RESOLVED, That the American Bar Association urges all federal, state, local, territorial, and tribal legislative bodies and governmental agencies to enact laws and adopt policies regarding the use of solitary confinement for detainees according to the following:

1. Solitary confinement (also referred to as “segregation” or “restrictive housing”) is prohibited for individuals with Intellectual Disability or serious mental illness; the elderly; women who are pregnant, are postpartum, or recently had a miscarriage or a terminated pregnancy; and individuals whose medical conditions will be exacerbated by such confinement; and

2. Solitary confinement should be used only in exceptional cases as a measure of last resort, where less restrictive settings are insufficient, and for no longer than is necessary to address the specific reason for placement, typically not to exceed 15 consecutive days.
INTRODUCTION

Solitary confinement, also referred to as “segregation” or “restrictive housing,” entails confining prisoners to a cell either alone or with a cellmate (double solitary or “double celling”) for 22 to 24 hours of day, for periods of times ranging from days to decades, with limited human interaction. Typically, prisoners are allotted one hour for exercise, which is also solitary in a bare cage or concrete enclosure, five days per week. Two or three times a week, prisoners shower. The cells typically are made of concrete blocks; are smaller than an average parking space, usually six by eight feet; have solid metal doors with a slot for food trays; lack windows; and are kept lighted at all times. A metal frame or concrete platform serves as a bed, and there is a metal toilet and sink.\(^1\)

Once considered a punishment of last resort reserved for the most violent and dangerous prisoners, solitary confinement has become a mainstay of prison management and control.\(^2\) Prisoners may be placed in solitary confinement because they: violated facility rules by, for example, talking back, being out of place, or failing to obey an order (disciplinary or punitive segregation); are thought to pose a risk to facility safety or security (administrative segregation); or are believed to be at risk of harm or abuse (protective custody), such as LGBTQ individuals, individuals with disabilities, youth under age 18, law enforcement or public officials, people convicted of sex offenses against children, and former gang members.\(^3\)

There is a lack of data on the number of people held in solitary confinement in the United States due to state-by-state variances, unreliable methods of data collection, different terminology, and the lack of national standards on what constitutes solitary confinement. However, a 2016 report released by the Arthur Liman Public Interest Program at Yale Law School and the Association of State Correctional Administrators (ASCA) estimated that in fall 2015 67,442 prisoners were held in restrictive housing—22 hours a day, for 15 days or more—across 48 jurisdictions (the Federal Bureau of Prisons, 45 states, the District of Columbia, and the Virgin Islands).\(^4\) This figure did not include prisoners held in jails (housing hundreds of thousands of people), juvenile facilities, and military and immigration facilities.

Scientific research confirms that solitary confinement is physiologically and psychologically harmful. Although the most widely reported effects are psychological, physiological effects are

---


\(^3\) Id. at 4.

commonly reported and include heart palpitations, diaphoresis (sudden excess sweating), insomnia, back and other joint pain, deterioration of eyesight, poor appetite, weight loss, lethargy, weakness, shaking, feeling cold, and aggravation of preexisting medical conditions. Individuals held in solitary confinement experience a whole host of negative responses, including negative attitudes and affect;° insomnia;¹ anxiety;² panic;³ aggression and rage;⁴ depression;⁵ and lower levels of brain function, including a decline in electroencephalogram (EEG) activity⁶ that is observable after only seven days in isolation.⁷

The widespread use of solitary confinement and its harmful effects on prisoners’ mental and physical health has gained national attention. In January 2016, the U.S. Department of Justice published a report providing an overview of restrictive housing practices in the federal prison system and setting forth guiding principles and policy recommendations for reform.⁸ Professional associations of correctional and health professionals, correctional officials, social scientists, international organizations, state and federal legislatures, among numerous others, have called for reform.

