

# Working to Limit Restrictive Housing: Efforts in Four Jurisdictions to Make Changes

The Association of State Correctional Administrators  
The Liman Center for Public Interest Law  
at Yale Law School

October 2018



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## **The Context: Nationwide Efforts to Limit Time-in-Cell**

This monograph provides excerpts from the ASCA-Liman Report, *Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell*. That Report is the fourth in a series of ASCA-Liman research projects focused on restrictive housing – or what is popularly known as “solitary confinement” – defined in this Report as placement of an individual in a cell for 22 hours or more on average for fifteen days or more.

Over the course of the past several years, ASCA and the Liman Center have asked each of the correctional departments in the fifty states, the Federal Bureau of Prisons, and a few jail systems to answer survey questions and provide policies to understand the use of restrictive housing. Our goal is to enable longitudinal, evidence-based assessments of the use of restrictive housing by providing a composite picture at particular intervals. As detailed in the Report, we gathered information about the numbers and demographics of people held in restrictive housing. We asked questions about sex/gender, race and ethnicity, and age. We also sought to learn about the subpopulations of the seriously mentally ill, pregnant prisoners, and transgender individuals. In addition, the ASCA-Liman survey included requests for information on the length of time that people spent in restrictive housing and about whether, how, and why policies governing restrictive housing were changing.

Forty-three jurisdictions provided information in response to the 2017-2018 survey on the numbers of people in restrictive housing. According to the Bureau of Justice Statistics, those 43 jurisdictions housed about 80.5% of the total prison population. The 43 jurisdictions reported a total of 49,197 prisoners in restrictive housing, which was 4.5% of the prisoners confined across this set. Correctional directors around the country also reported that they were making changes to reduce and, in some instances, to abolish holding people in cell for 22 hours or more on average for fifteen days or more.

Below, we provide first-hand accounts by correctional leaders describing their efforts to make major changes in the use of restrictive housing in Colorado, Idaho, North Dakota, and Ohio. These prison administrators explain the ways in which they have revised policies, the challenges that they have faced, and the impact of their efforts.

## **Colorado Reforms: What Do You Mean “Culture”?**

**Rick Raemisch,  
Executive Director, Colorado Department of Corrections**

During the fall of 2017, Colorado became the first, and thus far, the only state in the United States to limit the use of Restrictive Housing to 15 days maximum, and this use is only for the most serious violations. Extended Restrictive Housing, the former Administrative Segregation, has been abolished. Following the United Nations Mandela Rules, this change means that a person in the Colorado prison system who was involved in a serious violation will be in Restrictive Housing for 22 hours per day, 7 days per week for a maximum of 15 days. Violations are not to be “stacked.” In other words, no one will be placed in Restrictive Housing for 15 days, removed, then immediately placed back in.

This change comes on top of others. Through the Department’s policy and then by statute, Colorado had already ended Restrictive Housing for seriously mentally ill prisoners. In fact, Colorado developed the policy that, if a person is involved in a disciplinary incident, and it is determined by a team consisting of correctional officers and clinicians that mental illness was the cause of the incident, the offender is taken out of the disciplinary process and given treatment. In addition, Colorado policies prohibit placing pregnant females and juveniles in Restrictive Housing under any circumstances.

When we initially started our reforms we adopted the philosophy “just open the door.” We control it. Open it. Of course many discussions, debates, committee work, and staff input were completed in order to develop the proper procedures and programs to allow us to open the door. As I have explained elsewhere, when we went in the direction of abolishing extended restrictive housing, there was no map, and there was no road. Dedicated staff were challenged to complete the reforms, and they not only accepted the challenge but excelled at it.

When the decision was made to finally go to the 15 day maximum Restrictive Housing, we adopted a new philosophy: “You can restrain, but you don’t have to isolate.” We were unable to find proper restraint tables, and we have never used cages, nor would we. Once again, staff answered the challenges, and we built our own furniture to fit our needs. Formerly dangerous, restrictive housing prisoners are now out of their cells for a minimum of four hours per day, at restraint tables with up to four other inmates, for programming and other activities.

We have all heard the adage: “You can lead a horse to water, but can’t make them drink.” I don’t believe that. I believe that: “If you throw the horse in the pond they are going to get some water just trying to get the hell out of the pond.” The point is to give them programming regardless of whether they want it or not. Although this practice is new, it appears to be working. The goal of course is first to get them at the table, then give programming, and work towards safely removing the restraints. The goal is to have the programming be successful to the point where they can be back in general population.

We have been asked numerous times how we were able to accomplish this. How were you able to change the culture? When we have responded, we have heard: “That won’t work here, the culture is too embedded in the way we are doing business now.” Culture was never an issue with us. Of course our staff was used to using segregation on a regular if not overused basis. It’s not a question of culture. It’s a question of leadership. There is debate as to whether or not Henry Ford actually made this famous quote, but he is credited with saying: “If I had asked my customers what they wanted, they’d have said a faster horse.”

The point obviously is that sometimes the vision needs to come directly from the leader. I gave the Colorado Department of Corrections the vision of where the Department would go. My approach was not “should we or would we?” Rather, it was: “This is what we are going to do.” I put together an executive team that believed in my vision. My other philosophy is that if you have someone who wants to try something different, and it makes sense, give it a try. I’ve stated many times that if what we do doesn’t work, we can always go back to the way things were before.

