STATE OF RHODE ISLAND

REPORT

Of the

SPECIAL LEGISLATIVE COMMISSION TO STUDY AND ASSESS THE USE OF SOLITARY CONFINEMENT AT THE RHODE ISLAND ACI

June 29, 2017

ACKNOWLEDGMENT

The Special Commission expresses its appreciation to the staff for their hard work and assistance in all aspects of the Commission's meetings and the preparation of this report. The Special Commission further thanks the members of the public who attended the meetings and participated in this important process.

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Representative Aaron Regunberg
Commission Chair

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THE COMMISSION AND ITS CHARGE

The commission was created pursuant to House Resolution H8206 (Sub A), which provides in pertinent part:

The purpose of said commission shall be to make a comprehensive study and assess the use of solitary confinement at the Rhode Island ACI, including but not limited to:

- *Rate and length of solitary confinement sentences;*
- *Proportionality between disciplinary offenses and the solitary confinement sentences they induce;*
- *Psychological impact of prolonged solitary confinement on inmates;*
- *Public safety implications of prolonged solitary confinement after inmates return to the community;*
- *Extent to which solitary confinement has a particular impact on vulnerable populations, such as youth, and those with disabilities;*
- *Fiscal impact of the current use of solitary confinement;*
- *Extent to which the Department of Corrections' current record-keeping policies on the use of solitary confinement are adequate to making informed administrative decisions; and*
- *Alternatives to and best practices for reducing the use of solitary confinement, as developed by other jurisdictions, and the extent to which these alternatives impact cost, behavior, and other outcomes within prison systems.*

Thereafter, pursuant to the language of the House Resolution, the following individuals were appointed to the commission:

Representative Aaron Regunberg (District 4) Chair
Representative Jean Phillipe Barros (District 59) Vice-Chair
Representative Sheri Roberts (District 29)
A.T. Wall, Director, RI Department of Corrections
Louis Cerbo, Director of Behavioral Health, RI Department of Corrections
Richard Ferruccio, President, RI Brotherhood of Correctional Officers
Roberta Richman, Former Administrator, RI Department of Corrections
Shakur El-Amin, Direct Action for Rights & Equality
John Prince, Direct Action for Rights & Equality
Jordan Seaberry, The Institute for the Study & Practice of Non-Violence
Laura Pisaturo, Chairperson, RI Parole Board
Michael DiLauro, RI Public Defender
Meghan Clingham, RI Mental Health Advocate
Kenny Alston, Chief Legal Counsel, RI Department of Health
Brad Brockmann, Executive Director, The Center for Prisoner Health & Human Rights
Robert Marshall, RI Developmental Disabilities Council
James Weeden, Asst. Director Institutions/Operations, RI Department of Corrections
Nancy Bailey, Former Administrator, RI Department of Corrections
Christopher Matkovic, Director, Division of Correctional Psychiatry, RI Hospital

INTRODUCTION

Solitary confinement, generally defined as a form of imprisonment in which an inmate is removed from the general inmate population and isolated from any human contact, with the exception of members of prison staff, for 22–24 hours a day, has recently been the focus of a world-wide human rights' campaign. In 2014, the United Nations' Committee Against Torture issued a report that called upon the United States to make substantial reforms regarding the use of Solitary Confinement in our Nation's

prisons. In recent years, numerous states have examined the issue and made reforms, some legislative, in their jurisdictions.

Critics of the use of Solitary Confinement cite to a number of factors that they argue should mandate reform including the impact on prisoners' mental and physical health, the dehumanizing nature of the practice and its lack of effectiveness as a disciplinary or rehabilitative tool. Alternatively, prison officials and other professionals within the prison system note the legitimate correctional goals of solitary confinement including protecting the safety of all prisoners, deterring violent and disruptive behaviors, disciplining serious offenders and the protection of the isolated prisoner from self-harm and/or other inmates.

