Committee on Criminal Justice & Public Safety
Testimony of GLBTQ Legal Advocates & Defenders, Maine TransNet, & Equality Maine
LD 696: An Act to Ban Solitary Confinement in Maine's Corrections System – OTP
February 9, 2022

Chairs Senator Deschambault, Representative Warren, and Distinguished Members of the Committee on Criminal Justice and Public Safety,

Good Afternoon. I am Mary Bonauto of Portland, an attorney at GLBTQ Legal Advocates & Defenders[1], and GLAD, Equality Maine and Maine TransNet are here in strong support for LD 696.

We support this bill (1) as urgently necessary to eliminate an intensely damaging practice that cannot be justified for any person, and fails to: look to less restrictive options appropriate to the individual; improve safety and security, prudently steward staff and fiscal resources; or improve resident preparation for successful reentry to the community; (2) for reasons of equity since the burden of incarceration tends to fall on those with the fewest financial resources, with mental illness, and because demographically it particularly burdens Black, African American, and Tribal and Indigenous persons, including those who are also LGBTQ; and (3) because it is the logical next step for Maine, building on past reforms, in a way that can maintain safety and security for staff and residents and improve individual outcomes.

1. BILL OVERVIEW & POLICY GOALS

First, this bill ends the destructive practice of solitary confinement, which the bill defines as 20 hours or more a day of isolation in one's cell. Although there is little to no evidentiary basis for the assertion that solitary makes facilities safer, this bill acknowledges the overriding concerns of staff and resident safety and security in facility management. To that end, it expressly permits, defines, and regulates "segregated housing" and creates a "residential rehabilitation" options ("RR") to address those concerns while also addressing the individual's underlying behavioral issues. Both segregation and residential rehabilitation as defined here allow for substantial in-cell time (17 and no more than 20 hours for segregated, and no more

[1] Through strategic litigation, public policy advocacy, and education, GLBTQ Legal Advocates & Defenders (GLAD) works in New England and nationally to create a just society free of discrimination based on gender identity and expression, HIV status, and sexual orientation.

than 17 hours for RRU), but without the same degree of personal, social, and informational isolation imposed by solitary and the lasting damage it causes.[2] Looking to individual needs, people in these statuses have at least some access to technology, education and programming, and the ability for at least weekly contact with families and loved ones, and prompt physical and mental health care assessments from which programming follows. And because segregation and residential rehabilitation are restrictive environments, individuals have a right to receive disciplinary reports, to counsel before being placed in segregation, and monthly reviews as to whether they may be discharged from RR because of progress made their individual plans.

The dual focus on facility security and staff and resident safety and individual rehabilitation addressing the underlying causes of individual behaviors and promoting personal development (with trauma-informed programming, specially-trained staff and peer mentoring) carries benefits for the individual and far beyond. LD 696, Part A, 3 (I) (1-9); see also Part A at 3 (A) and 3 (N). The DOC reports that it discharges about 1,200 people per year and will ultimately discharge the overwhelming majority of people currently incarcerated. The bill expressly articulates an objective of "prepar[ing] [the individual] for release to the general population and ultimately, the community." Maine DOC's continued shift from punishment to redemption and rehabilitation, and the recognition that formerly incarcerated people will always be a part of our communities, should benefit everyone.

How Segregation and Residential Rehabilitation Work -Selected Examples

Segregation

- A person may be placed in segregation for 17 hours of in-cell time and no more than 20 hours, with baseline humane conditions and provision of programming, contact and rehabilitative treatment
- Specified limits on the *reasons for* segregation (mostly threats or acts to others or conduct detrimental to facility management) & on the *duration of* segregation (3 days sequentially and no more than 9 out of 60 days)
- Vulnerable populations exempted, e.g. youth under 21, persons over 65, residents with disabilities, including mental illness (standards to be developed in rulemaking), individuals who are pregnant, 8-weeks post-partum, or are caring for a child in the facility, persons in protective custody
- Resident receives prompt medical and mental health assessments, develops success plans and receives appropriate therapeutic and personal development support
- After 3 days of segregated confinement, the individual may return to the general population or, as necessary, to residential rehabilitation or the intensive mental health unit at the Maine State Prison

[2] There is little dispute about the harms caused by solitary confinement, especially when prolonged. K. James and E. Vanko, "The Impacts of Solitary Confinement – Evidence Brief," Vera Institute for Justice (April 2021), available at: https://www.vera.org/downloads/publications/the-impacts-of-solitary-confinement.pdf and included as Attachment A. See also, e.g. K. Reiter, J. Ventura, D. Lovell et al., "Psychological Distress in Solitary Confinement: Symptoms, Severity and Prevalence in the U.S., 2017-2018," *American J. of Pub. Health*, 110, No. s1, (2020), a S56-S62, available at: https://perma.cc/452X-C676; C Haney, "The Psychological Effects of Solitary Confinement: A Systematic Critique," *Crime and Justice* 47, no. 1 (2018), 365-416, available at: https://www.researchgate.net/publication/323674531/; National Institute of Justice, "Administrative Segregation in U.S. Prisons, Executive Summary"(March 2016), available at: https://www.ojp.gov/pdffiles1/nij/249749.pdf.

Residential Rehabilitation [RR]

- Placement to RRU when procedures (to be developed by MDOC Commissioner) require continued separation from the general population
- Same limitation on vulnerable populations as segregation
- Person may be confined no more than 17 hours a day, and be offered at least 6 hours of out of cell congregate programming, services, treatment and meals, and an additional hour of recreation.
- Access to same program and work opportunities as in the general population
- Resident and staff develop "individual rehabilitation plan" with activities "based on the resident's medical, mental health and programming needs" and "projected timelines for completion and discharge from residential rehabilitation"
- Meaningful periodic review every 30 days to determine if discharge to less restrictive environment is appropriate, and if denied, a statement of specific reasons as to why and what the person must do to be discharged.
- Discharge rights after a year or when within 2 months of discharge from the facility, absent significant risks to the safety and security of staff and other resident
- Upon successful completion, rewards of restored "good time" and termination of remaining time on other disciplinary infractions
- Supportive training for staff and hearing officers to qualify to work on RR.

This reorientation would improve Maine's correctional system in the ways that solitary confinement fails it, thus providing a better environment for staff and residents, and improving outcomes when individuals return home to their families and communities.

SYSTEM EQUITY

Second, this bill would rightly reach all residents of prisons and jails, many of whom are persons with mental and behavior health issues, and those demographics who face disproportionate incarceration. For example, the December 2021 data reported by the Maine Department of Corrections shows that 25% of those in restrictive housing or special management status were Black or African American, another 25% Native American, and 50% White, which we can all recognize as a significant racial disparity.[3]

The LGBTQ+ community is also part of all these demographics in prisons and jails, including those working at those facilities. We lack public data from the Maine DOC, something we trust can be rectified. National data tell us that LGBTQ people are often incarcerated due to reasons such as profiling by law enforcement as well as policies that criminalize poverty, homelessness, participation in survival economies such as sex work, and

[3] As to mental and behavioral health issues, see Lance Tapley, Pine Tree Watch, "The Criminalization of the Mentally Ill in Maine," March 7, 2018, available at: https://www.prisonlegalnews.org/news/2018/mar/7/criminalization-mentally-ill-maine/

As to racial demographics, the most recent American Community Survey for Maine reports that 94.3% of the population is White, 1.38% is Black or African American, 0.65% is Native American, and 3.58 % of people identify with 2 or more races, or as Asian, Native Hawaii'n or Pacific Islander, or other. Maine Population 2022, available at: https://worldpopulationreview.com/states/maine-population

the unequal impact of the school-to-prison pipeline.[4]

Once incarcerated, LGBT people often face discrimination, humiliation, abuse, and assault at disturbingly high levels. The unwarranted use of restrictive housing with respect to LGBT people is among these disparities. The United States Department of Justice report on the use of restrictive housing in U.S. prisons and jails found that lesbian, gay and bisexual inmates (28% in prison and 22% in jail) were more likely than heterosexual inmates (18% in prison and 17% in jail) to have spent time in restrictive housing – that is proportionally 10% more LGBT people in prisons and 5% more in jails.[5] The current Massachusetts leader of Black & Pink, Michael Cox, was himself placed in solitary confinement by "a Lieutenant known to be homophobic" for giving another gay friend a goodbye hug in the prison yard. A report on Black and Pink's National LGBT Prisoner Survey found that a shocking 85% of LGBT respondents had been held in solitary confinement during their incarceration, with half reporting two years of more in such housing.[6]

As reported by Black and Pink, many states do not recognize that they have fallen into a "punish the victim" approach in responding to PREA's obligation to avoid sexual misconduct. Often, "prison staff to assert that they are placing prisoners into solitary confinement as a means of increasing safety … [D]espite the Prison Rape Elimination Act's clear statement that isolation should only be used in circumstances when there is no other possible alternative to prevent abuse, it is nevertheless a routine practice used on LGBT prisoners. Fifty percent of those who have experienced solitary confinement were put there for their own protection but against their will."[7]

As the National Center For Transgender Equality concluded in its 2018 report, *LGBTQ People Behind Bars*: "If [LGBT prisoners'] vulnerability is recognized at all, it may be by placing them in indefinite solitary confinement, with little or no activity or human contact – conditions that can cause serious psychological trauma").[8]

> The Prison Rape Elimination Act, passed in 2003, is supposed to prevent this kind of segregation. PREA requires all alternatives to be assessed and exhausted before placing a person involuntarily in segregated housing. PREA identifies alternatives, such as relocating a perpetrator of abuse, providing heightened supervision, changing housing placement or cellmates, placement in a single-occupancy cell within the general population, or transfer to a men's to a women's facility, or vice-versa. PREA also

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[4] Nat'l Ctr. For Transgender Equal., LGBTQ People Behind Bars 5, 2018, available at: https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf ; S.E. James et. al., The Report of the 2015 U.S. Transgender Survey 184-190, 2016, available at: https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf (transgender respondents were incarcerated at more than twice the rate of the general population, and rates of incarceration are for transgender people of color are nearly ten times the rate of the general population).

[5] Allen J. Beck, *Use of Restrictive Housing in U.S. Prisons and Jails 2011-2012* (Washington, D.C.: BJS, 2015), 5, https://perma.cc/YL9S-7B98

[6] Jason Lydon et. al., *Coming Out of Concrete Closets* (Boston, Black & Pink Massachusetts, 2015), 34, https://perma.cc/M8R5-YZFX

[7] Jason Lydon et. al., Coming Out of Concrete Closets (Boston, Black & Pink, 2015) at 35 (emphasis added).

[8] See note 6, above, at p. 5.

requires continued programming and limits on the length of stay in protective custody.[9]

To our knowledge, DOC published data does not address this subset of incarcerated people in Maine's prisons and jails. PREA requires states to prevent and address sexual violence in these facilities, but we are not aware of how the department collects or maintains data as to LGBTQ people, or how it utilizes its various restrictive housing options for LGBTQ people who are at heightened risk for sexual misconduct. We know that DOC has to classify people as transgender or intersex, but we do not know to what degree MDOC separates people in this population from the general prison population because it believes there are no other adequate alternatives to ensure safety. For example, the December 2021 MDOC Report states that five people were on "Administrative Status," a type of restrictive housing, to protect their safety, but with no information as to whether the safety issues were related to their LGBTQ status. MDOC policies recognize their PREA obligation to prevent sexual misconduct, and to attempt other placements before resorting to special management housing or protective custody housing[10], but it is not possible to discern from its reports what is happening in practice, including with the use of "protective custody.[11]

SIGNIFICANT EVOLUTION IN CORRECTIONS PRACTICES

In 1890, the U.S. Supreme Court observed that solitary confinement was "found to be too severe" and the practice was virtually abandoned by the end of the century. *In re Medley*, 134 U.S. 160, 168 (1890). Although nothing changed in the assessment of damage since then, solitary confinement practices were typically minimal in much of the 20th century, but grew in the 1980s and 1990s when prison and jail populations swelled from the "War on Drugs" and other aspects of mass incarceration. [12]

Maine's DOC, like many other states, has reformed its practices and reduced the use of solitary confinement, for which we credit the department. This bill is a logical next step in this State's work and asks the legislature to end restrictive housing that amounts to solitary confinement. Doing so is consistent with "the emerging standards of penological practice" to minimize and regulate the use of restrictive housing, or, as neighboring Massachusetts has decided, to abandon such restrictive housing altogether.[13]

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[9] See 28 Code of Fed. Reg. 115.41, available at: https://www.law.cornell.edu/cfr/text/28/115.241

[10] ME DOC, Adult Facility Policy 6.11.2 (Victim's Services, Sexual Misconduct (PREA and Maine Statutes) – Prevention, Procedure E (March 16, 2021)

[11] ME DOC Adult Facility Policy 15.3, Special Housing – Protective Custody (July 1, 2020) authorizes separate placement after other alternatives are exhausted, and MDOC policy 6.11.2, above, also authorizes protective custody to avoid sexual mistreatment of residents.

[12] U.S. Department of Justice, National Institute of Corrections, at https://nicic.gov/projects/restrictive-housing; C Haney, "Restricting the Use of Solitary Confinement," *Annual Review of Criminology*, vol. 1, 285-310 (2018), at 288.

[13] See Press Release, "DOC Announces Initial Steps Toward Elimination of Restrictive Housing," June 29, 2021, at: https://www.mass.gov/news/doc-announces-initial-steps-toward-elimination-of-restrictive-housing and attached as Exhibit B. This decision and announcement follows years of engaging issues about restrictive housing and a DOC-commissioned report by corrections experts from Falcon Correctional and Community Services, Inc. The report notes that experience and legal developments had had a "profound impact on penological practices" regarding restrictive housing. Elizabeth Falcon, "Elevating the System, Exploring Alternatives to Restrictive Housing - Restrictive Housing Systems Study, Program Validation and Best Practice Recommendations," Falcon,

Continuing its reform efforts aligns with reforms around the country that eliminate or reform restrictive housing and exclude particular subpopulations. Reductions in the use of restrictive housing have been rapid. In 2014, the Correctional Leaders Association and the Arthur Liman Center for Public Interest Law at Yale Law School reported that between 80,000 and 100,000 incarcerated individuals were being held in some form of restrictive housing, including solitary confinement, in prisons across the United States.[14] By the end of 2019, that number had halved to between 55,000 and 62,500 individuals.[15] (A significant caveat, however, is that this number has increased dramatically during the pandemic given COVID-related, nonpunitive medical-isolation precautions.[16])

According to the 2019 Liman survey, four states "no longer house[d] individuals in what the survey defined as 'restrictive housing,'" including Colorado, Delaware, North Dakota, and Vermont. In addition -

- Twenty-nine states "considered or enacted legislation limiting the use of restrictive housing," including fifteen states and the federal government that "enacted statutes limiting or prohibiting restrictive housing for subpopulations."[17]
- An additional seven jurisdictions "passed laws requiring data collection and reporting on the use of restrictive housing": Maryland, Michigan, Minnesota, Nebraska, New Mexico, Virginia, and the U.S. federal government.
    - These bills were varied in their approaches to reform. For example, New Jersey's law limited the length of solitary confinement to twenty consecutive days while "protect[ing] vulnerable populations from the harms of solitary, including people under 21 and over 65, pregnant and post-partum people and those who have recently suffered a miscarriage or terminated a pregnancy, LGBTQ people, those with serious medical conditions, and those with various forms of mental health or developmental disabilities."
- Georgia, Texas, Montana, and Maryland passed laws prohibiting the use of solitary on pregnant people.
- Montana, Maryland, and Arkansas also passed prohibitions on the use of solitary

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Inc. (March 2021) at 17, 27, available at: https://www.mass.gov/doc/falcon-report/. The U.S. Department of Justice has also issued a "Report and Recommendations Concerning the Use of Restrictive Housing, Executive Summary," (January 2016) at https://www.justice.gov/archives/dag/report-and-recommendations-concerning-use-restrictive-housing and continues to investigate States' compliance with statutory and constitutional requirements for people who are incarcerated.

