I. Introduction

Over the past five years, momentum for reform of the practice of solitary confinement in our prisons, jails and juvenile detention centers grew at an enormous rate. In many ways, the reform movement’s success at capturing the attention of the media, the public, and state and national leaders is unprecedented for any campaign seeking to end inhumane prison conditions. Indeed, both the President and Justices of the Supreme Court have publicly condemned the practice in the last few months.

But the sudden appearance of success is no accident. It is the product of long-term investment by a number of groups, savvy organizing, multi-pronged strategies, and intensive and simultaneous engagement with leaders at the state, national and international level. The result is that both the public and prison officials in state after state, and the federal system, seem to be embracing more humane and effective alternatives. Some reforms have been halting and piecemeal, others more thoroughgoing. Some are driven by legislation or litigation, others by policy or budget.

Many both inside and outside the reform movement recognize that we have reached a tipping point where increasingly more sophisticated and sustained advocacy and targeted funding can influence more rapid and permanent change to solitary confinement practices in America – and perhaps even lead to abolition. At this critical moment of opportunity this paper is designed to reflect on the drivers of reform and the current status of each agent of change. This paper seeks to identify key strengths, challenges and opportunities for the movement as a means of mapping the most successful path forward to create sustainable change.

II. Brief Overview of the Scope of the Problem

On any given day, the best research suggests there are approximately 80,000 – 100,000 people held in solitary confinement settings in prisons across the country. And that figure does not even include the thousands of men, women and children subject to solitary in local jails and juvenile detention centers. The numbers are staggering and so is the duration. While some prisoners spend days or weeks in isolation, too frequently American prisoners are subject to solitary for months, years, and even decades. In the federal prison system and at least 19 states, corrections official may hold people in isolation housing indefinitely. A recent study in Texas, for example, demonstrated that “On average, prisoners remain in solitary confinement for almost four years; over one hundred Texas prisoners have spent more than twenty years in solitary confinement.”

Solitary confinement is widely recognized as painful and difficult to endure. Research demonstrates that solitary confinement is psychologically difficult for even relatively healthy individuals, but it can be devastating for those with mental illness. When people with severe mental illness are subjected to solitary confinement, they deteriorate dramatically. In addition to increased psychiatric symptoms generally, suicide rates and incidents of self-harm are much higher for prisoners in solitary confinement. A February 2014 study in the American Journal of Public Health found that detainees in solitary confinement in New York City jails were nearly seven times more likely to harm themselves than those in general population, and that the effect
was particularly pronounced for youth and people with severe mental illness. In California prisons in 2004, 73% of all suicides occurred in isolation units—though these units accounted for less than 10% of the state’s total prison population. In the Indiana Department of Corrections, the rate of suicides in segregation was almost three times that of other housing units.

Recognizing these dangers, major U.S. health organizations, including the American Psychiatric Association, Mental Health America, the American Public Health Association, the National Alliance on Mental Illness, and the Society of Correctional Physicians, have issued formal policy statements opposing long-term solitary confinement, especially for prisoners with mental illness.

International human rights bodies have also condemned the prolonged use of solitary confinement. The Inter-American Commission on Human Rights has urged member states to “adopt strong, concrete measures to eliminate the use of prolonged or indefinite isolation under all circumstances,” the United Nations Special Rapporteur on Torture called for a global ban on solitary confinement in excess of 15 days as well as on the segregation of juveniles and those with mental disabilities, and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment found that solitary confinement conditions can amount to “inhuman and degrading treatment.” Indeed, research shows that some of the clinical impacts of isolation can be similar to those of physical torture.

Despite the obvious harms, there is little evidence or research about the goals, impacts or cost-effectiveness of solitary confinement as a corrections tool. In fact, there is no evidence that using solitary confinement or supermax institutions has significantly reduced the levels of violence in prison or that such confinement acts as a deterrent. A 2006 study found that opening a supermax prison had no effect on prisoner-on-prisoner violence in Arizona, Illinois and Minnesota. The same study found that creating a supermax had only limited impact on prisoner-on-staff violence in Illinois, none in Minnesota, and actually increased violence in Arizona. A similar study in California found that supermax prisons have not only failed to isolate or reduce violence in the state prison system, but in fact all measures of violence suggest it has increased. Even where disciplinary segregation is used as a short-term punishment, a recent study finds that it does nothing to deter violence in prison. In a recent review of the evidence for and against the use of “segregated housing” the Vera Institute of Justice in New York noted that although the “most widely accepted and cited reason for using segregated housing is to ensure safety, order, and control within a prison… there is little evidence to support the claim that segregated housing increases facility safety or that its absence would increase in-prison violence.”

Moreover, limiting the use of solitary confinement has been shown to decrease violence in prison. According to the Michigan Department of Corrections, a reduction in the number of prisoners in segregation has resulted in a decline in violence and other misconduct. Similarly, Mississippi saw a 70% reduction in violence levels when it closed an entire solitary confinement unit and after Colorado decreased its use of solitary confinement by 85% its rate of prisoner-on-staff assaults plummeted.