GATHERING INFORMATION ON SOLITARY CONFINEMENT ISSUES

The Special Commission met for the purposes of hearing testimony consistent with its charge on ten (10) different dates, to include September 29, 2016, October 20, 2016, December 7, 2016, January 5, 2017, January 26, 2017, February 15, 2017, March 9, 2017, April 6, 2017, April 13, 2016 and May 3, 2017. The commission heard or received testimony from subject matter experts in all areas surrounding corrections law and policy relating to the use of solitary confinement, including physicians, psychiatrists, clinical psychologists, clinical social workers, and officials within every relevant field at the Rhode Island Department of Corrections (RIDOC). In addition, many of the comments from commission members, subject matter experts in their own right, were heard during the public comment hearings.

The list of those who formally presented testimony at commission hearings were as follows:

9/29/16 – Commission Chair Aaron Regunberg, (Representative, District 4)
10/20/16 – Matthew Kettle, Warden, High Security & Maximum, RIDOC
12/7/16 – Erin Boyar, Principal Planner, RIDOC Planning/Research Unit,

Community members – Elton Simpson, Anthony Sinapi, Suzanne Affigne, Sebastian Atryzek; written testimony from Luther Peralta, Ryan Callahan, Jarrod Raymond, Roberta Vangel and Daniel Lee

1/5/17 – Sarah Martino, The Center for Prisoner Health & Human Rights
Chris Dorval, Licensed Clinical Social Worker
Alan Feinstein, former Supervising Clinical Psychologist, RIDOC
Brian Adae, Rhode Island Disability Law Center

1/26/17 – Caitlin M. Bouchard, Supervising Clinical Psychologist, RIDOC
Lynne Diggins, CSW, High Security/Maximum Security, RIDOC
Lt. William Galligan, High Security, RIDOC
Dr. Louis Cerbo, Director, Behavioral Health, RIDOC
Dr. Christopher Matkovic, Director, Division of Correctional Psychiatry

2/15/17 – Brad Brockmann & Sarah Martino, The Center for Prisoner Health & Human Rights

3/9/17 – Commission Members

4/6/17 – Commission Members

4/13/17 – Commission Members

5/3/17 – Commission Members

The hearings began on September 29, 2016, with the election of the Commission Chair and Vice-Chair. Commission Chair Regunberg set forth the overall goals of the commission which included (1) an examination of the use of solitary confinement in Rhode Island to determine whether current policy and practice offers room for improvement; (2) studying best practices from other states and jurisdictions to evaluate policies and principles that may have value in Rhode Island, and (3) drafting recommendations for administrative and/or legislative changes.

The substantive testimony began with a RIDOC presentation on the definitions/descriptions of the various statuses by which inmates at the ACI are categorized, the basis for an inmate's classification and the privileges and everyday existence of an inmate in the different classifications. RIDOC described five forms of

inmate housing: general population, administrative confinement, administrative detention (those in administrative confinement awaiting trial), close confinement (a step down from administrative confinement prior to return to general population) and disciplinary confinement.

Pertinent to the commission's charge, RIDOC officials described the two main housing statuses of prisoners considered "Restrictive Housing" at the Rhode Island ACI. The first, administrative confinement, represents a classification for sentenced inmates based on conduct-related factors to include violent behavior, an inability to adjust to general population, posing a threat to the ACI, enemy issues and the need for an immediate mental health evaluation where the inmate can't remain safely in general population. Inmates classified to administrative confinement are confined to their cells for 23 hours a day. They eat meals in their cells, enjoy weekday showers, weekly phone calls/visits, medical visits three times per day and mental health visits consistent with the inmate's treatment plan.

The commission also heard testimony regarding the RIDOC version of housing that most closely resembles the general definition of solitary confinement, referred to as disciplinary confinement. Formerly called segregation, disciplinary confinement is a form of temporary separation from general population for inmates who are found guilty of certain disciplinary infractions. The duration of the inmate's confinement is based on the seriousness of the offense pursuant to RIDOC's Discipline Severity Scale. Those placed in disciplinary confinement are in single cells at High Security and Max but are in double cells in Medium, Intake and the Women's facility.

Inmates in disciplinary confinement are confined to their cells for 23 hours a day, and are allowed one hour of exercise per day. They eat meals in their cells and their visits and phone calls are limited to legal, clergy or professional reasons only. They are also entitled to medical and mental health treatment and services as well as select programs like GED and occupational therapy.

