community reentry.
- **Challenge Program.** A cognitive-behavioral, residential psychology treatment program for high-security inmates with a history of substance abuse and/or mental illness. The program is designed to increase self-control and problem solving skills, and encourage the development of pro-social relationships, placing a special emphasis on violence prevention and the avoidance of negative peer associates.
- **Bureau Rehabilitation and Values Enhancement (BRAVE) Program.** A cognitive-behavioral, six-month residential psychology treatment program for young, medium-security inmates serving lengthy terms of incarceration. The program is designed to support favorable institution adjustment, reduce inmate misconduct, encourage the development of pro-social relationships, and direct inmates to meaningful self-improvement opportunities while incarcerated.
- **Drug Abuse Programs (Drug Education, NRDAP, RDAP).** A series of outpatient and residential programs for inmates with a history of substance use. These cognitive-behavioral programs are designed to provide inmates with the necessary skills to refrain from substance abuse and related criminal conduct.
- **Resolve Program.** A cognitive-behavioral program designed to address the trauma-related mental health needs of female offenders. Inmates typically participate in the program during the first 12 months of incarceration, and it takes approximately 40 weeks to complete.
- **Criminal Thinking Groups.** Outpatient, cognitive-behavioral treatment groups designed to address criminality and misconduct. In these groups, inmates learn how criminal thinking errors impact their behaviors and how to effectively change their thinking and, in turn, change their behaviors.
- **Anger Management Groups.** Outpatient, cognitive-behavioral treatment groups designed to teach participants anger management skills. Inmates learn and practice cognitive, relaxation, and communication skills to reduce anger, including by learning how to develop an individualized anger control plan.



- **Sexual Self-Regulation Groups.** Outpatient, cognitive-behavioral treatment groups designed to address sexual deviancy and sexual preoccupation in sex offenders. Inmates learn and practice a set of self-management skills to gain effective control over deviant sexual urges and behaviors.
- **Core Correctional Communication Program.** A program that trains staff to help inmates to identify, verbalize, and eventually address the consequences of their behavior.
- **Token Economy Programs.** A system of behavior modification incorporated into several of the Bureau's Psychology Treatment programs. Token economies focus on the use of positive reinforcement, a powerful behavior change tool, to encourage and support pro-social behaviors and relationships.

## **SHU Transitional Segregation**

In some cases, inmates will remain in the SHU longer than originally anticipated due to difficulties finding acceptable housing in general population. There are several reasons for these delays. One involves the general overcrowding at Bureau facilities: high- and medium-security facilities are currently above their rated capacities (46 percent and 30 percent, respectively), limiting the number of empty beds available for inmates exiting SHU.

Another source of delay is "separatee orders," which limit where the Bureau can house certain inmates. A separatee order can be submitted by Bureau staff, federal prosecutors, or judges, and the order prohibits a specific inmate from being housed with certain other individuals, typically due to gang rivalries or other security concerns. As of November 23, 2015, approximately 5,800 SHU inmates were subject to some type of separatee order. In each one of those cases, Bureau staff can only return the inmate to an institution that is free of all other individuals listed in the separatee order. (The Bureau faces similar challenges when progressing inmates through the multi-level SMU program or housing prisoners at the ADX.)

## **Conditions of Confinement**

By almost any measurement, the conditions of confinement in the SHU are more restrictive than those afforded to inmates in general population. Although the exact conditions vary, the typical cell is 60 to 80 square feet, with a bunk, toilet, sink, and a narrow window. Some cells include small desks bolted to the wall; some include showers. Inmates are typically permitted to possess a small number of personal items, subject to regular inspection. Most inmates receive their meals on a tray passed through a small slot in the cell door. When inmates are permitted to leave the cell, they are usually cuffed or shackled at the wrists, waist, and legs, and escorted by one or more correctional officers to recreation or group therapy. Recreation typically occurs in confined spaces, usually alone or in small groups separated from others by fencing.

Federal regulations and Bureau policy documents establish baseline conditions of confinement for all SHUs. As noted earlier, inmates in AD status and DS status are housed under very similar physical conditions. However, the Program Statement governing SHU operations provides that those placed in non-punitive AD status receive certain privileges not available to those placed in DS status. Bureau staff make 30-minute rounds, ensuring that all required conditions are met.

Per Bureau regulations, certain baseline conditions apply, regardless of AD or DS status:

- **Environment.** Living quarters are to be well-ventilated, adequately lighted, appropriately heated, and maintained in sanitary conditions.
- **Cell occupancy.** Ordinarily, one or two occupants.
- **Clothing.** Each inmate receives adequate institution clothing, including footwear, and must be provided opportunities to exchange clothing and/or have it washed.
- **Bedding.** Each inmate receives a mattress, blankets, a pillow, and linens for sleeping, and must be provided opportunities to exchange linens. (As a disciplinary sanction, the UDC/DHO may remove an inmate’s mattress during non-sleeping daytime hours as a “loss of privilege.”)
- **Food.** Each inmate receives nutritionally adequate meals.
- **Personal hygiene.** Each inmate has access to a wash basin and toilet, as well as personal items necessary to maintain an acceptable level of personal hygiene. Inmates normally have an opportunity to shower and shave at least three times per week.
- **Exercise.** Each inmate receives the opportunity to exercise outside his or her individual quarters at least five hours per week, ordinarily on different days in one-hour periods. The Warden may limit this opportunity for specific safety reasons, but may not restrict exercise time as a sanction for disciplinary violations.
- **Reading Materials.** Each inmate receives a reasonable amount of non-legal reading material, and is permitted to possess religious scriptures of the inmate’s faith.
- **Telephone.** Each inmate is ordinarily permitted to make one social telephone call per month. (As a disciplinary sanction, the UDC/DHO may limit telephone access as a “loss of privilege.”)
- **Legal activities.** Each inmate may conduct legal research, file lawsuits, and participate in legal visits and telephone calls under the same provisions as inmates in general population.

- **Social visiting privileges and general (non-legal) correspondence.** Each inmate may have social visits and send social correspondences, unless those privileges have been restricted.
- **Staff monitoring.** Bureau staff will arrange to visit each inmate within a reasonable time after receiving an inmate request. In addition, inmates are regularly monitored by program and unit team staff.
- **Programming activities.** Each inmate has access to programming activities to the extent such access does not jeopardize the safety, security, orderly operation of a correctional facility, or public safety. (Participation in programming activities, such as education programs, may be suspended to inmates in DS status.) This programming can include cognitive behavioral interventions, literacy programs, adult continuing education, college correspondence classes, and parenting classes.

Inmates in AD status receive some privileges not afforded to inmates in DS status. For example:

- **Personal property.** Each inmate in AD status is permitted a “reasonable amount” of personal property and “reasonable access” to the commissary. Personal property may include religious texts, legal material, magazines, mail, a newspaper, personal hygiene items, a 25-picture photo album, snack foods, powdered soft drinks, stationary, wedding band, radio with ear plugs, and a watch. Inmates in DS status may possess mail, purchase limited commissary items, such as hygiene items and stamps, and receive reading material, including religious texts.

Bureau regulations also require that inmates receive appropriate medical and mental health care while in the SHU. This includes daily sick call rounds, daily pill lines (typically in the morning, noon, and evening), individualized health services (including treatment for chronic diseases, mental illnesses, dental emergencies, and physical therapy), and immunizations. In addition, after every 30 calendar days of continuous placement in AD or DS status, mental health staff examines the inmate, including a personal interview. Inmates in SHU longer than six months receive comprehensive mental health evaluations, as discussed later in this Report. Emergency medical and mental health care is always available to SHU inmates.

## Staffing

Correctional Services staff are assigned to SHU as a quarterly work assignment. A lieutenant oversees the overall operations of the unit. Correctional officers supervise and ensure the safety of inmates, facilitate access of staff from other departments (*e.g.*, warden and associate wardens, medical, case management, psychology, religious services), and provide routine services and privileges (*e.g.*, mail, telephone, visits, reading material, meals, recreation, showers). To ensure around-the-clock, year-round coverage, each SHU employs approximately 18 correctional staff

members over the course of three daily shifts (day watch, evening watch, morning watch). Depending upon the capacity of a SHU, a day watch shift typically involves three to five officers, who are responsible for supervising as many as 200 inmates.

In comparison to general population living quarters, SHU typically houses a significantly higher concentration of inmates who recently have engaged in violent (fights; assaults) or seriously disruptive (drugs; weapons) behavior. While correctional officers assigned to SHU routinely communicate and interact with inmates in the unit, they face a higher risk of exposure to dangerous situations presented by inmates who resort to violence when other prisoners would not.

Given the heightened security risks, it typically takes multiple correctional officers to escort even small numbers of SHU inmates outside of their cells. Seemingly mundane tasks, such as transporting the inmates to a recreation space or supervising group therapy classes, require careful coordination among staff members, and these tasks often take much longer to complete than when performed in general population units.

## **Data Collection**

Prior to January 2013, the Bureau had only limited ability to track inmates housed in SHU. Among other things, the Bureau's electronic system could not distinguish between inmates in DS or AD status, nor could it identify the specific reasons an inmate was placed in SHU. Starting in early 2013, however, the Bureau implemented a new, automated tracking system, known as the "SHU Application," which now operates at all Bureau-operated facilities. In its current form, the SHU Application can provide Bureau staff with information about the number of inmates placed in DS status, as well as several "subcategories" of AD status (such as "protective custody" or "pending transfer"). Staff can obtain this information through a "SHU Dashboard," which presents data in an easy-to-read format. The chart on the following page demonstrates some of the information accessible through the SHU Dashboard.

There are, however, limitations to the data collected by the SHU Application. At present, the SHU Application can only provide a "snapshot" of all inmates in the SHU at a particular moment (*i.e.*, incidence data); it cannot track information about individual inmates. As a result, unless Bureau staff has access to paper files, it is impossible to tell how long a particular inmate has been housed in segregation, whether an inmate's status in the SHU has changed over time (for example, transitioning from investigative AD status to a punitive DS term), or the number of times an inmate has returned to segregation during the inmate's entire prison term.

The chart below includes two such "snapshots": one from May 2013, the first month when the SHU Application could track the total number of inmates housed in the SHU for longer than 90, 180, and 364 days; and one from November 23, 2015. The right two columns show the change in SHU population during that time, by total numbers and percentage. Among other things, the chart reveals a decline in the Bureau's total SHU population over the two-and-a-half year period (14.5%), even when compared to the reduction in the Bureau's overall inmate population (7.9%).

The most substantial reductions have been in long-term SHU placements: the number of inmates housed in SHU more than 180 days have declined nearly 60 percent during this period, and the number housed more than 364 days have declined by more than 50 percent.

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

The current version of the SHU Application has not yet been implemented at any of the Bureau’s private contract facilities. As a result, it is only possible to electronically track the total number of inmates in SHU at those institutions (as was the case at all Bureau facilities prior to the roll-out of the SHU Application).

<b>SHU PLACEMENT OVER TIME (CONTRACT FACILITIES)</b> (Adapted from Data Provided by Facilities)				
SHU Placement	05/27/13	11/23/15	Change (05/27/13 to 11/23/15)	
			Total	% Change
Total in SHU	1,778	924	854 ↓	48.03% ↓
Average Daily Population	29,303	23,083	6,220 ↓	21.23% ↓

The Bureau is currently developing the capacity to track inmates as they move through different statuses within their restrictive housing units. As part of these efforts, the Bureau is automating its disciplinary process, which will allow Bureau officials to track a disciplinary violation from the incident report, to DHO hearing, to final disposition. In addition, in late 2016, the Bureau expects to release an upgraded version of the SHU Application, which will make it possible to track inmates as they progress through restrictive housing, including as they transfer from AD status to DS status or vice versa. Once these efforts are completed, the Bureau will have greater ability to assess the use of its Special Housing Units, allowing staff to identify potential problems quickly.

## Special Management Units (SMU)

SMU is a four-phase program for Bureau inmates who present unique security and management concerns. The program is designed for those who require greater supervision than is typically available at SHUs, but whose history of violent conduct does not rise to the level required for designation to the ADX. The goal of the program is to correct inmates' disruptive and violent behaviors, while gradually preparing them for return to the general population. The Bureau considers the program non-punitive, insofar as it is never imposed as an actual sanction for a disciplinary violation, although the vast majority of inmates selected for the program have a history of disciplinary violations at their institutions. Many are members or leaders of gangs or other "security threat groups" (STGs). Policies regarding the SMU are codified in Program Statement 5217.01, Special Management Units.

The Bureau created the SMU program in 2009, in response to a series of violent incidents within the federal prison system, including a staff homicide and a number of inmate homicides and serious assaults. As violence increased, so too did the disciplinary violations, and eventually the number of inmates requiring punitive segregation outpaced the capacity of the Bureau's SHUs.

In response, the Bureau implemented a number of policies, including the creation of the SMU program. By 2012, the SMU population reached 2,009 inmates. Over time, as prison violence subsided, the Bureau reduced the number of prisoners placed in the SMU program. As of November 25, 2015, 1,235 inmates were participating in the program.

A Warden may refer an inmate for possible designation to a SMU if the inmate:

- Participated in "disruptive geographical group/gang-related activity";
- Had a leadership role in disruptive geographical group/gang-related activity;
- Has a history of serious or disruptive disciplinary infractions;
- Committed any 100-level ("Greatest") disciplinary violation, after being classified as a member of a "disruptive group";
- Participated in, organized, or facilitated any group misconduct that "adversely affected the orderly operation of a correctional facility"; or
- Participated in or was associated with activity such that greater management of the inmate's interaction with other people is necessary to "ensure the safety, security, or orderly operation of the Bureau facilities, or protection of the public."

To refer an inmate to a SMU, the Warden submits a comprehensive referral packet, including all documents recording the inmate's misconduct, to the Regional Director. If the Regional Director determines the referral warrants further review, an impartial "Hearing Administrator" is appointed to conduct a hearing. The SMU Hearing Administrator must be a trained and certified DHO and cannot be a witness in a relevant disciplinary action involving the inmate.

Inmates receive notice of the SMU hearing, including the reasons for their referral and the availability of a staff member to assist with gathering documents and written statements. Hearings may be conducted in person or remotely via telephone or videoconference. Inmates may appear at the hearing, make an oral statement, and present documentary evidence (*e.g.*, written witness statements). The SMU Hearing Administrator will determine if the inmate meets the SMU referral criteria and will prepare a detailed report of his or her findings for the Regional Director. Additional information, such as a review of the inmate's mental health history is also provided. If the Regional Director determines an SMU referral is appropriate, the Regional Director will make a recommendation to the Bureau's Designation and Sentence Computation Center for a SMU designation. At this stage in the referral process, the Bureau's Psychology Services Branch also plays a role in reviewing inmates with a mental health history to ensure the inmate's placement in a SMU is appropriate. Inmates are provided a copy of the Hearing Administrator's report and advised of the opportunity to appeal the SMU designation via an expedited appeal process directly to the Bureau's Office of General Counsel.

Once selected, an inmate is transferred from his home institution to USP Lewisburg to begin the program. All SMU inmates progress through the four-phase program; Bureau staff conduct regular "SMU Reviews" to determine when an inmate should be advanced to the next phase. Inmates who violate program rules or fail to meet expected targets can be returned to a previous level. Inmates who have mental health disorders or cognitive limitations that make it unlikely that they would progress through the phases are accommodated, so that they may have the same opportunity as those without disabilities to advance through the phases, or diverted to an appropriate program to accommodate those limitations. The four phases are described below. Average completion times are included in parentheses.

- **Level One** (4 months). At this level, interaction between inmates is minimal. The Associate Warden is responsible for determining which inmates may be housed or participate in activities together. Inmates are ordinarily restricted to their assigned cells. An initial SMU Review occurs within 28 days, and every 90 days subsequently.
- **Level Two** (6-8 months). Level Two largely resembles Level One, except that out-of-cell activities and programming may be increased on a case-by-case basis. In some instances, inmates are permitted to have additional personal property. Inmates participate in GED or ESL programs, either individually or in a classroom setting, as well as individual and small group counseling sessions, which focus on "treatment readiness skills" (*i.e.*, basic empathy, respect). During this phase, SMU Reviews occur every 90 days.
- **Level Three** (6-8 months). At this level, inmates begin to interact in an open, but supervised setting, both within a unit and in frequent group counseling sessions. Inmates who demonstrate good conduct receive increased privileges, such as greater commissary access and additional personal property. Counseling sessions focus on ways to minimize



disruptive behavior, including through cognitive restructuring. SMU Reviews occur every 90 days.

- **Level Four** (2-4 months). At this level, inmates must be able to demonstrate their sustained ability to coexist and interact appropriately with other individuals and groups in the unit. Inmates may be considered for the same personal property privileges given to general population inmates. SMU Reviews occur every 30 days. At the completion of this stage, inmates return to a general population setting, typically at a high-security institution.

Currently, all Level One and Level Two inmates are housed at USP Lewisburg. Level Three and Level Four inmates are housed either at USP Lewisburg or USP Allenwood. If an inmate has not completed all four stages after 24 months, a referral for continued SMU designation must be submitted to the Regional Director, who must authorize continued placement. If the inmate continues to exhibit disruptive conduct after six additional months, the inmate may be referred for designation to another appropriate facility, including the ADX.

## **Conditions of Confinement**

Bureau policies establish baseline conditions of confinement for all SMU inmates, as well as the increased privileges that inmates can earn as they progress through the program. Many of the baseline privileges are identical to those in the SHU, including those regarding environment (ventilation, lighting, heating), cell occupancy, clothing, bedding, food, personal hygiene, access to religious materials, and medical care. Inmates are permitted five hours of out-of-cell exercise per week. During Level One and Level Two, recreation occurs in individual metal enclosures; in the final two phases, inmates may recreate together.

All SMU inmates receive mental health evaluations every 30 days, and emergency mental health and medical care are always available at the institution or in the community. Inmates who remain in SMU longer than 18 months receive comprehensive mental health evaluations. USP Lewisburg offers psychology programming on its in-cell radio station. In addition, the Education Department at Lewisburg offers literacy and secondary education programming. (Among the Bureau's high-security institutions, USP Lewisburg has the highest GED completion rate).

## **Staffing**

Correctional Services staff are assigned to SMUs as a quarterly work assignment. A lieutenant oversees the overall operations of the unit. Correctional officers supervise and ensure the safety of inmates, facilitate access of staff from other departments, and provide routine services and privileges. To ensure around-the-clock, year-round coverage, each SMU employs approximately 16 correctional staff members over the course of three daily shifts. Depending upon the capacity of a SMU, a day watch shift typically involves three to five officers, who are responsible for supervising approximately 75 to 200 inmates.

Much like staff assigned to SHU units, those who work in SMUs face repeated exposure to dangerous situations, due largely to the high-risk populations placed in SMU. All SMU officers are trained to address these security risks.

## USP Administrative Maximum (ADX)

Experienced correctional administrators have long recognized that a small group of extremely violent and influential inmates can have a disproportionately negative effect on the safe and orderly operation of an institution. The mission of the United States Penitentiary, Administrative Maximum (ADX) addresses this concern. The ADX is designed to safely house the Bureau’s most violent, predatory, disruptive, and escape-prone inmates in an environment providing each inmate an opportunity to demonstrate improved behavior, and the ability and motivation to eventually reintegrate into an open population at a different facility. The mission of the ADX also allows the Bureau’s other penitentiaries to operate safely and openly, permitting the significant percentage of the Bureau’s inmate population who want to serve their sentences without difficulty to do so safely.

The ADX houses just over 400 male inmates, which constitutes less than a quarter of a percent of the total Bureau population. This number has stayed relatively stable despite the growing inmate population since the ADX opened in 1994. The most common reasons for ADX placement are serious institutional misconduct, most often involving progressive acts of violent, predatory, aggressive, intimidating, or extremely disruptive conduct; involvement in conspiracies to, attempts to, or actual escapes from secure facilities; and unusual security needs based on the nature of an inmate’s offense (*e.g.*, notoriety, access to vast community and financial resources, or a leader of an organized crime association or terrorist group). Most inmates “work” their way to the ADX through progressive acts of predatory violence and/or extremely disruptive behavior, demonstrating they cannot function in an open population institution without posing a risk to the safety and security of the institution staff, inmates, and the public. In addition, the ADX accepts a small number of particularly dangerous or violent inmates from state correctional agencies, when states believe that their own facilities are insufficient to address the risks that a particular inmate possesses. (As of November 23, 2015, 15 of the ADX’s 405 inmates were state prisoners, representing 11 states.) Through regular, careful case reviews, the Bureau ensures that the ADX is used for only those individuals who need the security and controls available. The chart below identifies categories of inmates housed at the ADX, as of November 2015:

Sample of ADX Population (As of November 2015)	
Description	Number
Leaders, Members, or Associates of “Security Threat Group” (STG)	98
Murdered Another Inmate	67
Leaders, Members, or Associates of “Disruptive Group”	62
International Terrorists	34
Al Qaeda	19

Gama'a Al-Islamiyaa	3
Taliban	3
History of Hostage Taking	12
Threatened Members of Federal Judiciary	12
Domestic Terrorists	10
Murdered Bureau Staff	3

Inmates are afforded multi-level reviews prior to their placement at the ADX. The current policy sets out a multi-step process, which includes a formal hearing, full clinical psychological evaluation (which is reviewed by the Bureau's Central Office), and medical review for determining whether an inmate is appropriate for placement at the ADX. This process applies to all inmates who are considered for transfer to the ADX, including those with Special Administrative Measures (SAMs), which are described in more detail below. Inmates are generally referred to the ADX if they meet one of two basic criteria: (1) violent, disruptive, or escape-prone conduct in other correctional institutions; or (2) their status prevents them from being safely housed in the general population of an open-population correctional facility. Each inmate referred for placement receives a hearing, during which the inmate may make a statement.

The ADX operates four distinct programs: the General Population and Step-Down Unit Program; the Control Unit Program; the Special Security Unit (SSU) Program; and the High Security Adult Alternative Housing Program. Unless an inmate is referred for placement to the Control Unit or has SAMs, the inmate will ordinarily be placed into General Population and Step-Down Program. As an inmate in this program demonstrates periods of clear conduct and positive institution adjustment, it is possible for the inmate to progress from the general population units, through the intermediate, transitional, and pre-transfer units, with increasing degrees of personal freedom and privileges at each stage, and be transferred out of the program to an open population institution. An inmate's eligibility for advancement in the program is reviewed, at a minimum, every six months. His continued placement is then closely scrutinized on a regular basis to ensure only those inmates who require the security and controls of the institution are housed at the ADX. The ADX also operates its own Special Housing Unit (ADX SHU) for inmates in administrative detention or disciplinary segregation status.

### **ADX Conditions of Confinement**

All inmates at ADX are single-celled. Inmates are provided with access to both indoor and outdoor recreation, with the amount of time varying by unit, as explained below. Inmates who choose to go to outside recreation have access to sunlight and fresh air. Generally, the areas contain pull-up and dip bars, and inmates are allowed to play with handballs and soccer balls. Inmates may request instruction in aerobic exercise from ADX Florence Recreation staff. Inmates have access to wellness programs, weekly leisure games via the ADX Florence closed circuit

television system, weekend “brain teaser” games, arts and crafts, a weekly movie program, and special holiday activities.

All inmates are given the opportunity to have up to five in-person social visits per month, unless they are subject to some sort of visitation restriction. These visits are non-contact. Inmates may also make social telephone calls, the number of which depends on the inmate’s housing unit, as described below. Inmates may send and receive legal and social correspondence.

