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 **2019 NAMI**
National
Convention
JUNE 19–22 • SEATTLE

The Destructive Impact of Imprisonment: Solitary Confinement of Prisoners With Mental Illness

Presented at NAMI National Convention Seattle,
June 21, 2019

Presenter: Howard D. Trachtman

- Howard D. Trachtman, BS, CPS, CPRP, COAPS
- Chair, NAMI Peer Leadership Council Advisory Committee
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- Mr. Trachtman, BS, CPS, CPRP, COAPS has experienced restraint and seclusion multiple times.
- He is chair of the NAMI Peer Leadership Council's Advocacy Committee and co-founder of the
- peer support network of NAMI Greater Boston.

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Presenter: Ron Honberg, JD

- Former NAMI Senior Policy Advisor
- Ronald Honberg, J.D. oversees NAMI's federal advocacy agenda and NAMI's work on legal and criminal justice issues.
- Ron has drafted amicus curiae briefs in precedent-setting litigation affecting people with mental illnesses and has provided technical assistance to attorneys
- and NAMI affiliates on legal and public policy issues.

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Presenter: Phillip Kassel, JD

- Executive Director Mental Health Legal Advisors Committee
- pkassel@mhlac.org 617 338 2345

Phillip Kassel is the Executive Director of the Mental Health Legal Advisors Committee. A veteran poor-persons' lawyer with concentrations

in education and prison law, he is currently working with other advocates challenging the abusive solitary confinement of prisoners with mental health challenges in a jail in southeast Massachusetts.

Presenter: Robert Salazar

- Robert Salazar, CPSW (Certified Peer Support Worker)
- Rsal333@yahoo.com 505 373 9604
- NAMI Albuquerque VP
- MHRAC (Mental Health Response Advisory Committee)
- Bernalillo County LEAD (Law Enforcement Assisted Diversion)
- IT Panel, Peer Presenter (Crisis Intervention Training)
- Connection Facilitator and State Trainer
- Smarts Teacher

Mr. Salazar has both experienced solitary confinement personally and seen it's misuse against others first hand while incarcerated. Robert first became a NAMI Connection facilitator while in jail. He is the current VP of NAMI Albuquerque where he is a dedicated advocate for criminal justice reform and behavioral health parity.

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FIRST PERSON ACCOUNT – Robert Salazar

- Robert will talk about his personal experience with solitary confinement.
- What Robert observed and how he felt.
- Impact of seeing others in solitary confinement as well
- Becoming a NAMI Connection facilitator while in prison

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Getting into the criminal justice system

- Abusive policing
- Arrests and prosecutions
- Courts' failure to account for mental illness in assessing culpability and dispositions; mandatory sentencing;
- Policing in communities of color

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What happens in prison

Harsh discipline

Solitary confinement (disproportionate cell confinement of people with mental health issues);

Harm to prisoners – suicide and long-range damage – and to communities

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Advocacy efforts

- Police training/mental health teams;
- Diversion: Sequential intercepts;
- Litigation

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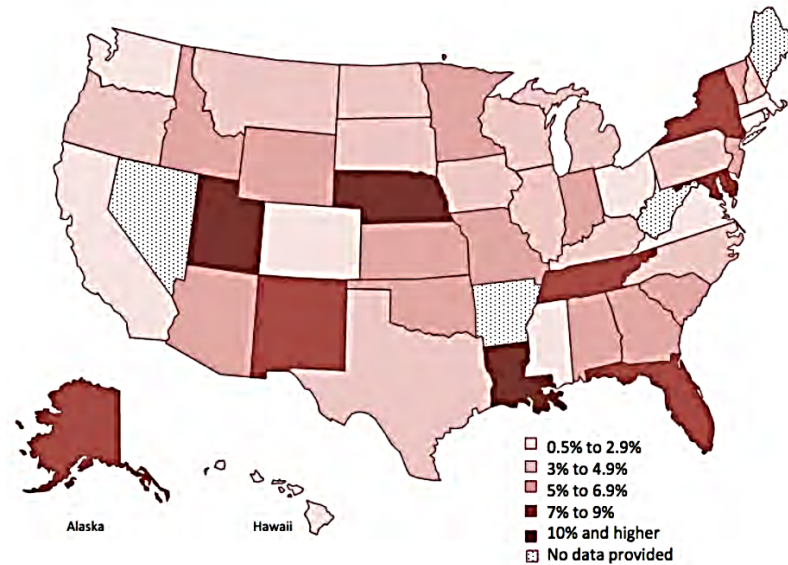


