

# Solitary Watch

## Criminal Justice Issues and Prisoners' Rights

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For the First Time, Solitary Confinement Is a National Campaign Issue. Will That Make a Difference?

by [Joshua Manson, Katie Rose Quandt, and James Ridgeway](#) | October 22, 2019

In July 2015, when President Barack Obama [mentioned concerns](#) about the use of solitary confinement, he broke more than 220 years of presidential silence on the issue. And a few months later, in November 2015, when Solitary Watch took a look at the various [2016 candidates positions on prison reform](#), most had never mentioned solitary confinement in their policies or platforms.

Today, there are clear signs that this lack of attention to solitary at the highest level of electoral politics has begun to change. Solitary confinement reform is specifically mentioned in the platforms and public statements of a majority of the leading 2020 Democratic presidential candidates a measure of the prominence the issue has achieved in just the last few years. And most have taken strong positions against solitary though there are important nuances of difference.

There's a history to how this change came about, beginning about ten years ago, when a handful of organizations working on solitary confinement helped propel this previously invisible issue into the public consciousness, the mainstream media, and the agendas of a handful of policymakers. Attention to solitary confinement at the federal level actually began in Congress. In [2012](#) and again in [2014](#), Senator Dick Durbin (D-IL) convened hearings on the subject in the Senate Judiciary Subcommittee he then chaired.

Obama, whose focus turned to criminal justice largely in his second term, addressed solitary confinement in July 2015, when he [announced](#) at the annual convention of the NAACP that he had directed Attorney General Loretta Lynch to review solitary policies in federal prisons. Do we really think it makes sense to lock so many people alone in tiny cells for 23 hours a day, sometimes for months or even years at a time? Obama asked. That is not going to make us safer. That's not going to make us stronger.

The Department of Justice review culminated in a [January 2016 report](#), which included recommendations for federal prisons and a list of [guiding principles](#) for all prison systems. In an [op-ed in the Washington Post](#) titled Why We Must Rethink Solitary Confinement, Obama pledged to enact the report's recommendations, including that solitary be used rarely, applied fairly, and subject to reasonable constraints. At the time, Solitary Watch estimated that the recommendations, if implemented, could reduce the number of people in solitary in federal prisons [by at least one-third](#).

The Obama Administration, of course, lasted less than another year not long enough for the DOJ and the federal Bureau of Prisons (BOP) to put many of the most meaningful changes into effect. The reforms might have continued under another Democratic president. But conditions in the BOP have deteriorated under President Donald Trump, with highly publicized [staff shortages](#) in the BOP, as well as an [absence of steady leadership](#) (there have been four directors and acting directors of the BOP since Trump took office). The much-hyped First Step Act banned solitary confinement for juveniles in the federal system a policy change that had already been instituted under Obama, and never affected more than a dozen or so children in federal custody.

In fact, the numbers indicate a change in course in federal solitary confinement under Trump. During Obama's second term, the number of people in restricted housing in BOP facilities had dropped from a high of 12,460 (7.8 percent) at the beginning of 2013 to about 9,740 (6.6 percent) in mid-2015. According to the [latest count](#), published on October 16, the current number is 11,773 (back up to 7.8 percent). In addition, since the beginning of the Trump presidency, the rate of solitary use in federal immigrant detention facilities has [increased by 15 percent](#).

The president who takes office 15 months from now will therefore take charge of a federal prison system that uses solitary confinement at rates well above the national average. And while a few state systems have implemented significant reforms, the overall number of people in solitary confinement nationally has dropped by only about 15 percent, at best, with at least 60,000 people still in solitary in state and federal prisons, and as many as 20,000 more in local jails.

So, where do the candidates stand on solitary confinement? How do their positions fit into their larger visions of prison reform? And just how much power does the president of the United States have to change this longstanding practice in American prisons, jails, and detention centers?

## Joe Biden

Among many other reforms, former Vice President Joe Biden's [criminal justice policy platform](#) aims to ensure humane prison conditions, which he'll start by ending the practice of solitary confinement, with very limited exceptions such as protecting the life of an imprisoned person. While any exceptions to solitary bans can be exploited by prison staff, who are given broad leeway to identify safety risks and face little oversight, this exception is relatively narrowly framed.

Biden's ambitious criminal justice plan is built around four core principles: reducing incarceration, eliminating demographic disparities, focusing on redemption and rehabilitation, and eliminating the profit motive from criminal justice. It contains policies to prevent crime, address systemic inequalities, and broadly support second chance measures including reduced criminalization of juveniles.

