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States examine policies, conditions for solitary confinement in prisons

Several states have made changes in recent years to policies and procedures for holding prison inmates in solitary confinement, such as modifying living conditions in solitary and limiting its use. Some changes were a response to lawsuits and concerns about the ability of those released from solitary to function safely in prison and in communities and about the physical and psychological effects of solitary confinement on inmates. Texas lawmakers may discuss similar policies during the state's 2017 legislative session.

Some states have limited the use of solitary confinement or modified living conditions in solitary confinement housing. California and New York, for example, are making changes under recent agreements reached in class action lawsuits in those states. The federal government is examining solitary confinement and has barred its use for juvenile inmates.

In Texas, many proposals could be adopted through agency policy, but legislative changes also may be considered. Potential changes to solitary confinement include limiting the length of terms in solitary, setting a minimum age for placement in solitary, excluding those with mental illness from being placed in solitary, and prohibiting the use of solitary confinement solely for affiliation with prison gangs. Other proposals include requiring more activities for those housed in solitary and creating a type of housing that falls between general population and solitary confinement.

Debate on these proposals centers on cost, safety in prisons and the community, and whether solitary confinement is implemented in ways that violate constitutional bans on cruel and unusual punishment.

Changes to use of solitary in other states

Debate about the use of solitary confinement has prompted states to examine their policies, with several making changes in recent years.

California lawsuit settlement. California recently agreed to changes to its solitary confinement policies and practices as part of a settlement agreement in a class action lawsuit brought against the state on behalf of a group of inmates. The inmates alleged that solitary confinement conditions in one California prison violated the U.S. Constitution's Eighth Amendment prohibition against cruel and unusual punishment due to the harmful psychological and physical consequences of prolonged isolation. They also said certain regulations and policies violated the 14th Amendment's due process clause. The agreement was reached in September 2015 and approved by the court in January 2016.

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Mental health issues in jails considered

In the wake of recent high-profile jail suicides in the state, the Texas House and Senate are studying mental health issues and regulation of county jails this interim. Both chambers have heard proposals that could lead to legislation in the next legislative session.

According to the Texas Commission on Jail Standards, 33 people died by suicide in county custody in 2015, including Sandra Bland, whose death at the Waller County jail led to protests earlier that year. Suicides constituted one-third of total county jail deaths in 2015.

The House Committee on County Affairs held a hearing in November to discuss recent jail suicides and a new intake form to be used by county

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Its provisions include:

- prohibiting placement into solitary solely based on gang affiliation and requiring that gang members be sent to solitary only for the same violations as non-gang members and for the same predetermined length of time as other inmates;
- use of a step-down program to transition gang members to the general population;
- requiring the state to review current gang members in solitary to determine if they should be released into the general population or placed into a step-down program; and
- creating a non-solitary, high security, and restricted custody general population housing unit as another housing option.

New York lawsuit settlement. In December 2015, the state of New York agreed as part of a lawsuit settlement to changes in its use of solitary confinement. The agreement establishes maximum terms in solitary of three months for many disciplinary violations, reduces the number of violations that can result in solitary confinement, and limits use of solitary for certain first-time violations. The agreement could receive court approval this spring.

The 2015 agreement followed a previous agreement reached in 2014 that restricted the use of solitary confinement for juveniles and pregnant inmates and for offenders with developmental disabilities. Some provisions in that agreement applied to all offenders, including guidelines for maximum lengths for terms in solitary. In 2015, New York City also changed its policies to limit the use of solitary confinement.

Federal review

The U.S. Department of Justice (DOJ) recently examined the use of solitary confinement and issued findings in January. The DOJ concluded that while there may be occasions when inmates need to be segregated from the general population, the use of "restrictive housing" — which includes solitary — should be done rarely, applied fairly, and be subject to reasonable constraints. The report included 50 guiding principles for restrictive housing, including housing inmates in the least restrictive setting necessary to ensure their safety and the safety of others, not releasing inmates directly from restrictive housing to the street, and seeking to increase the minimum time inmates in solitary spend outside their cells. Federal agencies were required to review the DOJ's findings and principles and report on their plans to address their use of solitary confinement. The DOJ reports that some proposals will be implemented soon for the about 10,000 federal offenders currently in solitary, while others will require additional resources or planning.

A proposed law in the current session of Congress would restrict the use of solitary confinement for juveniles in the federal criminal justice system and give preferences to certain grant applications from states with similar policies. The bill, S. 675, sponsored by Sen. Rand Paul (R-Kentucky) and Sen. Cory Booker (D-New Jersey), has been referred to the Senate Committee on the Judiciary.