It is against this backdrop that the ABA urges all federal, state, local, territorial and tribal legislative bodies and governmental agencies to enact laws and adopt policies regarding the use of solitary confinement for detainees according to the following:

(1) Solitary confinement (also referred to as “segregation” or “restrictive housing”) is prohibited for individuals with Intellectual Disability¹⁵ or serious mental illness¹⁶;

---

⁶ See, e.g., Michael Bauer et al., Long-Term Mental Sequelae of Political Imprisonment in East Germany, 181 J. NERVOUS & MENTAL DISEASE 257, 258-61 (1993); Peter Suedfeld et al., Reactions and Attributes of Prisoners in Solitary Confinement, 9 CRIM. JUST. & BEHAV. 303, 315-18 (1982).
⁷ See, e.g., Bauer et al., supra note 6, at 259.
¹⁰ See, e.g., Bauer et al., supra note 6, at 259-60.
¹¹ See, e.g., Andersen et al., supra note 8, at 22.
¹³ Id.
¹⁵ Formerly termed “Mental Retardation,” this condition is defined as “a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains.” AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 33 (5th ed. 2013).
¹⁶ The Substance Abuse and Mental Health Services Administration (SAMSHA) describes “serious mental illness” as a condition that affects “persons aged 18 or older who currently or at any time in the past year have had a diagnosable mental, behavioral, or emotional disorder (excluding developmental and substance use disorders),” that meets current “diagnostic criteria” in a fashion that “has resulted in serious functional impairment” and “substantially interferes with or limits one or more major life activities,” exclusive of “dementias and mental
the elderly; women who are pregnant, are postpartum, or recently had a miscarriage or a terminated pregnancy; and individuals whose medical conditions will be exacerbated by such confinement.

(2) Solitary confinement can be used only in exceptional cases as a measure of last resort, where less restrictive settings are insufficient, and for no longer than is necessary to address the specific reason for placement, typically not to exceed 15 consecutive days.

**BACKGROUND**

*The Eighth Amendment*

Solitary confinement is a form of punishment subject to scrutiny under the Eighth Amendment. “The Eighth Amendment . . . prohibits the infliction of ‘cruel and unusual punishments’ on those convicted of crimes.” At its core, the Eighth Amendment limits the extent to which the government can punish its prisoners. In *Furman v. Georgia*, the U.S. Supreme Court set forth four principles for determining whether a particular punishment is “cruel and unusual”: (1) a punishment that by its severity is degrading to human dignity; (2) a severe punishment that is obviously inflicted in wholly arbitrary fashion”; (3) a severe punishment that is clearly and totally rejected throughout society; and (4) a severe punishment that is patently unnecessary. Punishments that are barbaric or torturous, “involve the unnecessary and wanton infliction of pain,” or are “grossly disproportionate to the severity of the crime” violate the Eighth Amendment.

The Eighth Amendment mandates that corrections officials provide “humane conditions of confinement” for prisoners. They must ensure that prisoners receive adequate food, clothing, shelter, and medical care, as well as take reasonable measures to guarantee prisoners’ safety. Successful Eighth Amendment claims have typically involved prison officials’ direct action or inaction, such as denying prisoners medical care, or depriving them of their basic human

---

17 Defined as individuals age 65 or older.
18 *Hutto v. Finney*, 437 U.S. 678, 685 (ruling that “[c]onfinement in . . . an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards.”).
19 *Wilson v. Seiter*, 501 U.S. 294, 296-97 (1991) (internal quotation marks omitted). Prior to conviction, persons who are held pending trial may seek relief under the Fourteenth Amendment to the U.S. Constitution.
needs\textsuperscript{28} or “the minimal civilized measure of life’s necessities,”\textsuperscript{29} “rather than an overall challenge to general penal practices, such as solitary confinement.”\textsuperscript{30} Several federal courts have ruled that certain segregation practices—those limited to the isolation of incarcerated individuals who have serious preexisting mental illness or are prone to suffer severe mental injury—violate the Eighth Amendment.\textsuperscript{31}