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Personal Perspectives on Solitary Confinement

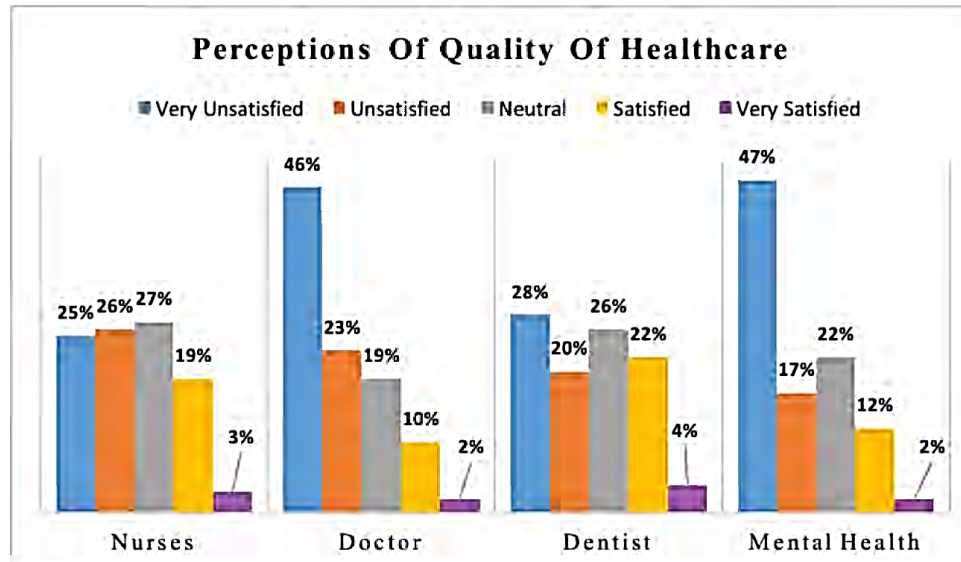
Robert Salazar
Vice-President
NAMI Albuquerque

Rates of Inmate Population in Restricted Housing by State, 2015



Source: ASCA-Liman Report, November 2016.

Perceptions of quality of health care across physicians



Source: Authors' Original Study, "Inmate Survey on the Use of Solitary Confinement in New Mexico," (Albuquerque: ACLU, 2018), conducted September 2018-January 2019.

Symptoms and behaviors exhibited in segregated housing

Symptoms and Behavior in Segregated Housing	Prevalence
Loneliness	98%
Anxiety	95%
Depression	94%
Sleep disturbances	91%
Mood swings	87%
Abdomen pain	85%
Lose track of time	85%
Difficulty communicating	81%
Suspicion	81%
Violent thoughts	81%
Confusion	79%
Joint pain	78%
Difficulty concentrating	78%
Fits of rage	77%
Extreme tiredness	77%

Hearing voices	75%
Severe headaches	75%
Impulse control	63%
Visual problems	63
Loss of appetite	58%
Increased pulse	57%
Nervous breakdown	54%
Memory loss	51%
Hallucination	50%
Cry spells	41%
Thoughts of suicide	24%
Digestion or Diarrhea	33%

Source: Authors' Original Study, "Inmate Survey on the Use of Solitary Confinement in New Mexico," (Albuquerque: ACLU, 2018), conducted September 2018-January 2019.

Data on the Use of Solitary Confinement Across US States as Reported by the ASCA-Liman Report (2016)

Jurisdiction	Total custodial population	Total custodial population for facilities reporting RH data	Population in Restricted housing	Percentage in restricted housing
Alabama	25,284	24,549*	1,402	5.70%
Alaska	4,919	4,919	352	7.20%
Arizona	42,736	42,736	2,544	6.00%
California	128,164	117,171*	1,104,172	0.90%
Colorado	18,231	18,231	217173	1.20%
Connecticut	16,056	16,056	128	0.80%
D.C.	1,153	1,153	95	8.20%
Delaware	5,824	4,342*	381	8.80%
Florida	99,588	99,588	8,103	8.10%
Georgia	56,656	56,656	3,880	6.80%
Hawaii	4,200	4,200	23	0.50%
Idaho	8,013	8,013	404	5.00%
Illinois	46,609	46,609	2,255	4.80%
Indiana	27,508	27,508	1,621	5.90%
Iowa	8,302	8,302	247	3.00%
Kansas	9,952	9,952	589	5.90%
Kentucky	11,669	11,669	487	4.20%
Louisiana	36,511	18,515*	2,689	14.50%
Maryland	19,687	19,687	1,485	7.50%
Massachusetts	10,004	10,004	235	2.30%
Michigan	42,826	42,826	1,339	3.10%
Minnesota	9,321	9,321	622	6.70%
Mississippi	18,866	18,866	185	1.00%
Missouri	32,266	32,266	2,028	6.30%
Montana	2,554	2,554	90	3.50%
Nebraska	5,456	5,456	598	11.00%
New Hampshire	2,699	2,699	125	4.60%
New Jersey	20,346	20,346	1,370	6.70%