Although the U.S. Supreme Court has not ruled on solitary confinement during the recent round of state policy changes, Supreme Court Justice Anthony Kennedy in an October 2014 concurrence in *Davis v. Ayala*, a case unrelated to the issue, wrote that consideration of issues presented by solitary confinement is needed.

Solitary confinement in Texas

In Texas, solitary confinement has been discussed in the past two legislative sessions and is part of broader interim studies being conducted by House and Senate criminal justice committees for the 85th legislative session in 2017. Recently, the House Corrections Committee discussed its charge to study the Texas Department of Criminal Justice's (TDCJ's) inmate release policies, including releases of offenders to the community directly from administrative segregation, the name given to solitary confinement in TDCJ. In 2012, the Senate Criminal Justice Committee conducted an interim study on the use of administrative segregation for the 83rd Legislature.

At the end of December 2015, Texas held 5,046 offenders in solitary confinement, about 3.4 percent of those incarcerated by TDCJ. This is a drop from 5,553 offenders in administrative segregation at the end of fiscal 2015, 6,564 at the end of fiscal 2014, and 9,542 at the end of fiscal 2006.

Under TDCJ policy, offenders are housed in administrative segregation because they have committed

assaults or other serious disciplinary offenses while in prison or because they are members of one of the 12 gangs that TDCJ labels "security threat groups." The agency reports that it uses multiple indicators to determine if an offender is in a security threat group, including tattoos, interviews, contraband, correspondence, and telephone calls. Multiple reviewers must agree with the determination that an offender is a member of a security threat group. At the end of fiscal 2015, about 54 percent of those in administrative segregation had been sent there for membership in a security threat group.

Housing and length of stay. Offenders in administrative segregation are housed one person to a cell. They generally are allowed one hour per day outside of their cells for recreation in individual, adjacent areas that allow sight and sound contact with others.

Offenders in administrative segregation may not work or attend education classes, programs, or group religious services. They are not allowed televisions but may buy radios through the commissary and have books brought to their cells. Offenders may take correspondence courses, but a rider in the general appropriations act prohibits TDCJ from providing them with in-cell tutoring.

Offenders in administrative segregation may see visitors during one two-hour visit per weekend. Visits are conducted through a divider and by using a phone, and contact visits are not allowed.

The length of a stay in administrative segregation is not pre-set but determined by an offender's behavior in solitary. Under TDCJ's policies, placement is reviewed monthly by agency staff who work at the prison and twice a year by staff assigned to the agency's central office. Offenders released from administrative segregation in fiscal 2015 had been housed in solitary for an average of 3.6 years, according to TDCJ. At the end of 2015, the inmate serving the longest time in administrative segregation had been there for 30 years. During fiscal 2015, 234 inmates served less than one month in administrative segregation.

Once moved to solitary, offenders can remain there until their full sentence is served. In these cases, inmates are released directly from administrative segregation to the community. In fiscal 2006, 1,539 offenders were released this way. In fiscal 2015, the number of direct releases to the community was 981, and according to TDCJ, the number is continuing to drop.

Transition and diversion programs. TDCJ operates several programs to transition inmates from administrative segregation to the general population or to divert offenders from such placement. Many of the programs have been developed in the past four years. The agency projects that the administrative segregation population will continue to decrease because of these programs, and that beginning this fiscal year, few offenders will be released directly from administrative segregation to the community.

Transition to general population. TDCJ operates two programs that each has a goal of preparing inmates to move from administrative segregation to the general offender population. Both operate in a classroom setting and allow group recreation.

The Gang Renouncement and Disassociation (GRAD) program works with members of security threat groups so they can disassociate from their gangs and return to the general offender population. About 4,520 offenders have been released from administrative segregation after going through the GRAD program as of the end of fiscal 2015. In fiscal 2015, 350 offenders completed the program and moved into the general offender population.

In 2014, TDCJ began its four-month Administrative Segregation Transition Program to help offenders transition from administrative segregation to the general population. Almost 280 offenders completed it in fiscal 2015.

Transition to the community. TDCJ operates two programs to help offenders move from administrative segregation directly to the community. The Corrective Intervention Pre-release Program is a three-month program to prepare inmates for release into the community. In fiscal 2015, 500 offenders completed it. The Serious and Violent Offender Reentry Initiative is a seven-month program that includes a post-release portion after offenders have left TDCJ. In fiscal 2015, 79 offenders completed the program. Both programs have group treatment and recreation.

Diversion from administrative segregation. In summer 2014, TDCJ began two programs offering alternatives to placement in administrative segregation. One is for security threat group members returning to prison and places offenders directly in the six-month program when they are sent to TDCJ. Another program is for certain mentally ill inmates and includes individual and group therapy.