With the exception of inmates in disciplinary segregation, each inmate has a 13" television in his cell, which generally provides channels for closed circuit institutional programming (Recreation, Education, Religious Services, and Psychology), broadcast channels, radio stations, and digital music channels. Inmates housed in administrative detention in the Special Housing Unit only have access to the institutional programming channels on their televisions. One of the television channels provides bulletins to the inmates and shows the date and time. The costs of the televisions and select broadcast channels are covered through profits from inmate commissary purchases.

Inmates may subscribe to periodicals; may borrow leisure reading materials from the institution’s library; may take GED, Adult Continuing Education, and correspondence classes; may paint, draw, or crochet; may participate in a weekly bingo game; and may participate in art, essay and poetry contests. Inmates may make purchases from the commissary, including food items, toiletries, pens, paper, and religious items.

All ADX inmates have in-person contact with other persons on a daily basis. The Warden, Associate Wardens, Captain, and Department Heads perform weekly rounds in each unit for the opportunity to visit with inmates. Correctional Officers perform regular 30 minute rounds throughout all three shifts on a daily basis. A member of an inmate’s Unit Team visits the inmates every day. Inmates receive regular visits from medical staff, education staff, religious services staff, and psychology staff when they perform their rounds, and upon request if needed. Medical and mental health staff visit each unit daily. In addition, inmates have the ability to communicate with one another in several ways—they can and do speak to their neighbors in the cells next to, above, or below them and may speak to one another during out-of-cell recreation.

ADX inmates are able to participate in legal activities, including filing lawsuits. The inmates are able to have confidential legal visits and calls. Inmates have access to legal research via an electronic law library located within each unit.

Each cell at the ADX has a light, which the inmate may turn on and off as needed. These lights have three settings (dim, medium, and bright). The inmate controls the setting of the lights from inside his cell and can turn the light completely off. The inmate is required to turn the light on when staff are interacting with him at the front of his cell. Each cell has a bed with a mattress and bedding, a sink, a desk, a shelf, and a chair. Inmates may have personal items, such as photographs, reading materials, and legal papers in their cells.

The sizes of the cells range from 75 to 87 square feet. The cells in six of the nine housing units (B, C, D, E, F, and G units) are approximately 87 square feet, which does not include the inner sallyport area of the cell, which is 17 square feet. Each cell has a solid outer door and an inner grill. The wall next to the door for each cell also has a window, which is approximately 12" x 48". Each cell solid outer door has a window, which looks out on to the housing unit range, which is approximately 5" x 18". Each cell also has a window that looks outside, providing the inmate with natural lighting, which is 5" x 38", as well as a shower in the cell. The cells in the remaining 3 units (H, J, and K units), have approximately 75.5 square feet of living space and do not have an inner sallyport or a shower. Each cell has a solid outer door, with a window, which looks out on to the range, which is 5" x 18". Each cell also has a window that looks outside, providing the inmate with natural lighting, which is 5" x 38".

The following sections describe the conditions at specific units within the ADX.

### ***General Population and Step-Down Unit Program***

The ADX has a General Population and Step-Down Unit Program that provides inmates with incentives to adhere to the standards of conduct associated with a maximum security custody program. As these inmates demonstrate good conduct and positive institutional adjustment, they may progress from the General Population Units (D, E, F, and G) to the Intermediate (J/A), Transitional (which is currently located at USP Florence, adjacent to the ADX on the complex), and Pre-Transfer Units (also located at USP Florence). Inmates who are successful in the Pre-Transfer Unit may be transferred to an appropriate Bureau facility. Inmates at the ADX are encouraged to engage with family and friends in the community through social visits, correspondence, and telephone calls. All inmates in the General Population and Step-Down Unit Program may receive up to five social visits per month; they may also send and receive social correspondence. There is no numeric limit on the number of legal visits and calls they may receive. The other privileges afforded to the inmates are determined by their housing unit assignments in this layered program.

Ordinarily, the minimum time period to complete the program is 36 months. The minimum stay in a general population unit is ordinarily 12 months, the intermediate program is ordinarily 6 months, the transitional program is ordinarily 6 months, and the pre-transfer program is ordinarily 12 months. There is no minimum or maximum time period for completion of the program.

- **General Population.** General Population inmates have access to the programming and opportunities described above, including a television set in each cell. These inmates receive at least 10.5 hours of out-of-cell recreation per week (alternating between indoor and outdoor). Meals are provided to the inmates in their cells. General Population inmates are permitted to have two 15-minute social phone calls per month.
- **Pre-Intermediate Unit.** The Pre-Intermediate Unit (K/A Unit) houses those inmates who have demonstrated they can function in a less secure environment within the ADX,

but who have not demonstrated they can function in the Intermediate Step of the Step-Down Unit Program. The inmates are assigned to a group with another inmate. These inmates receive a minimum of 10.5 hours of out-of-cell recreation per week. The inmates recreate out of their cells in a double-occupancy recreation area either on the range or outside. Meals are provided to the inmates in their cells, and they eat their meals in their cells. The inmates receive three 15-minute social telephone calls per month. Shower stalls are located on the range and the inmates are escorted to shower.

- **Intermediate Step.** Inmates in the Intermediate Step receive 20.5 hours of out-of-cell recreation per week, split between out-of-cell recreation on the range and outdoor recreation. The inmates are assigned to one of four groups, with as many as eight inmates in a group. The inmates have indoor and outdoor recreation out of their cells with inmates in their assigned group. Meals are provided to the inmates by groups, with each group allowed out of their cells one at a time to come to the front of the range, receive their meals, and then return to their cells while unrestrained. The inmates eat their meals in their cells. The inmates are unrestrained when out of their cells on the range. The inmates receive two 15-minute social telephone calls per month. Shower stalls are located on the range, and the inmates may shower any time they are out on the range.
- **Transitional Unit and Pre-Transfer Unit.** The Transitional and Pre-Transfer Units are located at USP Florence, in Bravo-B (B/B) Unit. Each cell in B/B Unit has approximately 80 square feet area of living space and does not have a sallyport or a shower. Each cell has a solid outer door. Each cell's solid outer door has a window which looks out on to the range. Each cell also has a window that looks outside, providing the inmate with natural lighting. The inmates are assigned to a group. The inmates consume their meals on the range with the other inmates in their assigned group. Showers are located on the ranges, and inmates may shower at any time they are on the range. The inmates in these units receive a minimum of 30.5 and 35.5 hours of out-of-cell recreation per week, respectively. The inmates' out-of-cell recreation includes recreation in the unit and in the outdoor group recreation area. The inmates receive four 15-minute calls, and 300 minutes of social telephone calls per month, respectively.

In addition, the ADX has a privilege incentive program for inmates in the General Population and Control Unit Programs. The incentive program provides inmates confined in the General Population and Control Units additional incentives to participate in programs and enhance the programming opportunities available to them to demonstrate their readiness for release from the General Population and Control Units. The program encourages progressive development of pro-social behavior and personal skills which enhance successful reentry into both a general population environment and, ultimately, the community. As inmates in the General Population and Control Units participate in programs, it is possible for inmates (1) to have restored certain privileges that were suspended through the discipline process; (2) to participate in additional programs; and (3) to obtain a reduction in the projected duration of the inmate's confinement in his unit.

### ***Control Unit Program***

The Control Unit houses the most dangerous, violent, disruptive and assaultive inmates in the Bureau's custody. The Control Unit Program provides housing for inmates who are unable to function in a less restrictive environment without posing a threat to others or the institution. This unit typically houses inmates who have assaulted or killed staff or other inmates or who have escaped or attempted escape from another institution.

Referral to the unit is outlined in Program Statement 5212.07, Control Unit Program, and is reviewed by the Regional Director in the region which the inmate is housed. If the Regional Director concurs with the placement, the referral is submitted to the Regional Director of the North Central region, where the ADX is located. The Regional Director then designates a hearing administrator to conduct a hearing to review the placement referral. A mental health evaluation is a required component of the referrals to the Control Unit, and medical, psychological, and psychiatric concerns are considered during the review. Findings from the mental health evaluations, along with the full clinical record, are reviewed by the Central Office level by the Psychology Services Branch. The decision of the hearing administrator is then submitted to the Executive Panel (consisting of the North Central Regional Director, and Assistant Director of the Correctional Programs Division) for final review and placement.

Inmates placed in the Control Unit are given a specific term of time that they will serve in the Control Unit. Inmates placed in the Control Unit are reviewed within four weeks of initial placement. Subsequent reviews are conducted on a monthly basis by the unit team, while the Executive Panel reviews each inmate's status and placement on a quarterly basis. Credit for time served is granted depending on their adjustment and readiness for release from the Control Unit.

Inmates housed in the Control Unit receive a minimum of 7 hours of out-of-cell exercise per week and can participate in educational and psychological programming via the closed circuit televisions within their cells. Inmates receive psychology services and medical services on the same basis as inmates housed in other units at ADX. The inmates consume their meals in their cells. The inmates receive one monthly social telephone call and may receive up to five social visits per month.

### ***Special Security Unit (SSU) Program***

The Special Security Unit Program is designed for inmates who are subject to Special Administrative Measures (SAMs), which are restrictions on communications imposed by the Attorney General. *See* 28 C.F.R. §§ 501.2, 501.3. Inmates with SAMs are placed in the Special Security Unit (H Unit). SAMs may be imposed to prevent disclosure of classified information that would pose a threat to national security if disclosed or to protect against acts of terrorism and violence. SAMs include, but are not limited to, placing an inmate in administrative detention and restricting social visits, mail privileges, phone calls, and access to other inmates and to the media. Inmates housed in the SSU are reviewed annually by the Attorney General to determine if the SAM status should be renewed or modified. The Attorney General's review includes an



assessment of information provided by the prosecuting United States Attorney's Office and federal law enforcement officials.

The inmates incarcerated in H Unit have the opportunity to participate in a three-phase Special Security Unit Program (SSU Program), designed especially for SAMs inmates. The purpose of the SSU Program is to confine inmates with SAMs under close controls, while providing them opportunities to demonstrate progressively responsible behavior and participate in programs in a safe, secure environment. The SSU Program balances the interests of providing inmates with programming opportunities and increased privileges with the interests of ensuring institutional and national security. The success of the inmate's participation in the SSU Program provides information that can be considered in the evaluation of whether SAMs continue to be necessary, or whether the inmate's communications can be monitored in a manner that will not compromise national or institutional security interests.

The inmates housed in the Special Security Unit receive a minimum of 10 hours of out-of-cell exercise per week. Generally, the inmates recreate individually in secure single recreation areas. The inmates in Phase 1 and Phase 2 consume all their meals in their cells. The inmates receive up to four monthly social telephone calls and may receive up to five social visits.

- **Phase 1.** The baseline phase of the program, an inmate in this phase may be permitted two non-legal telephone calls per month, access to a commissary list and art and hobby craft items, and escorted shower time on the inmate's range three times each week.
- **Phase 2.** Depending upon the inmate's adjustment, he can move into Phase 2 at approximately 12 months. In Phase 2 of the Program, an inmate may be permitted three non-legal telephone calls per month and access to an expanded commissary list and additional art and hobby craft items. The inmate is allowed to be out of his cell without an escort five times each week.
- **Phase 3.** Placement into Phase 3 typically requires a modification of the SAMs to allow inmates to have physical contact with one another. Inmates in Phase 3 are allowed to be out on the range together in groups of up to four. An inmate in Phase 3 gains the ability to be in physical contact with other inmates in the range area outside his cell, seven days a week. Phase 3 inmates spend one-and-a-half hours per day on the range with up to three other inmates, none of whom are escorted by Bureau staff. The inmates in Phase 3 eat one meal together and engage in recreational activities, including watching television, reading and playing cards. Phase 3 inmates may shower at any time they are on the range. In addition, Phase 3 inmates continue to have access to the expanded art and hobby craft list and a further expanded commissary list.

### ***High Security Adult Alternative Housing Program***

This is a recently developed program designed for inmates who have generally demonstrated that they can function in a less-secure environment within the ADX without posing a risk to institutional security and good order, but whose safety needs prohibit them from advancing through the Step-Down Unit Program. The recent addition of this programming housing unit reflects the Bureau's core values (correctional excellence, respect, and integrity) through a continual review of the operating procedures to determine if gradual modification is necessary, first and foremost to reflect sound security practices, and only then to safely expand inmate access to programming opportunities. This program permits close controls while providing basic amenities and life enhancing programs that allow inmates to engage socially with one another.

The inmates in this program are housed in K/B Unit. The inmates are assigned to one of four groups of up to eight inmates. The unit has an enclosed common area with recreation equipment and leisure materials. These inmates receive a minimum of 24 hours of out-of-cell recreation per week. The inmates recreate with other inmates in their assigned group on the range, or outdoors, on a large recreation yard. The inmates consume their meals in their cells. The inmates are unrestrained when out of their cells. The inmates receive four 15-minute social telephone calls per month and may receive up to five social visits per month. Shower stalls are located on the range. The inmates may shower anytime they are out on the range. The inmates in this Program may leave the unit, unrestrained and under a staff escort, to purchase items from Commissary.

### ***ADX Special Housing Unit (ADX SHU)***

The ADX's Special Housing Unit (C Unit, Range 1) is a short-term housing unit for both inmates in Disciplinary Segregation, who have been found guilty of prohibited acts while at the ADX, and those in Administrative Detention, who have pending internal investigations, have been designated for a transfer, or have other temporary administrative needs. These inmates receive a minimum of 5 hours of out-of-cell exercise per week. The inmates recreate individually in secure single recreation areas. The inmates consume their meals in their cells. The inmates receive a minimum of one monthly social telephone call and may receive up to five social visits per month. Shower stalls are located within the cells. As mentioned, inmates on Administrative Detention status in the ADX SHU have televisions in their cells that show Bureau programming and inmate bulletin information. Inmates on Disciplinary Segregation status do not have a television in their cell.

## Bureau Inmates Requiring Special Consideration

The following sections examine Bureau services for four categories of inmates who may require special consideration: inmates with serious mental illness, inmates with acute medical needs, young adults (age 18-24 at time of conviction), and juveniles (under 18 at time of adjudication). As discussed below, each category possesses certain characteristics that may make the inmates particularly susceptible to the effects of restrictive housing, and so additional care may be required in certain circumstances.

### Inmates with Serious Mental Illness (SMI)

Inmates with serious mental illness (SMI) who are violent or disruptive pose a special challenge to the Bureau. Their behavior often requires removal from the general population, and yet “traditional” forms of restrictive housing (SHU, SMU, and the ADX) present challenges to ensure that an inmate’s mental health does not deteriorate during restrictive housing placement. The Bureau is addressing these concerns with a three-pronged approach: (1) by creating specialized secure mental health units, which allows Bureau staff to divert SMI inmates from long-term segregation into less restrictive housing; (2) by providing enhanced mental health services for inmates in SHU, SMU, and the ADX, including screening and intensive psychological programming; and (3) by offering mental health care to all Bureau inmates, as a way of reducing and preventing the type of disruptive behavior that often results in segregation. Many of the Bureau’s policies on mental health treatment are codified in Program Statement 5310.16, Treatment and Care of Inmates with Mental Illness, which was published in May 2014 and is included in the Appendix to this Report, along with other Program Statements that relate to psychiatric and psychological services.

Before describing individual mental health programs, it is helpful to summarize the Bureau’s system for classifying mental illness. The Bureau has defined four mental health “care levels” based on the seriousness of an inmate’s mental illness and the associated need for intervention, which is determined through regular inmate screenings.

- **Care Level One (“CARE1-MH”). Healthy or simple chronic care.** An individual is considered to meet CARE1-MH criteria if he or she (1) shows no significant level of functional impairment associated with a mental illness and demonstrates no need for regular mental health interventions; and (2) has no history of serious functional impairment due to mental illness or, if a history of mental illness is present, has consistently demonstrated appropriate help-seeking behavior in response to any reemergence of symptoms.
- **Care Level Two (“CARE2-MH”). Stable, chronic care.** An individual is considered to meet CARE2-MH criteria if he or she has a mental illness requiring (1) routine

outpatient mental health care on an ongoing basis; and/or (2) brief, crisis-oriented mental health care of significant intensity (*i.e.*, placement on suicide watch or behavioral observation status).

- **Care Level Three (“CARE3-MH”). Unstable, complex chronic care.** An individual is considered to meet the criteria for CARE3-MH if he/she has a mental illness requiring (1) enhanced outpatient mental health care (*i.e.*, weekly mental health interventions); or (2) residential mental health care (*i.e.*, placement in a residential Psychology Treatment Program).
- **Care Level Four (“CARE4-MH”). Inpatient psychiatric care.** A mentally ill inmate may meet the criteria for CARE4-MH and require acute care in a psychiatric hospital if the inmate is gravely disabled and cannot function in general population in a CARE3-MH environment.

Inmates who qualify as “seriously mentally ill” are Mental Health Care Level Two, Three or Four, although all Mental Health Care Level Four inmates are referred to one of the Bureau’s inpatient Federal Medical Centers. The Bureau classifies “serious mental illness” based on several factors, including the diagnoses, the severity and duration of symptoms, the degree of functional impairment, the treatment history, and current treatment needs. Under Bureau policy, the following diagnoses are generally classified as SMIs:

- Schizophrenia Spectrum and Other Psychotic Disorders;
- Bipolar and Related Disorders; and
- Major Depressive Disorder.

In addition, the following diagnoses are often classified as serious mental illnesses, especially if the condition is sufficiently severe, persistent, and disabling:

- Anxiety Disorders;
- Obsessive-Compulsive and Related Disorders;
- Trauma and Stressor-Related Disorders;
- Intellectual Disabilities and Autism Spectrum Disorders;
- Major Neurocognitive Disorders; and
- Personality Disorders.

Other types of mental illnesses may be classified as SMI on a case-by-case basis if they result in significant functional impairment. The chart below identifies the classification of restrictive housing inmates by mental health care level.

<b>MENTAL HEALTH CARE LEVELS</b>			
(Data as of November 2015)			
<b>Type of Housing</b>	<b>SHU</b>	<b>SMU</b>	<b>ADX</b>
MH Care Level 1	7,429	1,251	369
MH Care Level 2	480	11	35
MH Care Level 3	91	2	0
MH Care Level 4	10	0	0
Not Available	284	1	0
Total Prisoners	8,294	1,265	404

## Secure Mental Health Units

In May 2014, the Bureau revised its mental health treatment policy in part to ensure appropriate mental health services for those in restrictive housing. This policy revision supported the development of alternative housing units for the Bureau’s most violent and disruptive SMI inmates. The Bureau now operates two types of “secure mental health units,” as described below. These programs are designed to help inmates better manage the symptoms of mental illness, thereby decreasing the risk of violence and allowing inmates to transition back to general population (and, eventually, the community). Both programs include program incentives for participants, such as increased privileges for good conduct and limited financial rewards.

- Secure Mental Health Step-Down Program (SMH-SDP).** The SMH-SDP focuses on inmates with SMI, with the exception of inmates with severe personality disorders (who are served by the Secure STAGES Program, as described below). SMH-SDP is a residential, unit-based program that provides treatment for maximum- and high-security inmates who do not require inpatient treatment but lack the skills to function in general population. The program incorporates cognitive behavioral treatments, cognitive rehabilitation, psychoeducational components, psychiatric care, and skills training within the context of a modified therapeutic community. Inmates receive significant amounts of out-of-cell and in-cell programming, based on each inmate’s individualized treatment plan. SMH-SDP typically lasts from 12 to 18 months, depending on the severity of the illness and course of treatment. Inmates who complete the program typically transfer to a Mental Health Care Level Three institution, which is an institution designed to provide enhanced psychological services in an open population setting. SMH-SDP operates in two locations: the unit at USP Atlanta, in Georgia, opened in October 2013, with a total capacity of 24 inmates; and the unit at USP Allenwood, in Pennsylvania, opened in August 2015, with a total capacity of 30 inmates. Out-of-cell time varies depending on the inmate’s treatment needs and level of functioning.

- **Secure Steps Towards Awareness, Growth, and Emotional Strength (Secure STAGES) Program.** Secure STAGES focuses on inmates with personality disorders, primarily those with a history of self-harm behaviors. Like SMH-SDP, it is a residential, unit-based program for maximum- and high-security inmates, and inmates participate in significant amounts of out-of-cell and in-cell programming, based on their individualized treatment plans. The program utilizes Dialectical Behavior Therapy, Rational Self-Analysis, Supported Employment, Seeking Safety, and other cognitive behavioral interventions. All participants are assigned one or more Secure STAGES “mental health companions,” who are other inmates trained to assist the participant through the program. Inmates typically spend at least 12 months in the Secure STAGES Program, and the total length will vary depending on treatment. Secure STAGES operates at one Bureau institution: USP Florence, adjacent to the ADX, which opened in November 2014 and has a total capacity of 18 inmates. Out-of-cell time varies depending on the inmate’s treatment needs and level of functioning.

Both programs are led by doctoral-level psychologists, and staff-to-participant ratios are kept low to ensure effective treatment. Additional treatment staff include psychiatric care providers, psychologists, social workers, and treatment specialists. Placement decisions for both programs are made by the Bureau’s Psychology Services Branch, in consultation with Health Services and the sending and receiving institutions.

As the capacity of SMH-SDP and Secure STAGES increases, the Bureau will have the ability to divert a larger number of SMI inmates away from traditional restrictive housing, especially long-term SHU placements. Any expansion of these programs is contingent on increased funding, as discussed later in this Report.

## **Mental Health Services in Restrictive Housing (SHU, SMU, ADX)**

The May 2014 revisions to the Bureau’s mental health policy codified a number of practices for inmates placed in traditional restrictive housing (*i.e.*, SHU, SMU, ADX). These include: baseline mental health services for all inmates in restrictive housing, regardless of mental health care level; enhanced mental health screening, to ensure that SMI inmates are diverted from restrictive housing; and incorporating an enhanced review of mental health issues into the Bureau’s disciplinary processes. In addition to these policies, the Bureau also enhanced its mental health services at the ADX, which are also discussed in greater detail.

### ***Baseline Mental Health Services for All Restrictive Housing Inmates***

Bureau policy requires that all inmates receive mental health care commensurate with their needs, even while in restrictive housing. This includes, where necessary, diagnostic assessments, suicide risk assessments, crisis intervention contacts, protective custody reviews, sexual assault prevention, and any other services that address sensitive or high-risk behaviors. The Bureau strives to provide

these services in face-to-face, private sessions, to the extent that staff safety and security are not jeopardized.

To avoid deterioration of an inmate's mental health while in restrictive housing, Bureau policy requires that staff provide ongoing support to all segregated inmates:

- During rounds, all staff make themselves available for brief conversations that demonstrate concern and their availability to provide assistance.
- Inmates are removed from their cells for private or extended interviews with Psychology and Psychiatry Services staff as a standard procedure.
- In-cell activities (*e.g.*, books, puzzles, games, audio/video entertainment and programming, where applicable) are provided to inmates.
- Close attention will be paid to the importance of out-of-cell, unstructured recreation time specific to inmates' needs and encouraging inmates to take advantage of out-of-cell activities.

In addition, at every Bureau institution, psychologists provide SHU staff with a list of inmates with mental health conditions who may become dangerous, self-destructive, or suicidal if placed in SHU. If an inmate on this list is placed in SHU, a supervisor immediately notifies Psychology Services Branch. A psychologist then conducts an assessment to determine if any special precautions need to be taken, including alternative placement.

