

## Exiting Solitary Confinement: A Survey of State Correctional Policies

Michelle Ghafar



### ABSTRACT

Given the emerging consensus that solitary is a weapon used with distressing frequency in U.S. prisons, researchers and practitioners must seriously consider existing tools that allow prisoners to contest their confinement. Thus, although most states now have policies and procedures detailing how prisoners are assigned to solitary, this Comment analyzes policies on the opposite end of the confinement setting—namely, the explicit procedures that explain how to exit solitary, and whether these procedures provide prisoners with proper incentives and guidelines for their release.

This Comment surveys ten states—Arizona, California, Florida, Georgia, Illinois, Michigan, New York, Ohio, Pennsylvania, and Texas—that collectively house more than half of the state prisoners in the nation, examining any policies and procedures that describe how prisoners can exit solitary confinement. The survey reveals that all ten states have exit procedures for solitary, although they vary considerably in detail and clarity. The Comment proceeds to offer a detailed analysis of the compiled policies and procedures according to certain themes that emerge across states—in particular, the level of prisoner involvement in the exit procedures, the factors considered by the state department of corrections when determining whether to release a prisoner from solitary, and the timing of that release. By comparing exit policies and procedures across states for recurring themes and patterns, this Comment contributes to the field of existing research and supports ongoing efforts to examine, reform, and ultimately limit the use of solitary confinement.

### AUTHOR

J.D. 2016, UCLA School of Law, Epstein Public Interest Law & Policy Program, Critical Race Studies Specialization. I am very grateful to Professor Beth Colgan for her invaluable guidance and recommendations in developing and editing this Comment. I would also like to thank Professors Joseph Doherty and Sharon Dolovich for their generous and helpful feedback and, in particular, Professor Jyoti Nanda for her unwavering support. Special thanks to Alex Cooper and the other staff and editors of Volume 64 of the *UCLA Law Review* for their excellent edits and suggestions, and to Rica Garcia, Sarah Khanghahi, and Iricel Payano, without whom this Comment might never have been published. Finally, thank you to my parents, my lifelong editors, who inspire me to work toward a better justice system for all.

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## INTRODUCTION

The life of any one of the tens of thousands of prisoners in solitary confinement across our nation's prisons<sup>1</sup> is one that is shocking in its deprivations and indignities, but simultaneously so predictable that madness is all but expected. Each day, prisoners often live within a cell that is the size of a small bathroom.<sup>2</sup> A solid metal cell door confines them to this space, where human contact is limited to occasional health evaluations or food trays delivered through a tiny opening in the door.<sup>3</sup> Showers are allowed a few times a week, while out-of-cell time for exercise is offered a few hours each week—though neither showers nor exercise are granted with any certainty.<sup>4</sup> Prisoners cannot communicate with one another except by shouting through the walls or vents.<sup>5</sup> Thus, prisoners report experiencing days alternating between complete silence and continuous yelling, banging, and kicking sounds.<sup>6</sup> Cells are windowless, with near-constant bright lights that “really get to you.”<sup>7</sup> These tens of thousands of prisoners are isolated in their cells for twenty-two—and often twenty-three or even twenty-four—hours a day, frequently for years on end.<sup>8</sup>

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1. SARAH BAUMGARTEL ET AL., TIME-IN-CELL: THE ASCA-LIMAN 2014 NATIONAL SURVEY OF ADMINISTRATIVE SEGREGATION IN PRISON ii (2015) (estimating that “some 80,000 to 100,000 people were, in 2014, in segregation” based on a survey of thirty-four jurisdictions that confine inmates in “some form of restricted housing—whether termed ‘administrative segregation,’ ‘disciplinary segregation,’ or ‘protective custody’”).
  2. See Greg Rienzi, *Thousands of American Prisoners Spend 23 Hours a Day in Solitary Confinement*, JOHNS HOPKINS MAG. (Spring 2015), <http://hub.jhu.edu/magazine/2015/spring/is-solitary-confinement-ethical> [<https://perma.cc/H7LV-PWAJ>]; Joe Giarratano, *Stories From Solitary*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/infographic/joe-giarratano-stories-solitary?redirect=prisoners-rights/joe-giarratano>; Anthony Graves, *When I Was on Death Row, I Saw a Bunch of Dead Men Walking. Solitary Confinement Killed Everything Inside Them*, AM. CIVIL LIBERTIES UNION (July 23, 2013), <https://www.aclu.org/blog/when-i-was-death-row-i-saw-bunch-dead-men-walking-solitary-confinement-killed-everything-inside?redirect=blog/prisoners-rights-capital-punishment/when-i-was-death-row-i-saw-bunch-dead-men-walking-solitary>. See generally *Stop Solitary-Stories From Solitary*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/stop-solitary-stories-solitary> [<https://perma.cc/ZEN8-JZVV>] [hereinafter *Stop Solitary*] (describing “the real stories of real people who have been affected by solitary confinement”).
  3. Rienzi, *supra* note 2; Giarratano, *supra* note 2; Graves, *supra* note 2.
  4. Rienzi, *supra* note 2; Giarratano, *supra* note 2; Graves, *supra* note 2.
  5. Giarratano, *supra* note 2; Graves, *supra* note 2.
  6. Giarratano, *supra* note 2; see also MATTHEW LOWEN, AM. FRIENDS SERV. COMM. ARIZ., STILL BURIED ALIVE: ARIZONA PRISONER TESTIMONIES ON ISOLATION IN MAXIMUM-SECURITY 10 (2014), <https://afscarizona.files.wordpress.com/2014/03/still-buried-alive.pdf> [<http://perma.cc/Zt6K-PDAB>] (surveying prisoners confined by the Arizona Department of Corrections for their reactions to a new maximum security prison being built by the state).
  7. Giarratano, *supra* note 2; see LOWEN, *supra* note 6, at 13–14.
  8. See Rienzi, *supra* note 2; Giarratano, *supra* note 2; Graves, *supra* note 2; *Stop Solitary*, *supra* note 2.

Solitary is thus shocking in its many deprivations, but also predictable in its many negative effects on prisoners' wellbeing and resilience. As other research has reported extensively, the impact and costs of solitary confinement on an individual's overall health—and specifically, mental health—are severe.<sup>9</sup> Not only are prisoners with preexisting mental health conditions extremely likely to deteriorate in solitary,<sup>10</sup> even those who are initially healthy report experiencing depression, paranoia, and hallucinations over time due to their confinement.<sup>11</sup> Many exhibit suicidal thoughts and behaviors.<sup>12</sup> Alarming, despite these serious and lasting consequences, solitary confinement may not be an effective or useful corrections management tool.<sup>13</sup> Prison administrators

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9. See *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on Constitution, Civil Rights, and Human Rights of the S. Comm. on the Judiciary*, 112th Cong. 20–21 (2012) (testimony of Craig Haney, Professor of Psychology, University of California, Santa Cruz); HUMAN RIGHTS WATCH, ILL-EQUIPPED: U.S. PRISONS AND OFFENDERS WITH MENTAL ILLNESS 145–64 (2003) [hereinafter HUMAN RIGHTS WATCH, ILL-EQUIPPED] (“[M]ost independent psychiatric experts, and even correctional mental health staff, believe that prolonged confinement in conditions of social isolation, idleness, and reduced mental stimulation is psychologically destructive.”); HUMAN RIGHTS WATCH, LOCKED UP ALONE: DETENTION CONDITIONS AND MENTAL HEALTH AT GUANTANAMO 50 (2008) [hereinafter HUMAN RIGHTS WATCH, LOCKED UP ALONE] (comparing supermaximum security confinement—in which prisoners are isolated indefinitely for twenty-three hours per day in single cells—to the conditions for detainees at Guantanamo Bay, reiterating the “frequent observation by prison experts that placing an individual in restricted confinement ultimately will lead to serious psychological damage”).
  10. Juan E. Méndez (Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), *Interim Rep. of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. A/66/268, at 19 (Aug. 5, 2011).
  11. HUMAN RIGHTS WATCH, ILL EQUIPPED, *supra* note 9, at 151; see also Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POLY 325, 328–29 (2006).
  12. See Grassian, *supra* note 11, at 349; see also Erica Goode, *Solitary Confinement: Punished for Life*, N.Y. TIMES (Aug. 3, 2015), [http://www.nytimes.com/2015/08/04/health/solitary-confinement-mental-illness.html?\\_r=0](http://www.nytimes.com/2015/08/04/health/solitary-confinement-mental-illness.html?_r=0) (explaining that, although prisoners in solitary confinement make up just 3 to 8 percent of the prison population, they nevertheless account for 50 percent of prison suicides).
  13. See JOHN J. GIBBONS & NICHOLAS DE B. KATZENBACH, COMM’N ON SAFETY & ABUSE IN AM.’S PRISONS, CONFRONTING CONFINEMENT 54 (2006) (“A carefully designed study of correctional systems in Arizona, Illinois, and Minnesota found that segregating prisoners in supermax facilities did little or nothing to lower overall violence. Prisoner-on-prisoner violence did not decrease in any of the three states. Prisoner-on-staff assaults dropped in Illinois, but staff injuries increased in Arizona, and there was no effect in Minnesota . . . .”); Terry A. Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi’s Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 CRIM. JUST. & BEHAVIOR 1037, 1047 (2009) (concluding that prisoners with serious mental illnesses “tend to suffer psychiatric deterioration and get into disciplinary trouble” in solitary confinement and “fare much better in treatment programs”).

often use solitary as a way to deal with prisoners whose behavioral problems stem from mental health issues, or to manage overcrowding in facilities.<sup>14</sup>

The recent coverage of Kalief Browder—a teen who spent two years in solitary confinement in New York for a crime he did not commit—and his tragic suicide in 2015 highlight the devastation that solitary can wreak even years later.<sup>15</sup> Justice Kennedy’s powerful criticism of solitary confinement in a subsequent opinion drew further attention, describing solitary’s “terrible price” and imploring experts to consider the numerous issues it presents within the correctional system.<sup>16</sup> The majority of the scholarship on solitary, however, has focused on the mental health consequences and the arbitrary reasons and inconsistent processes determining how prisoners are sentenced to this confinement setting in the first place. Although this work is crucial given solitary’s overuse as a correctional practice—and the real effects on human beings—very little scholarly attention has been paid to what is available to prisoners who wish to advocate for their release once they have already been sentenced to solitary.<sup>17</sup>

Given the emerging consensus that solitary is a weapon used with distressing frequency in U.S. prisons,<sup>18</sup> we must seriously consider existing tools

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14. See E. FULLER TORREY ET AL., TREATMENT ADVOCACY CTR., THE TREATMENT OF PERSONS WITH MENTAL ILLNESS IN PRISONS AND JAILS: A STATE SURVEY 7–8 (2014) (explaining that the disproportionate confinement of mentally ill people in solitary is due to prison officials who are neither trained nor equipped to properly house such prisoners); Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 CRIME & DELINQ. 124, 128 (2003); Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477, 479–80 (1997) (“In part in response to increasing pressures in badly overcrowded prison systems and the absence of resources with which to attempt alternative approaches, correctional administrators are turning to aggressive policies of punitive segregation in the hope of enhancing their control over prisoners.”).
  15. Jennifer Gonnerman, *Kalief Browder, 1993–2015*, NEW YORKER (June 7, 2015), <http://www.newyorker.com/news/news-desk/kalief-browder-1993-2015> [<https://perma.cc/4HPY-CZ7N>].
  16. Davis v. Ayala, 135 S. Ct. 2187, 2210 (2015).
  17. A few studies have helpfully begun the critical research on how prisoners can exit solitary confinement. See, e.g., Mariam Hinds & John Butler, *Solitary Confinement: Can the Courts Get Inmates out of the Hole?*, 11 STAN. J. C.R. & C.L. 331, 342 (2015) (discussing how California’s prisoners can leave solitary confinement by completing a determinate sentence in solitary, receiving parole while in solitary, participating in a step-down program, or—in the case of gang members—participating in a debriefing process); HOPE METCALF ET AL., ADMINISTRATIVE SEGREGATION, DEGREES OF ISOLATION, AND INCARCERATION: A NATIONAL OVERVIEW OF STATE AND FEDERAL CORRECTIONAL POLICIES (2013); BAUMGARTEL ET AL., *supra* note 1, at 9 (examining the review process for one form of solitary in particular—administrative segregation—and concluding that the researchers “did not learn when and why individuals were released from administrative segregation”).
  18. Some states, however, have slowly begun to reform their solitary confinement practices in recent years. In 2014 alone, more states passed solitary confinement reforms than in the previous sixteen years. Eli Hager & Gerald Rich, *Shifting Away From Solitary*, MARSHALL PROJECT (Dec.

that allow prisoners to contest their confinement. Thus, although most states now have policies and procedures detailing how prisoners are assigned to solitary, this Comment analyzes policies on the opposite end of this confinement setting—namely, the explicit policies that explain how to *exit* solitary, and whether they provide prisoners with proper incentives and guidelines for their release. Prior investigations of exit procedures—while incredibly important in prioritizing the research on possible methods for prisoners’ eventual release from solitary—have been limited to a few studies with a narrow focus on specific jurisdictions or types of solitary.<sup>19</sup> This Comment substantially expands that work by reducing these limitations, examining different permutations of solitary confinement in jurisdictions throughout the United States.

By comparing exit policies and procedures across states for recurring themes and patterns, this Comment contributes to the field of existing research and supports ongoing efforts to examine, reform, and ultimately limit the use of solitary confinement. While the recent attention on solitary—as well as the increasing pressure to reduce its use<sup>20</sup>—are heartening signs, it is important to understand what is and is not currently available to prisoners who wish to work toward release using existing policies and procedures. Any litigation or policy advocacy for meaningful changes will be better served by measuring where prisons stand now.

This Comment surveys ten states—Arizona, California, Florida, Georgia, Illinois, Michigan, New York, Ohio, Pennsylvania, and Texas—that collectively house more than half of the prisoners held in state prisons in the United States,<sup>21</sup> examining the policies and procedures that describe how to exit solitary confinement. The survey finds that all ten states have exit procedures for

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23, 2014, 1:12 PM), <https://www.themarshallproject.org/2014/12/23/shifting-away-from-solitary> [<https://perma.cc/3RST-VEFC>].

19. See *supra* note 17 and accompanying text.

20. See *supra* note 18 and accompanying text; see also Shane Bauer, *The American Correctional Association Ushered Me out of Its Convention With Armed Guards*, MOTHER JONES (Aug. 21, 2014, 12:54 PM), <http://www.motherjones.com/mixed-media/2014/08/armed-guards-ushered-me-out-prison-convention> [<https://perma.cc/A8KU-TVJB>] (describing an American Correctional Association (ACA) convention, where “the main plenary was composed of wardens and mental-health workers discussing the need to reform the use of long-term solitary confinement”); Erica Goode, *Prisons Rethink Isolation, Saving Money, Lives and Sanity*, N.Y. TIMES (Mar. 10, 2012), [http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?\\_r=0](http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?_r=0) [<https://perma.cc/KR8Z-QJSF>] (noting Mississippi’s reform of its solitary confinement practices as “a focal point for a growing number of states that are rethinking the use of long-term isolation and re-evaluating how many inmates really require it, how long they should be kept there and how best to move them out”).