Proposals for limits or changes

Proposals to change how states use solitary confinement often are directed either at limiting its use or changing its structure. Proposals to limit its use include:

- limiting the time an offender can serve in solitary;
- excluding those with mental illness from solitary confinement;
- setting a minimum age for those sent to solitary; and
- prohibiting the use of gang affiliation as a sole reason for solitary.

Other proposals would address how solitary confinement is structured, including requiring more activities for those housed there and creating a type of high-security housing between administrative segregation and the general population.

Legislation in the 84th Legislature. The 84th Legislature in 2015 considered several bills addressing administrative segregation, but only one was enacted. HB 1083 by Márquez requires TDCJ to perform a mental health assessment on inmates before they may be confined in administrative segregation. TDCJ may not confine an inmate in administrative segregation if the assessment indicates that it would not be appropriate for the inmate's medical or mental health. TDCJ reports that its practices comply with the requirements in the bill.

HB 1084 by Márquez would have required TDCJ to develop a plan to reduce use of administrative segregation. The plan would have had to include for some offenders in solitary more time out of their cells and a chance to participate in programs in their cells and to exercise with the general population. TDCJ would have had to report annually on inmates in administrative segregation, including the number of inmates, average lengths of stay, reasons for placements, and recidivism rates. HB 1084 was placed on the General State Calendar but not considered.

Two bills on administrative segregation died in the Senate Criminal Justice Committee. Both SB 890 and SB 891 by Rodríguez would have limited use of administrative segregation for inmates with mental illness and would have required TDCJ to create a step-down program for certain inmates who otherwise would be released directly to the community. SB 891 also would have limited confinement in solitary to 365 consecutive days unless, after a review, a longer stay was approved by TDCJ's executive director. It would have created a committee to study use of solitary and make recommendations.

Debate over limits on solitary. The debate about limiting the use of solitary confinement often centers on safety, costs, and whether solitary confinement is implemented in ways that violate prohibitions on cruel and unusual punishment due to its potential mental and physical effects on offenders. Supporters of making changes to Texas' current policies say that while solitary is necessary in some situations, it is being overused, and that the small number of short-term programs used by TDCJ do not go far enough to limit the use of administrative segregation and to reform the state's practices. Others say prisons should have the flexibility to use administrative segregation when needed and for as long as needed for inmates who are violent or dangerous to staff, other offenders, or themselves.

Safety. Supporters of establishing limits on the use of solitary confinement say that solitary should be used only when absolutely necessary for strictly limited amounts of time, and that its use for certain inmates, such as the mentally ill or the young, should be restricted. Those leaving solitary can have mental health or other issues and an inability to function safely in prison or the community, say supporters of limits on the use of solitary. Critics of establishing specific limits on solitary confinement say that in some situations isolating an inmate may be necessary and that no suitable alternative may be available. Restricting use of solitary could endanger correctional officers, other staff, and offenders, they say.

Cost. Holding inmates in solitary confinement is an inefficient use of taxpayer money, say supporters of establishing limits on its use. Others say that the costs of administrative segregation may be necessary and that eliminating it would result in marginal, if any, savings to the state.

Prohibition on cruel and unusual punishment. Those arguing for limits on the use of administrative segregation say it can be cruel and unusual punishment, resulting in severe negative psychiatric and physical consequences for offenders. Others counter that solitary confinement can be used in a way that does not run afoul of prohibitions on cruel and unusual punishment.

— by Kellie A. Dworaczyk

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jails to screen inmates for mental illness. The Senate Committee on Criminal Justice held a hearing in September on the enforcement of jail standards and how mental health services are provided in county jails and other correctional facilities. The Senate committee heard testimony on what happens when people with mental illness are arrested, while they are in jail, and after they leave the system.

State law and standards established by the Texas Commission on Jail Standards determine how county jails identify inmates with mental illness and provide procedures jails can follow to prevent suicide. The standards apply only to county jails, not city jails (see ***County jails and municipal lockups***, page 7). The 85th Legislature may consider in 2017 whether the standards and related laws should be revised. This article provides background on current measures in place at county jails and outlines proposals, many of which were discussed at recent hearings, to address mental health issues and prevent suicides in jails.

Intake and screening form

County jails currently screen for mental illness and suicide risk. In October, the Texas Commission on Jail Standards, which oversees county jails' compliance with the state's jail standards, issued a redesigned intake screening form to identify inmates at risk of suicide and those with a history of mental illness.

