

Solitary Watch

Criminal Justice Issues and Prisoners' Rights

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by [Katie Rose Quandt](#) | November 9, 2018

This week, voters elected a new host of Democratic legislators and governors, flipping the balance of power in many state governments and in the U.S. House of Representatives. Although Democrats in Congress, in particular, will have their hands full dealing with the Trump White House, elected officials who find the time and wherewithal to address prison reform could potentially use their power to make progress at least prevent backsliding at the federal, state, and local levels.

FEDERAL

Historically, Democrats have a mixed record on criminal justice and prison policy. President Bill Clinton's infamous Violent Crime Control and Law Enforcement Act of 1994 funded prison construction for states that enacted truth-in-sentencing, leading to increased incarceration rates, overcrowding, and the building of supermax facilities designed for solitary confinement.

President Obama paid little attention to criminal justice issues for most of his presidency, but during his final two years in office he [instituted a series of changes](#) in federal sentencing, reentry, and prison policy designed to make modest reductions to mass incarceration and address the systems racial disparities. Among these was a [major review of solitary confinement](#) in federal prisons, leading in 2016 to a new set of guidelines for the use of restricted housing by the Bureau of Prisons (BOP).

If fully implemented, these new policies might have significantly reduced the use of solitary in the federal system, which still holds at least 8,000 incarcerated men and women in restricted housing. But despite the high-profile meetings on prison reform convened by Jared Kushner, the BOP under Donald Trump and Jeff Sessions has by all accounts been a mess: Its first director, retired Army General Markinch, resigned after nine months, [reportedly driven out](#) by a turf war between Kushner and Sessions. Now managed by a career government lawyer, the BOP is suffering from a leadership vacuum and an understaffing crisis that, according to a recent [New York Times exposé](#), has forced teachers, nurses, and secretaries to act as guards.

Despite the breakup of the Republican monopoly in Washington come January, House Democrats will lack the power to pass any prison reform legislation beyond the tepid package championed by Kushner, which would do little to improve conditions and nothing to change the use of solitary confinement. The Senate bill to [overhaul solitary confinement](#) in the Bureau of Prisons, introduced in April by Dick Durbin of Illinois with the support of several other Democrats, will make no progress in the Republican-controlled Senate. The less comprehensive [Solitary Confinement Study and Reform Act of 2018](#), introduced in the House, would be similarly blocked even in the unlikely event that was made a priority in the current political climate.

However, Democrats will have newfound power to at least revive the issue of solitary confinement, which has languished at the federal level since Obama left office. This power will come largely from the passing of leadership in several key House committees.

Jerrold Nadler (NY) is poised to head the House Committee on the Judiciary. In his new role, Nadler could investigate [Trump's firing of Sessions](#) and even [initiate impeachment proceedings](#). But the Judiciary Committee also has the power to block legislation that could lead to an increase in the use of solitary. In addition, Nadler could use his new position to hold congressional hearings on solitary confinement, like the ones hosted in [2012](#) and [2014](#) by the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, which was chaired by Sen. Dick Durbin. Durbin's hearings raised the visibility of the issue and set the path for the Obama administration's subsequent reforms. Nadler, who is one of 41 co-sponsors of the House solitary reform bill, might well be persuaded by advocates to take an interest in the issue.

When **Elijah Cummings** (MD) takes his likely position as chair of the House Oversight and Government Reform Committee, many hope to see the committee investigate ethics violations, security concerns, and conflicts of interest in the Trump White House. But the Oversight Committee can also investigate failings within the Department of Justice, including the BOP. The Oversight Committee could prompt a Government Accountability Office investigation into the state of the BOP, including the effects of understaffing on living conditions of incarcerated people or the use of solitary confinement on vulnerable populations. (Even the DOJ's own Inspector General last year produced a [scathing assessment](#) of the BOP's continued isolation of individuals with mental illness.) Cummings' record suggests an interest in prison reform: He is another cosponsor of the House solitary bill, and last year [introduced two](#) different [juvenile justice bills](#) that would prohibit solitary room confinement in federal juvenile facilities.

Nita Lowey (NY) is expected to lead the powerful House Committee on Appropriations, which has considerable control over how funds are disbursed to government departments, agencies, and programs, and over what makes it to the floor of Congress. The Appropriations Committee could potentially withhold funding for new prisons, or engineer increases in funding for rehabilitative programs or even for the implementation of lapsed Obama-era solitary reforms. But like other high-ranking Democrats, Lowey will need to choose how to use her political capital in deal-making with the Republicans. And it remains to be seen how much of an appetite Democrats have to make prison conditions or criminal justice reform in general a priority over the coming two years.

STATES

Since Trump took office, advocates seeking to end or limit solitary confinement have largely focused their efforts on the states, where solitary reform efforts have gained ground in the past two years. Reforms have been achieved not only through the passage of state legislation, but through the leadership of progressive state directors of corrections backed by supportive governors. Several Election Day developments bode well for continued reforms at the state level.

New York

Earlier this year, New York's sweeping Humane Alternatives to Long-Term (HALT) Solitary Confinement Act [passed the state Assembly by a wide margin](#), but did not make it to the Senate floor for a vote. This was unsurprising: For years, a group of elected Democratic defectors called the Independent Democratic Conference (IDC) caucused with the Republicans, preventing Senate Democrats from exercising their majority.

Most members of the IDC fell in the state primary this year, and this week, Democrats [decisively reclaimed the state Senate](#). Democrats also retained their large majority in the Assembly, clearing the legislative path for solitary reform. In addition to securing Senate votes, New York's strong [grassroots anti-solitary movement](#) will likely focus its efforts on re-elected Democrat Gov. Andrew Cuomo, who has not yet committed to signing the HALT bill, but has supported some other popular criminal justice reforms in the past year.