### ***Enhanced Mental Health Screening; Diverting SMI Inmates to Other Housing***

Bureau policy requires that staff conduct extensive mental screening of inmates before referring them to long-term restrictive housing (SMU or ADX), as well as additional screening for inmates who have been housed in any form of segregation (SHU, SMU, or ADX) for an extended period of time. The policy also sets out criteria for determining when inmates identified as SMI during these screenings should be diverted or removed from restrictive housing and placed elsewhere.

As noted earlier, Bureau staff place inmates in SMU and the ADX only after conducting a rigorous, multi-level referral process. Both reviews involve specific screening for mental health issues. For SMU, the Bureau's Psychology Services Branch reviews inmates with a history of mental health issues, including anyone previously identified as Mental Health Care Level Two or higher, to ensure there are no factors precluding their placement in the program. For the ADX, a licensed, doctoral-level psychologist conducts a comprehensive mental health evaluation of each inmate, including a review of the prisoner's history of medical, mental health, substance abuse, psychosexual, and psychosocial issues. This evaluation, along with the full clinical record, is then submitted to the Psychology Services Branch for review and concurrence.

The Bureau prohibits the placement of any Mental Health Care Level Four inmates in SMU or the ADX. Similarly, most Mental Health Care Level Three inmates are also diverted from SMU or ADX placement, except when the inmate possesses such “extraordinary security needs” that they cannot be housed anywhere else.<sup>25</sup> (In such cases, the Bureau develops a mental health treatment plan commensurate with the inmate’s treatment needs.) Moreover, the Psychology Services Branch will generally recommend against the placement of an inmate in SMU or the ADX if it appears that such placement would interfere with the inmate’s participation in necessary mental health treatments, if the inmate’s mental health disorder or cognitive limitations make it unlikely he or she would progress through the stages of SMU or the ADX, or if documentation suggests SMU or the ADX is “likely to exacerbate” an inmate’s mental health condition.

Bureau policy establishes similar mental health evaluations for any inmate housed in any form of segregation for an extended period of time. The policy requires evaluations for inmates in SHU for 6 months, in a SMU for 18 months, or the ADX for 12 months. As part of these evaluations, a Bureau psychologist examines the inmate’s records, observes the inmate’s behaviors, conducts a clinical interview and, when necessary, undertakes additional psychological testing. If the evaluation reveals that the inmate’s mental health appears to have deteriorated while in restrictive housing, the Bureau’s mental health staff develops a treatment plan to mitigate the impact or identify an alternative placement. The Psychology Services Branch reviews these mental health evaluations for concurrence and collaborates with institution staff when mental health concerns are noted. In addition, the Psychology Services Branch reviews SMU and ADX inmates for possible removal at any time if an inmate begins to experience SMI symptoms, requires an emergency transfer to an in-patient psychiatric facility, or demonstrates other significant mental health issues or cognitive limitations.

### ***Mental Health and the Bureau’s Disciplinary Program***

The May 2014 policy also strengthens the role of Bureau psychologists in the inmate disciplinary program. The policy recognizes, for example, that an inmate’s mental health symptoms may contribute to his or her disciplinary violations, which can in turn lead to placement or extension of placement in SHU. As a result, the Bureau now requires that when a Disciplinary Hearing Office

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<sup>25</sup> See Institution Supplement FLM 5310.16A, Treatment and Care of Inmates with Mental Illness, dated July 22, 2015. Extraordinary security concerns exist in three circumstances: (1) when an inmate’s communications are limited to prevent disclosure of classified information or to address a substantial risk that an inmate’s communications could result in acts of terrorism, death, or serious bodily injury; (2) when an inmate is extremely dangerous and cannot be safely housed in a less secure setting or a secure mental health unit; for example, when an inmate has committed serious assaults, murder, or escape while housed in secure environments and continues to pose a risk of engaging in such conduct; or (3) when an inmate or his or her crimes are of such notoriety that the inmate cannot be safely housed in a less secure environment with other inmates without a substantial risk of harm to him or her.



(DHO) is reviewing a case, he or she must refer the matter to staff psychologists for a competency and responsibility determination when the alleged violation involves:

- Any inmates classified as Mental Health Care Levels Three or Four;
- Any inmates classified as Mental Health Care Level Two, where there appears to be a “mental health concern”;
- Any violation for Offense Code 228 (“Tattooing or Mutilation”) that involves self-harm; or
- Any violation for Offense Code 302 (“Misuse of Authorized Medication”).

In such cases, psychologists advise the DHO on the inmate’s competency and responsibility. The May 2014 policy also provides for a psychologist’s input as to whether certain types of sanctions would be inappropriate based on the inmate’s mental health needs. In particular, sanctions that limit social interaction and social support—such as disciplinary segregation, loss of visits, or loss of phone calls—are considered on a case-by-case basis, and DHOs are discouraged from applying such sanctions in these situations.

### ***Mental Health Treatment at the ADX***

In 2012-13, in order to enhance the treatment available to inmates at ADX, the Bureau increased the mental health staffing at ADX by hiring three additional full-time psychologists, one psychiatric nurse, and one psychology technician. One of the three additional full-time psychologist positions facilitates trauma-related psychological programming. The Bureau also hired a full-time social worker for FCC Florence, whose priority is those inmates housed at ADX and who provides reentry planning services within one year of release, as appropriate. The Bureau also added a Deputy Chief Psychologist for the Complex.

The Bureau has also constructed and maintains facilities—secure programming enclosures—for group therapy at the ADX. These facilities are also used for re-entry services. Examples of the subject matters for group therapy include criminal thinking, emotional self-regulation, seeking safety, anger management, basic cognitive skills, and a non-residential drug abuse program. In addition, the ADX has locations available for private psychological and psychiatric counseling sessions in each housing unit at the ADX.

The ADX also provides psychiatry services. Psychiatric assessment, treatment, and consultation generally are provided by the institution psychiatrist, contract psychiatrist, or psychiatric mid-level provider (such as a psychiatric nurse practitioner). All ADX inmates may receive psychotropic medications as clinically indicated. In July 2015, the ADX implemented a local policy, which provides that inmates receiving psychiatric medications at the ADX will be seen by a psychiatrist, physician, or psychiatric nurse every 90 days, or more often if clinically indicated, for, at a minimum, the first year of their ADX placement. The ADX local policy also implements procedures to ensure that Health Services notifies the psychiatrist, psychiatric mid-level provider, psychiatric nurse, or physician and Psychology Services of inmates who refuse or consistently miss

doses of their prescribed psychotropic medications. When in-person psychiatry services are not available at the facility, tele-psychiatry is provided, in private sessions without the presence of correctional officers.

In addition to private and group counseling and treatment, ADX inmates ordinarily have access to in-cell therapeutic and recreation activities, including access to programming through closed-circuit television (*e.g.*, Psychology Services programs), hobby craft provided by Recreational Services or available through a Special Purchase Order, puzzles provided by Recreational Services, and leisure reading materials. Inmates are also encouraged to engage in yoga, relaxation techniques, meditation, deep breathing exercises, mindfulness exercises, and grounding techniques. A variety of educational and religious in-cell programming is also made available to inmates. ADX psychologists make weekly rounds in each unit.

As noted above, national policy provides that inmates with a serious mental illness will be excluded from ADX unless extraordinary security concerns exist that cannot be met elsewhere. Seriously mentally ill inmates who must remain at ADX due to extraordinary security issues have an individualized treatment program and are provided with at least 10, and as many as 20, hours of out-of-cell time per week, consistent with their individualized treatment plan. In particular, those inmates are eligible for placement in the previously described Adult Alternative Housing Program, if appropriate.

Finally, the ADX has developed procedures for heightened review of inmate requests related to mental health issues and referrals for mental health services. In particular, those requests are treated differently than other written inmate requests to staff. They are classified as requiring a response within 4 hours, 24 hours, or 3 to 10 business days, and are resolved by a member of the Psychology Services Branch.

## **Bureau's Mental Health Services, Generally**

In addition to programs specifically designed for the most violent and disruptive inmates, the Bureau also provides general mental health services to all inmates. One of the benefits of these general purpose programs is that they allow Bureau staff to develop early intervention treatment plans, reducing the likelihood that inmates will engage in the type of disruptive behavior that often results in segregation.

The Bureau employs more than 1,400 Psychology Services staff, including psychologists, treatment specialists, and administrative support staff. Bureau psychologists have doctoral degrees in clinical or counseling psychology, and treatment specialists have bachelor or master's degrees in social science fields, such as counseling, psychology, and social work. In addition to Psychology Services staff, the Bureau employs Health Services staff, including psychiatrists and mid-level psychiatric practitioners, to provide psychiatric care for inmates with mental health conditions, as well as social workers to facilitate continuity of care as inmates with mental health needs transition to the community.

Mental health treatment and care is provided in each institution, with close oversight by the Central Office. At the institution level, Psychology Services departments are staffed with a core complement which includes a chief psychologist, drug abuse program coordinator, staff psychologist(s), treatment specialist(s), and a psychology technician or secretary. Departments may also include additional positions for specialty programs. Psychology Services departments range from small departments with 5 to 10 staff to larger departments with more than 25 staff, depending on the mission of the institution.

Within each department, a licensed, doctoral-level psychologist serves as the mental health treatment coordinator. This psychologist manages the treatment and care of inmates with mental illness and ensures all provisions of applicable program statements are implemented. In the institutions, psychiatric services are provided by a “team medicine” model, which can include on-site Bureau psychiatrists, Bureau tele-psychiatrists, or contract psychiatrists. In addition, at some institutions, physicians, psychiatric mid-level providers, psychiatric clinical pharmacists, and social workers provide additional and complementary support. The Bureau concentrates mental health resources at select, special mission institutions to provide more intensive mental health treatment; however, all institutions are equipped to provide a basic level of care for inmates with mental illness.

Inmates are initially screened for mental illness prior to their arrival at a Bureau facility. The Bureau’s Designation and Sentence Computation Center staff review each inmate’s Pre-Sentence Report to identify any significant mental health history, noting this history in the agency’s electronic database (SENTRY) and making designations consistent with the estimated level of care required to address any identified mental health concerns. This screening process matches the inmate’s estimated level of care with an institution’s resources at the time of initial designation.

Upon arrival at the designated institution, medical staff conduct an initial screening for physical and mental health concerns, followed by a more detailed mental health intake by a psychologist within the first two weeks. Inmates also complete a brief Psychology Services Inmate Questionnaire, noting any self-reported mental health concerns. In conjunction with the Psychology Services mental health intake, the psychologist identifies the inmate’s mental health care level, based upon the anticipated level of care required to address his or her current mental health needs.

The Bureau offers several types of mental health services, as described below:

- **Inpatient Care.** In addition to routine mental health care, select Bureau institutions provide more intensive mental health treatment. Five of the Bureau’s Federal Medical Centers provide inpatient psychiatric services for the most acutely ill inmates (Mental Health Care Level Four). This level of care is reserved for inmates with SMIs which cannot be managed in an outpatient or residential setting due to the severity of their current symptoms and/or the presence of a co-occurring medical condition requiring hospitalization.

- **Psychology Treatment Programs.** Intensive mental health treatment is also available in the Bureau’s Psychology Treatment Programs (PTPs). PTPs are offered for three key populations: inmates with SMI, inmates with substance use disorders, and inmates with a sex offense history. PTPs share several common features: (1) clearly defined admission criteria; (2) a standardized, evidence-based treatment protocol consisting of cognitive-behavioral interventions—in the case of residential programs, these interventions are delivered within the context of a modified therapeutic community model; and (3) staff with specialized expertise. These national programs require significant staff resources and are targeted to serve inmates with the greatest needs. PTPs serving inmates with SMI include the SMH-SDP and Secure STAGES discussed earlier, as well as non-Secure versions of both programs. In addition, PTPs include the Challenge Programs, Skills Program, Resolve Program, and Dual Diagnosis Residential Drug Abuse Programs, all of which were cited earlier in this Report as alternatives to SHU placement. (The Bureau has published a short document summarizing these programs, “A Directory of Bureau of Prisons’ National Programs,” which is included in the Appendix to this Report.)
- **Evidence-Based Treatment Groups.** In addition to these national programs, institutions offer a series of outpatient, evidence-based treatment groups using existing resources. Institutions are required to provide a minimum of one outpatient treatment group per quarter, deemed a “Priority Practice.” Current Priority Practices include: Anger Management, Basic Cognitive Skills, Criminal Thinking, Dialectical Behavior Therapy, Emotional Self-Regulation, Illness Management and Recovery, and Seeking Safety. By offering these Priority Practices, Psychology Services departments provide services for inmates with mild to moderate programming needs, that is, inmates who do not require residential or inpatient care.
- **Mental Health Care Level Based Services.** Based on an inmate’s mental health care level, certain services are required, as detailed below. These services may be delivered on an outpatient basis, in the context of a residential PTP or, for inmates classified as Mental Health Care Level Four, in an inpatient setting. Inmates may be transferred to a different institution in order to receive specialized services or participate in a PTP.

  - Inmates classified as Mental Health Care Level One are not required to receive any regular mental health services or to have a treatment plan. When mental health services are provided to these inmates, they are documented in the Psychology Data System.
  - Inmates classified as Mental Health Care Level Two receive a documented diagnosis and rationale for the diagnosis and assigned care level; a collaborative, individualized treatment plan describing problems and goals, and the interventions

planned to assist with goal attainment, updated at least every 12 months; and evidence-based psychosocial interventions on at least a monthly basis.

- Inmates classified as Mental Health Care Level Three receive a documented diagnosis and rationale for the diagnosis and assigned care level; a collaborative, individualized treatment plan describing problems and goals, and the interventions planned to assist with goal attainment, updated at least every 6 months; and evidence-based psychosocial interventions on at least a weekly basis provided via enhanced outpatient care or within the context of a residential PTP.
- Inmates classified as Mental Health Care Level Four receive a documented diagnosis and rationale for the diagnosis and assigned care level; a collaborative, individualized treatment plan describing problems and goals, and the interventions planned to assist with goal attainment, updated at least every 90 days; and evidence-based psychosocial interventions and/or mental health contacts on at least a weekly basis. This treatment takes place only in a Federal Medical Center.
- **Recovery Model.** Consistent with recommendations of the President’s New Freedom Commission on Mental Health, the Bureau has identified recovery as a guiding principle in the treatment and care of inmates with mental illness. Mental health recovery refers to the process by which people are able to live, work, learn, and participate fully in their communities. For some individuals, recovery is the ability to live a fulfilling and productive life despite a disability. For others, recovery implies the reduction or complete remission of symptoms. The Bureau strives to integrate the recovery model into its PTPs and treatment plans for inmates with mental illness.
- **Suicide Prevention Program.** The Bureau operates a comprehensive suicide prevention program to assist staff in identifying and managing potentially suicidal inmates. The Bureau maintains a relatively low suicide rate, approximately 10 per 100,000, suggestive of the effectiveness of this comprehensive program. Additional information about the program can be found in the Suicide Prevention Program policy contained on the Bureau’s public website.
- **Care Coordination and Reentry (CCARE) Teams.** CCARE Teams are multidisciplinary teams that use a holistic approach to ensure that critical aspects of care for inmates with mental illness are considered and integrated. The CCARE Team is responsible for identifying potential concerns affecting inmates with mental illness in a correctional environment. It is a required component at all Mental Health Care Level Two, Three, and Four institutions.

- **Mental Health Training for Bureau Staff.** Basic mental health training is provided to all Bureau staff as a part of Introduction to Correctional Techniques (initial Bureau training) and Annual Training. Mental health and suicide prevention training guides are made available to all staff as an ongoing point of reference. More advanced mental health training is provided to select Bureau staff, based on their assigned duties. For example, on a quarterly basis additional mental health training is provided to staff working in restrictive housing settings; specialized suicide prevention training is provided to health care providers, lieutenants, chaplains, and correctional counselors; and mental health providers are offered a wide range of in person and web-based training courses. A 24-hour Mental Health Specialty Training is made available in select institutions to support the development of an optimal environment for effective treatment and care of inmates with mental illness, in which mental health professionals and other staff work collaboratively to support treatment.
- **Mental Health Companions.** Mental Health Companions are trained inmates who provide assistance and support to inmates with mental illness under the direction of the Psychology Services department. Mental Health Companion Programs are initiated at the discretion of the Warden. They may take a variety of forms, including a cadre residing on a mental health treatment unit, supporting a drop-in center, or participating in individual pairings with inmates who need additional support. The institution's Mental Health Treatment Coordinator is responsible for the selection, training, assignment, and removal of individual companions. Inmates selected as companions are considered to be on an institution work assignment when they are on their scheduled shift and receive performance pay for time spent providing support to inmates with mental illness.
- **Reentry Services.** As inmates with mental illness transition to the community, the Bureau provides a variety of reentry services, including mental health treatment summaries (which contain recommendations for inmates' ongoing care) and community-based support for inmates participating in Residential Reentry Centers. Bureau social workers create comprehensive release plans for those with significant mental health vulnerabilities, and especially for those without a community placement.

## Inmates with Medical Needs

Inmates placed in restrictive housing may experience acute medical conditions or have some level of chronic disease that requires ongoing medical attention. This section covers the procedures the Bureau of Prisons uses to insure appropriate medical care under those conditions.

Similar to the four levels of mental health care, the Bureau has adopted a classification procedure for medical care. These levels are used to place inmates in institutions where the services are commensurate to their medical need. The four levels of care are:

- **Care Level One.** Inmates are generally healthy but may have limited medical needs that can be easily managed by every 6 to 12 month clinician evaluations. Needed subspecialty care is limited (not regularly required and completed in less than 3 months).
- **Care Level Two.** Inmates are stable outpatients that have chronic illnesses that require clinician evaluations no more frequently than monthly and are independent in activities of daily living (ADLs), such as dressing and eating.
- **Care Level Three.** Inmates are fragile outpatients with conditions that require frequent clinical contacts (daily to monthly). Inmates may require assistance in performing some ADLs, but do not require daily nursing care. Such assistance may include the regular services of inmate companions. Stabilization of the inmate's medical health condition may periodically require hospitalization.
- **Care Level Four.** Inmates require inpatient medical facilities and may require daily nursing care. Current symptomology or treatment requires 24-hour skilled nursing care or nursing assistance.

Inmates with severe chronic medical needs are designated to one of the Bureau's Federal Medical Centers. If their behavior necessitates a placement in SHU, their medical needs can be addressed in that setting. Generally, inmates in Medical Care Level Three or lower who are placed in restrictive housing can be managed in the institution. Restrictive housing units in all institutions have cells that provide some capability to accommodate inmates with moderate mobility concerns/physical limitations (*e.g.*, wheelchair access toilets/sinks) for those who require such access.

## Young Adults (Age 18-24 at Time of Conviction)

While most jurisdictions use the age of 18 as the cutoff between juvenile and adult criminal court adjudication, developmental research shows this is a somewhat arbitrary demarcation. This section discusses the role of restrictive housing as a response to misconduct by young adults—which is defined here as inmates between the age of 18 and 24. However, to provide context, this section briefly reviews scholarship on the relationship between brain and psychosocial development extending from adolescence to young adulthood.

### Brain Development and Young Adult Behavior

Recent scientific advances have shown that the human brain, particularly the prefrontal cortex region that regulates impulse control and reasoning, continues to develop well into a person's 20s. In addition, psychosocial capacities continue to mature even further into adulthood. This gap between cognitive and psychosocial capacities has been characterized as the “maturity gap,” where cognitive function develops in advance of executive function. Studies also suggest that the part of the brain that controls pleasure-seeking behavior is hyperactive from adolescence until the mid-20s. Because of these factors, young adults are more likely to engage in risk-seeking behavior, have difficulty moderating their responses in emotionally charged situations, or have not fully developed a future-oriented method of adult-quality decision-making.<sup>26</sup>

Young adulthood is also distinct, though less so, from adolescence. Despite the increased cognitive development, young adults are more likely to engage in risk-seeking behavior than juveniles, which places them at higher risk for physical injury and at greater risk for becoming justice-involved. The period of young adulthood is particularly challenging for young men and women who are involved in crime, as they are more likely than the general population to have experienced traumatic incidents during childhood, which has been shown to disrupt or delay psychosocial development. In addition, justice-involved youth and young adults have a higher likelihood of parental incarceration, poverty, foster care, substance abuse, mental health needs and learning disabilities, all of which have been linked to impeding psychosocial maturity.<sup>27</sup>

However, in addition to the challenges that young adults present, this age range is also a period of time when rapid brain development occurs. As such, there is a significant opportunity to positively influence decision making and help get this age group back on track by implementing policies and practices that incorporate their developmental needs.

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<sup>26</sup> Vincent Schiraldi, et al., *Community-Based Responses to Justice-Involved Adults*, NEW THINKING IN COMMUNITY CORRECTIONS 3-4 (2015).

<sup>27</sup> *Id.*



## Young Adults & the Bureau

Bureau data indicates that young adults constitute slightly less than 5% of the total inmate population, but more than 8% of the SHU population. The share of young adults in SMU is slightly smaller than in the total inmate population, while less than 1% of inmates in the ADX are young adults.

<b>RESTRICTIVE HOUSING DEMOGRAPHIC INFORMATION</b>				
(Adapted from SENTRY Data as of 11/21/2015)				
<b>Type of Housing</b>	<b>Total</b>	<b>SHU</b>	<b>SMU</b>	<b>ADX</b>
<b>Total Prisoners</b>	<b>161,886</b>	<b>8,418</b>	<b>1,268</b>	<b>404</b>
18 to 24	4.93%	8.11%	4.65%	0.25%
25 to 34	29.09%	39.88%	43.69%	14.85%
35 to 44	34.32%	33.40%	35.02%	31.68%
45 to 54	20.09%	14.33%	13.25%	27.48%
55 to 64	8.62%	3.40%	3.15%	19.55%
65 and Older	2.96%	0.88%	0.24%	6.19%

Young inmates who commit misconduct within the Bureau are subject to the same array of sanctions and due process procedures as older inmates; however, the Bureau recognizes the developmental delay among its incarcerated young adults and has incorporated programming services to try to prevent the misconduct that triggers a restrictive housing placement. For example, the Bureau Rehabilitation and Values Enhancement (BRAVE) Program is a cognitive-behavioral, six-month residential psychology treatment program for young, medium-security inmates serving lengthy terms of incarceration. The program is designed to support favorable institution adjustment, reduce inmate misconduct, encourage the development of pro-social relationships, and direct inmates to meaningful self-improvement opportunities while incarcerated.

## Juveniles (Under 18 at Time of Adjudication)

As used here, the term “juvenile” encompasses two categories of individuals: those who were adjudicated as juveniles, and those under the age of 18 who were convicted and sentenced as adults. Federal law requires that adjudicated juveniles be housed separately from adults until their 21st birthday, and that those convicted and sentenced as adults must be housed separately until their 18th birthday (at which point they are transferred to an adult facility).

The Department of Justice prosecutes very few juveniles, and so the Bureau is only responsible for the custody of a very small number of juveniles. As of December 5, 2015, the Bureau was responsible for 71 juvenile inmates, of which 45 were serving a term of incarceration, and 26 were under the supervision of the U.S. Probation Office. Approximately 70% of the Bureau’s juveniles are convicted of violent offenses, with almost half convicted of homicide or aggravated assault, and over a quarter convicted of sexual assault. The Bureau does not house any incarcerated juveniles in its own facilities, but instead contracts or enters into intergovernmental agreements with state or municipal juvenile facilities to house these individuals.