The pervasive use of solitary confinement means that thousands of prisoners, many of them with severe mental illness, return to their communities after months or years in isolation, emerging with diminished social and life skills. A 50 state survey in 2015 found that at least 10,000 prisoners
are directly released to the streets from isolation units in the 24 states that actually kept data; 26 states and the Federal government do not even track this information.22 Years earlier, a blue-ribbon expert panel examining national prison conditions, the Commission on Safety and Abuse in America’s Prisons, raised serious public safety concerns regarding the practice of releasing prisoners directly from segregation settings to the community.23 That same year in 2006, a major psychiatric study of prisoners in solitary confinement noted that such conditions may “severely impair[] the inmate’s capacity to reintegrate into the broader community upon release from imprisonment.”24 Since the vast majority of prisoners—at least 95%—will eventually serve their sentences and be released, community reentry is an important element of a corrections department’s mission.25

Unsurprisingly, release directly from isolation correlates with an increased risk of recidivism. Preliminary research from California suggests that rates of return to prison are 20% higher for solitary confinement prisoners.26 In Colorado, two-thirds of prisoners released directly from solitary confinement returned to prison within three years; by contrast, prisoners who first transitioned from solitary confinement to the general prison population were 6% less likely to recidivate in the same period.27 A 2001 study in Connecticut found that 92% of prisoners who had been held at the state’s supermax prison were rearrested within three years of release, compared with 66% of prisoners who had not been held in administrative segregation.28 Another study, in Washington State, tracked 8,000 former prisoners upon release and found that, not only were those who were released directly from segregation more likely to reoffend, but they were also more likely to commit violent crimes.29 Significantly, prisoners released directly from segregation had much higher recidivism rates compared to individuals who first transitioned from segregation to general population before their release (64% compared with 41%).30 Findings like these, suggesting a link between recidivism, public safety, and the debilitating conditions in segregation, have led mental health experts to call for pre-release programs to help prisoners held in solitary confinement transition to the community more safely.31

III. The Current Solitary Confinement Reform Movement in the United States

By all accounts, the practice of solitary confinement is a human rights crisis and public safety quagmire in the United States. But it is not intractable. Solutions exist and the last few years have generated a sea change in public knowledge about the practice and support for reform at the local, state, and federal level. In some respects, this sea change is the product of decades of advocacy and civil rights litigation that set a foundation for the movement we now see. For instance, litigators in the 1990s and early 2000s were able to bring the first federal court cases to hold that placing seriously mentally ill people in solitary confinement violated the Eighth Amendment’s prohibition on cruel and unusual punishment,32 and that the Due Process Clause of the 14th Amendment to the U.S. Constitution gives rise to prisoners’ liberty interest in not being placed in a supermax prison due to the highly restrictive nature of the conditions in such units.33 But in other respects, the new momentum to end the use of solitary confinement is the product of a broader cultural rethinking of the practice, its impacts, and outcomes.

This new momentum builds on five discernible agents of reform: civil society campaigns, allies in government and leading professional groups, civil rights litigation, emerging technical support for change and corrections leadership, and media coverage that increases public awareness and
discourse. (A chronology of recent reforms to the practice of solitary confinement is attached to this report as Appendix A).

All of these agents of reform are critical to the ultimate success of the movement because achieving lasting change to end solitary confinement in this country requires more than reform of a particular policy, law, or short-term practice. Real change in this arena demands a cultural shift that fundamentally rethinks U.S. reliance on mass incarceration as a strategy for dealing with persistent social problems and the socio-economic fallout of structural inequality. Such change also needs support not only from the public at large, political and religious leaders, and the medical community, but also affected communities and corrections and juvenile justice professionals.

A. Reform Drivers in the Stop Solitary Movement

1. Civil Society Campaigns

The forces for change have been building for about a decade. In 2006 a blue-ribbon commission, chaired by former Attorney General Nicholas Katzenbach and former federal judge John Gibbons, found that “[t]he increasing use of high-security segregation is counter-productive, often causing violence inside facilities and contributing to recidivism after release.” The Commission advocated “mak[ing] segregation a last resort,” and “end[ing] conditions of isolation.” Building on these findings, faith groups and civil rights organization began to formulate advocacy campaigns to reform the practice. In 2008 the American Friends Service Committee launched its “Stopmax” campaign. Expanding that momentum, in 2010 the ACLU convened a large group of lawyers, prisoner rights advocates, corrections officials, academics and researchers, religious activists, and mental health experts to map out a national and local strategy for ending solitary and creating workable alternatives. The result was a “Stop Solitary Campaign” that has accelerated legislative and policy reform, public education, and litigation nationwide. At the same time, the National Religious Campaign Against Torture (NRCAT) expanded its work on U.S.-sponsored torture to organize diverse faith communities to advocate against the practice of solitary confinement. The ACLU and NRCAT have played leading national roles in the movement. Both groups work in partnership or as complements in the vast majority of state-based campaigns through state affiliates and local allies, and both have been the driving forces behind advocacy work at the federal level. The combination of the faith community and the civil rights community working in tandem at the grass roots and grass tops level is one of the great strengths of the movement, adding to its diversity and the range of tools employed to achieve goals.

The movement has also benefited from strong single-state campaigns with remarkable organization and leadership. Many of these states, such as New York and California, have employed multi-pronged advocacy strategies including grassroots organizing, legislative advocacy, and litigation. In New York State, the Campaign Against Isolated Confinement (CAIC), led by the Correctional Association of New York (CANY) and a few key groups, has mobilized statewide with remarkable momentum and forceful strategic planning. CAIC invests in a great deal of training and empowerment for its members and deftly incorporates the voices of affected communities in its work and leadership. The results of CAIC’s work has been the most progressive solitary reform legislative campaign in the country, the Humane Alternatives to Long-Term Solitary Confinement bill (HALT). CAIC’s level of sophistication stands out in the reform movement and provides a model for other jurisdictions.
In California, another robust campaign against solitary confinement grew from a series of statewide hunger strikes by prisoners in support of prisoners held in long-term solitary confinement at California’s Pelican Bay State Prison. That movement led to the formation of dynamic organizations who led a statewide campaign against solitary confinement, including California Families Against Solitary Confinement, People’s Action for Rights & Community, and the Prisoner Hunger Strike Solidarity Coalition. These groups are characterized by their leadership by solitary survivors and family members, as well as direct input from incarcerated men and women into policy recommendations and strategy. Actions on the ground in California raised national awareness of the problem of solitary confinement and led to several legislative battles, as well as a class action suit that eventually settled with dramatic results expected.