\textit{The Supreme Court—At the Brink of Decision}

To date, the U.S. Supreme Court has yet to rule that solitary confinement is unconstitutional, but it may be on the brink of a decision. As early as 1890 the Court recognized that, even for prisoners sentenced to death, solitary confinement bears “a further terror and peculiar mark of infamy.”\textsuperscript{32} The Court ruled that a Colorado statute specifying solitary confinement prior to execution was unconstitutional under \textit{ex post facto} prohibition. The Court found in that context that “the solitary confinement . . . was an additional punishment of the most important and painful character, and therefore is forbidden.”\textsuperscript{33}

The Court recounted that in the 1700s some states erected solitary prisons where prisoners were confined in a cell and completely isolated, having “no direct intercourse with or sight of any human being.”\textsuperscript{34} However, serious objections emerged:

A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal

\textsuperscript{29} \textit{Id.} at 347.
\textsuperscript{30} \textit{VERA INSTITUTE OF JUSTICE, supra} note 2, at 10.
\textsuperscript{32} \textit{In re Medley}, 134 U.S. 160, 170 (1890).
\textsuperscript{33} \textit{Id.} at 171.
\textsuperscript{34} \textit{Id.} at 168.
better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community. 35

Accordingly, solitary confinement was found to be too severe, and changes were made in the prison system.

In 2005, the Supreme Court in *Wilkinson v. Austin* held that prisoners at the Ohio State Penitentiary (OSP) have a liberty interest in avoiding the harsh and restrictive conditions at the state’s so-called supermax facility. 36 Although the Court found Ohio’s policy to offer sufficient procedural protections under the Due Process Clause, *Wilkinson* stands for the proposition that where the conditions of solitary are atypical and significant in relation to the ordinary incidents of prison life, 38 due process requires that prisoners be afforded adequate procedural protections prior to placement in solitary and periodic reviews to determine if continued placement is justified.

The Court found that assignment to OSP “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” 39 Almost all human contact is prohibited, even to the point that conversation is not permitted from cell to cell; cell lights may be dimmed, but are on for 24 hours; and inmates exercise only one hour per day in a small indoor room. These conditions likely would apply to most solitary confinement facilities, except for the especially severe limitations on all human contact; the fact that OSP placement is indefinite and after an initial 30-day review, is reviewed just annually; and the fact that placement disqualifies an otherwise eligible inmate for parole consideration.

Since *Wilkinson*, courts have found that prisoners have a constitutionally protected interest in avoiding the aforementioned harms of solitary confinement and have examined state policies to determine whether they provide procedural protections consistent with due process. 40 Such decisions call into question policies mandating the automatic placement of prisoners into solitary confinement without an individualized assessment as to security risk, or other factors justifying placement in the highly restrictive conditions of solitary confinement.

The Court almost had a chance recently to rule directly on the constitutional sufficiency of solitary confinement, in the case of *Prieto v. Clarke*. Alfredo Prieto, convicted of two capital murders in 1988 and another in 1990, had convinced a federal district court that the circumstances of his housing on Virginia’s death row, involving housing in a separate single cell with restricted visitation and recreation, were “uniquely severe,” such that the Virginia prison system either had to improve his conditions of confinement or afford him “an individualized classification determination” similar to those for noncapital offenders. 41

35 Id.
37 Id. at 230.
38 Id. at 222-23 (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)).
40 See, e.g., *Williams v. Secretary, Pa. Dep’t of Corrs.*, 848 F.3d 549 (3d Cir. 2017); *Shoats v. Horn*, 213 F.3d 140 (3d Cir. 2000).
When the case was taken by prison officials to the Fourth Circuit Court of Appeals, Prieto’s brief victory was overturned. The appellate court reasoned that because “[a] written Virginia policy requires all capital offenders to be housed on death row prior to execution, without any possibility of reclassification,” there could be no “expectation or right on the part of Virginia capital offenders to any other housing assignment.”

Prieto gave every appearance of being a case that at least two justices were eager to hear. However, Prieto turned out not to be the case by which solitary confinement jurisprudence would be advanced—in one direction or the other. The appellant was executed before this matter could be heard, and the Court dismissed the petition for certiorari as moot. With this much advance interest having been telegraphed by two justices, it is just a matter of time before a similar matter will be considered.