Inmates may be sentenced to disciplinary confinement for various offenses and for varying lengths of time, depending upon the severity of the misconduct. For those sentenced for moderate or low level violations, inmates may be sanctioned by a loss of privileges (visits, furloughs, out of cell time, phone calls), warnings, restitution and good time not to exceed 15 days.

The commission heard testimony regarding the privileges and restrictions placed on inmates serving long-term in disciplinary confinement, to include a review of the inmate's status every 90 days, the ability to write the Warden with a request for suspension of sentence and the immediate review of one serving in Disciplinary Confinement whenever mental health professionals or other staff advise the warden that disciplinary confinement appears harmful to an inmate's mental health. RIDOC noted that inmates are counseled as to how they can remove themselves from this status (by showing that they are ready to conform their behavior) and that as many as 1/3 of these inmates have had their original sentences suspended, although RIDOC was unable to present exact data showing how many individuals had their time suspended and how much time was suspended across all facilities.

RIDOC officials further offered the commission a data overview regarding the lengths and types of sentences of those serving at the ACI. This data analysis covered a one year period (October 2015 to October 2016), and offered a snapshot of the ACI population on October 13, 2016. Specifically, RIDOC represented that as of October 13, 2016, the Rhode Island ACI housed 3,076 prisoners in its various facilities but approximately 10,000 prisoners and 14,000 commitments over the course of that year.

Relevant data/percentages of those serving in the relevant categories of restrictive housing by total number serving, length of stay and vulnerable populations from October, 2015 to October, 2016 included:

Administrative Confinement:

- 55 of all committed inmates in that year were held in Administrative Confinement for some portion of the year.
- 18 of 55 stayed in Administrative Confinement for more than a year.
- Approximately 13% of those 55 were SPMI.
- Inmates' ages ranged from 21 to 69 (3 were over 55 years of age).

Disciplinary Confinement:

- 1,221 inmates were held in disciplinary confinement over the entire year (12% of all of those committed to the prison during that year).
- 77 of those inmates were under 21 years of age – 63 inmates were older than 55.
- 8% of those inmates were identified as suffering from a SPMI.
- Average length of a consecutive stay was 35 days – only 5 offenders stayed consecutively for more than 1 year.
- Average length of a cumulative stay was 46 days – only 17 offenders stayed cumulatively in disciplinary confinement for more than 1 year.

RIDOC officials noted some of the limitations of its data collection as its system was designed to track prisoner movement rather than provide the statistical analysis sought by the commission, but noted its willingness and desire to work to obtain the data sought by the commission for oversight in future General Assembly sessions.

As a part of a qualitative analysis of the issue, the commission heard from members of the Rhode Island community who have experienced solitary confinement first-hand. Those community members included formerly incarcerated individuals who served in solitary confinement; currently incarcerated individuals in the form of written testimony; family members of incarcerated individuals, and professional practitioners who represent incarcerated individuals. Many of these individuals testified at length as to what they deemed an arbitrary and unduly harsh use of solitary confinement for relatively minor offenses.

Mostly, these individuals shared personal experiences of the lasting negative impact of their isolation, or that of a loved one, on their mental and physical health. In addition, many community members noted that those who are sentenced to solitary confinement often suffer from profound mental health issues even before their incarceration. In this regard, they testified that solitary confinement served to exacerbate those pre-existing issues rather than to serve any rehabilitative purpose, which they offered as counter to the goals of the greater community who will receive these very individuals in society upon their release from the ACI.

The commission also heard from experts in both medical and psychiatric fields regarding the physical and psychological impact of solitary confinement on a prisoner. Presenters offered testimony on recent research studies which showed that prolonged isolation causes higher rates of psychiatric hospitalization, sleeplessness, anxiety, depression and suicidal thoughts among prisoners. Additional research studies noted negative physiological effects on prisoners to include loss of appetite, lethargy and diminished impulse control.

Additional presenters pointed to recent studies' results that those serving in solitary confinement have a higher rate of pre-existing mental illness than inmates serving in general population with a particular impact on those inmates with serious and persistent mental illness (SPMI). Importantly, presenters further noted the lack of any empirical evidence of the effectiveness of solitary confinement as a tool to deter recidivism or change a prisoner's behavior.