21. This figure only includes prisoners held in state prisons, excluding those confined in jails and federal correctional facilities. See E. ANN CARSON, U.S. DEP’T OF JUSTICE, PRISONERS IN 2014, at 3 tbl.2 (2015), <http://www.bjs.gov/content/pub/pdf/p14.pdf> [<https://perma.cc/RJ7W-BFM7>].

solitary, although they vary considerably in detail and clarity. Not only did the relevant procedures exist in multiple policies within each state, these procedures could also be found across a range of sources—such as policy directives, operations manuals, and administrators’ memorandums—as well as throughout different types of policies—including those for classification of prisoners, prisoner grievances, and prisoner discipline.<sup>22</sup> A detailed analysis of the compiled policies and procedures reveals certain themes that emerge across states—in particular, (1) the level of prisoner involvement in the exit procedures, (2) the

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22. Of course, the examined documents are only useful if prisoners can, in fact, access them in the first place when seeking to exit solitary confinement. Fortunately, for the most part, prisoners have access to these documents. Nine of the ten states in the sample offer all or most of their policies for open access. ARIZ. DEP’T OF CORR., DEPARTMENT ORDER MANUAL, 101 SYSTEM OF WRITTEN INSTRUCTIONS 2, 14 (2010); ARIZ. DEP’T OF CORR., DEPARTMENT ORDER MANUAL, 919 INMATE RESOURCE CENTER/LIBRARY SERVICES 3–4 (2015) (specifying that, in Arizona, prisoners who are unable to get to a prison library—by being confined in solitary, for example—must “[c]omplete an Inmate Resource Center/Library Materials Request [Form] to request materials be held for them or delivered to their unit/housing location”); CAL. CODE REGS. tit. 15, § 3002 (2016); CAL. DEP’T OF CORR. & REHAB., 15-04 NOTICE OF CHANGE TO REGULATIONS 1 (2015); CAL. DEP’T OF CORR. & REHAB., OPERATIONS MANUAL, § 12010.4 (2015); FLA. ADMIN. CODE ANN. r. 33-102.201 (2014); GA. DEP’T OF CORR., POLICY AND PROCEDURE ACCESS LISTING 1, 13, 14, 15, 18 (2010) (indicating that prisoners in most security levels have access to the Inmate Reference Library, where the policies can be found, with the exception of prisoners in Administrative Segregation and Tier 1 Segregated Housing, where it is unclear whether prisoners can even access the Reference Library); *Romero v. O’Sullivan*, 302 Ill. App. 3d 1031, 1038 (1999) (indicating that Title 20 of the Illinois Administrative Code, which pertains to the Illinois Department of Corrections, is provided in the law libraries of its prison facilities, where prisoners can access them); MICH. DEP’T OF CORR., 05.03.115, LAW LIBRARIES 3, 6 (2010) (stating that segregated prisoners “shall be allowed to receive upon request at least five items at one time from the required main law library collection”—which must have all non-exempt policies—“at least three days each week”); N.Y. DEP’T OF CORR. & CMTY. SUPERVISION, 0001, INTRODUCTION TO THE POLICY AND PROCEDURE MANUAL 8 (2015) (stating that the department of corrections’ policies with the “A B” code—encompassing all those included from New York in this Comment’s analysis—must be distributed to prison libraries, unless they contain material that is barred for “security” reasons); N.Y. DEP’T OF CORR. & CMTY. SUPERVISION, 4470, GENERAL LIBRARY SERVICES 3 (2016) (specifying that prisoners without direct access to the library must be able to request and receive the materials through procedures established for them); OHIO DEP’T OF REHAB. & CORR., 58-LIB-01, COMPREHENSIVE LIBRARY SERVICES 3 (2015); PA. DEP’T OF CORR., 1.1.1, POLICY MANAGEMENT SYSTEM 2 (2008). On the other hand, several documents remain unclear in whether they are made available to prisoners. These include New York’s corrections administrators’ memorandums and the state’s administrative code. N.Y. COMP. CODES R. & REGS. tit. 7 (2015); Memorandum from the N.Y. Dep’t of Corr. on Special Housing Management Committee to All Superintendents (Apr. 2, 2013) (on file with author). Further, Texas’s entire administrative segregation plan seems to be available only for prison staff. TEX. DEP’T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION PLAN 1, 20 (2012); TEX. DEP’T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION REFERENCE CHART 1 (2012). Finally, recent case law suggests that Ohio’s administrative code is not openly accessible to prisoners. *Willis v. Mohr*, 2013 WL 1281634 at \*4 (S.D. Ohio Mar. 26, 2013) (including an Ohio prisoner’s argument that the state administrative code “was not provided to him and is not ‘on display’ or openly ‘posted’”).

factors considered by the state department of corrections (DOC) when determining whether to release a prisoner from solitary, and (3) the timing of that release.

These findings also demonstrate, however, that the policies are often vague, so brief as to offer no real guidance for prisoners, or so complex that a prisoner would struggle to understand them. Considering that a vast number of prisoners are mentally ill or have limited education and already struggle to meet the demands of prison rules,<sup>23</sup> we must ask whether we can fairly expect them to make enough sense of the policies to meaningfully advocate for release.

This Comment proceeds as follows: Part I provides a working definition of “solitary confinement” and describes solitary’s growth and prevalence as a widely used penal practice. Part I also describes the importance to correctional administration and prisoner reentry of policies and procedures for exiting solitary. Part II offers the research methodology, which includes a combination of public records requests to each state’s corrections department as well as a review of corrections departments’ websites. Part III provides the results of the survey, analyzing the policies according to the themes that exist across states. Finally, Part IV discusses the implications of vague or confusing policies and procedures that do not provide prisoners with adequate notice or opportunity to exit solitary. Part IV also raises the importance of performing further research on whether these policies and procedures are followed in practice, especially for researchers and scholars hoping to advance meaningful reforms of solitary confinement.

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23. See, e.g., COMM. ON ETHICAL CONSIDERATIONS FOR REVISIONS TO DHHS REGULATIONS FOR PROT. OF PRISONERS INVOLVED IN RESEARCH, INST. OF MED. OF THE NAT’L ACADS., ETHICAL CONSIDERATIONS FOR RESEARCH INVOLVING PRISONERS 38–39, 45 (Lawrence O. Gostin et al. eds., 2007) (citations omitted) (“Often individuals come into the correctional system with little education and, therefore, poor reading, writing, math, and oral communication skills. Poor reading and communication skills pose a challenge to informed consent, which is often handled through written documents, and points to the importance of ensuring that informed consent procedures are monitored to determine that prisoners truly understand what they are consenting to. . . . Forty-one percent of inmates in the nation’s state and federal prisons and local jails and 31 percent of probationers had not completed high school or its equivalent.”); HUMAN RIGHTS WATCH, ILL-EQUIPPED, *supra* note 9, at 31–32; see also Seth J. Prins, *Prevalence of Mental Illnesses in U.S. State Prisons: A Systematic Review*, 65 PSYCHIATRIC SERVS. 862, 862 (2014) (“People with mental illnesses are overrepresented in the criminal justice system in the United States. This includes jails and prisons as well as probation or parole supervision. . . . For people with mental illnesses—who face inordinate poverty, unemployment, crime, victimization, family breakdown, homelessness, substance use, general health problems, and stigma—contact with the criminal justice system can exacerbate social marginalization, disrupt treatment and linkage to service systems, or represent the first occasion for treatment.” (footnotes omitted)).

## I. BACKGROUND: WHAT IS SOLITARY CONFINEMENT?

As the size of the prison population has grown, so too has correctional administrators' use of solitary confinement as a population management tool. This Part provides a definition of solitary confinement that reflects the many justifications for a prisoner's isolation, based on the prison systems of ten states that confine a majority of U.S. prisoners. I then lay out how solitary emerged as a widely used penal practice, describing the types of prisoners who tend to end up in solitary and how they are sentenced to this confinement setting.

### A. Nature of Solitary Confinement in U.S. Prisons

Within and across prison facilities, the nature of solitary confinement and its labels fluctuate considerably, and the problems of articulating a universal definition are well documented.<sup>24</sup> Solitary Watch reports, however, that “[f]ew prison systems use the term ‘solitary confinement,’ instead referring to prison ‘segregation’ or placement in ‘restrictive housing.’”<sup>25</sup> Because placement can stem from punitive, disciplinary, or protective reasons, the exact terminology is inconsistent across jurisdictions.<sup>26</sup> Thus, a review of state corrections departments’

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24. See CHASE RIVELAND, U.S. DEP'T OF JUSTICE, NAT'L INST. OF CORR., SUPERMAX PRISONS: OVERVIEW AND GENERAL CONSIDERATIONS 3 (1999) (explaining that, in the case of supermaximum security prisons—which are designed to incarcerate people under highly isolated conditions—“jurisdictions do not share a common definition of supermax due to their differing needs, classification criteria and methods, and operational considerations”); *Solitary Confinement Facts*, AM. FRIENDS SERV. COMM., <https://www.afsc.org/resource/solitary-confinement-facts> [<https://perma.cc/AWP8-Q2M7>] (referring to “MCU (management control units), CMU (communications management unit), STGMU (security threat group management units), voluntary or involuntary protective custody, [and] special needs units”); Méndez, *supra* note 10, at 8–9 (“There is no universally agreed upon definition of solitary confinement. . . . Solitary confinement is also known as ‘segregation,’ ‘isolation,’ ‘separation,’ ‘cellular,’ ‘lockdown,’ ‘Supermax,’ ‘the hole’ or ‘Secure Housing Unit (SHU),’ but all these terms can involve different factors.” (footnotes omitted)).
25. Sal Rodriguez, *FAQ*, SOLITARY WATCH (2015), <http://solitarywatch.com/facts/faq> [<https://perma.cc/HJQ5-SZ29>].
26. *Id.* “[D]isciplinary segregation” is defined as “time spent in solitary as punishment for violating prison rules, and usually lasts from several weeks to several years.” *Id.* “Administrative segregation” relies on a system of classification rather than actual behavior, and often constitutes a permanent placement, extending from years to decades. ‘Involuntary protective custody’ is especially common among children held in adult prisons, LGBTQ individuals, and other at-risk prisoners who live in indefinite isolation despite having done nothing wrong.” *Id.*; see also ALISON SHAMES ET AL., VERA INST. OF JUSTICE, SOLITARY CONFINEMENT: COMMON MISCONCEPTIONS AND EMERGING SAFE ALTERNATIVES 4 (2015), [http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report\\_1.pdf](http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf) [<https://perma.cc/YE9M-4GH3>] (reporting that, as to protective custody, solitary is “used as a preventative measure in an effort to protect those at high risk of sexual assault and physical abuse in a prison’s or jail’s

policies reveals references to “segregation,” “administrative segregation,” “disciplinary confinement,” “security housing unit,” and “punitive segregation,” among other terms.<sup>27</sup>

Given solitary’s countless names, the exact term used to label the isolation is not as important to this Comment as a certain defined set of conditions. The concern rests primarily on isolation that is detrimental to physical and mental health. Therefore, I broadly define “solitary confinement” as complete isolation for an average of twenty-two hours a day, with limited human interaction and limited opportunity for rehabilitative programming.<sup>28</sup> This definition is not bound by specific time parameters because solitary terms can last from days to several decades. The negative effects on prisoners may appear after only a few

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general population (for example, incarcerated people who are transgender or former law enforcement officers”).

27. “Segregation” is one of the most common labels that fall within this Comment’s definition of solitary confinement. For other labels within the ten-state sample, see, for example: Memorandum from Charles L. Ryan, Dir. of Ariz. Dep’t of Corr., on Maximum Custody Population Management to Distribution 1, 6 (Mar. 27, 2014) (on file with author) (“maximum custody” and “restrictive housing”); CAL. DEP’T OF CORR. & REHAB., 15-04 NOTICE OF CHANGE TO REGULATIONS 6, 7, 61 (2015) (“administrative segregation,” “security housing unit,” “segregated program housing unit,” “non-disciplinary segregation,” and “protective housing unit”); CAL. DEP’T OF CORR. & REHAB., OPERATIONS MANUAL § 3334 (2015) (“behavior management unit”); FLA. DEP’T OF CORR., 33-602.220, ADMINISTRATIVE CONFINEMENT (2014) (“administrative confinement”); FLA. DEP’T OF CORR., 33-602.222, DISCIPLINARY CONFINEMENT (2014) (“disciplinary confinement”); FLA. DEP’T OF CORR., 33-601.800, CLOSE MANAGEMENT (2014) (“close management”); FLA. DEP’T OF CORR., 33-601.820, MAXIMUM MANAGEMENT (2014) (“maximum management”); GA. DEP’T OF CORR., IIB02-0004, DISCIPLINARY ISOLATION (2015) (“disciplinary isolation”); GA. DEPT. OF CORR., STANDARD OPERATING PROCEDURES, IIB09-0004, SPECIAL MANAGEMENT UNIT-TIER III (2015) (“special management unit”); ILL. ADMIN. CODE tit. 20, § 501.350 (1987) (“protective custody”); ILL. ADMIN. CODE tit. 20, § 504.660 (2003) (“administrative detention”); MICH. DEP’T OF CORR., 03.03.105, PRISONER DISCIPLINE 21 (2012) (“punitive segregation”); N.Y. DEP’T OF CORR. & CMTY. SUPERVISION, 4933, SPECIAL HOUSING UNITS (2013) (“special housing units”); OHIO ADMIN. CODE 5120-9-08(L)(1) (2013) (“disciplinary control”); OHIO ADMIN. CODE 5120-9-09 (2013) (“limited privilege housing”); OHIO ADMIN. CODE 5120-9-11 (2014) (“security control”); OHIO ADMIN. CODE 5120-9-13.1 (2013) (“local control”); OHIO DEP’T OF REHAB. & CORR., 55-SPC-02, SPECIAL MANAGEMENT PROCEDURES (2013) (“special management status”); PA. DEP’T OF CORR., DC-ADM 801, INMATE DISCIPLINE 6-1 (2014) (“disciplinary custody status” and “administrative custody”). For purposes of clarity, all of these labels are considered “solitary confinement” and the policies related to them are reviewed as part of the data analysis.
28. LAURA ROVNER, AM. CONST. SOC’Y FOR L. & POL’Y, DIGNITY AND THE EIGHTH AMENDMENT: A NEW APPROACH TO CHALLENGING SOLITARY CONFINEMENT 2 (2015), [https://www.acslaw.org/sites/default/files/Dignity\\_and\\_the\\_Eighth\\_Amendment\\_2.pdf](https://www.acslaw.org/sites/default/files/Dignity_and_the_Eighth_Amendment_2.pdf) [<https://perma.cc/V3GP-5DM2>] (“While there is some variation among prisons, the conditions in solitary confinement (also referred to as administrative segregation, special housing units (SHUs), disciplinary segregation, control units, penal isolation, and restrictive housing) typically share a common set of features. Prisoners spend twenty-two to twenty-four hours each day alone in their cells . . . .” (footnote omitted)).

days;<sup>29</sup> research suggests that such effects are almost guaranteed to materialize after ten days.<sup>30</sup> All of this Comment's references to solitary's many other labels fall within this definition. The challenge presented here is attempting to locate exit policies and procedures despite the array of different contexts, labels, and programs that ultimately refer to the same confinement setting.<sup>31</sup>

Regardless of the variations in terminology, solitary is characterized by a certain set of conditions that are common across prisons and states. As recently summarized by the American Constitution Society for Law and Policy:

For whatever period of time a prisoner is held in solitary confinement, virtually every aspect of his life occurs in his eighty square foot cell. A prisoner in segregation eats all of his meals there, within arm's reach of his toilet. He is usually denied many services and programs provided to nonsegregated prisoners, such as educational classes, job training, drug treatment, work, or other kinds of rehabilitative or religious programming. To the extent that a person in solitary receives any programming, it is typically provided in-cell through written materials or via a television screen, though some people in solitary are prohibited from having televisions, radios, art supplies, and even reading materials. For the one hour per day (on average) that prisoners in solitary are permitted to leave their cells, they are taken to a small, kennel-like cage to exercise, and even the time there is spent alone. Access to family visits and phone calls is limited; any visits that do occur take place through thick glass and over phones. And prisoners in solitary confinement typically are not permitted any human touch, except when the correctional officers shackle them to escort them from location to location.<sup>32</sup>

Many scholars and advocacy groups consider these conditions to be torture<sup>33</sup> and yet for several decades administrators have heavily relied on solitary

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29. Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME & JUST. 441, 494–95 (2006).

