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by [Jean Casella](#) | January 27, 2016

Citing the devastating, lasting psychological consequences of solitary confinement, President Barack Obama on Monday evening announced a set of policy changes designed to dramatically reduce the use of prison isolation. The changes, which apply only to the federal prison system, will have a limited initial impact on the total number of people held in solitary, but they set a powerful precedent for further reforms across the country.

In an [op-ed published in the *Washington Post*](#), Obama begins by referencing the case of Kalief Browder, the young man who committed suicide after spending two years in pre-trial solitary confinement as a teenager on New York's Rikers Island. Such heartbreaking results, the President writes, are the reason why my administration is taking steps to address this problem.

These steps include banning solitary confinement for juveniles and as a response to low-level infractions, expanding treatment for the mentally ill and increasing the amount of time inmates in solitary can spend outside of their cells within the federal prison system.

Mentioning his belief in second chances and redemption as well as public safety, Obama makes a powerful argument against solitary on both practical and moral grounds. How can we subject prisoners to unnecessary solitary confinement, knowing its effects, and then expect them to return to our communities as whole people?, he asks. It doesn't make us safer. It's an affront to our common humanity.

In his reference to unnecessary solitary, however, the President clearly leaves the door open for some use of prison isolation. He acknowledges that there are circumstances when solitary is a necessary tool, such as when certain prisoners must be isolated for their own protection or in order to protect staff and other inmates. In those cases, the practice should be limited, applied with constraints and used only as a measure of last resort.

The reforms announced by the President draw on a set of policy changes recommended by the Department of Justice. These resulted from a review of federal solitary confinement by a DOJ Working Group that included representatives of the federal Bureau of Prisons (BOP), Civil Rights Division, and various other bodies. Obama directed Attorney General Loretta Lynch to conduct the review last summer, when he first denounced solitary in a speech on criminal justice before the NAACP.

The Justice Department last night released the full report, which includes an overview of the use of restrictive housing in the federal system, followed by a set of 50 guiding principles and finally a series of policy recommendations, which are what Obama is codifying through executive action.

A close reading of the [123-page report](#) reveals just how far these policy changes will go in reducing and reforming the use of solitary confinement, in the federal system and beyond.

Adding Up the Numbers

Obama's op-ed is remarkable simply for its frank use of the term solitary confinement. Recently retired BOP Director Charles Samuels had [repeatedly testified](#) before Congress that restrictive housing in the federal system did not, in fact, constitute solitary confinement. (Samuels also, famously, [had no idea of the size](#) of a federal isolation cell.) In addition, in his reference to the 10,000 federal prisoners held in solitary confinement, the President clearly included individuals in 23-hour-a-day lockdown in double cells in federal Special Housing Units (SHUs) and Special Management Units (SMUs).

To be precise, the review found that as of December 2015, the Bureau of Prisons held 9,914 people in solitary confinement, or restrictive housing, in BOP-run prisons, and an additional 924 in private contract prisons. This is slightly less than 6 percent of the total population of about 185,000 in all facilities. An unspecified additional number are held in isolation by the U.S. Marshals Service.

Bans on Solitary for Juveniles, Pregnant Women

For a few specific categories of people, Obama's policy changes will bring a near-complete ban on the use of solitary confinement by the BOP. This includes juveniles under the age of 18. In fact, very few children are held in federal custody and even these are farmed out to

state and local facilities, since the federal Bureau of Prisons runs no juvenile jails. In December 2015, there were 26 incarcerated juveniles in federal custody. Over the course of the previous year, the report states, the Bureau [of Prisons] was notified of 13 juveniles placed in restrictive housing at its contract facilities.

Also virtually banned from solitary are women who are pregnant, are postpartum, recently had a miscarriage, or recently had a terminated pregnancy. The report does not provide data on how many such women, if any, have been placed in restrictive housing in the past.

Ban on Solitary for Low-Level Offenses

The policy recommendations also ban the use of Disciplinary Segregation for low-level disciplinary offenses, which include Malingering/Feigning Illness, Abusive/Obscene Language, and Violating Visiting Regulations, among others, as well as for first instances of moderate-level offenses, which range from Destroying Property \$100 to Being Unsanitary/Untidy to Smoking in Unauthorized Area.

However, very few individuals held by the BOP are placed in solitary for low-level offenses; instead, they face other sanctions, such as fines or loss of good time credits or visiting privileges. In 2015, of the 712 convictions for low-level offenses, only 0.14% were punished with terms in solitary.

The number of convictions for moderate-level offenses that resulted in solitary time was much higher: 6.1% of 62,043, or 3,785. The review does not say how many of these were first offenses, and thus potentially impacted by the ban. This number also reflects convictions for infractions, and the number of people in solitary for such infractions at any given time might be considerably lower.

Time-Cuts for More Serious Offenses and Special Management Unit Programs

Perhaps more significant are dramatic cuts in the length of time individuals can be placed in solitary in Disciplinary Segregation for more serious offenses, ranging from Tattooing or Self Mutilation to Engaging in a Sex Act to fighting, weapons possession, and assault. For example, the policy recommendations reduce the maximum amount of time in solitary for a first high-level offense from 365 days to 60 days.

The impact of these reductions on the total population in Disciplinary Segregation is impossible to calculate. But a relatively small number of people in solitary are actually in Disciplinary Segregation: 1,417 in November 2015, according to the review. Instead, most are in Administrative Detention pending investigations or hearings for infractions, or awaiting transfers or classification, or held over after their disciplinary sentences are up, presumably because they are considered high risk. The report recommends that the hearing and transfer processes be speeded up, but leaves the details up to the BOP.

