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Criminal Justice Issues and Prisoners' Rights

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by [James Ridgeway and Jean Casella](#) | March 1, 2011

Caon City, Colorado, is the Solitary Confinement Capital of the Western World. Now, a Small Group Lawyers, Legislators, and Activists Is Challenging This All-American Form of Torture.

Part 2: Showdown at the Colorado State Penitentiary

Time passes slowly for the 750 prisoners at the Colorado State Penitentiary (CSP) on the outskirts of Caon City. For years they were, like most supermax prisoners, virtually invisible to the public but that has recently begun to change. CSP gained notoriety last year as the subject of a documentary on solitary confinement by [National Geographic Explorer](#). And now, a bill introduced in the state legislature, which seeks to curb the use of solitary, has made the state of Colorado and CSP in particular a focal point for a rising national movement against isolated confinement.

The men who inhabit CSP are more typical of supermax residents than those at ADX, and few of them would qualify as the worst of the worst. Prisoners from throughout Colorado's correctional facilities land in administrative segregation, or ad seg, at CSP for fighting with other inmates or guards or for making threats or compromising or intimidating staff; for being identified as gang members; for having contraband (which can include not only weapons but cigarettes or drug paraphernalia); for attempting to escape, refusing a work assignment, advocating facility disruption, or generally posing a serious management problem all on the say-so of prison officials. Prisoners are entitled to a hearing, but according to a [2005 study](#), 90 percent of these hearings result in the segregation requested by prison staff. Terms in solitary last an average of 18 months, but many stretch to years.

Whatever their violations of record, many prisoners find their way to CSP by exhibiting the symptoms of untreated mental illness. Since the 1980s, as budgets for social services have been slashed to the bone even as prison costs exploded, prisons have increasingly become the new asylums, and [supermax isolation](#) has become a substitute for appropriate mental health or substance abuse treatment for tens of thousands of prisoners. When the bipartisan [Commission on Safety and Abuse in America's Prisons](#) issued its report in 2006, one of its primary recommendations was to protect mentally ill prisoners with disciplinary issues from being placed in solitary confinement, rather than in the secure therapeutic units where they belonged. To date, only a few states have made progress in this area and they did so only when their hands were forced by lawsuits. According to a report from [Human Rights Watch](#), which based its estimates on available data from the states, one-third to one-half of prisoners held in segregation suffered from mental illness. In Colorado, by the state's own calculations, the figure in 2005 was 37 percent, up from 15 percent a decade earlier. The increase, according to the state's report, had followed a dramatic decline in mental health professionals and rehabilitation programs that were a casualty of budget cuts.

Troy Anderson has spent 23 of his 40 years on earth behind bars and the majority of those years in solitary confinement. His list of diagnoses includes ADHD, bipolar disorder, intermittent explosive disorder, anti-social personality disorder, cognitive disorders, a seizure disorder, and polysubstance dependence, and he has attempted suicide many times, starting at the age of 10. Now serving a 75-year sentence, Anderson has been seen periodically by prison psychiatrists, all of whom seem to concur that he is seriously mentally ill and needs therapy and medication. On at least one occasion, he briefly received treatment in a facility designed for prisoners with mental illness, and improved considerably. But he was taken from that facility and sent back to CSP, where his mental health treatment has been a fiasco of intermittent and inappropriate medications and scant therapy, sometimes conducted through a slot in his solid steel cell door.

According to the lawsuit filed on his behalf by the University of Denver's Civil Rights Clinic, it is Troy Anderson's mental illness that landed him in solitary in the first place; and it is his mental illness that now will not allow him to earn his way out of isolation and into the general population. His lawyers predict that unless something changes, he will die in prison, and probably in solitary confinement at CSP.

A team of student lawyers is working for Anderson under the supervision of teaching fellow Brittany Glidden who came to DU fresh from the landmark case on prisoner health care in California and co-counsel Amy Robertson of the law firm Fox & Robertson. Their suit is taking a new approach in challenging Anderson's decade-long isolation. In addition to making Constitutional claims similar to those in other solitary confinement cases, Anderson's lawyers are claiming violations of the Americans with Disabilities Act. They argue that by failing to treat his mental illness, and then effectively punishing him for having it, the Colorado Department of Corrections is discriminating against him based on his disability. The state is seeking to dismiss their complaint, and there is not much precedent to predict how courts will decide, says Glidden. But she feels confident that they will be able to move forward on at least some of their

claims.

