U.S. Department of Justice
Report and Recommendations
Concerning the Use of Restrictive Housing

GUIDING PRINCIPLES

January 2016

Guiding Principles

The U.S. Department of Justice's *Report and Recommendations Concerning the Use of Restrictive Housing* includes a series of "Guiding Principles," which are intended as best practices for correctional facilities within the American criminal justice system.[1] (*See pp. 94-103.*) These aspirational principles should serve as a roadmap for correctional systems seeking direction on future reforms. When a correctional system possesses the resources, staffing, and legal authority to fully implement these principles, it should do so. When a correctional system lacks the resources, staffing, or legal authority, it should develop a clear plan for building the necessary capacity and then proceed expeditiously toward that goal. Officials at prisons and jails should work with policymakers, correctional officer labor unions, advocacy organizations, and other stakeholders to develop responsible and humane restrictive housing policies that both protect inmates and enhance officer safety.

Restrictive Housing, Generally

1. Inmates should be housed in the least restrictive setting necessary to ensure their own safety, as well as the safety of staff, other inmates, and the public.

2. Correctional systems should always be able to clearly articulate the specific reason(s) for an inmate's placement and retention in restrictive housing. The reason(s) should be supported by objective evidence. Inmates should remain in restrictive housing for no longer than necessary to address the specific reason(s) for placement.

3. Restrictive housing should always serve a specific penological purpose. When drafting or implementing policy authorizing the use of restrictive housing, correctional systems should

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[1] These Guiding Principles do not have the force of law and do not create or confer any rights, privileges, or benefits to past, current, or future inmates or detainees housed by federal, state, or local correctional or detention systems, including the Federal Bureau of Prisons. The Guiding Principles were developed for correctional systems that detain or incarcerate inmates in connection with criminal proceedings in civilian courts. Other correctional or detention systems may wish to review these Guiding Principles to determine which are applicable to their unique circumstances and to make appropriate changes accordingly.

Both implementation and application of these Guiding Principles involve the exercise of judgment of relevant Department officials, including those at the Federal Bureau of Prisons and the U.S. Marshals Service. Nothing in these Guiding Principles should be construed to limit the authority of the Attorney General to impose Special Administrative Measures pursuant to 28 C.F.R. §§ 501.2-501.3. Nor should they be construed to limit the Department's ability to implement administrative detention for any inmate or detainee as imposed by the Attorney General pursuant to 28 C.F.R. §§ 501.2(a) or 501.3(a), or as needed to implement any Special Administrative Measure or any court order issued pursuant to 18 U.S.C. § 3582(d).

clearly articulate the purpose(s) for employing restrictive housing in the authorized circumstances.

4. An inmate's initial and ongoing placement in restrictive housing should be regularly reviewed by a multi-disciplinary staff committee, which should include not only the leadership of the institution where the inmate is housed, but also medical and mental health professionals.

5. For every inmate in restrictive housing, correctional staff should develop a clear plan for returning the inmate to less restrictive conditions as promptly as possible. This plan should be shared with the inmate, unless doing so would jeopardize the safety of the inmate, staff, other inmates, or the public.

6. All correctional staff should be regularly trained on restrictive housing policies. Correctional systems should ensure that compliance with restrictive housing policies is reflected in employee-evaluation systems.

7. Correctional systems should establish standing committees, consisting of high-level correctional officials, to regularly evaluate existing restrictive housing policies and develop safe and effective alternatives to restrictive housing.

End-of-Term Placement

8. Absent a compelling reason, prison inmates should not be released directly from restrictive housing to the community.

9. During the final 180 days of an inmate's term of incarceration, officials should avoid placing the inmate in involuntary restrictive housing. If an inmate is housed in involuntary segregation 180 days out from the end of his or her sentence, officials should consider releasing the inmate to a less restrictive setting if this can be done without endangering the safety of the inmate, staff, other inmates, or the public. If segregation becomes necessary during this time, officials should provide targeted re-entry programming to prepare the prisoner for his or her return to the community.

Disciplinary Segregation

10. Correctional systems should develop clear, specific policies for determining under what conditions an inmate can be placed in segregation in response to an alleged disciplinary violation—both during the investigative stage and after an adjudication of guilt—as discussed below.

11. Correctional systems should work with prosecutors and other law enforcement officials to ensure that inmates who engage in serious criminal activity while incarcerated—especially those who assault or kill correctional staff—face criminal prosecution when appropriate.