In a recent concurring opinion in Davis v. Ayala, Justice Anthony Kennedy was moved to respond “only to one factual circumstance, mentioned at oral argument but with no direct bearing on the precise legal questions presented by this case.” He took that opportunity to cite numerous learned treatises as a preface to opining:

These are but a few examples of the expert scholarship that, along with continued attention from the legal community, no doubt will aid in the consideration of the many issues solitary confinement presents. And consideration of these issues is needed. Of course, prison officials must have discretion to decide that in some instances temporary, solitary confinement is a useful or necessary means to impose discipline and to protect prison employees and other inmates. But research still confirms what this Court suggested over a century ago: Years on end of near-total isolation exact a terrible price. In a case that presented the issue, the judiciary may be required, within its proper jurisdiction and authority, to determine whether workable alternative systems for long-term confinement exist, and, if so, whether a correctional system should be required to adopt them.

Justice Kennedy’s pronouncement occurred on the heels of a dissent by Justice Stephen Breyer in Glossip v. Gross, asserting that “given the negative effects of confinement and uncertainty, it is not surprising that many inmates volunteer to be executed, abandoning further appeals,” and referred in particular to “the dehumanizing effect of solitary confinement.”

In Ruiz v. Texas, Justice Breyer dissented from the Court’s refusal to issue a stay of execution for Rolando Ruiz, finding Ruiz’s claim—that his execution would violate the Eighth Amendment because it would follow 20 years spent in solitary confinement—“a strong one.” Breyer called on this Court to determine “whether extended solitary confinement survives Eighth Amendment scrutiny.” He noted that Ruiz had developed symptoms long associated with solitary confinement, namely severe anxiety and depression, suicidal thoughts, hallucinations,

---

42 80 F.3d 245, 252 (4th Cir. 2015).
45 Id. at 2210 (citation omitted).
disorientation, memory loss, and sleep difficulty. “If extended solitary confinement alone raises serious constitutional questions,” Breyer concluded, “then 20 years of solitary confinement, all the while under threat of execution, must raise similar questions, and to a rare degree, and with particular intensity.”

**BUILDING ON ABA POLICY**

The ABA has long been committed to promoting a criminal justice system, including humane and safe prisons, that reflects American values. It shares a growing concern over what has become the prolonged solitary confinement instituted in federal and state prisons and jails. In February 2010, a set of ABA Standards for Criminal Justice on the Treatment of Prisoners was approved by the ABA House of Delegates. The standards regarding solitary confinement center around a core ideal: “Segregated housing should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner.”

Based on the widespread use of solitary confinement, its physiological and psychological harmful effects, case law, and the national call for reform, this resolution goes beyond these standards. It restricts the use of solitary confinement to exceptional cases as a measure of last resort, where less restrictive settings are insufficient, and for no longer than is necessary to address the specific reason for placement, typically not to exceed 15 consecutive days.

This resolution is in agreement with the National Commission on Correctional Health Care (NCCHC) offered a position statement on “Solitary Confinement (Isolation)” that delineated the following principles as a means to “guide correctional health professionals in addressing issues about solitary confinement”:

1. Prolonged (greater than 15 consecutive days) solitary confinement is cruel, inhumane, and degrading treatment, and harmful to an individual’s health.

5. Solitary confinement as an administrative method of maintaining security should be used only as an exceptional measure when other, less restrictive options are not available, and then for the shortest time possible. Solitary confinement should never exceed 15 days. In those rare cases where longer isolation is required to protect the safety of staff and/or other inmates, more humane conditions of confinement need to be utilized.