[14] Full Report, TIME-IN-CELL 2019: A SNAPSHOT OF RESTRICTIVE HOUSING BASED ON A NATIONWIDE SURVEY OF U.S. PRISON SYSTEMS, CORRECTIONAL LEADERS ASSOCIATION & ARTHUR LIMAN CENTER FOR PUBLIC INTEREST LAW AT YALE LAW SCHOOL 2 (2020), https://law.yale.edu/sites/default/files/area/center/liman/document/time-in-cell_2019_ppt.pdf.

[15] *Id.*; *see also* Amy Fettig, 2019 Was a Watershed Year in the Movement to Stop Solitary Confinement, ACLU: NEWS & COMMENT. (Dec 16. 2019), https://www.aclu.org/news/prisoners-rights/2019-was-a-watershed-year-in-the-movement-to-stop-solitary-confinement/ ("In 2019, we saw national momentum to reign in the abusive use of solitary confinement expand faster than ever before. This year was record-setting in terms of reforms we saw introduced in state legislatures.").

[16] Katja Ridderbusch, *COVID Precautions Put More Prisoners in Isolation. It Can Mean Long-Term Health Woes*, NPR (Oct. 4, 2021, 1:29 PM ET), https://www.npr.org/sections/health-shots/2021/10/04/1043058599/rising-amid-covid-solitary-confinement-inflicts-lasting-harm-to-prisoner-health.

[17] Overview, Time-In-Cell 2019, Correctional Leaders Association & Arthur Liman Center for Public Interest Law at Yale Law School 26 (2020), https://law.yale.edu/sites/default/files/area/center/liman/document/time-in-cell_2019_ppt.pdf.

confinement on minors.[18]

Significant reform efforts accelerated in 2021 state legislatures. Among other significant developments -

- New York State enacted the "Humane Alternatives to Long-Term Solitary Confinement Act" ("HALT Act")[19], effective March 31, 2022. Like LD 696, this law establishes a framework of separate segregated and residential rehabilitation units (by other names), with the similar objectives and purposes and subpopulation limitations, and with durational limits.

- The Massachusetts Department of Corrections announced last June that it will eliminate all restrictive housing within three years.[20] This recommendation was based on the in-depth study of its system and a process of engagement with correctional staff, persons with lived experience, persons expert in particular aspects of prison management, mental and behavioral health and others.[21]
    - The Massachusetts DOC consultant "strongly recommended" a philosophical shift from punishment for disciplinary infractions "to one that assumes some responsibility to identify and respond to the criminogenic and clinical risk factors that contributed to the infraction." That way, "restrictive housing units become assessment centers for development of behavior plans that address the etiology of problematic behavior." It then follows that "reentry from a restrictive housing unit is accompanied by specific, measurable, attainable goals that reflect behavioral progress, increased safety, and which meet identified clinical and criminogenic needs."[22]
    - In its June 29, 2021 press release announcing its proposed changes, the Massachusetts DOC stated: "To address misbehavior in a more meaningful way, DOC will focus on identifying the behavioral and clinical criminogenic needs of those within the Department's care. Guided by this assessment, these individuals will be placed on tracts to connect them with appropriate programming and

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[18] See Fettig, above at note 15. As best we can tell from press reports, by August 2021, 23 states forbade solitary for juveniles by statute, while others did so through regulation. This is one example of recent trends.

[19] NYS Laws 2021, c. 93 (S 2836, 2021 Leg., Reg. Sess. (NY. 2021)), available for download from: https://www.nysenate.gov/legislation/bills/2021/s2836

Note that a NYS Correction Officers Union and several individuals filed a lawsuit claiming that ending solitary confinement would deny them a safe workplace. The case is at the trial court level on the State Attorney General's Motion to Dismiss. It is fair to note that both the NY State Courts and the U.S. Supreme Court have addressed and rejected the arguments advanced by the challengers. See *New York State Correctional Officers and Police Benevolent Ass'n, Inc. et al. v. Hochul*, No. 1:21-CV-0535 (MAD/CFH) (Complaint).

[20] Mass. DOC Press Release, above at n. 13. See also Falcon Rpt. at n. 13, p. 34, which noted how this alternative model to restrictive housing amounting to solitary confinement was first designed by Correctional Services Canada, which creates a Structured Intervention Unit" based on "the Risk-Needs-Responsivity (RNR) model." There is an operating "assumption of treatment or programming need, which turns the Structured Intervention Unit into an assessment center. The person undergoes an assessment to identify the clinical and criminogenic factors driving the behaviors that led to the infraction or disciplinary intervention, and the person is then programmed into the appropriate intervention to meet those identified needs.

[21] See Mass. DOC Press Release, above at note 13 & Exhibit B to this testimony.

[22] See Falcon Report above at note 13 above, at p. 35.

treatment opportunities."[23]

Maine's foundational work in this area makes it ideally positioned to make these reforms. To what end does Maine continue to use restrictive housing that amounts to solitary confinement as defined in this bill? A 2016 Assessment of then-extant research on solitary confinement concluded "it is virtually impossible to find empirical evidence supporting its utility or efficacy."[24] To our knowledge, there is little more now.

We all urge passage of LD 696 to eradicate the punishing and damaging isolation of solitary confinement and implement the effective alternatives provided for in this bill. Thank you for your consideration, and I am happy to take any questions.

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[23] See Mass. DOC Press Release, above at note 13 & Exhibit B to this testimony.

[24] See note 4 above, Nat'l Institute of Justice, Administrative Segregation in U.S. Prisons, Executive Summary, at 4. (2016). The authors suggested research design ideas going forward to address the gaps in existing research.

Exhibit A

April 2021

Mapping U.S. Jails' Use of Restrictive Housing:
Trends, Disparities, and Other Forms of Lockdown

Chase Montagnet, Jennifer Peirce, David Pitts

An electronic version of this report is available for download on Vera's web site, www.vera.org.

Requests for additional information about the research described in this report should be directed to David Pitts, senior research associate, at dpitts@vera.org.

Vera Research Department

Executive Summary

The use of restrictive housing (solitary confinement) in U.S. prisons and the rationales for or against it have been the subject of widespread research and debate. Much less is known, however, about restrictive housing in U.S. jails, due to lack of standardized policies, limited data, and the rapid turnover of people detained. Furthermore, many jails keep the general population in de facto restrictive housing conditions—such as 22 hours or more per day in a cell–because of space limitations without classifying this as solitary confinement.

This study provides new, unique insights on the prevalence of restrictive housing in U.S. jails, the disparities in its use, and the conditions of confinement in specific types of housing units, with a focus on restrictive housing units. This data was gathered through a mail-based survey sent to administrators at all jails in the United States.

Vera researchers analyzed the surveys (N=270) and found:

- **Approximately 6 percent of the jail population was in restrictive housing on a given day**, with the highest proportions in jails located in small and mid-sized counties and in mid-sized (100 to 499 person capacity) jails.[1] (Vera's survey defined restrictive housing as anyone held in a cell for 22 hours or more per day.)

- **Further, approximately 23 percent of jails in Vera's survey reported that they hold at least some people in the general population area in their cells for 22 hours or more per day.** This indicates that some people in general population are in equivalent-to-restrictive housing conditions even though they are not included in the official restrictive housing count. In this report, Vera calls this "de facto restrictive housing." Thus, the prevalence of restrictive housing *in practice* is higher than the official rates that agencies report.

- **Other units that are not classified as restrictive housing by corrections agencies also held people in their cells for 22 hours or more per day.** Approximately 64 percent of intake units, 57 percent of medical units, 50 percent of mental health units, and 48 percent of protective custody units held people in their cells 22 hours or more per day.[2]

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[1] Vera's survey defined restrictive housing as anyone held in a cell for 22 hours or more per day. The definition of restrictive housing in prisons is also anyone held in a cell for 22 hours or more per day, but many reporting mechanisms – notably the CLA-Liman survey – count only days beyond 15 consecutive days. International standards cite 15 days as the maximum.
[2] See "Definitions" on page 5.

- **Approximately 58 percent of people housed in official restrictive housing units had been there for more than 15 days.** With national statistics indicating that the average length of stay in jails is 26 days, this indicates that for some people their time in jail may be spent solely in restrictive housing units.[3]

- **Disparities in the use of restrictive housing in jails are similar to disparities found in prisons.** Most notably, Black people and people with a designation for a mental health condition were present in higher percentages of the restrictive housing population than the general population.

- **Access to healthcare varied across facilities,** and there was a wide range in types of healthcare personnel and services. The most common type of staff was on-call medical staff, followed by medical staff available 24 hours per day every day. Two jails (0.78 percent of jails surveyed) did not offer any medical care on site—both were in rural counties.

- **Conditions of confinement varied across types of housing units** that are separated from the general population. This includes housing units that are officially designated as restrictive housing (such as disciplinary or administrative segregation) and those that are designated for other specific purposes **(such as intake, medical, protective).**[4] The Vera team developed a composite score of restrictiveness across types of units, based on time out of cell and access to various services. Within officially-designated restrictive housing areas, disciplinary segregation was the most restrictive on this score. Within housing units for other specific purposes, the most restrictive unit was intake, while the least restrictive was protective custody.

Finally, this paper offers policy recommendations oriented toward efforts for documenting and reducing the use of restrictive housing in jails. These include:

- The adoption of a uniform definition of restrictive housing for jails. Many *prisons* track restrictive housing stays that exceed 15 days because that is the maximum time set out in international standards. However, because a typical stay in jail is usually shorter than in prison, it is important to document time spent in restrictive housing even when it is less than 15 days.

- The uniform adoption of policies that prohibit the use of restrictive housing for vulnerable populations (e.g., juveniles, pregnant women, people with mental health issues). This is in line with international standards.

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[3] Zhen Zeng and Todd D. Minton, *Jail Inmates in 2019* (Washington, DC: Bureau of Justice Statistics, US Department of Justice (BJS), March 2021), 8. https://perma.cc/MYX9-EN9S.
[4] See definitions box.

- Increased oversight of jails through the requirement of quarterly population reports to state and national institutions. Such a requirement would improve:
    - Documentation of the use of restrictive housing in local jails by jail staff.
    - Consistency and clarity in how jails document demographic information—particularly race and ethnicity—of detained people at intake.
    - Documentation of demographic information of people in restrictive housing.
    - Consistency and clarity in how jails document misconduct, infractions, and positive incentives for behavior management.

The concerning findings in this report about the prevalence and conditions of restrictive housing in jails should *not* justify expanding the size or scope of jails in order to have "better" units to be used for isolation or discipline. Of course, some jails face severe challenges in basic infrastructure, and improvements to some basic conditions—such as access to showers, phones, visitors, or programs—might be important to meet minimum standards. But the most important response to the problems of restrictive housing is to reduce the use of restrictive housing directly. Although increasing time out of cell, including meaningful access to programs and contact with family, is also important, this does not resolve or replace the need to reduce the number of people in restrictive housing and the length of stay in such conditions. More broadly, this report's findings point to the urgent need to reduce local jurisdictions' reliance on jail incarceration as a means of public safety. Subjecting people to overcrowding and inhumane conditions will not serve to achieve safety and, in fact, will only be counterproductive to that goal.

Definitions

Restrictive housing: Holding people in their cells for 22 hours per day or more, including people in single and/or double cells.

15-day consecutive clause: Prisons typically count restrictive housing as staying more than 15 consecutive days in a cell in which one is held for 22 hours per day or more. In this study, for jails, any amount of time in restrictive housing was counted; most jails reported stays of one day or more.

Types of restrictive housing units: These are housing units officially designated as restrictive and are meant to be punitive and/or for risk management purposes. The designation refers to the reason for segregation, even if the physical cell space is the same as general population or another type of housing unit.

> **Disciplinary segregation:** This is used to sanction incarcerated people found guilty of violating facility rules.
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> **Administrative segregation:** This is used to remove people from a jail's general population and/or hold people in their cell if they are thought to pose a risk to the safety of others, the security of an institution, or both. In some jurisdictions, placement in administrative segregation may also be determined by a person's status (such as the type of offense for which they were incarcerated or whether an investigation is pending, for example) and not just their behavior.

De facto restrictive housing: In this report, Vera uses this term to refer to general population housing units in which people are held in equivalent-to-restrictive housing conditions—specifically, held in a cell for 22 hours or more per day. Such units are not officially designated restrictive housing units (such as disciplinary or administrative).

Types of specific housing units: These are housing units that are for separating people from the general population for specific purposes, but they are not meant to be additionally punitive.

> **Intake:** This is typically where a person stays during initial assessments, prior to placement in a longer-term cell area.
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> **Medical:** This refers to a unit inside the jail where people stay when they are receiving medical attention; these people may be isolated or with other people under medical care.
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> **Mental health:** This refers to a unit inside the jail where people stay when they are receiving mental health care; they may be isolated or with other people.
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> **Protective custody:** This refers to when people are removed from a jail's general population when they are thought to be at risk of abuse, victimization, or other harm. They may be held alone or with other people.

Mental health designation: In the survey, jail administrators were asked to provide numbers according to their own system's criteria or definitions for general flags or designations for mental health conditions. Most did not provide details on their definitions.

Serious mental illness (SMI): In the survey, jail administrators were asked to provide numbers according to their own system's criteria or definitions for serious mental illness (SMI).

ICE detention: This refers to people who are being held under the jurisdiction of U.S. Immigration and Customs Enforcement (ICE). Both ICE and the United States Marshals Service house a significant number of people in jails, although ICE detainees are being held in civil—not criminal—custody.

Recent population: The survey asked jail administrators to share population numbers on the day they answered the survey. Although most administrators answered the survey within a few months, they did not answer the survey on the exact same day. Therefore, within this report, "recent population" refers to the numbers that jails provided when they answered the survey, not average daily population across a year.

Restrictiveness scale: The Vera team developed a composite scale to assess overall restrictiveness of conditions across different types of housing units. This scale combines five elements: time out of cell, programs offered, personal calls available, visits available, and use of restraints. The scale ranges from 0 to 5. See Figure 46 at page 60 for details.

For more details on restrictive housing types and definitions, please visit https://www.vera.org/rethinking-restrictive-housing.