I consider my Executive Team and the other corrections leaders here as jet fighter pilots. I give them the target and then allow them to figure out how to get there. Not all of our staff believed in our reforms. Some retired, some transferred, but the results of our reforms have changed a good number of those who did not think it would work. At our two mental health prisons, where restrictive housing is completely banned, assaults, self-harm, and suicides have decreased dramatically. Staff enjoy work more because prisoners are acting in a more positive manner. It is quiet and safer. Safer facilities mean safer communities when they are released.

In the past, we had a waiting list for people with mental illness to be transferred to our facility for the seriously mentally ill. Today we have over fifty vacant beds. Our other facility for those with mental health issues has over 45 empty beds. It is too early to tell if the reason for this is because we have stopped manufacturing or multiplying mental illness by the overuse of segregation, but before our reforms there were none.

The bottom line: We have one vacant super max, and one re-purposed super max. We are back on track with our mission of public safety.

## **Idaho: Efforts to Reform Restrictive Housing**

**Henry Atencio**

**Director, Idaho Department of Correction**

**Keith Yorby**

**Warden, Idaho State Correctional Institution,**

**Idaho Department of Correction**

Idaho Department of Correction [IDOC] made a decision to reform restrictive housing because it was the right thing to do for public and for community safety. Given that ninety-eight percent of prisoners in IDOC will return to the community, it is inconsistent with IDOC's mission to keep a prisoner in long-term restrictive housing, which results in no access to programming or educational opportunities, until they are released back into the community. Moreover, reforming restrictive housing has many benefits. It encourages safe and humane practices for the prison population. Reform permits compliance with international and national law, as the United Nations has declared that being confined in a cell 23 hours a day for more than 15 days is considered torture. Prison-based reform reduces IDOC's exposure to litigation regarding restrictive housing.

IDOC's reform process began in 2016 and was guided by nationwide standards addressing restrictive housing, which included principles of the U.S. Department of Justice and the thirteen guiding principles provided by the Association for State Correctional Administrators (ASCA).<sup>1</sup> Early on in the process, IDOC made the decision to include staff from multiple disciplines and at various leadership levels in the command structure. IDOC formed a command staff group comprised of agency and division leadership and reached out to external entities, who agreed to provide feedback and guidance to the agency during the reform process. The external partners included staff from the State Appellate Public Defenders' Office, the Office of the Federal Defenders of Idaho, and the Idaho Chapter of the American Civil Liberties Union. They have been an integral part of the process, as they have provided feedback on policy revisions, suggested language to use, and identified areas where the policy was unclear.

IDOC's path to reform also entailed having individual members of the department attend trainings and go on site visits to other states. Wardens, joined by correctional and mental health staff, visited Arizona and Washington Departments of Correction to see firsthand how reforms were implemented and to have discussions with those jurisdictions' staff about challenges and innovative ideas. In addition, several IDOC agency and facility leaders participated in training at the National Institute of Corrections (NIC) on restrictive housing reform. Idaho was selected as a pilot for an on-site NIC restrictive housing training that took place in August of 2017. Attendance at the training by wardens from facilities that housed men and women and that had long-term

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<sup>1</sup> The ASCA principles are available here: <https://www.asca.net/pdffdocs/9.pdf>.

restrictive housing was crucial, as they both gained insight and learned about the importance and implementation of the restrictive housing guidelines of the U.S. Department of Justice.

As a result of this process, Idaho wardens began reviewing all prisoners who had been in long-term restrictive housing to reevaluate them with the goal that placement in restrictive housing should be reserved only for individuals who posed an imminent threat to the security of the institution. Doing so entailed taking a comprehensive approach to restrictive housing reform. The agency decided that two key policies, addressing restrictive housing and the disciplinary process, had to be updated. As a consequence, a revamped disciplinary policy added an alternative sanction process and changed the Disciplinary Offense Report (DOR) codes, and the restrictive housing policy was split into three separate policies—a short-term restrictive housing policy, a long-term restrictive housing policy, and a protective custody policy. The new policies<sup>2</sup> reflect and implement a shift in the purposes and in the practices, and the result has been that fewer people are placed in restrictive housing.

A few specifics are in order. The short-term restrictive housing policy begins with a statement of purpose reflecting IDOC's mission statement on restrictive housing reform: "Restrictive housing protects staff and inmates by segregating those who are the most violent or present the greatest danger to the safe operations of the facilities." The policy provides that time spent in short-term restrictive housing is capped at fifteen days. Past that point, prisoners must be afforded, at a minimum, three hours of out-of-cell time a day and provided with personal property as they would have in general population. The policy also requires prisoners who have a language barrier, physical/sight/hearing impairment, or medical or mental health issues to have accommodations when placed in restrictive housing or an alternative placement, as needed.

Further, IDOC has limited the behaviors that can result in short-term restrictive housing placement to those that pose an imminent risk to safety. This change in the criteria for entry has reduced the number of short-term restrictive housing beds at some facilities, and, at others, the people put into such beds. In addition, some facilities have implemented "calm down" areas for prisoners to de-escalate, while others have implemented diversionary tiers for those in possession of drugs or alcohol or who have tested positive on urinalysis tests.