Biden has by far the longest record on criminal justice issues and the nature of that record has attracted plenty of criticism. As chair of the Senate Judiciary Committee in 1994, Biden was intimately involved in crafting and passing the [Violent Crime Control and Law Enforcement Act](#), a comprehensive measure that responded to a national panic over violent crime by dramatically escalating the War on Drugs and implementing so-called tough-on-crime measures. Although the legislation did not specifically touch on solitary, it contributed to the carceral trends of the time, which included exponential increases in incarceration and an explosion in the use of solitary confinement. While his current platform does seem to take a different approach, Biden has been reluctant to take responsibility for the effects, direct and indirect, of the 1994 bill.

## Elizabeth Warren

True to her I have a plan for that reputation, Massachusetts Senator Elizabeth Warren's [proposal for reforming solitary confinement](#) stands out for its level of detail. She aims to eliminate solitary confinement, which provides little carcerative benefit and has been demonstrated to harm prisoners' mental and physical health, in favor of safe alternatives. Notably, she also pledges to end the use of protective custody, a practice that leads to disproportionate isolation of trans and gender non-conforming people, and to direct the Bureau of Prisons to establish a set of standards and reforms to protect the most vulnerable in our prison system in a way that does not involve confining a person for more than 20 hours a day.

Warren's overall criminal justice platform is wide-reaching and detailed. She says she wants to address the roots of crime through evidence-based interventions. She also favors sentencing reform and rethinking what we choose to criminalize by ending cash bail and weeding out fines and fees. She further proposes systemic reform in law enforcement and prosecution, re-entry services for formerly incarcerated individuals, and an end to private prisons. She also outlines a number of reforms relating to conditions of confinement in prisons, including protections for LGBTQ and specifically transgender people, and increased access to education, rehabilitation programming, and mental health and substance abuse services. She aims to incentivize reform at the state and local levels.

In both [2018](#) and [2019](#), Warren was one of six co-sponsors of the Solitary Confinement Reform Act, a proposed bill to limit the use of solitary in the federal system. (She did not, however, sponsor the legislation when it was first introduced in 2016.) Along with Senator Cory Booker, she has also twice [co-sponsored the Dignity for Incarcerated Women Act](#), which would prohibit solitary confinement of pregnant women.

In June, drawing on reporting by the International Consortium of Investigative Journalists, NBC News, and The Intercept, Warren [sent a letter](#) to the Acting Director of ICE, requesting information on the rampant overuse of solitary confinement in immigration detention facilities. In July, she asked the Acting Inspector General of the Department of Homeland Security to [investigate the use of solitary confinement](#) to coerce participation in voluntary work programs in federal and federally contracted prisons.

## Bernie Sanders

Senator Bernie Sanders of Vermont's [2020 platform](#) makes bold promises to reform the criminal justice system and the practice of solitary confinement. In fact, the first item in the Prisoner Bill of Rights that he promises to enact is ending solitary confinement, which unequivocally states that solitary confinement is a form of torture and unconstitutional, plain and simple. He also specifically promises to end solitary confinement for youth.

Sanders proposes other reforms to prison conditions, including unlimited visits, phone calls, and video calls; improved medical and mental health care; increased training and education in prisons; voting rights for all people in prison; guarantees of safe working conditions; and the creation of a specific Office of Prisoner Civil Rights and Civil Liberties within the Department of Justice to enforce those guarantees. His ambitious criminal justice platform outlines a variety of other reforms, including promises to remove profit from criminal justice, end cash bail, and increase transparency and accountability in law enforcement and policing.

Over the course of his long Congressional career, as a representative from 1991 to 2007 and a senator ever since, Sanders has championed a number of progressive criminal justice policy priorities, though he has been mostly silent on solitary confinement. Surprisingly, given the strong language in his platform, he has never been a cosponsor on the Solitary Confinement Reform Act, unlike Warren, Harris, and Booker.

## Pete Buttigieg

In his [Douglass Plan](#) for supporting communities of color, South Bend, Indiana, Mayor Pete Buttigieg is the first candidate to suggest adopting the [Nelson Mandela Rules](#), the United Nations standard minimum rules for the treatment of incarcerated people. Specifically, Buttigieg wants to reduce the over-reliance on solitary confinement and abolish its prolonged use, bringing the United States in line with international human rights standards, which view the use of solitary confinement in excess of 15 days as *per se* torture.

Also in his Douglass Plan, Buttigieg commits to cutting the total incarcerated population by 50 percent through a combination of drug law reform, sentencing reform, increasing the use of presidential pardons, eliminating profit from criminal justice, decriminalizing poverty, and supporting re-entry. He also commits to police and law enforcement reform, including raising the bar for police officers to be legally justified in using force.

## **Kamala Harris**

In her [2020 presidential campaign platform](#), California Senator Kamala Harris promises to end solitary confinement, but ensure alternative therapeutic and rehabilitative mechanisms are available to protect the safety of individuals in prisons and of prison staff. She also pledges to end solitary for children.