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Introduction

Solitary confinement is a flashpoint in debates about conditions inside U.S. prisons. It is arguably the most extreme version of harsh conditions—a "prison within a prison."[5] Although policies and definitions vary, "restrictive housing" (the term commonly used in the corrections sector to refer to solitary confinement) generally refers to holding a person inside a cell for 22 or more hours per day, often without access to activities, programming, or amenities available to those housed in the general population.[6] As of 2019, on any given day 3.8 percent of people in U.S. prisons were being held in some form of restrictive housing for 15 days or more.[7] With mounting evidence about the physical and psychological harms of restrictive housing, combined with research suggesting that it does not deter (and may worsen) subsequent misconduct, there is a growing consensus that restrictive housing in prisons needs to be reduced.[8]

Prisons house far more people than jails. In 2019, the national average daily prison population was 1,435,500, compared to 758,400 for jails.[9] (By late 2020, following measures responding to the COVID-19 pandemic, there were 1,249,300 people in prisons on any given day and 633,200 in jails.)[10] Although this seems to indicate that prisons impact more people than jails, these average daily population figures do not reflect the sheer number of people who pass through jails each year. In 2019, there were 10.3 million jail admissions, compared to 576,956 admissions to state or federal prison.[11] This high turnover rate means that, while prisons may house twice as many people as jails, the reach of jails is much wider.[12] Therefore,

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[5] Angela Browne, Alissa Cambier, and Suzanne Agha, "Prisons Within Prisons: The Use of Segregation in the United States," *Federal Sentencing Reporter* 24, no. 1 (2011), 46–49.
[6] National Institute of Justice, *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions* (Washington DC: U.S. Department of Justice, 2016), 7, https://perma.cc/YK5Y-9MXZ.
[7] Correctional Leaders Association and Arthur Liman Center of Public Interest Law, *Time in Cell 2019: A Snapshot of Restrictive Housing* (New Haven, CT: Yale University, 2020), 5, https://perma.cc/V8SP-B3ME.
[8] Kayla James & Elena Vanko, *The Impacts of Solitary Confinement* (New York: Vera Institute of Justice, 2021), https://perma.cc/J98E-N667; Ryan M. Labrecque, "The Use of Administrative Segregation and Its Function in the Institutional Setting," in *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions*, 2016, 49–84; Jules Lobel and Peter Scharff Smith, *Solitary Confinement: Effects, Practices, and Pathways toward Reform* (Oxford, UK: Oxford University Press, 2020); and Fatos Kaba, Andrea Lewis, Sarah Glowa-Kollisch, et al., "Solitary Confinement and Risk of Self-Harm Among Jail Inmates," *American Journal of Public Health* 104, no. 3 (2014), 442–47, https://perma.cc/6NBV-E8F7.
[9] Jacob Kang-Brown, Oliver Hinds, Eital Schattner-Elmaleh, and James Wallace-Lee, *People in Jail in 2019* (New York: Vera Institute of Justice, 2019), 3, https://perma.cc/QH36-Y4G7; and Jacob Kang-Brown, Chase Montagnet, Eital Schattner-Elmaleh, and Oliver Hinds, *People in Prison in 2019* (New York: Vera Institute of Justice, 2020), 1, https://perma.cc/8XBA-R5GS.
[10] Jacob Kang-Brown, Chase Montagnet, and Jasmine Heiss, *People in Jail and Prison in 2020* (New York: Vera Institute of Justice, 2021), 1, https://perma.cc/24ZJ-CZEB.
[11] Zeng and Minton, Jail Inmates in 2019, 2021, 1; and E. Ann Carson, *Prisoners in 2019* (Washington, DC: BJS 2020), https://perma.cc/MYX9-EN9S.
[12] Craig Haney, Joanna Weill, Shirin Bakhshay, and Tiffany Lockett, "Examining Jail Isolation: What We Don't Know Can Be Profoundly Harmful," *The Prison Journal* 96, no. 1 (2016), 126–52, 129, https://perma.cc/4SGV-PTZ7; Kristin Turney and Emma Conner, "Jail Incarceration: A Common and Consequential Form of Criminal Justice Contact," *Annual Review of Criminology* 2, no. 1 (2019), 265–90; and Christopher Wildeman, Maria D. Fitzpatrick, and Alyssa W. Goldman, "Conditions of Confinement in American Prisons and Jails," *Annual Review of Law and Social Science* 14, no. 1 (2018), 29–47.

the use of restrictive housing in jails potentially impacts a far higher number of people, albeit often for shorter periods.

Despite the broad reach of jails, there is a dearth of research about them, for several reasons. First, while prisons are fairly uniform systems under the jurisdiction of either federal or state governments, jails are run by local or county governments.[13] Across more than 3,000 decentralized jails, there is a vast range of circumstances that make systematic tracking difficult.[14] Second, compared to prisons, the population in jails is more heterogeneous in terms of sex, security level, and legal status.[15] Jails hold people awaiting trial for a range of offenses, awaiting transfer to prison, held on a contract for another agency, detained for probation/parole violations, or serving a jail sentence, to name a few.[16] There is also constant turnover in the jail population, making it difficult to systematically document conditions.[17] Third, people who are detained in jail are a vulnerable population, often with lower socioeconomic status, physical or mental health problems, and substance dependence.[18] Given that jails are often under-resourced and understaffed, they are ill-equipped to manage an influx of people with complex needs.[19] This places extra burdens on staff and may limit their ability to collect and submit data on population numbers and conditions in their jails. Against this backdrop, it is not surprising that there is limited information on the use of restrictive housing in jails.

Yet, despite the gaps in data about restrictive housing in jails, there is reason to suspect that jails use restrictive housing as much as, if not more than, prisons.[20] It is plausible that restrictive housing might be used more in jails due to some of the common characteristics of jail operations. For example, jails typically offer limited programming to people, may provide less training to officers than prisons, and often suffer from space constraints.[21] Jails also often have fewer mental health professionals and options for managing the needs of people with mental health conditions or other behavioral challenges.[22] The potential harms of restrictive housing impact people in jails as well as prisons, so it is worth understanding where and how jails use it.

This study is, to our knowledge, the first to examine at a national scale the extent and type of restrictive housing used in U.S. jails and the characteristics of people held in restrictive housing in jails.

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[13] Haney, Weill, Bakhshay, and Lockett, "Examining Jail Isolation," 2016, 131.
[14] Ibid.
[15] Turney and Conner, "Jail Incarceration," 2019, 272.
[16] Zeng, *Jail Inmates in 2018*, 2020, 3, and Turney and Conner, "Jail Incarceration," 2019, 271.
[17] David C. May, Brandon K. Applegate, Rick Ruddell, and Peter B. Wood, "Going to Jail Sucks (and It Really Doesn't Matter Who You Ask)," *American Journal of Criminal Justice* 39, no. 2 (2014), 250-66.
[18] Turney and Conner, "Jail Incarceration," 2019.
[19] See Ram Subramanian, Ruth Delaney, Stephen Roberts, et al., *Incarceration's Front Door: The Misuse of Jails in America* (New York: Vera Institute of Justice, 2015), https://perma.cc/XNM8-7PBG; and Haney, Weill, Bakhshay, and Lockett, "Examining Jail Isolation," 2016, 132-133.
[20] Haney, Weill, Bakhshay, and Lockett, "Examining Jail Isolation," 2016, 131-34; and Homer Venters, "Mythbusting Solitary Confinement in Jail," in *Solitary Confinement: Effects, Practices, and Pathways Towards Reform* (Oxford, UK: Oxford University Press, 2020), 173-184.
[21] Haney, Weill, Bakhshay, and Lockett, "Examining Jail Isolation," 2016, 132-33; and May, Applegate, Ruddell, and Wood, "Going to Jail Sucks," 2014.
[22] Anna Scheyett, Jennie Vaughn, and Melissa Floyd Taylor, "Screening and Access to Services for Individuals with Serious Mental Illnesses in Jails," *Community Mental Health Journal* 45, no. 6 (2009), 439, https://doi.org/10.1007/s10597-009-9204-9.

To do this, Vera conducted a mail-based survey of administrators of jails across the United States. This report analyzes the findings from the 270 jail jurisdictions that responded and considers how the prevalence of restrictive housing and the disparities in its use for various demographic groups and vulnerable populations vary by size of jail and county characteristics. Additionally, this study compares key aspects of detention conditions—such as time out of cell and access to visits, programs, and services—across types of official restrictive housing and other "regular" housing types. Finally, Vera offers areas for future research and policy recommendations.

Restrictive housing in jails & prisons: what we know

Institutions usually cite one of three goals when using restrictive housing: to deter further misconduct by imposing restrictive housing as a punishment (usually called disciplinary segregation), to isolate people who are dangerous to other incarcerated people or who are involved in an investigation process (usually called administrative segregation), or to protect people who are threatened by others (usually called protective custody).[23] Efforts to document the prevalence of restrictive housing often separate these categories.

Given the lack of research on restrictive housing in jails, the closest relevant data are from prisons. The most recent national survey of prisons, conducted by the Correctional Leaders Association and the Liman Center at Yale University, found that 3.8 percent of people in prison are in some form of restrictive housing; however, in some states this percentage is as high as 11 percent, while four states have reduced the proportion to zero.[24] Notably, this study defines restrictive housing as "separating prisoners from the general population and holding them in their cells for an average of twenty-two or more hours per day for fifteen or more continuous days. . . ."[25] This potentially undercounts the prevalence of restrictive housing by failing to count people who spend fewer than 15 days, or more than 15 days but non-consecutively, in restrictive housing. This study focuses on jails, where people often stay for shorter periods. Therefore, any stays in restrictive housing, not just stays exceeding 15 consecutive days, were counted.

The most comprehensive data on restrictive housing in jails comes from the 2011-2012 National Inmate Survey, which used self-reported data from incarcerated people in 233 prisons and 357 jails. In that study, 2.2 percent of jail detainees had been in restrictive housing the previous night, while 17.4 percent of jail detainees had spent time in restrictive housing over the previous 12 months.[26] These

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[23] Labrecque, "The Use of Administrative Segregation and Its Function in the Institutional Setting," in NIJ, *Restrictive Housing in the US*, 2016, 49–84. Definitions of restrictive housing, and the various types of restrictive housing units (e.g., disciplinary segregation, administrative segregation), vary across jurisdictions. CLA and Liman Center, *Time in Cell 2019*, 2020, 4.
[24] CLA and Liman Center, *Time in Cell 2019,* 2020, 6-8.
[25] CLA and Liman Center, *Time in Cell 2019,* 2020, 6.
[26] Allen J Beck, *Use of Restrictive Housing in U.S. Prisons and Jails, 2011–12* (Washington DC: BJS, 2015), 3, https://perma.cc/7W3C-ML5K.

numbers are similar to the proportions documented in prisons.[27] However, policies and practices have changed since 2012, and the survey did not capture the category or reason for placement in restrictive housing. It also did not examine restrictive conditions in housing areas that are not meant to be punitive.

Some aspects of how jails operate may increase the likelihood that they use restrictive housing, compared to how prisons use it. First, due to the transient nature of the population entering jail and lack of resources, elaborate assessments of an individual's circumstances, previous record, and risk factors and needs often do not occur as consistently in jails.[28] Instead, jail staff—who may lack the training to assess a person's needs and risks—are tasked with managing and controlling this population. This could lead to increased use of punitive responses, such as restrictive housing, as a means of control, regardless of how this might affect an individual's behavior.[29] Second, like prisons, jails sometimes lack varying classification options for people. The inability to tailor housing placements for people may increase the likelihood that staff will use restrictive housing as a means of monitoring and controlling people.[30] Third, compared to prisons, people housed in jails often have fewer privileges.[31] Thus, in response to misconduct, withholding programming or privileges is often not available as a punitive response; restrictive housing, however, may be one of the few or only available options.

Finally, jails typically have limited space for activities, and some jails have no communal space at all. As a result, detainees may spend almost all their time inside their cells. For those who spend 22 hours or more per day in their cell, this means that, although their housing may be considered general population, in practice many are in a restrictive housing situation. Alternatively, space constraints may also cause jail staff to place people in a restrictive housing unit if that is the only available cell space. Given all this—in addition to the fact that people in jail have less ability to form supportive networks inside (due to short stays), have less physical mobility, and receive less programming than those in prison—some incarcerated people view jail incarceration as more punitive than prison.[32]

For these reasons, this report covers not only the prevalence of restrictive housing in jail, but an overview of the conditions of confinement in the general population, restrictive housing units, and other types of nonpunitive housing units. Part of the goal of this report is to explore the extent to which people in general population jail housing areas are experiencing conditions and constraints that are similar to restrictive housing.

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[27] Ibid.
[28] Haney, Weill, Bakhshay, and Lockett, "Examining Jail Isolation," 2016, 131-134; Venters, "Mythbusting Solitary Confinement in Jail," 2020.
[29] Haney, Weill, Bakhshay, and Lockett, "Examining Jail Isolation," 2016, 131-134.
[30] Haney, Weill, Bakhshay, and Lockett, "Examining Jail Isolation," 2016, 133; and Venters, "Mythbusting Solitary Confinement in Jail."
[31] May, Applegate, Ruddell, and Wood, "Going to Jail Sucks," 2014, and Haney, Weill, Bakhshay, and Lockett, "Examining Jail Isolation," 2016, 132.
[32] May, Applegate, Ruddell, and Wood, "Going to Jail Sucks," 2014 , 250-66 (survey results demonstrating that average people would be willing to do a longer sentence in prison if that meant they would avoid time in a local jail).; and Turney and Conner, "Jail Incarceration," 2019.

Disparities in the use of restrictive housing in prisons and jails

Disparities in incarceration rates have been well documented, including, but not limited to, racial/ethnic disparities, age disparities, and disparities in incarceration rates of people with mental health issues, transgender people, and other vulnerable groups.[33] Although the data is limited, these disparities are also present in the use of restrictive housing in prisons and jails.[34]

Racial and ethnic disparities. In terms of racial and ethnic disparities in prisons, in 2019, the incarceration rate in prisons for Black people was 5.1 times higher than white people.[35] When disaggregated by gender and race/ethnicity, Black men were imprisoned at a rate that was 5.7 times greater than white men, and Black women were incarcerated at a rate that was 1.7 times greater than white women.[36] Similar findings emerge in jails. In 2018, the jail incarceration rate for Black people was 3.3 times higher than that of white people.[37]

These same disparities are found in the use of restrictive housing in prisons. According to a 2019 survey from the Correctional Leaders Association and the Arthur Liman Center at Yale Law School, Black men comprised 43.4 percent of the male restrictive housing population, compared to 40.5 percent of the total male custodial population.[38] Hispanic or Latino men comprised 16.9 percent of men in restrictive housing, while comprising 15.4 percent of the total male custodial population.[39] Native American or Alaskan Native men comprised 2.1 percent of the total men in restrictive housing, yet just 1.7 percent of the total male custodial population.[40] The opposite is true for white men, who were more likely to be placed in the general population (41.4 percent) than the restrictive housing population (36.9 percent).[41] Black women are disproportionately placed in restrictive housing: Black women comprised 21.5 percent of the total female custodial population, yet 42.1 percent of the restrictive housing population.[42] Native American or Alaskan Native women are also overrepresented in restrictive housing relative to the general population, 4.0 percent compared to 3.3 percent, respectively.[43]

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[33] Carson, *Prisoners in 2019,* 2020.
[34] CLA and Liman Center, *Time in Cell 2019,* 2020, 3; and Léon Digard, Sara Sullivan, and Elena Vanko, *Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems* (New York City: Vera Institute of Justice, 2018), https://www.vera.org/rethinking-restrictive-housing.
[35] Black people were incarcerated at a rate of 1,096 per 100,000 Black residents, while white people were incarcerated at a rate of 214 per 100,000 white residents.
[36] Carson, *Prisoners in 2019*, 2020, 16.
[37] Zeng and Minton, *Jail Inmates in 2019*, 2021, 4, Table 2. Black people were incarcerated at a rate of 600 per 100,000 Black residents, while white people were incarcerated at a rate of 184 per 100,000 white residents.
[38] CLA and Liman Center, *Time in Cell 2019,* 2020, 25.
[39] Ibid., 26
[40] Ibid., 30-31, Table 12.
[41] Ibid.
[42] Ibid., 32-33, Table 13.
[43] Ibid.

