



PolicyPerspective

Reliance on Solitary Confinement as a Long-Term Correctional Solution Is on the Decline in Tennessee

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Solitary confinement, or restrictive housing—the term of art preferred by corrections professionals, is the correctional removal of an inmate from the general population primarily in response to an inmate’s disruptive behavior, a threat posed to the general population by the inmate, or a safety threat posed by the general population toward the inmate.

Key Points

- Tennessee Department of Corrections has implemented procedural changes “to reduce restrictive housing to an irreducible minimum.”
- Lawmakers should revise the statutory prohibition on earned credits to those assigned to restrictive housing. Instead, allow Tennessee Department of Corrections discretion to determine if a degree of credit is appropriate based on successful program compliance.

In Tennessee, despite a growing prison population ([TDOC 2019a, 14](#)), it appears that the correctional reliance upon restrictive housing as a long-term solution to inmate behavior appears is on the decline. A nationwide survey performed by the Association of State Correctional Administrators and the Liman Center for Public Interest Law at Yale Law School found that while Tennessee’s overall inmate population has steadily increased, from 2015 to 2017 the percentage of inmates in restrictive custody decreased from 8.8 percent to 5.3 percent ([ASCA, 96-97](#)). Looking further into this decrease, the survey noted that those assigned to restrictive housing for longer terms dramatically decreased from 2015-2016 to 2017-2018. Specifically, the decrease broke down as illustrated in Table 1.

To what should we attribute this decline in long-term use of restrictive housing, and what steps can be taken to ensure a continued positive outcome? This paper will highlight the policy changes and programming implemented by the Tennessee Department of Corrections (TDOC) that have led to the positive outcomes to date, as well as opportunities to expand upon the successful decline in reliance upon costly restrictive housing.

Statutory and Administrative Framework Governing Solitary Confinement in Tennessee

Under Tennessee law, “any inmate who neglects or refuses to perform the labor assigned, or willfully injures any of the materials, implements, or tools, or engages in conversation with any other inmate, or in any other manner violates any of the regulations of the penitentiary, may be punished by solitary confinement...” (T. C. A. § 41-21-402(a)). The law affords wardens discretion pertaining to the implementation of solitary confinement; however, confinement shall not exceed 30 days for each offense (T. C. A. § 41-21-402(a)). Wardens must “immediately” report “the name of each person committed to solitary confinement, with a

Table 1. Comparing the numbers of prisoners in restrictive housing by length of time in 2015–16 and in 2017–18

15 days up to 1 mo.	1 up to 3 mos.	3 up to 6 mos.	6 up to 12 mos.	1 up to 3 yrs.	3 up to 6 yrs.	More than 6 yrs.
89 (2015-16)	239 (2015-16)	222 (2015-16)	353 (2015-16)	500 (2015-16)	166 (2015-16)	205 (2015-16)
110 (2017-18)	276 (2017-18)	237 (2017-18)	280 (2017-18)	244 (2017-18)	31 (2017-18)	3 (2017-18)

Source: [ASCA, 101](#)

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statement of the nature of the person's offense, the date of confinement and the period for which committed," to the commissioner for the Department of Corrections (T. C. A. § 41-21-403).

Restrictive housing is defined by TDOC as follows:

The purposeful separation of inmates from the general inmate population in confinement or housing where measures are taken to provide maximum security and/or to control their circumstances or circumscribe their freedom. This general status is for either punitive or administrative reasons that are subject to inmates remaining in their cells up to 22 hours each day (TN Dep't of Corr. Policy # 506.16, 2).

It is important to note, though, that it is the policy of TDOC to ensure that any services available to the general population, whether rehabilitative or behavior, are available to inmates in restrictive housing (TN Dep't of Corr. Policy #506.16, 2). Further, inmates assigned to restrictive housing may still receive outside visits (TN Dep't of Corr. Policy #507.01). This is important for the rehabilitative progress of each inmate placed in restrictive housing.

The Impact of Administrative Policies and Procedural Changes

The Legislature has empowered the TDOC commissioner with the authority to manage the custody of any inmate assigned to TDOC (T. C. A. § 4-3-603, T. C. A. § 4-3-606). As outlined below, the commissioner has utilized his authority in recent years to adopt administrative policies and procedures designed to reduce the time an inmate spends in restrictive housing.

In 2017, TDOC began implementing a series of policy changes that appear to have resulted in fewer inmates assigned to long terms in restrictive housing and a 3.5 percent reduction in the restrictive housing population generally, outlined in **Table 1**. On June 1, 2017, TDOC implemented a "uniform procedure for the initial diagnostic, classification, and reclassification of inmates in the physical custody of ... TDOC," which includes the "[c]ompletion of a review of restrictive housing placement by the Classification Committee or other authorized staff every seven days for the first 60 days and at least every 30 days thereafter" (TN Dep't of Corr. Policy # 401.04, 3). Under this policy reform, case management plans are developed that are a "continuously updated and edited series of goals and action steps that govern the confinement, supervision, treatment, sanctioning, transition, and rehabilitative needs of individuals sentenced to serve their sentence under the authority of the TDOC," as determined by a validated risk and needs assessment tool. The risk and needs assessment tool assists

correctional decisions on the use of restrictive housing and the development of individualized risk and needs programming to facilitate the transition from restrictive housing to general population.