The commission then heard from RIDOC officials regarding the number of incarcerated persons who suffer from serious and persistent mental illness (SPMI) and the prevalence of those serving in restrictive housing who suffer from SPMI. Defined as a condition that affects those 18 years and older who currently, or at any time in the past year, have been diagnosed with a mental, behavioral or emotional disorder of sufficient duration to meet the criteria specified in the DSM-V (excepting substance abuse and developmental disorders), that resulted in a functional impairment that has occurred on

either a continuous or intermittent basis, SPMI prisoners served time in disciplinary confinement for a 15 month period (April 2015 to September 2016) at the following rates per facility:

High Security

- 23% of the total number of prisoners at HSC suffered from SPMI (22 of 65).

Medium Security

- 1.7% of the total number of prisoners at Med suffered from SPMI (19 of 411).

Women's Facilities

- 5.3% of the total number of prisoners at Women's suffered from SPMI (7 of 43).

Maximum Security

- 4.3% of the total number of prisoners at Max suffered from SPMI (18 of 250).

Intake Service Center

- 2.8% of the total number of prisoners at Intake suffered from SPMI (24 of 236).

The commission heard from RIDOC behavioral health and medical staff regarding the current status of treatment for prisoners, specifically those serving in restrictive housing and those with SPMI. It was noted that the total mental health staff included eleven (11) clinical social workers alongside the behavioral health director. RIDOC noted that, from November 2015 to November 2016, those 11 clinical social workers had a total of 16,617 encounters with inmates to include therapeutic sessions, follow-ups and multi-disciplinary team meetings.

Through testimony of various witnesses at nearly every commission meeting, a consensus grew that RIDOC's desire to provide enhanced treatment of those suffering from SPMI was evident, but that greater resources were necessary in order to fulfill the goals of the commission to reduce the prevalence and impact of solitary confinement on this particular inmate population.

The commission heard detailed testimony regarding recent reform efforts in numerous states, often through collaborative efforts between correction officials and advocacy groups or directly via state legislatures and legislative commissions. These efforts were driven by the goals of developing responsible and humane restrictive housing policies that limit restrictive settings for inmates, reduce inmate recidivism and allow for a safer environment for staff, inmates and the public. Many of these states redefined their correctional plans for the use of restrictive housing as a short-term intervention in the least restrictive manner possible, with a focus on individualized goal planning, behavior change, and treatment as needed to support and facilitate the inmate's capacity to live effectively in general population and return successfully to the community.

Recent reforms in some States further limited the use of solitary confinement for violent and high-risk inmates. Other states reduced the overall sentences prisoners could receive for non-violent offenses while some specified limitations on solitary confinement sentences for vulnerable prison populations (SPMI, pregnant prisoners, and juveniles).

Those States' prisons cited for best practices included:

- Rikers Island, New York City – inmates in solitary with SPMI were diverted into treatment units as an alternative to traditional segregation settings.
- Hamden County, Massachusetts, House of Corrections – began incentivizing behavior in restrictive housing, where inmates earn various privileges while in isolation (use of MP3 player, recreation/out of cell time, access to programming).
- Colorado (State) – use of Management control units and Close Custody transition units which provide a progressive step-down process for offenders transitioning to general population.
- Washington (various prisons) – targeting gang-involved, mentally ill, and recidivist inmates in segregation for specific behavioral programs, anger control training, and specialized treatment plans with interactive programming and focus on pro-social skills.

- Oregon, Pennsylvania, Ohio – use of the "10 and 10" model – (10 hours out of cell therapy and 10 hours out of cell recreation time per week) for units designated for inmates with mental illness.
- Michigan (Alger Correctional Facility) – creation of a six-stage program to decrease the length of an inmate's stay in solitary and direct them to reclassification.
- Maine (Maine State Prison) – multiple reforms designed to decrease the number of inmates in solitary, to include allowing inmates to remain in their general population cells pending completion of disciplinary investigations.
- Virginia (Red Onion State Prison) – across the board training of executive prison staff leading to in-house trainings for all staff with a new focus on offender programming.
- North Dakota (North Dakota State Penitentiary) – creation of a five-wing segregation unit, each with their own specific focus (A – dangerous behavior requiring intense analysis, B – assessment wing, behavior modification wing, D&E – administrative transition unit).