Although the data is more limited for restrictive housing in jails, similar ethnic/racial disparities are also present. The 2012 National Inmate Survey found that 17.3 percent of white people, 17.4 percent of Black people, 15.5 percent of Hispanic/Latino people, and 21.5 percent of people in the "other" population group spent time in restrictive housing while in jail.[44] It is worth noting some flaws in these ethnic/racial categories. The "other" category includes Native Americans, who are overrepresented among detained people in some states, but does not disaggregate Native Americans from other racial groups included in "other." The definitions for Hispanic/Latinx people (an ethnicity category that can overlap with other race categories) are unclear and inconsistently documented in correctional facilities, which likely leads to undercounting of Hispanic/Latinx people if they are listed only as white (or, less commonly, only as Black).[45] Thus, in jails, it appears that people in the "other" group are the most likely to report having spent time in in restrictive housing, followed by Black people and white people relatively equally, and then Hispanic/Latinx people. However, given that these results are from nearly a decade ago and are self-reported (and, thus, lacking some details), additional data is needed.

Age disparities. Age disparities also exist in the use of restrictive housing in both prison and jail, with younger people more likely to have spent time in restrictive housing.[46] For example, in prisons, an average of 4.2 percent of men overall were incarcerated in restrictive housing.[47] However, younger men were incarcerated in restrictive housing at higher rates—5.9 percent of men ages 18-25 and 5.6 percent of men ages 26-35, as opposed to just 2 percent of men over fifty.[48] Similar disparities exist for women in prison: an average of 0.8 percent of women overall were in restrictive housing, but younger women were incarcerated in restrictive housing at higher rates—1.9 percent of women ages 18-25 and 1.0 percent of women ages 26-35, but only 0.4 percent of women over 50.[49]

It is worth noting that data on jails' use of restrictive housing for people under age 18 is very limited. This represents a large gap in the literature, as advocates stress that not only are juveniles more susceptible to placement in restrictive housing (given that their brains are still developing, which can lead to behavioral issues), but also that placement at a young age can result in immense long-term

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[44] The National Inmate Survey uses the category "Hispanic/Latino." Elsewhere in this report, we use the term Latinx. Although there are some differences, for purposes of this report we treat these terms as interchangeable. Beck, *Restrictive Housing 2011–12*, 2015, 4, Table 3.
[45] Sarah Eppler-Epstein, Annie Gurvis, and Ryan King, *The Alarming Lack of Data on Latinos in the Criminal Justice System* (Washington, DC: The Urban Institute, 2016), http://urbn.is/cjdata.
[46] The National Inmate Survey (2012) breaks statistics out by age or gender but not both. However, the percent of incarcerated people self-reporting having spent time in restrictive housing decreases in every age bracket. Young people aged 18-19 in prison were the most likely to have spent time in restrictive housing, at 30.9 percent (compared to just 8.9 percent for the 55+ age bracket). Beck, *Restrictive Housing 2011–12*, 2015, 4, Table 3.
[47] CLA and Liman Center, *Time in Cell 2019,* 2020, 18.
[48] Ibid., 35-36.
[49] Ibid., 36.

psychological trauma.[50] To the extent that governments have taken action to reduce or prohibit solitary confinement, many have focused on reducing use for juveniles and youth due to these developmental considerations.[51]

People with mental illness. Prisons and jails are also very likely to house people with mental illness. The 2011-2012 National Inmate Survey highlighted that approximately 37 percent of the prison population and 44 percent of the jail population have a history of a mental health issue generally.[52] The same survey found that 26 percent of people in jails meet the threshold for experiencing serious psychological distress, compared to 14 percent in prison and 5 percent in the general population.[53] Further, this survey found that people with a mental illness were more likely to have reported spending time in restrictive housing, in prisons and in jails, compared to people without a mental illness.[54]

Given that people with serious mental illness may be especially vulnerable, there is international consensus—including in United Nations standards—that they should not be placed in restrictive housing at all.[55] However, recent reports reveal that this practice still exists in both prisons and jails in the United States.

Within prisons, definitions for serious mental illnesses vary across jurisdictions, with some jurisdictions adopting the American Correctional Association's (ACA) definition of serious mental illness and others developing their own definitions.[56] Regardless of the definition used, people suffering from a serious mental illness are being held in restrictive housing, despite recommendations against this. For example, across all jurisdictions and using the CLA-Liman definition of restrictive housing (22 hours per

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[50] ASCA and Liman Center, *Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell* (New Haven CT: Association of State Correctional Administrators (ASCA) and The Arthur Liman Center for Public Interest Law at Yale Law School, 2018), 84, https://www.ssrn.com/abstract=3264350; Andrew Clark, "Juvenile Solitary Confinement as a Form of Child Abuse," *Journal of the American Academy of Psychiatry and the Law* 45, no. 3 (2017), 350–57; and Laura Anne Gallagher, "More than a Time Out: Juvenile Solitary Confinement," *U.C. Davis Journal of Juvenile Law and Policy* 18 no. 2 (2014), 244-266, https://perma.cc/BK7L-KJ2L.

[51] See for example Elizabeth Cauffman, Adam Fine, Alissa Mahler, and Cortney Simmons, "How Developmental Science Influences Juvenile Justice Reform," *UC Irvine Law Review* 8, no. 1 (2018), 21-40, https://perma.cc/54ZZ-K2DU; and Amy Fettig, "The Movement to Stop Youth Solitary Confinement: Drivers of Success & Remaining Challenges," *South Dakota Law Review* 62 (2017), 776.

[52] Thirty-seven percent of people in prison and 44 percent of people in jail had been told in the past by a mental health professional that they had a "mental disorder," and 14 percent of people in prison and 26 percent of people in jail "reported experiences that met the threshold for serious psychological distress" within 30 days prior to a BJS survey in 2011 and 2012. Jennifer Bronson and Marcus Berzofsky, *Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011–12* (Washington, DC: BJS, 2017), 3, https://perma.cc/R4PV-2WJD.

[53] Bronson and Berzofksy, *Mental Health Problems Reported by Prisoners and Jail Inmates*, 2017, 3-4.

[54] Beck, *Restrictive Housing 2011–12*, 2015, 6. The definitions of mental illness were not as detailed in National Inmate Survey as they were in the CLA & Liman Center survey.

[55] See for example United Nations Human Rights Committee, *Consideration of reports submitted by States parties under Article 40 of the Covenant, concluding observations of the Human Rights Committee, United States of America* UN Doc. CCPR/C/USA/CO/3 (New York: UNHRC, 2006). See also: United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), General Assembly Resolution A/RES/70/175 (2015), https://undocs.org/A/RES/70/175

[56] The ACA defines serious mental illness as "Psychotic Disorders, Bipolar Disorders, and Major Depressive Disorder; any diagnosed mental disorder (excluding substance use disorders) currently associated with serious impairment in psychological, cognitive, or behavioral functioning that substantially interferes with the person's ability to meet the ordinary demands of living and requires an individualized treatment plan by a qualified mental health professional(s)." ACA Standard 4-RH-0012, ACA 2016 Restrictive Housing Standards 17.

day in cell, for 15 days or more), 6.2 percent of men in the custodial population suffer from a serious mental illness, whereas 5.4 percent of men in restrictive housing suffer from a serious mental illness. Women with serious mental illnesses were also part of the restrictive housing population in prisons, although this number is smaller. Across all jurisdictions, and using the CLA-Liman definition of restrictive housing, 11.5 percent of women in the custodial population suffer from a serious mental illness, whereas 1.5 percent of women in restrictive housing suffer from a serious mental illness.[57] Although it is encouraging that people with *serious* mental illness are not overrepresented in restrictive housing in prisons, the fact that they continue to be placed in restrictive housing is a matter of concern.

Transgender people. There is limited official data on the number of transgender people in prisons and jails, but 2 percent of transgender people report having been incarcerated, which is more than twice the rate of the general U.S. population.[58] In 2015, 85 percent of LGBTQ incarcerated people reported having been placed in restrictive housing at some point, with trans women reporting the highest rates of placement for safety reasons.[59] Prison policies and institutional culture include contradictory guidelines on how prison staff decide whether a transgender person is placed in a male or female institution and, within a given institution, on criteria for placement in restrictive housing.[60] This uncertainty, combined with the uneven implementation of federal legislation meant to reduce sexual assault in prison, increases the likelihood that transgender people will be placed in restrictive housing, often solely for "protection" purposes.[61] This misuse of restrictive housing led the ACA to develop guidelines indicating that people may not be placed in restrictive housing based on gender identity alone.[62] While such a guideline generally applies to both prisons and jails, compliance within jails is more difficult to ensure due to their decentralization.

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[57] CLA and Liman Center, *Time in Cell 2019,* 2020, 46-50.
[58] National Center for Transgender Equality (NCTE), *LGBTQ People Behind Bars: A Guide to Understanding the Issues Facing Transgender Prisoners and Their Legal Rights* (Washington, DC: NCTE, 2018), 5 and 37, https://perma.cc/JSA8-WQRU.
[59] Seventy-seven percent of trans women reported being placed in solitary confinement for safety reasons, including at their own request and/or against their will. Jason Lydon, Kamaria Carrington, Hana Low, et al., *Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey* (Omaha, NE: Black & Pink, 2015), 5 and 37, https://perma.cc/V7ZS-28PB.
[60] See generally Douglas Routh, Gassan Abess, David Makin, et al., "Transgender Inmates in Prisons: A Review of Applicable Statutes and Policies," *International Journal of Offender Therapy and Comparative Criminology* 61, no. 6 (2017), 645–66.
[61] For federal legislation and regulations, see Prison Rape Elimination Act (PREA) of 2003, 117 Stat. 972, codified at 42 U.S.C. ch. 147 § 15601 et seq; and National Standards To Prevent, Detect, And Respond To Prison Rape Under The Prison Rape Elimination Act (PREA) 28 C.F.R. § 115.5 (2012); see generally 28 C.F.R. §§ 115.15, 115.31, 115.41, 115.42, 115.86. For PREA implementation as it relates to incarcerated transgender and gender nonconforming people, see generally Karri Iyama, "We Have Tolled the Bell for Him: An Analysis of the Prison Rape Elimination Act and California's Compliance as It Applies to Transgender Inmates," *Tulane Journal of Law & Sexuality* 21 (2012), 23-48, https://perma.cc/5U68-RB2X; and Michelle L. Malkin and Christina DeJong, "Protections for Transgender Inmates Under PREA: A Comparison of State Correctional Policies in the United States," *Sexuality Research and Social Policy* 16, no. 4 (2019), 393–407. For use of restrictive housing as "protection" for transgender and gender nonconforming people see Faroat Andasheva, "Aren't I a Woman: Deconstructing Sex Discrimination and Freeing Transgender Women from Solitary Confinement," *FIU Law Review* 12 no. 1 (2016), 117-150, https://perma.cc/4RFW-WJQV; and Holly Foster, "The Conditions of Confinement in Restrictive Housing," in *Restrictive Housing in the US: Issues, Challenges, and Future Directions* (Washington, DC: National Institute of Justice, 2016), 85-116, 107-108, https://perma.cc/C7AA-XVYF.
[62] ACA Standard 4-RH-0035, ACA 2016 Restrictive Housing Standards 40.

Variation in definitions (for example: self-identification of gender versus documentation by a health professional of a gender change) and gaps in data make it difficult to assess disparities for transgender people being placed in restrictive housing, especially in jails. However, a 2020 report found that 4.7 percent of transgender people in prisons were held in restrictive housing, with percentages ranging from 0 percent in some jurisdictions to 14.3 percent in others.[63]

Harms associated with restrictive housing

Despite the justification used by some correctional managers that restrictive housing increases safety and promotes order throughout the facility, research indicates that restrictive housing may *decrease* order within the institution and increase people's criminogenic risk once released.[64] Moreover, restrictive housing may have detrimental effects on an individual's mental and physical health.[65] Use of restrictive housing—and the isolation it causes—disregards the importance of social bonds and meaningful contact with others.[66] For years, social psychologists have stressed the importance of interaction, noting that humans are social beings that derive meaning and understanding from social interactions. Depriving people of the ability to interact with others by placing them in restrictive housing, therefore, is not only painful, but destabilizing; it decreases an individual's sense of belonging, self-control, self-esteem, and prosocial behavior, making it more difficult for them to return to general population or the community once released.[67]

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[63] CLA and Liman Center, *Time in Cell 2019,* 2020, 58.
[64] For a discussion of the theory of disciplinary segregation and the decision-making employed in its use see H. Daniel Butler and Benjamin Steiner, "Examining the Use of Disciplinary Segregation within and across Prisons," *Justice Quarterly* 34, no. 2 (2017), 248–71, https://doi.org/10.1080/07418825.2016.1162319. For an examination of the effects of using restrictive housing conditions on safety, recidivism, and risk, see H. Daniel Butler, Benjamin Steiner, Matthew D. Makarios, et al., "An Examination of the Influence of Exposure to Disciplinary Segregation on Recidivism," *Crime & Delinquency* 66, no. 4 (2020), 485-512; Valerie Clark and Grant Duwe, *The Effects of Restrictive Housing on Recidivism* (St. Paul, MN: Minnesota Department of Corrections, 2017), https://perma.cc/WPH6-AHF6; Ryan M. Labrecque and Paula Smith, "Assessing the Impact of Time Spent in Restrictive Housing Confinement on Subsequent Measures of Institutional Adjustment among Men in Prison," *Criminal Justice and Behavior* 46, no. 10 (2019), 1445-1455; and Joseph W. Lucas and Matthew A. Jones, "An Analysis of the Deterrent Effects of Disciplinary Segregation on Institutional Rule Violation Rates," *Criminal Justice Policy Review* 30, no. 5 (2019), 765–87.
[65] Cyrus Ahalt et al., "Reducing the Use and Impact of Solitary Confinement in Corrections," *International Journal of Prisoner Health* 13, no. 1 (2017), 41–48; ASCA and Liman Center, *Reforming Restrictive Housing*, 2018, 84-87; Samuel Fuller, "Torture as a Management Practice: The Convention Against Torture and Non-Disciplinary Solitary Confinement," *Chicago Journal of International Law* 19, no. 1 (2018): 102–44; Stuart Grassian, "Psychiatric Effects of Solitary Confinement," *Washington University Journal of Law & Policy* 22 (2006), 325-383, https://perma.cc/7QGG-PK27; Craig Haney, "The Psychological Effects of Solitary Confinement: A Systematic Critique," *Crime and Justice* 47, no. 1 (2018), 365–416; Haney, Weill, Bakhshay, and Lockett, "Examining Jail Isolation," 2016; James and Vanko, *The Impacts of Solitary Confinement*, 2021; Terry A. Kupers, "What To Do With the Survivors? Coping With the Long-Term Effects of Isolated Confinement," *Criminal Justice and Behavior* 35, no. 8 (2008), 1005–16; and National Institute of Justice, *Restrictive Housing in the U.S.*, 2016, 199-298 (Chapters 6 and 7).
[66] Haney, Weill, Bakhshay, and Lockett, "Examining Jail Isolation," 2016, 141.
[67] Federica Coppola, "The Brain in Solitude: An (Other) Eighth Amendment Challenge to Solitary Confinement," *Journal of Law and the Biosciences* 6, no. 1 (October 25, 2019): 184–225, https://doi.org/10.1093/jlb/lsz014; Craig Haney, "Restricting the Use of Solitary Confinement," *Annual Review of Criminology* 1, no. 1 (2018): 285–310, https://doi.org/10.1146/annurev-criminol-032317-092326; Haney, Weill, Bakhshay, and Lockett, "Examining Jail Isolation," 2016; Matthew D. Lieberman, expert report submitted in *Todd Ashker et al. v. Governor of the State of California et al.*, No. 4:09-cv-05796-CW (N.D. Cal. 2014), 2-5, https://perma.cc/WX6C-JKRV.