Since arriving in Congress in 2016, Harris twice [co-sponsored the Solitary Confinement Reform Act](#) in the Senate. In her [policy platform](#), Harris mostly advertises her record as a prosecutor in California, including a pilot re-entry program she began as San Francisco District Attorney and several law enforcement accountability measures she implemented as the states Attorney General. She commits to ensuring accountable and constitutional policing through investigations, litigation, and support for legislation, while also supporting drug and sentencing reform, ending profit in criminal justice, and implementing a federal moratorium on the use of capital punishment.

As Attorney General of California, however, Harris had at best a mixed record on criminal justice reform. And she represented the California Department of Corrections and Rehabilitation in a landmark lawsuit over its use of long-term solitary confinement, which accompanied a massive hunger strike at Pelican Bay and prisons across the state. As the states lead attorney, Harris fought the lawsuit hard for several years, until she [reached a settlement](#) with the plaintiffs in 2015 that overhauled the states use of indeterminate long-term confinement, but fell far short of eliminating the practice.

## **Beto O'Rourke**

Former Member of Congress Beto O'Rourke, from El Paso, Texas, makes no mention of solitary confinement in his [criminal justice policy platform](#). When asked about solitary confinement in a [virtual town hall](#), however, O'Rourke said, Yes, lets absolutely end solitary confinement. He quickly went on to say we must acknowledge even more significant problems in the criminal justice system that directly affect a greater number of people.

O'Rourke's criminal justice platform includes ten broad goals, including basic sentencing reform, fighting discrimination against the formerly incarcerated, ending cash bail, eliminating private prisons, and ensuring health care and treatment for addiction in prisons.

## **Cory Booker**

Senator Cory Booker of New Jersey, surprisingly, makes no mention of solitary confinement in his [criminal justice policy platform](#). The platform lists aims such as Decriminalize marijuana, expunge records, and restore justice to individuals and communities that have been devastated by the War on Drugs: End harsh mandatory minimums for nonviolent drug offenses; and Improve the ability of those behind bars to stay in touch with their loved ones.

Despite the absence of solitary confinement in Bookers platform, he has over time been more engaged with the issue than any other candidate, as part of his broader interest in criminal justice reform. During his six years in the Senate, he has cosponsored the federal Solitary Confinement Reform Act every time it has been introduced since 2016. He twice sponsored the [Dignity for Incarcerated Women Act](#), which aimed to improve treatment of women behind bars, and included a prohibition on [solitary confinement of pregnant women](#). In 2015 he introduced the Mercy Act, which would prohibit solitary confinement of children in the federal system, and, three years after it failed to pass, [successfully pushed](#) to include this prohibition in the [First Step Act](#), which passed Congress in December 2018.

In June of this year, Booker [formally requested](#) that the Senate Judiciary Committee hold a hearing on abuses at ICE immigrant detention facilities, including the widespread use of solitary confinement, which Booker called a form of torture and condemned as a dangerous practice. And earlier this year, he [applauded the New Jersey state legislature](#) for passing a highly progressive solitary confinement reform bill, calling it a historic step and noting again that solitary confinement is torture. It is an archaic, damaging, and inefficient practice that has been proven to have irreversible effects.

## **Andrew Yang**

Andrew Yang's [criminal justice platform](#) does not mention solitary confinement. It contains a number of broad promises, including to reducing incarceration through evidence-based sentencing reform and less punitive drug policies, legalizing marijuana, and ending cash bail. Notably, Yang also calls for the [decriminalization of opioids](#).

## **Amy Klobuchar**

Minnesota Senator Amy Klobuchar built a reputation for toughness during her days as a prosecutor. Her [relatively short criminal justice policy platform](#) does not mention solitary confinement, or any issues concerning prison conditions. And overall, her plans for reform are far more restrained than those of her fellow moderate Joe Biden. Her platform centers around a Second Step Act, which would bring the reforms from the First Step Act to state prison systems through financial incentives so states can restore some discretion from mandatory sentencing for nonviolent offenders.

Klobuchar also promises to appoint a White House criminal justice reform advisor, and to create a Clemency Advisory Board to systematize the use of the presidents clemency power to let out individuals serving long sentences. In addition, she highlights the importance of cash bail reform, expanded funding for public defenders and re-entry programs, and increased use of drug courts.

## **Julian Castro**

Former HUD Secretary Julian Castro's only [criminal justice policy platform](#) focuses exclusively on policing reform and does not mention solitary confinement. He includes a number of specific policy proposals to curb use-of-force in and racially discriminatory policing, bring greater accountability to policing, and build trust between law enforcement and the communities they serve. Notably, Castro seeks to reform and restrict the qualified immunity defense that protects law enforcement officers from lawsuits reform which could peel back the shield of protection for corrections officers who place people in solitary confinement in violation of their constitutional rights.