Pre-Adjudication (Investigative Segregation)

12. An inmate should not be placed in restrictive housing pending investigation of a disciplinary offense unless the inmate's presence in general population would pose a danger to the inmate, staff, other inmates, or the public. In making this determination, officials should consider the seriousness of the alleged offense, including whether the offense involved violence, involved escape, or posed a threat to institutional safety by encouraging others to engage in such misconduct. Policy and training should be crafted carefully to ensure that this principle is not interpreted overly broadly to permit the imposition of restrictive housing for infrequent, lower-level misconduct.

13. Except in emergency situations, an inmate should not be initially placed in investigative segregation without prior approval by a supervisory official. This supervisor should carefully scrutinize the proposed placement to determine whether segregation is necessary at this stage.

14. An inmate's initial placement in investigative segregation should be reviewed within 24 hours by an appropriate, high-level authority who was not involved in the initial placement decision.

15. Correctional staff should complete their disciplinary investigation as expeditiously as possible. Any time that an inmate spends in investigative segregation should be credited towards the term he or she ultimately serves in disciplinary segregation for that offense. Absent compelling circumstances, such as a pending criminal investigation, an inmate should not remain in investigative segregation for a longer period of time than the maximum term of disciplinary segregation permitted for the most serious offense charged.

16. An inmate who demonstrates good behavior during investigative segregation should be considered for release to the general population while awaiting his or her disciplinary hearing. Similarly, if an inmate is ultimately adjudicated guilty, the inmate's good behavior should be given consideration when determining the appropriate penalty.

Post-Adjudication (Disciplinary Segregation)

17. Inmates who violate disciplinary rules should be placed in restrictive housing only as necessary, and only after officials have concluded that other available sanctions are insufficient to serve the purposes of punishment.

18. Disciplinary sanctions, regardless of whether they involve a period of segregation, should be applied in a manner that is swift, certain, and fair.

19. Correctional systems should establish maximum penalties for each level of offense. These penalties should always include alternatives to disciplinary segregation. The maximum penalties should be graded based on the seriousness of the offense. If used for punishment, restrictive housing should be reserved for offenses involving violence, involving escape, or posing a threat to institutional safety by encouraging others to engage in such misconduct. Policy and training should be crafted carefully to ensure that this principle is not interpreted overly broadly to permit the imposition of restrictive housing for infrequent, lower-level misconduct.

20. An inmate should be sentenced to a term of disciplinary segregation only after officials conduct a disciplinary hearing and the inmate is adjudicated guilty of the alleged violation. The hearing should be conducted by a correctional official outside the regular chain of command at the institution where the inmate is housed.

21. When a disciplinary hearing officer is confronted with an inmate who demonstrates symptoms of mental illness, the officer should refer the inmate to a qualified mental health professional to provide input as to the inmate's competence to participate in the disciplinary hearing, any impact the inmate's mental illness may have had on his or her responsibility for the charged behavior, and information about any known mitigating factors in regard to the behavior. The disciplinary hearing officer should also consult a mental health professional, preferably the treating clinician, as to whether certain types of sanctions, (*e.g.*, placement in disciplinary segregation, loss of visits, or loss of phone calls) may be inappropriate because they would interfere with supports that are a part of the inmate's treatment or recovery plan. Disciplinary hearing officers should take the psychologist's findings into account when deciding what if any sanctions to impose.

22. Ordinarily, disciplinary sentences for offenses that arise out of the same episode should be served concurrently.

23. To incentivize conduct that furthers institutional safety and security, inmates who demonstrate good behavior during disciplinary segregation should be given consideration for early release from segregation, where appropriate.

Protective Custody

24. Generally, inmates who require protective custody should not be placed in restrictive housing.

25. When an inmate faces a legitimate threat from other inmates, correctional officials should seek alternative housing, by transferring the threatened inmate either to the general population of another institution or to a special-purpose housing unit for inmates who face similar threats, with conditions comparable to those of general population. There are two exceptions to this general principle:

    a. When the inmate poses such extraordinary security risks that even a special-purpose housing unit is insufficient to ensure the inmate's safety and the safety of staff, other inmates, and the public. In such cases, the inmate may be housed in more restrictive conditions. The inmate's placement should be regularly reviewed to monitor any medical or mental health deterioration and to determine whether the extraordinary security risks have subsided.

    b. During a brief investigative period while correctional staff attempt to verify the need for protective custody or while the inmate is awaiting transfer to another facility.

26. When transferring an inmate to another institution for protective custody reasons, correctional officials should give consideration to an inmate's release residence, including a desire to be housed close to family.

27. Correctional systems should identify the most common reasons that inmates request protective custody (*e.g.*, prior cooperation with law enforcement, conviction for sex offense, gang affiliation, sex or gender identification) and develop strategies for safely housing these inmates outside traditional restrictive housing units.