The long-term restrictive housing policy (addressing individuals in such housing for fifteen days or more) also begins with a statement of purpose, again stemming from IDOC's mission statement. "Restrictive housing is a structured program that protects staff and inmates by segregating those who are the most violent or present the greatest danger to the safe operations of the facilities." The policy requires that all prisoners placed into long-term restrictive housing programs are in Idaho's "Step Up Program," which consists of five stages designed to provide behavioral expectations to prisoners, teach them to identify concepts and skills to assist in behavior change, and assess their behavior to determine if placement in long-term restrictive housing is

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<sup>2</sup> Idaho's policies can be found at [www.idoc.idaho.gov](http://www.idoc.idaho.gov).

necessary. The policy requires that prisoners identified as having a serious mental illness be exempted from long-term restrictive housing placement and instead be placed in an alternative setting, which is usually a mental health unit. Further, the policy adds an administrative review committee for all long-term restrictive housing placements. That committee is at the prisons' division leadership level and includes both of the deputy chiefs of prisons and the chief psychologist, who is a non-voting member.

As of the writing of this report in the spring of 2018, the new disciplinary policy is in effect; the short-term and long-term restrictive housing and the protective custody policies are in the final drafting stage. The command staff is doing a policy review, and the goal is to have training in place during the summer of 2018 to complete a rollout of the reforms. And even before the full implementation, IDOC has seen the impact in the reduction in the numbers of people in long-term restrictive housing and new methods of responding to problems. One example comes from Idaho Maximum Security Institution (IMSI), a facility whose operating capacity was 412 inmates prior to restrictive housing reform and which had included 320 single-occupancy restrictive housing cells. IMSI has expanded its capacity to house 564 prisoners and as of the end of June, IMSI has 134 prisoners in long-term restrictive housing and 24 in short-term restrictive housing. The facility has revised its practices to have more prisoners in close-custody general population.

At Pocatello Women's Correctional Center (PWCC), the facility operating capacity was 313 prisoners prior to restrictive housing reform, with a total of 20 single-occupancy restrictive housing cells. The current operating capacity has increased to 333. Today, one prisoner under the sentence of death is in what is termed long-term restrictive housing status, but, in practice, she is out of her cell three or more hours per day. At the South Idaho Correctional Institution (SICI), 17 short-term restrictive housing beds were taken off line, which enabled the placement of 34 minimum custody general population prisoners to be housed there. As of the end of June 2018, the population in restricted housing had declined from 294 long-term restrictive housing prisoners to 134 people held in long-term restrictive housing.

## **Reflections on North Dakota's Sustained Solitary Confinement Reform**

**Leann Bertsch**

**Director, North Dakota Department of Corrections and Rehabilitation**

Since late 2015, the North Dakota Department of Corrections and Rehabilitation (ND DOCR) has maintained an approximately 60–70% reduction in the population of its Administrative Segregation Unit (renamed the Behavioral Intervention Unit or BIU) at the North Dakota State Penitentiary (NDSP). The number of people residing in BIU as of April 5, 2018 was 24. The daily count within this unit has remained under 40 people over more than two years, down from over 100 people in 2015. The average length of stay in BIU has fluctuated between 30 and 60 days, although there are a few people who reside in the unit much longer based on the severity of violence, their expression of continued risk for violence, or their own preference for the BIU setting.

This population reduction has been sustained by continuing to adhere to a multi-faceted screening and assessment process. In fact, NDSP was able to convert one of the tiers within BIU to a preferred housing tier, which is home to 20 of the most consistently pro-social residents within the facility. Another 20-cell unit was converted to the Administrative Transition Unit, where people live when they are in the process of moving from BIU to a general population setting. ND DOCR continues to focus on those who commit any of 10 of the most serious in-custody offenses that may make a person eligible for BIU placement, with some exceptions for fighting and other harmful behaviors when they become severe or chronic. ND DOCR also continues to avoid placing people diagnosed with serious mental illnesses in BIU when possible and divert them to the Special Assistance Unit for more individualized services when it is determined that it is not safe to keep them in general population.

The sustained decrease in the number of people in the BIU setting has allowed for staff to make much better use of their time and to have a greater impact. Corrections officers engage each resident in friendly conversation, change-oriented discussion, or practice of a cognitive or behavioral skill at least twice per day. The unit Sergeant is also tasked with planning one pro-social, structured recreational activity each weekend to increase positive engagement with staff and out-of-cell socialization. Unit staff also provides reinforcement in the form of tangible property items, extra recreation time, extra showers, and the like, based on the person's participation in therapeutic and social activities, as well as the parameters of individualized behavior plans. Currently, BIU residents can access up to two hours and 40 minutes of recreation per day when they engage in skill practices and therapeutic groups, in addition to time spent in groups, individual sessions, and specially-planned enrichment activities.