The Bureau currently maintains 12 agreements or contracts with facilities housing juveniles. Seven of these facilities are “secure” (meaning that the facilities include direct supervision of inmates and no unsupervised access to the community), and five are non-secure, community-based facilities. The majority of these facilities are located in the Western United States, given that many of the juveniles in federal custody committed their crimes in Indian country in the western half of the United States. The Bureau’s agreements with these facilities require that the institution provide a minimum of 50 hours of programming per week for each juvenile, which includes educational and vocational training, independent living preparation, specialized treatment goals and objectives, counseling and psychological services, structured recreational activities, religious and cultural services, financial responsibility classes, and opportunities for family visitation.

Currently, juveniles in federal custody are rarely placed in restrictive housing, and when they are, the placement is typically brief. From September 1, 2014 to September 25, 2015, the Bureau was notified of 13 juveniles placed in restrictive housing at its contract facilities.

The Bureau has established a “Statement of Work” (SOW) for juvenile inmates, which outlines policies regarding the management and treatment of juveniles in contract facilities. The SOW includes written guidelines regarding appropriate disciplinary procedures, including when and how restrictive housing may be used. The policy also outlines the use of “room restriction,” which is the practice of placing a juvenile in an unlocked room, typically his or her cell, for a period not to exceed one hour.

Per the SOW, juveniles who commit a “minor rule violation” or require a “cooling off period” may be placed on room restriction; however, the time period must not exceed one hour in an unlocked room. For “major rule violations,” juveniles may be placed in a secure unit or a special

management unit, which triggers a number of notification requirements and additional protections for the juvenile. Staff must regularly monitor the juvenile, with required reviews every 15 minutes. The Bureau must be notified as soon as the inmate is placed in restrictive housing, and this notification is relayed to the Central Office. Within 24 hours of the triggering incident, the juvenile must receive a written copy of the alleged rule violation, and must be seen by a licensed mental health professional to ensure that the juvenile's behavior is not the result of mental illness or a medical condition.

If confinement goes beyond 24 hours, the facility administrator must review the continued confinement every 24 hours. If confinement continues beyond 5 consecutive days, the administrator must provide written justification for continued confinement and ensure that a licensed mental health professional conducts another review to ensure that the juvenile is not experiencing any deterioration of his or her medical or mental health. An interdisciplinary team must develop a "Special Behavior Management Program Plan" for the juvenile. In addition, Bureau staff review the need for continued placement every 24 hours.

## Audits of the Bureau's Restrictive Housing Programs

In recent years, several outside organizations have reviewed the Bureau's restrictive housing practices and published their findings. This Report summarizes two high-profile reviews: a 2014 analysis by CNA Analysis and Solutions, a private consulting firm (the "CNA Audit"), and a 2013 report by the Government Accountability Office (the "GAO Report"). Both the CNA Audit and the GAO Report are included in the Appendix to this Report, along with the Bureau's responses. This section also discusses the Bureau's internal auditing procedures, which includes reviews of each facility's SHU.

### CNA Audit

In February 2014, the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Human Rights heard testimony regarding the Bureau's use of restrictive housing. Following that hearing, the Bureau retained CNA Analysis and Solutions to conduct an independent audit of its policies and practices, which included multiple site visits by a team of experienced correctional experts. The final report, *Federal Bureau of Prisons: Special Housing Unit Review and Assessment*, was released in December 2014. The Bureau published a response to the CNA Audit in February 2015, concurring with many of the report's findings and recommendations, but taking issue with some findings, especially those relating to the Bureau's mental health services.

The "key findings" of the CNA Audit are quoted in full below:

- *The general conditions of confinement in restricted housing units are consistent with national regulations and standards.*
- *Management of the SHUs is complicated by the high percentage of inmates that have requested protection from other inmates, often due to gang related issues.*
- *The Bureau does not have adequate non-punitive protective custody housing units that have equivalent levels of programs and privileges as general population inmates.*
- *Backlogs in inmates awaiting transfer to the next program level negate the intent of the [SMU] program design and decrease the motivation to change behavior.*
- *Mental health services in restrictive housing require improvement in three specific areas: 1) proper mental health diagnoses; 2) more effective treatment; and 3) providing sufficient psychiatric staffing.*

- *The lack of time parameters for completion of disciplinary hearings results in substantial variation among facilities in the amount of time served in segregation for similar offenses, and can result in disproportionately long sanctions.*
- *There is no formal Bureau-wide reentry preparedness program specific to restrictive housing and inmates in these settings have very limited access to reentry programming.*
- *Bureau information systems do not effectively track the number and movement of inmates within the restrictive housing units.*

In addition, the CNA Audit proposed several recommendations to further reduce the Bureau's restrictive housing population. Those proposals are quoted in full below.

- *Establish a time limit on the amount of time that an inmate can be held in investigative status.*
- *Allow credit for time served in SHU upon determination of disciplinary sanction;*
- *Establish a housing option separate from SHU for inmates in protection status (protective custody);*
- *Continue rigorous review of referrals to restrictive housing;*
- *Reduce the time period for completion of the SMU program from the present 18 to 24 months to 12 months and compress the four levels to three levels by combining Level 3 and Level 4 and allowing more differentiation between the conditions of confinement between the levels; and*
- *To ensure appropriate treatment for seriously mentally ill inmates, the Bureau should complete a review of all inmates assigned to ADX, SMU, and SHU to identify all inmates who should be transferred to a secure mental health program similar to the ones being developed at USP Atlanta and USP Allenwood.*

The Bureau generally concurs with these recommendations and is prepared to implement them, as discussed in the "Guiding Principles and Policy Recommendation" section of this Report.

The primary area of disagreement between the CNA auditors and the Bureau involved mental health treatment. The CNA audit concluded that restrictive housing inmates with mental health needs were routinely underdiagnosed or misdiagnosed, resulting in insufficient treatment for mentally ill inmates. The CNA audit criticized the Bureau's methods for assessing mental illness, and repeatedly stated that the Bureau lacked sufficient psychiatric staff to provide adequate mental health treatment to all inmates who require it. In its response, the Bureau rejected many of these findings. The Bureau argued, among other things, that CNA based its conclusions on a small sampling of cases that was not representative of the Bureau's full restrictive housing population and that the sampled cases were not thoroughly reviewed by CNA auditors.

## GAO Report

In December 2011, Representative Bobby Scott requested that GAO initiate an audit of the Bureau's monitoring and evaluation of its restrictive housing programs. The GAO's final report, *Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing* (GAO-13-249), was released in May 2013. The GAO Report identified four questions it sought to answer, which are quoted in full below:

- *What were the trends in BOP's segregated housing unit population and number of cells from fiscal year 2008 through February 2013?*
- *To what extent does BOP centrally monitor how individual facilities document and apply policies guiding segregated housing units?*
- *To what extent has BOP assessed the costs to operate segregated housing units and how do the costs to confine an inmate in a segregated housing unit compare with the costs of confine an inmate in a general inmate population housing unit?*
- *To what extent does BOP assess the impact of segregated housing on institutional safety and the impacts of long-term segregation on inmates?*

In sum, GAO found the following:

- *While the Bureau had a mechanism to centrally monitor many of its segregated housing unit policies, the Bureau did not centrally monitor the policies specific to the ADX. As a result, the Bureau had less assurance that ADX staff consistently followed ADX-specific policies to the same degree that these requirements are followed for SHUs and SMUs.*
- *Prison officials were not consistently documenting that inmates' conditions of confinement, such as food and exercise privileges, were being met. While the Bureau had implemented new software to track the monitoring of SHUs and SMUs, the Bureau had not developed a plan to clarify the objectives and goals of the new software program, with time frames and milestones that explain the extent to which it will address documentation issues that were identified.*
- *The Bureau had not studied the impact of segregated housing on inmates, staff, and institutional safety. GAO proposed that, as the Bureau considered options for conducting a study of segregated housing, the agency might want to consider lessons learned from some state initiatives that reduced the number of inmates held in segregation without significant, adverse impacts on violence or assault rates.*
- *The Bureau's own policies recognized that long-term segregation may have a detrimental effect on inmates. While the Bureau regularly checked the mental health of inmates in segregated housing, BOP had not conducted an assessment of the long-term impact of segregation on inmates.*

The GAO Report issued four recommendations, which are quoted in full below:

- *Develop ADX-specific monitoring requirements;*
- *Develop a plan that clarifies the objectives and goals of the new software program [SHU Application], with time frames and milestones, and other means, that explains the extent to which the software program will address documentation concerns we identified[;]*
- *Ensure that any current study to assess segregated housing units also includes an assessment of the extent that segregated housing contributes to institutional safety, and consider key practices that include local and state efforts to reduce reliance on and the number of inmates held in segregated housing;*
- *Assess the impact of long-term segregation on inmates in SHUs, SMUs, and ADX.*

The Bureau has taken the necessary steps and responded to each of these recommendations, and is now awaiting closure of the audit.

## **Bureau Internal Audits**

To monitor compliance with policy, the Bureau has developed procedures for auditing all areas of services and security through its Program Review Division located in the Central Office. Program Review Guidelines have been developed to audit the Bureau's operations. The Bureau has organized these review policies around specific operational disciplines such as the one developed for Correctional Services procedures. This particular Program Review includes specific procedures to monitor the degree to which SHU operations are in compliance with Bureau policy. For each discipline in which the audit has been developed, Program Review Guidelines set forth responsibilities of the reviewers and specific requirements for each review.

The Correctional Services Program Review Guidelines (G5500I.11) establish many procedures for reviewing institution SHUs. For example, the guidelines require members of the program review team to visit SHUs to review documents to see if staff have made the required rounds on each shift. The review also has procedures for interviewing SHU staff to see if they understand appropriate entrance and exit procedures, correct handling of keys, appropriate use of restraints, correct use of escort procedures, and proper searches of the cells. Some of the procedures cover documentation review. Others cover observations and interviews of staff.

Correctional Services program reviews are comprehensive, and occur every six months to three years, depending on the rating the institution received during its last review. Institutions receiving an "at risk" rating will be reviewed again in six months; institutions receiving a "good" or "superior" rating will be reviewed again in three years.

Regardless of the scheduled review timeframe for Correctional Services, a Reviewer-In-Charge of every other program review occurring at the institution throughout the year will visit every range

of an institution's SHU to assess noise level, sanitation, cell crowding, and inmate complaints among other factors. These supplemental reviews occur, on average, five times a year. All SHU findings are reported to the Warden and, if significant, to the Regional Director. In FY 2015, the Bureau conducted 506 Program Reviews.

Program Reviews are not only used to insure compliance with policy at the institution level, they are also collated by the Program Review Division to track nationwide patterns in institution reviews to identify and correct systemic problems.



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<b>Total Prisoners</b>	<b>161,886</b>	<b>8,418</b>	<b>1,268</b>	<b>404</b>
By Race				
Asian/Pacific Islander	1.47%	0.89%	0.24%	1.73%
Black	40.01%	37.43%	47.56%	35.89%
American Indian	1.94%	3.72%	5.52%	3.71%
White	29.29%	27.89%	23.82%	43.32%
Hispanic	27.28%	30.07%	22.87%	15.35%
By Age				
Under 25	4.93%	8.11%	4.65%	0.25%
25 to 34	29.09%	39.88%	43.69%	14.85%
35 to 44	34.32%	33.40%	35.02%	31.68%
45 to 54	20.09%	14.33%	13.25%	27.48%
55 to 64	8.62%	3.40%	3.15%	19.55%
65 and Older	2.96%	0.88%	0.24%	6.19%
Mental Care Level				
Care Level 1	94.53%	90.85%	98.90%	91.83%
Care Level 2	2.54%	5.91%	0.87%	8.17%
Care Level 3	0.36%	1.16%	0.16%	0.00%
Care Level 4	0.41%	0.13%	0.00%	0.00%
Not Available	2.16%	1.95%	0.07%	0.00%

(Excludes private facilities)

## **Part Two**

### Restrictive Housing in Other Correctional and Detention Systems

## United States Marshals Service (USMS)

Although this Report focuses largely on the Bureau's restrictive housing policies, it also examines a second detention system operated by the Department of Justice: the U.S. Marshals Service's (USMS) program for housing and transporting federal pre-trial detainees. There are several significant differences between the Bureau's correctional system, which primarily houses inmates convicted of criminal offenses and sentenced to terms of incarceration, and USMS's detention program, which typically houses detainees during the course of their criminal proceedings.

The USMS detention program is overseen by its Prisoner Operations Division (POD). In 2014, the USMS received into custody 155,500 prisoners who were ordered detained by the federal courts; these prisoners were held in custody an average of 97 days pending adjudication and release from USMS custody. On January 1, 2015, 56,584 prisoners were in the custody of the USMS and housed in 698 facilities nationwide.<sup>28</sup> USMS houses detainees in several types of facilities:<sup>29</sup>

- **State and Local “IGA” Facilities.** Approximately 60% of USMS detainees are housed in detention space provided to USMS through “intergovernmental agreements” (IGA) with approximately 1,800 state, county, or local agencies. Not all of these facilities house USMS inmates on a regular basis, and many will only house a handful of inmates at any given time. Many of the facilities are county jails or similar short-term detention facilities operated by sheriffs, and given that each locality is responsible for the day-to-day operations of their facility, there is some variation in their services, programs, operating procedures, and conditions of confinement. IGAs are at-will agreements, and the locality is responsible for the day-to-day supervision and care of the inmate. Either party may terminate the agreement without any legal consequences.
- **Private Detention Facilities.** Approximately 20% of USMS detainees are housed in private detention facilities under performance-based contracts. Under federal law, these facilities are required to comply with American Correctional Association standards. *See* 18 U.S.C. § 4013(c)(2)(C).
- **Bureau Facilities.** Approximately 20% of USMS detainees are housed by the Bureau, which receives direct appropriations to cover the cost. The Bureau manages its own facilities and operations.

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<sup>28</sup> The population count excludes prisoners housed in local medical facilities.

<sup>29</sup> USMS also operates cell blocks, usually inside or adjacent to federal courthouses, for processing defendants and housing detainees awaiting court appearances or attorney visits. Inmates are rarely housed in USMS cell blocks longer than a few hours, and so they are not addressed in this Report.

The cost of detaining pre-trial detainees varies considerably between facilities. Contracts with private sector providers are of fixed duration, while IGAs typically have no expiration.

Historically, USMS has required that its private detention facilities adhere to the Federal Performance-Based Detention Standards (FPBDS), which include baseline standards on a variety of issues, including 27 standards relating to the operation and management of Special Housing Units. USMS enforces the contract terms through a rigorous auditing and compliance program, and reserves the right under its performance contracts to sanction facilities that fall short of their obligations.

USMS does not require that IGA facilities comply with FPBDS. Instead, USMS requires that IGAs comply with the laws of the relevant jurisdiction, as well as any other standards required by an authorized agency. In addition, USMS has limited enforcement remedies against IGAs, insofar as all IGA agreements are at will and subject to cancellation at any time. However, all IGA agreements include some basic reporting requirements, including requirements that facilities immediately notify USMS of a significant event related to USMS prisoners, such as the death, assault, medical emergency, attempted escape, or escape of a federal detainee.

We note that USMS detainees, as federal criminal defendants, possess certain procedural protections that safeguard against excessive use of restrictive housing. Unlike most Bureau inmates, USMS detainees are typically represented by an attorney for the entirety of their detention, and these attorneys are well-positioned to identify and report concerns about their clients' housing to the judge overseeing their case. (The same is true for inmates who demonstrate symptoms of serious mental illness.) In addition, it is important to note that most detainees remain in USMS custody for a relatively short period of time, limiting the likelihood of long-term placement in restrictive housing.

## Restrictive Housing in the States

Virtually all correctional systems in America employ restrictive housing in some manner, although inconsistent definitions and practices complicate efforts to quantify its prevalence across jurisdictions.

The 2015 ASCA-Liman Survey, described earlier in the “Data and Research” section of this Report, provides the most comprehensive recent accounting of restrictive housing at the state and federal level.<sup>30</sup> The survey organizers asked states (along with the Bureau and the District of Columbia) to provide data on two categories of segregation: inmates in any form of restrictive housing, and inmates in “administrative segregation,” which ASCA-Liman defined as restrictive housing for 30 days or more, excluding punitive segregation and protective custody. Thirty-two states, the District of Columbia, and the Bureau of Prisons responded with both numbers. The data, which appear on the next page, provide a snapshot of the prevalence of restrictive housing at a particular moment in fall 2014.

The survey results, which appear in the chart on the following page, indicated substantial variation between jurisdictions. Delaware reported the highest percentage of inmates in any form of restrictive housing, at 14.2%; Montana reported the lowest, at 2.1%. The Bureau reported that approximately 6.6% of its inmates were housed in some form of restrictive housing, near the 34-jurisdiction average of 6.3%. The survey revealed similar variations in the use of long-term “administrative segregation.” Five states reported that less than 1% of its inmate population was housed in administrative segregation (New York, North Carolina, Connecticut, Wisconsin, New Hampshire), while Kentucky reported the highest percentage in such housing, at 6.6%. The Bureau reported that 1.0% of its inmates were this status, somewhat below the 34-jurisdiction average of 2.6%.

### State-Level Reforms

In recent years, a number of states have reformed their restrictive housing policies, resulting in significant decreases in their segregation populations. Several states have credited these changes for other improvements within their correctional facilities, including reduced prison violence, higher officer morale, and substantial cost savings.

The reforms, which vary from jurisdiction to jurisdiction, fall into several broad categories:

- **Prevention.** These reforms are designed to prevent the type of disruptive behavior that often results in segregation. The policies make it easier for correctional staff to identify inmates who are prone to violence, victimization, and/or mental health issues, facilitating early intervention. Among other things, these policies include behavioral and contingency management tools, as well as risk assessment programs.

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<sup>30</sup> See 2015 ASCA-LIMAN SURVEY, *supra* note 15.

2015 ASCA-Liman Survey					
Use of Restrictive Housing in 34 Jurisdictions (as of Fall 2014)					
States	Custodial Population	All RH		“Administrative” <sup>31</sup>	
		Total	Percent	Total	Percent
Alabama	24,862	1,253	5.0%	729	2.9%
Colorado	20,944	662	3.2%	207	1.0%
Connecticut	16,564	592	3.6%	74	0.4%
Delaware	5,977	847	14.2%	330	5.5%
District of Columbia	2,067	174	8.4%	62	3.0%
Federal Bureau of Prisons (BOP)	171,868	11,387	6.6%	1,656	1.0%
Florida	100,869	8,963	8.9%	2,416	2.4%
Georgia	52,959	1,658	3.1%	1,625	3.1%
Indiana	28,318	1,789	6.3%	692	2.4%
Iowa	8,172	542	6.6%	142	1.7%
Kansas	9,529	664	7.0%	557	5.8%
Kentucky	12,103	794	6.6%	794	6.6%
Massachusetts	10,475	518	4.9%	313	3.0%
Michigan	44,925	2,004	4.5%	1,122	2.5%
Missouri	31,945	3,929	12.3%	3,290	10.3%
Montana	2,519	52	2.1%	48	1.9%
Nebraska	5,162	685	13.3%	173	3.4%
New Hampshire	2,714	270	9.9%	17	0.6%
New Jersey	18,968	1,687	8.9%	1,092	5.8%
New York	53,613	4,198	7.8%	23	0.0%
North Carolina	37,695	3,052	8.1%	85	0.2%
North Dakota	1,632	63	3.9%	23	1.4%
Ohio	50,554	2,064	4.1%	1,553	3.1%
Oklahoma	27,488	1,317	4.8%	1,183	4.3%
Oregon	14,591	1,025	7.0%	239	1.6%
Pennsylvania	49,051	2,339	4.8%	1,060	2.2%
South Carolina	21,575	1,735	8.0%	483	2.2%
South Dakota	3,627	221	6.1%	105	2.9%
Tennessee	21,030	2,626	12.5%	445	2.1%
Texas	150,569	6,301	4.2%	6,301	4.2%
Utah	6,995	832	11.9%	95	1.4%
Washington State	16,554	806	4.9%	296	1.8%
Wisconsin	21,996	1,363	6.2%	96	0.4%
Wyoming	2,074	110	5.3%	50	2.4%
<b>Total</b>	<b>1,049,984</b>	<b>66,522</b>	<b>6.3%</b>	<b>27,376</b>	<b>2.6%</b>

<sup>31</sup> For the purposes of this survey, ASCA-Liman defined “administrative segregation” as housing “inmates in a cell (either alone or with a cellmate) for most of their day (approximately 22-23 hours a day), and lasting thirty days or more, but excluding those placed in punitive segregation and protective custody.” 2015 ASCA-LIMAN SURVEY, *supra* note 15, at i.

- **Specialized, or “mission-specific,” housing units.** These reforms involve the creation of specialized housing units for categories of inmates that require removal from the general population, but typically do not require the type of restrictions typically found in a “traditional” segregation unit. These mission-specific programs include units for inmates with serious mental illness and those requiring protective custody.
- **Stricter rules for placement and length of stay.** These reforms limit when, why, and for how long an inmate can be placed in restrictive housing, especially in cases involving disciplinary or preventative segregation. Some jurisdictions have narrowed the list of offenses that are punishable by restrictive housing. Some have also imposed limits on the amount of time inmates can be held in restrictive housing, which can apply to specific categories of inmates (*e.g.*, juveniles and inmates with serious mental illness), or to certain types of segregation (such as maximum penalties for disciplinary violations). Some jurisdictions have effectively eliminated restrictive housing for certain populations, such as juveniles.
- **Regular status reviews.** Several states have instituted regular reviews of inmates in restrictive housing, to help ensure that those who do not belong in segregation will be promptly moved to a more appropriate setting. Oftentimes, these reviews are conducted by multi-disciplinary committees of prison officials, which include mental health staff.
- **Re-entry programming.** These reforms focus on rehabilitation while in restrictive housing, thus increasing the likelihood that the prisoner can safely return to the general inmate population and, eventually, society at large.

In addition to making specific policy changes, many of the reform-minded states have also reported a “cultural” shift within their correctional systems—one where restrictive housing becomes a last resort, rather than a default solution for officers and staff. This cultural shift has been particularly pronounced in locations where state leaders have not just developed far-reaching reforms, but also engaged the entire correctional workforce in the implementation of these policies.

This Report highlights five jurisdictions that have undertaken particularly significant reforms in recent years: Colorado, Washington State, New Mexico, Virginia (at the Red Onion State Prison), and Hampden County, Massachusetts.

### *Colorado*

In 2011, Tom Clements assumed leadership of Colorado Department of Corrections (CDOC), and identified restrictive housing an area that needed reform. His efforts were cut short in 2013, when he was murdered by a former inmate—one who had been released directly from segregation

to the community. Clements was succeeded as director by Rick Raemisch, who continued and expanded Clements' segregation reforms.

A 2011 National Institute of Corrections study for CDOC found that the number of inmates in long-term segregation was growing, that there was considerable internal confusion as to how this type of housing should be used, that inmates remained in such housing on average for two years, and that forty percent of prisoners were released from long-term segregation directly to the community.

In response, Colorado reviewed all prisoners who were housed in segregation for more than twelve months, and reassigned those who had been held long-term into step-down units to prepare them to return to the general population. CDOC developed a sanction matrix, significantly narrowed the list of violations punishable by segregation, and eliminated indeterminate sentences to administrative segregation. A residential treatment program was developed for mentally ill inmates, providing ten hours of out-of-cell treatment and ten hours of out-of-cell recreation per week, with the goal of returning participants to the general population.