New Mexico	7,389	7,389	663	9.00%
New York	52,621	52,621	4,498	8.50%
North Carolina	38,039	38,039	1,517	4.00%
North Dakota	1,800	1,800	54	3.00%
Ohio	50,248	50,248	1,374	2.70%
Oklahoma	27,650	27,650	1,552	5.60%
Oregon	14,724	14,724	630	4.30%
Pennsylvania	50,349	50,349	1,716	3.40%
South Carolina	20,978	20,978	1,068	5.10%
South Dakota	3,526	3,526	106	3.00%
Tennessee	20,095	20,095	1,768	8.80%
Texas	148,365	148,365	5,832	3.90%
Utah	6,497	6,497	912	14.00%
Vermont	1,783	1,783	106	5.90%
Virgin Islands	491	339*	96	28.30%
Virginia	30,412	30,412	854	2.80%
Washington	16,308	16,308	274	1.70%
Wisconsin	22,965	20,535*	751	3.70%
Wyoming	2,128	2,128	131	6.20%

Source: ASCA-Liman Report (2016) "Numbers and Percentages of Men and Women in Custodial Population in Restricted Housing by Jurisdiction (15 Consecutive Days or Longer, 22 Hours or More per Day) (n = 48)"

Solitary Confinement by Gender Across Participant Jurisdictions that Provided Data on Gender Composition

Jurisdiction	Male Inmates			Female Inmates		
	Total custodian population	Restricted housing population	Percentage in restricted housing	Total custodian population	Restricted housing population	Percentage in restricted housing
Alabama	23,062	1,382	6.00%	1,487	20	1.30%
Alaska	4,360	345	7.90%	559	10	1.80%
Arizona	38,764	2,452	6.30%	3,972	92	2.30%
California	111,996	1,079	1.00%			
Colorado	16,719	214	1.30%	1,512	3	0.20%
Connecticut	14,993	120	0.80%	1,063	8	0.80%
Delaware	4,119	378	9.20%	223	3	1.30%
D.C.	1,153	95	8.20%			
Florida	92,679	7,863	8.50%	6,909	240	3.50%
Hawaii	3,989	22	0.60%	738	1	0.10%
Idaho	7,001	389	5.60%	1,012	15	1.50%
Indiana	24,937	1,579	6.30%	2,571	42	1.60%
Iowa	7,575	242	3.20%	727	5	0.70%
Kansas	9,132	581	6.40%	820	8	1.00%
Kentucky	10,664	362	3.40%	1,005	20	2.00%
Louisiana	17,577	2,583	14.70%	938	106	11.30%
Maryland	18,736	1,454	7.80%	951	31	3.30%
Massachusetts	9,313	447	4.80%	691	16	2.30%
Michigan	40,625	1,321	3.30%	2,201	18	0.80%
Minnesota	8,674	602	6.90%	647	20	3.10%
Mississippi	17,516	180	1.00%	1,350	5	0.40%