These detrimental effects are exacerbated for younger people, elders, and those with preexisting mental and physical health conditions.[68] For juveniles, who are still developing, isolation can have severe consequences for their life course.[69] For older people, the lack of physical exercise and meaningful contact with others increases the risk of dementia, cardiovascular disease, and vitamin D deficiencies, among others.[70] Available research indicates that restrictive housing units often have few accommodations for people with disabilities, such as offering wheelchairs, hearing aids, Braille materials, or physical therapy.[71] Finally, for people with a preexisting mental illness and/or disabilities, placement in restrictive housing can exacerbate their condition.[72]

Concerned about these harms, mental health, legal, and human rights organizations have called for the abolition of restrictive housing or, at a minimum, a decrease in its use. For example, the National Commission on Correctional Health Care has called for restrictive housing to not exceed 15 days, while other organizations have called for restrictive housing to only be used when absolutely necessary and for the shortest amount of time possible.[73] The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) prohibit restrictive housing for vulnerable groups and impose a cap of 15 days generally.[74] Moreover, some jurisdictions have enacted statutes to limit the use of restrictive housing.[75] Despite these efforts and the reports cited above, the lack of comprehensive data on the use of restrictive housing in prisons and, especially, in jails is an impediment to lasting reforms.

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[68] ASCA and Liman Center, *Reforming Restrictive Housing*, 2018, 84.
[69] See generally Clark, "Juvenile Solitary Confinement as a Form of Child Abuse," 2017.
[70] ASCA and Liman Center, *Reforming Restrictive Housing*, 2018, 84.
[71] ASCA and Liman Center, *Reforming Restrictive Housing*, 2018, 85; and Jamelia Morgan, *Caged In: The Devastating Harms of Solitary Confinement on Prisoners with Physical Disabilities* (New York: ACLU, 2017), 7, Table 1, 10, 12, 28-34 and 35-39, https://perma.cc/V5K9-NV3R.
[72] Kaba, Lewis, Glowa-Kollisch, et al., "Solitary Confinement and Risk of Self-Harm," 2014, 442–47; Jessica Knowles, "The Shameful Wall of Exclusion: How Solitary Confinement for Inmates with Mental Illness Violates the Americans with Disabilities Act," *Washington Law Review* 90, no. 2 (2015), 893-942, https://perma.cc/L4UZ-TSPL; Morgan, *Caged In*, 2017, 24-40; and Keramet Reiter and Thomas Blair, "Punishing Mental Illness: Trans-Institutionalization and Solitary Confinement in the United States," in *Extreme Punishment: Comparative Studies in Detention, Incarceration and Solitary Confinement*, ed. Keramet Reiter and Alexa Koenig, (London: Palgrave Macmillan UK, 2015), 177–196, https://doi.org/10.1057/9781137441157_10.
[73] ACLU, *The Dangerous Overuse of Solitary Confinement in the United States* (New York: ACLU, 2014), https://perma.cc/XPH3-QHST; Fettig, "The Movement to Stop Youth Solitary Confinement," 2017; Anna Conley, "Torture in US Jails and Prisons: An Analysis of Solitary Confinement Under International Law," *ICL Journal* 7, no. 4 (December 1, 2013): 415–53, https://doi.org/10.1515/icl-2013-0402.; Human Rights Watch, "Human Rights Watch Memo of Support for the New York State HALT Solitary Confinement Act," Human Rights Watch, April 30, 2019, https://perma.cc/PTH6-ZXZU; and Morgan, *Caged In*, 2017.
[74] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), General Assembly Resolution A/RES/70/175 (2015).
[75] For example, in 2019, 12 states (AR, CA, GA, MD, MN, MT, NE, NJ, NM, TX, VA, and WA) passed 18 bills regarding restrictive housing use; in 2020, nine states (CA, CO, FL, LA, NE, NJ, SC, VA, and WA) passed 11 bills on this topic. Many of the bills target specific populations, such as pregnant or postpartum people, people with serious mental illness, and juveniles. Other bills set out data reporting requirements. Outright bans and caps on the length of stay were more uncommon in state and federal legislation.

Current Study

The current study maps and analyzes the prevalence of restrictive housing in U.S. jails and the disparities in its use, as well as the conditions of confinement in specific and restrictive housing units. To gather this data, Vera researchers created a survey for jail authorities (warden, administrator, or sheriff), and distributed this survey to all jails throughout the United States.

Survey development

Vera developed the survey in 2018 and 2019, with input from jail professionals, government organizations, and advocacy groups. It was designed to be relatively simple and accessible so that a busy jail administrator could complete it using their own internal data systems.

The survey is four pages long. A completed survey provides a single-day snapshot of the facility by capturing information about jail population, staffing (including physical and mental health providers), and population demographics (e.g., sex, age, race/ethnicity). The survey includes a glossary of terms to avoid the varying definitions that occur across jurisdictions. For example, restrictive housing was defined as holding someone in a cell for 22 or more hours per day.

Questions related to restrictive housing include total population, demographics, length of stay, and numbers of people in restrictive housing who are transgender, have a mental health designation, and/or are under immigration detention (ICE).[76] Finally, the survey asks about the basic living conditions for the general population, specific housing units, and restrictive housing units, including cell space, access to visits and calls, time out of cell, and programming. This relatively broad approach was intended to capture how jails track restrictive housing and how they operate on a day-to-day basis more generally.

Data collection

To develop a comprehensive list of jails in the United States, the Vera team built a list of jail names, addresses, and contact information for key personnel (e.g., warden or administrator, sheriff), for as many counties as possible, using mostly open-source online information. This list was cross-checked with a list purchased from the National Public Safety Information Bureau.[77] The final list included: county jails; jails under tribal jurisdiction; facilities that are part of integrated jail-prison systems in Connecticut, Rhode Island, Vermont, Delaware, Alaska, and Hawaii; jails that are regional or cover multiple counties; and city jails. In situations where there were multiple jail facilities within a single county, with different mailing addresses and names, a separate mail survey was sent to each facility. The survey included an option to note whether the respondent was responding for one or multiple facilities.

[76] Definitions of these terms and others are provided at page 5 of this report.
[77] National Public Safety Information Bureau, "Correctional Institutions and Agencies," database (Stevens Point, WI: National Public Safety Information Bureau, accessed October 15, 2020), https://www.safetysource.com/lists/index.cfm?fuseaction=CIA.

The Vera team documented jail contact information for 3,146 jurisdictions and 3,439 individual facilities (numerous counties listed several different facilities with different addresses) and mailed a paper survey to each facility between June and August 2019. Jail administrators had several options for filling out the survey: an online Qualtrics survey, a form-fillable PDF to return by email, or printing the PDF (filled out electronically or by hand) and returning by postal mail. The team sent follow-up emails, including a copy of the survey and a link to the online Qualtrics survey, to all jurisdictions during October and November 2019. Responses were accepted until January 31, 2020.

Sample description

Surveys were received from 285 jurisdictions, representing 9.1 percent of all jurisdictions contacted. However, some surveys were duplicates, illegible, or had too much missing data; thus, the final sample size was 270. Using the final sample size of 270, the study has a response rate of 8.6 percent of the jurisdictions contacted, or 7.9 percent of all the individual facilities contacted. Vera received valid survey responses from 45 different states. No survey responses were received from Arizona, Delaware, District of Columbia, Hawaii, Rhode Island, and West Virginia.[78] The maximum number of responses from a given state was 14 (5 percent of the sample), received from each of four states: Colorado, Florida, Iowa, and Texas.

Vera staff organized responses by county type across four categories: rural, small and midsize metro, suburban, and urban, based on Vera's approach to the National Center for Health Statistics Urban-Rural Classification Scheme for Counties.[79]

[78] Delaware, Hawaii, and Rhode Island have unified state prison and jail systems, which may have led to uncertainty about who should respond to a jail-specific request. Still, other states with integrated systems, such as Alaska, Connecticut, and Vermont, did send responses.

[79] Vera's approach collapses the six categories defined by the National Center for Health Statistics (NCHS) Urban-Rural Classification Scheme for Counties to four, by combining medium with small metropolitan areas, and micropolitan (an urban area with a population of at least 10,000 but less than 50,000) with noncore areas (all other areas not considered metropolitan or micropolitan). See Jacob Kang-Brown and Ram Subramanian, *Out of Sight: The Growth of Jails in Rural America* (New York: Vera Institute of Justice, 2017), 8, https://perma.cc/3WUD-JSQN.

Figure 1
Sample by county

	Surveys completed	Percentage
Rural	152	57%
Small and mid-metros	67	25%
Suburban	41	15%
Urban	9	3%
Total	**269**	**100%**

Most responses were from rural counties, accounting for 57 percent of the surveys received. These results are not surprising, as nearly two-thirds of counties are classified as rural and most counties have a jail.[80]

Figure 2
Sample by jail population size

	Surveys completed	Percentage
Small (0-99)	133	49%
Medium (100-499)	97	36%
Large (500 or more)	39	14%
Total	**269**	**100%**

* 1 missing value

To examine responses in terms of jail population size (which was reported on the survey as the size of the population the day of the survey response), Vera staff used the categories for jail size set in the Annual Survey of Jails; however, to simplify analysis, the Vera team consolidated the seven categories into three.[81] As reported in Figure 2, the largest group of respondents were jails with small population sizes (49 percent), followed by medium (36 percent), and finally large (14 percent).

[80] Kang-Brown and Subramanian, *Out of Sight*, 2017, 8.
[81] Zeng and Minton, *Jail Inmates in 2019*, 2021, 7, Table 5. The BJS categories are: fewer than 50 incarcerated people; 50-99; 100-249; 500-999; 1,000-2,499; and 2,500 or more.

Findings

The Vera team used the survey data to generate summary statistics on the prevalence, disparities, and conditions of confinement in restrictive housing units across the country. These findings should be viewed as an initial step into further understanding the use of restrictive housing in U.S. jails.

Jail population characteristics

Of the responding jails, the jail population size ranged from zero to 4,910, with an average of 306 people and a median of 102 people. The population held in restrictive housing ranged from zero to 301 people, with an average of 18 people and a median of 3 people. The average number of full-time staff was 110, with a median of 29; the average number of part-time staff was three, with a median of one.

Figure 3
Jail population characteristics

	Average	Median	Range
Number of part-time staff	3.09	1	0-70
Number of full-time staff	109.62	29	1-2124
Incarcerated population on a specific recent day	306.29	102	0-4910
Restrictive housing population	18.23	3	0-301

Prevalence of restrictive housing

Overall, across the entire sample of jails, **5.64 percent of the incarcerated population was held in restrictive housing** on a given day, based on the broad definition of 22 hours or more in cell. This is 1.5 times the percentage of people held in restrictive housing in prison (3.8 percent).[82] There was also a wide range in the percentage of people in restrictive housing in a given jail: 59 jails had no people in restrictive housing, while two jails housed their entire population in restrictive housing. Of these two jails, one is a facility designated as high-security where all people are explicitly held in restrictive housing. The other facility, due to space limitations, does not allow any incarcerated people to have time out of cell.

[82] CLA and Liman Center, *Time in Cell 2019,* 2020, 6.

The Vera analysis finds a higher prevalence of restrictive housing than reported in the National Inmate Survey (2.7 percent), but a comparable amount to that reported by the two jail systems in the 2018 ASCA-Liman Nationwide Survey (3.6 percent and 6.2 percent).[83]

Figure 4
Prevalence of restrictive housing, by county type

	%
Rural	4.74%
Small and mid-metros	6.65%
Suburban	5.52%
Urban	5.08%

Small and mid-metro counties have the highest average prevalence of restrictive housing in jails, followed by suburban jails; urban and rural county jails have similar restrictive housing proportions. This is notable because one might assume that large city jails—with more complex housing and disciplinary systems—or rural jails—with less space and resources—might use restrictive housing more often. The reasons behind the higher prevalence of restrictive housing in jails in small and mid-metro counties are worth further research, although any study should consider that the size ranges demarcated in this survey are arbitrary.

Figure 5
Prevalence of restrictive housing in responding jails, by jail size

	%
Small (0-99)	5.87%
Medium (100-499)	6.46%
Large (500 or more)	5.28%

These jail size categories collapse the seven size categories of the Annual Survey of Jails into three.[84] Medium-sized jails report the highest prevalence of restrictive housing, followed by small jails; large jails

[83] The National Inmate Survey (NIS), 2011–12, was conducted in 233 state and federal prisons and 357 local jails, with a sample of 91,177 incarcerated adults nationwide. On a given day, 2.7% of people in jail and 4.4% of people in prison were reported as held in restrictive housing. Beck, *Restrictive Housing 2011–12*, 2015, 1. In the 2018 ASCA-Liman survey, two large city jails (Los Angeles and Philadelphia) provided data on restrictive housing. ASCA and Liman Center, *Reforming Restrictive Housing*, 2018, 5.
[84] The Annual Survey of Jails demarcates these categories at average daily populations of 0-49, 50-99, 100-249, 250-499, 500-999, 1,000-2,499 and 2,500. Zeng, *Jail Inmates in 2018*, 2020, 7, Table 5. Vera collapses the lowest two, next pair, and top three categories.

have the lowest prevalence of restrictive housing use. Despite these differences, the proportions are fairly similar across jail sizes.

Disparities in the use of restrictive housing

The Vera team examined the survey data to identify disparities in the characteristics of people placed in restrictive housing in jails. The Vera team searched for potential disparities in race/ethnicity, gender, age, and certain vulnerable groups by comparing the proportion of people in a given group within the general population to the proportion in the population in restrictive housing.[85]

Figure 6
General population (GP) vs. restrictive housing (RH)

	Composition of GP	Composition of RH
Race/ethnicity		
% Black	19.04%	25.41%
% Latinx	8.43%	5.60%
% White	67.14%	64.35%
% Other	5.43%	3.27%
Gender		
Men	82.67%	83.06%
Women	17.33%	17.11%
Age		
% Under 18	0.45%	1.19%
% 18-25 years old	22.14%	24.21%
% 26-54 years old	69.85%	67.15%
% 55 or older	7.34%	7.17%
Vulnerable groups		
% Transgender people	0.087%	0.97%
% People with mental health designation	17.42%	28.24%

[85] Due to limitations in the data that jails reported in the survey, Vera was unable to disaggregate gender and age across race/ethnicity.