CDOC reports that it has reduced the number of prisoners in "administrative segregation" from 1,505 (approximately 7% of the total inmate population) in November 2011 to 131 (approximately 1% of the population) in May 2015, and has eliminated releases directly from segregation into the community. Inmates with significant mental illness are now prohibited by statute from being placed in segregation. CDOC also reports that the average length of stay in administrative segregation or restrictive housing has been reduced from 28 months to less than eight months. CDOC reports no increase in assaults on staff by inmates since these reforms have been implemented.

### *Washington State*

The Washington Department of Corrections (WADOC) reports that in 2010 five percent of Washington's prison population was held in restrictive housing. This included prisoners held in "administrative or disciplinary segregation" (2% of total population), and those assigned to "intensive management units" with maximum custody status (3% of total population). Around this time, WADOC leaders began asking whether they were using restrictive housing effectively and appropriately. Building on the Department's long history of working on segregation reform, WADOC worked with the Vera Institute of Justice and Disability Rights Washington to revitalize their efforts with the twin goals of safely reducing their population in restrictive housing and creating more productive activities for prisoners who remain in segregation. As of today, WADOC has made great strides towards achieving both goals.

WADOC reports that it has reduced the number of prisoners assigned to maximum custody by 46 percent, from 581 in calendar year 2010 to 312 in calendar year 2015 (as of November). These 312 prisoners represent roughly two percent of Washington's prison population. WADOC also modified its sanctioning guidelines grid and reduced the length of time a prisoner can be held in administrative segregation from 60 to 47 days. Over the last five years, WADOC has seen a



paradigm shift—from using segregated housing to suppress and contain, to encouraging behavioral change through intensive programming and opportunities for congregate activity. The Department has instituted and expanded a number of cognitive behavioral and skill-building programs that target different needs. These include the Motivating Offender Change (MOC) program at the Washington State Penitentiary, the Reintegration and Progressive Program (RAPP) at Monroe Correctional Complex, and the Intensive Transition Program (ITP) at Clallam Bay Corrections Center. With the ITP, WADOC’s longest running cognitive behavioral program, the Department has seen an eighty percent success rate; of the 131 program graduates, 107 have not returned to restrictive housing. Since implementing these initiatives, WADOC reports less violence and fewer staff uses of force at the prisons with intensive management units.

### *New Mexico*

In the years following a high-profile prison riot in 1980, New Mexico Corrections Department (NMCD) increasingly turned to segregation in response to all manner of threats, resulting in the greater use of segregation for disciplinary, “administrative,” and protective custody purposes. Prisoners were routinely released from segregation directly into New Mexico’s communities. In 2012, Secretary Gregg Marcantel and NMCD partnered with the Vera Institute of Justice to undertake an evaluation of its use of segregation. Vera found that about eleven percent of New Mexico’s state prisoners were in segregation and that about 75 percent of those individuals were inactive gang members in protective custody. Vera also found an overuse of segregation as a disciplinary sanction and a lack of alternative sanctions.

In response to these findings, NMCD drastically reduced the use of segregation for protective custody and eliminated long-term protective custody segregation. Prisoners can no longer serve more than thirty days in disciplinary segregation. Among other reforms, NMCD established the Restoration to Population Program (RPP), in which inactive gang members are placed in a separated general population setting where they can participate in programs including drug treatment, GED, and work skills development. Anecdotally, participants in the RPP program have reported that they appreciate the opportunity to safely renounce their gang affiliations.

Today, NMCD prisoners are no longer released directly from segregated environments to the community. Those who have 180 days until their release date are placed in a special management setting, where they are provided congregate movement and programming to prepare them for release to the community. NMCD renamed its Level 6 maximum security unit the Predatory Behavior Management Program (PMP) to more clearly define its purpose to prepare prisoners for successful return to general population. The PMP incorporates clearly defined steps to address predatory behavior. In addition, sex offenders are placed in separated general populations where they receive evidence-based sexual offender treatment, and a Drug Suppression Unit has been created for prisoners who are guilty of dealing drugs, giving these categories of inmates, who previously would have been housed in segregation, greater access to programming.

Following the implementation of these reforms, NMDC has reported that, as of 2015, it has reduced its segregated population from eleven percent of the total inmate population to less than seven percent.

### ***Virginia (Red Onion State Prison)***

In 1998, the Virginia Department of Corrections (VADOC) opened Red Onion State Prison to house the increasing number of inmates the department had been placing into administrative segregation. At Red Onion, prisoners were confined to their cells 23 to 24 hours per day and had extremely limited access to programming and out of cell movement. Some inmates remained at Red Onion for years. VADOC leaders began to recognize many of the challenges created by the use of long-term administrative segregation such as deterioration of inmates' ability to interact with other staff and inmates; negative effects on staff morale and an increase in the use of employee sick leave; and the higher cost of running an administrative segregation unit.

In October 2011, VADOC began to implement reforms at Red Onion focusing on culture change within the facility. The warden, his executive team, and all staff completed training to acquire effective communication and strategies to motivate change. The Department also created new positions of Cognitive Treatment Officers, uniformed staff who escort and supervise inmates, who are also trained to provide programming to motivate and support positive change.

The VADOC established a Segregation Step-Down Program as a path for inmates in long-term administrative segregation to work their way into the general population. The Department focused on risk reduction strategies, enhancing inmates' motivation to change problematic behavior combined with programming to provide new skills. The program includes cognitive behavioral journaling, the use of therapeutic modules and security chairs to allow inmates to come out of their cells and join small groups for programming, and increasing performance expectations and additional privileges at each level.

In 2011, Red Onion State Prison housed 511 men classified as security level S—maximum security administrative segregation. Since reforms, VADOC reports that there has been a 68 percent reduction in the number of security level S inmates, a 78 percent reduction in incident reports, a 91 percent decrease in inmate grievances, and an 86 percent reduction in informal complaints. VADOC is now examining ways to apply the successes of Red Onion to restrictive housing statewide.

### ***Hampden County, Massachusetts***

The Hampden County Correctional Center (HCCC) in Massachusetts reports that prior to reforms, segregated housing had become an overused “jail within a jail.” Administrators believed that the segregation unit did not reflect the philosophy of their overall operation, which emphasized providing avenues for, and reinforcement of, positive behavior. Additionally, staff felt a constant concern for the elevated potential for mental decompensation in individuals housed in the segregation unit. In developing reforms, HCCC focused on staff buy-in, in part by forming a

multidisciplinary committee to draft and propose changes to the Disciplinary Segregation/Special Management Unit. After a ten-month process, the committee presented its proposed reforms to the Sheriff of Hampden County.

HCCC increased the use of alternative sanctions to increase the ability of staff to respond to infractions without placing prisoners in disciplinary segregation. In segregation units, reforms included new programming, positive reinforcement for good behavior, preemptive steps to combat mental decompensation, and supportive re-entry planning for return to the general housing unit. Additionally, HCCC instituted a good-time policy through which inmates in disciplinary segregation can reduce their sentences through good behavior; increased out-of-cell time in the segregation unit through the use of an exercise cell with medicine balls and a stationary bike; and introduced MP3 players loaded with correctional programs, soundscapes, guided meditation, and music. HCCC no longer uses segregation as a sanction for behavioral problems stemming from prisoners' mental illnesses and has established a separate mental health crisis intervention short-term unit. Finally, HCCC created step-down units to allow inmates to move from segregation to general population.

Since the implementation of reforms, HCCC reports that it has seen a 68 percent reduction in the number of inmates being held in the segregation unit and a more than 70 percent decrease in the average length of stay on the unit. HCCC has reported no increase in assaults in either the segregation unit or the general population. HCCC reports a markedly better climate and more positive attitudes from staff working in the segregation unit.

## Federal Support for State and Local Efforts

The Justice Department offers substantial support to help state and local jurisdictions develop and maintain safe, effective, and humane correctional systems. This support is provided primarily through two mechanisms: the National Institute of Corrections (NIC), a training and technical assistance center operated by the Bureau, and the Office of Justice Programs (OJP), which provides grant funding, technical assistance, and other types of support to state, local, and tribal systems across a range of criminal justice and law enforcement matters.

### National Institute of Corrections (NIC)

The mission of the National Institute of Corrections (NIC) is to serve the nation as a center of learning, innovation, and leadership that shapes and advances effective correctional practice and public policy. NIC is the only national agency with a legislative mandate (Public Law 93-415) to provide specialized services to state and local correctional agencies. NIC has long been recognized nationally for its unique role and high level of excellence in providing services.

NIC also collaborates closely with a number of professional organizations and associations that have a vested interest in developing and promoting sound correctional practices. These organizations include the Association of State Correctional Administrators (ASCA), the American Correctional Association, the American Jail Association, and the American Probation and Parole Association.

NIC has invested resources in its support to states and localities concerned with best practices in restrictive housing, recognizing there are many definitions and interpretations of restrictive housing throughout the field. Highlights of NIC's restrictive housing efforts are outlined below in four subsections: technical assistance, training, oversight of the CNA contract to review the Bureau of Prisons restrictive housing policies and procedures, NIC information resources, and collaboration with other professional correctional agencies.

#### *Technical Assistance to Requesting Jurisdictions*

Through its Technical Assistance (TA) program, NIC responds directly to the needs, problems, and individual requirements of state and local correctional agencies. NIC's technical assistance includes onsite guidance, support, consultation, or training provided by experienced technical resource providers and/or NIC staff members who serve in an advisory capacity and work with agency staff.

NIC has engaged in a number of restrictive housing TA events with jurisdictions requesting assistance. Recent examples include:

- Comprehensive Reviews including Restrictive Housing and STG's (2014). NIC conducted an evaluation of a state DOC's Security Threat Group (STG) management system as well

as a comprehensive assessment of the agency’s policies, procedures and practices of inmates housed within restrictive housing. The latter included inmates serving Disciplinary Detention, retention based upon personal safety concerns, and inmates assigned to restrictive housing that have a mental health diagnosis. Outcomes of this work included: (1) an overview of national best/promising practices related to the contemporary use of restrictive housing in various population groups; (2) legal considerations and ramifications in managing inmates in restrictive housing; (3) STG classification and criteria options essential for appropriate due process, management, SDP programing, and transition back to a general population facility or release to a community setting; and (4) methods, options and applicable tools to develop a vision, goals and a road map for incorporating potential revisions within existing restrictive housing and STG policies and procedures.

- Draft Policy Reviews to Incorporate Best Practices (2015). NIC conducted a comprehensive assessment of a state DOC’s draft policy and procedure for the placement of Maximum Security designated inmates into a Restricted Housing Unit Program. A report outlining the assessment outcomes was provided to the agency.
- Restrictive Housing Operations Review and Use as an Administrative Discipline Tool (2015). NIC conducted comprehensive evaluation and assessment of a state DOC’s restrictive housing operations, specifically reviewing its use as an administrative discipline tool.

### ***Management of Restrictive Housing Populations Training Programs***

Previously titled, “Management of High-Risk Offenders,” this NIC training program was updated after ASCA published the guidelines for restrictive housing. Since 2013, there have been 7 iterations of the program with 41 state agencies, one large jail, and one federal agency attending with an overall attendance of 205 participants.

Management of Restrictive Housing Populations is a 32-hour training program that focuses on the management of inmates in restrictive housing within the control and jurisdiction of departments of corrections throughout the country. The program explores fundamental issues in programs that attempt to reintegrate inmates back into general populations which preclude releasing them directly from restrictive housing back to the community and explores the management strategies for the long-term inmate in restrictive housing. In addition, the program addresses legal issues surrounding restrictive housing, gang management, prison culture and climate, and classification of high-risk individuals.

### ***Restrictive Housing Resources at NIC’s Information Center***

Located at the National Corrections Academy in Aurora, Colorado, the Information Center assists correctional policy makers, practitioners, elected officials, and others interested in correctional issues—including restrictive housing. Information Specialists who have professional experience in

corrections provide expert research assistance with full access to materials in the NIC library collection. Specialists assist with locating and, in many cases, obtaining copies of this information at no charge.

## **Office of Justice Programs (OJP)**

The Office of Justice Programs partners with jurisdictions and agencies to support a range of justice programs at the state, local, and tribal level. Many of these partnerships are facilitated through OJP's Bureau of Justice Assistance (BJA), which provides direct grants and technical assistance to both correctional systems and non-profit organizations that support BJA's mission. OJP also oversees, among other entities, the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the National Institute of Justice (NIJ), both of which are discussed below.

### ***Bureau of Justice Assistance (BJA)***

In fiscal year 2013, BJA awarded approximately \$400,000 to support a partnership between the South Dakota Department of Corrections (SD DOC) and the Crime and Justice Institute (CJI) of Community Resources for Justice, Inc. The grant funds, awarded through BJA's "Emerging Innovation: Field-Initiated Programs" Competitive Grant Program, supported SD DOC's efforts to safely reduce the use of restrictive housing in its correctional facilities and share lessons learned with other states. To date, CJI has published two policy briefs on the project,<sup>32</sup> and a comprehensive final report is expected in spring 2016.

To further support reform efforts, BJA joined with the Vera Institute of Justice's (Vera) Center on Sentencing and Corrections (CSC) in fiscal year 2014 to launch the "Safe Alternatives to Segregation" Initiative (SAS). The SAS initiative involves partnerships with five state and local correctional systems to significantly reduce the use of restrictive housing through the development of safe and effective alternatives, as well as limited technical assistance to a number of additional jurisdictions upon request. To support the initiative, BJA awarded approximately \$500,000 to Vera, which the organization matched with other sources of funding.

Several of the projects are described below.

- **Five state and local partnerships.** In March 2015, after a competitive bidding process, Vera announced the five participating jurisdictions: the state corrections departments of Nebraska, North Carolina, and Oregon, and the local departments in New York City and Middlesex County, New Jersey. In partnership with these sites, Vera is performing a full review of the corrections departments' policies and practices and conducting data analysis to determine the drivers and characteristics of incarcerated people in segregation. In the

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<sup>32</sup> BARBARA PIERCE PARKER & DARIN YOUNG, *RESTRICTIVE HOUSING: ATTRACTING YOUR BEST STAFF WHERE THEY ARE NEEDED MOST* (2015); BARBARA PIERCE PARKER & KEVIN MCLAIN, *RESTRICTIVE HOUSING PERFORMANCE MEASURES: REAL WORLD APPLICATION* (2015).

spring 2016, Vera will provide recommendations on policy and practice changes that can safely and effectively reduce the use of segregated housing across the systems and will help implement these recommendations.

- **Advisory Council.** To support the work in the sites, Vera has convened an Advisory Council comprising practitioners from state and local correctional systems that have successfully reduced their reliance on segregated housing as well as other experts in correctional management, criminal justice policy, mental health, and special populations.
- **Resource Center.** Through the online Safe Alternatives to Segregation Resource Center, Vera provides the latest research, reports, policy briefs, webinars, and information on promising reforms already being implemented in jurisdictions nationwide. These resources aim to inform correctional officials, policymakers, advocates, the media, and the general public about the current use of segregation in the U.S., its impact, and what can be done to address it. Through the resource center, Vera also offers limited technical assistance to additional jurisdictions upon request.

### *Office of Juvenile Justice and Delinquency Prevention (OJJDP)*

OJJDP provides funding for a broad range of prevention and intervention programs and technical assistance to states and local communities to appropriately respond to juvenile delinquency and victimization. In 2015, OJJDP convened a federal interagency working group to explore what is known about the use of restrictive housing in juvenile justice facilities. To date, the working group has reviewed available research on the use of restrictive housing, examined recent rulings and cases and worked to develop an operational definition for categorizing the various forms of restrictive housing used in juvenile justice facilities. The next steps for the working group are to determine what activities and resources are needed to better understand current practices at the state and local level and identify resources to support the implementation of evidence-based practices and sustainable changes at the local level.

### *National Institute of Justice (NIJ)*

NIJ serves as the research, development and evaluation agency of the U.S. Department of Justice, and is dedicated to improving knowledge and understanding of crime and justice issues through science. NIJ provides objective and independent knowledge and tools to reduce crime and promote justice, particularly at the state and local levels. NIJ funds research on various institutional correctional issues, including restrictive housing. In 2015, for example, NIJ has hosted a two-day symposium on the “use of administrative segregation” in the United States and commissioned several white papers on the subject.

## Federal Civil Rights Litigation

The Department of Justice is responsible for enforcing a number of civil rights laws pertaining to individuals confined in restrictive housing, including the Civil Rights of Institutional Persons Act (CRIPA), the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973. CRIPA, 42 U.S.C. § 1997a, which Congress passed in 1980, gives the Attorney General the authority to investigate conditions of confinement in institutions operated by or on behalf of state and local governments—including juvenile justice facilities, adult jails and prisons, nursing homes, and facilities for individuals with psychiatric or developmental disabilities—to determine whether violations of the Constitution or federal law exist. CRIPA enforcement has been delegated to the Department’s Civil Rights Division, and all CRIPA matters are handled by the Division’s Special Litigation Section.

Under CRIPA, the Division is authorized to remedy a pattern or practice of unlawful conditions that deprives individuals confined in the facilities of their constitutional or federal statutory rights. As required by the statute, the Division engages in negotiations and conciliation efforts to develop remedies that help jurisdictions correct deficient conditions. If these efforts fail, the Division may file a lawsuit to correct the violations of rights. At the end of fiscal year 2014, the Division had active CRIPA matters and cases involving 150 facilities in 27 states, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories of Guam and the Virgin Islands.

Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Title II applies to all state and local governments and their departments, agencies, special purpose districts, and other instrumentalities. Title II extends to all of a correctional facility’s services, programs, and activities, including classification, housing, recreation, and medical and mental health treatment, among others, for which prisoners are otherwise qualified. *See* 28 C.F.R. § 35.151, 35.152. The regulation implementing title II of the ADA requires public entities to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). The Division’s Disability Rights and Special Litigation Sections share enforcement responsibilities under Title II related to correctional institutions.

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, prohibits discrimination on the basis of disability in federally conducted and federally assisted programs and activities. The Department’s Section 504 implementing regulation for the programs and activities conducted by the Department are found at 28 C.F.R. part 39 and its Section 504 implementing regulation applicable to recipients of federal financial assistance from the Department are found at 28 C.F.R. part 42, Subpart G). Section 504 states that no qualified individual with a disability shall “be excluded from the participation in, denied the benefits of, or be subjected to discrimination under” any covered program or activity. 29 U.S.C. § 794(a). The Department’s 504 regulations



include requirements for program accessibility and effective communication with people who have hearing or vision disabilities. *See* 28 C.F.R. § 39.160(a)(1). While the Office of Justice Programs enforces the Department's Section 504 regulations with respect to federally assisted programs and activities, the Disability Rights Section of the Civil Rights Division is charged with coordinating the consistent application of Section 504 regulations across the federal government.

For decades, a number of the Division's matters have involved the use of restrictive housing, some focusing on the treatment of adult prisoners and others specifically focusing on juvenile detention facilities. Several of the Division's more recent adult cases are summarized below.

- **State of Pennsylvania.** In 2013, the Division published its findings regarding the Pennsylvania Correctional Institution at Cresson (SCI-Cresson), which found that that institution's use of long-term and extreme forms of solitary confinement on adult prisoners with serious mental illness and/or intellectual disabilities violated the Eighth Amendment and Title II of the Americans with Disabilities Act. The Division's findings in SCI-Cresson compelled it to expand its investigation statewide. In 2014, the Division found that throughout the state, adult prisoners with serious mental illness were subjected to prolonged solitary confinement under harsh conditions, leading to severe mental deterioration, psychosis, and acts of suicide and self-harm.
- **Columbus, Georgia.** In January 2015, the Division entered a supplemental agreement that will wind down enforcement of the long-standing consent decree involving the Muscogee County Jail in Columbus, Georgia. The supplemental agreement expands on a 1999 decree by adding safeguards for prisoners with serious mental illness, including limiting the use and duration of solitary confinement; increasing out-of-cell time; and requiring the jail to provide secure mental health and step-down units.
- **State of California.** In 2013, the Division filed two statements of interest in *Coleman v. Brown*, a federal class action in the Eastern District of California challenging the prolonged isolation of adult prisoners with serious mental illness. The Division affirmed that Title II of the ADA requires prison officials to make individualized assessments of prisoners with serious mental illness or intellectual disabilities when making housing determinations to provide for reasonable modifications that ensure that they are not automatically placed in solitary for mere convenience. Also in 2013, the Division filed a statement of interest in *Mitchell v. Cate*, another statewide class litigation challenging California's policy and practice of race-based lockdown as a response to potential security threats. The Division stated that using race as a proxy for potential gang violence to justify locking down all prisoners of a racial or ethnic group violated the Fourteenth Amendment's Equal Protection Clause.
- **St. Croix, Virgin Islands.** After extensive litigation, the federal court in St. Croix concluded in May 2013 that, among other unconstitutional conditions in the Golden Grove Adult Correctional Facility, "prisoners with mental illness languish in segregation

cells, purportedly for their own protection.” The court also found that the facility failed to adequately classify prisoners as having serious mental illness, provide specialized mental health housing, and conduct surveillance rounds in segregation to identify prisoners with mental illness and refer for treatment. The subsequent settlement agreement prohibits housing prisoners with serious mental illness in segregation. In addition, it requires regular review of prisoners in segregation to minimize time in segregation, provision of adequate opportunities for out-of-cell time, and that qualified mental health providers review proposed prisoner disciplinary sanctions to evaluate whether mental illness may have impacted rule violations and ensure that prisoners are not punished for acts that are solely symptoms of mental illness.

- **St. Tammany Parish, Louisiana.** In 2012, the Division published its findings regarding the St. Tammany Parish Jail, in Covington, Louisiana. The Division found that St. Tammany’s routine, long-term use of booking cages to house suicidal adult prisoners deprived prisoners of adequate mental health care and put them at risk of harm.
- **Miami-Dade County, Florida.** The Division’s August 2011 findings report on its investigation of the Miami-Dade County Corrections and Rehabilitation Department concluded that the facility’s “segregated housing units for prisoners with serious mental illness and suicidal behaviors are inhumane and unconstitutional.” The report outlined remedial measures including the implementation of policies and procedures requiring mental health staff’s review of mentally ill prisoners’ disciplinary charges to ensure that mentally ill prisoners are not punished for conduct that is symptomatic of mental illness, and the provision of mental health care housing units, or special needs units, for prisoners who cannot function in the general population.
- **Robertson County, Tennessee.** In August 2011, the Division’s investigation of the Robertson County Detention Center in Springfield, Tennessee culminated in findings that the facility’s use of “therapeutic lockdown,” or the practice of placing prisoners with mental illness in long-term isolation, “is contrary to generally accepted professional standards of mental health care and the Constitution.” The subsequent settlement agreement prohibits the use of administrative segregation to supplant crisis services.
- **Columbia, South Carolina.** In October 2013, the Division’s investigation of the segregation of inmates with HIV held by the South Carolina Department of Corrections (SCDC) resulted in a consent decree ending their segregation in “HIV only” dormitories in two of SCDC’s highest security prisons. The Department brought the case under Title II of the ADA and Section 504. This resolution followed a decision in a similar case brought in 2012 by the American Civil Liberties Union (ACLU) against the Alabama Department of Corrections (ADOC), regarding ADOC’s segregating prisoners with HIV by housing them separately from all other prisoners and confining some of its prisoners with HIV in

restrictive housing. The district court ruled that placing inmates with HIV in restrictive housing on the basis of their HIV status, as well as other types of segregation to which ADOC subjected the inmates, violated their rights under the ADA and Section 504. *See Henderson v. Thomas*, 891 F. Supp. 2d 1296 (M.D. Ala. 2012).