Behavioral health staff also provides at least one structured leisure activity each week, such as an art project, mindfulness practice, or a movie. Three times per week they facilitate a group that focuses on applying skills to reduce or eliminate the use of violence, manage trauma reactions,

and cope with segregation. Each resident completes an individualized Success Plan, detailing how he plans to apply skills in high-risk future situations, prior to or soon after moving to the Administrative Transition Unit. Once the person has moved to the Administrative Segregation Unit, he has the opportunity to continue to participate in group two times per week to work on skills application as the amount of time spent in general population settings increases. These group curricula and the Success Plan served as the foundation to inform a curriculum developed by Dr. Paula Smith for a Bureau of Justice Assistance Encouraging Innovation Grant related to applying interventions in restrictive housing settings, which ND DOCR will continue to implement as a data collection site related to that grant project.

Over the past two and a half years, ND DOCR has sustained a substantial reduction in the use of the Special Operations Response Team within the BIU (no use of the team at all in this unit since October 2017), along with a reduction in overall uses of force. The prevalence of negative behaviors by residents of the unit has also dramatically decreased. ND DOCR believes the focus on reinforcement of positive change, building friendly relationships between staff and residents, and allowing residents access to pro-social coping skills (music, television, puzzle books, etc.) are collectively responsible for these changes. Perhaps our most exciting outcome to date is the fact that, of the 149 residents placed on BIU program status from October of 2015 to February of 2018, only 26 have returned to BIU program status. That is a 17% “recidivism” rate into the BIU program. ND DOCR is working to collect more precise data regarding these outcomes, but we are very encouraged by these initial results.

These changes, while overwhelmingly positive, have not been without challenges. NDSP did see a significant increase in physical fights between residents in mid-2016 to mid-2017. This increase occurred at the same time that our overall prison population was the highest it has ever been and we have some suspicions that this may be correlated more strongly with the population increase than the changes in the use of restrictive housing. As the population has slowly stabilized and begun to decrease, the prevalence of fighting has decreased as well. While most staff members have been supportive of the changes, there has been a perception that the overall safety of the facility has been compromised. Factually, there has been no increase in assaults on staff, assaults on residents by peers, or the overall level of violence perpetrated within the institution. There has also been a perception that residents are not “held accountable” for rule violations. In reality, residents continue to receive significant sanctions—the only difference is those sanctions are much less likely to include lengthy placements in restrictive housing, especially for non-violent offenses.

In order to address the problem of institutional violence more thoroughly, ND DOCR is excited to begin assessing people entering prison using the Risk of Administrative Segregation Tool (Labrecque & Smith, 2017) in order to identify those at highest risk for displaying institutional violence resulting in placement in restrictive housing. A copy of the tool is below.

**BEHAVIORAL INTERVENTION UNIT REPORT CARD**DEPARTMENT OF CORRECTIONS AND REHABILITATION  
DIVISION OF ADULT SERVICES  
(04-2018)

										Group Attendance					
										Monday	Tuesday	Wed	Thurs	Friday	
										<input type="checkbox"/> SMI	A (Attended); R (Refused); C (Cancelled)				
Inmate Name					Inmate Number					Date of Arrival		Release Date			
Placing Behavior															
Status <input type="checkbox"/> Investigative Segregation <input type="checkbox"/> Disciplinary Segregation <input type="checkbox"/> Administrative Segregation <input type="checkbox"/> Administrative Transition Unit															
Intervention Needs Assessment Referral <input type="checkbox"/> Yes <input type="checkbox"/> No								Requested Date		Completion Date					
DATE	SHIFT	KEEPS TRAYS/TROWS TRAYS	DOESN'T ALLOW TRAY SLOT CLOSURE	COVERS FRONT WINDOW	DOESN'T COMPLY WITH STAFF DIRECTIVES	INTERACTS BY YELLING, NAME CALLING OR THREATS	ENGAGED IN CHECK IN WITH STAFF	NUMBER OF SKILL PRACTICES/ SKILL DEMO DONE	Target Behavior			STAFF INITIALS			
									Skill Practice/Skill Demonstration						
										COMMENTS					
	AM						Yes No								

Those identified as high risk will then be offered a 10-session group intervention program focused on establishing a pro-social adjustment to prison and managing high-risk situations for violence in an effective, non-violent manner. This program will begin in April 2018. Dr. Paula Smith and Dr. Ryan Labrecque will evaluate the effectiveness of this intervention in preventing future violence as compared to a no-treatment control group. Another future direction is to develop a peer support specialist certification program for prison residents, with the goal of providing additional support to those at risk for placement or placed in BIU.

One way to provide an overview of the outcomes, as of the spring of 2018, is by the chart below.

Type of Seg.	Investigative	Disciplinary	BIU Program	Total Unit
Avg. # of days	5.55	7.63	18.97	32.14

Type of Seg.	Investigative	Disciplinary	BIU Program	Total Unit
Total # Stays Over 14 Days	30	38	60	128

## **Restrictive Housing: The Challenge of Reforming the Fabric of an Agency**

**Gary Mohr,**

**Director, Ohio Department of Rehabilitation and Correction**

Restrictive housing reform represents one of the most extensive reforms in the history of corrections in the United States. The use of restrictive housing to respond to prisoner misbehavior has been the foundation of correctional management philosophy for over a century. The practice is embedded in the philosophy and logic of nearly all agency staff and is interwoven into the fabric of any correctional agency's culture.