Texas Administrative Code, title 37, part 9, sec. 271.1 directs county jails to screen all inmates to identify medical, mental health, or other special needs that require placing inmates in special housing units. It allows those who require protection or separation to be separated from other inmates for the safety and security of the facility. Sec. 273.5(b) requires that county jails use an approved screening form for mental disabilities and suicide prevention. City jails, which are not subject to state standards, may use a different form.

The redesigned form includes questions intended to help jails better identify inmates with a history of mental illness and those at risk of suicide. It provides explicit direction to notify certain entities, such as mental health authorities, and to consider inmates to be at risk of suicide if they answer certain questions affirmatively. The previous form asked inmates to self-report mental illness and to indicate if they felt depressed or suicidal but did not instruct jailers how to respond.

Questions have been raised about whether the new form will be more effective than its predecessor. Some witnesses at the House County Affairs hearing testified that the new form could place too many inmates on suicide watch. Others said it would be better to over-identify inmates than fail to prevent a suicide. Witnesses at the Senate hearing said the form should screen inmates according to severity of suicide risk and direct jailers not to place certain inmates in solitary confinement because it may exacerbate their illness.

Proposals to address mental health issues in jails

Proposals to address mental health issues and suicide in jails include preventing individuals with a history of mental illness from entering or re-entering jail, expanding jail inspections to include city jails, increasing mental health training for jailers, and increasing access to mental health treatment for inmates in county jails.

Preventing jail entry. Proposals to prevent individuals with mental illness from entering jail include diverting arrestees into mental health or addiction treatment, releasing certain indigent criminal defendants with a mental illness on a personal bond as they wait for trial, or issuing tickets for low-level, nonviolent offenses, rather than making an arrest. Some of these policies already are allowed, but discretionary, under Texas law.

For certain misdemeanor offenses, peace officers have discretion under the Texas cite-and-summons law in the Code of Criminal Procedure, art. 14.06 to issue a citation and a summons to appear in court, rather than arresting and taking the suspect to jail. This procedure does not change the penalties that may be assessed.

Bexar County began a program in September to make it easier for certain indigent criminal defendants

with mental illness to be released quickly from jail on a personal bond before trial. It is designed to work within a framework of the Texas Code of Criminal Procedure that requires magistrates to release certain arrestees with mental illness on a personal bond unless good cause is shown to do otherwise. The program, partially funded by a state grant, helps provide an attorney soon after arrest to certain arrestees with mental illness who cannot afford to hire one. Under the program, arrestees released on personal bond must agree to supervision by the county, undergo a mental health assessment, and be assigned a mental health treatment plan. Bexar County is collecting data to measure changes in the number of arrestees diverted from jail to mental health treatment and will submit quarterly progress reports to the state.

Supporters of policies to prevent low-level, nonviolent offenders with mental illness from entering jail say they would reduce suicides in county jails and ease the burden on jails to provide mental health treatment. Critics say that while the policies have merit, some counties may not have an established framework for diverting offenders, such as releasing arrestees on a personal bond with supervision, and they caution that uniform policies may not account for local needs. In some cases, jail may be a more appropriate response than diversion, critics say.

Preventing jail re-entry. Proposals to prevent re-entry into jail of those with mental illness include ensuring former inmates have access to housing and mental health treatment after release and encouraging partnerships between jails and mental health authorities.

SB 1185 by Huffman, enacted in 2013 by the 83rd Legislature, directed the Department of State Health Services (DSHS) and the county judge to implement a jail diversion pilot program in Harris County to reduce recidivism and the frequency of arrest and incarceration among those with mental illness. The bill required the program to give persons with mental illness access to social, clinical, housing, and welfare services soon after they are released from jail and required local entities to coordinate in providing those services. State funding for the program is contingent on a match from the Harris County Commissioner's Court. It is funded from fiscal 2014 through fiscal 2017. The commissioner of DSHS must submit a report on the program's effectiveness by December 1, 2016.

The Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), part of the Texas Department of Criminal Justice, provides pre-release screening and referral to mental health treatment services for offenders leaving county jails. TCOOMMI mainly serves felony offenders but also some pre-trial arrestees and misdemeanor offenders.

The 2016-17 state budget includes a rider requiring DSHS to implement a mental health peer support re-entry program to ensure inmates with mental illness successfully transition from the county jail into clinically appropriate community-based care. DSHS selected three local mental health authorities serving Cameron, Harris, Hidalgo, Tarrant, and Willacy counties as pilot sites to implement the program, starting April 1.

Supporters of expanding state funding for housing programs and mental health and addiction treatment for former inmates say suicides could be avoided by preventing those with mental illness from committing offenses related to their addiction or mental illness and returning to jail. They say expanding state funding for these programs could save counties money in jail costs. Critics say that while these programs can be beneficial, local communities should step up to provide mental health services outside of jail and encourage personal responsibility in treating addiction before the state increases funding.