This resolution is also in agreement with the United Nations’ Mandela Rules:

---

48 Id. at 1247.
Rule 45

(1) Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner’s sentence. 51

An additional source of support for this resolution is the U.S. Department of Justice’s 2016 Report and Recommendations Concerning the Use of Restrictive Housing, which concludes:

[T]here are occasions when correctional officials have no choice but to segregate inmates from the general population, typically when it is the only way to ensure the safety of inmates, staff, and the public and the orderly operation of the facility. But as a matter of policy, we believe strongly this practice should be used rarely, applied fairly, and subjected to reasonable constraints. The Department believes that best practices include housing inmates in the least restrictive settings necessary to ensure their own safety, as well as the safety of staff, other inmates, and the public; and ensuring that restrictions on an inmate’s housing serve a specific penological purpose and are imposed for no longer than necessary to achieve that purpose. 52

Further, the ABA Criminal Justice Standards on Mental Health 53 provide that “segregated housing of persons with mental disorder should only occur under the circumstances defined in Standard 23-2.8” 54 of corresponding ABA Standards for Criminal Justice on the Treatment of Prisoners. The latter Standards provide, among other things, that: “(a) No prisoner diagnosed with serious mental illness should be placed in long-term segregated housing.” 55 Based on scientific research documenting the psychological harms caused by solitary confinement, federal case law finding that placing people with serious mental illness into solitary confinement constitutes cruel and unusual punishment, 56 settlements, state law, and the recommendations of numerous professional organizations discussed below, this resolution urges the prohibition of solitary confinement for persons with serious mental illness.

53 Adopted in August 2016, these Standards were adopted to supplant the Third Edition (August 1984) of the ABA Criminal Justice Mental Health Standards, and are found at file:///C:/Users/allbriga/AppData/Local/Microsoft/Windows/Temporary%20Internet%20Files/Content.IE5/00VS4K39/mental_health_standards_2016.authcheckdam.pdf.
54 Id., at Standard 7-10.1(c) (“Services for people with mental disorder”).
56 See footnote 28.
In 2014, Colorado Governor John Hickenlooper signed Senate Bill 14-064,280, which prohibits the placement of seriously mentally ill prisoners (SMI) in “long-term isolated confinement except when exigent circumstances are present.”\textsuperscript{57} Nebraska law requires individuals with serious mental illness who present a high risk to others or to self and require residential mental health treatment to be housed in Secure Mental Health housing.\textsuperscript{58} In January 2016, a settlement was reached in a long-running class-action lawsuit brought by the ACLU of Indiana and the Indiana Protection and Advocacy Services Commission against the Indiana Department of Correction. The settlement prohibits the placement of a seriously mentally ill prisoner into solitary confinement.\textsuperscript{59} In December 2015, the Uptown People’s Law Center announced a landmark settlement in \textit{Rasho v. Baldwin}, a class action lawsuit against the Illinois Department of Corrections, that provides for the removal of prisoners with serious mental illnesses from solitary confinement.\textsuperscript{60}

The American Psychiatric Association maintains that “prolonged segregation of adult inmates with serious mental illness, with rare exceptions, should be avoided due to the potential for harm to such inmates.”\textsuperscript{61} In addition, in its 2016 \textit{Report and Recommendations Concerning the Use of Restrictive Housing}, the Justice Department recommends that “[g]enerally, inmates with serious mental illness (SMI) should not be placed in restrictive housing.”\textsuperscript{62} NCCHC lists as one of principles that mentally ill individuals should be excluded from solitary confinement of any duration.\textsuperscript{63} In addition, Mandela Rule 45(2) states:

\textit{The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice continues to apply.}\textsuperscript{64}

In addition to inmates with serious mental illness, this resolution urges that solitary confinement be prohibited for individuals with Intellectual Disability; the elderly; women who are pregnant, are postpartum, or recently had a miscarriage or a terminated pregnancy; and individuals whose medical conditions will be exacerbated by such confinement. Because of its adverse psychological effects, a 2017 report by the Human Rights Clinic at the University of Texas

\begin{footnotes}
\item[57] COLO. REV. STAT. § 17-1-113.8 (2014).
\item[59] Solitary Watch, \textit{Milestones in Solitary Reform}, http://solitarywatch.com/resources/timelines/milestones/.
\item[60] Id. See also https://www.illinois.gov/IISNews/15-1093-IDOC_Reaches_Agreement_in_Rasho_v_John_Baldwin.pdf.
\item[62] U.S. DEP’T OF JUST., \textit{supra} note 52, at 99.
\end{footnotes}
School of Law recommends that Texas should entirely ban the use of solitary confinement for inmates with mental illnesses or intellectual disabilities.\(^{65}\)