% People with serious mental illness	6.29%	24.60%
% ICE detention	2.24%	0.728%

As Figure 6 shows, the most striking disparities are by race/ethnicity and for certain vulnerable groups. Black people make up a higher percentage of the restrictive housing population (25 percent) than of the general population (19 percent), while other race/ethnicity groups have a larger proportion in general population. This overrepresentation of Black people in restrictive housing also appears in prisons.[86]

Latinx people make up a higher percentage of the general population than the restrictive housing population. This contrasts with the trends in prisons, in which Latinx people are overrepresented in restrictive housing, at least for men.[87] This difference in the jails patterns may be partly because race/ethnicity data (especially in jails) typically reflects what an intake officer notes down and is often inaccurate for Latinx people in particular.[88] Because Latinx people may be listed as white, without any notation of ethnicity, this likely results in over-counting of non-Hispanic white people and under-counting of Hispanic/Latinx people, which could explain the apparent under-representation of Latinx people in restrictive housing.

Finally, the "other" category includes other racial/ethnic groups that are overrepresented in restrictive housing in prisons—such as Native Americans or Alaska Natives—and some that are underrepresented—such as Asian Americans.[89] Although the survey results indicate that the "other" category makes up a higher percentage of the general population than the restrictive housing population, further detail on race/ethnicity data in jails might reveal different patterns.

Regarding age, the largest disparities exist among juveniles, with youth 18 years old and under overrepresented in restrictive housing (0.45 percent in GP, compared to 1.19 percent in RH). Although many jails do not house any juveniles, this is still an important finding given the long-term detrimental effects that placement in restrictive housing can have on juveniles.

The disparities for vulnerable groups are also notable. People with a mental health designation are overrepresented in restrictive housing (17 percent in GP, compared to 28 percent in RH), and those with a serious mental illness even more so (6 percent in GP, compared to 25 percent in RH). (Most jails treat these categories as mutually exclusive.) This demonstrates that the efforts to limit or prohibit placing people with mental illness in restrictive housing are not fully reaching jails. Similarly, transgender people

[86] CLA and Liman Center, *Time in Cell 2019,* 2020, 24-25.
[87] Ibid.
[88] Eppler-Epstein, Gurvis, and King, *The Alarming Lack of Data on Latinos in the Criminal Justice System*, 2016.
[89] CLA and Liman Center, *Time in Cell 2019,* 2020, 24-25.

are also disproportionately in restrictive housing (0.09 percent in GP, compared to 0.98 percent in RH), although it's important to note that there are major data gaps for this group because most jails (like many prisons) do not have consistent ways of identifying or tracking gender identity at intake or for restrictive housing.[90]

County disparities

When the sample is disaggregated by county type—rural, small/mid metro, suburban, and urban —the disparities noted above emerge differently.

As outlined in Figure 7, sizeable disparities emerged in rural counties. Black people are overrepresented in restrictive housing generally. White people are also overrepresented in restrictive housing in rural counties, which is not the typical pattern for jails or prisons in general: Of the 78 rural counties reporting restrictive housing figures for white people, 44 (56 percent) show an overrepresentation of white people.[91] Although many rural counties have mostly white populations, the pattern of overrepresentation of white people does not appear to be due to differences in the proportion of white people in the local county population.[92] Thus, further research into local factors that may affect overrepresentation of white people in restrictive housing in jails certain rural counties is warranted. Additionally, further research into whether and how jail facilities are documenting race and ethnicity—specifically for Latinx people and for other people who may be incorrectly listed only as white—is important in order to avoid misinterpreting data.

For vulnerable groups in rural county jails, transgender people and people with any mental health designation were overrepresented in restrictive housing compared to the general population. Some population groups made up a higher percentage of the general population than the restrictive housing population, such as Latinx, "other" racial/ethnic category, and ICE detainees.[93] These trends are similar to the overall sample of jails.

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[90] Jennifer Sumner and Lori Sexton, "Same Difference: The 'Dilemma of Difference' and the Incarceration of Transgender Prisoners," *Law & Social Inquiry* 41, no. 3 (2016), 616–42 ("Although … transgender prisoners were a distinct--and distinctive—group of prisoners seen as different from the larger men's prison population, [corrections staff at four Pennsylvania facilities] demonstrated a lack of agreement about who, exactly, fell within the boundaries of this group.").

[91] Within this sample, the Vera team removed two facilities that had a relatively large local Latinx population but that appeared not to be tracking Latinx ethnicity as a category in jail data: one jail had no Latinx people listed in the jail and one had missing data only for the Latinx category. This suggests that for these two facilities, Latinx people are being listed only as white (or possibly as Black).

[92] The average proportion of white people (15 to 64 years old) in the counties where white people are overrepresented in restrictive housing is not significantly different than the proportion for the counties where white people were not overrepresented in restrictive housing (88 percent versus 82 percent).

[93] As stated earlier, there are difficulties with how Latinx and "Other" racial/ethnic data are recorded by some jails. In this sample, 15 facilities (6 percent) said that more than 10 percent of their incarcerated people were held under ICE jurisdiction; two facilities had levels over 50 percent.

Figure 7
Rural counties: general population (GP) vs. restrictive housing (RH)

	GP	RH
Race/ethnicity		
% Black	9.60%	13.13%
% Latinx	8.82%	4.33%
% White	74.61%	79.13%
% Other	7.07%	2.56%
Gender		
Men	81.07%	81.15%
Women	18.93%	19.28%
Age		
% Under 18	0.48%	0.61%
% 18-25 years old	23.25%	21.34%
% 26-54 years old	69.11%	69.02%
% 55 or older	7.05%	7.16%
Vulnerable groups		
% Transgender people	0.09%	1.53%
% People with mental health designation	14.18%	28.65%
% People with serious mental illness	4.54%	28.34%
% ICE detention	2.19%	0.97%

In small and mid-metro areas, the trends are similar to the overall jails sample. As Figure 8 indicates, Black people, people under 18 years old, transgender people, and people with a serious mental illness made up a higher percentage of the restrictive housing population than the general population in small and mid-metro areas. When compared to the overall sample of jails, there are some notable differences worth mentioning. For example, among jails in small and mid-metro areas, Latinx people made up a higher percentage of the restrictive housing population than the general population; this is in contrast to the full overall sample of jails. However, as noted earlier, data consistency on Latinx race/ethnicity is unreliable. Furthermore, although people aged 18 to 25 were a slightly higher percentage of the restrictive

housing population than the general population in the full overall sample of jails, this disparity is much larger in small and mid-metro areas.

Figure 8
Small & mid-metros: general population (GP) vs. restrictive housing (RH)

	GP	RH
Race/ethnicity		
% Black	31.78%	36.94%
% Latinx	4.94%	6.42%
% White	58.59%	50.36%
% Other	4.68%	4.60%
Gender		
Men	84.03%	86.15%
Women	15.97%	13.83%
Age		
% Under 18	0.55%	1.28%
% 18-25 years old	20.62%	26.69%
% 26-54 years old	70.01%	65.50%
% 55 or older	8.45%	6.65%
Vulnerable Groups		
% Transgender people	0.08%	0.54%
% People with mental health designation	22.00%	24.09%
% People with serious mental illness	7.56%	20.15%
% ICE detention	1.10%	0.19%

The largest disparities were found in suburban areas, as outlined in Figure 9. The following groups made up a higher percentage of restrictive housing population than the general population: Black people, those in the "other" racial/ethnic category, women, people under age 18, people aged 18 to 25 years, people 55 years old or older, transgender people, people with mental health issues, and people with a serious mental illness. Conversely, Latinx people, people 26 to 54 years old, and people under

immigration detention (ICE), among others, made up a higher percentage of the general population than the restrictive housing population.

Figure 9
Suburban: general population (GP) vs. restrictive housing (RH)

	GP	RH
Race/ethnicity		
% Black	27.64%	32.43%
% Latinx	9.64%	4.77%
% White	60.73%	56.94%
% Other	1.78%	3.11%
Gender		
Men	85.65%	82.18%
Women	14.35%	17.82%
Age		
% Under 18	.24%	2.52%
% 18-25 years old	21.13%	24.95%
% 26-54 years old	71.65%	66.93%
% 55 or older	6.65%	8.44%
Vulnerable Groups		
% Transgender people	0.08%	0.24%
% People with mental health designation	19.73%	28.09%
% People with serious mental illness	8.64%	20.18%
% ICE detention	4.18%	0.98%

Urban areas had similar disparities to small and mid-metro areas. As Figure 10 indicates, Black people, those in the "other" racial/ethnic category, people under 18 years old, people 18 to 25 years old, transgender people, and those with a serious mental illness made up a higher percentage of the restrictive housing population than the general population. Conversely, other groups made up a higher percentage of the general population than the restrictive housing population, including white people (37 percent in GP,

compared to 33 percent in RH), and those aged 26 to 54 (73 percent in GP, compared to 68 percent in RH), among others.

Figure 10
Urban: general population (GP) vs. restrictive housing (RH)

	GP	RH
Race/ethnicity		
% Black	40.54%	45.79%
% Latinx	20.34%	17.93%
% White	37.42%	33.19%
% Other	1.69%	2.71%
Gender		
Men	86.36%	84.87%
Women	13.64%	15.13%
Age		
% Under 18	0.37%	1.15%
% 18-25 years old	20.00%	24.43%
% 26-54 years old	72.62%	68.26%
% 55 or older	7.01%	6.31%
Vulnerable Groups		
% Transgender people	0.14%	0.32%
% People with mental health designation	32.17%	35.26%
% People with serious mental illness	11.84%	29.43%
% ICE detention	1.78%	0.59%

Overall, rural counties show different patterns in race and age disparities than other types of counties. Given the sheer number of rural counties and the differences in their characteristics, it is hard to generalize across rural areas. But the contrasts between rural areas and areas in or near cities are worth further exploration. Additionally, suburban counties, followed by small and mid-sized metro counties, appear to have the largest disparities. As stated earlier, small, and mid-sized metros showed the highest

prevalence of restrictive housing in the overall sample, followed by suburban counties; therefore, the unique features of these counties are worth further analysis.

Jail size disparities

The disparities in the use of restrictive housing varied by jail size. For small jails (those housing fewer than 100 people), as shown in Figure 11, there were disparities by race and for vulnerable groups: Black people, white people, transgender people, and those with any mental health designation were overrepresented in restrictive housing. The finding that white people made up a larger percentage of the restrictive housing population than the general population was unexpected but coincides with the findings in rural communities. Additionally, given that smaller jails are more likely to be found in rural communities, there is likely overlap driving these results.[94]

Like the full sample findings, Latinx, other racial/ethnic groups, and ICE detainees made up a higher percentage of the general population than the restrictive housing population. (As stated earlier, the data problems with how Latinx and other racial/ethnic categories are documented are likely influencing this ratio.) Finally, unlike the overall sample, people 18 to 25 years old represented a higher percentage of the general population than the restrictive housing population (24 percent in GP, compared to 20 percent in RH).

In jails with medium-sized populations (100-499 people), the disparities mostly follow the same patterns as the overall sample of jails, with Black people, younger people, transgender people, and people with mental illness overrepresented in restrictive housing.

In jails housing 500 or more people, the largest disparities were seen for Black people (38 percent in GP, compared to 42 percent in RH), those under age 18 (0.4 percent in GP, compared to 0.9 percent in RH), those ages 18 to 25 years old (21 percent in GP, compared to 26 percent in RH), and those with serious mental illnesses (9 percent in GP, compared to 16 percent in RH). As evident in Figure 13, and consistent with the overall sample, white people and ICE detainees made up a higher percentage of the general population than the restrictive housing population.

Figure 11
Small jails (100 people or less): general population (GP) vs. restrictive housing (RH)

	GP	RH
Race/ethnicity		
% Black	11.62%	13.92%
% Latinx	9.88%	5.09%

[94] See generally Kang-Brown and Subramanian, *Out of Sight*, 2017.

% White	71.70%	77.90%
% Other	6.83%	0.44%
Gender		
Men	81.57%	80.37%
Women	18.43%	19.93%
Age		
% Under 18	0.62%	0.78%
% 18-25 years old	24.11%	20.22%
% 26-54 years old	67.96%	69.97%
% 55 or older	7.26%	8.32%
Vulnerable Groups		
% Transgender people	0.06%	1.75%
% People with mental health designation	12.46%	32.78%
% People with serious mental illness	4.88%	30.11%
% ICE detention	1.27%	0.42%

Figure 12
Medium jails (100-499 people): general population (GP) vs. restrictive housing (RH)

	GP	RH
Race/ethnicity		
% Black	21.85%	27.95%
% Latinx	4.14%	2.45%
% White	68.79%	62.20%
% Other	5.02%	6.37%
Gender		
Men	83.00%	84.22%
Women	17.00%	15.97%

Age		
% Under 18	0.26%	1.66%
% 18-25 years old	20.08%	26.79%
% 26-54 years old	72.51%	64.65%
% 55 or older	6.89%	6.85%
Vulnerable Groups		
% Transgender people	0.11%	0.64%
% People with mental health designation	22.01%	25.15%
% People with serious mental illness	6.70%	24.27%
% ICE detention	3.18%	0.84%

Figure 13

Large jails (500 or more people): general population (GP) vs. restrictive housing (RH)

	GP	RH
Race/ethnicity		
% Black	37.54%	42.19%
% Latinx	13.24%	14.14%
% White	47.90%	42.02%
% Other	1.60%	1.51%
Gender		
Men	85.72%	84.87%
Women	14.28%	15.09%
Age		
% Under 18	0.38%	0.94%
% 18-25 years old	21.03%	26.44%
% 26-54 years old	69.25%	66.63%
% 55 or older	8.79%	6.02%
Vulnerable Groups		
% Transgender people	0.13%	0.22%

% People with mental health designation	27.07%	25.21%
% People with serious mental illness	9.44%	15.67%
% ICE detention	2.53%	1.11%

Overall, two interesting findings emerged across jail sizes. First, Black people were overrepresented in restrictive housing across all jail sizes. In small jails only, white people were also overrepresented in restrictive housing. (Some of these people may be Latinx and listed in jail records as white; see discussion for Figure 7 on rural counties, above.) Second, the overrepresentation of people with mental health conditions in restrictive housing is the most severe in small jails. Disparities also exist in medium and large jails, but this highlights the urgent need to address this issue, especially among small jails, given that almost all best practice standards call for a prohibition on restrictive housing for people with mental health conditions. (See "Type of Mental Health Staff on Premises" on page 45 for a more detailed discussion.)

Prevalence of specific and restrictive housing units

Survey respondents were asked to note whether they had the following types of specific housing units: intake housing, medical housing, mental health housing, and protective custody, as well as the following types of restrictive housing units: disciplinary segregation and administrative segregation. (See definitions at page 5 of this report for descriptions of these units.)

Figure 14
Percent of jails with housing units

	%
Specific housing units	
Intake	79.45%
Medical	71.43%
Mental health	59.17%
Protective custody	84.55%
Restrictive housing units	
Disciplinary segregation	90.42%
Administrative segregation	88.03%

Although most jails had both specific and restrictive housing units, restrictive housing units were more represented in the sample of jails. In fact, more than 90 percent of jails had disciplinary segregation units, and 88 percent had administrative segregation units. Regarding specific housing units, the most common type of housing unit was protective custody, whereas the least common type of housing unit was mental health units.

