



**A BLUEPRINT FOR ENDING
SOLITARY CONFINEMENT BY THE
FEDERAL GOVERNMENT**

THE FEDERAL ANTI-SOLITARY TASKFORCE

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Currently, over [10,000 people](#) on any given day are in some form of solitary confinement in federal Bureau of Prisons facilities, representing nearly 8% of the total federal prison population. This is a substantially higher percentage than the national average in state prison systems and even higher than in the federal BOP a decade ago before reductions were made under the Obama administration.

Solitary confinement is torture. It causes immense suffering and devastating mental, physical, and emotional harm. In federal custody, as in state and local jurisdictions across the country, solitary and other forms of restrictive housing and practices are disproportionately inflicted on Black people, Latinx people, Native people, and other people of color, as well as transgender and gender non-conforming people, people with mental health needs, and young people.

Solitary has directly caused the deaths of far too many people, and it has increased violence and harm in prisons, detention facilities, and outside communities. Evidence shows that in fact the opposite of solitary confinement - providing people full days out-of-cell with pro-social engagement and programming - actually increases safety.

President Joe Biden and Vice President Kamala Harris both committed to ending the practice of solitary confinement in their 2020 campaigns and policy platforms. Thanks to a growing movement against solitary across the country, these commitments were shared widely among other leading Democratic presidential candidates, including Senators Elizabeth Warren, Bernie Sanders, and Cory Booker.

At the same time, states and localities across the country are restricting the use of solitary across partisan lines, and multiple local and state jurisdictions are moving toward fully ending solitary. In 2021, 70 pieces of legislation were filed across 32 states to end some aspect of solitary confinement in state prisons and jails.



Both the Biden-Harris Administration and the U.S. Congress can and should lead the way in ending this inhumane, harmful, and counterproductive practice in federal jurisdictions. This document provides a Blueprint for how the U.S. government can use executive, administrative, and legislative action to end the torture of prolonged solitary confinement in federal custody, including in Bureau of Prisons facilities, U.S. Marshals Service facilities, and immigration detention.

Specifically, the U.S. government must:

1 End all forms of solitary confinement in all federal custody, other than lock-ins measured at most in hours to de-escalate emergency situations involving imminent serious physical injury, or true medical quarantine in units overseen by medical staff;

2 Ensure that all separation/alternatives to solitary, regardless of what they are called, are the opposite of solitary, with access to full days out-of-cell (at least 14 hours) and congregate, meaningful programming and activities (at least 7 hours) without restraints and with at least several other people in group spaces conducive to meaningful human engagement;

3 Enhance due process protections, using neutral decision-makers and representation at hearings, restricting conduct that can result in any separation to the most egregious conduct in need of an intensive intervention, and imposing strict time limits on any separation; and

4 Create oversight and enforcement mechanisms, including ensuring a private cause of action, mandatory data collection, independent oversight by an Ombudsperson, media, and community stakeholders, and incentives for states and localities to end solitary and create safer and more effective interventions.

While the specific proposals in this Blueprint are designed for federal custody, the key mechanisms can also provide a framework for ending solitary confinement in state and local jurisdictions across the country as well.

The Specific Proposals and Explanations

Proposal 1

End solitary confinement in all federal custody, other than a) in emergency situations involving imminent serious physical injury, measured in hours rather than days, and with repeated engagement during that time, or b) for medical quarantine in units overseen by medical staff, with comparable to general population services, phone calls, emails, programming with appropriate physical distance, telecommunication, and meaningful human engagement with appropriate physical distance.

Solitary confinement should be defined as any amount of involuntary lock-in other than 8 hours at night for sleep and 2 hours during the day for count and other operations of the facility, regardless of the name of the unit or status a person is in.

Beyond those time limits, involuntary lock-ins should only occur in an emergency situation as a last resort to de-escalate immediate conflict that has resulted in serious physical injury or makes imminent injury likely, and for as short a time as necessary to de-escalate such conflict and not to exceed four hours total immediately following such conflict, with staff rounding at least every 15 minutes and staff engagement at least every hour. No one should be held in such confinement for more than four hours total in any 24-hour period, nor more than 12 hours total in any seven day period.