30. Craig Haney and Mona Lynch have pointed out that “[t]here is not a single study of solitary confinement wherein non-voluntary confinement that lasted for longer than 10 days failed to result in negative psychological effects.” Haney & Lynch, *supra* note 14, at 531. Solitary Watch also provides a helpful list of specific state prison systems—including Arizona, Texas, and New York, which are all included in this Comment's analysis—that have published the average length of time spent by their prisoners in solitary. Rodriguez, *supra* note 25.

31. METCALF ET AL., *supra* note 17, at 3.

32. ROVNER, *supra* note 28, at 2.

33. See Atul Gawande, *Hellhole*, NEW YORKER (Mar. 30, 2009), [http://www.newyorker.com/reporting/2009/03/30/090330fa\\_fact\\_gawande](http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande) [<https://perma.cc/94PC-JC65>] (“[A]ll human beings experience isolation as torture.”); *Torture: The Use of Solitary Confinement in U.S. Prisons*, CTR. FOR CONSTITUTIONAL RTS., <https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/torture-use-solitary-confinement-us-prisons>

confinement to manage prisoners.<sup>34</sup> That overreliance has begun to ebb, although only recently.<sup>35</sup>

This Comment applies a broad definition of solitary confinement—complete isolation for an average of twenty-two hours a day, with limited human interaction and limited opportunity for rehabilitative programming—for several reasons. First, by focusing on isolation that is detrimental to physical and mental health, this definition attempts to acknowledge the harm inflicted on the individuals in solitary, most of whom are especially vulnerable to that harm. Second, and as discussed in Part I.B, this definition attempts to account for the many justifications for placement, spanning from solitary’s earliest uses through the present day. Because these justifications have transformed considerably across solitary’s lifespan in corrections’ history, this broad definition takes a historical perspective that encompasses solitary’s evolution, beginning with its first appearance as a penal practice.

## B. Solitary as a Widely Used Penal Practice

Solitary first came about in the early nineteenth century as a means to punish and rehabilitate prisoners.<sup>36</sup> Once it became clear, however, that prisoners suffered serious health consequences as a result—and that solitary failed to rehabilitate—it fell out of use for several decades.<sup>37</sup> Unfortunately, with the War on Drugs and changes in sentencing policies in the 1980s, incarceration rates rose dramatically.<sup>38</sup> At the same time, the deinstitutionalization movement led to the closure of state mental health hospitals and resulted in a lack of

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[<https://perma.cc/R6SG-KMCM>] (last modified June 1, 2015) (citing the Center for Constitutional Rights’s lawsuit, *Ashker v. Governor of Cal.*, No. C 09-5796 CW, 2014 U.S. Dist. LEXIS 75347 (N.D. Cal. June 2, 2014), which argues that California’s use of solitary confinement violates the Eighth Amendment’s prohibition against cruel and unusual punishment); Méndez, *supra* note 10, at 2 (reporting the conclusions of the United Nations (U.N.) Special Rapporteur on Torture).

34. See ROVNER, *supra* note 28, at 3–4.

35. See Hager & Rich, *supra* note 18.

36. See ROVNER, *supra* note 28, at 3; see also Jules Lobel, *Prolonged Solitary Confinement and the Constitution*, 1 U. PA. J. CONST. L. 115, 118–19 (2008) for a discussion of the harmful effects of solitary confinement’s use in the early nineteenth century.

37. ROVNER, *supra* note 28, at 3; Lobel, *supra* note 36, at 118–19.

38. See Becky Pettit & Bruce Western, *Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration*, 69 AM. SOC. REV. 151, 154 (2004); *Drug Policy*, THE SENTENCING PROJECT, <http://www.sentencingproject.org/template/page.cfm?id=128> [<https://perma.cc/TUS5-TZ25>] (“The number of people in state prisons today for drug offenses is 10x greater than in 1980.”); Pamela Engel, *Watch How Quickly the War on Drugs Changed America’s Prison Population*, BUS. INSIDER (Apr. 23, 2014, 1:19 PM), <http://www.businessinsider.com/how-the-war-on-drugs-changed-americas-prison-population-2014-4> [<https://perma.cc/TWT9-NTLN>].

community mental health resources, so that mentally ill people were increasingly diverted from these communities into prisons.<sup>39</sup> Thus, as the prison population swelled, “and with it, unsurprisingly, an increase in prison violence,”<sup>40</sup> administrators increasingly turned to isolation as a means of managing prisoners in vastly overcrowded facilities.<sup>41</sup>

Today, the criteria for the isolation of prisoners vary by state.<sup>42</sup> Violations of facility rules, violence against prisoners or staff, and association with gang members can all land a prisoner in solitary.<sup>43</sup> Prison administrators ultimately have discretion over the length and terms of long-term isolation, “which can be for months or years.”<sup>44</sup> “One former prisoner . . . recalled being put in solitary confinement [even] for petty annoyances like refusing to get out of the shower quickly enough.”<sup>45</sup>

It is perhaps unsurprising, then, that contrary to popular belief, solitary does not confine the worst of the worst. Many prisoners in solitary are people with untreated mental illnesses.<sup>46</sup> “Others have ended up in solitary because they . . . are children in need of ‘protection,’ are gay or transgender, are Muslim, have

39. James Gilligan, *The Last Mental Hospital*, 72 PSYCHIATRIC Q. 45, 45 (2001) (“The public mental hospital system was created in part because many mentally ill people were being held in prisons and jails. Support for those hospitals waned over time, however, and . . . a consensus was reached to close them down. Unfortunately, they were not replaced with adequate community mental health resources, so as the hospitals have emptied, the prisons and jails have filled, partly with the mentally ill.”).
40. ROVNER, *supra* note 28, at 4 (“Efforts to curb this violence coupled with the shift in correctional philosophy away from rehabilitation and toward incapacitation led to unprecedented growth in the number of supermax cells in the late 1980s and early 1990s. Believing that ‘criminals were harder’ and could not be rehabilitated, the only option in the minds of many correctional administrators was to isolate prisoners from one another—as completely as possible for as long as possible.” (footnotes omitted)).
41. *See* *Brown v. Plata*, 131 S. Ct. 1910, 1924 (2011).
42. *See, e.g.*, Rodriguez, *supra* note 25.
43. *Id.* (“Today, incarcerated men and women can be placed in complete isolation for months or years not only for violent acts but for possessing contraband, testing positive for drug use, ignoring orders, or using profanity.”); *see also* Gawande, *supra* note 33.
44. Gawande, *supra* note 33; *see also* Rodriguez, *supra* note 25 (“Individuals receive terms in solitary based on charges that are levied, adjudicated, and enforced by prison officials with little or no outside oversight. Many prison systems have a hearing process, but these are seldom more than perfunctory. Prison officials serve as prosecutors, judges, and juries, and prisoners are rarely permitted representation by defense attorneys. Unsurprisingly, in most prison systems, they are nearly always found guilty.”).
45. Gawande, *supra* note 33.
46. Mentally ill prisoners are less likely to be able to follow the rules in the ultra-controlled environment of prisons and are thus more likely to receive infractions that lead to placement in isolated confinement. To make matters worse, solitary leads to further psychological damage. Alexandra Naday et al., *The Elusive Data on Supermax Confinement*, 88 PRISON J. 69, 87 (2008). One report estimates that one-third to one-half of those held in solitary have some form of mental illness. SHAMES ET AL., *supra* note 26, at 17, 18.

unsavory political beliefs, or report rape or abuse by prison officials.”<sup>47</sup> These prisoners also disproportionately represent economically disadvantaged people of color, who are more likely to be perceived as dangerous.<sup>48</sup> Further, the Vera Institute of Justice has reported that a large number of prisoners are placed in solitary “not as punishment for actually engaging in violence; rather they are there because they have been categorized as potentially dangerous or violent—often because prison officials have identified them as gang members.”<sup>49</sup>

These practices have contributed to the expansive use of solitary since its reemergence in the 1980s. Yet scholars have begun to note a shift as a growing number of prison officials, legislators, and judges have called for reductions in its use.<sup>50</sup> Lawsuits, budget limitations, and increasing public awareness of solitary’s ill effects have also pushed more and more states to reduce the number of prisoners in solitary.<sup>51</sup> Although these signs are heartening, further research is needed on prisons’ existing policies and procedures for solitary, in order to support the movement toward alternative correctional tools.

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47. Rodriguez, *supra* note 25.

48. Bruce A. Arrigo & Jennifer Leslie Bullock, *The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What Should Change*, 52 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 622, 633–34 (2007); cf. Bonnie Kerness & Jamie Bissonette Lewey, *Race and the Politics of Isolation in U.S. Prisons*, 22 ATL. J. COMM. 21 (2014) (tracing “the historic development of isolation in the United States and its strategic use against poor and oppressed people of color as well as individuals who are seen as political threats”). Craig Haney has also discussed how solitary confinement “appears to be reserved disproportionately for prisoners of color” in many jurisdictions. *Reassessing Solitary Confinement*, *supra* note 9, at 79 (“That is, the racial and ethnic overrepresentation that occurs in our nation’s prisons generally is, in my personal experience, even more drastic inside solitary confinement units. Although these data are not systematically collected and made available for analysis overall, a study that I conducted in a Security Housing Unit in California confirmed that approximately 90% of the prisoners housed there were of color (i.e., Latino or African American).”).

49. SHAMES ET AL., *supra* note 26, at 12. Unfortunately, the practice of labeling certain prisoners as gang members has contributed to the disproportionate confinement in solitary of Black and Latino prisoners, who are more likely to be “unfairly labeled as gang members.” GIBBONS & KATZENBACH, *supra* note 13, at 54–55; Naday, *supra* note 46, at 88 (“Although gang members are typically considered dangerous, identifying them and [security threat groups] (STG) members can be subjective and biased. Critics argue that the ‘use of the ‘gang’ label by prison authorities is fraught with racial profiling and radical harassment.’ It is possible that large numbers of inmates have been falsely labeled as gang or STG members by corrections officials.” (citations omitted)).

50. BAUMGARTEL ET AL., *supra* note 1, at i.

51. Goode, *supra* note 12.

### C. Research Questions Raised by Existing Literature

Considering the fact that about 50 percent of all prison suicides occur in solitary confinement units,<sup>52</sup> establishing what official procedures exist to help prisoners exit this confinement setting is of paramount importance. Because of the large number of mentally ill people entering prisons—and the added vulnerability of being placed in and affected by segregated confinement—effective exit policies and procedures are critical, with tremendous consequences for these prisoners’ chances for rehabilitation and success once they return to their communities.<sup>53</sup> To the extent that corrections facilities attempt to rehabilitate those involved in the criminal justice system, the misuse of solitary works against that process of rehabilitation.<sup>54</sup>

Although much has been written about how prisoners are assigned to solitary as well as the inevitable mental health results, much less attention has been paid to those policies and procedures that allow a prisoner to transition out of this confinement setting. Numerous studies have shown higher recidivism rates for prisoners who are released directly into the community from solitary, as opposed to from the general population.<sup>55</sup> Taking into account the implications for public safety—as well as the significantly higher costs of operating solitary confinement units<sup>56</sup>—it is crucial to understand how prisoners can use existing prison policies

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52. *Id.*

53. See Lorna A. Rhodes, *Supermax as a Technology of Punishment*, 74 SOC. RES. 547, 559 (2007) (“[T]hose held for long periods of time in supermax find it extremely difficult to live in less structured environments and to manage everyday social interaction.”).

54. See generally GIBBONS & KATZENBACH, *supra* note 13, at 15 (discussing the need to change correctional facilities’ institutional culture toward one that treats prisoners with dignity and respect).

55. Rodriguez, *supra* note 25. It is important to highlight that these higher recidivism rates for prisoners released directly from solitary are compared to the recidivism rates among general population prisoners who were never held in solitary. David Lovell et al., *Recidivism of Supermax Prisoners in Washington State*, 53 CRIME & DELINQUENCY 634, 644–45 (“[S]upermax status was significantly associated with higher rates of recidivism only for those supermax offenders released directly from supermax to the community. These offenders were far more likely to reoffend than their nonsupermax mates . . .”). Because the prisoners in Lovell’s study were compared to others with similar criminal histories, the results strongly suggest “the different rates of recidivism were caused by conditions in solitary confinement and not by characteristics of the prisoners.” Shira E. Gordon, *Solitary Confinement, Public Safety, and Recidivism*, 47 U. MICH. J.L. REFORM 495, 522 (2014); see also *Reassessing Solitary Confinement*, *supra* note 9, at 86 (“Without oversimplifying, one of the things we have learned about how prisoners make successful transitions back into their communities of origin is that positive re-entry depends on their ability to connect to a supportive, caring group of other people, and the ability and opportunity to become gainfully employed. Solitary confinement significantly impedes both things.”).

56. Rodriguez, *supra* note 25; see also GIBBONS & KATZENBACH, *supra* note 13, at 15 (“Housing a prisoner in segregation can be twice as costly as other forms of confinement . . .”); Daniel P. Mears & Jamie Watson, *Towards a Fair and Balanced Assessment of Supermax Prisons*, 23 JUST. Q. 232,

to exit solitary. This Comment substantially expands the existing research, surveying state corrections departments in an effort to analyze these policies and presenting a comprehensive picture of what is available to a majority of prisoners confined in solitary across the country.