These recent reforms across the nation led to tangible, positive results for prisoners and correctional staff. Many states reported a significant drop in incidents of violent crime among inmates, while others noted an even greater drop in minor offenses. Consistent with reform goals, nearly all of these jurisdictions report a significant decrease in the number of inmates serving in solitary confinement generally, as well as a decrease in the length of stays in isolation.

PANEL RECOMMENDATIONS

In its final meetings, the Commission met to discuss its ideas for potential improvements to the policies and practice of solitary confinement at the Rhode Island Department of Corrections and, if possible, to draft specific recommendations to make those improvements a reality. Consistent with Chair Regunberg's goals announced at the

first commission hearing, many stakeholders expressed a strong preference for administrative reform over legislative action.

Over the course of multiple panel discussions, commission members made numerous recommendations for reform including but not limited to the following:

Mission Orientation:

- RIDOC should develop a specific and narrowly focused mission for the use of solitary confinement as well as performance metrics to track the achievement of these goals.

Administrative Reforms – Classification:

- No inmate should be classified into segregation if they have not committed an offense that poses a significant threat to the prison population.

Disciplinary Confinement Processes:

- No inmate should be placed in disciplinary confinement pre-adjudication.
- Strengthening of the "work your way in, work your way out policy" by requiring a written plan for earning a way out, to be signed by staff and inmates.
- Increased immediate contact with all inmates placed into segregation.

Disciplinary Confinement Criteria:

- Conduct a review of current offenses and sanctions to ensure that disciplinary confinement is reserved for sentences that present a significant risk to staff and inmate safety.

Alternative to Disciplinary confinement:

- Increase use of "two-nighter" policy, which allows inmates charged with minor offenses to waive a disciplinary hearing and accept a two-night loss of privileges.

Time limits:

- 15 day maximum sentence for disciplinary confinement.
- Lessening of sentences across the board.
- Allow prior good time earned to remain unaffected despite later solitary sanction.

Reduced Sensory Deprivation:

- Allowance of family/outside contact in all housing via calls and visits.
- 20 hours out of cell every week.
- Accessibility to programming geared toward inmate behavior change to allow for inmates to move to less restrictive housing as soon as possible.

Population Exclusions:

- Exclusion of pregnant women, juveniles, offenders under the age of 24, developmentally disabled inmates and inmates with SPMI.

Oversight:

- RIDOC should submit a quarterly data report to ensure that reform measures are fully implemented to be available for review by the Commission Chair and members.

SUBSTANTIVE CHANGE ACHIEVED

As a result of the work of the commission, which spanned over nine months, the commission reports the following changes to the use of solitary confinement already implemented or forthcoming at RIDOC:

Mission Orientation:

- RIDOC adoption of a policy statement on the use of restrictive housing that clarifies, inter alia:
    - Inmates should be housed in the least restrictive setting possible and only remain there to address the specific reason for the placement.

- Inmates placed in restrictive housing shall receive in writing the specific reasons for the placement.
- Inmates shall receive a clear plan in writing for a return to less restrictive housing.

Classification:

- No inmate should be classified into restrictive housing based solely on gang affiliation or due to their status as LGBTI.
- Every inmate placed in restrictive housing will receive a written plan for returning the inmate to the least restrictive conditions as promptly as possible.
- The written plan shall include general incentives and privileges (e.g., gradual increase in out of cell time, group interaction, increased education and programs, phone calls, visits, commissary items, TVs, radios, MP3s).
- Close confinement will be re-named transitional confinement.

Disciplinary Confinement Processes and Criteria:

(Pre-Adjudication):

- Inmates shall not be placed in disciplinary confinement, but instead placed in their own cell, unless the inmate poses a danger to himself or others.
- Placement at this stage shall be reviewed within 24 hours and investigations completed promptly – 24 to 72 hours whenever possible.
- Time spent in restrictive housing pre-adjudication shall be credited to the inmate's sentence should he or she be placed in disciplinary confinement after a determination of guilt.

(Post-Adjudication):

- Sweeping revision of policy that ensures that only those inmates who were found to commit Class 1 or Class 2 offenses will be placed in restrictive housing and removes all Class 3 and Class 4 offenses from disciplinary confinement sanctions.