Preventative Segregation

28. Inmates should not be placed in long-term preventative segregation unless correctional officials conclude, based on evidence, that no other form of housing will ensure the inmate's safety and the safety of staff, other inmates, and the public. This determination should be guided by clearly articulated procedural protections, including the use of a multidisciplinary review team.

29. Officials should regularly review those in preventative segregation with the goal of transitioning inmates back to less restrictive housing as soon as it is safe to do so.

30. Inmates in preventative segregation should be given the opportunity to participate in incentive or step-down programs that allow them to progress to less restrictive housing.

Conditions of Confinement

31. Correctional systems should seek ways to increase the minimum amount of time that inmates in restrictive housing spend outside their cells and to offer enhanced in-cell opportunities. Out-of-cell time should include opportunities for recreation, education, clinically appropriate treatment therapies, skill-building, and social interaction with staff and other inmates.

32. As correctional systems reduce the number of inmates in restrictive housing, they should devote resources towards improving the conditions of those remaining in segregation. In particular, correctional systems should take advantage of lower staff-to-inmate ratios within restrictive housing units by providing the remaining inmates with increased out-of-cell time.

33. Correctional systems should provide out-of-cell, confidential psychological assessments and visits for inmates whenever possible, to ensure patient privacy and to eliminate barriers to treatment.

34. Restrictive housing units should maintain adequate conditions for environmental, health, and fire safety.

35. The denial of basic human needs—such as food and water—should not be used as punishment, whether alone or in conjunction with the use of restrictive housing.

Inmates with Serious Mental Illness

36. Generally, inmates with serious mental illness (SMI) should not be placed in restrictive housing.

37. An inmate with SMI should not be placed in restrictive housing, unless:

    a. The inmate presents such an immediate and serious danger that there is no reasonable alternative;[2] or

    b. A qualified mental health practitioner determines:

        i. That such placement is not contraindicated;[3]

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[2] "Immediate and serious danger" might arise during an emergency, such as a large-scale prison riot, but would only last as long as emergency conditions are present. "Immediate and serious danger" also includes the "extraordinary security needs" described in Institution Supplement FLM 5310.16A, Treatment and Care of Inmates with Mental Illness, dated July 22, 2015. *See* DOJ Report, at 51 n.25.

ii. That the inmate is not a suicide risk;

iii. That the inmate does not have active psychotic symptoms; and

iv. In disciplinary circumstances, that lack of responsibility for the misconduct due to mental illness or mitigating factors related to the mental illness do not contraindicate disciplinary segregation.

38. Inmates with SMI who are diverted from restrictive housing should be placed in a clinically appropriate alternative form of housing, such as a secure mental health unit or other residential psychology treatment program.

39. If an inmate with SMI is placed in restrictive housing:

a. Mental health staff should conduct a mental health consultation at the time of the inmate's placement in restrictive housing;

b. The inmate should receive intensive, clinically appropriate mental health treatment for the entirety of the inmate's placement in restrictive housing;

c. The inmate should receive enhanced opportunities for in-cell and out-of-cell therapeutic activities and additional unstructured out-of-cell time, to the extent such activities can be conducted while ensuring the safety of the inmate, staff, other inmates, and the public;

d. At least once per week, a multidisciplinary committee of correctional officials should review the inmate's placement in restrictive housing;

e. At least once per week, a qualified mental health practitioner, assigned to supervise mental health treatment in the restrictive housing unit, should conduct face-to-face clinical contact with the inmate, to monitor the inmate's mental health status and identify signs of deterioration; and

f. After 30 days in restrictive housing, the inmate should be removed from restrictive housing, unless the warden of the facility certifies that transferring the inmate to an alternative housing is clearly inappropriate.[4] In making this determination, the

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[3] A qualified mental health practitioner might conclude that placement in restrictive housing is not contradicted, when, for example, the practitioner determines that the inmate is stable, responding well to medication, unlikely to remain in restrictive housing for more than a short period of time, and likely to decompensate if transferred away from the inmate's current mental health treatment team.

[4] In determining the appropriateness of the inmate's continuing placement, wardens should be guided by the principles outlined above regarding the placement of inmates with SMI in restrictive housing.

warden should consult with mental health staff, who should conduct a psychological evaluation of the inmate beforehand.