## II. METHODOLOGY

Every state has regulations and policies governing all aspects of life in its prisons. Although most states now have policies and procedures detailing how prisoners can be assigned to solitary, this Comment looks to the explicit policies that explain how to *exit* solitary, and whether those policies provide prisoners with proper incentives and guidelines for their release. The resulting data set is the product of states' responses to individual public records requests sent to their DOCs, which often sent materials that were unavailable, not forthcoming, or not responsive. I also reviewed each state DOC's website for exit policies and procedures, in the event that the websites offered additional information or clarified previously received data.

The survey focuses on ten states that collectively house nearly half of the state prisoners in the nation.<sup>57</sup> The states are located across the United States, ranging in demographics, political attitudes, and size. Given that they confine a majority of the state prison population nationwide, these states are also more likely to have the largest number of prisoners in solitary.<sup>58</sup> The policies and procedures of this ten-state sample thus reflect what is available to a majority of prisoners who are held in solitary and hope to advocate for their release.

Because of the many sets of rules that apply to prison management, the types of data sources examined here should be noted at the outset.<sup>59</sup> In response

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260, 262 (2006) (discussing the significantly higher costs of supermaximum security prisons and the lack of research on their cost effectiveness).

57. See *supra* note 21 and accompanying text.

58. A recent study shows that seven of the states in the ten-state sample are among the jurisdictions with the highest number of prisoners in "restrictive housing"—defined as including administrative segregation, disciplinary segregation, and protective custody. BAUMGARTEL ET AL., *supra* note 1, at 14–15. Together, these seven states—Florida, Georgia, Michigan, New York, Ohio, Pennsylvania, and Texas—account for nearly half of all prisoners in restrictive housing within the thirty-four jurisdictions included in the Baumgartel study (excluding the Bureau of Prisons). *Id.* at 15. The remaining three states in the ten-state sample were not included in the Baumgartel study. *Id.*

59. The data collection for this Comment took place over the course of nearly a year, with a final round of online research completed in April 2015. A few states, however, delayed the responses to their public records requests such that policies were analyzed as late as September 2015. Further, states such as California—which recently updated its procedures for solitary confinement during summer

to the public records requests, most states sent policy directives and administrative regulations, both of which apply to the entire state corrections system.<sup>60</sup> Some states, however, responded with department orders, operations manuals, administrators' memorandums, and occasionally links to state administrative codes or rules. Supplemental online research for most states turned up additional documents from these categories. All of these sources were reviewed for any reference to procedures that allow prisoners to exit solitary confinement.<sup>61</sup> Any such procedures are included in the analysis for the ten-state sample so as to present a comprehensive picture of what is available to a prisoner who seeks to exit solitary.<sup>62</sup>

#### A. Public Records Requests

As a first step, individual public records requests<sup>63</sup> were sent by email to each state's DOC requesting to inspect or obtain copies of the following documents:

Policies or procedures for how adult prison inmates can be released from, or exit, long-term segregation or solitary confinement. This includes step-down programs, and generally, how someone once sentenced to long-term solitary confinement or segregation can be released from that confinement setting.

The public records requests notified each state of the required response time specified in their respective public records statutes to ensure greater likelihood of

2015—required additional research through October 2015. Some states' policies may have been updated in the meantime; those more recent changes are not reflected in this analysis.

60. For an explanation of the distinction between policy directives and administrative regulations, see Chesa Boudin et al., *Prison Visitation Policies: A Fifty-State Survey*, 32 YALE L. & POL'Y REV. 149, 157–59 (2013).

61. Specifically, data collection was limited to those policies that included exit procedures *after* a prisoner had already undergone the process of being sentenced to solitary in the first place. Thus, admissions processes—such as placement hearings—are not included in the analysis.

62. Given the volume of policies and procedures, the data analysis is limited to adult prisoners in particular. An examination of the actual implementation of these policies in practice is beyond the scope of this Comment.

63. The difficulty of using public records requests as a data-gathering tool must be acknowledged. Because the requests are subject to the interpretation and goals of the responder, a researcher may receive an overwhelming amount of data or not enough. In either situation, substantial additional time is required to locate and review the sought-after materials. Yet the requests are still useful for several reasons, primarily that responders may include materials that are otherwise unavailable online or elsewhere. Further, responses may alert researchers to data sources that were previously not considered, such as in the case of Michigan's response, which included an administrator's memorandum, and thus expanded the scope of data sources under consideration for all other states. Finally, it is useful to document those states that denied the public records request altogether, along with their justifications for doing so, as essential data in itself for future researchers—particularly when online research turns up responsive materials despite a state's rejection.

compliance. This statutory response time requirement varied from three business days<sup>64</sup> to ten days<sup>65</sup> to within a “reasonable amount of time.”<sup>66</sup>

All of the states, except New York,<sup>67</sup> responded within the deadlines mandated in their public records statutes. Only Illinois responded to deny the entirety of the request, citing the Illinois Freedom of Information Act (FOIA), which exempts the release of records that “relate to or affect the security of correctional institutions.”<sup>68</sup> Fortunately, most states responded with the requested information, either in attachments or referrals to their websites.<sup>69</sup> New York and Texas sent hard copies of their materials in the mail. Florida, Michigan, and Pennsylvania responded with a couple of policies while denying specific parts of the request by stating that certain documents were exempt under their public records statutes or that the materials did not exist.<sup>70</sup> Finally, only one state, Arizona,

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64. GA. CODE ANN. § 50-18-71(b)(1)(A) (2013 & Supp. 2016).

65. CAL. GOV'T CODE § 6253(c) (West 2008 & Supp. 2016).

66. Texas's and Arizona's statutes have a variation of the “reasonable amount of time” response requirement, mandating that agencies “promptly produce” or “promptly furnish” the requested records, respectively. TEX. GOV'T CODE ANN. § 552.221 (West 2012 & Supp. 2016); ARIZ. REV. STAT. ANN. § 39-121.01(D)(1) (2011 & Supp. 2016). FLA. STAT. § 119 (2016). Ohio's statute is similar. OHIO REV. CODE ANN. § 149.43 (West 2016). Florida requires that public records requests be acknowledged “promptly” and responded to “in good faith.” FLA. STAT. § 119.07(c) (2016).

67. New York sent automated emails for months before mailing a packet of policies nearly five months after the initial public records request.

68. Email from Lisa Weitekamp, Freedom of Information Act (FOIA) Officer, Dep't of Corr., to author (Jan. 29, 2015, 6:52 AM PST) (citing 5 ILL. COMP. STAT. 140/ 7(1)(e) (2015)) (“Keeping [segregated] inmates safely and securely housed is of the utmost importance in maintaining the security of a correctional facility. Regarding the step down process, the Administrative Directive in question is a confidential document which is not even accessible to IDOC staff without permission from the Director or Chief of Operations . . . . The document contains highly sensitive material which could be utilized by the inmate population to subvert the security processes of IDOC . . . . [D]angerous inmates could manipulate their entry into populations and facilities which would cause significant security threats . . .”).

69. Email from Media Relations Office, Ariz. Dep't of Corr., to author (Jan. 26, 2015, 7:55 AM PST) (including the website links to the step-down procedures for maximum custody prisoners along with the menu of department orders); Email from Laura Lomonaco, Correctional Counselor II, Cal. Dep't of Corr. & Rehab., to author (Apr. 22, 2015, 8:15 AM PST) (including the website link to the department rules and the Department Operation Manual); Email from Erin Wright, Assistant Counsel, Ga. Dep't of Corr., to author (Apr. 29, 2015, 10:56 AM PST) (attaching a list of all the department's policies and offering to forward those that are requested); Email from Daniel Flowers, Deputy Communications Chief, Ohio Dep't of Rehab. & Corr., to author (Jan. 27, 2015, 7:30 AM PST) (including website links to responsive policies and administrative regulations).

70. Email from Andrew Filkosky, Agency Open Records Officer, Pa. Dep't of Corr., to author (Jan. 28, 2015, 8:07 AM PST) (denying a portion of the request by citing several exemptions under the Pennsylvania Right-to-Know Law, including exemptions for personal security, law enforcement, criminal investigations, and noncriminal investigations); Email from Dianne Houpt, Public Records Unit of Office of General Counsel, Fla. Dep't of Corr., to author (Jan. 27, 2015, 1:44 PM

explained that the term “solitary confinement” was not applicable because it did not exist in that state.<sup>71</sup> Nevertheless, Arizona is still included in the sample because much has been written about the state’s denial of confining its prisoners in solitary as “both bold and blatantly inaccurate,” with some estimating that at least two thousand people are held in solitary.<sup>72</sup> Further, the state still sent links to the step-down procedures for maximum custody inmates along with the menu of department orders in response to the public records request.

## B. State Correctional Department Websites

Due to the difficulty of relying on public records requests as a sole data-gathering tool, each state DOC’s website was reviewed for any policies and procedures that may explain how prisoners can exit solitary confinement. In the absence of policy directives, administrative regulations, department memorandums or orders, or operations manuals, I examined state administrative codes and rules instead.<sup>73</sup> By reviewing this wide range of data sources, online research resulted in responsive materials for over half of the states.<sup>74</sup> Reviewing

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PST) (“[T]here are no procedures responsive to this request. The information is contained in Chapter Rule(s) 33-602.220 and 33-602.222, F.A.C. [Florida Administrative Code].” (citing FLA. ADMIN. CODE ANN. r. 33-602.220, 33-602.222 (2014))); Email from Andrew Phelps, Assistant FOIA Coordinator, Mich. Dep’t of Corr., to author (Apr. 29, 2015, 12:15 PM PST) (attaching a “Response to Request for Public Records,” which states “[p]ortions of requested records are exempt from disclosure”). I reviewed the cited exemptions of the Pennsylvania Right-to-Know Law and confirmed the state DOC’s representations. Unfortunately, Michigan’s response did not allow for this confirmation, as it did not cite the specific exemptions used to partially deny the public records request. A review of its public records statute, however, reveals several references to personal security and law enforcement exemptions, similar to those cited by Pennsylvania.

71. Arizona explained that single-cell prisoners are provided programs like education, substance abuse treatment, and mental health that allow for adequate out-of-cell time. Email from Media Relations Office, Ariz. Dep’t of Corr., to author (Jan. 26, 2015, 7:55 AM PST).
72. LOWEN, *supra* note 6, at 5–7; *see also* David Fathi, *Solitary Confinement in Arizona: Cruel and Unusual*, ACLU (Mar. 6, 2012, 1:09 PM), <https://www.aclu.org/blog/solitary-confinement-arizona-cruel-and-unusual> (discussing a class action lawsuit filed against the Arizona Department of Corrections for housing “thousands of prisoners in solitary confinement conditions so harsh they violate the Eighth Amendment ban on cruel and unusual punishment”).
73. In particular, the state administrative codes or rules for California, Florida, Illinois, New York, and Ohio were helpful. CAL. CODE REGS. tit. 15, div. 3 (2016); FLA. ADMIN. CODE ANN (2014); ILL. ADMIN. CODE tit. 20 (1987); N.Y. COMP. CODES R. & REG. tit. 7 (2012); OHIO ADMIN. CODE (2013). These states did not offer any relevant policies and procedures online—with the exception of Ohio and California, which had available an operations manual and a few administrators’ memorandums—thus the state codes or rules were the only data sources that referenced possible exit procedures.
74. This could partly be explained by the wide search parameters used for the online research component, which looked to grievance procedures, classification policies, and mental health policies, among other areas, that might have included any process for prisoners to contest their

the Arizona, Georgia, and Texas DOC websites for further documents proved fruitless, although these states had already sent policies in response to the public records requests. Thus, all ten states are included in this Comment's analysis using data from the public records requests, online research, or both sources.

### III. RESULTS OF STATE SURVEY

Upon commencing data collection for this Comment, the central question was how many states have published policies and procedures that indicate how a prisoner can exit solitary confinement. It turns out that, within the ten-state sample, all states have these policies, although they vary considerably in detail and clarity. In this Part, I provide a detailed analysis of the compiled policies and procedures for each state, with a focus on certain key aspects that emerged in the data—primarily, (1) the level of prisoner involvement in the exit procedures, (2) the factors considered by the DOC when determining whether to release a prisoner from solitary, and (3) the timing of that release. These findings demonstrate that the obstacle may not be the availability of such policies so much as whether a prisoner could make enough sense of them to meaningfully advocate for release.

#### A. Types of Policies

Given the number of rules that govern prison life, it is unsurprising that exit procedures could be found in multiple policies and other sources for each state. For these purposes, “exit procedures” refers to a range of information, from detailed, step-by-step instructions—such as some states' step-down programs—to a single line included in a policy or memorandum. Any such references are included in this analysis to present all the conceivable options for a prisoner.

Specifically, the requested information tended to exist in certain categories of policies. These policies included those for classification of prisoners, solitary confinement and review of solitary, prisoner grievances, prisoner discipline, and mental health of prisoners. Further, four states—Arizona, California, Georgia,

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confinement in solitary. Because these policies' references to exit processes from solitary are often obscure—such as a sentence or two buried within a much longer policy, or other brief language that did not explicitly mention its applicability to solitary—these policies could be left out of a response to a public records request. Nevertheless, many of the documents discovered during the online research should have been included in states' responses, as the public records requests broadly asked for policies and procedures regarding solitary confinement. The responders' omissions of these materials further support the claim that prisoners face serious obstacles when attempting to access policies and procedures to exit solitary.

and Michigan—had separate, standalone step-down programs for transition from solitary. The range of policies containing possible exit procedures presents challenges for analyzing the similarities and differences across states—to say nothing of the difficulty facing a prisoner who must locate the relevant exit procedures while incarcerated.<sup>75</sup>

For example, a state like Arizona includes possible exit procedures not only in its classification policy, but also in its policies for population management and security threat group management.<sup>76</sup> These policies are designed for very different purposes, however, making it difficult to discover themes and patterns within states. This is further compounded when considering the additional policies of the other nine states in the ten-state sample.<sup>77</sup> This Comment addresses these challenges by instead focusing on a broad definition of solitary confinement, examining any policies that affect this defined set of conditions, and analyzing them according to themes that are likely to be most helpful to prisoners.

## 1. Classification Policies

Exit procedures are most commonly found in a state's classification policies, as is the case in seven of the ten surveyed states.<sup>78</sup> Because classification policies describe how prisoners are assigned to certain security or custody levels

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75. See *supra* note 32 and accompanying text.

76. ARIZ. DEP'T OF CORR., DEPARTMENT ORDER MANUAL, 801 INMATE CLASSIFICATION 7 (2011); ARIZ. DEP'T OF CORR., DEPARTMENT ORDER MANUAL, 806 SECURITY THREAT GROUPS (STGS) 14–19, 21–22 (2012); Memorandum from Charles L. Ryan, Dir. of Ariz. Dep't of Corr., on Maximum Custody Population Management to Distribution (Mar. 27, 2014) (on file with author).