Often, pregnant women in solitary confinement receive no medical care. The Justice Department recommends that generally women who are pregnant, post-partum or recently had a miscarriage or a terminated pregnancy should not be placed in restrictive housing.\(^{66}\) NCCHC also recommends that pregnant women should be excluded from solitary confinement of any duration.\(^{67}\) Mandela Rule 45(2) provides that the imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.”\(^{68}\)

CONCLUSION

No consensus exists for outright abolition of solitary confinement—given, in particular, the need for temporary segregation under emergent circumstances—but prolonged, retributive, and arbitrary uses are clearly inappropriate and merit corrective intervention on the part of federal, state, local, territorial and tribal legislative bodies and governmental agencies. Based on the proposed reforms discussed in this report, this resolution urges the adoption of two overarching principles: (1) to limit the use of solitary confinement to exceptional cases as a measure of last resort, where less restrictive settings are insufficient, and for no longer than necessary to address the specific reason for placement, typically not to exceed 15 consecutive days, and (2) to prohibit solitary confinement altogether for individuals with Intellectual Disability or serious mental illness; the elderly; women who are pregnant, are postpartum, or recently had a miscarriage or a terminated pregnancy; and individuals whose medical conditions will be exacerbated by such confinement.

Respectfully submitted,
Morris “Sandy” Weinberg
Chair, Criminal Justice Section
February, 2018

\(^{65}\) HUMAN RIGHTS CLINIC, UNIVERSITY OF TEXAS SCHOOL OF LAW, DESIGNED TO BREAK YOU: HUMAN RIGHTS VIOLATIONS ON TEXAS’ DEATH ROW 9, 49 (Apr. 2017), file:///C:/Users/allbriga/AppData/Local/Microsoft/Windows/Temporary%20Internet%20Files/Content.IE5/7NNO10PF/2017-HRC-DesignedToBreakYou-Report.pdf.

\(^{66}\) U.S. DEP’T OF JUST., supra note 52, at 102, 114-15.

\(^{67}\) http://www.ncchc.org/solitary-confinement.

1. **Summary of Resolution(s).**
   The resolution urges all federal, state, local, territorial, and tribal legislative bodies and governmental agencies to enact laws and adopt policies regarding the use of solitary confinement for detainees according to the following:

   1. Solitary confinement (also referred to as “segregation” or “restrictive housing”) is prohibited for individuals with Intellectual Disability or serious mental illness; the elderly; women who are pregnant, are postpartum, or recently had a miscarriage or a terminated pregnancy; and individuals whose medical conditions will be exacerbated by such confinement; and

   2. Solitary confinement should be used only in exceptional cases as a measure of last resort, where less restrictive settings are insufficient, and for no longer than is necessary to address the specific reason for placement, typically not to exceed 15 consecutive days.

2. **Approval by Submitting Entity.** This resolution was passed by the Criminal Justice Council at the Fall Council Meeting in November 2017, and by the Commission on Disability Rights at its Fall Meeting in October 2017.

3. **Has this or a similar resolution been submitted to the House or Board previously?**
   Yes, in 2017, the ABA adopted a resolution urging “federal, state, local, territorial and tribal legislative bodies and governmental agencies to enact laws and adopt policies prohibiting the use of solitary confinement – the involuntary placement alone in a cell, room or other area for any reason other than as a temporary response to behavior that threatens immediate harm and ends when the threat is over and, in no case, more than 4 hours - of children and youth under age 18.” This resolution would build on this existing policy by addressing solitary confinement of adult detainees.