Even involuntary lock-ins measured in hours should be prohibited for protected special populations because of the particular harm they can face in isolation, including people 25 or younger, 55 or older, with mental health needs, with medical conditions, with disabilities, who are LGBTI, and who are pregnant or new mothers.

Explanation for Proposal 1

Restricting solitary confinement to situations measured in hours draws from best practices in youth and mental health settings, including [Colorado youth detention policies](#), [NYC secure detention youth facilities](#), and [other model youth policies](#), as well as mental health models where seclusion can be measured even in minutes and involve engagement during seclusion.

In incarceration settings: [Allegheny County](#) (includes Pittsburgh) just banned solitary confinement (although with a definition of solitary that could be strengthened). [Chicago](#), while still a work in progress, is in the process of attempting to end solitary entirely administratively. [New York City](#), while also still a work in progress, is on the brink of ending solitary entirely administratively and legislatively, with alternatives involving full days out-of-cell and congregate programming. [Connecticut](#) has a bill with growing momentum that would nearly end solitary entirely other than in emergencies, and [Virginia](#) and [Maine](#), as well as other states, have proposed bills that would ban solitary as well. [New York State](#) recently enacted legislation that would end all prolonged solitary beyond 15 days, ban solitary entirely in many circumstances, and ensure people in alternatives have at least seven hours of out-of-cell congregate programming and activities.

Solitary causes people to engage in [self-mutilation and suicide](#). It causes [heart disease](#). It causes [anxiety, depression, psychosis](#). It leads people to deteriorate mentally and physically. [Research](#) shows even one or two days of solitary leads to significantly heightened risk of death by accident, suicide, violence, overdose, and other causes.

Of note, double celling - where two people are locked in the same cell - still amounts to solitary confinement and has just as harmful consequences, and sometimes even worse and [deadly consequences](#).

Moreover, solitary makes prisons, detention facilities, and outside communities less safe. There is no evidence that restricting people's out-of-cell time improves safety in any way. On the contrary, there is ample evidence showing that solitary confinement causes people to mentally and physically deteriorate, making it more likely a person will act in a harmful manner. There is also evidence (see next page) **that the best way to reduce violence is to adopt policies and practices that are the opposite of solitary, with full days of out-of-cell time and program-based and engagement-based interventions.**

Proposal 2

Ensure that all separation from the general population or alternatives to solitary, regardless of what they are called and including any and all forms of restrictive housing, are the opposite of solitary, with full days of out-of-cell congregate time (at least 14 hours) and opportunities for congregate programming and activities (at least seven hours) aimed at addressing the reasons for separation from the general population, without restraints and with at least several other people in group spaces conducive to meaningful human engagement. The definition of restrictive housing should encompass all forms of housing that is more restrictive in any way than the general facility population in terms of hours out-of-cell, programming, services, congregate engagement with other people, visits, communications, amenities, or any other aspect of daily living, in order to avoid “solitary by another name” and to actually improve safety.

Also, restraints should generally be prohibited to ensure people are not chained during programming, and there should be no restrictions on communications with individuals, attorneys, or the news media, or any other Special Administrative Measures (a relatively new practice that has been abused).

Explanation for Proposal 2:

Addressing the root causes of harmful behaviors requires engagement, not isolation. There can be separation from the general facility population when needed without isolation. There are no safety or other benefits to restricting people’s out-of-cell time, beyond immediate emergency responses measured in hours. But such restrictions on out-of-cell time can cause extreme suffering, devastating harm, and even death.

Evidence shows that what works to reduce violence and improve safety is the opposite of solitary, with opportunities for pro-social programming and engagement-based approaches. Examples like the Resolve to Stop Violence Project in San Francisco jails, which involves full days of out-of-cell congregate programming, show dramatic reductions in violence in jails and outside communities after people return home, as well as financial savings.