Since 2010, state legislative campaigns have emerged in eighteen states, including: Texas, Arizona, Maine, Massachusetts, Delaware, New Jersey, New York, Ohio, Illinois, Virginia, Florida, New Mexico, Nevada, Nebraska, Montana, Colorado, Maryland, and California. In the past five years, Texas, Maine, Massachusetts, New Mexico, New Jersey, Nevada, Colorado, Delaware and Nebraska have all passed legislation either to restrict solitary confinement or study how to reduce its use.\(^{36}\)

2. **Allies in government and leading professional groups**

Recognition that solitary confinement is overused, abused and dangerous has reached the highest levels of American government. In an historic op-ed in the *Washington Post*, President Barack Obama denounced the practice of solitary confinement in the United States. He stated:

> How can we subject prisoners to unnecessary solitary confinement, knowing its effects, and then expect them to return to our communities as whole people? It doesn’t make us safer. It’s an affront to our common humanity.\(^{37}\)

The national review of solitary confinement practices and alternatives conducted by the Attorney General previously ordered by the President in July 2015 was released simultaneously with his opinion piece.\(^{38}\) That report and its recommendations—adopted by the President—set forth over 50 guiding principles for solitary reform writ large and a host of specific policy changes for the federal Bureau of Prisons (BOP) and other detention agencies within the DOJ, including a ban on youth solitary, diversion of those with serious mental illness, reform to protective custody, prohibitions on the use of solitary confinement for low-level disciplinary infractions, and shortened mandatory lengths of stay in solitary confinement units. These reforms are the result of several years of federal advocacy and repeated engagement with the BOP, the DOJ, and the Administration, as well as strong internal allies.

National reform efforts have also attracted strong allies in the U.S. Congress. In June 2012, Senator Dick Durbin of Illinois held the first ever congressional hearing on solitary confinement, and in February 2014 Senator Durbin held a follow-up hearing on the subject. In his closing remarks at the second hearing, Senator Durbin declared that solitary confinement is overused across the country, and that children, pregnant women, and people with serious mental illness should never be subjected to the practice.\(^{39}\) As a result of these hearings, the federal Bureau of Prisons (“BOP”) faced greater scrutiny of its solitary confinement and isolation policies and
practices. Facing mounting scrutiny from Congress and the public, BOP announced that it has reduced its segregated population, and in response to Congressional pressure, it also underwent a comprehensive and independent assessment of its use of solitary confinement. That audit identified dangerous deficiencies in the treatment and care of prisoners in solitary confinement and recommended comprehensive reforms of the length of stay in isolation, the treatment of individuals with mental illness, the use of isolation for protective custody, and the practice of directly releasing individuals from isolation to the streets. All of these findings fed into the reforms ultimately ordered by the President.

Increasing leadership by prominent national organizations is also playing an important role in shaping political leadership, public opinion and the field of corrections on the issue of solitary reform. In 2010, the American Bar Association issued its Standards for Criminal Justice, Treatment of Prisoners which place limits on all aspects of solitary confinement. The solutions presented in the Standards represent a consensus view of representatives of all segments of the criminal justice system who collaborated exhaustively in formulating the final ABA Standards. At the same time medical organizations, like the American Psychiatric Association and the American Academy of Child and Adolescent Psychiatry, promulgated policy and standards to protect individuals with mental illness and children from the harms of solitary, and other medical, professional, and religious organizations have followed suit. Important thought leaders, including the National Academy of Sciences, recently addressed the pervasive use of solitary confinement as a symptom and grave consequence of the country’s overreliance on incarceration in the last 40 years.

3. Civil rights litigation

Civil rights litigation is simultaneously driving systems reform and exposing the harms solitary wreaks on incarcerated people. Key recent victories in states like Massachusetts, Pennsylvania, California, Arizona, and Indiana are leading to the further development of alternative approaches to the management of seriously mentally ill and cognitively disabled individuals in corrections. Ground-breaking litigation in New York led to the exclusion of youth under 18 and pregnant women from isolation units in the state prisons. Litigation is also playing a pivotal role in banning the use of solitary on youth in both the adult and juvenile systems with major statewide settlements in Ohio and Illinois in the last two years.

In late 2015 two major jurisdictions in the United States – New York and California – announced far-reaching, statewide settlements mandating reforms beyond exclusion of individuals with serious mental illness from solitary confinement units. In Ashker v. Brown, a class action filed on behalf of hundreds of prisoners held in solitary for ten years or more in California’s Security Housing Units (“SHUs”), California has agreed to reforms expected to dramatically reduce the number of prisoners in the SHUs and limit the way SHU confinement is used going forward. These reforms stop the state’s practice of sending prisoners to solitary merely based on allegations of gang “affiliation.” Instead, a gang validated prisoner will only be sent to the SHU if found guilty at a hearing of a serious violent offense, such as murder, violence against persons, or weapons possession. The settlement also limits time spent in the SHU; provides that prisoners who have spent more than ten years in solitary be immediately released to a general-population setting; creates a secure alternative to solitary confinement; and severely limits all prolonged solitary confinement and provides for significantly more out-of-cell time. The state recently announced that these reforms are also expected to save $28 million.
Final settlement in *Peoples v. Fischer* was also reached in a class action brought by NY State prisoners. Under the agreement, the state commits itself to reducing solitary, limiting the length of solitary sentences, and abolishing many dehumanizing aspects of isolated confinement. In particular it removes more than 1,100 people from traditional solitary conditions and either moves them into rehabilitative units with common spaces and group programming or into other less isolating disciplinary units. The agreement further restricts the circumstances in which solitary can be imposed as punishment. Amongst other provisions it also requires de-escalation training of over 20,000 of Department of Corrections personnel.55