40. Inmates in restrictive housing should be screened for signs of SMI. Correctional systems should implement policies, procedures, and practices to ensure that:

    a. Prior to an inmate's placement in restrictive housing (or when that is infeasible, as soon as possible and no later than within 24 hours of placement), staff can promptly determine whether the inmate has been previously designated as seriously mentally ill or at risk of developing SMI;[5]

    b. Multiple times per day, correctional officers, trained in identifying signs of mental health decompensation, conduct rounds of the restrictive housing unit;

    c. At least once per day, medical staff conduct medical rounds of the restrictive housing unit;

    d. After 30 days in restrictive housing, and every 30 days thereafter, all inmates in restrictive housing receive a face-to-face psychological review by mental health staff; and

    e. If at any point an inmate shows signs of psychological deterioration while in restrictive housing, the inmate should be immediately evaluated by mental health staff. At the conclusion of this review, mental health staff should recommend whether the inmate requires immediate transfer to a medical facility or other treatment center, as well as whether the inmate should receive enhanced mental health services and/or should be referred to a clinically appropriate alternative form of housing.

Juveniles (Under 18 at Time of Adjudication)

41. Juveniles should not be placed in restrictive housing.

42. In very rare situations, a juvenile may be separated from others as a temporary response to behavior that poses a serious and immediate risk of physical harm to any person. Even in such cases, the placement should be brief, designed as a "cool down" period, and done only in consultation with a mental health professional.

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[5] A correctional system could make this determination by, for example, creating an index, or "hot list," of inmates previously designed as seriously mentally ill. When a correctional system lacks this capacity, staff should conduct a psychological review of the inmate at the time of placement to make this determination.

Young Adults (Age 18-24 at Time of Conviction)

43. All correctional staff should receive training on young adult brain development, and appropriate de-escalation tactics. Training should incorporate reliable, evidence-based science.

44. Correctional systems should incorporate developmentally responsive policies and practices for young adults, and as resources allow, implement modified therapeutic housing communities with wrap-around programming in order to reduce the number of incidents that result in placement in restrictive housing.

45. Correctional officials should strive to limit the use of restrictive housing whenever possible, and to the extent used, to limit the length of inmates' stay and to identify services—including group educational and therapeutic services—that they can safely participate in while in restrictive housing.

Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI) and Gender Nonconforming Inmates

46. Inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations should not be placed in restrictive housing solely on the basis of such identification or status.

47. When an inmate who is LGBTI or a gender nonconforming inmate faces a legitimate threat from other inmates, correctional officials should seek alternative housing, with conditions comparable to those of general population to the extent possible.

48. Correctional officials can sometimes avoid the unnecessary use of restrictive housing for protective custody reasons by making different classification assignments. In deciding whether to assign a transgender or intersex inmate to a facility or program for male or female inmates, correctional officers must consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, giving serious consideration to the inmate's own views.

Pregnant and Post-Partum Inmates

49. Women who are pregnant, who are post-partum, who recently had a miscarriage, or who recently had a terminated pregnancy should not be placed in restrictive housing.

50. In very rare situations, a woman who is pregnant, is postpartum, recently had a miscarriage, or recently had a terminated pregnancy may be placed in restrictive housing as a temporary response to behavior that poses a serious and immediate risk of physical

harm. Even in such cases, this decision must be approved by the agency's senior official overseeing women's programs and services, in consultation with senior officials in health services, and must be reviewed every 24 hours.

Inmates with Medical Needs

51. All inmates in restrictive housing should have access to appropriate medical care, including emergency medical care.

52. When an institution lacks the capacity to provide appropriate medical care to an inmate in restrictive housing, that inmate should be transferred to an appropriate facility where he or she can receive necessary treatment.

Data Collection & Transparency

53. Prison systems should collect data about several aspects of their use of restrictive housing:

    a. System-wide data. This data should describe the incidence and prevalence of restrictive housing, including the total number of inmates in each type of restrictive housing, restrictive housing recidivism rates, and the average length of stay. This information should be publicly available on corrections websites. It should include demographic information for inmates, including race, national origin, religion, gender, gender identity, sexual orientation, disability status, and age, to the extent that the collection and publication of such information complies with all applicable laws.

    b. Inmate-level data. This data should allow correctional systems to track individual inmates throughout their incarceration. This will allow facilities to determine whether, how often, and how long a particular inmate has been placed in segregation, including as the inmate changes status (*i.e.*, from investigative segregation to disciplinary segregation). This information should be available to correctional officers, to the extent consistent with applicable law, as a way to identify strategies to treat disruptive inmates, and should not be released publicly.

    c. Officer data. Correctional systems should consider implementation of an early intervention system, a management tool that promotes supervisory awareness and helps officials identify trends, revise policy as needed, and deploy additional training where necessary. This information should not be released publicly.