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Explanation for Proposal 2 (cont)

Similarly, the Merle Cooper program in New York State was the opposite of solitary - with full days out-of-cell, programming, and the ability to earn the right to not be locked in at night - and had positive outcomes on safety and was praised by staff, administrators, and participants. The Clinical Alternatives to Punitive Segregation (CAPS) program in the New York City jails - an alternative to solitary that is based on therapeutic approaches rather than punitive ones or isolation - has shown positive outcomes for reducing violence and self-injury. Of note, in Colorado "corrections officers who had initially opposed [limits on solitary] changed their minds after they began to see positive results."

According to Dr. James Gilligan, who is the former director of Massachusetts prison mental health services and who has studied violence for decades, in his 2001 book *Preventing Violence*: "Far from preventing violence, punishment is the most powerful stimulus to violent behavior that we have yet discovered. Punishment does not prevent violence, it causes it, in addition to being a form of it." Recalling his experience observing an incarceration setting, Dr. Gilligan wrote:

"The more violent a person was, the more severely he would be punished, and the more severely he was punished, the more violent he would become. This endless, mutually self-defeating vicious circle kept both people incarcerated and prison officers in a chronic state of war with each other - which was the opposite of what they both said they wanted."

Under the above Proposal 1 in this Blueprint, if someone engages in violence, they can immediately be locked in for a period measured in hours in order to address the immediate situation. After that immediate period, people can still be separated from the general population. **What matters is the nature of that separation. Rather than isolation that is known to increase the likelihood of violence, people who are separated must be in environments that evidence shows are better suited for actually reducing and preventing violence.**

Proposal 3

Enhance due process protections, using neutral decision-makers and a right to representation at hearings to ensure meaningful review of allegations that can result in separation or alternatives, restricting conduct that can result in separation or alternatives to the most egregious conduct in need of an intensive intervention, and imposing strict time limits on separation or alternatives to ensure that people are not warehoused in abusive environments.

Explanation for Proposal 3:

The processes that result in solitary confinement and other forms of restrictive housing are often arbitrary, unfair, and infused with racial and other bias. People facing the prospect of being separated from the general facility population should have the right to representation, including a right to appointed counsel, and should have a hearing before a neutral decision-maker who is not employed by the Bureau of Prisons, the U.S. Marshals Service, Department of Homeland Security, or other federal agencies with people in their care and custody. Other jurisdictions, such as Washington, D.C. and Massachusetts, provide for representation. In addition, people in custody and any attorney of record should receive proper and timely notice of the charges against them and all relevant evidence, and any refusal by a person in custody to attend such hearings should be videotaped and made part of the record. A failure to provide such notice or to enter into the record videotaped evidence of an alleged refusal to attend by a person in custody should constitute a procedural violation warranting dismissal.

There also must be strict time limits on how long someone can remain in an alternative to solitary, including a maximum of 60 days in any six month period if the conditions are as outlined above and shorter if the out-of-cell and programming requirements do not meet those proposed. Such time limits are essential to ensure that people do not get warehoused in units that may become abusive.

Proposal 4

Create oversight and enforcement mechanisms, including ensuring a private cause of action, mandatory data collection, independent oversight by an Ombudsperson, media, and community stakeholders, and incentives for states and localities to end solitary and create safer and more effective interventions.

Including a private cause of action is necessary to ensure that people in custody who are wrongfully placed in solitary or restrictive housing and severely injured in violation of any new law restricting solitary and/or the Constitution are not precluded from having the ability to sue.

The Bureau of Justice Statistics should immediately begin collecting disaggregated data on the use of solitary confinement from all federal and juvenile facilities, as well as state prisons and local jails, and begin producing a public report at least annually.