On October 1, 2017, TDOC established dedicated Secured Management Units (SMU) for those assigned to restrictive housing for disruptive behavior or identified as a member of a security threat group (STG) (TN Dep't of Corr. Policy # 506.26.1, 1). An STG is "any group, organization, or association of three or more individuals who possess common characteristics which serve to distinguish them from other individuals or groups who have been determined to be acting in concert, so as to pose a threat or potential threat to staff, other inmates, the institution or the community" (TN Dep't of Corr. Policy # 506.26.1, 2). An inmate so assigned must participate in a three-phase program, with the security restrictions decreasing with the successful completion of each phase (TN Dep't of Corr. Policy # 506.26.1, 4-5). The SMU phases are "designed to be approximately four months in duration, however, an inmate's time may be extended or an inmate may be required to repeat a phase as determined during an SMU Review Hearing" (TN Dep't of Corr. Policy # 506.26.1, 5). If an inmate assigned to the SMU successfully completes all phases of the programming, he or she will have an opportunity to present any progress to the SMU Review Board that will ultimately recommend whether the inmate should be reassigned to the general population (TN Dep't of Corr. Policy # 506.26.1, 6-7). Correspondingly, the ASCA-Liman Nationwide survey notes a sharp reduction in the number of inmates who remain in segregation after six months, indicating that the SMU units and the tailored programs implemented therein have had a positive impact in the length of time an inmate remains in restrictive housing for reasons related to behavior or STG identification.

On November 30, 2018, TDOC established an "extended restrictive housing step down program" (SDP) for inmates subject to "mandatory segregation" or "administrative segregation" (TN Dep't of Corr. Policy # 506.14.3, 2). Mandatory segregation is the "assignment to maximum security housing of those inmates committed to the Department under the sentence of death" (TN Dep't of Corr. Policy # 404.11, 1). Administrative segregation is "the non-punitive segregation of inmates, for control purposes, who are believed to be a threat to the security of the institution, the welfare of staff, or to other inmates and the community" (TN Dep't of Corr. Policy # 404.10, 1). Under this new policy, an offender leaving extended restrictive housing must successfully complete a multi-phase, step-down program defined by TDOC as follows:

A program that includes a system of review and establishes criteria to prepare an inmate for transition to general population or the community. Individualized programs involve a coordinated, multidisciplinary team approach that includes mental health, case management, and security practitioners. Medical personnel will be part of the multidisciplinary team when inmates who have chronic care or other significant medical accommodation needs participate in this program (TN Dep't of Corr. Policy #506.14.3, 1).

The expressed goal of TDOC's step-down program is "to reduce restrictive housing to an irreducible minimum" (TDOC 2019b, 8). It may be too soon to measure the success of the extended restrictive housing step-down program in terms of reduction in the length of time inmates remain in mandatory or administrative segregation or the success of participants' transition into the general population. However, with the advent of individualized, evidence-based programming aimed at addressing the specific behavior that necessitated mandatory or administrative segregation, a degree of optimism is justified.

While successfully transitioning inmates from restrictive housing to the general population is of obvious interest to the safety of inmates and correctional staff, there is also a positive fiscal component to consider. The exact cost savings generated from the decline in Tennessee inmates assigned to restrictive housing remains to be seen. However, the costs associated with enhanced, individualized supervision of a segregated inmate are greater than the standard supervision of the general population. The experience of Tennessee's neighbor, Mississippi, indicates that significant cost savings are associated with safely reducing the segregated

population. As early as 2002, Mississippi began implementing reforms such as a "step-down" system and developing pathways for inmates to transition back into the general population from solitary confinement through positive behavior and compliance (Simms, 249-50). The result was a 75 percent decline in the solitary population and a cost-savings of \$6 million per year (Pinkston).

Legislative Reform

While TDOC has successfully implemented policies and procedures "to reduce restrictive housing to an irreducible minimum," lawmakers should consider legislative changes that allow TDOC the discretion to extend earned credits for those who successfully "earn" their way out of segregation through successful completion of the required programming. Mississippi implemented a "step down" program to encourage prisoners to "earn" their way out of solitary confinement "through positive behavior and compliance." As a result, Mississippi was able to significantly reduce its solitary confinement population (Levin and Alexander).

Conclusion

Solitary confinement, or restrictive housing, remains a necessary practice to ensure the protection of individual inmates, the general population, and correctional staff. However, policies and procedures, such as those adopted by TDOC, that include programming to address behavior and/or ensure safe cohabitation within the general population, while also limiting the time in segregation, are necessary to achieve this end. Further, lawmakers should consider allowing TDOC the discretion to incentivize success within the restrictive housing programs by extending credit for compliance. ★

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ABOUT THE AUTHOR



Julie Warren is Right on Crime's director of state initiatives and the state director for Tennessee. After her work as a civil defense litigator, Warren returned to public service and began her work in the office of the West Virginia attorney general, where she primarily served as an appellate advocate for the state of West Virginia and as legislative counsel to the attorney general. Warren served four years at the U.S. Department of Justice in Washington, D.C., and during law school clerked on the Senate Judiciary Committee. Warren is a graduate of Marshall University and of Regent University School of Law, and she attended Georgetown Law Center as a visiting student.

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