77. The problem of standardizing and comparing data on solitary confinement across states is consistent with longstanding research challenges facing scholars and practitioners. See SHAMES ET AL., *supra* note 26, at 7 (“[T]he nomenclature used to describe segregated housing varies widely from state to state and there are no national standards for reconciling these differences . . . [D]ifferences in the criteria for admission to, and release from, segregated housing further confound efforts to compare the use of segregated housing between jurisdictions. Not only do these vary from state to state, they can change significantly even within jurisdictions from year to year.” (footnotes omitted)).

78. See CAL. CODE REGS. tit. 15, § 3272 (2016); FLA. ADMIN. CODE ANN. r. 33-601.210 (2014); ILL. ADMIN. CODE tit. 20, § 503.20 (1987); ARIZ. DEP'T OF CORR., DEPARTMENT ORDER MANUAL, 801 INMATE CLASSIFICATION 7 (2011); GA. DEP'T OF CORR., IIC02-0002, INSTRUCTIONS FOR COMPLETING INITIAL AND RECLASSIFICATION SECURITY INSTRUMENTS 5 (2008); GA. DEP'T OF CORR., STANDARD OPERATING PROCEDURES, IIC02-0004, CLASSIFICATION COMMITTEE 7–15 (2015); MICH. DEP'T OF CORR., 05.01.100, PRISONER PROGRAM CLASSIFICATION 2 (2014); OHIO DEP'T OF REHAB. & CORR., 53-CLS-04, LEVEL 5 CLASSIFICATION 7–13 (2012).

within prisons,<sup>79</sup> it is unsurprising that these policies would also include procedures for how those in solitary can exit that confinement setting. As with the other categories of policies, classification policies allow for prisoner involvement in the procedures, include references to the factors considered by the DOC when determining whether to release a prisoner from a certain confinement setting, and state the timing of that release.

It should be noted at the outset, however, that the relevant portions of some states' classification policies were too brief to meaningfully analyze, thereby providing no direction to those prisoners who look to them for exit guidelines. For example, the only language in California's administrative regulations that discussed moving from a high custody classification—such as solitary confinement—to a lower custody level simply states “[a]ny reduction of an inmate’s custody classification must be by classification committee action.”<sup>80</sup> Similarly, Illinois’s policy vaguely mentions custody changes by stating that “[a] review of a committed person’s classification designation or program assignment shall be conducted at regular intervals.”<sup>81</sup> The parameters of this review and the timing of these intervals are never made clear. Neither of these policies indicate how a prisoner can be involved in advocating for their own release from solitary, what factors the DOC considers for release, and the timing of release.

In looking at the remaining five states with exit procedures within their classification policies, the most common form of prisoner involvement is to participate in the classification review process, which prisons conduct at regular intervals to confirm that prisoners are still placed in the appropriate custody or security level.<sup>82</sup> Prisoners who wish to transition out of solitary can submit written statements and supporting documents that explain why they should be placed in a lower custody level, participate in hearings or interviews with prison administrators, and receive copies of the final placement decision. Ohio’s policy goes so far as to require the classification committee to explain the steps a prisoner can take in the future to reduce their classification status.<sup>83</sup> Thus, its “Classification

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79. David Lovell, *Patterns of Disturbed Behavior in a Supermax Population*, 35 CRIM. JUST. & BEHAV. 985, 1000 (2008) (“Classification focuses principally on where a prisoner lives, custody levels, and program assignments . . .”).

80. CAL. CODE REGS. tit. 15, § 3272 (2016).

81. ILL. ADMIN. CODE tit. 20, § 503.20 (1987).

82. Another form of prisoner involvement is provided by the policies of Arizona and Georgia, both of which allow prisoners to appeal their classification status by submitting a form along with written statements and supporting documents. See ARIZ. DEP’T OF CORR., DEPARTMENT ORDER MANUAL, 801 INMATE CLASSIFICATION 16–17 (2011); GA. DEP’T OF CORR., IIC02-0004, STANDARD OPERATING PROCEDURES, CLASSIFICATION COMMITTEE 19 (2015).

83. OHIO DEP’T OF REHAB. & CORR., 53-CLS-04, LEVEL 5 CLASSIFICATION 9 (2012).

Committee must provide a reasoned decision to the inmate that tells what he or she must do to reduce his or her classification status . . . [and an inmate] must be provided promptly with a copy of the Classification Committee's recommendation and reason(s), ensuring the inmate sufficient time to review it, prepare a defense, and file any objections."<sup>84</sup>

Despite Ohio's strong model requiring explanation of administrators' decisions and allowing for prisoner involvement at multiple stages, several states' classification policies are much less accommodating in allowing for, or clearly describing the level of, prisoner involvement. Besides a forty-eight hour notice of any classification review, Florida's policy requires prisoners "to appear for assessments and reviews unless a permanent medical condition makes them incapable of participating and the reason is documented in the review."<sup>85</sup> It is unclear how vocal and active prisoners can be during this appearance, or whether they just need to be present for the review process. Along the same lines, Georgia's policy states that classification decisions are "based on the inmate's behavior" without ever explaining what that means, or what a prisoner can do to conform their behavior to appropriate standards.<sup>86</sup> Prisoners in Georgia can also appeal Classification Committee actions, but again, the standards for this appeal and a prisoner's ability to file a successful appeal are never discussed.<sup>87</sup>

Next, prisons consider a broad range of factors as part of the classification review process when determining whether to move a prisoner out of specific confinement settings. These include: history of institutional violence, escape history, age, and gang affiliation (Arizona); achievement of positive adjustment goals (Florida); conduct violations and progress toward program recommendations (Michigan); likelihood of committing prohibited actions, demonstrated attitude, time left on current sentence, security level prior to current placement, and the risk posed by the prisoner to the safety and security of others (Ohio).<sup>88</sup>

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84. *Id.*

85. FLA. ADMIN. CODE ANN. r. 33-601.210(4)(c) (2014).

86. GA. DEP'T OF CORR., IIC02-0002, INSTRUCTIONS FOR COMPLETING INITIAL AND RECLASSIFICATION SECURITY INSTRUMENTS 5 (2008).

87. GA. DEP'T OF CORR., STANDARD OPERATING PROCEDURES, IIC02-0004 CLASSIFICATION COMMITTEE 19 (2015).

88. *See* FLA. ADMIN. CODE ANN. r. 33-601.210(4)(b) (2016); ARIZ. DEP'T OF CORR., DEPARTMENT ORDER MANUAL, 801 INMATE CLASSIFICATION 3 (2011); MICH. DEP'T OF CORR., 05.01.100, PRISONER PROGRAM CLASSIFICATION 2 (2014); OHIO DEP'T OF REHAB. & CORR., 53-CLS-04, LEVEL 5 CLASSIFICATION 8-9 (2012). There is some overlap across states in the consideration of these factors. For example, Arizona, Michigan, and Ohio all look to prisoners' conduct violations or incident reports. California goes so far as to consider all of the listed factors in its classification decisions. CAL. DEP'T OF CORR. & REHAB., OPERATIONS MANUAL, § 61020.19.3, 61020.19.4 (2015).

The classification review procedures for Georgia, on the other hand, do not discuss the factors considered by its DOC. Although the policy references “the inmate’s behavior,” it does not indicate the type of behavior that is seen favorably or the duration of that behavior or how it is documented.<sup>89</sup> Given the overrepresentation of mentally ill people—who already struggle within the overly regulated environment of prisons—in solitary confinement, the vagueness around behavioral expectations is likely to be a difficult, if not insurmountable, obstacle for those prisoners hoping to exit solitary.<sup>90</sup>

Finally, seven states’ classification policies also include the timeline for their review procedures, giving prisoners some idea of when they may exit solitary.<sup>91</sup> The timelines vary considerably across states, however, with Florida’s classification assessments taking place every twelve months while Ohio provides for review within thirty days of placement.<sup>92</sup>

Thus, although seven states in the ten-state sample have classification policies with exit procedures, the actual language in the policies paints a more nuanced picture. Of those seven states, Illinois’s policy and California’s administrative regulations are too brief to provide any direction to prisoners. Further, Florida and Georgia’s policies do not seem to allow much in the way of prisoner involvement in the classification review process, while Georgia also does

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89. GA. DEP’T OF CORR., IIC02-0002, INSTRUCTIONS FOR COMPLETING INITIAL AND RECLASSIFICATION SECURITY INSTRUMENTS 5 (2008).

90. For some examples of how mental illness poses unique challenges for prisoners seeking to comply with prison rules, see HUMAN RIGHTS WATCH, *ILL-EQUIPPED*, *supra* note 9, at 31–32 (“Persons with schizophrenia may experience prison as a peculiarly frightening, threatening environment that can result in inappropriate behavior including self-harm or violence directed toward staff or other prisoners. Persons with bipolar disorder in a manic phase can be disruptive, quick to anger, provocative, and dangerous. Prisoners with serious mental illness, particularly if the illness has psychotic features, may find it next-to-impossible to abide by, or, in more extreme cases, even to understand, prison regulations. . . . A small percentage [of prisoners] don’t understand the rules. They’re the ones who are psychotic. More common is that prison rules don’t mean much to someone hearing voices—that’s the least of their problems.’ A person with paranoid schizophrenia . . . may, on a literal level, understand a rule but nevertheless view a request to abide by that rule as being part of a conspiracy directed against him. ‘It’s less of not understanding and more of acting on distortions.’” (citations omitted)).

91. See CAL. DEP’T OF CORR. & REHAB., OPERATIONS MANUAL, § 61020.14, 6102019.2 (2015); FLA. ADMIN. CODE ANN. r. 33-601.210(4)(c) (2014); ILL. ADMIN. CODE tit. 20, § 503.20(e) (1987); ARIZ. DEP’T OF CORR., DEPARTMENT ORDER MANUAL, 801 INMATE CLASSIFICATION 17 (2011); GA. DEP’T OF CORR., ATTACHMENT 5, IIC02-0002, INSTRUCTIONS FOR COMPLETING INITIAL AND RECLASSIFICATION SECURITY INSTRUMENTS 7 (2008); MICH. DEP’T OF CORR., 05.01.100, PRISONER PROGRAM CLASSIFICATION 2 (2014); OHIO DEP’T OF REHAB. & CORR., 53-CLS-04, LEVEL 5 CLASSIFICATION 7–8 (2012).

92. See FLA. ADMIN. CODE ANN. r. 33-601.210(4)(c) (2014); OHIO DEP’T OF REHAB. & CORR., 53-CLS-04 LEVEL 5 CLASSIFICATION 7–8 (2012).

not describe the factors considered by the DOC. The ten-state survey suggests that certain themes—such as this lack of meaningful guidance in exit procedures or a lack of opportunity for prisoner involvement in classification review—are all too common. Parts III.B, C, D, and E lay out these themes for the entire range of policies across all ten states, providing a more comprehensive picture of exit procedures that are likely to be most helpful to prisoners.

## B. Inmate Involvement

### 1. Appeal Systems

Unsurprisingly, states diverge in how much they allow prisoners to advocate for their release from solitary.<sup>93</sup> Most commonly, prisoners are permitted to proceed through an appeal system that contests a disciplinary violation that may have led to their placement in solitary.<sup>94</sup> Of the five states that provide these appeal systems, Pennsylvania's three-level appeal system is the most thorough, providing

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93. For a discussion of the four states with step-down programs in the ten-state sample, see generally Part III.E. These programs allow for a high degree of prisoner involvement, prescribing certain program and behavioral requirements in order to proceed to lower custody levels.

94. See, e.g., CAL. CODE REGS. art. 8 (2016); MICH. DEP'T OF CORR., 03.03.105, PRISONER DISCIPLINE 11–12 (2012); N.Y. DEP'T OF CORR. & CMTY. SUPERVISION, 4932, CH. V, STANDARDS, BEHAVIORS & ALLOWANCES 10–11, 14–15 (2016); OHIO ADMIN. CODE 5120-9-08(O), 5120-9-08(P), 5120-9-08(Q), 5120-9-08(R) (2013); PA. DEP'T OF CORR., DC-ADM 801, INMATE DISCIPLINE 24–27, 30–31 (2015). Some states also permit appeals of classification decisions, as in Arizona and Georgia. See *supra* note 87 and accompanying text (explaining the problems with Georgia's vague appeal system). Further, in Arizona and Michigan, prisoners can ask for an administrative review of their classification score and are interviewed as part of that process. Arizona's policy allows for administrative review "when there is factual evidence the information utilized in the scoring process was incorrect or information that would have altered the result was omitted. No other issues will be considered. To request an administrative review of a classification score: . . . inmate shall submit a written request for a review on an Inmate Letter or designated appeal form to the Complex Warden." ARIZ. DEP'T OF CORR., DEPARTMENT ORDER MANUAL, 801 INMATE CLASSIFICATION 17 (2011). It is unclear what constitutes sufficient "factual evidence" or what should be included in the written request for review, thus this option seems too vague to be helpful to a prisoner seeking to exit solitary. Michigan's policy is slightly better, specifying the behavioral expectations for prisoners who request a custody reclassification, including: "1. The prisoner has successfully completed an education program. 2. The prisoner has demonstrated responsibility in a work assignment for at least six months . . . 3. The prisoner is not progressing in or has difficulty in adjusting to an assignment or program . . . 4. The prisoner has been found guilty of a Class I or Class II misconduct. 5. The prisoner has been terminated from an assignment . . . 6. The prisoner no longer meets the criteria for being considered unemployable . . . 7. Institutional needs and resources." MICH. DEP'T OF CORR., 05.01.100, PRISONER PROGRAM CLASSIFICATION 2 (2014). The reclassification process also requires an interview with staff; however, the process and guidelines for that interview are not specified for prisoners. *Id.*

step-by-step directions for prisoners.<sup>95</sup> The system requires that an appeal “include a brief statement of the facts relevant to the appeal. Appeals that are not brief or which are found to be an attempt to harass, intimidate, or burden the reviewers to distract them from their duties by placing a hardship on them to determine the appeal points, may be rejected on that basis.”<sup>96</sup> If a prisoner is unsatisfied with the outcome of the first-level appeal, the decision from a second-level appeal “shall be in writing and shall be forwarded to the inmate within seven working days of receipt of the appeal.”<sup>97</sup> And if the prisoner is still unsatisfied, a final appeal requires several supporting documents—including a misconduct report, hearing examiner’s report, statements from the prisoner and any witnesses, appeal forms, and staff responses to the appeals.<sup>98</sup>

The accessibility of Pennsylvania’s system depends in large part on whether prisoners can put together a “legible” and “courteous” appeal and whether they can obtain the necessary supporting documents—all of which could be unrealistic to expect from prisoners who are most likely mentally ill with limited education.<sup>99</sup> Pennsylvania’s system, however, is one of the most detailed, proceeding in several steps with the requirements for the appeal forms, supporting documents, and response timelines laid out for prisoners. Michigan’s appeal system, on the other hand, presents a different picture. The state’s policy requires prisoners to complete an appeal form, which “shall be available to prisoners upon request from the hearing officer or housing unit staff.”<sup>100</sup> Besides specifying the staff who are to receive the appeal, the policy does not explain what is necessary for a successful

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95. PA. DEP’T OF CORR., DC-ADM 801, INMATE DISCIPLINE 24–27, 30–31 (2015).

