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Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2016/11/18/what-trump-and-sessions-could-mean-for-solitary-confinement-in-americas-prisons/>

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by [Jean Casella and James Ridgeway](#) | November 18, 2016

The degree of civilization in a society, Dostoevsky famously said, can be judged by entering its prisons. U.S. prisons have, for decades, offered a grim enough picture of American civilization. But what might they look like after a few months, or years, of President Donald Trump and Attorney General Jeff Sessions? In particular, what might the election results mean for the tens of thousands of men, women, and children suffering in solitary confinement in U.S. prisons and jails, and for people on both sides of the bars who oppose this peculiarly American form of torturous punishment?

In the past week, sources as diverse as the [Marshall Project](#) and the [Cato Institute](#) have speculated on how a Trump Administration might affect progress on criminal justice issues, from sentencing reform to police accountability. The prognosis is not positive. When it comes to solitary confinement specifically, a few have pointed to President Obama's January 2016 executive order banning solitary for juveniles in federal prisons as ripe for rollback, given [Trump's promise](#) to cancel every unconstitutional executive action, memorandum and order issued by President Obama on his first day in office.

In fact, Obama's executive actions on solitary confinement have gone far beyond just removing the small number of children held in isolation by the federal government. Solitary Watch did a [detailed analysis](#), at the time, of the reforms [recommended by the Department of Justice](#) and endorsed by the President. We found that the reforms, taken together, would reduce by at least several thousand the number of people held in solitary in federal prisons.

The complete set of federal reforms, some of which have already been implemented, end the use of solitary confinement on individuals charged with low-level, nonviolent disciplinary offenses in prison. They reduce the length of solitary terms for more serious infractions, and for high-risk individuals like gang members who are placed in Special Management Units (SMUs) temporarily to correct their behavior. The reforms also call for alternatives to solitary for people placed in protective custody and individuals with serious mental illness. But all of this could be stalled and even reversed by Trump.

In addition, Muslim Americans accused of terrorism-related charges, including low-level material support charges, have been especially likely to be placed in isolation in federal facilities. Many have spent months or years in pre-trial solitary confinement. Trump's promise to [wage war](#) on what he calls radical Islamic extremism in thought as well as deed means the net will surely be cast even wider in the future, possibly filling solitary confinement cells in places like Manhattan's Metropolitan Correctional Center and Colorado's notorious ADX supermax.

The vast majority of people in solitary are held in state prisons and local jails, out of reach of such executive actions. But the U.S. Department of Justice and particularly, the Civil Rights Division has long acted as a check on abuses in state and local systems. Recently, for example, the DOJ conducted an investigation of Pennsylvania's use of long-term solitary on individuals with mental illness and developmental disabilities, and [reached an agreement](#) with the state's Department of Corrections to institute sweeping changes. Even before today's announcement of Alabama Senator Jeff Sessions as Trump's choice for Attorney General, the Civil Rights Division is said to be in a [state of high anxiety](#) over the impending transition, and given [Sessions's history of insensitivity to civil rights](#), it is hard to imagine a Sessions DOJ spending resources to protect the rights of the incarcerated.

In addition, under Obama, the DOJ's Bureau of Justice Assistance has [provided funding](#) for states and counties to work with the Vera Institute of Justice's Safe Alternatives to Segregation project to study and reduce their use of solitary confinement. The Justice Department in January recommended expanding this program; under Trump and Sessions such funding is vulnerable.

Trump has long denounced what he calls criminals' rights. And more broadly, since the widespread use of solitary confinement is driven by mass incarceration, Trump's general law-and-order stance, which is inhospitable to such moves as sentencing reform, could add to the federal prison population. Sessions, who has a track record on these issues he [virulently opposed](#) recent bipartisan efforts at sentencing reform and [wrongly believes](#) that [crime is skyrocketing](#) will certainly have Trump's back.

Finally, Trump's pledge to round up undocumented migrants, as well as migrants who have been convicted of criminal offenses, promises teeming immigrant detention centers (and new ones, likely run by [private prison corporations](#)), where the solitary confinement is [also used](#). Under Obama, Immigration and Customs Enforcement (ICE) [issued a directive](#) intended to limit the use of solitary in immigrant

detention, but that directive can be rescinded.