In addition, the Division has participated in a number of cases that specifically focus on restrictive housing as applied to juveniles:

- **Rikers Island, New York.** In August 2014, the United States Attorney’s Office for the Southern District of New York, working in conjunction with the Civil Rights Division, published its findings regarding the conditions of confinement of adolescent male inmates on Rikers Islands, in New York City. Under a consent decree approved by the court in October 2015:
  - The City may not “place Inmates under the age of 18 in Punitive Segregation or Isolation.” *See* Consent Judgment § XVI(2), *United States v. City of New York*, S.D.N.Y. No. 11-5845 (Oct. 21, 2015) (ECF 249);
  - Inmates under the age of 19 may be placed “in a locked room or cell as a temporary response to behavior that poses a risk of immediate physical injury to the Inmate or others.” *Id.* § XVI(10); and
  - The period of confinement “shall not exceed 24 hours, except in extraordinary circumstances which shall be documented, approved by the Warden of the Facility, and approved in writing by the Corrections Health Care Provider supervising psychiatrist or supervising clinical psychologist.” *Id.* § XVI(10)(c).
- **Leflore County, Mississippi.** In May 2015, the Division filed in federal court a consent decree with the Leflore County, Mississippi, Board of Supervisors concerning the conditions at the Leflore County Juvenile Detention Center. The consent decree included commitments eventually to eliminate disciplinary seclusion and restrict the use of cool-down seclusion to one hour.
- **Contra Costa County, California.** In 2014, the Division filed a statement of interest in a case to protect the rights of youth with disabilities to special education services while in detention. The youth were placed in solitary confinement for as much as 22 hours a day. Following the Division’s statement, the parties to that case agreed to reforms that prohibit the use of seclusion for disciplinary reasons and to limit the use of seclusion imposed as a temporary response to behavior that threatens immediate harm to no more than four hours.

- **State of Ohio.** In 2014, the Division entered into a consent decree resolving allegations that Ohio unlawfully subjected youth with mental health needs to harmful seclusion in violation of their constitutional rights. Ohio agreed to eliminate disciplinary segregation, greatly reduce cool-down seclusion, and ensure youth receive individualized mental health treatment to prevent and address the violent behaviors that led to seclusion.
- **Terrebonne Parish, Louisiana.** In 2011, the Division released its findings regarding the Terrebonne Parish Juvenile Detention Center, in Houma, Louisiana. The Division found that isolation and restraints were routinely used at this pre-trial facility when verbal or non-physical methods would have been adequate. The parties signed a consent decree in 2011, which among other things imposed limits on the use of isolation. The facility ultimately came into compliance with the consent decree, and this matter was dismissed in 2014.
- **Los Angeles County, California.** Following a 2008 findings letter, the Division and Los Angeles County entered into a Memorandum of Understanding (MOU) regarding conditions at facilities for youth who have violated the conditions of their probation. A 2012 amendment to the MOU limits the conditions in which isolation can be used, limits how long youth may be placed in isolation, and examines the use of isolation as a measure of determining the County's compliance with the agreement.

## Immigration and Customs Enforcement (ICE)

For comparison purposes, this Report also considers the immigration detention system operated by Immigration and Customs Enforcement (ICE). In recent years, ICE has instituted a number of significant reforms to their restrictive housing practices that serve as a useful guidepost for other correctional and detention systems.

In some ways, ICE's immigration detention program resembles the model used by the U.S. Marshals Service: a mix of federal, state, county, and private facilities that temporarily house detainees while they await adjudication of their long-term status. (For ICE detainees, they are awaiting a decision regarding their removal from the United States or execution of a removal order; for USMS detainees, they are awaiting resolution of their federal criminal proceeding.) However, ICE also requires that all detention facilities utilized by the agency meet ICE's national detention standards, which prescribe minimum conditions of confinement, programs, and services for ICE detainees at that facility.

### Overview of ICE Detention Program

ICE's detention system is overseen by the Custody Management Division, a part of ICE's Enforcement and Removal Operations (ERO). In FY 2015, ICE housed a total of 307,310 detainees, although only a fraction of that population was housed by ICE at any single time. The average length of stay in ICE custody was 34.4 days. On January 1, 2015, for example, ICE had 26,392 detainees in its custody at 177 facilities throughout the United States.<sup>33</sup> ICE houses detainees in several types of facilities:

- **State and Local “IGSA” Facilities.** In FY 2015, on average, over half of ICE detainees were housed in detention space provided to ICE through “intergovernmental agency service agreements” (IGSA) with approximately 80 state, county, or local agencies; another 15% of ICE detainees were housed in detention space through ICE riders on Marshals Service “intergovernmental agency agreements” (IGA), with approximately 60 state, county, or local agencies.<sup>34</sup> Many of the facilities are county jails or similar short-term detention facilities operated by sheriffs, sometimes with housing units the facility dedicated for ICE detainees. However, approximately half of the detainees housed in IGSA facilities—27% of the entire FY 2015 ICE average daily population (ADP)—were housed in dedicated IGSA facilities (*i.e.*, facilities that exclusively house ICE detainees and that are typically owned and operated by contractors). Given that each locality is responsible for the day-to-day operations of their facility, there is some variation in their services, programs, operating procedures, and conditions of confinement. In almost all cases,

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<sup>33</sup> The average daily population (ADP) for FY 2015 was 28,168.

<sup>34</sup> This data for total numbers of facilities includes only those with an FY 2015 ADP of 1 or more, as ICE has a large number of authorized facilities that it rarely, if ever, uses.

IGSAs are at-will agreements, and either party may terminate the agreement without legal consequences.

- **Contract Detention Facilities (CDF).** In FY 2015, approximately 18% of the ICE ADP was housed at dedicated CDFs, which are owned and operated by private sector contractors pursuant to a performance-based contract with ICE.
- **Service Processing Centers (SPC).** In FY 2015, approximately 10% of the ICE ADP was housed at SPCs, which are owned and administered by ICE but largely staffed by private sector contractors, pursuant to a performance-based contract with ICE.

The cost of detaining individuals in ICE custody varies considerably between facilities, as do the terms and conditions of the IGSAs and contracts. At some locations, ICE pays for every bed, regardless of whether it is occupied. At other locations, the per diem is reduced when a certain occupancy level is achieved. The majority of contracts with private prison providers are short in duration, whereas most IGSAs with county sheriffs have no expiration.

Over the past 15 years, ICE has developed three sets of “national detention standards,” which apply to all non-Bureau facilities that house its detainees. The first and second sets of standards were released in 2000 and 2008, respectively. The third and most recent iteration, released in February 2012, is known as the “Performance-Based National Detention Standards 2011” (PBNDS 2011), and was drafted to improve medical and mental health services; increase access to legal services, religious opportunities, recreation, and visitation; improve communication with detainees with limited English proficiency; and improve the process for reporting and responding to complaints, among other things. All ICE-affiliated detention facilities (IGSA, CDF, and SPC) are subject to one of the three sets of detention standards. Several factors determine which standard applies to which facilities, including when ICE last negotiated its agreement with a particular facility. ICE generally requests a facility to adopt the revised standards upon renegotiation or renewal of any contract. PBNDS 2011 currently applies to facilities housing approximately 66% of ICE’s ADP, excluding family residential facilities, which do not utilize segregated housing. All dedicated facilities (SPCs, CDFs, and dedicated IGSAs) are covered by PBNDS 2011.

ICE also requires all facilities that house its detainees to adhere to certain policies regarding the use of segregation. All versions of ICE national detention standards establish detailed requirements with respect to facility segregation practices, including with respect to permissible grounds for placement in segregation, procedural requirements for making initial placement decisions and for conducting regular ongoing reviews of the necessity of continued segregation, health and safety monitoring and documentation requirements, as well as minimum detainee access to a range of facility programs and services.

ICE’s policies establish two types of restrictive housing: “disciplinary segregation,” which is punitive, and “administrative segregation,” which covers all non-punitive forms of restrictive

housing (*e.g.*, investigative, protective, preventative, transitional). ICE policies regarding permissible disciplinary segregation sanctions are codified in the national detention standards, including PBNDS 2011. In some ways, the disciplinary scale is similar to the Bureau’s: the PBNDS establishes four levels of offenses—“Greatest,” “High,” “High Moderate,” and “Low Moderate” —which closely track the offense levels established in the Bureau’s disciplinary system. For each offense level, the policy describes a variety of available sanctions, including punitive segregation. The maximum segregation penalties are as follows:

ICE MAXIMUM TERMS (Adapted from PBNDS 2011)	
Severity Level	Any Offense
Greatest	60 days
High	30 days
High Moderate	3 days
Low Moderate	Not permitted

## Reporting Requirements

In 2013, ICE conducted a review of its restrictive housing policies, and issued a directive titled “Review of the Use of Segregation for ICE Detainees” (ICE Segregation Directive), which complements whatever detention standards apply to a particular facility. The ICE Segregation Directive imposes several reporting requirements, both to regional ERO field offices and to ICE Headquarters in Washington, D.C.

- Regional reporting.** Each facility must report in writing to a regional ERO supervisor (the “Field Office Director,” or FOD) whenever a detainee has been held continuously in segregation for 14 days, 30 days, and at every 30-day interval thereafter, or has been held in segregation for 14 days out of any 21-day period. Once notified, the regional field office conducts a review of the segregation case, to ensure that proper procedures were followed, and to ensure that ongoing segregation is appropriate. As part of this review, the regional field office must evaluate the appropriateness of potential housing or custodial alternatives, such as return of the detainee to the general population, transfer to another facility where the detainee can be housed in the general population or in an environment better suited to his or her needs, or release from custody (consistent with requirements of mandatory detention under the Immigration and Nationality Act, public safety, and other immigration enforcement considerations).

An even more stringent policy applies when the detainee meets criteria that might make him or her more vulnerable in segregation and therefore require more intensive monitoring. The Directive requires that a facility must notify the regional ERO office no

later than 72 hours after placement in segregation when the detainee: (1) has a mental illness, serious medical illness, or serious physical disability, regardless of the reason for the placement; or (2) was placed in administrative segregation because of a special vulnerability,<sup>35</sup> or because the detainee is an alleged victim of sexual assault, is an identified suicide risk, or is on a hunger strike. Regional field offices must conduct a similar review of the segregation placement in these cases once notified, at this shorter interval.

- **Headquarters reporting.** The Directive requires the regional ERO office to notify ICE Headquarters regarding any detainee held longer than 30 days, as well as certain detainees held in segregation for more than 14 days, including those subject to the 72-hour regional notification process described above. ICE Headquarters components then provide a second layer of review concerning the appropriateness of the segregation placement, and work with regional field offices to effectuate any less restrictive housing or custodial options as available and appropriate.

These reporting requirements allow ICE to closely scrutinize segregation decisions at its facilities. In October 2013, the agency deployed a web-based program, the Segregation Review and Management System (SRMS), to track detainees in restrictive housing and to facilitate the reporting and multi-level review requirements described above. SRMS allows ERO regional field offices to submit notifications about segregation placements to ICE Headquarters in real time, and automatically prompts field offices to furnish information required by the Directive whenever a segregation case has reached requisite notification or re-evaluation intervals (14 days, 30 days, etc.). ICE Headquarters components are able to jointly review cases in the system and share comments within each case, in order to reach a coordinated recommendation as to the appropriateness of continued segregation and any available alternative housing options. SRMS allows tracking and trend analysis based on a wide variety of factors, such as placement reason, security threat, or any of the special criteria included in the ICE Segregation Directive. The program allows officials to calculate the average and median amount of time detainees spend in each of these subcategories, as well as evaluate statistical trends for facility segregation practices more generally. SRMS also serves as a centralized historical record of all segregation cases entered into the database, and subsequent field office and Headquarters level reviews.

In addition, ICE also operates a rigorous, multi-layered oversight program to ensure compliance with its detention standards, regardless of which version governs at a particular facility. The

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<sup>35</sup> The Directive identifies detainees with “special vulnerabilities,” as those,

who are known to be suffering from mental illness or serious medical illness; who have a disability or are elderly, pregnant, or nursing; who would be susceptible to harm in general population due in part to their sexual orientation or gender identity; or who have been victims – in or out of ICE custody – of sexual assault, torture, trafficking, or abuse. [Part 3.3, at 2.]



agency's On-Site Detention Compliance Oversight Program is comprised of more than 40 federal detention site monitors posted at each of ICE's major detention facilities who, on a full-time and consistent basis, inspect to ensure that ICE's contractors meet requirements, respond to and report on problems, and collaborate with contracting officers regarding cost adjustments as appropriate. This program currently covers facilities housing over 80% of ICE's ADP. In addition, ICE's Detention Standards Compliance Unit (DSCU) administers annual contract inspections of all over-72 hour detention facilities with an average daily population of more than 10 detainees. ICE has also established an independent Office of Detention Oversight (ODO), which provides in-depth examinations of compliance with applicable national detention standards at select facilities based on risk analyses or specific identified concerns. These levels of oversight complement the additional review mechanisms established by the ICE Segregation Directive with respect to segregation issues in particular.

## **Part Three**

### Guiding Principles and Policy Recommendations

## Guiding Principles

This section includes a series of “Guiding Principles,” which are intended as best practices for correctional facilities within the American criminal justice system.<sup>36</sup> These aspirational principles should serve as a roadmap for correctional systems seeking direction on future reforms. When a correctional system possesses the resources, staffing, and legal authority to fully implement these principles, it should do so. When a correctional system lacks the resources, staffing, or legal authority, it should develop a clear plan for building the necessary capacity and then proceed expeditiously toward that goal. Officials at prisons and jails should work with policymakers, correctional officer labor unions, advocacy organizations, and other stakeholders to develop responsible and humane restrictive housing policies that both protect inmates and enhance officer safety.

### Restrictive Housing, Generally

- Inmates should be housed in the least restrictive setting necessary to ensure their own safety, as well as the safety of staff, other inmates, and the public.
- Correctional systems should always be able to clearly articulate the specific reason(s) for an inmate’s placement and retention in restrictive housing. The reason(s) should be supported by objective evidence. Inmates should remain in restrictive housing for no longer than necessary to address the specific reason(s) for placement.
- Restrictive housing should always serve a specific penological purpose. When drafting or implementing policy authorizing the use of restrictive housing, correctional systems should

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<sup>36</sup> These Guiding Principles do not have the force of law and do not create or confer any rights, privileges, or benefits to past, current, or future inmates or detainees housed by federal, state, or local correctional or detention systems, including the Federal Bureau of Prisons. The Guiding Principles were developed for correctional systems that detain or incarcerate inmates in connection with criminal proceedings in civilian courts. Other correctional or detention systems may wish to review these Guiding Principles to determine which are applicable to their unique circumstances and to make appropriate changes accordingly.

Both implementation and application of these Guiding Principles involve the exercise of judgment of relevant Department officials, including those at the Federal Bureau of Prisons and the U.S. Marshals Service. Nothing in these Guiding Principles should be construed to limit the authority of the Attorney General to impose Special Administrative Measures pursuant to 28 C.F.R. §§ 501.2-501.3. Nor should they be construed to limit the Department’s ability to implement administrative detention for any inmate or detainee as imposed by the Attorney General pursuant to 28 C.F.R. §§ 501.2(a) or 501.3(a), or as needed to implement any Special Administrative Measure or any court order issued pursuant to 18 U.S.C. § 3582(d).

clearly articulate the purpose(s) for employing restrictive housing in the authorized circumstances.

- An inmate's initial and ongoing placement in restrictive housing should be regularly reviewed by a multi-disciplinary staff committee, which should include not only the leadership of the institution where the inmate is housed, but also medical and mental health professionals.
- For every inmate in restrictive housing, correctional staff should develop a clear plan for returning the inmate to less restrictive conditions as promptly as possible. This plan should be shared with the inmate, unless doing so would jeopardize the safety of the inmate, staff, other inmates, or the public.
- All correctional staff should be regularly trained on restrictive housing policies. Correctional systems should ensure that compliance with restrictive housing policies is reflected in employee-evaluation systems.
- Correctional systems should establish standing committees, consisting of high-level correctional officials, to regularly evaluate existing restrictive housing policies and develop safe and effective alternatives to restrictive housing.

### **End-of-Term Placement**

- Absent a compelling reason, prison inmates should not be released directly from restrictive housing to the community.
- During the final 180 days of an inmate's term of incarceration, officials should avoid placing the inmate in involuntary restrictive housing. If an inmate is housed in involuntary segregation 180 days out from the end of his or her sentence, officials should consider releasing the inmate to a less restrictive setting if this can be done without endangering the safety of the inmate, staff, other inmates, or the public. If segregation becomes necessary during this time, officials should provide targeted re-entry programming to prepare the prisoner for his or her return to the community.

### **Disciplinary Segregation**

- Correctional systems should develop clear, specific policies for determining under what conditions an inmate can be placed in segregation in response to an alleged disciplinary violation—both during the investigative stage and after an adjudication of guilt—as discussed below.

- Correctional systems should work with prosecutors and other law enforcement officials to ensure that inmates who engage in serious criminal activity while incarcerated—especially those who assault or kill correctional staff—face criminal prosecution when appropriate.

***Pre-Adjudication (Investigative Segregation)***

- An inmate should not be placed in restrictive housing pending investigation of a disciplinary offense unless the inmate’s presence in general population would pose a danger to the inmate, staff, other inmates, or the public. In making this determination, officials should consider the seriousness of the alleged offense, including whether the offense involved violence, involved escape, or posed a threat to institutional safety by encouraging others to engage in such misconduct. Policy and training should be crafted carefully to ensure that this principle is not interpreted overly broadly to permit the imposition of restrictive housing for infrequent, lower-level misconduct.
- Except in emergency situations, an inmate should not be initially placed in investigative segregation without prior approval by a supervisory official. This supervisor should carefully scrutinize the proposed placement to determine whether segregation is necessary at this stage.
- An inmate’s initial placement in investigative segregation should be reviewed within 24 hours by an appropriate, high-level authority who was not involved in the initial placement decision.
- Correctional staff should complete their disciplinary investigation as expeditiously as possible. Any time that an inmate spends in investigative segregation should be credited towards the term he or she ultimately serves in disciplinary segregation for that offense. Absent compelling circumstances, such as a pending criminal investigation, an inmate should not remain in investigative segregation for a longer period of time than the maximum term of disciplinary segregation permitted for the most serious offense charged.
- An inmate who demonstrates good behavior during investigative segregation should be considered for release to the general population while awaiting his or her disciplinary hearing. Similarly, if an inmate is ultimately adjudicated guilty, the inmate’s good behavior should be given consideration when determining the appropriate penalty.

***Post-Adjudication (Disciplinary Segregation)***

- Inmates who violate disciplinary rules should be placed in restrictive housing only as necessary, and only after officials have concluded that other available sanctions are insufficient to serve the purposes of punishment.

- Disciplinary sanctions, regardless of whether they involve a period of segregation, should be applied in a manner that is swift, certain, and fair.
- Correctional systems should establish maximum penalties for each level of offense. These penalties should always include alternatives to disciplinary segregation. The maximum penalties should be graded based on the seriousness of the offense. If used for punishment, restrictive housing should be reserved for offenses involving violence, involving escape, or posing a threat to institutional safety by encouraging others to engage in such misconduct. Policy and training should be crafted carefully to ensure that this principle is not interpreted overly broadly to permit the imposition of restrictive housing for infrequent, lower-level misconduct.
- An inmate should be sentenced to a term of disciplinary segregation only after officials conduct a disciplinary hearing and the inmate is adjudicated guilty of the alleged violation. The hearing should be conducted by a correctional official outside the regular chain of command at the institution where the inmate is housed.
- When a disciplinary hearing officer is confronted with an inmate who demonstrates symptoms of mental illness, the officer should refer the inmate to a qualified mental health professional to provide input as to the inmate's competence to participate in the disciplinary hearing, any impact the inmate's mental illness may have had on his or her responsibility for the charged behavior, and information about any known mitigating factors in regard to the behavior. The disciplinary hearing officer should also consult a mental health professional, preferably the treating clinician, as to whether certain types of sanctions, (*e.g.*, placement in disciplinary segregation, loss of visits, or loss of phone calls) may be inappropriate because they would interfere with supports that are a part of the inmate's treatment or recovery plan. Disciplinary hearing officers should take the psychologist's findings into account when deciding what if any sanctions to impose.
- Ordinarily, disciplinary sentences for offenses that arise out of the same episode should be served concurrently.
- To incentivize conduct that furthers institutional safety and security, inmates who demonstrate good behavior during disciplinary segregation should be given consideration for early release from segregation, where appropriate.

## **Protective Custody**

- Generally, inmates who require protective custody should not be placed in restrictive housing.

- When an inmate faces a legitimate threat from other inmates, correctional officials should seek alternative housing, by transferring the threatened inmate either to the general population of another institution or to a special-purpose housing unit for inmates who face similar threats, with conditions comparable to those of general population. There are two exceptions to this general principle:
  - When the inmate poses such extraordinary security risks that even a special-purpose housing unit is insufficient to ensure the inmate's safety and the safety of staff, other inmates, and the public. In such cases, the inmate may be housed in more restrictive conditions. The inmate's placement should be regularly reviewed to monitor any medical or mental health deterioration and to determine whether the extraordinary security risks have subsided.
  - During a brief investigative period while correctional staff attempt to verify the need for protective custody or while the inmate is awaiting transfer to another facility.
- When transferring an inmate to another institution for protective custody reasons, correctional officials should give consideration to an inmate's release residence, including a desire to be housed close to family.
- Correctional systems should identify the most common reasons that inmates request protective custody (*e.g.*, prior cooperation with law enforcement, conviction for sex offense, gang affiliation, sex or gender identification) and develop strategies for safely housing these inmates outside traditional restrictive housing units.

## **Preventative Segregation**

- Inmates should not be placed in long-term preventative segregation unless correctional officials conclude, based on evidence, that no other form of housing will ensure the inmate's safety and the safety of staff, other inmates, and the public. This determination should be guided by clearly articulated procedural protections, including the use of a multidisciplinary review team.
- Officials should regularly review those in preventative segregation with the goal of transitioning inmates back to less restrictive housing as soon as it is safe to do so.
- Inmates in preventative segregation should be given the opportunity to participate in incentive or step-down programs that allow them to progress to less restrictive housing.

## Conditions of Confinement

- Correctional systems should seek ways to increase the minimum amount of time that inmates in restrictive housing spend outside their cells and to offer enhanced in-cell opportunities. Out-of-cell time should include opportunities for recreation, education, clinically appropriate treatment therapies, skill-building, and social interaction with staff and other inmates.
- As correctional systems reduce the number of inmates in restrictive housing, they should devote resources towards improving the conditions of those remaining in segregation. In particular, correctional systems should take advantage of lower staff-to-inmate ratios within restrictive housing units by providing the remaining inmates with increased out-of-cell time.
- Correctional systems should provide out-of-cell, confidential psychological assessments and visits for inmates whenever possible, to ensure patient privacy and to eliminate barriers to treatment.
- Restrictive housing units should maintain adequate conditions for environmental, health, and fire safety.
- The denial of basic human needs—such as food and water—should not be used as punishment, whether alone or in conjunction with the use of restrictive housing.

## Inmates with Serious Mental Illness

- Generally, inmates with serious mental illness (SMI) should not be placed in restrictive housing.
- An inmate with SMI should not be placed in restrictive housing, unless:
  - The inmate presents such an immediate and serious danger that there is no reasonable alternative;<sup>37</sup> or
  - A qualified mental health practitioner determines:
    - That such placement is not contraindicated,<sup>38</sup>

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<sup>37</sup> “Immediate and serious danger” might arise during an emergency, such as a large-scale prison riot, but would only last as long as emergency conditions are present. “Immediate and serious danger” also includes the “extraordinary security needs” described in Institution Supplement FLM 5310.16A, Treatment and Care of Inmates with Mental Illness, dated July 22, 2015. *See supra* note 25.