Inspecting jails. Local Government Code, ch. 351 prescribes minimum standards for county jails and requires each to comply with the minimum standards, rules, and procedures of the Texas Commission on Jail Standards. The commission's minimum standards, under 37 TAC, part 9, address matters ranging from inmate supervision, hygiene, housing, and meals to plans for supervising inmates with special needs.

The Texas Commission on Jail Standards, as directed by Government Code, ch. 511 and Local Government Code, ch. 351, conducts unannounced and staggered inspections of county jails annually and issues certificates of compliance or notices of noncompliance if a facility does not meet standards. After issuing a notice, the commission follows up to ensure noncompliance is corrected, and if not, the matter may be referred to the Office of the Attorney General for enforcement. The commission does not inspect city jails.

Some have proposed requiring that the Texas Commission on Jail Standards include city jails in inspections. Supporters say both city and county jails should be accountable to state standards on mental health protocols because suicides can occur in both types of jails. City jails should not be exempt simply because it would cost more to regulate them, supporters say. Critics of expanding inspections to city jails say that before jail standards are changed or inspections expanded to city jails, the Texas Commission on Jail Standards should use its limited resources to first ensure that county jails are consistently held to the existing protocols. They say the commission would have to increase staff to inspect city jails, which should be regulated locally. Critics say city jails generally hold arrestees for a shorter time than county jails and would incur significant construction and maintenance expenses to meet the same standards.

Mental health training. Occupations Code, sec. 1701.310 requires county jailers to complete preparatory jailer training, which is offered online, within one year of being employed. This training includes mental health and suicide prevention training, according to the Texas Commission on Law Enforcement. Further mental health training is available through the commission, including a supplemental course on how to use the intake screening form.

County jails and municipal lockups

Jail standards, set by the Texas Commission on Jail Standards, regulate county jails but not state correctional facilities or municipal jails. The commission's purview includes 243 county jails. In January 2016, the total county jail inmate population was 60,151. Municipal jails, also known as lockups, are regulated locally and range in size from large city jails to much smaller facilities that hold individuals after arrest. Lockups and county jails hold people waiting for trial and both misdemeanor and felony offenders. State prisons hold people convicted of first-, second-, and third-degree felonies and state jails those convicted of state-jail felonies.

One proposal would require further mental health training for county jailers and extend the requirements to city jailers. Supporters of requiring additional mental health training say it could help jailers develop the skills needed to work with inmates who have mental illness and to better administer the screening form. They say the training could be offered online to minimize the burden on jails with minimal staff.

Critics of requiring more mental health training for jailers say it could make it harder for jails to recruit and retain staff and that the new mental health intake screening form is clear enough that jailers can administer it with no further training. Additional training also is not needed, they say, because jailers who have not completed training are accompanied by certified staff while at work and receive on-the-job training during their first year. Critics of extending requirements to city jailers say that city jailers should be regulated locally to meet local needs.

Mental health treatment. Under 37 TAC, part 9, sec. 273.5, sheriffs and jail operators are required to develop and implement a mental disabilities/suicide prevention plan, in coordination with medical and mental health officials. The plan must include provisions for identifying and communicating with inmates who are mentally disabled or potentially suicidal and for intervention and emergency treatment related to suicide attempts, plus other requirements. Jails must check with the DSHS Continuity of Care query system to determine if an inmate previously has received state mental health care.

County jails often contract with local mental health authorities to provide clinical assessments and mental health treatment for inmates, but they are not required to do so. Texas jail standards, under 37 TAC, part 9, sec. 273.2 require county jails to implement plans for inmate medical, mental, and dental services that include procedures for sick calls, prompt care in acute and emergency situations, referral for mental health services, and control and distribution of prescriptions. County jails are not required to hire an on-site mental health professional.

Some have proposed requiring that county jails and city jails hire an on-site mental health professional. Supporters say having a professional on staff would

make it easier for inmates to receive care and would help prevent suicide. If jails could not afford to hire a mental health professional, supporters say, the jails could use telemedicine, including in rural areas. Critics of requiring an on-site mental health professional say smaller rural jurisdictions have limited access to mental health care providers and do not have resources to hire one or to use telemedicine.

Concerns also have been raised that jail inmates may have difficulty accessing drugs they were prescribed for mental illness before being arrested and that some medications provided by jails may not be interchangeable with pre-existing prescriptions.

— by Lauren Ames

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John H. Reagan Building
Room 420
P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0752

www.hro.house.state.tx.us

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