Castro did take a strong public position against solitary confinement in an [October 12 tweet](#), where he highlighted a news story about a suicide in solitary in a Texas prison, and wrote: More than 61,000 people in the United States are being held in solitary confinement. The UN has called prolonged stays in isolation a form of torture. It should not exist as a form of punishment in our nation.

### Tom Steyer

Tom Steyer's [criminal justice platform](#) does not mention solitary confinement. It contains a number of goals, including ending cash bail, decarceration, getting rid of private prisons, increasing clemency, and providing increased funding to public defenders and community programs. He also emphasizes the importance of re-entry programming.

### Tulsi Gabbard

Tulsi Gabbard, who represents one of Hawaii's two Congressional districts, does not mention solitary confinement in her [criminal justice policy platform](#). The platform primarily highlights four pieces of legislation Gabbard introduced or co-sponsored, including a pending bill to legalize marijuana.

While it is significant that so many candidates have come out in opposition to the use of solitary confinement, there are limits to the scope and influence of the U.S. president's power over the practice. The federal government, of course, has limited power over prison and jail policies at the state and local level, where the vast majority of incarcerated people in the United States are held. And even legislation reforming the federal prison system would be extremely difficult for a Democratic president to push through a Republican-controlled Senate.

Even so, the federal Bureau of Prisons is a unit within of the U.S. Justice Department; therefore, the attorney general has considerable authority in setting and implementing the policies of the federal prison system. A new president could start by appointing reform-minded officials to the roles of attorney general and director of the BOP, and working with them to enact the Obama Administration's 2016 recommendations, before moving on to the more ambitious limits on solitary laid out by several of the candidates.

Federal prison reforms can stand as a model for state prison systems to follow. And the president has other means of affecting prison policies nationwide. A new president, for example, could work to set minimum standards for prison conditions, such as air and water quality, and minimum requirement for health care, as well as labor standards for prison staff that would indirectly limit the use of solitary confinement. The 2003 Prison Rape Elimination Act (PREA) although it is a weak law that has yet to be fully and effectively implemented could nonetheless be something of a model in the way it sets out certain requirements and leads to a federal funding cutoff to prisons if they are not met.

The president could also enlarge the Civil Rights Division of the Justice Department, which has the power to investigate, sue, and oversee state prison systems if they are found in violation of the Constitution, the Americans with Disabilities Act (ADA), or the 1980 Civil Rights of Institutionalized Persons Act (CRIPA). For example, starting in 2013, under the leadership of Obama appointee Vanita Gupta, the Civil Rights Division [investigated](#) the Pennsylvania Department of Corrections' use of solitary confinement on people with mental illness and intellectual disabilities, forcing the state to make changes. The danger here is that once federal oversight ends, states can (and often do) revert to their previous practices.

The president can also allocate some funds to encourage reforms via federal agencies. In 2016, under Obama, the Bureau of Justice Assistance [awarded \\$2.2 million](#) to the Vera Institute of Justice, to work with state and local jurisdictions to reduce their reliance on solitary confinement. That funding ended when Trump took office.

Finally, the 46th president could provide incentives to state prison systems to make desired changes. This is how the 1994 Crime Bill managed to have such a sweeping negative effect at the state level: It offered generous funds to states that adopted mandatory minimum sentences and limited parole through [Truth in Sentencing](#) laws. Funds that were often used for prison construction. For example, in 1998, New York State [ended parole for violent crimes](#), even for first-time offenses. In exchange, the state [received \\$200 million in grants](#) from the federal government to build new so-called Special Housing Units, greatly increasing the state's capacity to hold people in solitary confinement. New York built more than ten such units between 1997 and 2000.

Through these various means, despite the limits on their power, a Democratic president who took their campaign promises seriously would have the potential to free thousands of incarcerated Americans from their concrete dungeons.

Joshua Manson is a freelance writer and editor based in Brooklyn, New York. He focuses on issues related to policing, prison conditions, and the dangerous health outcomes associated with incarceration. He is on Twitter [@joshua\\_k\\_manson](#). Katie Rose Quandt is a senior contributing writer/editor at Solitary Watch and freelance journalist based in the Bronx. Her work has appeared in The Atlantic, Slate, The Nation, The Guardian, and Mother Jones. She is also a senior editor at the Prison Policy Initiative, and was an Alicia Patterson Foundation Fellow and Soros Justice Media Fellow. Find her [@katierosequandt](#) and at [katierosequandt.com](#). James Ridgeway (1936-2021) was 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*.

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October 25, 2022

by [Solitary Watch Guest Author](#)

October 13, 2022

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September 29, 2022

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