- That the inmate is not a suicide risk;
  - That the inmate does not have active psychotic symptoms; and
  - In disciplinary circumstances, that lack of responsibility for the misconduct due to mental illness or mitigating factors related to the mental illness do not contraindicate disciplinary segregation.
- Inmates with SMI who are diverted from restrictive housing should be placed in a clinically appropriate alternative form of housing, such as a secure mental health unit or other residential psychology treatment program.
- If an inmate with SMI is placed in restrictive housing:
  - Mental health staff should conduct a mental health consultation at the time of the inmate's placement in restrictive housing;
  - The inmate should receive intensive, clinically appropriate mental health treatment for the entirety of the inmate's placement in restrictive housing;
  - The inmate should receive enhanced opportunities for in-cell and out-of-cell therapeutic activities and additional unstructured out-of-cell time, to the extent such activities can be conducted while ensuring the safety of the inmate, staff, other inmates, and the public;
  - At least once per week, a multidisciplinary committee of correctional officials should review the inmate's placement in restrictive housing;
  - At least once per week, a qualified mental health practitioner, assigned to supervise mental health treatment in the restrictive housing unit, should conduct face-to-face clinical contact with the inmate, to monitor the inmate's mental health status and identify signs of deterioration; and
  - After 30 days in restrictive housing, the inmate should be removed from restrictive housing, unless the warden of the facility certifies that transferring the inmate to an alternative housing is clearly inappropriate.<sup>39</sup> In making this determination, the

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<sup>38</sup> A qualified mental health practitioner might conclude that placement in restrictive housing is not contradicted, when, for example, the practitioner determines that the inmate is stable, responding well to medication, unlikely to remain in restrictive housing for more than a short period of time, and likely to decompensate if transferred away from the inmate's current mental health treatment team.

<sup>39</sup> In determining the appropriateness of the inmate's continuing placement, wardens should be guided by the principles outlined above regarding the placement of inmates with SMI in restrictive housing.

warden should consult with mental health staff, who should conduct a psychological evaluation of the inmate beforehand.

- Inmates in restrictive housing should be screened for signs of SMI. Correctional systems should implement policies, procedures, and practices to ensure that:
  - Prior to an inmate’s placement in restrictive housing (or when that is infeasible, as soon as possible and no later than within 24 hours of placement), staff can promptly determine whether the inmate has been previously designated as seriously mentally ill or at risk of developing SMI;<sup>40</sup>
  - Multiple times per day, correctional officers, trained in identifying signs of mental health decompensation, conduct rounds of the restrictive housing unit;
  - At least once per day, medical staff conduct medical rounds of the restrictive housing unit;
  - After 30 days in restrictive housing, and every 30 days thereafter, all inmates in restrictive housing receive a face-to-face psychological review by mental health staff; and
  - If at any point an inmate shows signs of psychological deterioration while in restrictive housing, the inmate should be immediately evaluated by mental health staff. At the conclusion of this review, mental health staff should recommend whether the inmate requires immediate transfer to a medical facility or other treatment center, as well as whether the inmate should receive enhanced mental health services and/or should be referred to a clinically appropriate alternative form of housing.

## **Juveniles (Under 18 at Time of Adjudication)**

- Juveniles should not be placed in restrictive housing.
- In very rare situations, a juvenile may be separated from others as a temporary response to behavior that poses a serious and immediate risk of physical harm to any person. Even in such cases, the placement should be brief, designed as a “cool down” period, and done only in consultation with a mental health professional.

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<sup>40</sup> A correctional system could make this determination by, for example, creating an index, or “hot list,” of inmates previously designated as seriously mentally ill. When a correctional system lacks this capacity, staff should conduct a psychological review of the inmate at the time of placement to make this determination.

## **Young Adults (Age 18-24 at Time of Conviction)**

- All correctional staff should receive training on young adult brain development, and appropriate de-escalation tactics. Training should incorporate reliable, evidence-based science.
- Correctional systems should incorporate developmentally responsive policies and practices for young adults, and as resources allow, implement modified therapeutic housing communities with wrap-around programming in order to reduce the number of incidents that result in placement in restrictive housing.
- Correctional officials should strive to limit the use of restrictive housing whenever possible, and to the extent used, to limit the length of inmates' stay and to identify services—including group educational and therapeutic services—that they can safely participate in while in restrictive housing.

## **Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) and Gender Nonconforming Inmates**

- Inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations should not be placed in restrictive housing solely on the basis of such identification or status.
- When an inmate who is LGBTI or a gender nonconforming inmate faces a legitimate threat from other inmates, correctional officials should seek alternative housing, with conditions comparable to those of general population to the extent possible.
- Correctional officials can sometimes avoid the unnecessary use of restrictive housing for protective custody reasons by making different classification assignments. In deciding whether to assign a transgender or intersex inmate to a facility or program for male or female inmates, correctional officers must consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, giving serious consideration to the inmate's own views.

## **Pregnant and Post-Partum Inmates**

- Women who are pregnant, who are post-partum, who recently had a miscarriage, or who recently had a terminated pregnancy should not be placed in restrictive housing.
- In very rare situations, a woman who is pregnant, is postpartum, recently had a miscarriage, or recently had a terminated pregnancy may be placed in restrictive housing as a temporary response to behavior that poses a serious and immediate risk of physical

harm. Even in such cases, this decision must be approved by the agency's senior official overseeing women's programs and services, in consultation with senior officials in health services, and must be reviewed every 24 hours.

## **Inmates with Medical Needs**

- All inmates in restrictive housing should have access to appropriate medical care, including emergency medical care.
- When an institution lacks the capacity to provide appropriate medical care to an inmate in restrictive housing, that inmate should be transferred to an appropriate facility where he or she can receive necessary treatment.

## **Data Collection & Transparency**

- Prison systems should collect data about several aspects of their use of restrictive housing:
  - o System-wide data. This data should describe the incidence and prevalence of restrictive housing, including the total number of inmates in each type of restrictive housing, restrictive housing recidivism rates, and the average length of stay. This information should be publicly available on corrections websites. It should include demographic information for inmates, including race, national origin, religion, gender, gender identity, sexual orientation, disability status, and age, to the extent that the collection and publication of such information complies with all applicable laws.
  - o Inmate-level data. This data should allow correctional systems to track individual inmates throughout their incarceration. This will allow facilities to determine whether, how often, and how long a particular inmate has been placed in segregation, including as the inmate changes status (*i.e.*, from investigative segregation to disciplinary segregation). This information should be available to correctional officers, to the extent consistent with applicable law, as a way to identify strategies to treat disruptive inmates, and should not be released publicly.
  - o Officer data. Correctional systems should consider implementation of an early intervention system, a management tool that promotes supervisory awareness and helps officials identify trends, revise policy as needed, and deploy additional training where necessary. This information should not be released publicly.

## Policy Recommendations

The U.S. Department of Justice is prepared to use the full range of its powers and authorities to safely reduce the use of restrictive housing in the United States.<sup>41</sup> The Department is prepared to change its own policies and practices, and to use the many tools at its disposal to encourage other correctional systems to do the same.

But to make lasting change, we must think boldly and broadly—not just about restrictive housing, but about the many factors that drove the decades-long rise in America’s restrictive housing population. As a nation, we must be willing to tackle difficult issues, from prison overcrowding to the persistent underfunding of community mental health clinics. We must invest in treatment and preventative services for high-risk populations, both in our correctional systems and society at large. By treating the conditions and behaviors that most often trigger an inmate’s placement in restrictive housing, we can create safer and less crowded prisons—and a safer and more productive country.

### Federal Bureau of Prisons

This Report outlines several specific policy recommendations that would help continue the downward trends in the Bureau’s restrictive housing population. In many cases, these proposals build on recent changes implemented by the Bureau, especially regarding the treatment of inmates with mental illness at the ADX and elsewhere.

There are, however, a number of practical and budgetary constraints that might limit the Bureau’s ability to quickly implement some of these proposals. The most important involves staffing. Over the past several decades, the Bureau’s inmate population has increased dramatically, without commensurate increases in the number of correctional officers and other Bureau staff. The rising inmate-to-officer ratio has placed tremendous stress on the Bureau’s employees, who often work long hours under challenging conditions. These staffing constraints have a particular impact on the operation of the Bureau’s SHU and SMU units. Restrictive housing units often contain some of the most challenging inmates in a correctional system, including those who are violent, vulnerable, and/or seriously mentally ill, which in turn requires additional officers to assist with escorting inmates, delivering meals, and providing a range of other individualized services under heightened security conditions. But the high inmate-to-officer ratios limit the Bureau’s ability to

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<sup>41</sup> Both implementation and application of these Proposed Actions involve the exercise of judgment of relevant Department officials, including those at the Federal Bureau of Prisons and the U.S. Marshals Service. Nothing in these Proposed Bureau Actions should be construed to limit the authority of the Attorney General to impose Special Administrative Measures pursuant to 28 C.F.R. §§ 501.2-501.3. Nor should they be construed to limit the Department’s ability to implement administrative detention for any inmate or detainee as imposed by the Attorney General pursuant to 28 C.F.R. §§ 501.2(a) or 501.3(a), or as needed to implement any Special Administrative Measure or any court order issued pursuant to 18 U.S.C. § 3582(d).

assign additional staff to SHU and SMU units; every officer assigned to restrictive housing unit is one less officer available in another area of the facility.

The Department believes that reducing the total number of restrictive housing inmates will lessen the intense demands currently placed on officers assigned to SHU and SMU units, freeing up staff to provide additional programming and services for the remaining inmates in restrictive housing. Over time, as the restrictive housing population decreases, the Bureau may be able to reassign some officers from SHU and SMU units to other housing units with lower staff-to-inmate ratios. The actual cost-savings from these changes are likely to be small (since most expenses associated with operating SHU and SMU units are fixed, regardless of the number of inmates housed), but a reduction in the overall restrictive housing population should allow for a more efficient allocation of staff resources across Bureau facilities.

Since January 2012, the Bureau has reduced the total number of inmates in restrictive housing by nearly 25 percent. The Department estimates that the policy recommendations proposed in this Report, if fully adopted, will result in additional substantial reductions in the Bureau's restrictive housing population. Although it is impossible to quantify the exact size of the future reductions, the Department notes that other state and local correctional systems implementing reforms, including those jurisdictions discussed in earlier in this Report, have reported reductions in their restrictive housing populations in recent years by nearly 50 percent or more, depending on the metrics used.

The Department notes that many of the Bureau's restrictive housing policies are codified in federal regulations and/or its internal policy documents, known as "Program Statements." Revisions to either type of document may be subject in some cases to collective bargaining.

### ***Restrictive Housing, Generally***

The Department recommends that the Bureau revise its written policies regarding restrictive housing to incorporate the Guiding Principles outlined in this Report, to the extent feasible based on appropriations and staffing.

- This Report recommends that the Bureau revise its Program Statements regarding Special Housing Units (PS 5270.10), the Inmate Discipline Program (PS 5270.09), and Special Management Units (PS 5217.01), to incorporate the following principles:
  - Inmates should be housed in the least restrictive setting necessary to ensure their own safety, as well as the safety of staff, other inmates, and the public.
  - Correctional staff should be able to clearly articulate the specific reason(s) for an inmate's placement and retention in restrictive housing. The reason(s) should be supported by objective evidence. Inmates should remain in restrictive housing for no longer than necessary to address the specific reason(s) for placement.

- Restrictive housing should always serve a specific penological purpose.
- An inmate’s initial and ongoing placement in restrictive housing should be regularly reviewed by a multi-disciplinary staff committee, which should include not only the leadership of the institution where the inmate is housed, but also medical and mental health professionals.
- For every inmate in restrictive housing, correctional staff should develop a clear plan for returning that inmate to less restrictive conditions as promptly as possible. This plan should be shared with the inmate, unless doing so would jeopardize the safety of the inmate, staff, other inmates, or the public.
- This Report recommends that the Bureau incorporate these principles, as well as the new policies described below, into existing training classes and curriculum (*e.g.*, Introduction of Correctional Techniques; quarterly SHU training; and training for lieutenants, captains, disciplinary hearing officers, psychologists, and reentry affairs coordinators). In addition, the Bureau should regularly train all correctional staff on its restrictive housing policies. This training should incorporate reliable, evidence-based science on the potential effects of restrictive housing on vulnerable populations, including young adults (ages 18-24) and inmates with serious mental illness.

### ***End-of-Term Placements***

Whenever possible, the Bureau seeks to avoid releasing inmates directly from restrictive housing back to the community. In some cases, these releases are inevitable—for example, if a judge unexpectedly grants an inmate’s request for post-conviction relief, the Bureau might have no choice but to immediately release the inmate, regardless of his or her current housing status. In addition, the Bureau reports that a small number of inmates request protective custody during the final months of their prison terms, sometimes as a way to “stay out of trouble.”

- This Report recommends that the Bureau revise its Program Statements regarding SHU (PS 5270.10) and SMU (PS 5217.10) to discourage the placement of inmates in restrictive housing nearing the end of their prison terms, whenever practicable.
- This Report recommends that the Bureau draft written policy regarding end-of-term restrictive housing. This policy should:
  - Provide guidance that, if an inmate is involuntarily housed in segregation 180 days out from the end of his or her sentence, Bureau staff should consider releasing the inmate to a less restrictive setting, if this can be done safely. Similarly, the policy should provide guidance that, during the final 180 days of an inmate’s prison term,

Bureau staff are directed to make every effort to avoid placing the inmate in involuntary restrictive housing.

- Establish procedures to ensure that, if an inmate is placed in restrictive housing during the final 180 days of his or her prison term, the inmate receives targeted re-entry programming to prepare for his or her return to the community.

### ***Investigative Segregation***

In some ways, the Bureau's disciplinary system resembles the stages of a criminal proceeding: after learning of an alleged violation, Bureau officials investigate the matter, conduct a factual hearing to determine responsibility, and then impose a penalty on those deemed responsible. Like a criminal proceeding, Bureau officials must make two types of detention decisions: during the investigative phase (usually immediately following the alleged violation), and as a post-adjudication sanction. Not all disciplinary violations result in segregation, either during the investigative stage or post-adjudication, and some infractions are resolved informally at the staff-to-inmate level, without triggering the formal disciplinary process.

The Bureau has codified approximately 90 types of disciplinary violations, or "prohibited acts," divided into four categories based on severity: Greatest (100-level); High (200-level); Moderate (300-level); and Low (400-level). *See* Table 1, PS 5270.09, Inmate Discipline Program. The disciplinary process begins as soon as staff observe or otherwise learn of a potential violation. If the matter is relatively minor, or if the inmate does not have a history of violations, the officer will typically try to resolve the incident informally. In more serious cases, the officer will draft an incident report and submit it to his or her lieutenant.

The filing of an incident report triggers an investigation and the Bureau's formal disciplinary process. An inmate may be placed in investigative segregation, or "administrative detention" (AD) status, pending investigation only after Bureau officials conclude that the inmate's presence in general population "poses a threat to life, property, self, staff, other inmate, the public, or to the security or orderly running of the institution." 28 C.F.R. § 541.23. Upon completion of the investigation, Bureau officials conduct a factual hearing, adjudicate the inmate's guilt, and, if necessary, determine an appropriate sanction. In serious cases, the hearing is conducted by a "Disciplinary Hearing Officer" (DHO), who operates outside the traditional reporting lines within the facility. If a DHO decides to impose a sanction of punitive segregation, the inmate enters "disciplinary segregation" (DS) status and remains in such status until the completion of the disciplinary term. Of the nearly 8,700 inmates in Bureau-run SHUs as of November 23, 2015, approximately 40% of those inmates (3,422) were classified as "AD status (pending investigation, BOP violation)" and another 16% percent (1,417) were classified as "DS status."

- This Report recommends that the Bureau revise its Program Statements regarding SHU (PS 5270.10) and the Inmate Discipline Program (PS 5270.09), as well as 28 C.F.R. § 541.3



and any other relevant regulations, to establish certain standards regarding its disciplinary investigation process, including the use of investigative segregation.

- This Report recommends that the Bureau draft written policy regarding the placement of inmates in investigative segregation. This policy should:
  - Require that, except in emergency situations, Bureau staff must obtain approval from a lieutenant or higher-ranking officer before placing an inmate in AD status pending investigation of a disciplinary violation. The lieutenant should be responsible for reviewing the request to determine whether the inmate's presence in the general population would pose a danger to the inmate, staff, other inmates, or the public, and if so, whether placement in SHU is appropriate. In making this determination, the lieutenant should be directed to consider the seriousness of the alleged disciplinary violation, including whether the offense involved violence, involved escape, or posed a threat to institutional safety by encouraging others to engage in such misconduct.
    - In emergency situations, Bureau staff need not obtain lieutenant approval before placing the inmate in AD status, although such approval should be obtained within 24 hours of placement.
    - In addition, within 24 hours of an inmate's placement in AD status, the placement decision should need to be reviewed and approved by a supervisory Bureau official not involved in the initial placement, such as the facility's Institution Duty Officer.
  - Establish a written policy that, absent compelling circumstances (such as flagrant, repetitive violations), Bureau staff should not place inmates in AD status pending investigation of a prohibited act with a severity level of Moderate (300-level) or Low (400-level).
- This Report recommends that the Bureau revise its written policies regarding disciplinary investigations. These revisions should:
  - Require that routine disciplinary investigations, such as those relating to misconduct directly observed by correctional staff, be completed within 7 working days of the filing of an incident report.
  - Require that, absent compelling circumstances (such as a pending criminal matter), all other disciplinary investigations be completed within 30 days of the issuance of

an incident report. Investigations that last longer than 30 days should be approved by the Warden of the facility.

- Require that time spent in AD status pending investigation be credited towards any term of DS status imposed for that violation.
- Require that Bureau staff prioritize investigations involving inmates placed in AD status pending investigation.
- Provide guidance that, absent compelling circumstances (such as a pending criminal matter), an inmate ordinarily should not remain in AD status pending investigation for a longer period of time than the maximum term of DS status permitted for the most serious act charged.

### ***Disciplinary Segregation***

If an inmate is found guilty of committing a prohibited act, the Disciplinary Hearing Officer (DHO) is typically responsible for determining the appropriate sanction. The Bureau's Program Statement on inmate discipline includes a chart of available sanctions, which includes disciplinary segregation, forfeiture of good time credit, loss of privileges, monetary fines, removal from program or group activity, confiscation of property, or extra duty. For each severity level, the Program Statement dictates the maximum term an inmate may be placed in restrictive housing, both for a first offense and for second or subsequent offenses, although the DHO may exercise his or her discretion and sentence the inmate to a shorter, determinant term of segregation or, when appropriate, no segregation at all.

- This Report recommends that the Bureau revise its Program Statements regarding SHU (PS 5270.10) and the Inmate Discipline Program (PS 5270.09), as well as 28 C.F.R. § 541.3 and any other relevant regulations, regarding the imposition of disciplinary segregation as a sanction for committing a prohibited act.
- This Report recommends that the Bureau reduce the maximum time an inmate can be placed in segregation as a sanction for violating a disciplinary rule, as per the chart on the following page. Among other things, these revisions should eliminate restrictive housing as a permitted sanction for all 400-level prohibited acts, and for an inmate's first adjudicated violation of all 300-level prohibited acts. As part of these changes, the Bureau should consider reclassifying a small number of 300-level prohibited acts as 200-level acts.

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

- This Report recommends that the Bureau make additional revisions to its written policies regarding the imposition of disciplinary segregation as a sanction for violating a prohibited act. These revisions should:
  - Provide guidance that DHOs should impose a sanction of disciplinary segregation only as necessary, and only after concluding that the other available sanctions are insufficient to serve the purposes of punishment.
  - Provide guidance that, ordinarily, DHOs should impose concurrent sentences for disciplinary violations arising from the same episode.
  - Codify existing practices whereby Bureau officials may release inmates from disciplinary segregation before the completion of their term as a reward for good behavior. The policy would include guidance that such decisions should be made in consultation with the institution’s multidisciplinary unit team.
  
- This Report recommends that the U.S. Attorney’s Offices and other law enforcement officials continue to support the Bureau’s efforts to ensure that inmates who engage in serious criminal activity while incarcerated—especially those who assault or kill correctional staff—face criminal prosecution when appropriate.

***Protective Custody***

As of November 23, 2015, the Bureau housed 921 protective custody inmates across 111 SHUs, with approximately 47% (436) housed for 30 days or more. As a policy matter, the Bureau believes it can best address this issue by expanding its existing network of special-purpose housing units (which allow inmates to reside in conditions less restrictive than SHU), and then transferring all qualifying protective custody inmates to one of these units.

In February 2014, the Bureau opened its first “Reintegration Housing Unit” (RHU) at FCC Oakdale, in Louisiana. The program is designed for protective custody inmates, with the goal of helping them eventually re-integrate with the general population over the course of a three-phase program. Participants live, work, and program in a residential unit, with approximately 16 hours

out-of-cell per day. The RHU unit at FCC Oakdale can currently house a maximum of 128 inmates.

- This Report recommends that the Bureau expand its RHU program, with the goal of eventually housing all inmates with a verified need for protective custody who cannot be housed in any other Bureau facilities. The Bureau should revise its Program Statement regarding SHU (PS 5270.10), as well as 28 C.F.R. § 541.29, to reflect this principle. As part of this expansion, the Bureau should:
  - Open a second wing of the RHU unit at FCC Oakdale, increasing its total capacity.
  - As necessary, establish up to three additional RHU units. Potential sites include USP Atwater, in California; FCC Coleman, in Florida; and MDC Brooklyn, in New York.
  - Undertake substantial efforts to educate inmates about the availability of the RHU program, with a special focus on inmates who are at high risk of victimization within the prison system.
  - As RHUs become operational at multiple locations, the Bureau should give consideration to an inmate's release residence when making assignment decisions.

### ***Special Management Unit (SMU) Program***

The Special Management Unit (SMU) is a four-phase program for Bureau inmates who present unique security and management concerns. The program is designed for inmates who require greater supervision than is typically available at SHUs, but whose history of violent conduct does not rise to the level required for designation to the ADX. The goal of the program is to correct inmates' disruptive and violent behaviors, while gradually preparing them for return to the general population. The Bureau considers the program non-punitive, insofar as it is not imposed as an actual disciplinary sanction, although the vast majority of inmates selected for the program have a history of disciplinary violations. Many are members or leaders of gangs or other "security threat groups" (STGs).

- This Report recommends that the Bureau revise its Program Statement regarding SMU (PS 5217.01), as well as any relevant regulations.
- This Report recommends that the Bureau shorten the SMU program from four phases to three, and reduce the overall program to approximately 12 months. The proposed average timeline is outlined in the chart on the following page.

Current SMU Schedule	
Phase	Average mos.
1	4
2	6-8
3	6-8
4	2
<b>Total</b>	<b>18-24 months</b>

Revised SMU Schedule	
Phase	Average mos.
1	6-8
2	2-3
3	1-2
<b>Total</b>	<b>9-13 months</b>

- This Report recommends that the Bureau make additional revisions to its written policies regarding the SMU program. These revisions should:
  - Establish an incentive program that permits high-performing inmates to advance through SMU phases on a shorter timeline than outlined in the schedule above.
  - Limit the maximum time an inmate may spend in SMU to 24 months. In revising this policy, the Bureau would reiterate that inmates who complete the SMU Program after 24 months will not be returned to the program unless they engage in additional disruptive behavior that warrants a new referral, which will be subject to approval as provided in policy.