Explanation for Proposal 4:

Specifically related to the private cause of action, people in prison have long used “Bivens actions” to seek money damages for constitutional violations in federal prison, but ever since the Supreme Court greatly restricted the availability of Bivens actions in *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017), many people challenging constitutional violations by federal prison guards or wardens have had their claims dismissed for lack of a cause of action. One example in the context of solitary is *Bistrain v. Levy*, 912 F.3d 79 (3d Cir. 2018) in which a pretrial detainee at a federal facility challenged his placement in solitary on and off over a decade, including for a year at a time, sometimes in retaliation for protected speech or with no procedural protections, and the court dismissed his constitutional claims for lack of a cause of action.

Any federal legislation ending solitary must create a cause of action, or else people who are placed in solitary and severely injured in violation of the new law would have no ability to seek compensation, even if the violation also amounts to a **violation of the Constitution.**

Explanation for Proposal 4 (cont):

Inclusion of an explicit cause of action is especially essential here, because if Congress acts in a particular context and does not include a private damages remedy, the Supreme Court has instructed the courts to interpret this as an indication that Congress does not think constitutional violations in that context are deserving of a damages remedy. For example, in *Dudley v. United States*, No. 4:19-CV-317-O, 2020 WL 532338 (N.D. Tex. Feb. 3, 2020) a woman incarcerated sought damages for sexual assault by her case manager and the court ruled that Congressional action in passing the Prison Rape Elimination Act without including a private cause of action counseled against the judiciary allowing a damages action to proceed. In other words, if any anti-solitary federal legislation passes without inclusion of a private damages remedy, it will affirmatively interfere with the ability of people in custody to seek compensation for injuries stemming from their placement in solitary.

In addition to the private cause of action, there should be extensive public reporting requirements on the use of solitary confinement and restrictive housing as well as multiple oversight mechanisms to ensure effective implementation.

Enhanced media access would provide the greatest mechanisms for oversight by the general public. An independent Ombudsperson with unfettered access to facilities and confidential communications would allow for meaningful mechanisms for people incarcerated to raise concerns, and federal agencies should be required to implement remedial action plans in response to Ombudsperson recommendations. A designated community oversight body should also be created with the ability to make unannounced visits with unfettered access to every area of every facility, and make recommendations that require a remedial action plan. This oversight body can be comprised of people who have lived through solitary, people who have had loved ones in solitary or lost loved ones because of solitary, faith leaders, medical and mental health professionals, civil rights and human rights advocates, and other community leaders.

With respect to incentivizing states and localities, the federal government should tie the continued expenditure of existing justice-related funding streams to requirements that states and localities adopt mechanisms outlined in this Blueprint to end solitary confinement and create alternatives that are the opposite of solitary with full days out-of-cell and access to congregate and meaningful programs and activities.



CONCLUSION

There is a growing movement around the country to end or restrict solitary confinement. The proposals outlined in this Blueprint draw from current best practices and the growing body of state and local legislation and policies that has emerged in recent years. The current moment presents an opportunity for the federal government to truly lead the way by ending solitary confinement, other than in extreme circumstances and measured in hours not days, and create incentives for states and localities to do the same.

President Biden and Vice President Harris have pledged to end solitary confinement, and Senator Durbin and many others in the U.S. Congress have worked for years to end this torturous practice. Now is the time for the administration and the U.S. Congress to implement this Blueprint through executive, administrative, and legislative action in order to end these harmful and unsafe practices, promote racial justice, and uphold the basic human dignity that confers the rights of all to be free from torture.

The Federal Anti-Solitary Taskforce

Principal Convenors,

American Civil Liberties Union

Center for Constitutional Rights

#HALTsolitary Campaign

National Religious Campaign Against Torture

Unlock the Box Campaign

Vera Institute of Justice

The Federal Anti-Solitary Taskforce (FAST) is working to fully end solitary confinement in federal prisons and detention facilities (and end solitary in states, as well). The Taskforce is comprised of civil rights, human rights, faith, and health organizations and leaders, including people who have survived solitary confinement, people who have had family members in solitary confinement, and their allies. Members of the Taskforce have been working to end solitary confinement across the country and have come together to push for an end to solitary confinement federally.

For more information, contact:
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