- Revision ensures that only Class 1 predatory offenses will subject an inmate to more than 31 days of consecutive confinement (max of 1 year). Class 2 offenses will only be subject to a max of 20 days with Class 1 non-predatory up to 30 days.
- Inmates sentenced to more than 45 days may petition the warden for a suspension of the sentence.

- A multi-disciplinary team will develop an incentive driven discharge plan (in writing) that informs inmates of the reason for their placement and the steps necessary for them to reduce their time.
- For inmates in disciplinary confinement in excess of 30 days for sanctions not due to a Class 1 predatory offense, but for multiple incident of misconduct, the multi-disciplinary team will review the inmate's record to address any noted pattern of behavior and make recommendations to address those behaviors.

Alternative to Disciplinary confinement:

- Adoption of the "two-nighter" policy for all inmates charged with low level offenses, while still allowing for a hearing for those who choose one.

Time Limits on Disciplinary Confinement:

- RIDOC commitment to incentive based, behavior modification model consistent with a written plan, which will detail the reasons for the confinement and the steps necessary for inmates to work their way to step-down programs, which will be provided to every inmate serving more than 60 days in disciplinary confinement.
- Regular medical and mental health reviews and an immediate evaluation by mental health staff whenever an inmate shows signs of psychological deterioration.

Reduced Sensory Deprivation:

- A phone call will be provided to inmates found guilty of an infraction that results in disciplinary confinement as soon as practical. An additional phone call will be offered to offenders placed in disciplinary confinement who remain discipline free for more than 30 days.

- TVs, radios and MP3s will be provided to inmates in administrative confinement.
- RIDOC will continue to evaluate staffing needs to allow for increased out-of-cell time for inmates in administrative and close confinement.

Population Exclusions:

- Women who are pregnant and post-partum will be excluded from restrictive housing except where temporary to address a serious risk of harm to the inmate or others.
- RIDOC will adopt the federal definition of developmental disabilities and will treat this population in a similar manner to the SPMI population.

SPMI Population:

- Those with SPMI or those for whom segregation would have a significantly damaging impact will not be placed in restrictive housing except for an evaluation period, if necessary.
- RIDOC will continue to work toward a "10 and 10" model and provide greater programming and services to return these inmates to the least restrictive housing possible but notes the need for additional resources and funding to achieve these model goals.

Oversight:

- RIDOC will submit quarterly data regarding the percentage of the population in restrictive housing in each facility and current length of stay by facility.
- RIDOC will submit an annual report on the mean, median, mode, range, minimum and maximum stays and sentences received by inmates in administrative and disciplinary confinement respectively.

REMAINING AREAS OF DISCUSSION

Although the commission resulted in expansive change to longstanding RIDOC policy relating to the many facets of the use of solitary confinement at the Rhode Island ACI, there remain a number of issues that stakeholders could not reach agreement on but pledged to continue to examine to see if common ground could be reached in the near future. Those areas include a specific time limit on sentences in restrictive housing, the time frame in which inmates will receive written plans to assist in their release from restrictive housing as well as the allowance (and timing) of visits for those in restrictive housing.

The Commission further agreed that continued observation was necessary regarding relevant data in forthcoming months and years to gauge the impact of the administrative changes to RIDOC policy. In particular, the commission agreed that all avenues of funding sources available to assist with the goals of this commission, to include federal grants, be identified and utilized where possible as the Department of Corrections has consistently expressed the need for further resources and funding to achieve these goals.

CONCLUSION

The use of Solitary Confinement evokes a passionate reaction from those who have experienced its use, either as an incarcerated inmate or a family member/loved one of a prisoner in isolation. Many states and international bodies have developed policies to address the serious impact of prolonged isolation on a person's overall physical and mental health. While Rhode Island's correctional officials acknowledge the need for change in some areas, they note that many of the desired programs that would alleviate the negative effects of isolation are costly and require funding in some form. Consistent with the recommendations of the commission, the General Assembly will continue to examine the issues in light of administrative changes made and others still to come with the hopes that the Rhode Island ACI may maintain a safe prison system for all its prisoners while limiting the impact of solitary confinement on those behind the walls.