New Mexico

In 2017, a [New Mexico House bill](#) was introduced to ban solitary confinement for pregnant women, children, and most people with mental illness, and require facilities to report on their use of solitary. The legislation passed easily through both chambers, but was vetoed by Gov. Susana Martinez (R).

The term-limited Martinez will be replaced by Michelle Lujan Grisham (D), who has [promised to reform solitary confinement](#). Democrats retained control of both legislative chambers (Senate seats were not up for election). The sponsor of the failed 2017 bill, Rep. Antonio Maestas (D), who retained his seat, has been calling for solitary reforms for years and will likely reintroduce the legislation.

Colorado

Colorado has [enacted major solitary reforms](#), becoming the first state to commit to observing the United Nations [Mandela Rules](#) and eliminating almost all long-term solitary confinement. As such, it occupies an enormously important place in the anti-solitary movement as a model for what other states can potentially achieve. Most of these reforms happened under the direction of DOC Executive Director Rick Raemisch, appointed in 2013 by Gov. John Hickenlooper (D) to succeed Tom Clements, who was also a reformer and was murdered by a man who had recently been released from solitary in a Colorado prison.

In the race for Hickenlooper's term-limited seat, Jared Polis (D) beat out his Trump-endorsed opponent, and will now have the power to appoint Raemisch's successor. (Democrats also gained control of the Senate and held the House.) In 2014, as a U.S. Representative, Polis expressed concern about an underreported aspect of solitary confinement. Merely replacing the threat of physical and sexual abuse with the isolation and cruelty of solitary confinement should not be the default procedure to protect LGBT inmates from the general prison population, he said in a [co-released statement](#) in connection with Sen. Durbin's subcommittee hearing on solitary confinement. We applaud efforts to bring attention to the negative fiscal, public safety and human rights consequences of solitary confinement.

Wisconsin

In Wisconsin, Tony Evers (D) narrowly defeated incumbent Gov. Scott Walker (R), who had an [abysmal criminal justice record](#) in the state. Evers's campaign website had a page dedicated to criminal justice reform, including a [promise to support](#) ending the use of solitary confinement (especially with juveniles). There is a strong grassroots effort to end solitary confinement in Wisconsin (including from incarcerated people, who [held a hunger strike](#) in 2016), as well as interest from the legislature, which introduced several promising but ultimately failed bills in 2018.

Illinois

In Illinois, former Gov. Pat Quinn (D) [closed the Tamms supermax facility](#) and instituted some solitary reforms in 2012, but progress stalled under Republican Gov. Bruce Rauner. Illinois also has a [long history of advocacy work](#) against solitary confinement, and in recent years the DOC has faced a [host of prison lawsuits](#) alleging mistreatment of the mentally ill, insufficient medical care, and the use of extreme isolation. As governor, newly elected J.B. Pritzker (D) could change course and once again work toward reducing solitary confinement in Illinois.

Other States

Legislative chambers flipped blue in several other states, including [Minnesota](#) (House) and [New Hampshire](#) (both chambers), both of which saw solitary reform bills stall out in 2017. And [newly elected Democrat governors](#) in states like Maine, Michigan, and Nevada will have the opportunity to appoint progressive DOC leaders interested in taking part in what is clearly a turning tide toward solitary reform. Of course, it remains to be seen whether legislators and governors in these states will make solitary confinement a priority.

COUNTIES

Nowhere is the use of solitary confinement less regulated than in our nations county jails. This election cycle, some high-profile sheriff races brought jail conditions including the widespread use of solitary out of the shadows and exposed them to public scrutiny.

Santa Clara County, CA

Solitary reform was dealt a blow by the reelection of Sheriff Laurie Smith in Santa Clara County this week. Smith defeated her former undersheriff to win a sixth term in office. As Solitary Watch [outlined last month](#), more than 100 incarcerated people launched a hunger strike in April to protest prolonged solitary confinement and other conditions in Smiths jails. It was the countys third mass jail hunger strike in three years, and participants [wrote that](#) many of us have spent over three years in solitary confinement. Even the union representing sheriffs office employees publicly sided with hunger strikers in 2016. More than a dozen people have committed suicide in the county jails since 2011.

However, the visibility of jail conditions was likely a factor in Smiths office settling a federal class action lawsuit in the days leading up to the election. It has also led to the creation of an independent monitoring body that will keep an eye on Smith and her deputies going forward.

Milwaukee County, WI

Milwaukee voters took a different direction, ousting Acting Sheriff Richard Schmidt in the August primary and electing his challenger, Earnell Lucas, to office this week.

Schmidt rose to Acting Sheriff in 2017, when his boss, David Clarke, left the post in hope of a job in the Trump administration. In 2016, Clarke drew national attention as a speaker on Trumps campaign trail and at the Republican National Convention, but back in Milwaukee, he was [under scrutiny](#) for several deaths in the jails he oversaw as sheriff. This election cycle, voters opted not to keep Clarks protege in office.

Other Counties

In general, the increased attention criminal justice reformers are giving to local races for sheriff and district attorney has helped place progressives in these offices in a [handful of cities and counties](#) around the country. This development can only be a positive one for people affected by mass incarceration, their families, and their communities. Advocates will need to press this new crop of local officials to ensure that jail conditions, including solitary confinement, are on their agendas, as well as more high-profile issues like policing and sentencing.

Banner photo: New York advocates rally at the state capitol in Albany in support of the HALT Solitary Confinement Act. Courtesy of the NY Campaign for Alternatives to Solitary Confinement.

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October 25, 2022

by [Solitary Watch Guest Author](#)

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September 29, 2022

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