Missouri	29,028	1,968	6.80%	3,238	60	1.90%
Montana	2,345	83	3.50%			
Nebraska	5,018	589	11.70%	438	9	2.10%
New Jersey	17,027	1,316	7.70%	722	54	7.50%
New York	50,189	4,410	8.80%	2,432	88	3.60%
North Carolina	35,228	1,476	4.20%	2,811	41	1.50%
North Dakota	1,582	53	3.40%	218	1	0.50%
Ohio	46,115	1,363	3.00%	4,133	11	0.30%
Oklahoma	24,722	1,519	6.10%	2,928	33	1.10%
Oregon	13,451	609	4.50%	1,273	21	1.60%
Pennsylvania	47,551	1,701	3.60%	2,798	15	0.50%
South Carolina	19,575	1,045	5.30%	1,403	23	1.60%
South Dakota	3,132	101	3.20%	394	5	1.30%
Tennessee	18,630	1,716	9.20%	1,465	52	3.50%
Texas	135,580	5,726	4.20%	12,785	106	0.80%
Utah	5,960	852	14.30%	537	60	11.20%
Virgin Islands	324	95	29.30%	15	1	6.70%
Virginia	28,059	824	2.90%	2,353	30	1.30%
Washington	15,172	273	1.80%	1,136	1	0.10%
Wisconsin	19,221	692	3.60%	1,313	59	4.50%
Wyoming	1,877	121	6.40%	251	10	4.00%
BOP	177,451	8,827	5.00%	11,730	115	1.00%
Across Jurisdictions	1,180,821	59,049	5.00%	83,749	1,458	1.70%

Source: ASCA-Liman Report (2016), “Number and Percentage of Male Custodial Population in Restricted Housing (n=43),” and “Number and Percentage of Female Custodial Population in Restricted Housing (n=40).”

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Fighting Solitary Confinement in the Courts: 30 Years of Struggle in Massachusetts

Phillip Kassel

Mental Health Legal Advisors Committee

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MHLAC?

- Created by legislature in 1973;
- Focus on Civil Commitment back then;
- Work now mostly in communities.

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Why Prison Law?

- Prisons the new mental hospitals;
- Most vulnerable clients are there;
- They suffer profoundly;
- “Intersectionality” priority.

What is Solitary Confinement (or “segregation”)?

- Common characteristics:
 - Persistent cell confinement:
 - one hour out of cell – 5 days week
 - Denial of property –
 - radio; even books;
 - no or limited access to institutional canteen
 - No programming – no EGT – longer prisoner sentence.

Impact of Solitary Confinement

- MA SJC quoted Stuart Grassian in *Haverty*:
- “[P]rolonged solitary confinement is highly toxic to psychological functioning. Inmates go into a kind of stupor, and some even become actively psychotic, agitated and paranoid. Difficulties with concentration and memory, and even overt confusional symptoms, are quite common. Intense anxiety, agitation, and panic attacks occur frequently. Many inmates become overtly paranoid—fearful and preoccupied with the ominous significance of every noise he hears and every shadow that passes his cell. Some inmates become unable to form any coherent string of thoughts; others become progressively, and obsessively, preoccupied with a particular thought or fear, entirely unable to quiet the thought or pay attention to anything else. Many inmates develop severe perceptual disturbances, including perceptual distortions and overt hallucinations.”

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Chief Legal Theories in MA Cases Challenging Solitary

- Due Process
- 8th Amendment and ADA



Due Process

- 1988: *Hoffer* decision: Embraces “Dignitary values;”
- DSU regulations;
- Avoidance by pretextual naming.



Liberty Interest

- 2002: *Haverty* – regulations are “constitutionally required;”
- Subsequent cases – the chase continues.



8th Amendment/ADA

- *Disability Law Center* case;
- Consent decree:
 - Prisoners w/ SMI may not be placed in solitary;
 - STUs;
 - Considerable out-of-cell time.



Effort to Create Reform in Jails

- ½ of all MA prisoners in jails
- Some are as bad as prisons or worse
- Abuse of solitary confinement
- No litigation impacts jails

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The envelope please . . .

- Selection process;
- The “winner” – Bristol County;
- Sheriff Thomas Hodgson.



3-year Investigation

- Stay long periods in seg;
- Pre-segregation – bad practices:
 - Screening;
 - Evaluation;
 - Diagnosis;
 - Medication.



Absurd Discipline

- Infractions;
- Piling on;
- Disciplinary process: mental illness doesn't matter.



“Treatment” in Seg

- Walk on by;
- “Do you want to kill yourself?”
- Don’t say “yes;”
- Suicide rate.



Battle v. Bristol County

- Chief contentions:
 - Failure to identify;
 - Failure to treat:
 - Before seg;
 - In seg.
- Early victories;
- Negotiation.



The MA Criminal Justice Reform Act

- Covers a range of issues (juvenile justice; bail; mandatory minimums, others)
- Solitary confinement:
 - Prohibited for SMI and PC (but exceptions will swallow rule);
 - Conditions (food/canteen/radio or TV);
 - Placement reviews
 - Secure treatment units;
 - Oversight commission.