Because there is no standard definition for such units, the Vera survey asked jails to report whether they had housing areas that serve each of these functions. It is possible that a given cell space could serve multiple functions depending on the situation.

Length of stay in restrictive housing

Given the harms associated with restrictive housing, advocates, policymakers, and even correctional leaders have stressed that restrictive housing should be used as a last resort and for the shortest amount of time possible.[95] The international minimum standard--set forth in the UN Mandela Rules—is a maximum of 15 days, with a prohibition on any amount of time for juveniles, pregnant women, and people with mental health conditions.[96] Unfortunately, as shown in Figure 15, many jails do not appear to be following these guidelines.

Figure 15

Length of stay in restrictive housing (among people held in RH on the survey day)

	% of people in RH
0-3 days	15.2%
4-15 days	26.2%
16-30 days	20.4%
31-60 days	13.1%
61-90 days	8.4%
91-365 days	12.2%
More than 1 year	4.0%

[95] ASCA and Liman Center, *Reforming Restrictive Housing*, 2018.
[96] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), General Assembly Resolution A/RES/70/175 (2015).

Instead, jails indicated the most common length of stay in restrictive housing was four to 15 days, followed by 16 to 30 days. With national statistics indicating that the average length of stay in jail is approximately 26 days, it is concerning that 58.1 percent of the people in restrictive housing units had been there for more than 15 days.[97] In other words, some people may spend most of their time in jail in official restrictive housing units.

Time out of cell

The Vera team examined how often jails hold people in the general population in their cells for 22 hours or more per day. These people are not in officially designated restrictive housing units, and may not show up in official administrative data that jails report on restrictive housing. But in practical terms, a person held alone in a cell except for two hours a day is in a restrictive housing situation. For the discussion in this report, Vera calls this de facto restrictive housing.

Additionally, the Vera team examined whether jails hold people for 22 hours or more per day in the four types of specific housing units that are not officially restrictive housing: intake, medical, mental health, and protective custody (see definitions box at the beginning of this report). As a comparison, the Vera team also looked at the percentage of jails that held people in their cell for 22 hours or more per day in restrictive housing units.

Figure 16
Jails that allow less than 2 hours out of cell per day, per type of housing unit[98]

Specific housing units	% of jails
Intake	63.86%
Medical	56.49%
Mental health	50.38%
Protective custody	48.37%
Restrictive housing units	

[97] Zeng and Minton, *Jail Inmates in 2019*, 2021.
[98] The survey asked jails to give overall totals of people held in cells for 22 hours or more per day, so Vera assumes this includes people in officially-designated restrictive housing units (disciplinary and administrative) regardless of time out of cell, as well as other housing areas that meet the 22 hours or more definition, including other 'specific housing units' (as listed in the table) and general population. However, it is possible that some jails listed only those in officially-designated restrictive housing. Figure 16 summarizes survey responses to a question on the number of hours out of cell permitted for each type of housing unit. So, the percentage of jails listed is the proportion of jails permit 2 hours or less for each type of housing unit. The jails did not provide the number of people in each of these housing units in such conditions.

Disciplinary segregation	79.52%
Administrative segregation	63.86%
General population[99]	22.73%

Figure 16 highlights concerning results. On average, approximately 64 percent of jails' intake units, 57 percent of jails' medical units, 50 percent of jails' mental health units, and 48 percent of jails' protective custody units held people in their cell 22 hours or more. However, many jails' specific housing units not designated as restrictive housing held people in their cells for less time per day than the disciplinary or administrative restrictive housing units. Approximately 80 percent of jails' disciplinary segregation units and 64 percent of administrative segregation units held people in their cells for 22 hours or more per day. Together, these numbers suggest that in a majority of jails, people in areas where they are meant to be receiving treatment or protection are still experiencing severe restrictiveness.

By comparison, about 23 percent of the jails in this survey held at least some people in general population in their cells for 22 hours or more. This indicates that some people are in a restrictive housing situation even though they are considered general population, and thus not under any disciplinary or exceptional circumstance. This means de facto restrictive housing is occurring in some jails across the county. It is possible that people in this situation would not be subject to current or new limits or oversight on the use of restrictive housing, due to not being officially on this status.

County type

Figure 17
Jails that allow less than 2 hours out of cell per day, by housing unit type and county type

	Rural	Small & Mid-Sized	Suburban	Urban
Specific housing units		% of jails		
Intake	60.22%	69.57%	75.00%	33.33%
Medical	56.76%	55.81%	60.00%	42.86%
Mental health	53.12%	43.24%	62.50%	25.00%
Protective custody	43.38%	56.00%	51.52%	37.50%

[99] Here, the survey asked respondents "in General Population, is anyone held in their cell for 22 or more hours per day, today?" This percentage means that 23 percent of jails held at least some people in General Population in equivalent-to-restrictive conditions, but does not specify how many people.

Restrictive housing units				
Disciplinary segregation	75.27%	90.00%	82.61%	83.33%
Administrative segregation	63.44%	45.00%	69.57%	83.33%
General population	23.33%	20.31%	25.00%	22.22%

As Figure 17 indicates, differences emerged across county type. Suburban jails had the highest percentage of restrictive housing conditions in specific housing units. For example, in 75 percent of suburban jails, intake units did not allow people out of their cell for more than 2 hours per day. Suburban areas also had the highest percentage of jails (25 percent) using de facto restrictive conditions for at least some of the general population.

Research suggests that restrictive housing is more common in facilities with overcrowding.[100] Given that rural counties and small and mid-sized counties saw an increase in jail populations between 2013 and 2019, while urban and suburban area jails saw a decrease, it would be reasonable to think that higher rates of de facto restrictive housing conditions in general population and specific housing units would occur in rural counties and small and mid-sized areas.[101] However, the survey results indicate otherwise: the highest proportion of jails reporting de facto restrictive housing in both specific housing units as well as the general population were in suburban counties, although not by much. These results, again, suggest that the conditions of confinement in suburban jails should be studied in greater detail.

Jail size

In the analysis by jail size, medium-sized jails had the highest proportion of restrictive housing conditions in three of the specific housing units (intake, medical, and protective custody). Small jails reported the largest proportion of mental health units that hold people in cell for 22 hours or more per day.

Figure 18
Jails that allow less than 2 hours out of cell per day, by housing unit type and jail size

	Small	**Medium**	**Large**
Specific housing units	% of jails		
Intake	61.54%	73.24%	35.29%
Medical	57.63%	58.82%	48.15%

[100] National Institute of Justice, *Restrictive Housing in the U.S.*, 2016; and Sarah R. Zyvoloski, "Impacts of and Alternatives to Solitary Confinement in Adult Correctional Facilities" (Master of Social Work Clinical Research Paper, St. Catherine University, 2018), 11, https://perma.cc/A3RY-CJF4.
[101] Kang-Brown, Hinds, Schattner-Elmaleh, and Wallace-Lee, *People in Jail in 2019*, 2019, 1.

Mental health	53.85%	52.83%	39.29%
Protective custody	42.47%	51.95%	51.52%
Restrictive housing units			
Disciplinary segregation	70.51%	85.92%	94.12%
Administrative segregation	61.54%	60.56%	88.24%
General population	23.21%	21.28%	25.00%

Regarding conditions in both types of official restrictive housing units, among all jail types, the highest proportion of large jails affirmed that they hold people in cell for 22 hours or more in disciplinary segregation units (94 percent) and 88 percent of large jails reported that these conditions exist in administrative segregation.[102]

When it comes to de facto segregation—22 hours or more in cell per day for people in the general population—25 percent of large jails reported this practice, the highest proportion of jails. This finding is somewhat surprising since conventional wisdom suggests that larger facilities have more official restrictive units; thus, they would not need to resort to holding people in general population cells for such long lengths of time per day.

Average hours out of cell

The Vera team examined the specific number of hours that housing units allowed people out of their cells, beyond the 22 hours per day definition. While these two measurements are similar, determining the number of hours across the various types of housing units allows for more nuanced comparisons.

Figure 19
Average hours out of cell

	Average hrs.
Specific housing units	
Intake	5.31
Medical	6.04
Mental health	6.52
Protective custody	6.29

[102] Even though this technically means that some jails' disciplinary and administrative segregation units do not meet the definition of restrictive housing–22 hours or more in cell per day–Vera assumes that they are still counted in any restrictive housing measure, as they are officially designated restrictive units. The survey did not collect detailed data on this.

Restrictive housing units	
Disciplinary segregation	2.91
Administrative segregation	4.14

Regarding specific housing units, mental health units allowed people out of their cells for the longest, followed by protective custody, then medical. Intake units confined people in their cells for the longest, with the lowest average time out of cell across the specific housing units.

Within restrictive housing units, disciplinary segregation restricted time out of the cell more than administrative segregation. It is notable that administrative segregation allows more than twice the hours out of cell (on average) than the general definition of restrictive housing. This makes sense given that administrative segregation is not always meant to be punitive.[103]

Specific housing units that are not supposed to be punitive allowed people out of their cells longer than the restrictive housing units, with averages of 5 or 6 hours out of cell per day. Vera staff disaggregated this data by county type, jail size, and region.

County Type

Figure 20

Average hours out of cell, by county type

	Rural	Small & mid-sized	Suburban	Urban
Specific housing units				
Intake	5.77	4.16	4.15	11.67
Medical	6.78	5.51	4.49	8.00
Mental health	6.48	7.49	4.08	9.63
Protective custody	7.81	4.81	4.51	6.13
Restrictive housing units				
Disciplinary segregation	3.65	1.84	2.51	1.63
Administrative segregation	5.13	2.70	3.86	1.75

[103] As noted above, Vera assumes that many jails included people held in disciplinary and administrative segregation as being in the overall restrictive housing count—even if the hours out of cell are more than the two hours or less definition.

Across county type, intake, medical, and mental health units had the highest average amount of time out of cell in urban areas and the least amount of time in suburban areas. Protective custody units had the highest average amount of time out of cell in rural areas and the least amount of time in suburban areas. Across the overall sample, suburban jails allowed people in nonpunitive housing units out of their cells for less time than other county types. This finding again highlights the unique nature of suburban jails that needs to be further explored.

With restrictive housing units across county type, the highest average amount of time out of cell for both disciplinary and administrative segregation was in rural areas, while urban areas were well below the threshold of two hours per day. This finding is worth further exploration in terms of compliance with basic standards for restrictive housing and could be an area of focus for reforms.

Jail size

Figure 21
Average hours out of cell, by jail size

	Small	Medium	Large
Specific housing units			
Intake	5.73	4.09	8.50
Medical	6.97	5.14	6.27
Mental health	6.72	5.89	7.34
Protective custody	8.38	4.93	5.01
Restrictive housing units			
Disciplinary segregation	3.41	3.02	1.32
Administrative segregation	5.23	4.07	1.62

Across jail sizes, in terms of specific housing units, large jails had the highest average amount of time out of cell in intake and mental health units. In small jails, medical and protective custody units had the highest average amount of time out of cell. Across all specific housing units, medium-sized jails had the lowest average amount of time out of cell.

Regarding restrictive housing units, people in disciplinary and administrative segregation units were allowed out of their cell the most in smaller jails. This reflects the pattern noted above for differences in rural counties versus suburban and urban ones.

Conditions in jail: services & programs

To provide a greater understanding of the conditions within jails generally, the survey asked about access to medical care and to programs in addition to the highest level of medical staff on premises, type of mental health staff at jails, and sleeping space. These conditions influence what resources jail staff can draw upon when facing difficult situations that might lead to disciplinary infractions or other incidents that systems often respond to with restrictive housing placement.

Access to medical care

People incarcerated in jails represent a vulnerable population, with high levels of physical and mental health conditions. Prior research demonstrates this: the 2011-2012 National Inmate Survey found that 40 percent of people incarcerated in jails currently suffer from chronic non-infectious diseases, while 45 percent have previously suffered from a chronic non-infectious disease.[104] Infectious diseases are also more prevalent among people in jail, with incarcerated people more likely to report having tuberculosis, HIV or AIDS, or other sexually transmitted diseases, compared to the general public.[105] Additionally, people incarcerated in jails also suffer from mental health conditions at a rate much higher than the general U.S. population: 44 percent of incarcerated people reported a history of mental illness.[106] Further, people incarcerated in jails are more likely to experience serious psychological distress than the general public and those incarcerated in prisons.[107] Given this, access to medical care is paramount for this population— but access and quality of services available in jails vary greatly. The Vera survey asked about access to medical care service, from constant availability to no services.

Figure 22
Access to medical care*

	% of Jails
24 hours/day, 7 days a week	46.88%
Daytime, 7 days a week	26.95%
Daytime, Monday-Friday	34.90%
On-call	56.25%

[104] Laura M. Maruschak, Marcus Berzofsky, and Jennifer Unangst, *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12* (Washington, DC: BJS, 2015), 1-3, https://perma.cc/4A99-DZPN.
[105] Ibid.
[106] Beck, *Use of Restrictive Housing*, 2015, 1.
[107] Bronson and Berzofsky, *Indicators of Mental Health Problems*, 2017, 3.

Local hospital or clinic	40.23%
Other	12.11%
None	0.78%

**respondents could select more than one option*

As Figure 22 indicates, "on-call" was the most common response at 56 percent, followed by 47 percent of jails reporting access to medical care that was available 24 hours/day, 7 days a week. Two jails (less than 1 percent of survey responses) did not offer any medical care.

County type

Access to medical care varied across county type. In rural areas, the most common access was on-call. In small and mid-sized metros, suburban counties, and urban areas, the most common access was available 24 hours a day, 7 days a week. Two jails in rural areas (1.4 percent of rural jails) did not offer medical services at all. Overall, access to medical care is generally less available in rural areas, and although this is not surprising, it is a serious concern for the general health of those incarcerated in these facilities.

Figure 23
Access to medical care, by county type

	Rural	Small and mid-sized	Suburban	Urban
24 hours/day, 7 days a week	30.34%	61.90%	71.05%	100%
Daytime, 7 days a week	22.76%	33.33%	34.21%	22.22%
Daytime, Monday-Friday	29.66%	39.68%	45.95%	44.44%
On-call	60.00%	50.79%	55.26%	44.44%
Local hospital or clinic	44.14%	33.33%	36.84%	44.44%
Other	13.79%	7.94%	15.79%	0%
None	1.38%	0%	0%	0%

Jail Size

As expected and shown in Figure 24, fewer small jails provided comprehensive access to medical care, compared to medium- or large-sized jails. The most common type of access in small and medium-sized jails was on-call; two small jails (1.6 percent of small jails) did not offer any medical care. In larger jails, the most common type of access was 24 hours a day, 7 days a week.

Figure 24
Access to medical care, by jail size

	Small	Medium	Large
24 hours/day, 7 days a week	29.46%	51.65%	100%
Daytime, 7 days a week	13.18%	41.76%	40.00%
Daytime, Monday-Friday	28.68%	41.11%	40.00%
On-call	58.14%	57.14%	48.57%
Local hospital or clinic	43.41%	37.36%	37.14%
Other	17.05%	8.79%	2.86%
None	1.55%	0%	0%

Highest level of medical staff on premises

Another factor in the quality of medical services in jail relates to the kind of professional staff available. This study sought to uncover the highest level of medical staff that is available to provide on-premises treatment.