Time cuts are also recommended for the 1,235 men in the Special Management Units, or SMUs. Most are gang members who are going through a four-phase program meant to correct inmates' disruptive and violent behaviors, while gradually preparing them for return to the general population. The review advises the BOP to shorten the length of the program from 18-24 months to 9-13 months, which if implemented could significantly reduce the SMU population.

Alternative Housing for People Diagnosed With Serious Mental Illness

The policy recommendations call for something close to an eventual ban on the isolation of individuals with mental illness. Any people in solitary with Serious Mental Illness (SMI) are meant, under the new policies, to be rehoused in Secure Mental Health Units. To make this happen, the capacity of these units, which already exist, will need to be increased, and as the report notes, Any expansion of these programs is contingent on increased funding. A fact sheet provided by the DOJ states: The President's Fiscal Year 2017 budget will include a request for \$24 million to support these efforts.

The numbers provided for people with SMI currently in restrictive housing in the federal system are, however, suspiciously low. According to the report, only 629 of the more than 9,900 people held in solitary by the BOP have significant mental health care needs (with an additional 285 for whom the information is not available). This low percentage does not track with most past studies of state prison system, which have found that anywhere from a quarter to a half of people in solitary suffer from mental illness.

The low numbers may be the result of past reforms in the federal system. But they may also reflect narrow definitions of SMI and a general trend toward underdiagnosis. In fact, when the BOP underwent an independent audit in 2014, the auditors, the CNA Group, concluded that restrictive housing inmates with mental health needs were routinely underdiagnosed or misdiagnosed, resulting in insufficient treatment for mentally ill inmates. The CNA audit criticized the Bureau's methods for assessing mental illness, and repeatedly stated that the Bureau lacked sufficient psychiatric staff to provide adequate mental health treatment to all inmates who require it.

Alternative Housing for People in Protective Custody

The policy changes also affect people in solitary for Protective Custody, which includes significant numbers of LGBTQ individuals, people convicted of sex offenses, and former gang members, among others. In November 2015, there were 921 individuals in Protective Custody. The new policy recommendations call for most of these people to be moved to Reintegration Housing Units again, pending the expansion of these units, and the funds to pay for the expansion.

More Out-of-Cell Time for All

When Obama stated that these steps will affect some 10,000 federal prisoners held in solitary confinement, he must have been thinking of one of his final directives: Wardens at all BOP facilities will be directed to develop institution-specific plans for increasing the number of hours restrictive housing inmates spend outside of their cell, and allowing greater opportunities for rehabilitation and reentry services.

The report further states that the DOJ believes that reducing the total number of restrictive housing inmates will lessen the intense

demands currently placed on officers assigned to SHU and SMU units, freeing up staff to provide additional programming and services for the remaining inmates in restrictive housing. Nowhere do the new rules set any minimum for out-of-cell time.

Total Reductions

If all of the Presidents directives are followed, and if they remain in place under a new president (since some will take years to implement), they stand to reduce the federal solitary population significantly. By the very roughest of estimates, they should eventually cut the number of people held in solitary by the BOP by perhaps a third.

As with all prison reforms, only implementation will tell the real story and yield the final numbers. The reductions could be undercut if, for example, prisons assign more people to Administrative Detention or to the SMUs to make up for cuts in Disciplinary Segregation. On the other hand, the reductions could be greater if people with mental illness in the BOP receive proper diagnosis and diversion from solitary.

Reading Between the Lines

Opponents of solitary confinement have much to celebrate in Obamas actions. The very fact that a sitting president chose to take on an issue that, only five years ago, was all but invisible, is remarkable in itself. Advocates who have been working on the issue for years, and who late last year sent an [open letter](#) to the President urging him to take meaningful action on solitary, can be encouraged by the eloquence of the Presidents denunciation, and by the spirit as well as the letter of the policy changes laid out by the DOJ.

The reforms Obama announced put the federal government at least in line with states like New York and California, which recently announced their own plans to reduce the use of solitary. But those states had their hands forced by lawsuits, whereas at the federal level change came as a result of Obamas leadership. And if, as the President hopes, the reforms also serve as a model for state and local corrections systems, most of whom have still done little or nothing to reduce solitary, the impact on the 100,000 individuals in isolation nationwide could be much greater.

Yet if one accepts as Obama himself seems to that long-term solitary is at best inhumane and damaging, and at worst torture, then there are troubling aspects to these (and most other) solitary reforms.

For one thing, the changes leave much to the good faith of wardens and other prison staff a group not famous for its opposition to solitary confinement. For example, the lack of specific minimums for out-of-cell time, or other enforceable minimum standards for the treatment of individuals held in isolation, mean that the thousands of people who will remain in solitary confinement after the reductions take effect may experience no change whatsoever as a result of the Presidents reforms.

This is because, by relying on an incremental approach, the reforms threaten to create two classes of people in prison. On one side are those who do not need or deserve to be in solitary and must be released: children, people with mental illness, other vulnerable populations, and individuals who committed only low-level violations of prison rules. On the other side are the rest, who, by implication, belong where they are.

The latter group tends to be left out of solitary reforms altogether. Yet in reality, those deemed least deserving of relief from the torments of solitary are often among the very people who need it most, because they have been in solitary the longest and in the most extreme conditions of isolation and sensory deprivation. In the federal prison system, 400 men live in such conditions in ADX federal supermax in Florence, Colorado, and Obamas reforms seem to have little to offer them.

This is not to say that the Presidents reforms are insignificant only that they are incomplete. If Obama wishes to show further leadership on this issue, he will insist on humane conditions and perhaps even second chances for all people held in federal custody. In the meantime, the danger is that the public and policymakers will think that the work on this issue is done. Most advocates, on the other hand, know there is still a long road ahead, as do the tens of thousands of people who remain in solitary confinement in American prisons at this moment.

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