### *Inmates with Serious Mental Illness (SMI)*

Inmates with serious mental illness (SMI) who are violent or disruptive pose a special challenge to the Bureau. Their behavior often requires removal from the general population, and yet “traditional” forms of restrictive housing (SHU, SMU, and the ADX) present challenges to ensure that an inmate’s mental health does not deteriorate during restrictive housing placement.

The Bureau is addressing these issues with a three-pronged approach: (1) by creating specialized secure mental health units, which allows Bureau staff to divert SMI inmates from long-term segregation into less restrictive housing; (2) by providing enhanced mental health services for inmates in SHU, SMU, and the ADX, including screening and intensive psychological programming; and (3) by offering mental health care to all Bureau inmates, as a way of reducing and preventing the type of disruptive behavior that often results in segregation. Many of the Bureau’s policies on mental health treatment are codified in Program Statement 5310.16, Treatment and Care of Inmates with Mental Illness, which was published in May 2014. The Bureau has codified several additional Program Statements regarding its psychological and psychiatric services.

The Bureau operates two types of “secure mental health units”: the Secure Mental Health Step-Down Program (SMH-SDP), and the Secure STAGES Program. The length of the programs varies by inmate, but typically involves a year or more. In both programs, inmates receive

significant amounts of out-of-cell and in-cell programming, based on each inmate's individualized treatment plan. In addition, the Bureau operates a number of other secure and non-secure psychology treatment programs, such as the Skills Program, a 12-to-18-month residential treatment program for inmates with intellectual disabilities and social deficiencies.

SMH-SDP operates in two locations: USP Atlanta, in Georgia, and USP Allenwood, in Pennsylvania, with a combined total capacity of 54 inmates. The Secure STAGES Program, which focuses on inmates with personality disorders, operates at USP Florence, adjacent to the ADX in Colorado, with a total capacity of 18 inmate participants. Over the past two years, the Bureau has taken substantial steps to divert the vast majority of SMI inmates from ADX and SMU to these mental health units.

- This Report recommends that the Bureau expand its network of residential mental health treatment programs, including secure mental health units, with the goal of building sufficient capacity to divert inmates with SMI from all forms of restrictive housing (*i.e.*, SHU, SMU, ADX) whenever it is clinically appropriate and feasible to do so.
  - In early 2016, the Bureau plans to expand the capacity of the SMH-SDP unit at USP Allenwood.
  - The Bureau should create additional SMH-SDP units in each of the four Bureau regions that do not currently have one. These units would require approximately 20 additional staff at each of the four locations, for a total of 78 positions, as well as modernization and repair needs.
  - The Department estimates that this expansion would cost in its first year approximately \$5.843 million for staff and \$4 million for building and facilities modernization.
- This Report recommends that the Bureau increase the capacity of its mental health services at each of its 111 SHU units, with the goal of expanding the Bureau's screening, evaluation, and mental health treatment of inmates in SHU.
  - The Bureau should hire 108 additional psychology positions, for a total estimated cost of \$14.157 million, allowing the Bureau to dedicate at least one staff psychologist to each SHU.
- This Report recommends that the Bureau expand a variety of psychology treatment programs, thus increasing the overall capacity of the Bureau's mental health programs and potentially reducing the likelihood that high-risk inmates will be placed in SHU later during their terms of incarceration. Among other important programs, the Bureau should consider further expansion of: the STAGES Program, for inmates with personality

disorder; the Skills Program, for male inmates with intellectual disabilities and social deficiencies; the Sexual Offender Management Program (SOMP), for inmates convicted of sex offenses; and the Resolve Program, for female inmates with trauma-related mental health needs.

- As the Bureau expands its mental health services, it should update its policies to require more regular screenings of inmates for SMI. As necessary, the Bureau should revise its Program Statements regarding Treatment and Care of Inmates with Mental Illness (PS 5310.16), Inmate Discipline Program (PS 5270.09), Special Housing Units (PS 5270.10), Special Management Units (PS 5217.01), and Psychology Services Manual (PS 5310.12) regarding the treatment of inmates with serious mental illness, to account for these policy changes.

### *Juveniles (Under 18 at Time of Adjudication)*

As used here, the term “juvenile” encompasses two categories of individuals: those adjudicated as juveniles, and those under age 18 who were convicted and sentenced as adults. The Bureau does not house any juveniles in its own facilities, and instead relies on contracts or intergovernmental agreements with a network of state, local, and private juvenile facilities. As the Guiding Principles make clear, the Department of Justice and the Bureau believe that juveniles should not be placed in restrictive housing, except as a temporary measure in response to an act of serious violence.

- This Report recommends that the Bureau end the practice of placing juveniles in restrictive housing. This policy change should be reflected in revisions to the Bureau’s Program Statement regarding juvenile delinquents (PS 5216.05), and any other relevant policies or regulations.
- Under this new policy, juveniles would be placed in a restrictive setting only as a temporary response to a behavioral issue that poses “a serious and immediate risk to any individual,” similar to the exception outlined in Section 212 (“Juvenile Solitary Confinement”) of S. 2123, the Sentencing Reform and Corrections Act, now pending in the U.S. Senate.

To put this policy into effect, the Bureau should hire a full-time Juvenile Administrator to enhance oversight of juvenile facilities. In addition, the Bureau should establish new contractual agreements (or modify existing ones) with facilities housing juveniles.

### *Pregnant and Post-Partum Inmates*

The Bureau provides female inmates with medical and social services related to pregnancy and child placement. As the Guiding Principles make clear, the Department of Justice and the Bureau believe that women who are pregnant, who are post-partum, who recently have had a miscarriage, or who recently have had a terminated pregnancy should not be placed in restrictive housing.

- This Report recommends that the Bureau revise its Program Statements regarding SHU (5270.10) and pregnancy (6070.05) to address the placement of women who are pregnant, are postpartum, recently had a miscarriage, or recently had a terminated pregnancy in restrictive housing. The policy should require that any such placement be approved by the Bureau’s senior official overseeing women’s programs and services, in consultation with senior officials in health services, and that the placement decision be reviewed every 24 hours.

### ***Conditions of Confinement***

Existing federal regulations and Bureau policies establish baseline standards regarding the conditions of confinement for inmates in restrictive housing. *See, e.g.*, 28 C.F.R. § 541.31 (Conditions of Confinement in SHU). In recent years, the Bureau has also taken substantial steps to enhance programming opportunities at the ADX, as discussed in the “USP Administrative Maximum (ADX)” section of this Report.

The Bureau will continue to identify ways to increase the minimum amount of time that inmates in SHU and SMU spend outside their cells. As noted earlier, a number of logistical barriers complicate these efforts. Generally speaking, it takes multiple correctional officers to escort even small numbers of inmates in restrictive housing units, given the heightened security risks. Seemingly mundane tasks, such as transporting the inmates to a recreation space or supervising group therapy classes, require careful coordination among staff members, and these tasks often take much longer to complete than when performed in general population units. In the Bureau’s SHU and SMU units, the limited staff spend their shifts managing an ever-increasing number of tasks, leaving little room for increased out-of-cell time under current conditions.

Currently, inmates in SHU and SMU receive a minimum of 5 hours of out-of-cell recreation per week, which is typically supplemented with additional out-of-cell group programming. As discussed below, the Department of Justice hopes to increase this minimum number of hours and aspires to eventually provide SHU and SMU inmates at least two hours of out-of-cell time per day. But to do so—and do so safely—there are essentially two options: increase restrictive housing staff, or reduce the number of restrictive housing inmates.

As part of this review, the Bureau attempted to calculate the cost of increasing out-of-cell time solely by increasing staff (*i.e.*, without reducing the number of inmates). According to the Bureau’s calculations, this change would require additional officers and lieutenants at all 111 Bureau facilities that operate SHUs or SMUs. To increase the minimum of out-of-cell recreation from 5 hours per week to 7, for example, the Bureau estimates that it would need to hire an additional 345 officers and 192 lieutenants, at a total cost of approximately \$47.6 million per year.

Given this high cost, the Department believes that, as a policy matter, it would be more prudent to seek increases in out-of-cell time by seeking to reduce the total number of inmates in restrictive housing. Such reductions would likely lower inmate-to-staff ratios and free up time to transport



and supervise prisoners remaining in SHU. Assuming that the other proposals in this Report are adopted, the Bureau can expect additional inmate reductions, and it would take advantage of this declining population by increasing out-of-cell time to the greatest extent possible. The Bureau's ability to maximize out-of-cell time would vary somewhat by institution, and this Report recommends that the Bureau adopt a policy that encourages Wardens to increase out-of-cell time in a manner consistent with the resources and staffing constraints at their facilities.

- This Report recommends that the Bureau revise its Program Statements regarding SHU (PS 5270.10) and SMU (PS 5217.01) to enhance opportunities for out-of-cell time. The policy should:
  - Direct Wardens to develop individualized plans for maximizing out-of-cell time for restrictive housing inmates at each Bureau institution. When developing these plans, Wardens should be directed to strive to provide the greatest amount of out-of-cell time possible, subject to three general factors:
    - Inmate-to-staff ratio, both in the restrictive housing unit and at the institution as a whole;
    - Total number of inmates in restrictive housing at the facility;
    - Limitations of the physical plant, especially regarding spaces used for recreation and group therapy.
  - Direct Wardens to review these plans at least once per year and make adjustments as necessary. In addition, Wardens should be permitted to adjust these plans on a temporary basis in response to sudden changes regarding any of the three factors described above.

In addition, the Bureau believes it could enhance its out-of-cell programming for restrictive housing inmates by changing the way it restrains inmates during these programs. Current regulations prohibit the Bureau from placing inmates in certain types of restraint equipment, thereby limiting its ability to purchase "secure programming chairs" for educational and group therapy programming for restrictive housing inmates.

- In 2016, the Bureau expects to publish a final rule modifying 28 C.F.R. § 552.22(h)(4), thereby permitting the use of secure programming chairs. Once the revised rule is published, the Bureau intends to purchase 610 of these chairs, which would allow inmates to receive in-person educational and mental health programming in a less restrictive manner than currently used. The Bureau estimates that the one-time purchase of security chairs would cost approximately \$1.7 million.

### ***Data Collection & Transparency***

Starting in early 2013, the Bureau implemented a new, automated tracking system, known as the “SHU Application,” which now operates at all Bureau-operated facilities. In its current form, the SHU Application can provide Bureau staff with information about the number of inmates placed in the SHU and the reason for their current placement. Staff can access this information through a “SHU Dashboard,” which presents data in an easy-to-read format.

The Bureau is currently developing the capacity to track inmates as they move through different statuses within their restrictive housing units. As part of these efforts, the Bureau is automating its disciplinary process, which will allow Bureau officials to track a disciplinary violation from the incident report, to DHO hearing, to final disposition. In addition, the Bureau expects to release an upgraded version of the SHU Application in late 2016, which will make it possible to track inmates as they progress through restrictive housing, including as they transfer from AD status to DS status or vice versa. Once these efforts are completed, the Bureau will likely have greater ability to assess the use of its Special Housing Units, allowing staff to identify potential problems as quickly as possible.

- This Report recommends that the Bureau begin posting monthly data from the SHU Dashboard on its external website, allowing the public to track the total number of inmates in restrictive housing Bureau-wide.
- In late 2016, the Bureau will upgrade its SHU Application, allowing staff members to more closely track inmate placements over time. This Report recommends that, as the Bureau develops more sophisticated methods of tracking placement data, including data regarding average length of stays, the Bureau should post this additional information on its external website.

### **U.S. Marshals Service**

The U.S. Marshals Service (USMS) houses approximately 20% of its inmates in private detention facilities, 60% of its inmates in state and local facilities pursuant to intergovernmental agreements (IGA), and the remainder in Bureau facilities. Historically, USMS has required that its private detention facilities adhere to its Federal Performance-Based Detention Standards (FPBDS), which include certain standards regarding the use of restrictive housing.

- This Report recommends that USMS revise FPBDS to incorporate the principles outlined in this Report, to the extent they exceed the standards currently codified in FPBDS. In doing so, USMS should require that its private contract facilities adhere to these revised policies going forward.

On the other hand, USMS does not require that its state and local IGA facilities comply with FPBDS, instead requiring only that IGAs comply with the laws of the relevant jurisdiction and any

other standards imposed by an authorized agency. However, all IGA agreements include some basic reporting requirements, including requirements that facilities immediately notify USMS of a significant event related to USMS prisoners, such as the death, assault, medical emergency, attempted escape or escape of a federal detainee.

- This Report recommends that USMS require that IGA facilities report basic information about the placement of federal detainees in restrictive housing, similar to the reporting requirements that USMS imposes upon the occurrence of significant incidents. These reporting requirements should not require that USMS take specific action in response to this information, but instead allow USMS, in its discretion, to determine whether any remedial steps are appropriate.

## **National Institute of Corrections**

The National Institute of Corrections (NIC) provides training, technical assistance, information services, and policy development assistance to federal, state, and local correctional agencies. The Department believes that NIC can serve a crucial role in encouraging correctional agencies to adopt the policies and principles outlined in this Report. Among other things, NIC organizes a popular 32-hour, in-person training program for state correctional agencies, titled “Management of Restrictive Housing Populations,” that helps state officials assess and enhance their restrictive housing programs.

- This Report recommends that NIC incorporate the principles outlined in this Report into its Management of Restrictive Housing Populations training program, thereby encouraging state agencies to develop plans for safely reducing the number of inmates in restrictive housing.
- This Report recommends that NIC provide technical assistance and other support to state and local correctional agencies seeking to safely reduce their restrictive housing population.

## **Office of Justice Programs**

The Office of Justice Programs partners with jurisdictions and agencies to support a range of justice programs at the state, local, and tribal level. Many of these partnerships are facilitated through OJP’s Bureau of Justice Assistance (BJA), which provides direct grants and technical assistance to both correctional systems and non-profit organizations that support BJA’s mission. In addition, the National Institute of Justice (NIJ), housed within OJP, supports research on a variety of topics, including the use and effects of restrictive housing.

### ***Bureau of Justice Assistance (BJA)***

In 2014, BJA joined with Vera Institute of Justice’s (Vera) Center on Sentencing and Corrections to launch the “Safe Alternatives to Segregation” Initiative (SAS). The SAS initiative involves partnerships with five state and local correctional systems to significantly reduce the use of

restrictive housing through the development of safe and effective alternatives. To support the initiative, BJA awarded approximately \$500,000 to Vera, which the organization matched with other sources of funding.

In March 2015, Vera announced the five participating jurisdictions: the state corrections departments of Nebraska, North Carolina, and Oregon, and the local departments in New York City and Middlesex County, New Jersey. In partnership with these sites, Vera is performing a full review of the corrections departments' policies and practices and conducting data analysis to determine the drivers and characteristics of incarcerated people in segregation. In the spring 2016, Vera will provide recommendations on policy and practice changes that can safely and effectively reduce the use of segregated housing across the systems and will help implement these recommendations.

BJA's ability to expand funding for the SAS Initiative depends largely on Congressional appropriations. If provided additional funding, BJA would work with Vera to develop additional resources to help state and local jurisdictions reduce their reliance on segregation. This assistance could include, among other things:

- Intensive technical assistance to additional jurisdictions (in addition to the 5 announced in March 2015);
- Practitioner surveys, to determine what resources are needed in the field;
- Development of "leaning sites," to facilitate peer-to-peer learning based on the efforts of correctional administrators who have successfully and safely reduced reliance on segregation;
- New resources to highlight best and promising practices, including a toolkit detailing how a system can safely reduce its use of segregation, webinars, an online self-assessment tool, and other online programs; and
- Evaluations of jurisdictions that have successfully decreased their use of segregation, to identify the effects of specific policy and program changes.

### ***National Institute of Justice (NIJ)***

NIJ funds research on various institutional correctional issues, including restrictive housing. In October 2015, NIJ sponsored a two-day meeting on the use of restrictive housing in America. This meeting brought together stakeholders from across the nation, including leaders from department of corrections, criminal justice and correctional scholars, advocacy and special interest groups, as well as federal partners, to identify key issues in the practice of restrictive housing. NIJ has also commissioned a number of white papers from criminologists and other scholars to assist as NIJ develops a research agenda on the subject of restrictive housing.

- In coming months, NIJ will issue a solicitation for innovative research proposals relating to restrictive housing issues, among other issues. NIJ will seek proposals for research that assesses the use of restrictive housing in prisons and jails, as well as the impact of the practice on inmates and staff. NIJ anticipates that up to \$8 million may become available for awards under this solicitation. This research will serve an important role as policymakers and correctional officials consider how to most effectively minimize the use of restrictive housing in American prisons and jails.

## Additional Policy Recommendation

### Diverting Inmates with Serious Mental Illness from Incarceration

Individuals with serious mental illness are overrepresented in American prisons and jails. In the most recent National Inmate Survey, conducted by the Bureau of Justice Statistics in 2011-12, an estimated 37% of prison inmates and 44% of jail inmates reported being told by a mental health professional that they had a mental disorder, as specified in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV).<sup>42</sup> The survey data also indicate that 15% of the U.S. prison population and 26% of the jail population are individuals with serious psychological distress (SPD),<sup>43</sup> as opposed to only 3.0% of the general adult population.<sup>44</sup>

People with mental illness who encounter the police are often incarcerated, rather than connected with treatment services, for minor or non-violent infractions because of a lack of community resources. Without adequate community services, courts and prosecutors have few options, leading judges to sentence individuals to incarceration for what was initially a mental health crisis. The lack of community-based treatment services for individuals with serious mental illness results in incarceration in a correctional facility serving as a default “treatment” option for these individuals.<sup>45</sup>

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<sup>42</sup> ALLEN J. BECK, ET AL., BUREAU OF JUSTICE STATISTICS, SEXUAL VICTIMIZATION IN PRISONS AND JAILS REPORTED BY INMATES, 2011-12 (2012).

<sup>43</sup> Based on the K6 screening scale. Although the K6 has been demonstrated to be a good predictor of serious mental illness in past studies, a recent technical group, convened by the Center for Mental Health Services at the Substance Abuse and Mental Health Services Administration (SAMSHA), recommended that it should be supplemented with questions on functional impairment to improve statistical prediction and validity.

<sup>44</sup> Centers for Disease Control and Prevention, *Early Release of Selected Estimates Based on Data from Surveillance Among Adults in the United States*, MORBIDITY & MORTALITY WKLY. REP., 2011; 60 (Suppl. Table 7). January-September 2012, National Health Interview Survey, Figures 13.1-13.3, March 2013, 2012.  
[http://www.nimh.nih.gov/health/statistics/prevalence/nsduh\\_smi\\_2013\\_graph\\_logo\\_final\\_148000.pdf](http://www.nimh.nih.gov/health/statistics/prevalence/nsduh_smi_2013_graph_logo_final_148000.pdf)

<sup>45</sup> See Rich, J.D., et al., *Medicine and the Epidemic of Incarceration in the United States*, 364 NEW ENGLAND J. OF MED., 2081-2083 (1991); Steinberg, Darrell, David Mills, and Michael Romano, “When Did Prisons Become Acceptable Mental Healthcare Facilities?,” Stanford Law School Three Strikes Project (Feb. 2015); Substance Abuse and Mental Health Services Administration, *Municipal Courts: An Effective Tool for Diverting People with Mental and Substance Use Disorders from the Criminal Justice System*, HHS Publication No. (SMA)-15-4929 (2015), 3-4.

While incarcerated, inmates with serious mental illness have unique behavioral and treatment needs. According to a BJS report on the Use of Restrictive Housing in U.S. Prisons and Jails between 2011 and 2012, inmates with a mental health problem are more likely than inmates without a mental health problem to report they had spent time in restrictive housing.<sup>46</sup> Inmates with SMI are also more difficult for correctional staff to manage, no matter how well trained and experienced in crisis intervention they are. Most correctional environments simply were not designed to provide the appropriate therapeutic environment to address and treat those with serious mental illness.

To address this issue, the corrections community must work collaboratively with all stakeholders in the criminal justice community, including mental health and substance abuse providers and non-governmental partners, to divert individuals with serious mental illness from all stages of criminal justice involvement. This collaboration should entail identifying critical barriers to community mental health treatment, which will be unique to each community. For example, many communities lack affordable housing, and, according to the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, there is a severe shortage of behavioral health professionals within our communities.

Diversion can include preventing further criminal justice involvement following interactions with a police officer and reducing the length of time individuals are involved with the criminal justice system. These efforts should be data driven and focused on evidence-based practices and at a minimum include: (1) training police officers, judges, prosecutors, and public defenders to recognize the signs of mental illness; (2) developing critical infrastructure and collaboration between all stakeholders in the criminal justice community to identify and implement diversion activities; and (3) developing the necessary community based resources to provide alternatives to incarceration, including mental health services such as Permanent Supported Housing,<sup>47</sup> intensive case management, peer support, and Assertive Community Treatment.<sup>48</sup>

Many communities have already taken positive steps to increase diversion of individuals with serious mental illness. For example, communities across the country have joined the Stepping Up Initiative organized by the Council of State Governments Justice Center, the National Association of Counties, and American Psychiatric Foundation, with support from the U.S. Department of

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<sup>46</sup> BECK, *supra* note 17, at 6.

<sup>47</sup> Permanent supported housing combines services and housing to successfully support individuals with severe mental illness in the community. *See* <http://store.samhsa.gov/product/Permanent-Supportive-Housing-Evidence-Based-Practices-EBP-KIT/SMA10-4510>.

<sup>48</sup> Assertive Community Treatment is an evidence-based mental health community service for individuals with the most severe mental illness that improves outcomes and reduces hospitalization. *See* <http://store.samhsa.gov/product/Assertive-Community-Treatment-ACT-Evidence-Based-Practices-EBP-KIT/SMA08-4345>.

Justice's Bureau of Justice Assistance, to increase diversion of individuals with serious mental illness from the criminal justice system.<sup>49</sup> The Substance Abuse and Mental Health Services Administration funds the GAINS Center for Behavioral Health and Criminal Justice Transformation that provides technical assistance for communities to expand access to behavioral health services for justice-involved populations.<sup>50</sup>

Providing mental health treatment in the community is not only more effective, but also typically less expensive than providing treatment in criminal justice settings.<sup>51</sup> In addition, there is the potential for large cost offsets, because diversion from incarceration can prevent further criminal justice involvement.<sup>52</sup>

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<sup>49</sup> Stepping Up Initiative, Dec. 5, 2015, *available at* <https://stepuptogether.org>.

<sup>50</sup> Substance Abuse and Mental Health Services Administration, GAINS Center for Behavioral Health and Justice Transformation, Dec. 5, 2015, *available at* <http://www.samhsa.gov/gains-center>.

<sup>51</sup> Cloud, David and Chelsea Davis, "Treatment Alternatives to Incarceration for People with Mental Health Needs in the Criminal Justice System: The Cost-Savings Implications," Vera Institute for Justice (Feb. 2013), p. 2.

<sup>52</sup> *Id.*; *see also* Van Dorn, Richard, et al., "Effects of Outpatient Treatment on Risk of Arrest of Adults with Serious Mental Illness and Associated Costs (Sept. 2013)," *Psychiatric Services*, Vol. 64, pp. 856-862, <http://ps.psychiatryonline.org/doi/abs/10.1176/appi.ps.201200406>