Matthew Court, one of the students working on the Troy Anderson case, says, I like the idea of systemic changes, but its really about Troy. We are doing everything we can to get him the treatment he needs, so that he has a fair shot, and can see what he is capable of. Courtney Longtin agrees. This is not abstract, she says. Theres some hope for Troy; if his case goes the way we hope his life could really changeHe could get out of CSP and into the general population, and maybe even into the world. Lee Knox is not sure that the case will have an impact on prison policy in general, but hopes that it will have a small, positive impact on people at CSP. In any event, he continues, the case gives Troy a serious voice. Prisoners dont have that voice.

Colorado prisoners do, however, have an unusual number of people dedicated to speaking out on their behalf, in the form of a community of Denver-based criminal justice reform advocates. The [ACLU of Colorado](#), along with local attorney Gail Johnson, is currently suing to improve conditions on the states death row, arguing that denying condemned prisoners exercise and sunlight violates their 8th amendment rights. The [Pendulum Foundation](#) advocates for children in Colorados adult prisons, as does the [Colorado Juvenile Defender Coalition](#), which recently documented the use of solitary confinement on teenagers in the Denver County Jail. And the [Colorado Criminal Justice Reform Coalition](#) contains more than a hundred groups, including many religious congregations, that seek to reduce the trend of mass incarceration in Colorado through legislation and policymaking.

Barb Stephenson is among the activists who are moved by personal experience as well as conscience. Stephenson works with the prison reform and prisoner support group [Colorado CURE](#). She talks frankly about her son Dudley, now 35, who has spent 13 years in prison for felony murder after taking part in a robbery where the victim was killed by an accomplice. Dudley also suffers from lifelong mental illness, and quickly landed in solitary confinement. Stephenson says she realized that I was the only person who was going to advocate for my son, and was relentless about getting him moved out of ad seg and into a setting where he could get treatment. Her matter-of-fact tone does not hide the toll this work has clearly taken on her.

Stephenson finally succeeded this past summer, when her son became a resident of a new unit for OMIsoffenders with mental illness in the Canon City prison complex. Stephenson says the change is wonderful: Dudley is now in a unit with only 16 other inmates, and is receiving the right medication. There is a therapist on the unit, and they get therapy outside of cages, Stephenson says, referring to the practice of placing segregated prisoners in adjoining pens for group therapy. But the new unit is small, she says, and the only other prison facility dedicated to OMIs, in nearby Pueblo, has just 255 beds. This means that Colorados ad seg cells likely hold more prisoners with mental illness than its treatment units.

A new and [highly controversial report](#) from the Colorado Department of Corrections claims that ad seg may not be such a bad place for them. The study followed a group of prisoners including some with diagnosed mental illnesses and some without for a year after they were placed in solitary at CSP. It found not only a lack of psychological harm, but astonishingly, some modest improvement in psychological well-being across all study groups. This runs counter to virtually all previous research on the psychological effects of solitary confinement, and the studys methodology and conclusions were immediately slammed by a number of prominent experts in forensic psychiatry.

Dr. Stuart Grassian, a psychiatrist and former member of the Harvard Medical School faculty, outlined a series of fatal flaws in the study, based largely on the fact that the data on prisoners mental state was self-reported. Grassian points to what he calls the Alysha Effect the impact of using an attractive young graduate student to question inmates, who might be reluctant to tell her about their psychiatric deterioration. Much of the 163 page final report consists of long and endless statistical dissections of the self-report data, Grassian wrote in an email. Yet these minute dissections reveal *nothing*, because the data they dissect does not in any meaningful manner reflect the psychiatric pathology they are supposed to be studying. They endlessly dissect garbage. And statistics are not alchemy; they cannot transform garbage into anything else but different arrangements of garbage.