The use of restrictive housing remains an essential part of managing safe and secure prisons. Changing the way a correctional organization uses restrictive housing requires a delicate balancing act of improving conditions of confinement for prisoners who are more conducive to rehabilitative ends, while simultaneously ensuring we protect our staff and prisoners from individuals whose behavior indicates they are poised to harm others. Further, for most of my 44 years in this work, restrictive housing has been used as the default penalty for all types of rule violations, whether violent or not. Changing practices associated with the use of restrictive housing is a delicate operation because our staff, those who work in the trenches of our prisons, firmly believe the use of restrictive housing as a default disciplinary sanction is tied directly to their safety. Reforming the system to use restrictive housing only when there is a threat to safety and security, rather than as punishment, often becomes viewed as an attempt to jeopardize safety.

Today, that cultural belief has been reinforced by the horrific incidents in prisons throughout our country from North and South Carolina, to Pennsylvania, Arizona and many other jurisdictions including Ohio. In 2018, an Ohio Correctional Officer was stabbed 32 times by two prisoners who were in extended restrictive housing; miraculously, he survived. This event not only magnified the challenge of continuing to reform restrictive housing, but also changed my life, as it was a vivid reminder of how precious life is and how we as leaders carry the heavy responsibility for the welfare of so many. As we continue the much-needed reform regarding the practice of placing prisoners in confined settings, an area where there is still much work to be done, the realities and images of individuals who have experienced serious, life-changing incidents cannot be ignored. The impact on their lives, as well as on the lives of their loved ones and fellow staff members, must be of paramount concern.

Ohio can clearly report success in reducing prisoners in restrictive housing as evidenced by data comparing the use of restrictive housing between 2013 to 2017. In fact, there has been a 45% reduction in the number of prisoners in restrictive housing during that time period. While this reduction is meaningful and significant, it is also a reminder of the need for restrictive housing now and in the future. The reality is that there are people in prison who pose a serious and direct threat to others, and we have a duty to protect others from these prisoners. As agency leaders, we count on our staff in all correctional systems to carry out post orders and follow our directives 24

hours a day, 7 days a week. Those dedicated public servants must acknowledge and trust their leaders, even though they will not always agree, or the overall agency goals will not be achieved. Leaders cannot merely issue edicts directing a course of action when those directives are contrary to the will of the workforce if they expect the vision of the policy to be realized. In matters that challenge the foundational beliefs and values of the staff, change must occur over time through consistent reinforcement of the philosophy underlying the policy direction.

**Operational Challenges to Restrictive Housing Reform:** The Ohio Department of Rehabilitation and Corrections (DRC) began restrictive housing reform in late 2013 by conducting wide-ranging discussions on how and why correctional supervisors/executives use restrictive housing. In 2014 and 2015, the DRC examined all policies and procedures, even hiring external consultants to provide insight into current practices, assess areas for improvement, and recommend a pathway for reform. In 2015, it became apparent restrictive housing reform was intrinsically linked to discipline reform. As such, the DRC needed to re-examine the entire way prisoner rule violations were addressed. Below, I outline our reforms.

*Reform Initiative A: Prison Disciplinary Reform (Swift, Certain, and Fair):* In late 2015 and early 2016, the DRC began to change the philosophy associated with the offender disciplinary system to encourage sanctions that adhere to swift, certain, and fair (SCF) principles of discipline. Most importantly, this change included using alternative sanctions to reduce the use of restrictive housing. Implementation required, and continues to require, ongoing changes to organizational culture.

Challenge 1: Operationalizing the changes in sanctioning practices remains an ongoing challenge by trying to achieve consistency, fairness, and immediacy of application across all prisons.

*Reform Initiative B: Alternatives to Restrictive Housing—Limited Privilege Housing:* The DRC has the option in Ohio's Administrative Regulations to use limited privilege housing. Limited privilege housing is a condition of confinement that significantly limits a prisoner's privileges, so it can be used to respond to low-to-moderate severity rule violations. Limited privilege housing is not restrictive housing. It is, however, a meaningful sanction that adheres to swift, certain, and fair principles of sanctioning. It also removes prisoners from the housing area where they committed their offense. In late 2015 and lasting until today, the DRC greatly expanded the use of limited privilege housing and encouraged staff to not use restrictive housing as the default placement for prisoners who have misbehaved unless they posed a danger to the prison or to others.

Challenge 2: Proper utilization of the limited privilege housing sanction has been a challenge. DRC continues to experience under-utilization and over-utilization of the sanction as an alternative to restrictive housing, and there is inconsistency in the security practices between areas.

Challenge 3: One of the greatest cultural challenges was passive resistance by staff who, in frustration over being asked not to use “segregation” for many offenses, assumed an “all or nothing” stance towards security. Simply put, if they could not place a prisoner in segregation (restrictive housing), then they just had to let prisoners do “whatever they wanted” and could take no meaningful action. Others felt a limited privilege housing unit could have a “relaxed” security posture when in reality limited privilege housing units can be just as secure as a restrictive housing unit if the type/kind of prisoner needs such levels of supervision. The critical difference is the out of cell time and access to programming and services which require all staff to change the way they work.