Parole reform?

- *Crowell* case – ADA requirements;
- “Where the board is aware that a mental disability may affect a prisoner's ability to prepare an appropriate release plan in advance of a parole hearing, the board should make reasonable modifications to its policy, for example, by providing an expert or other assistance to help the prisoner identify appropriate post release programming.”

Cases: Due Process

- *Hoffer v. Fair* (available upon request) (prisoners have a liberty interest under the MA constitution in avoiding long-term administrative segregation – mandates “DSU regulations);
- *Haverty v. Commissioner*, 437 Mass. 737 (2002) (affirms DSU regulations, which are “constitutionally required”);
- *LaChance v. Commissioner*, 463 Mass. 767 (2012) (sets 60 day cap on administrative segregation before due process applies under federal law);
- *Cantell v. Commissioner*, 475 Mass. 745 (2016) (reaffirms *Haverty*).



Cases: 8th Amendment/ADA

- *Disability Law Center v. Mass. DOC*: settlement agreement at <https://www.clearinghouse.net/chDocs/public/PC-MA-0026-0004.pdf>
- *Battle v. Hodgson* (Expert affidavit and class certification memorandum posted).

Statutory Reform and Parole

- Summary of CJRA provisions on solitary confinement: <https://willbrownsberger.com/solitary-confinement-in-the-criminal-justice-package/>
- *Crowell v. Mass. Parole Board*, 477 Mass. 106 (2017) (Parole Board has obligation under the ADA to assist parole-eligible persons to devise plan for release).

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Making the Case for Alternatives to Solitary Confinement

Ron Honberg, J.D.
Senior Policy Advisor, NAMI

Consider What Solitary Confinement Is

- Cells 7 or 8 feet by 10 feet in size.
- People held in these cells for 22.5 to 24 hours per day.
- No group activities or congregating with others.
- Few activities or programs.
- No or very limited visitors.
- Some people are held in these conditions for months or years at a time.



Solitary Confinement: Effects on Individuals

- Prolonged solitary causes or worsens psychiatric symptoms.
- Worsening symptoms often cause behaviors that result in new criminal charges, longer sentences (A vicious cycle)
- Increases in self mutilation, other forms of self harm, suicides.
- Leave people wholly unprepared to transition into general population or into community.



Solitary Confinement: Effects on Correctional Systems

- Very expensive (more staff resources, etc.).
- Increases in safety and security concerns due to worsening symptoms.
- Leaves people entirely unprepared to reenter communities, thereby increasing re-offenses and recidivism.
- Increases liability and litigation costs for correctional systems.



Solitary Confinement: Examples of State Reforms

- **Colorado**
 - Solitary limited to “serious infractions.”
 - Solitary eliminated altogether for people with severe mental illness.
- **Maine**
 - Fewer people sent to solitary.
 - People spend less time in solitary.
 - Better conditions within solitary units and cells.
 - More access to care/services to prevent deterioration of MH deterioration.
 - Clear path out of solitary.



Alternatives to solitary confinement

- For low level and non-violent offenders, diversion and alternatives to incarceration.
- Specialized mental health treatment units.
 - Treatment and rehabilitation, minimal isolation, interactions with others, movement, recreation, and education.
- CIT and de-escalation training for correctional officers.
- Specialized parole and probation, F-ACT teams, intensive case management, supportive housing, etc. upon release.

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“The human toll wrought by extended terms of isolation long has been understood and questioned by writers and commentators.”

Justice Anthony Kennedy, *Davis v. Ayala*, 135 S. Ct. 2187 (2015).

“The more people are put in solitary, the more people will end up acting in ways that require segregation.”

Leann Bertsch, Director, Dakota Department of Corrections and Rehabilitation

Additional Resources

- ACLU Prison Project, “Stop Solitary Advocacy Tools,” <https://www.aclu.org/other/stop-solitary-advocacy-campaign-tools>
- Solitary Watch, web based resources on solitary confinement and its effect on people with mental illness, <https://solitarywatch.org/>
- Liman Center for Public Interest Law, Yale University, numerous resources and reports on solitary confinement/administrative segregation, <https://law.yale.edu/centers-workshops/arthur-liman-center-public-interest-law/liman-center-publications>
- National Religious Campaign Against Torture (NRCAT), coalition of religious groups working on solitary confinement reforms, <http://www.nrcat.org>



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