Dr. Terry Kupers, a clinical psychologist and researcher who teaches at Berkeleys Wright Institute, says the study is terrible and needs to be debunked. It offers bad methodology and sloppy thinking aimed specifically at disproving that supermax confinement causes psychological damage. In an email, Kupers continued: What needs to be underlined is that this study does prove that lots of prisoners with serious mental illness selectively wend their way into supermax and are very symptomatic during their tenure in supermax. This is not the spin the researchers want to put on their findings, but its definitely apparent in their results.

When the principal investigator is an employee of the agency whose practices are being studied, it certainly raises questions about neutrality and objectivity, says David Fathi, director of the ACLUs National Prison Project, which recently made solitary confinement in U.S. prisons a priority issue. These results fly in the face of the bulk of the literature, which shows that solitary confinement is extremely damaging to many people. So I dont think this one study with its highly idiosyncratic results will have much influence.

Opponents of solitary confinement do worry, however, that the state will use its new study as ammunition in what has become a public battle over a further expansion of the practice in Colorado. The subject actually made headlines last spring during a contentious budget debate in the cash-strapped state. At issue was the opening of a second state supermax, known as CSP II. Begun in 2003, when the first CSP was barely ten years old, construction of the 208 million CSP II was delayed by a lawsuit, and then by Colorado governor Bill Ritter, who put its opening on hold because of budget shortfalls.

But Ritter changed his mind, despite resistance from a coalition of state civil liberties, human rights, and criminal justice reform groups. When state lawmakers finally passed their \$18 billion budget in April 2010, they made substantial cuts to public education, colleges and universities, and tax breaks for small businesses and senior citizens, as well as to inmate vocational training, re-entry programs, and mental health care. But in the midst of all these cuts, the Colorado legislature managed to find \$9.37 million to open one wing of the new supermax, containing 316 additional ad seg cells. The new prison is a state-of-the-art isolation facility where prisoners family visits and even mental health treatment can be Skyped, since every one of the 316 cells has its own computer screen. (Our requests to visit both CSP and CSP II were denied by the Colorado Department of Corrections because at the time the facilities were in transition.)

Douglas Wilson, the Colorado Public Defender, provides criminal defense to the states indigent; at the entrance to the busy office he

heads in downtown Denver is a seal bearing the motto: That Justice Escape None. Wilson has plenty of former clients in CSP, and some current ones, as well, since he defends inmates accused of committing crimes inside the states prisons. He cites from memory a store of facts and figures on the use of solitary confinement in Colorado, sometimes with dry asides that signal his disdain for certain aspects of criminal justice policy in his state. When he wants to answer a question in the affirmative without actually answering it, he raises his eyebrows and says, meaningfully, Some would say so.

Wilson's criticism is more direct when it comes to the opening of CSP II (now officially renamed Centennial South), and says he and other opponents were blindsided when the supermax was put back in the budget. Wilson points out that there were already 1200 ad seg beds throughout the Colorado prison system, including 750 at CSP alone more than three times the national average, as a percentage of the total prison population. But the DOC mounted what he calls a propaganda effort, claiming there were thousands of prisoners waiting to get into administrative segregation; in reality, Wilson says, the number was 119. Whats more, he argues, 450 guys are in ad seg because of mental illness, and if they were moved to treatment units, as they should be, you wouldnt need CSP II.

The growth in solitary confinement outpaces, but also draws upon, the explosion in Colorados incarceration rate over the last 30 years, which in turn tracks a national trend. In Colorado the trend began in earnest in 1985, Wilson says, when the state legislature voted to simply double all sentences. In the 1990s the state added mandatory minimums. Since 1980, the population of Colorado has increased by about 60 percent, while its prison population has increased by [more than 600 percent](#).

Critics of mass incarceration attribute such changes largely to political posturing and policymaking, rather than increases in the crime rate, and have expressed hope that the cost-pressures caused by the recession might help reverse this trend. Wilson himself advocated targeted sentencing reductions as a member of a Sentencing Task Force of the Colorado [Commission on Criminal and Juvenile Justice](#) which is charged by the state legislature with, among other things, promoting cost-effective expenditure of limited criminal justice funds. Wilson says he argued for sentencing reforms that would have saved the state \$60 million, and that excluded sex offenders and those convicted of serious violent crimes. Nevertheless, he reports, the response was overwhelmingly negative. You would have thought Id just kicked my grandmother down the stairs, he said.