As with most criminal justice reforms in the age of Trump, it will now be up to state and local governments to take the lead in rolling back the use of solitary confinement, as quite a number [have already done](#). Amy Fetting, who is Deputy Director of the ACLU's National Prison Project and Director of the NPP's Stop Solitary initiative, told Solitary Watch: We were certainly concerned that the DOJ under the new administration will back away from the aggressive enforcement of the civil rights statutes that we've seen over the past few years. But there is no question that reform of solitary confinement will continue. There is widespread recognition at the state and local level that solitary confinement is over-used and abused and that there are better, more humane alternatives that work.

James Ridgeway (1936-2021) was the founder and co-director of Solitary Watch. An investigative journalist for over 60 years, he served as Washington Correspondent for the Village Voice and Mother Jones, reporting domestically on subjects ranging from electoral politics to corporate malfeasance to the rise of the racist far-right, and abroad from Central America, Northern Ireland, Eastern Europe, Haiti, and the former Yugoslavia. Earlier, he wrote for The New Republic and Ramparts, and his work appeared in dozens of other publications. He was the co-director of two films and author of 20 books, including a forthcoming posthumous edition of his groundbreaking 1991 work on the far right, Blood in the Face. Jean Casella is the director of Solitary Watch. She has also published work in The Guardian, The Nation, and Mother Jones, and is co-editor of the book Hell Is a Very Small Place: Voices from Solitary Confinement. She has received a Soros Justice Media Fellowship and an Alicia Patterson Fellowship. She tweets @solitarywatch.

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by [Juan Moreno Haines](#)

October 25, 2022

by [Solitary Watch Guest Author](#)

October 13, 2022

by [Vaidya Gullapalli](#)

September 29, 2022

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It would be great if correctional institutions could come up with some kind of basic norms with their peers to address this issue. There is no perfect solution, but there are some basic principles that many correctional institutions could probably agree on.

Distinguishing between whether someone is truly an active danger or is just difficult to deal with due to belligerence, lack of cooperation, or whatever is an important starting point. While people who are truly extremely dangerous at any given point may need to temporarily be in their own room for safety reasons, other alternatives should be explored for working with people who are not an imminent danger.

Ensuring that people who are in their own room due to their extreme risk of harming others are still provided with human contact is essential. Whether this ongoing contact is provided by correctional officers, mental health specialists, chaplains, volunteers, other clergy, their visiting family, etc, people need human contact. Confining someone to their room for safety reasons should not preclude human contact. Human contact also needs to be ample enough to prevent the documented adverse effects of isolation which are multiple and serious.

If there are concerns about staffing levels, these concerns need to be clearly delineated so that politicians and the public understand what the issues are. Use of isolation is a basic human rights issue. The effects of isolation are extremely serious and problematic. While it is important to address safety issues for officers, concerns about safety issues should not be an excuse for not addressing the issue at all. If it is truly unrealistic to implement humane changes until training and staffing levels increase, then correctional institutions need to be at the forefront of vigorously and repeatedly demanding increased funding in order to create humane reforms that align with basic human rights.

Correctional institutions should learn from their peers who have had either success or failure with making humane changes. Successes in other institutions can be the impetus for creating reforms and innovating in one's own institution. Similarly, attempts at change that have gone poorly can provide great information for learning what not to do.

I love the idea People don't fail. Solutions do. It is possible to learn as much from things that have not worked as from things that have. This does not mean there is anything wrong with an institution; it is a sign of being willing to try things and evolve. Correctional institutions should adopt best practices both from the United States and abroad so that they do not end up trying to reinvent the wheel. When possible, they can also innovate and improve on solutions.

This is not an impossible problem to solve. It is possible to be realistic and pragmatic while also being humane and compassionate. The basic idea is that everyone needs human contact to function as a person. Without it, people psychologically deteriorate and suffer immense pain. If they are able to have this contact within the general population, they should. If they are not able to at any given point, due to extreme safety issues, they should still have warm human contact with a variety of people within their own room. Efforts should

be made towards reintegration.

While this is a challenging subject that requires thoughtful consideration by both experts and lay people alike, this issue is fundamentally about a very basic human value. Everyone needs people to talk with. Giving everyone people to talk with is something that as human beings we really should be able to do. Correctional institutions should work together to create a very basic set of norms that are humane, reasonable, and promote prosocial behavior and good psychological functioning. It is not necessary to address every single possible issue at this stage, but agreeing on a broad set of principles that apply in general could be very helpful.

If within a given institution there is simply not funding to provide staffing and training to meet this professional norm of humane treatment, then this can provide a starting point for demanding increased funding.

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