The leadership of the Civil Rights Division of the U.S. Department of Justice in initiating investigations around the use of solitary confinement and supporting litigation in the last five years has also been central to the development of policy, practice, and law at the state and national level.56 Additionally, public statements and support of the former Attorney General Eric Holder about the harm of solitary confinement for youth have done much to further national discussion and scrutiny of the practice.57 The DOJ’s new Guiding Principles for solitary confinement reform will certainly inform new and ongoing litigation and court settlements.58

The ferment of social change around the issue of solitary confinement reform has not gone unnoticed by the U.S. Supreme Court. On June 18, 2015 the Court issued its decision in *Davis v. Ayala*, a case addressing the exclusion of a defense attorney from part of a hearing on jury selection. The defendant had spent much of the past 20 years in solitary confinement and Justice Anthony Kennedy wrote a separate concurring opinion to address the practice. Justice Kennedy noted that long-standing knowledge of the danger of solitary confinement was “[t]oo often” and “[t]oo easily ignored,” but described a “new and growing awareness” about solitary confinement. Justice Kennedy writes of “[t]he human toll wrought” on all people; how solitary “exacts a terrible price” on all people; and how solitary can bring all people “to the edge of madness, perhaps to madness itself.” He also appear to invite a case to address these concerns directly: “In 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.”59

4. **Corrections/Juvenile Justice leadership and emerging technical support for systems change**

Recognition within the criminal justice community and corrections that the use of solitary confinement in the U.S. has gone too far and is not creating positive results is also fueling reform efforts. On the heels of the Commission on Safety & Abuse in America’s Prisons, the Vera Institute of Justice started a “segregation reduction” project (now entitled the “Safe Alternatives to Segregation Initiative”), to provide technical assistance to states seeking to reduce the number of prisoners in solitary confinement.60 This project works with states and jurisdictions to gather data about their use of solitary confinement and help craft changes to policy and practice to reduce the system’s dependence on isolation as a management tool. In some systems, such as New Mexico, advocates have worked with state legislatures and corrections leadership to bring Vera into the state to provide this critical assistance. Vera recently released its first public report detailing its findings, strategies, and recommendations for reform gathered from technical assistance provided to a number of states. This report is being widely cited by and relied upon by
advocates as well as government officials. At the same time, Vera has expanded the states it provides technical assistance to through federal funding.

A similar technical assistance model is now being developed by leading juvenile justice organizations, including the Center for Children’s Law & Policy, the Center for Juvenile Justice Reform, the Council of Juvenile Correctional Administrators, and the Justice Policy Institute. These well regarded and well placed organizations represent a pivotal addition to the movement to end youth solitary through both inside and outside measures.

Corrections leadership on reform is also playing a pivotal role. Indeed, a recent report by the Association of State Correctional Administrators (ASCA) and Yale Law School recognized that “[p]rolonged isolation of individuals in jails and prisons is a grave problem drawing national attention and concern.” For instance, these concerns are reflected in the actions of some of the field’s most outspoken leaders. Executive Director of Colorado’s Department of Corrections, Rick Raemisch, spent a night in solitary and wrote in the New York Times that that experience gave reform a new urgency for him. Leaders in other jurisdictions, such as New Mexico, Washington, Maine, Massachusetts, Mississippi, Texas, and New York City, have made major strides in changing the daily practice of solitary confinement in this country. Some of this leadership has been spurred by litigation, but most is the result of a discernible self-recognition in the field that change is necessary and that better alternatives must be found to support both prison and public safety. Most recently, a colloquium convened at John Jay College of Criminal Justice with 15 state corrections leaders and 15 advocates and academics met to develop a consensus set of recommendations for reform. The resulting report sets forth a thoughtful, comprehensive set of reform principles backed by a corrections and academic imprimatur.

5. Media coverage

A key linchpin supporting much of the advocacy strategy to end the use of solitary confinement is sustained media attention and public education. Prior to 2010 there was almost no reporting on the use of solitary in the United States, despite its pervasive use and corrosive impacts. This began to change with the formation of Solitary Watch, a web-based, single issue journalism site that creates and collates print and online reporting on solitary confinement and on advocacy efforts against it.

Leveraging its single issue focus, Solitary Watch gives a voice to the thousands of prisoners trapped in isolation cells, featuring letters and direct communications from behind bars, as well as the voices of survivors. Solitary Watch also provided the first forum for regular reporting on the use of solitary confinement nationwide, as well as the efforts of the advocacy community to end the practice. From this specialized on-line source, mainstream media soon picked up on the topic.

Media momentum and public discourse around solitary was especially affected by the largest hunger strike in U.S. history by 30,000 prisoners in California protesting over conditions in solitary confinement and especially in Pelican Bay State Prison’s SHU. Widespread media coverage and enormous state and local pressure lead to two legislative hearings into SHU conditions and policy changes by the California Department of Corrections and Rehabilitation.

At the same time, advocacy campaigns nationwide have been working diligently to engage media attention through local op-eds by community leaders, editorial board engagement, human rights
reports, arts collaborations, and utilization of social media. As a result of these strategies, the question of whether solitary confinement costs too much, is inhumane, and does nothing to rehabilitate prisoners is now emerging fully in the public discourse.

B. Emerging alternatives to solitary confinement

As a result of all of these social and political forces, reforming solitary confinement practices is now a hotly debated national conversation – and positive change is happening across the country. Thousands have already left solitary, supermax prisons have been shuttered, and greater protections for children and individuals with mental illness are now in place in several jurisdictions. Looking at the developing pattern of change, several alternative approaches stand out.

1. The Development of National Standards

In recognition of the inherent problems of solitary confinement, the American Bar Association ("ABA") approved standards to reform its use. The ABA’s Standards for Criminal Justice, Treatment of Prisoners address all aspects of solitary confinement (the Standards use the term “segregated housing”).69 These standards and the imprimatur of the ABA have been especially useful in the context of drafting legislation and revising policies and practices at the state and local level.