Challenge 4: A cultural myth developed that restrictive housing reform’s goal was to reduce the use of restrictive housing regardless of the prisoner’s behavior. DRC leadership was compelled to constantly remind staff that restrictive housing reform never meant prisons could not use restrictive housing to address violence or seriously disruptive behavior. This myth was persistent and remains even when policies were released providing staff the option of stronger and lengthier disciplinary sanctions. The written words contained in the policy, as well as emails sent to all staff, were overshadowed by this mythology that is still persistent five years into reform.

*Reform Initiative C: Widespread Training/Communication on Restrictive Housing:* Throughout 2016 and carrying into 2018, the DRC has revised dozens of policies, lesson plans, and in-service training on restrictive housing Reform and its related components within the DRC.

Challenge 5: Communication of the “why” behind restrictive housing Reform remains our prevailing challenge. A significant number of staff still report they do not understand the reasons for reform despite training, memos, policies, and emails that have tried to explain all aspects of the reform effort. More importantly, many of them do not understand the permanence of these changes and are “waiting to go back to the way it was.” Finally, it cannot be ignored that there are some staff who simply believe prisoners should be severely restricted while in prison and especially when they commit any rule violations. It is reasonable to say that when an organization operates for nearly a century in one manner, it will take a very long time to change the fundamental beliefs of the staff who operate that organization. These individuals who, regrettably, exist at all levels in our agency continue to passively, or sometimes actively, resist restrictive housing reform, likely in the hope the reform will fail and the DRC will have to return to the status quo which existed in 2013.

Challenge 6: The volume and pace of change is a significant, on-going challenge for staff at all levels. Change for any organization is difficult, but the root nature of

this change coupled with the fact the change requires a shift in personal, organizational, and leadership philosophy, makes it incredibly challenging.

Challenge 7: Staff perceptions exist by some at all levels (line, supervisor, and executive staff) that are less than supportive of/favorable to restrictive housing reform efforts thus far. There is a strong feeling these policies are making people less safe and reform values prisoners over staff safety. The serious incident of the stabbing of our correctional officer mentioned earlier has kept this belief alive.

Challenge 8: There is substantial message dilution in training and communication. As information is passed down from each level of leadership and supervision, the message gets changed and altered, greatly affected by the cultural resistance outlined in previous challenges. As such, the DRC must continually improve the content and delivery of the restrictive housing Reform “communication plan.”

*Reform Initiative D: Serious Misconduct Panels and External Oversight of Extended Restrictive Housing:* Prior to reform, local wardens possessed the authority independently to place prisoners into restrictive housing for six months, and in some cases, for a year or more. There was no centralized oversight for these two review processes. Wardens applied this power based on their individual perspective about misbehavior rather than an organizational view. In response, the DRC established the “serious misconduct panel” (SMP) as the only process by which offenders can be referred to “extended restrictive housing” and implemented centralized oversight of all placements and releases. The SMP referral is still made by a warden but is approved by a regional director and the panel is comprised of two exempt employees from a prison other than the one where the offense occurred.

Challenge 9: There have been concerns expressed that the use of the SMP implies a mistrust of the professional judgment of local teams who know the prisoners best. The delicate balancing act of ensuring consistency across all prisons while respecting local decision makers becomes interpreted as a form of heavy-handed oversight. In addition, prison leaders believe the new policies curtailed their ability to control violence and disruption at their prisons.

Challenge 10: The procedural aspects of the SMP are cumbersome and time consuming. The ongoing challenge is to streamline the SMP process without hindering the objectivity, due process, or thoroughness of the review.

*Reform Initiative E: Conditions of Confinement and Programming for Extended Restrictive Housing:* The DRC examined the conditions of confinement for offenders in extended restrictive housing and implemented additional programming, meaningful activities, and out-of-cell time. This process includes enhanced release preparation programs as best exemplified by the Ohio State Penitentiary [OSP] reversion program. This program introduces pro-social elements such as

employer engagement, family activities/events, and meals in group settings, including meals with the warden, into our highest security setting.

Challenge 11: The physical plant and infrastructure of all DRC facilities were not designed to provide a lot of out-of-cell time for prisoners in restrictive housing. The facilities were designed according to the philosophy of corrections in the United States at the time. The last prisons constructed were designed in the mid-1990s, almost a quarter of a century ago. The only way to offset some of these design issues is with significant staffing resources, which are very costly and difficult to appropriate in challenging budgetary environments.

Challenge 12: Self-imposed isolation, even when out-of-cell opportunities are granted, remains a considerable challenge. Prisoners choose these environments in a significant number of circumstances.

Challenge 13: It is a continuing challenge to ensure conditions of confinement differ between restrictive housing, limited privilege housing, and general population in a meaningful way that sufficiently deters prisoners from engaging in misbehavior. The more you give prisoners in restrictive housing/extended restrictive housing/limited privilege housing, the less appealing rule compliant behavior becomes for prisoners in general population. Over-compensating to assist restrictive housing/extended restrictive housing prisoners can exacerbate the problems associated with Challenge 12 and, as has been proven by some cases in Ohio, actively encourage prisoner misbehavior to achieve a placement into extended restrictive housing.