96. *Id.* at 5–2 (“Further, the text of any appeal shall be legible and presented in a courteous manner, free of vulgarity and profanity or language or symbols attempting to harass, intimidate, or extort the reviewers.”).

97. *Id.* at 5–3.

98. *Id.* at 5–4. In response to a final appeal, the facility “shall respond directly to the inmate in all cases where the position taken by the facility is upheld” and “shall prepare a letter to the inmate” when the decision is reversed, amended, or remanded. *Id.* at 5–5. The detail and contents of these responses, however, are not specified, making it difficult to know whether a prisoner receives meaningful feedback on their appeals.

99. *Id.* at 5–2. Such requirements for “legible” and “courteous” appeals can easily be used to reject prisoners’ complaints, however well founded the complaints may be. A former administrator in California’s corrections department testified before a U.S. House Judiciary Subcommittee that “[m]any of these prisoners are mentally ill or barely literate” yet “[g]rievances may be rejected because the prisoner could not clearly articulate his complaint, or for a minor problem such as using handwriting that is too small.’ The more convoluted or technical the process, the more likely prisoners will fail in their efforts to exhaust their administrative remedies.” NAT’L PRISON RAPE ELIMINATION COMM’N, REPORT 93 (2009). Although these policies are open to this kind of abuse by prison officials, such abuse is outside the scope of this Comment, which is focused on whether prisoners are clearly told how to proceed.

100. MICH. DEP’T OF CORR., 03.03.105, PRISONER DISCIPLINE 12 (2012).

appeal. California's appeal system is similar,<sup>101</sup> although it provides slightly more detail, stating that appeal forms must "describe the specific issue under appeal and the relief requested" with only "one issue or related set of issues" per form along with "all facts known" and "supporting documents."<sup>102</sup>

## 2. Grievance Systems

Similar to the appeal system, five states provide grievance systems as another way that prisoners can be involved in contesting their placement in solitary.<sup>103</sup> On the most detailed end, Florida's grievance system delineates a multistep process for informal and formal grievances, including grievance appeals to the state Office of the Secretary.<sup>104</sup> Prisoners must begin with an informal grievance, which "shall be submitted to the designated staff by placing the informal

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101. The remaining two states that allow prisoners to be involved in an appeal system are New York and Ohio. New York's policy requires that prisoners "be advised of his or her right to appeal the disposition of the disciplinary hearing to the facility superintendent." N.Y. COMP. CODES R. & REG. tit. 7, § 253.8 (2012). And although appeals must be "submitted in writing to the Superintendent within 72 hours of the receipt of the disposition," no other indication is given for the elements of a successful appeal. *Id.* Similarly, Ohio's policy mandates that an "appeal shall state the inmate's allegations of procedural error and/or objections to the [Rules Infraction Board (RIB)] panel's determination of guilt or penalty imposed." OHIO ADMIN. CODE 5120-9-08(O)(1) (2013). The Warden must "promptly notify the inmate of the appeal decision on a form designed for that purpose." OHIO ADMIN. CODE 5120-9-08(O)(3) (2013). Although a specific response form indicates that the feedback may be more specific to a prisoner's appeal, the policy is still unclear in describing what constitutes a strong appeal.
102. CAL. CODE REGS. tit. 15, § 3084.2(a) (2015); CAL. CODE REGS. tit. 15, § 3084.5(a)(1) (2015); CAL. CODE REGS. tit. 15, § 3084.2(a)(4) (2015); CAL. CODE REGS. tit. 15, § 3084.2(a)(4)(b) (2015). California's appeal system describes its initial screening process for appeals at length, directing staff that "[w]hen an appeal is not accepted, the inmate or parolee shall be notified of the specific reason(s) for the rejection or cancellation of the appeal and of the correction(s) needed for the rejected appeal to be accepted." CAL. CODE REGS. tit. 15, § 3084.5(b)(3) (2015). It is not stated, however, whether these instructions are provided in person, by form, or whether the prisoner is permitted to ask questions and clarify issues. *Id.*
103. FLA. DEP'T OF CORR., 33-103, INMATE GRIEVANCE PROCEDURE (2014); ILL. ADMIN. CODE tit. 20, § 501.350(f) (1987) (applying specifically to grievances of placement in involuntary protective custody); MICH. DEP'T OF CORR., 04.04.113, SECURITY THREAT GROUPS 6 (2015); N.Y. COMP. CODES R. & REGS. tit. 7, § 304.14 (2012); TEX. DEP'T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION PLAN 6 (2012). More specifically, in Michigan, prisoners may file a grievance contesting their designation as a member of a "security threat group," which often results in placement in solitary. MICH. DEP'T OF CORR., 04.04.113, SECURITY THREAT GROUPS 6 (2015). Texas's administrative segregation plan—one of only two policies made available by the state for this Comment—did not lay out its specific grievance system, instead simply referring to the "right to appeal the decision of the [administrative segregation committee] through the offender grievance procedures." TEX. DEP'T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION PLAN 6 (2012).
104. FLA. DEP'T OF CORR., 33-103.005, INMATE GRIEVANCE PROCEDURE (2014); FLA. DEP'T OF CORR., 33-103.006, INMATE GRIEVANCE PROCEDURE (2014).

grievance in a locked grievance box. Locked boxes shall be available to inmates in open population and special housing units.<sup>105</sup> The prisoner must submit the grievance on a specific form and “ensure that the form is legible, that included facts are accurately stated, and that only one issue or complaint is addressed. The inmate must limit all grievance narrative to [the form], and only two additional pages of narrative will be allowed. The inmate shall . . . forward the informal grievance to the designated staff person.”<sup>106</sup> These instructions seem straightforward, assuming that the prisoner will be able to ensure the facts are “accurately stated” within the page limit—a serious challenge for prisoners with mental health problems or those with grievances that require more nuanced or detailed explanations.

Florida’s process for formal grievances is very similar, except that the policy includes a provision buried among several other subsections that “grievances of disciplinary action” and “grievances challenging placement in close management” (or solitary) may be filed directly with the reviewing authority, “by-passing the informal grievance step, and may be sent in a sealed envelope through routine institutional mail channels.”<sup>107</sup> Catching this provision is dependent on a prisoner’s ability to wade deep into three subsections of a dense eighteen-page policy.

By comparison, New York’s policy is brief and vague, although it is specific to prisoners confined in its Special Housing Units (SHU).<sup>108</sup> “Inmates assigned to the SHU will have access to the inmate grievance mechanism as follows: (a) Grievance forms will be made available upon request to an SHU officer. (b) A staff representative of the inmate grievance resolution committee will visit the SHU a minimum of once per week, or more often if necessary or requested to do so by the supervisor in charge of the SHU, to interview the inmate and investigate the grievance.”<sup>109</sup> It is unclear what is necessary for a complete grievance form, how the interview proceeds, and the elements of the investigation, thereby providing almost no direction for the prisoner.

### 3. Personal Interviews

The next most common form of prisoner involvement is their participation in a personal interview with prison administrators as part of a hearing process for

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105. FLA. DEPT OF CORR., 33-103.005(1)(a), INMATE GRIEVANCE PROCEDURE (2014).

106. FLA. DEPT OF CORR., 33-103.005(2)(b)(2), INMATE GRIEVANCE PROCEDURE (2014). Prisoners must receive a written response. FLA. DEPT OF CORR., 33-103.005(2)(b)(4)(a), INMATE GRIEVANCE PROCEDURE (2014).

107. FLA. DEPT OF CORR., 33-103.006, INMATE GRIEVANCE PROCEDURE (2014).

108. N.Y. COMP. CODES R. & REGS. tit. 7, § 304.14 (2012).

109. *Id.*

release from certain confinement settings.<sup>110</sup> Only one of the six states that conduct these personal interviews, however, explain the process and goals of the interview, thereby making it difficult for a prisoner to adequately prepare for them.<sup>111</sup> Illinois and New York conduct these personal interviews when prisoners are being removed from protective custody, but again, the policies do not indicate how to prepare and succeed in these interviews.<sup>112</sup> Ohio requires that prisoners at least receive notice prior to the hearing. Notice must also be provided when a prisoner in Ohio is scheduled for a hearing to determine whether they should be transferred to a psychiatric facility from their current confinement setting. The requirements here are much clearer than those for personal interviews, stating that the prisoner must be notified “that the department is considering transferring the inmate to a psychiatric hospital, that it will hold a hearing on the proposed transfer at which the inmate may be present, that at the hearing the inmate has the rights described in paragraph (B)(3) of this rule,

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110. FLA. DEP’T OF CORR., 33-602.220(8)(b), ADMINISTRATIVE CONFINEMENT (2014); FLA. DEP’T OF CORR., 33-602.222(8)(b), DISCIPLINARY CONFINEMENT (2014); FLA. DEP’T OF CORR., 33-601.800(16)(c), CLOSE MANAGEMENT (2014); ILL. ADMIN. CODE tit. 20, § 501.350(d) (1987); ILL. ADMIN. CODE tit. 20, § 504.50(c) (1987); MICH. DEP’T OF CORR., 04.05.120 SEGREGATION STANDARDS 10–11 (2010); MICH. DEP’T OF CORR., 05.01.100, PRISONER PROGRAM CLASSIFICATION 2 (2014); N.Y. DEP’T OF CORR. & CMTY. SUPERVISION, 4020, SECURITY CLASSIFICATION GUIDELINE DECISION APPEAL 1 (2015); OHIO ADMIN. CODE 5120-9-13.1(I) (2014); OHIO DEP’T OF REHAB. & CORR., 55-SPC-02, SPECIAL MANAGEMENT PROCEDURES 4 (2013); TEX. DEP’T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION PLAN 12–14 (2012). Along the same lines, California and Florida perform psychological assessments of prisoners to determine whether they should remain in disciplinary detention, in particular. CAL. CODE REGS. tit. 15, § 3330(g) (2015); FLA. DEP’T OF CORR., 33-602.222(8)(b), DISCIPLINARY CONFINEMENT (2014).
111. Texas’s policy provides a detailed explanation of its hearing process, in which prisoners are evaluated for release from administrative segregation. Prisoners “shall have the right to attend the [state classification committee] review hearing, unless the administrative segregation offender presents a threat to the security of offenders or staff by attending the hearing, in these situations an explanation shall be noted on the I-189. The administrative segregation offender shall also have the right to make a statement, submit written statements from witnesses, and submit other documentary evidence during the . . . review hearing. If the administrative segregation offender refuses to attend, the hearing may be held in the admin segregation offender’s absence.” TEX. DEP’T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION PLAN 13 (2012). It remains unclear, however, how a prisoner may constitute “a threat to the security of offenders or staff” or whether accommodations are available for prisoners who refuse to attend due to mental illness.
112. Both Illinois and New York conduct personal interviews for prisoners attempting to exit involuntary protective custody. ILL. ADMIN. CODE tit. 20, § 501.350(d) (1987); N.Y. COMP. CODES R. & REGS. tit. 7, § 330.3(b)(2) (2015). New York also provides for personal interviews when prisoners request to be released from voluntary protective custody. N.Y. COMP. CODES R. & REGS. tit. 7, § 330.3(a) (2015).

and that the department will provide qualified and independent assistance to the inmate with respect to the hearing.”<sup>113</sup>

#### 4. Documentation

Prisoners can also be involved in exit procedures by receiving forms or documentation that explain the reasons for their custody placement.<sup>114</sup> For example, in Ohio and Pennsylvania, prisoners who appeal a disciplinary violation can expect a copy of administrators’ final decision.<sup>115</sup> More specifically, following a classification decision, Ohio’s prisoners must receive an explanation of why they were placed in a certain classification level, along with the attendant behavioral expectations for success in that level.<sup>116</sup>

An example of a documentation policy that could actually prove helpful to prisoners, California’s Administrative Segregation policy states that “[a]ll classification committee actions shall be documented, including a specific record of inmate’s participation, an explanation of reason(s), and the information and evidence relied upon for the action taken. The inmate shall be provided copies of the completed forms relied upon in making the decisions affecting the inmate.”<sup>117</sup> In contrast, Illinois’s vaguer requirement appears in its policy for involuntary protective custody, requiring that “[t]he committed person shall be personally served with a copy of the Chief Administrative Officer’s decision.”<sup>118</sup> The policy does not describe what is included in this decision, when a prisoner can expect to receive it, and whether they can request that its contents be clarified.

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113. OHIO ADMIN. CODE 5120-9-21.1(B)(2) (2013) (“The department shall not hold the hearing until the inmate has received written notice of the proposed transfer and has had sufficient time to consult with the person appointed by the department to provide assistance to the inmate and to prepare for a presentation at the hearing.”).

114. CAL. CODE REGS. tit. 15, § 3084.1(e) (2015); CAL. CODE REGS. tit. 15, § 3335(j) (2015); CAL. DEP’T OF CORR. & REHAB., OPERATIONS MANUAL, § 52080.29 (2015); ILL. ADMIN. CODE tit. 20, § 501.350(e) (1987); ILL. ADMIN. CODE tit. 20, § 504.50(d) (1987); ILL. ADMIN. CODE tit. 20, § 505.60(b) (1987); N.Y. DEP’T OF CORR. & CMTY. SUPERVISION, 4933, SPECIAL HOUSING UNITS 3 (2013); N.Y. DEP’T OF CORR. & CMTY. SUPERVISION, 4040, INMATE GRIEVANCE PROGRAM 14 (2016); OHIO ADMIN. CODE 5120-9-08(Q)(1) (2014); OHIO ADMIN. CODE 5120-9-13.1(G) (2014); OHIO DEP’T OF REHAB. & CORR., 53-CLS-04, LEVEL 5 CLASSIFICATION 9-10 (2012); PA. DEP’T OF CORR., DC-ADM 801, INMATE DISCIPLINE (2008); PA. DEP’T OF CORR., DC-ADM 802, ADMINISTRATIVE CUSTODY PROCEDURES 2-2-2-3 (2014); TEX. DEP’T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION PLAN 12-13 (2012).