The growth in solitary confinement, likewise, has little to do with any empirical data showing that it improves inmates behavior or reduces either prison violence or recidivism. To the contrary, Wilson points out; ex-offenders who have spent time in ad seg are more likely to end up back in prison: [over 60 percent](#) of them do so within three years of release, as opposed to 50 percent of the states overall prison population. Wilson finds this unsurprising, since more than 40 percent of Colorados ad seg prisoners are released directly back onto the street, after years or months in solitary confinement. Wilson says he would particularly like to see changes to the process of how inmates get into and out of ad seg, and what happens to them once they leave.

But even such small inroads will depend upon action by the courts or what he calls brave legislators because any reduction in the use of solitary confinement will undoubtedly be seen as soft on crime, and therefore as political poison. The ACLUs David Fathi agrees that practices like solitary confinement tend to survive even when they make no rational sense from a prison management point of view, because unfortunately they make political sense for the next election. But Fathi also believes that a number of events are coming together to produce a breakthrough in public awareness on the issue of solitary confinement.

In one of the most hopeful signs, a pair of brave legislators has stepped forward in Colorado. On February 21, a bill was introduced in the state legislature by Sen. Morgan Carroll of Aurora and Rep. Claire Levy of Boulder, both Democrats. Their bill is aimed at what many people see as the soft underbelly of solitary confinement the areas where the practice is most vulnerable to criticism. The legislation would significantly curb the isolation of prisoners with mental illness or developmental disabilities, and would demand that prisoners be reintegrated into the general prison population before their release. In addition, it emphasizes what the ACLU called the staggering cost of using solitary confinement, rather than mental or behavioral health alternatives, as the default placement without regard to medical needs, institutional security or prisoner and public safety. The additional cost of solitary confinement in Colorado is as high as \$21,485 per year, per inmate, and by emphasizing the practices economic costs as well as its human costs, the legislation exploits a growing willingness among fiscal conservatives to question the nations 30-year addiction to mass incarceration.

A similar bill introduced in the Maine state legislature last year ended with legislators agreeing only to study the issue further. But if nothing else, the Colorado bill might help the states criminal justice reformers halt a still further expansion of solitary confinement. Wilson points out that just one wing of CSP II has been opened so far. The total capacity of the prison is 948, so 632 additional beds remain empty in two additional wings. In the past, the pool of prisoners deemed in need of solitary confinement has expanded to fill the capacity. Wilson wonders if, despite a rising tide of opposition, the Field of Dreams rule may apply once again at CSP II: If you build it, they will come.

The students and faculty at the DU Civil Rights Clinic are watching the new legislation closely, but they have learned that when it comes of challenging solitary confinement, successes must be measured in increments. Solitary in Colorado is a huge, well-established institution, which is unlikely to be undone by a group of crusading law students, or even a brave legislator or two. But that doesnt mean that the fight isnt worthwhile. Student attorney Keenan Jones says the reason he is at the Civil Rights Clinic, working to defend the rights of these buried men, is because he fell in love with the Constitution, and he believes that today, the Constitution is being tested in prisons, perhaps more than anywhere else. John Feeney-Coyle agrees: How we treat our prisoners, he says, is the ultimate measure of how tied we are to our system and its principles.

[Part 1: The Alcatraz of the Rockies](#)

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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well well CO state thats not what you do to others if you want to make it in life after death all can say is stop puffing them rocks come down from your high and start using your dam head i have adhd and to be in solitary like that is nuts with so much to offer to the world you need to start helping not hurting you call your self CO state department of rehabiltashion yet i see none of the last word in that name going on you make me sick to see you doingthis think not with your dick use your god given brains you should have lisened to grassian solitary dose no good your step down thing sucks solitary will not bring nices inmates just pissed off ones you want love you must give love ern thare trust you have none in my mind yet may thare be light in the darknes of justice

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