*Reform Initiative F: Limiting Extended Restrictive Housing for Seriously Mentally Ill Prisoners and Enhanced Monitoring:* The DRC recognizes the potential effects of restrictive housing on the seriously mentally ill. However, seriously mentally ill prisoners, like others, can commit very serious acts of violence and disruption unrelated to their mental illness. Furthermore, even if the violence is related to their mental illness, the threat to the safety of others cannot be ignored. Therefore, the DRC has implemented practices to closely monitor the utilization of extended restrictive housing for prisoners with serious mental illness, and placement in extended restrictive housing for a person with serious mental illness must be approved at the departmental level. We also use and have expanded high security Residential Treatment Units [RTUs] as an assessment/diversion opportunity to avoid placement in extended restrictive housing for some people with serious mental illness.

Challenge 14: The single greatest challenge in this effort is to develop and implement a “space between” restrictive housing and general population for dangerous, disruptive, and violent seriously mentally ill prisoners. Efforts to operate a “secure adjustment unit” for violent, seriously mentally ill offenders were

unsuccessful. We have added a significant number of Residential Treatment Unit [RTU] beds for the seriously mentally ill. There remain prisoners who are seriously mentally ill and violent/disruptive, but do not meet the standard of our mental health staff for an RTU level of care.

Challenge 15: DRC has expanded the number of high security RTUs, but there remains a substantial need for more beds and staff.

Challenge 16: Although philosophically we understand the need to treat seriously mentally ill prisoners differently, if one lessens the sanctions on prisoners solely because they are seriously mentally ill, other prisoners may perceive a tremendous injustice. This can cause disruption in housing units where both seriously mentally ill and non-caseload prisoners are held. In addition, as we attempt to grant more out-of-cell time and increased staff engagement for seriously mentally ill prisoners even after they have committed serious acts of violence against staff, we experience a growing cultural resistance to reform. Staff who are victimized, sometimes repeatedly, by these prisoners perceive these acts as being unfair and proof there is lack of care for staff and for the impact that violence by prisoners has on them. Thus the challenge continues.

*Reform Initiative G: Tracking and Data Collection:* The DOTS system, our tracking system, in present form, cannot effectively track people placed in restrictive housing or limited privilege housing. Since 2013, the DRC has continually developed new methods for measuring restrictive housing, primarily by using snapshots. Currently, Operations and IT staff are developing a restrictive housing/limited privilege housing Disciplinary Tracking System integrated into the DOTS system that, once completed, will provide a comprehensive system for examining disciplinary sanctions and their utilization, as well as profiles and real-time data on prisoners in restrictive housing/limited privilege housing. It will track the work flows associated with major job processes which may affect length of stay in restrictive housing/limited privilege housing including, but not limited to:

- 1) Hearing Officer and RIB Decisions
- 2) SMP referrals, extended restrictive housing placements, and extended restrictive housing reviews
- 3) Investigations regarding prison administrative functions such as misbehavior, protective control, separations, and staff nexus
- 4) Security Classification Reviews and Increases/Decreases
- 5) Prisoner Movement and Transfers

Challenge 17: While waiting for these changes, it is not acceptable to forgo efforts to track restrictive housing. Reporting mechanisms have changed somewhat over time and to get accurate data is a cumbersome process that is very labor-intensive.

*Conclusion:* On December 27, 2010, when I met with Governor Kasich and decided to accept this journey to oversee the Ohio Department of Rehabilitation and Correction, he asked me to do two things. First, we could not afford another Lucasville, the riot that lasted 11 days and resulted in 10 deaths. Secondly, “Go reform the most unreformed part of government.” While we have made some very progressive changes in creating reintegration environments, expanded programming including treatment of the addicted both in and outside our prison walls, expanded residential treatment beds for the mentally ill, employment partnerships with employers with experiences both inside the prisons and out in the communities, and engagement with community faith partners, the challenge of reforming restrictive housing is at the core of that challenge. Restrictive housing reform remains a challenge to us in Ohio and many other jurisdictions around our great country.

## A National Shift in Perspective

These four narrative accounts are illustrative of a significant change in restrictive housing policies. As ASCA-Liman reported in 2013, the rules promulgated by corrections departments then gave wide discretion to correctional staff to place individuals in restrictive housing. The policies had broad criteria for putting people into isolation, and little focus on moving people out of restrictive housing. In contrast, in 2018, directors around the country are revisiting their rules on restrictive housing and, in many instances, seeking to narrow the bases for entry, to increase time out-of-cell, and to expand opportunities for sociability. Moreover, time-based categories of restrictive housing have emerged. Correction policies distinguish between “*restrictive housing*” (defined as requiring a prisoner “to be confined to a cell at least 22 hours per day”) and “*extended restrictive housing*” (defined as separating a prisoner “from contact with general population while restricting” the prisoner to his cell “for at least 22 hours per day and for more than 30 days”).<sup>3</sup>

One illustration of the revised approaches to limiting the use of restrictive housing comes from the American Correctional Association (ACA), which in 2016 issued new Performance Based Standards on Restrictive Housing. The ACA called on jurisdictions to ensure that prisoners not be released directly to the community from restrictive housing. Further, the ACA Standards placed a prohibition on assigning individuals under the age of 18 or pregnant females to extended restrictive housing. The ACA Standards also stated that prisoners “will not be placed in Restrictive Housing on the basis of gender identity alone.”<sup>4</sup> In addition, the Standards provided that correctional departments “not place a person with serious mental illness in Extended Restrictive Housing.”<sup>5</sup>

The ASCA-Liman 2018 survey mapped the impact of these ACA Standards. Thirty-six jurisdictions reported that they had reviewed their restrictive housing policies since the release of the 2016 Standards, and 25 described relying on the ACA Standards when making policies. For example, 21 jurisdictions reported that they had implemented the ACA Standard that persons with serious mental illness not be placed in extended restrictive housing.