4. **What existing Association policies are relevant to this Resolution, and how would they be affected by its adoption?**
   In February 2010, a set of ABA *Standards for Criminal Justice on the Treatment of Prisoners* was approved by the ABA House of Delegates. The standards regarding solitary confinement center around a core ideal: “Segregated housing should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner.” Further, the ABA *Criminal Justice Standards on Mental Health* provide that “segregated housing of persons with mental disorder should only occur under the circumstances defined in Standard 23-2.8” of corresponding ABA *Standards for Criminal Justice on the Treatment of Prisoners*, which
provide, among other things, that: “(a) No prisoner diagnosed with serious mental illness should be placed in long-term segregated housing.”

5. **If this is a late report, what urgency exists which requires action at this meeting of the House?**
   Not applicable

6. **Status of Legislation.** (If applicable)
   Not applicable

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**
   Adoption of the policy will allow the ABA to support efforts in all branches of government that are working to end the practice of excessive solitary confinement of adult detainees.

8. **Cost to the Association.** (Both direct and indirect costs)
   None

9. **Disclosure of Interest.** (If applicable)
   Not applicable.

10. **Referrals.** Concurrent with the filing of this resolution and Report with the House of Delegates, the Criminal Justice Section is sending the resolution and report to the following entities and/or interested groups:

    - Section of Civil Rights and Social Justice
    - Health Law Section
    - Section of International Law Government and Public Sector
    - Section of Litigation
    - Section of Science & Technology Law
    - Law Practice Division
    - Lawyers Division
    - Solo, Small Firm and General Practice Division
    - Commission on Hispanic Legal Rights and Responsibilities
    - Commission on Homelessness & Poverty
    - Commission on Immigration
    - Commission on Racial & Ethnic Diversity in the Profession
    - Center for Human Rights
    - Coalition on Racial & Ethnic Justice
    - Standing Committee on Legal Aid and Indigent Defendants
    - Standing Committee on Federal Judiciary
11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Kevin Scruggs  
American Bar Association  
1050 Connecticut Ave NW, 4th Floor  
Washington, DC 20036  
Kevin.scruggs@americanbar.org  

Eric York Drogin  
Harvard Medical School  
350 Lincoln Street, Suite 2400  
Hingham, MA 02043  
(339) 200-9131  
eyd@drogin.net  
edrogin@bidmc.harvard.edu  

12. **Contact Name and Address Information (Who will present to the House of Delegates)**

Stephen Saltzburg  
2000 H Street, NW  
Washington, D. C. 20052  
T: 202-994-7089  
E: ssaltz@law.gwu.edu  

Neal Sonnett  
2 South Biscayne Blvd., Suite 2600  
Miami, Florida 33131-1819  
T: 305-358-2000  
Cell: 305-333-5444  
E: nrslaw@sonnett.com
1. **Summary of the Resolution**

The resolution urges all federal, state, local, territorial, and tribal legislative bodies and governmental agencies to enact laws and adopt policies regarding the use of solitary confinement for detainees according to the following:

1. Solitary confinement (also referred to as “segregation” or “restrictive housing”) is prohibited for individuals with Intellectual Disability or serious mental illness; the elderly; women who are pregnant, are postpartum, or recently had a miscarriage or a terminated pregnancy; and individuals whose medical conditions will be exacerbated by such confinement; and

2. Solitary confinement should be used only in exceptional cases as a measure of last resort, where less restrictive settings are insufficient, and for no longer than is necessary to address the specific reason for placement, typically not to exceed 15 consecutive days.

2. **Summary of the Issue that the Resolution Addresses**

Concern over the circumstances under which adult detainees are held in locked facilities has been evident for years to the point where a variety of legal, social scientific, and other sources have weighed in on this issue and its deleterious impact on incarcerated persons. Various entities assert that the use of this practice violates the Eighth Amendment proscription against cruel and unusual punishment.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

The proposed position will allow lawyers and the ABA to continue to work with other jurisdictional officials to curtail unacceptable solitary confinement practices in all correctional facilities.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

None.