The ABA Standards are not considered ideal by most American civil rights attorneys, advocates, and experts. Since their promulgation in 2010, even greater reforms and stronger policies have been implemented in some jurisdictions. However, the ABA standards still do provide greater limitations and policy protections than now exist in most jurisdictions. More recent standards, such as the recently approved United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the “Nelson Mandela Rules,” are also informing the development of standards and legislative proposals in the United States. The Nelson Mandela Rules flatly ban solitary confinement that is indefinite or prolonged (over 15 consecutive days), and require that even shorter term solitary confinement be “used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority.” They bar use of solitary confinement “in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures,” and as part of a prisoner’s sentence. The Rules also ban placement of prisoners in dark or constantly lit cells.70

The new guiding principles enunciated by the Department of Justice incorporate aspects of both the ABA and Nelson Mandela Rules with several highly specific requirements for policy and practice, including the exclusion of youth and pregnant women and almost all seriously mentally ill individuals (with additional clinical supports in the rare instances where segregation is used). The principles also mandate tighter controls on the use of solitary for discipline; protective custody; administrative or investigative purposes.71

2. Alternative Models

Several states have taken steps to investigate, monitor, reduce, and reform their use of solitary. For example, New York passed a law that excludes the seriously mentally ill from solitary
confinement, requires periodic assessment and monitoring of the mental status of all prisoners subject to solitary confinement for disciplinary reasons, creates a non-disciplinary unit for prisoners with psychiatric disabilities where a therapeutic milieu is maintained and prisoners are subject to the least restrictive environment consistent with their needs and mental status, and requires that all staff be trained to deal with prisoners with mental health issues.72

Responding to litigation that was settled in 2012, the Massachusetts Department of Correction rewrote its mental health care policies to exclude prisoners with severe mental illness from long-term segregation and designed two maximum security mental health treatment units to divert the mentally ill out of segregated housing.73 In the Colorado prison system, as of December 2013, wardens were directed that prisoners with “major mental illness” were no longer to be placed in administrative segregation; in 2014 Colorado passed a law reflecting this change and providing the necessary funding to make it permanent.74 By the end of 2013, facing mounting public scrutiny of its overuse of solitary confinement, the New York City Department of Correction had reassigned all detainees with mental illness in “punitive segregation” at Rikers Island jail to units with more therapeutic resources.75

In Maine, after an extensive advocacy and legislative campaign that culminated in an extensive government report on areas in need of reform, the Maine Department of Corrections enacted a series of policy changes to reduce its use of solitary, including an incentive system that allows prisoners to earn access to more recreation while in solitary and earlier release from solitary.76 Accompanying the rapid reduction in the use of solitary confinement were improved conditions for the isolated prisoners, including access to radios, televisions, and reading material. People in solitary have also been given more opportunity to interact with other prisoners through group recreation and counseling sessions, and more opportunities to earn perks like additional hours of recreation through positive behavior. Tighter controls and approval requirements on the use of solitary confinement units, as well as expanded programming options, led to population reductions of over 50%.77

In Washington State the department of corrections moved from using solitary as suppression and containment to the use of intensive programming. Part of this reorientation included moving from managing different types of prisoners the same way, to mission-specific housing to target risk, need, and responsivity of individual prisoners in programs geared towards their individual needs, such as mental health, cognitive impairment, gang involvement, and chronic behavioral problems. A large emphasis in Washington’s transformation of solitary practices has been organizational culture change. This change is accomplished by staff training and engagement of staff in the change process, encouraging interaction between prisoners and staff through physical setting and interactive tools, and allowing staff to build programs, set up classrooms, and other similar activities.78

These alternatives to the use of solitary confinement represent promising practices emerging across the United States. Some reforms have been piecemeal, while others represent a more comprehensive rethinking of segregation practices and the ultimate goals of a corrections
institution. There is not yet a dominant new model, but it is clear that the former status quo of solitary confinement practice in the country is no longer considered humane, effective, or appropriate for a democratic nation.

C. Strengths, Challenges & Opportunities for the Reform Movement Now

1. National coordination and leadership

Strengths: A great strength of the movement is the national partnership between the civil rights community led by the ACLU and the faith community lead by NRCAT. This partnership has created a diverse and flexible leadership able to develop tools and resources and easily transmit them to the field. The partnership also facilitates the transmission of lessons learned in the reform process to all campaigns thereby enhancing capacity building as the movement matures. The Stop Solitary listserv allows activists, lawyers, experts and academics to communicate easily with each other and to share resources. Multiple strategies in a variety of venues – international, federal, state, and local – have built momentum and engaged various sectors of society. The emergence of the youth coalition lead by CCLP in partnership with juvenile justice administrators provides key and credible leadership for transforming youth systems away from solitary.

Challenges: A challenge to the national leadership is the need to expand coalition partners and increase the diversity of voices, including affected communities and survivors, in shaping strategy and solutions. A further challenge is the thinning of resources of the national leadership as the number of states and jurisdictions engaging in the effort continue to grow and the need for technical expertise to support these campaigns to make meaningful, informed policy advocacy choices expands. The need to sustain communication and respond to growing needs in the field is outgrowing capacity. Another challenge is the limited number of groups engaged in federal advocacy around the issue of solitary reform.

Opportunities: The marked attention to the need for solitary reform from high level leaders, such as President Obama and Justice Anthony Kennedy, present enormous opportunities for building national momentum and transmitting it to the states. Leveraging this moment into lasting reform at both the national and local level must be a priority. And leveraging President Obama’s federal ban on youth solitary to expand campaigns at the state level should be a priority.