115. OHIO ADMIN. CODE 5120-9-08(O)(3) (2014); PA. DEP’T OF CORR., DC-ADM 801, INMATE DISCIPLINE 5-2 (2008).

116. OHIO DEP’T OF REHAB. & CORR., 53-CLS-04, LEVEL 5 CLASSIFICATION 7 (2012).

117. CAL. CODE REGS. tit. 15, § 3335(e) (2015).

118. ILL. ADMIN. CODE tit. 20, § 501.350(e) (1987).

## 5. Review Process

Four states permit prisoners to participate in some sort of review process with correctional administrators where they examine case records and conviction history in the prisoner's presence or with the prisoner's input in the review process.<sup>119</sup> In Illinois, however, prisoners in administrative detention do not need to be interviewed during their review, although the reason for this is not explained.<sup>120</sup> In contrast, Ohio's prisoners must receive notice of their review hearing and can participate by making a statement or submitting documents.<sup>121</sup> In Pennsylvania, participation takes the form of an interview with the prisoner.<sup>122</sup>

Not inconsequentially, California and New York may reward inmates with decreases in their custody levels if prisoners meaningfully change their own behavior—by no longer posing a threat to themselves or others, or conforming their behavior to prison regulations.<sup>123</sup> This expectation, however, is very problematic when considering the specific challenges of those prisoners with mental illnesses or developmental disabilities.<sup>124</sup>

### C. Factors Considered by the DOC

Perhaps most important to prisoners who are seeking to exit solitary confinement, this Part describes the specific factors relied on by state DOCs in deciding whether to change a prisoner's confinement setting. Although the sheer range of these factors is a positive sign that prisons are seeking to be comprehensive in their review, it is unclear whether states do indeed consider them in practice, or how many of these factors a prisoner must satisfy to be successful. Prisoners who satisfy one, many, or all of the factors seem to be in the same position as one another, along with those who satisfy particular factors in varying degrees.

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119. ILL. ADMIN. CODE tit. 20, § 505.70(a) (2010); MICH. DEPT OF CORR., 04.05.120, SEGREGATION STANDARDS 10-11 (2010); OHIO ADMIN. CODE 5120-9-13.1(I) (2014); OHIO DEPT OF REHAB. & CORR., 55-SPC-02, SPECIAL MANAGEMENT PROCEDURES 4 (2013); PA. DEPT OF CORR., DC-ADM 802, ADMINISTRATIVE CUSTODY PROCEDURES 14 (2014).

120. ILL. ADMIN. CODE tit. 20, § 504.660 (2003).

121. OHIO DEPT OF REHAB. & CORR., 53-CLS-04, LEVEL 5 CLASSIFICATION 8 (2012).

122. PA. DEPT OF CORR., DC-ADM 802, ADMINISTRATIVE CUSTODY PROCEDURES 2-3 (2014).

123. CAL. CODE REGS. tit. 15, § 3334(c)(5) (2015); Memorandum from the N.Y. Dep't of Corr., *supra* note 22.

124. *See supra* note 90 and accompanying text. As with all of the existing policies, whether they are actually followed in practice is a worthy area for research that—although outside the scope of this Comment—would more accurately capture prisoners' lived experiences as well as the real efficacy of these policies. Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1178 (2015).

Most states look to whether prisoners can function in less secure environments—or their potential future adjustment to those environments.<sup>125</sup> Many other factors discussed in this Part, if they are not considered separately as part of other policies and procedures, fall under the umbrella of potential future adjustment. Thus, states will look to a prisoner's current disciplinary conviction record or escape history<sup>126</sup> and to whether a prisoner would likely pose a security threat in the general population, by disobeying prison rules, for example.<sup>127</sup> Relatedly, whether a prisoner has completed any recommended programs—such as a work assignment, step-down program, or debriefing as part of security threat group management—is important in determining the prisoner's ability to function in less secure settings.<sup>128</sup> Arizona, Florida, and Michigan also look

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125. ARIZ. DEP'T OF CORR., DEPARTMENT ORDER MANUAL, 801 INMATE CLASSIFICATION 9 (2011); CAL. DEP'T OF CORR. & REHAB., 15-04 NOTICE OF CHANGE TO REGULATIONS 20 (2015); FLA. DEP'T OF CORR., 33-601.800(16)(3), CLOSE MANAGEMENT (2014); GA. DEP'T. OF CORR., STANDARD OPERATING PROCEDURES, IIB09-0003, ADMINISTRATIVE SEGREGATION—TIER II 3 (2015); GA. DEP'T OF CORR., IIC02-0002, INSTRUCTIONS FOR COMPLETING INITIAL AND RECLASSIFICATION SECURITY INSTRUMENTS 6 (2008); MICH. DEP'T OF CORR., 04.05.120 SEGREGATION STANDARDS 11–12 (2010); Memorandum from the N.Y. Dep't of Corr., *supra* note 22; OHIO DEP'T OF REHAB. & CORR., 53-CLS-04, LEVEL 5 CLASSIFICATION 8–9 (2012); PA. DEP'T OF CORR., DC-ADM 802, ADMINISTRATIVE CUSTODY PROCEDURES 4-1 (2014).
126. ARIZ. DEP'T OF CORR., DEPARTMENT ORDER MANUAL, 801 INMATE CLASSIFICATION 11 (2011); FLA. DEP'T OF CORR., 33-601.800(16)(g), CLOSE MANAGEMENT (2014); GA. DEP'T OF CORR., IIC02-0002, INSTRUCTIONS FOR COMPLETING INITIAL AND RECLASSIFICATION SECURITY INSTRUMENTS 5–6 (2008); Memorandum from the N.Y. Dep't of Corr., *supra* note 22; PA. DEP'T OF CORR., DC-ADM 802, ADMINISTRATIVE CUSTODY PROCEDURES 4-1 (2014); TEX. DEP'T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION PLAN 26 (2012).
127. CAL. DEP'T OF CORR. & REHAB., 15-04 NOTICE OF CHANGE TO REGULATIONS 20 (2015); GA. DEP'T. OF CORR., STANDARD OPERATING PROCEDURES, IIB09-0003, ADMINISTRATIVE SEGREGATION—TIER II 4 (2015); N.Y. COMP. CODES R. & REGS. tit. 7, § 310.3(c) (2015); OHIO DEP'T OF REHAB. & CORR., 53-CLS-04, LEVEL 5 CLASSIFICATION 8-9 (2012); PA. DEP'T OF CORR., DC-ADM 802, ADMINISTRATIVE CUSTODY PROCEDURES 4-1 (2014); TEX. DEP'T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION PLAN 26 (2012). Similarly, in the context of protective custody, Illinois, New York, and Pennsylvania consider whether prisoners must continue to be held for their protection. ILL. ADMIN. CODE tit. 20, § 501.350(d) (1987); N.Y. COMP. CODES R. & REGS. tit. 7, § 330.3(b) (2015); PA. DEP'T OF CORR., DC-ADM 802, ADMINISTRATIVE CUSTODY PROCEDURES 1–2 (2014).
128. Memorandum from Charles L. Ryan, Dir. of Ariz. Dep't of Corr., on Maximum Custody Population Management to Distribution 1 (Mar. 27, 2014) (on file with author); CAL. DEP'T OF CORR. & REHAB., 15-04 NOTICE OF CHANGE TO REGULATIONS 33 (2015); FLA. ADMIN. CODE ANN. r. 33-601.210(4)(b) CUSTODY CLASSIFICATION (2014); MICH. DEP'T OF CORR., 05.01.100, PRISONER PROGRAM CLASSIFICATION 2 (2014); Memorandum from the N.Y. Dep't of Corr., *supra* note 22; TEX. DEP'T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION PLAN 26 (2012). Arizona and New York, in particular, also look to a prisoner's age. ARIZ. DEP'T OF CORR., DEPARTMENT ORDER MANUAL, 801 INMATE CLASSIFICATION 3 (2011); Memorandum from the N.Y. Dep't of Corr., *supra* note 22. Although the impact of an individual's age is not specified in the policies, a program evaluation by the Arizona DOC indicates that younger prisoners tend to commit more disciplinary violations within their facilities, thereby

to new information or circumstances that require a change in a prisoner's custody level or institution assignment, such as new convictions or institutional violence.<sup>129</sup> Most of these factors, however, are not properly defined or explained, making the degree to which escape history, for example, affects administrators' placement decisions, or how frequently prisoners are allowed to break prison rules before they are considered a security threat, unclear.

Given the large population of mentally ill prisoners in solitary confinement, and the justifiable concern for their rehabilitation and success, it is important to note that a majority of states factor prisoners' physical and mental health statuses into their review processes.<sup>130</sup> Whether this helps or hurts a prisoner's review is unclear. For example, as part of Georgia's administrative segregation policy, "the inmate's/probationer's counselor shall review the inmate/probationer well being and mental status every seven (7) days and report his/her findings to the Warden/Superintendent" during the first two months of their confinement in administrative segregation.<sup>131</sup> And interestingly, a majority of jurisdictions in the ten-state sample consider a prisoner's demonstrated attitude, as assessed by an interview, statement, or other interactions with prison staff.<sup>132</sup> Again, this factor—considered without reference to overall mental wellbeing—is particularly

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suggesting that younger prisoners may also have a more difficult time exiting solitary. TERRY L. STEWART & DARYL R. FISCHER, ARIZONA DEP'T OF CORR.: SECURITY THREAT GROUP (STG) PROGRAM EVALUATION iv (2001), <https://www.ncjrs.gov/pdffiles1/nij/grants/197045.pdf>.

129. Memorandum from Charles L. Ryan, Dir. of Ariz. Dep't of Corr., on Maximum Custody Population Management to Distribution 4 (Mar. 27, 2014) (on file with author); FLA. DEP'T OF CORR., 33-601.800(16)(g), CLOSE MANAGEMENT (2014); MICH. DEP'T OF CORR., 05.01.100, PRISONER PROGRAM CLASSIFICATION 2 (2014).
130. CAL. DEP'T OF CORR. & REHAB., OPERATIONS MANUAL, § 52080.32 (2016); FLA. DEP'T OF CORR., 33-601.800(16)(a), CLOSE MANAGEMENT (2014); GA. DEP'T. OF CORR., STANDARD OPERATING PROCEDURES, IIB09-0001, ADMINISTRATIVE SEGREGATION 7 (2015); MICH. DEP'T OF CORR., 04.05.120 SEGREGATION STANDARDS 11-12 (2010); N.Y. DEP'T OF CORR. & CMTY. SUPERVISION, 4933, SPECIAL HOUSING UNITS 10-11 (2013); OHIO ADMIN. CODE 5120-9-21.1 (2013); TEX. DEP'T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION PLAN 26 (2012). Ohio considers mental health status as part of its policy for transferring prisoners to a psychiatric facility from their current confinement setting, in the event of a prisoner's deterioration. OHIO ADMIN. CODE 5120-9-21.1 (2013).
131. GA. DEP'T. OF CORR., STANDARD OPERATING PROCEDURES, IIB09-0001, ADMINISTRATIVE SEGREGATION 7 (2015).
132. GA. DEP'T. OF CORR., STANDARD OPERATING PROCEDURES, IIB09-0004, SPECIAL MANAGEMENT UNIT-TIER III 9 (2015) (referring specifically to "demeanor with staff" in its step-down program for the Special Management Unit); MICH. DEP'T OF CORR., 04.05.120 SEGREGATION STANDARDS 11-12 (2010); N.Y. COMP. CODES R. & REGS. tit. 7, § 301.4(d)(1)(ii) (2012); OHIO ADMIN. CODE 5120-9-13.1(J)(3) (2014); PA. DEP'T OF CORR., DC-ADM 802, ADMINISTRATIVE CUSTODY PROCEDURES 4-1 (2014); TEX. DEP'T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION PLAN 26 (2012).

problematic for the majority of prisoners, those grappling with mental illness or other disabilities.

#### D. Timing of Release

Because of the different policies adopted by states—as well as the policies' different purposes and goals—the timing for release from specific confinement settings is the most complex category to analyze, differing significantly within and across states. The timing question is important, however, because prisoners who miss the relevant deadlines for reviews, grievances, appeals, or interviews can effectively waive their opportunity to contest their confinement setting. Yet states' policies make understanding the relevant timeframe applicable to specific procedures a considerable challenge, with confusing and dense language that can easily mislead.

The longest interval before a possible release time is one year, with five states conducting an annual review or reclassification of each prisoner's status.<sup>133</sup> States also complete custody reviews at six-month intervals, depending on the prisoner's particular confinement setting,<sup>134</sup> as well as every three months,<sup>135</sup> two months,<sup>136</sup> and monthly.<sup>137</sup> Even more frequently, reviews can take place every

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133. ARIZ. DEP'T OF CORR., DEPARTMENTAL ORDER MANUAL, 801 INMATE CLASSIFICATION 16 (2011) (maximum custody prisoners); CAL. DEP'T OF CORR. & REHAB., OPERATIONS MANUAL § 61020.14 (2016); FLA. ADMIN. CODE ANN. r. 33-601.210(4)(c) (2014); MICH. DEP'T OF CORR., 04.04.113, SECURITY THREAT GROUPS 6 (2015) (security threat group prisoners); OHIO DEP'T OF REHAB. & CORR., 53-CLS-04, LEVEL 5 CLASSIFICATION 8 (2012) (level 5 classification prisoners). In particular, California's Department Operations Manual states that "[a]n inmate's case shall be reviewed at least annually to consider the accuracy of the inmate's Placement Score, custody designation, program, work and privilege group, and facility placement, including recommendation for transfer." CAL. DEP'T OF CORR. & REHAB., OPERATIONS MANUAL § 61020.19.2 (2016).

134. ARIZ. DEP'T OF CORR., DEPARTMENTAL ORDER MANUAL, 801 INMATE CLASSIFICATION 8 (2011) (review after the first six months, but annually after that); CAL. DEP'T OF CORR. & REHAB., 15-04 NOTICE OF CHANGE TO REGULATIONS 4 (2015) (administrative segregation prisoners); FLA. DEP'T OF CORR., 33-601.800(8)(b)(3), CLOSE MANAGEMENT (2014) (review of behavioral risk assessments for close management prisoners); MICH. DEP'T OF CORR., 05.01.100, PRISONER PROGRAM CLASSIFICATION 2 (2014) (review of prisoners' program classification).

135. ILL. ADMIN. CODE tit. 20, § 504.660(c) (2003).

136. N.Y. COMP. CODES R. & REGS. tit. 7, § 301.4(d) (2012).

137. CAL. DEP'T OF CORR. & REHAB., OPERATIONS MANUAL § 52080.24 (2016) (temporary segregation); FLA. DEP'T OF CORR., 33-601.820(6)(a), MAXIMUM MANAGEMENT (2014) (maximum management); FLA. DEP'T OF CORR., 33-601.800(16)(a), CLOSE MANAGEMENT (2014) (close management status); GA. DEP'T. OF CORR., STANDARD OPERATING PROCEDURES, IIB09-0001, ADMINISTRATIVE SEGREGATION 7-8 (2015); MICH. DEP'T OF CORR., 04.05.120 SEGREGATION STANDARDS 11 (2010) (administrative segregation); N.Y. COMP. CODES R. & REGS. tit. 7, § 330.3(b)(2) (2015) (involuntary protective custody

two weeks<sup>138</sup> and even weekly,<sup>139</sup> again depending on the confinement setting. Illinois's classification policy is the most vague, providing for review of classification decisions at "regular intervals."<sup>140</sup> And for those prisoners who choose to participate in the appeal system, four states require responses to submitted appeals within thirty to sixty days.<sup>141</sup> Pennsylvania, however, requires a response within seven days.<sup>142</sup>

California, which recently underwent a major overhaul of its solitary confinement policies, is the most specific with regards to the maximum terms allowed for its different versions of solitary. For example, disciplinary detention can last no longer than ten days each month without further approval.<sup>143</sup> Additionally, prisoners in administrative segregation must be reviewed within ten days of their placement.<sup>144</sup> The maximum length of a determinate sentence to its security housing units is sixty months.<sup>145</sup>

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placement); OHIO ADMIN. CODE 5120-9-13.1(I) (2014) (local control); OHIO DEP'T OF REHAB. & CORR., 53-CLS-04, LEVEL 5 CLASSIFICATION 7 (2012) (level 5 custody); OHIO DEP'T OF REHAB. & CORR., 55-SPC-02, SPECIAL MANAGEMENT PROCEDURES 4 (2013) (special management status); PA. DEP'T OF CORR., DC-ADM 802, ADMINISTRATIVE CUSTODY PROCEDURES 1-2 (2014) (involuntary protective custody); PA. DEP'T OF CORR., DC-ADM 802, ADMINISTRATIVE CUSTODY PROCEDURES 2-3 (2014) (administrative custody); TEX. DEP'T OF CRIM. JUST., ADMINISTRATIVE SEGREGATION PLAN 11 (2012).