More generally, in the larger monograph from which these materials are excerpted, we report on responses from 43 jurisdictions discussing a range of policy changes, including narrowing the criteria for entry into restrictive housing. For example, in one jurisdiction, infractions such as “horse play” or possession of small amounts of marijuana, which previously could have formed the basis for placement in restrictive housing, would no longer lead to isolation.

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<sup>3</sup> AMERICAN CORRECTIONAL ASSOCIATION RESTRICTIVE HOUSING PERFORMANCE BASED STANDARDS (Aug. 2016), p. 3, available at <https://www.asca.net/pdfdocs/8.pdf>.

<sup>4</sup> *Id.* at Standard 4-RH-0035, p. 40.

<sup>5</sup> *Id.* at Standard 4-RH-031, p. 46

In addition, jurisdictions reported expanding the oversight of placement, altering the amount of time spent in-cell, and offering more opportunities for sociability through programs, recreation and social interactions. More than half of the 43 responding jurisdictions discussed requiring consideration of less-restrictive alternatives before placement in restrictive housing.

One of the longstanding goals of the ASCA-Liman surveys has been to build a longitudinal database to enable evidence-based analysis. The 2015 ASCA-Liman Report found that more than 66,000 prisoners were in restrictive housing in 34 jurisdictions. Based on Bureau of Justice Statistics (BJS) on prison populations, the 2015 Report estimated that between 80,000 to 100,000 prisoners were in restrictive housing across the country. The 2016 Report found that about 67,500 prisoners were in restrictive housing in 48 jurisdictions, which accounted for 96.4% of the prison population. The 2018 Report identified a total of about 49,197 prisoners in restrictive housing in 43 jurisdictions which accounted for 80.5% of the U.S. prison population. Thus, the 2018 Report estimates that 61,000 prisoners were in restrictive housing as of 2017. The caveats on these numbers are that the definitions of restrictive housing varied somewhat among the three reports, and that the data do not generally include juveniles or individuals in jails. Further, no inquiries were made about individuals held in immigration or military detention.

Forty jurisdictions provided restrictive housing data in both 2016 and 2018. The 2018 Report compared this information and identified a reduction in 29 jurisdictions in the numbers of prisoners in restrictive housing and an increase in 11 jurisdictions. Across the 40 jurisdictions, the percentage of prisoners in restrictive housing decreased from 5.0% in 2015 to 4.4% in 2017.

Another window into changes over time comes from information about how long people spend in restrictive housing. Thirty-one jurisdictions responded with information on length of stay in both the 2015-2016 and in the 2017-2018 surveys. We asked jurisdictions for information on different lengths of confinement in restrictive housing: 15 days to one month, one to three months, three to six months, six months to one year, one to three years, three to six years, and longer than six years. Overall, the numbers of individuals in restrictive housing across most lengths of time decreased from 2016 to 2018. The number of prisoners in restrictive housing for time periods six months or less decreased in about as many jurisdictions as it increased. The number of prisoners in restrictive housing for time periods longer than six months decreased in more jurisdictions than it increased.

The monograph on the 2017-2018 data and policies, coupled with the narratives from four jurisdictions, makes plain that many correctional systems around the United States are seeking to lower the numbers of people in their cells for 22 hours or more on average for fifteen days or more and to alter the activities and opportunities for those held in restrictive housing. The reports from correctional officials reflect the national and international consensus that restrictive housing can impose grave harms on individuals confined, on staff, and on the communities to which prisoners return.

## **Association of State Correctional Administrators (ASCA)**

ASCA is the most exclusive correctional association in the world. ASCA members are the leaders of each U.S. state corrections agency, Los Angeles County, the District of Columbia, New York City, Philadelphia, the Federal Bureau of Prisons, U.S. Military Correctional Services (Army, Navy, Air Force, Marines), and United States territories, possessions, and commonwealths. ASCA members lead over 400,000 correctional professionals and supervise approximately eight million prisoners, probationers, and parolees. ASCA's goal is to increase public safety by utilizing correctional best practices, accountability, and providing opportunities for people to change.

## **The Arthur Liman Center for Public Interest Law, Yale Law School**

The Liman Center was endowed to honor Arthur Liman, who graduated from Yale Law School in 1957. Throughout his distinguished career, he demonstrated how dedicated lawyers, in both private practice and public life, can respond to the needs of individuals and of causes that might otherwise go unrepresented. The Liman Center, which began as the Liman Program in 1997, continues the commitments of Arthur Liman by supporting work, in and outside of the academy, dedicated to public service in the furtherance of justice.

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