2. Vibrant state-level campaigns

Strengths: Another key strength of the movement is the growing state-level engagement. Every year, more states move to engage in the issue. It is also notable that political and regional divisions do not define the movement. Indeed, the vast majority of reforming states are headed by Republican Governors. Many of these campaigns are well coordinated, deeply engaged and sophisticated in strategy, such as New York and California.

Challenges: While some states have large, well-coordinated coalitions engaged in the work, others have only a handful of organizations involved or are primarily led by one group. In many of these campaigns there is a need for greater inclusion of survivor and affected community voices and perspectives, as well as broader public engagement.
At the same time, the technical capacity of many of these campaigns needs support, including advocacy training and sophisticated political analysis by state-level leaders. Many of these campaigns have accomplished much with few resources but they do not have a plan for long-term sustainability and growth. Further, resistance to reform from corrections leaders and unions continues to be the main obstacle to policy and legislative change – and without sophisticated plans and funding to minimize or neutralize their opposition, real change is difficult. Just recently, the massive, multi-year effort to pass a stop solitary youth bill in California was undermined by the Governor’s lack of support for the bill should it pass due to the opposition of the probation and parole officers’ union. The bill ultimately stalled in the Assembly Appropriations Committee after passage by the California Senate.

**Opportunities:** Recognizing the needs of nascent groups, the need to expand the communities of care and the need to tie the movement together, several of the leading advocacy organizations developed a nationwide effort to coordinate grass roots actions called *Together to End Solitary*. This effort hosts events on the 23rd of each month to recognize the 23 hours a day thousands of our people spend in isolation. A website was developed to coordinate and highlight the events and a monthly spotlight focuses on a particular group and action. The goal is to increase peer-to-peer exchange; allow greater reflection on successes/failures from over 5 years of organizing; and actively engage a larger swath of the community in the movement. Building on these coordinated activities to allow sophisticated and seasoned campaigns to transmit knowledge and experience to more nascent campaigns is a critical opportunity. Employing strategies to expand advocacy training and provide technical assistance could also be leveraged through the *Together to End Solitary* site.

### 3. Emerging alternatives to solitary confinement

**Strengths:** In the last five years there has been a proliferation of state-level experimentation with new programs designed to reduce the use of solitary confinement and create alternatives for vulnerable populations, such as individuals with serious mental illness. In the juvenile justice system, litigation, leadership, and a greater youth development focus in the field have led to rapid reform in a number of states.

**Challenges:** Although a number of jurisdictions have undertaken reform – sometimes piecemeal – there is very little documentation and research on these alternative programs. This problem is exacerbated by the lack of data and low level capacity for data analysis and collection in many jurisdictions and the historic reluctance of corrections systems to allow outside researchers to analyze their work. As a result, there is no clear road map for reform or consensus around alternatives that work. It is also true that systems with the most abusive solitary confinement policies and practices are most often the same systems that have poor data collection policies and capacities. This factor makes it difficult to document the problem or collect the data necessary to analyze potential paths for reform.

**Opportunities:** Lack of data on solitary and emerging alternatives is a recognized problem in both the advocacy and the corrections community. It was widely discussed at an NIJ convening on solitary in the Fall of 2015. Several leaders have declared openness to research on their system’s reform efforts and this is mirrored in a greater embrace of “evidence based practices” in corrections writ large. The DOJ’s recently released Guiding Principles include data collection provisions and now mandate that BOP and other detention agencies within DOJ engage in regular
data collection of solitary confinement practices. These actions can be used as a model for the states. In the juvenile justice context several states, such as MO, NY, and MA have longstanding models that reject the use of solitary that can be used for other youth systems, as well as extrapolated into the adult corrections context.

4. Funding the movement

**Strengths:** The movement to stop solitary evolved directly as a result of national and community stakeholders recognizing and responding to a human rights crisis. It is driven by community needs and the voices of prisoners, like the statewide hunger strike in California. For the past six years, relatively small investments have produced substantial results and momentum at the national and local level. Although the pool of funders is small, these funders have strategically deployed resources across sectors from national to local organizations, media outlets, research institutions, and support for corrections engagement in the reform process.

**Challenges:** Despite the overwhelming need for reform and the demonstrable success of stop solitary campaigns, few funders are involved in this area. The movement has now worked on much of the low-hanging fruit and needs much greater funding in order to sustain, expand, and grow campaigns to achieve real and sustainable change. Many of the programs and projects necessary for holistic change, such as support for sophisticated research, litigation, and technical assistance to develop alternatives, require more substantial funding over a longer time horizon. It is also true that a lack of funding is a barrier to entry for some groups, despite urgent needs and considerable opportunity for reform. As a result, the movement may be hobbled and opportunities possibly lost due to a lack of available resources.

**Opportunities:** Leaders in this arena are mission motivated with clear goals; results have already been achieved in many ways but there is a well-recognized need to sustain the work to achieve lasting and meaningful change. President Obama’s recent outspoken support for solitary reform adds a national spotlight to this work. It is also true that there is considerable momentum around the need to address mass incarceration and funders have followed that momentum. The need for solitary reform is a product and symptom of mass incarceration – and a campaign that produces tangible results. Better delineation of these ties to the problem of mass incarceration and opportunities for reform that impact mass incarceration can be leveraged to expand the movement’s funding base. New funders can be introduced to the work; the demonstrable results already achieved; and the clear path advocacy groups and other stakeholders in the movement envision for building momentum and achieving long-term change.