138. ILL. ADMIN. CODE tit. 20, § 501.350(d) (1987).

139. FLA. DEP'T OF CORR., 33-602.222(8)(a), DISCIPLINARY CONFINEMENT (2014); FLA. DEP'T OF CORR., 33-601.820(6)(a), MAXIMUM MANAGEMENT (2014); FLA. DEP'T OF CORR., 33-601.800(16)(a), CLOSE MANAGEMENT (2014) (though only for the first sixty days); GA. DEP'T. OF CORR., STANDARD OPERATING PROCEDURES, IIB09-0001, ADMINISTRATIVE SEGREGATION 7 (2015) (administrative segregation, but only for the first two months); MICH. DEP'T OF CORR., 04.05.120 SEGREGATION STANDARDS 10 (2010) (administrative segregation, but for the first two months only); OHIO DEP'T OF REHAB. & CORR., 55-SPC-02, SPECIAL MANAGEMENT PROCEDURES 4 (2013) (special management status, though only for the first sixty days); PA. DEP'T OF CORR., DC-ADM 802, ADMINISTRATIVE CUSTODY PROCEDURES 2-3 (2014) (administrative confinement, but for the first two months).

140. ILL. ADMIN. CODE tit. 20, § 503.20(e) (1987).

141. CAL. CODE REGS. tit. 15, § 3084.8(c) (2015); MICH. DEP'T OF CORR., 03.03.105, PRISONER DISCIPLINE 11-12 (2012); N.Y. DEP'T OF CORR. & CMTY. SUPERVISION, 4932, CH. V, STANDARDS, BEHAVIORS & ALLOWANCES 14 (2016); OHIO ADMIN. CODE 5120-9-08(O)(3) (2013).

142. PA. DEP'T OF CORR., DC-ADM 801, INMATE DISCIPLINE 4-1 (2008).

143. CAL. CODE REGS. tit. 15, § 3330(c) (2015).

144. CAL. CODE REGS. tit. 15, § 3335(d) (2015). This policy is still rather vague, stating that "[r]elease from administrative segregation shall occur at the *earliest possible time* in keeping with the inmate's case factors and reasons for the inmate's placement in administrative segregation." CAL. CODE REGS. tit. 15, § 3339(a) (2015) (emphasis added).

145. The policy further specifies that this maximum determinate term is for violation of specific offenses only. CAL. DEP'T OF CORR. & REHAB., 15-04 NOTICE OF CHANGE TO REGULATIONS 6 (2015). As with so much else in these polices, however, it is unclear whether the sixty-month limit is a reality in practice. It is far more likely that terms in solitary are indefinite. McLeod, *supra* note 124, at 1178.

### E. Step-Down Programs

Four states in this Comment's ten-state sample have step-down programs that are designed to help the transition out of solitary confinement.<sup>146</sup> These programs move prisoners toward the highest level of freedom and privileges they can attain in short increments, rewarding good behavior instead of punishing bad behavior.<sup>147</sup> Thus, step-down programs are, in theory, very effective at reducing the harms of isolation and incentivizing better behavior so that prisoners stay out of solitary.<sup>148</sup>

All four states' programs condition progress through the steps on meeting behavioral expectations and ability to adjust to less secure confinement. Arizona's program is very specific in this respect, requiring that prisoners comply with the following requirements: "grooming," "shower," "medical compliance," "cell cleanliness," "refrain from . . . banging . . . and yelling," as well as "refrain from being disrespectful . . . [and] using profanity."<sup>149</sup> The state's program for management of security threat groups (or gangs) requires prisoners to participate in a gradual debriefing program that demonstrates they are no longer part of security

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146. Arizona has step-down programs for both its maximum custody and security threat group populations. Memorandum from Charles L. Ryan, Dir. of Ariz. Dep't of Corr., on Maximum Custody Population Management to Distribution (Mar. 27, 2014) (on file with author); ARIZ. DEP'T OF CORR., DEPARTMENT ORDER MANUAL, 806 SECURITY THREAT GROUPS (STGs) (2012). California has its Behavior Management Unit program as well as a program for security threat groups (gangs). CAL. DEP'T OF CORR. & REHAB., OPERATIONS MANUAL, § 3334 (2015); CAL. CODE REGS. tit. 15, § 3378.3 (2015). Georgia has a multitier step program that includes disciplinary segregation, protective custody, administrative segregation, and Special Management Units. GA. DEP'T OF CORR., IIB09-0002, SEGREGATION—TIER I: DISCIPLINARY, PROTECTIVE CUSTODY AND TRANSIENT HOUSING (2015); GA. DEP'T OF CORR., IIB09-0003, ADMINISTRATIVE SEGREGATION: TIER II PROGRAM HANDOUT (2015); GA. DEP'T OF CORR., IIB09-0003, ADMINISTRATIVE SEGREGATION—TIER II (2015); GA. DEP'T OF CORR., IIB09-0004, SPECIAL MANAGEMENT UNIT—TIER III (2015). Finally, Michigan has a "segregation incentive program" for prisoners classified to administrative segregation. Memorandum from Daniel H. Heyns, Dir. of Mich. Dep't of Corr., on Incentives in Segregation Program to Executive Policy Team, Administrative Management Team, Wardens (Dec. 23, 2014) (on file with author).

147. Interview with Terry Kupers, Psychiatrist, Wright Inst., in Oakland, California (Aug. 23, 2012).

148. *Id.*

149. Memorandum from Charles L. Ryan, Dir. of Ariz. Dep't of Corr., on Maximum Custody Population Management to Distribution (Mar. 27, 2014) (on file with author). Prisoners are in Step I for thirty days.

threat group activity.<sup>150</sup> Similarly, California, Georgia, and Michigan all incorporate behavioral requirements into their step-down programs.<sup>151</sup>

Despite the promise of step-down programs, scholars have pointed out that systems proceeding in several “levels” through which prisoners can work toward greater privileges still present challenges, particularly for the mentally ill.<sup>152</sup> As explained in a Human Rights Watch report:

[I]t is plain that seriously mentally ill inmates differentially lack the ability to understand, internalize, and react appropriately to the disincentives of this level system. Seriously ill inmates are overrepresented in the lower levels of administrative segregation and the long periods spent mired there can be attributed to the serious symptoms of their mental illness. In a circular fashion, the extreme social and sensory deprivation of segregation in turn exacerbates those same symptoms that have kept these inmates stuck at the bottom due to repeated disciplinary infractions.<sup>153</sup>

Although the programs may be “good on paper” by incentivizing good behavior and actively involving the prisoner in the decision of whether to exit solitary, the lofty goals of these programs are likely unrealistic for the very prisoners for which they were designed.

#### IV. IMPLICATIONS

The survey results demonstrate that states do have policies and procedures designed to facilitate prisoners’ eventual release from solitary confinement. All of the jurisdictions in the ten-state sample have exit procedures located throughout a variety of policies governing life in their prisons. Some of these procedures are located within policies for solitary confinement and, assuming the corrections department makes the policies available and accessible, prisoners can thus easily

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150. ARIZ. DEP’T OF CORR., DEPARTMENT ORDER MANUAL, 806 SECURITY THREAT GROUPS (STGS) (2012). California’s program for security threat groups also involves a debriefing process. CAL. CODE REGS. tit. 15, § 3378.3 (2015).

151. CAL. DEP’T OF CORR. & REHAB., OPERATIONS MANUAL, § 3334 (2015); GA. DEP’T OF CORR., IIB09-0002, SEGREGATION—TIER I: DISCIPLINARY, PROTECTIVE CUSTODY AND TRANSIENT HOUSING (2015); GA. DEP’T OF CORR., IIB09-0003, ADMINISTRATIVE SEGREGATION: TIER II PROGRAM HANDOUT (2015); GA. DEP’T OF CORR., IIB09-0003, ADMINISTRATIVE SEGREGATION—TIER II (2015); GA. DEP’T OF CORR., IIB09-0004, SPECIAL MANAGEMENT UNIT—TIER III (2015); Memorandum from Daniel H. Heyns, Dir. of Mich. Dep’t of Corr., on Incentives in Segregation Program to Executive Policy Team, Administrative Management Team, Wardens (Dec. 23, 2014) (on file with author).

152. See HUMAN RIGHTS WATCH, ILL-EQUIPPED, *supra* note 9, at 154.

153. *Id.* (footnote omitted).

locate them.<sup>154</sup> Most often, however, the procedures are located across different categories of policies, and are written with varying degrees of detail and clarity. In this more common scenario, the question is whether a prisoner confined in solitary will be able to locate and adequately access these procedures, an effort that entails determining which policy or procedure applies given their particular confinement setting.

Despite the importance of such procedures to all prisoners in solitary, the overrepresentation of the mentally ill, socioeconomically disadvantaged, and people of color in solitary makes the accessibility of any exit procedures absolutely critical. One justification is that allowing these prisoners—who will hypothetically return to their communities<sup>155</sup>—meaningful opportunities for rehabilitation and success is a worthy goal of our prison system. The second justification for accessible policies is that the marginalized groups that constitute the lion's share of prisoners in solitary have a special need for them. Given that the data analysis for this Comment required at least several months of sorting through the large volume of policies and procedures within each state—to determine which might apply to solitary, and then to locate the relevant exit procedures—it is difficult to imagine how the typical prisoner in solitary could make sense of them. This is especially the case if prisoners hope to advocate for their release within a reasonable amount of time, while lacking any of the resources and support that were available to me while conducting the research for this Comment.<sup>156</sup>

Of course, advocating for fairer or more humane policies may only serve to acknowledge solitary confinement's use and perpetuate the violence, abuse, and ineffectiveness it creates within the corrections system. Thus, some argue that solitary reform will inevitably be insufficient in eliminating the “dehumanizing aspects of incarceration” if the United States continues its “commitment to the

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154. See *supra* note 22 and accompanying text.

155. See Lorna A. Rhodes, *Pathological Effects of the Supermaximum Prison*, 95 AM. J. PUB. HEALTH 1692, 1695 (2005) (“[C]ommunities are affected by the release of prisoners who may have lost whatever social skills and self-control they had when they went to prison, and who in some cases may be psychologically damaged beyond repair.”).

156. This places prisoners in a difficult catch-22: Their inability to conform to prison rules—most likely because of mental illness—leads to their initial placement in solitary, where their illness is exacerbated along with their ability to comply with rules, which then leads to longer solitary terms. See HUMAN RIGHTS WATCH, *ILL-EQUIPPED*, *supra* note 9, at 145 (“When [the mentally ill] are in segregation, if they're not appropriately engaged they continue exhibiting the behaviors that got them there in the first place. If anything, they heighten that activity, which then puts them back before a disciplinary committee, and they get more . . . time. So instead of getting out, they wind up staying longer and longer and longer, and they deteriorate.” (citation omitted)). Thus, time is of the essence for prisoners seeking clear procedures that allow them to exit more quickly and avoid the mental, physical, and spiritual deterioration that so often makes transitioning out of solitary difficult, if not impossible.

practice of imprisonment,” advocating instead for complete prison abolition as “a more compelling moral, legal, and political” solution.<sup>157</sup> The volume, inconsistency, and vagueness of solitary policies, coupled with solitary’s devastating consequences in a prisoner’s life, are persuasive arguments for abolition.

Finally, regardless of whether the policies exist on paper—to say nothing of their clarity and accessibility, which was questioned throughout the previous Part—there is still the issue of whether states actually follow them in practice. Arizona is a prime example of this problem. The state’s policies allow for prisoner involvement in their placement procedures, consider a wide range of factors when making placement decisions, and specify the relevant timelines for release from certain confinement settings. Yet the state denies that it employs solitary confinement altogether, despite a series of articles and reports documenting its actual use of solitary and the extremely poor conditions in those units.<sup>158</sup> The constant stream of research and media reports exposing the harsh reality facing prisoners—who are unable to exit solitary regardless of whether they should have been sentenced to that setting in the first place—across the country is consistent with the coverage of Arizona’s prison system. Although it is beyond the scope of this Comment, the question whether these policies and procedures are followed in practice is an important one for researchers and scholars hoping to advance meaningful reforms of solitary confinement.

### CONCLUSION

Correctional administrators’ historical overreliance on solitary confinement as a population management tool has slowly begun to ebb, although only recently. Despite this shift, the life of any one of the tens of thousands of prisoners in solitary across our nation’s prisons continues to be a very bleak one. Thus, we must begin to focus attention on the existing tools that allow prisoners to contest their confinement once they have already been sentenced to solitary—a highly likely occurrence in the typical prisoner’s life given that solitary is still used with distressing frequency within prisons.

This Comment substantially expands the field of existing research, surveying state corrections departments in an effort to analyze their policies and presenting a comprehensive picture of what is available to a majority of state prisoners confined in solitary across the country. In examining possible exit procedures from solitary across a sample of the ten states that confine a majority of

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157. McLeod, *supra* note 124, at 1162, 1184.

158. See *supra* note 72 and accompanying text.

state prisoners nationwide, the survey reveals that state policies designed to transition prisoners out of this confinement setting range widely in detail and clarity. Not only must prisoners locate the relevant exit procedures amidst multiple sources—such as policy directives, administrators’ memorandums, and operations manuals—they must do so within different types of policies—including those for prisoner classification, mental health of prisoners, and prisoner grievances. If a prisoner manages to get this far, they must then understand the actual procedure, which can be so brief as to offer no real guidelines or so long and complex that prisoners would be unlikely to understand them.

Taking into account the typical makeup of a state prison—with high numbers of mentally ill or developmentally disabled prisoners, and a disproportionate number of prisoners with limited formal education—the multiple obstacles to locating and understanding exit procedures may render them effectively inaccessible. State corrections departments must examine their policies through the eyes of the prisoners who most frequently need them in order to increase their consistency and clarity, particularly in the face of compelling arguments for the abolition of the prison system. The impact of these policies on prisoners’ health and successful reentry is important not just for the prisoners themselves, but for the communities these individuals may eventually reenter.