5. Movement focus on cultural change

**Strengths:** The reform movement has focused on multiple advocacy strategies in different arenas from inception. Inclusion of the need to change culture within correctional institutions is a mandate of the national movement and a factor clearly recognized by many internal corrections reformers. Key advocacy community leaders are committed to long-term engagement as a result of their focus on the need for broad cultural change in order to achieve and sustain meaningful reform. Recognition of the need for culture change in the advocacy community has allowed for greater dialogue with corrections officials on the need for reform.
**Challenges:** Changing the long-ingrained culture of corrections—which relies on solitary confinement as a one-size-fits-all solution to the many problems prison officials face in operating safe, effective and humane institutions—continues to be a consistent and significant obstacle. Although advocates have successfully persuaded courts to order reforms and legislatures to support them, and a number of corrections leaders are vocal supporters of reform, conditions are still slow to change. Structural challenges, such as understaffing and lack of training, are a problem, but corrections staff often resist change to practices they’ve relied on for decades out of inertia or lack of familiarity with or trust in alternatives.

Achieving cultural change requires buy-in from staff as well as directors. This in turn requires a longer time horizon for success. And sustaining long-term campaigns after partial victories can be difficult. In order to ensure that reforms to solitary confinement “stick,” vigilance and monitoring is necessary after initial victory is achieved. This need for long-term engagement is complicated by the short time horizons for media and public engagement.

**Opportunities:** There is a clear need to expand engagement with unions and line staff around solitary confinement reform. Persuading officers to support the reform cause can be facilitated by engagement with national union leadership, like the AFL-CIO, which is increasingly engaged in the effort to end mass incarceration, and by recognizing that prison conditions are also working conditions. Leveraging opportunities to foster culture change from within the community through greater communication, staff training, and increased resources will be critical for success. These relationships can be difficult to build and may take years to come to fruition, but engaging unconventional allies remains an important and underutilized tactic to support reform.

6. Early success & partial victories

**Strengths:** An incredible momentum for solitary confinement reform has evolved over the past 5 years. This movement benefits from strong media engagement; rapid change in some systems; positive emerging models and outspoken corrections champions; an engaged and active reform community; significant and persistent litigation and high profile court settlements; and attention from the highest levels of government, including the President and the Supreme Court.

**Challenges:** The reform movement is divided to some extent around strategy. Many reforms have focused solely on certain vulnerable populations, such as individuals with serious mental illness, while leaving the bulk of people trapped in isolation. Many question whether there is sufficient political will to ensure that the movement achieves abolition of solitary confinement across the board. The ability to sustain broad reform in the face of probable changes in political leadership and priorities is also at issue. Connecting solitary reform to the broader movement against mass incarceration has not been fully achieved, although the success of solitary reform is beginning to elicit interest from those larger, better funded efforts. Another tension is the need for increased resources to support alternatives to solitary confinement in the face of both governmental and non-governmental pressures to decrease both incarcerated populations and funding for corrections. For some, this means diverting funding for mental health to the community without acknowledging the need for such care to be provided by multiple government agencies.

**Opportunities:** Savvy leadership and open dialogue about the tensions in the reform movement have supported nuanced strategies for reform. We now see expanding civil rights litigation beyond
vulnerable categories and a specific acknowledgement by Justice Kennedy that broad reform is necessary to address the practice. The recent DOJ report and op-ed by President Obama both focused on vulnerable populations, but also on the need for broad reform. Mature campaigns that have achieved the exclusion of individuals with serious mental illness from solitary populations, such as NY, CA, and MA (generally achieved through litigation and later codified in state law), have subsequently focused on broad scale reform beyond vulnerable populations. This natural progression should be treated as a model and supported elsewhere. It is also increasingly reflected in jurisdictions where reforms are most mature and leadership most dynamic, such as in CO and WA. Public safety and rehabilitation narratives aid the expansive and sustained need for reform, as well as broader support from corrections allies. There may be opportunities to use the growing awareness of the need for transparency and oversight in policing as leverage to argue for the urgent need for oversight and accountability in prisons, jails and juvenile detention centers, and the hidden, unregulated, and extreme practice of solitary confinement is a poster child practice for such advocacy.
ENDNOTES


6 Expert Report of Professor Craig Haney at 45-46 n. 119, Coleman v. Schwarzenegger, 2008 WL 8697735 (E.D. Cal 2010) (No. CIV S-90-0520 LKK JFM P). Another study examined the impact of solitary confinement on the amount of time that passes between incidents in which prisoners harm themselves and found that prisoners in solitary harm themselves on average 17 months earlier than prisoners in general population. See Lanes, supra note 5, at 539-40.


11 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, “21st General Report of the CPT” dated August 1, 2010 – July 31, 2011, retrieved from


14 Id. at 1365-66.


17 Alison Shames, Jessa Wilcox and Ram Subramanian, “Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives”, Vera Institute of Justice, May 12, 2015 at 18 retrieved from http://www.vera.org/pubs/solitary-confinement-misconceptions-safe-alternatives (finding that a significant proportion of the segregated population is placed there for being neither violent nor dangerous; in some jurisdictions “nuisance prisoners” constitute the majority of people in disciplinary segregation).


20 Shames, et al., supra note 17 at 18.

21 See, e.g., Reiter, supra note 15 at 2 (noting that in California nearly 40% of segregated prisoners are released directly to the community without first transitioning to lower security units); Maureen L. O’Keefe, Colorado Department of Corrections, Analysis of Colorado’s Administrative Segregation, 25 (2005) (noting that Colorado also releases about 40% of its supermax population directly to the community).


25 See, e.g., Timothy Hughes and Doris James Wilson, “Reentry Trends in the United States”, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2004), retrieved from http://www.bjs.gov/content/pub/pdf/reentry.pdf (reporting that 95% of all state prisoners will eventually be released).

26 Reiter, supra note 15, at 50.

27 Maureen L. O’Keefe, Colorado Department of Corrections, Analysis of Colorado’s Administrative Segregation, 25 (2005) (noting that Colorado also releases about 40% of its supermax population directly to the community).


29 Commission on Safety and Abuse in America’s Prisons, supra note 23, at 55.

30 Id.


34 Commission on Safety and Abuse in America’s Prisons, supra note 23, at 14.

35 Id. at 55.


The “ABA Criminal Justice Standards on the Treatment of Prisoners” (2010) represent the product of a five-year drafting process, approved by the American Bar Association House of Delegates in February 2010. They are based on constitutional and statutory law, relevant correctional policies and professional standards, and the deep expertise of the drafters who represented all segments of the criminal justice system, as well as the comments of dozens of additional experts and groups (among them heads and former heads of correctional agencies, prisoners’ advocacy organizations, and many professional associations). The full text of the Standards is available at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html.

American Academy of Child and Adolescent Psychiatry, “Solitary Confinement of Juvenile Offenders” (2012), retrieved from https://www.aacap.org/aacap/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx (opposing “the use of solitary confinement in correctional facilities for juveniles.” stating that “any youth that is confined for more than 24 hours must be evaluated by a mental health professional,” and aligning AACAP with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which includes among “disciplinary measures constituting cruel, inhuman or degrading treatment” “closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned”); American Psychiatric Association, “Position Statement on Segregation of Prisoners with Mental Illness” (2012), supra note 41 (“Prolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such inmates.”); American Public Health Association, “Solitary Confinement as a Public Health Issue”, supra note 41 (detailing the public-health harms of solitary confinement; urging correctional authorities to “eliminate solitary confinement for security purposes unless no other less restrictive option is available to manage a current, serious, and ongoing threat to the safety of others”; and asserting that “[p]unitive segregation should be eliminated”); Mental Health America, Seclusion and Restraints, Policy Position Statement 24 (2011), supra note 8 (“urging abolition of the use of seclusion... to control symptoms of mental illnesses”); Alliance on Mental Illness, Public Policy Platform, Section 9.8, supra note 8 ("opposing the use of solitary confinement and equivalent forms of extended administrative segregation for persons with mental illnesses"); Society of Correctional Physicians, Position Statement, Restricted Housing of Mentally Ill Inmates (2013), supra note 8 (“acknowledging that prolonged segregation of inmates with serious mental illness, with rare exceptions, violates basic tenets of mental health treatment,” and recommending against holding these prisoners in segregated housing for more than four weeks); New York State Council of Churches, “Resolution opposing the Use of Prolonged Solitary Confinement in the Correctional Facilities of New York State and New York City” (2012), retrieved from https://sites.google.com/site/nyscouncilofchurches/priorities/on-solitary-confinement; Rabbinical Assembly, “Resolution on Prison Conditions and Prisoner Isolation” (2012), retrieved from http://www.rabbinicalassembly.org/story/resolution-prison-conditions-and-prisoner-isolation?tp=377 (calling on prison authorities to end prolonged solitary confinement, and the solitary confinement of juveniles and of people with mental illness); American Bar Association, “ABA Criminal Justice Standards on the Treatment of Prisoners”, Standards 23-2.6-2.9, 23-3.8, 23-5.5 (2010), retrieved from http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html (limiting acceptable rationales for segregated housing and long-term segregated housing, stating that no prisoners...


45 Memorandum & Order, Disability Law Center, Inc. v. Massachusetts Department of Correction, et al., No 07-cv-10463 (MLW), (Apr. 12, 2012 D. MA).


58 See supra note 38.


60 The Segregation Project first provided technical assistance to states such as Washington, Maryland, Pennsylvania, Illinois and New Mexico (see http://www.vera.org/project/segregation-reduction-project). The project recently expanded its capacity with private and government funding and is now known as the Safe Alternatives to Segregation Initiative (see http://www.vera.org/project/safe-alternatives-segregation-initiative).

61 See Shames et al., supra note 17.


64 See, e.g., Alison Shames, supra note 17 (reviewing reform efforts and emerging practices in these states).


66 Elizabeth Alexander, “This Experiment, So Fatal: Some Initial Thoughts on Strategic Choices in the Campaign Against Solitary Confinement”, UC Irvine L. Rev., Vol. 5, No. 1 (Apr. 2015) (Describing Solitary Watch as the “nerve center” of the campaign).


69 See ABA Standards, supra note 42.


73 See press release, U.S. District Court Approves Settlement Reached in Five-Year Litigation Over Solitary Confinement of Mentally Ill Prisoners, (Apr. 12, 2012), retrieved from http://www.lawdragon.com/2012/04/16/u-s-district-court-approves-prison-settlement (“As a result of the litigation, DOC already has implemented significant systemic reforms, including a mental health classification system, a policy to exclude inmates with severe mental illness from long-term segregation, and the design and operation of two maximum security mental health treatment units as alternatives to segregation.”); Settlement Agreement, Disability Law Center, Inc. v. Massachusetts Department of Correction, et al., Civil Action No. 07-10463 (MLW), supra note 102.

74 See Memorandum from Lou Archuleta, Interim Director of Prisons, Colorado Department of Corrections, to Wardens, Offender Services (Dec. 10, 2013) (directing wardens to no longer refer prisoners with “major mental illness” or “MMI Qualifiers” to administrative segregation, reproducing the wording of a new administrative code section describing the policy, and noting that the Department is “working to move” MMI prisoners out of administrative segregation), available at, http://aclu-co.org/sites/default/files/Memo%20Mental%20Health%20Qualifiers%20Ad%20Seg%20MEMO%20%282%29.pdf. See also S.B. 14-064, 69th Gen. Assemb., 2nd Reg. Sess. (Colo. 2014).

75 See Zachary Heiden, “Change is Possible: A Case Study of Solitary Confinement Reform In Maine” 18-26 (American Civil Liberties Union, 2013).

76 Zachary Heiden, “Change is Possible: A Case Study of Solitary Confinement Reform In Maine” 18-26 (American Civil Liberties Union, 2013).