Figure 25
Highest level of medical staff

	% of Jails
Physician	65.16%
Registered Nurse (RN) or Nurse Practitioner	19.67%
Licensed Practical Nurse (LPN)	7.38%
Local hospital/telehealth	7.79%

As detailed in Figure 25, the highest level of medical staff on premises was a physician in nearly two-thirds of jails, followed by a registered nurse (RN) or nurse practitioner. Very few facilities rely solely on a licensed practical nurse (LPN) (7.38 percent). Finally, approximately 8 percent of jails indicated that there was no onsite medical staff; instead, people used telehealth services or were sent to the local hospital for all medical needs. It is possible that this might increase given that the COVID-19 pandemic has affected in-person services.

County Type

Figure 26
Highest level of medical staff, by county type

	Rural	Small & mid-sized	Suburban	Urban
Physician	51.88%	76.19%	84.62%	100%
Registered Nurse (RN) or Nurse Practitioner	26.32%	11.11%	15.38%	0%
Licensed Practical Nurse (LPN)	9.02%	9.52%	0%	0%
Local hospital/telehealth	12.78%	3.17%	0%	0%

Across all county types, the highest level of medical staff on premises was most frequently a physician. Approximately 52 percent of jails in rural counties had a physician on the premises; additionally, 76 percent of jails in small and mid-sized counties, 85 percent in suburban counties, and 100 percent of jails in urban counties had a physician on the premises. While the results for urban counties suggest that all facilities have a physician on the premises, this should be interpreted with caution, as there were only nine urban jails in the sample.[108]

Jail size

Across all jail sizes, physicians were the highest level of medical staff available on the premises. However, less than half of small jails (47 percent) reported having a doctor on site. Although large and medium jails all reported having at least a licensed nurse practitioner or registered nurse on site, 16 percent of small jails indicated that no medical staff were on site to meet medical needs.

Figure 27
Highest level of medical staff, by jail size

	Small	Medium	Large
Physician	47.41%	76.92%	94.44%
Registered Nurse (RN) or Nurse Practitioner	27.59%	14.29%	5.56%
Licensed Practical Nurse (LPN)	8.62%	8.79%	0%
Other	16.38%	0%	0%

[108] There are 62 urban county jails in the country.

Type of mental health staff on premises

Different mental health professionals serve different roles for incarcerated people, such as providing therapy, prescribing medication, running programs, doing assessments, or facilitating family and peer connections. Given the overrepresentation of people with mental health conditions in restrictive housing generally and the concerns about the harms of restrictive housing especially for people with mental health conditions, the availability of professional mental health staff and services is particularly relevant for any effort to reduce the use of restrictive housing.[109] Although it is difficult to generalize an ideal format or content of mental health services in jails, the Vera survey reveals significant gaps and disparities in basic access levels.

Figure 28
Mental health staff

	% of jails *
Psychiatrist	42.55%
Psychologist	29.36%
Counselor	76.17%
None	12.77%

* Numbers will not add to 100% because jails may have more than one type of staff

Figure 28 documents the survey responses regarding mental health staff in jails. Although these numbers demonstrate that some mental healthcare is available inside jails, they also indicate that some jails may be offering inadequate treatment options for their population. Nearly 13 percent of responding institutions (30 jails) did not offer any type of mental health care.

There are also gaps in a fundamental function of mental health staff: prescribing medication. Given that some mental illnesses require treatment with prescription medication, it is noteworthy that only 43 percent of responding jails employ psychiatrists who can prescribe medication. It is possible, however, that these facilities have physicians on the premises who can prescribe mental health medication and employ counselors and/or psychologists for therapy, such as cognitive behavioral therapy. To determine if this was the case, the Vera team conducted additional analyses. Of the 135 jails that did not have a psychiatrist on staff, approximately 54 percent employed a physician. While this provides some coverage for people needing prescription medication, 46 percent of jails do not have a medical doctor on the premises that can prescribe necessary mental health medication—once again highlighting that some jails may be failing to provide adequate mental health care to their populations.

[109] See generally Reena Kapoor and Robert Trestman, "Mental Health Effects of Restrictive Housing," in *Restrictive Housing in the US*, 2016, 199–232.

County type

Across rural, small and mid-sized, and suburban areas, counselors were the most common mental health staff, followed by psychiatrists, then psychologists. Suburban and urban areas had more presence of all types of mental health staff compared to small and rural counties, although the results from urban areas should be interpreted with caution due to the small sample size. These findings may reflect the general dearth of mental health services in rural areas—inside and outside of detention facilities—as approximately 20 percent of rural jails did not maintain any type of mental health staff.[110]

Figure 29
Mental health staff, by county type

	Rural	Small & mid-sized	Suburban	Urban
Psychiatrist	24.60%	54.10%	71.05%	100%
Psychologist	23.02%	26.23%	44.74%	77.78%
Counselor	65.08%	86.89%	92.11%	100%
None	19.84%	4.92%	2.63%	0%

Jail size

As expected, counselors were the most common mental health staff across all jail sizes, followed by psychiatrists and then psychologists. A higher proportion of large jails have all types of mental health professionals, compared to small- or medium-sized jails, perhaps due to better access and resources; this is especially the case with small jails, as 20 percent did not offer any mental health staff. Given this, along with the fact that smaller and rural jails have higher disparities in the overrepresentation of people with mental health conditions in restrictive housing, this topic merits further research and policy attention.

[110] For an examination of access to mental health services across geographic regions outside of a correctional context, see C. Holly A. Andrilla, Davis G. Patterson, Lisa A. Garberson, et al., "Geographic Variation in the Supply of Selected Behavioral Health Providers," *American Journal of Preventive Medicine* 54, no. 6, Supplement 3 (2018) S199–207, https://perma.cc/V8AQ-BXK6; and for a discussion of mental health provider shortages and emerging options for rural correctional institutions see Edward Kaftarian, "Telemental Health in Rural Correctional Institutions," *MHealth* 6 (2020), https://perma.cc/4PPG-VQYL.

Figure 30
Mental health staff, by jail size

	Small	Medium	Large
Psychiatrist	23.85%	49.44%	83.33%
Psychologist	22.02%	25.84%	58.33%
Counselor	66.06%	80.9%	94.44%
None	20.18%	7.87%	2.78%

Access to programs

Approximately 95 percent of all incarcerated people return to the community.[111] Therefore, providing programming that can assist in the reentry process is essential. Even programs that do not continue after release or that are offered to people who are in jail only briefly can still be beneficial, as they can provide structure and reduce idle time for incarcerated people. Yet, given shorter stays in jails and lack of infrastructure, programming may not be offered nearly as much as it is in prisons.[112] The survey asked jail administrators to identify which programs of the following list are available in their facility. In-person visits are included under "programs" because visits strengthen social bonds and occupy a detained person's time in a positive way, similar to formal programs. Library access is included because it is a positive activity, even if it does not typically operate as a structured program. Figure 31 presents the responses related to access to programs.

Figure 31
Access to programs

	%
In-person visits	48.89%
Education programs	55.19%
Library	79.63%
Substance use disorder treatment	55.19%
Anger management/conflict resolution	42.22%
Arts & music programming	18.15%
Sports programming	24.44%

[111] Timothy Hughes and Doris James Wilson, "Reentry Trends in the U.S." BJS, updated April 7, 2021, https://perma.cc/BU3C-GRVA.
[112] Turney and Conner, "Jail Incarceration," 2019, 269.

Religious programming	84.44%
Parenting classes	33.7%

The most common program offered was religious programming (84 percent of jails). Given that almost all of the country's prisons have at least one chaplain it is not surprising that almost all jails in the sample offered some form of religious programming to those incarcerated.[113] The second most common program was access to the library (80 percent of jails), followed by education programs and substance use disorder treatment, both at 55 percent of jails.

Regarding substance use disorder treatment, the Census of Jail Facilities in 2006 reported that only 10 percent of jails had a drug or alcohol treatment program, a substantially lower percentage than the Vera sample.[114] While this could be a product of the small sample size, it may also indicate that substance use disorder treatment offered in jails has increased in the past decade and a half. However, there is little standardization of treatment programs for substance use disorder, making true measurement or comparisons of program access difficult.

Finally, less than half of the jails offered in-person visits (49 percent), which is surprising given that most people in jail are in their local community. This can generate a sense of isolation for detained people, regardless of their housing unit. Visits are generally considered to be a right and to be beneficial to a person's well-being. Further, research in prisons suggests that visitation helps stabilize people and reduces misconduct; this could plausibly translate to jails settings, too.[115]

County type

As expected, access to programs varied across county type. The most common programming offered in rural, small and mid-sized, and suburban areas was religion and access to the library.

Figure 32

Access to programs, by county type	**Rural**	**Small & mid-sized**	**Suburban**	**Urban**
In-person visits	48.68%	43.28%	58.54%	55.56%
Education programs	45.39%	62.69%	73.17%	88.89%
Library	75.66%	85.07%	82.93%	100%
Substance use disorder treatment	43.42%	68.66%	70.73%	88.89%

[113] Stephanie C Boddie and Cary Funk, *Religion in Prisons—A 50-State Survey of Prison Chaplains* (Washington, DC: Pew Research Center, 2012), https://perma.cc/LY32-5A73.
[114] James Stephan and Georgette Walsh, *Census of Jail Facilities, 2006* (Washington, DC: BJS, 2011), 6, https://perma.cc/C27Y-3YZ7.
[115] Joshua C. Cochran, "The Ties That Bind or the Ties That Break: Examining the Relationship between Visitation and Prisoner Misconduct," *Journal of Criminal Justice* 40, no. 5 (2012), 433–40.

Anger management/conflict resolution	27.63%	56.72%	60.98%	100%
Arts & music programming	13.16%	23.88%	19.51%	55.56%
Sports programming	18.42%	34.33%	29.27%	33.33%
Religious programming	78.95%	92.54%	87.80%	100%
Parenting classes	21.71%	43.28%	51.22%	88.89%

Similar findings emerged in urban areas. Religious programming, access to the library, and anger management/conflict resolution programs were all offered at 100 percent of the urban jails surveyed. The second most common program types offered in urban areas were education programs, substance use disorder treatment programs, and parenting classes—all at approximately 89 percent.

Notably, jails in rural counties have far less programming available, across a range of activities. Since rural county jails tend to be smaller and farther from local organizations that might develop or deliver programming options, this is common.[116] The dearth of programming might mean that people in jail experience more idle or empty time, even if technically they are not required to remain in cell for most of the day.

Jail Size

As Figure 33 indicates, access to the library was the most common program type in small jails, followed by religious programming. Similarly, in medium-sized jails, the most common type of programming was religion, followed by access to the library. Finally, in large jails, the most common type of programming was religious programming, followed by education programs, which are usually much more involved and resource-intensive than running a library. It is worth noting that opportunities for in-person visits did not vary much across jail size—50 percent in small jails, 51 percent in medium-sized jails, and 44 percent in large jails.

Figure 33

Access to programs, by jail size

	Small	Medium	Large
In-person visits	49.62%	50.52%	43.59%
Education programs	39.10%	64.95%	87.18%
Library	76.69%	84.54%	79.49%

[116] Andrilla, Patterson, Garberson, et al., "Geographic Variation in the Supply of Selected Behavioral Health Providers," 2018;; Kaftarian, "Telemental Health in Rural Correctional Institutions," 2020; and Kang-Brown and Subramanian, *Out of Sight*, 2015.

Substance use disorder treatment	37.59%	68.04%	84.62%
Anger management/conflict resolution	24.06%	51.55%	82.05%
Arts & music programming	9.77%	22.68%	35.9%
Sports programming	13.53%	32.99%	41.03%
Religious programming	73.68%	95.88%	92.31%
Parenting classes	14.29%	43.30%	76.92%

Type of sleeping space in general population

To understand the living conditions within cells, the survey asked respondents to indicate the most common type of sleeping space within their facility. It is important to note that a single cell does not denote restrictiveness necessarily, even though a restrictive housing unit typically holds only one person. A single cell in a jail, with regular conditions (including out of cell time) and access to programs and services, may be the most desired sleeping arrangement, since it provides some privacy and personal space.

The survey also asked jail administrators about the proportions of cells with each type of sleeping space. The question does not separate restrictive housing units from regular housing units.

Figure 34
Type of sleeping space available in general population*

	% of Jails
Single cell	56.06%
Double cell	78.03%
Dorm	76.52%
Other	6.49%

*Jails identified all types that apply, so totals do not add up to 100 percent.

As Figure 34 indicates, the most common type of sleeping space for the general population was double cells (78 percent), followed by dorms (77 percent). If single cells require the most space inside a facility, then it is unsurprising that they are less prevalent, even though they still appear in more than half of jails.

County type

A handful of differences emerged across county types. Among jails in rural areas, the most commonly reported types of sleeping spaces were dorms, followed by double cells. In small and mid-sized areas, double cells and dorms were the most common, both at 86 percent of jails. In suburban areas, the most common sleeping spaces were double cells, followed by dorms. Finally, in urban areas, dorms were the most common, at 100 percent, followed by single cells at 89 percent of jails.

Figure 35

Type of sleeping space available, by county type

	Rural	Small & mid-sized	Suburban	Urban
Single cell	52.67%	53.12%	65.00%	88.89%
Double cell	70.67%	85.94%	95.00%	77.78%
Dorm	71.33%	85.94%	75.00%	100.00%
Other	6.76%	6.25%	7.50%	0.00%

Jail size

Finally, in terms of sleeping space across jail sizes, the most common sleeping space in small jails was double cells, followed by dorms. The distribution of sleeping spaces in medium-sized and large jails was similar, with the most common type being dorms, followed by double cells.

Figure 36

Type of sleeping space available, by jail size

	Small	Medium	Large
Single cell	50.00%	60.00%	66.67%
Double cell	72.73%	81.05%	88.89%
Dorm	66.67%	83.16%	94.44%
Other	5.34%	7.45%	8.33%

Altogether, there are no strong patterns related to sleeping space type in general population. Dorms are widely used, but a mix of cell types is available. Since living conditions vary so much in general population, it is difficult to say whether these findings suggest that general population sleeping areas resemble the conditions of restrictive housing. Further research to connect access to programs and

services with degree of privacy, autonomy, and material comfort in cell areas would be help clarify this issue.

Conditions in specific and restrictive housing units

Respondents were asked questions about both specific and restrictive housing units. Those questions pertained to the hours out of cell, the type of sleeping space, access to programming, phone calls, visits, and the use of restraints.[117]

Type of sleeping space

To better understand the conditions in the four specific housing units and the two types of restrictive housing units, the Vera team examined the sleeping space in these units. Specifically, the survey asked "mostly, the type of cell/sleeping space is," and respondents could choose from single, double, dorm, or other.

Specific housing units

The most common sleeping space across all specific housing units was single cells, while the least common sleeping space was dorms. Many jails face space limitations and are unable to house all the people who need specialized services—whether intake, medical, mental health, or protection—in the units designed for this. Further research could seek to understand the criteria for accessing these specialized housing units and whether the available spaces meet the needs of the facility and the people housed there.

Figure 37

Type of sleeping spaces available

	Intake	Medical	Mental health	Protective custody
Single cell	41.01%	56.67%	62.09%	59.72%
Double cell	18.43%	13.33%	11.76%	23.15%
Dorm	12.90%	10.00%	5.88%	5.56%
Other	27.65%	20.00%	20.26%	11.57%

[117] See "Time out of Cell" on page 36 of this report for more information on the development of these questions.

Restrictive housing units

Like specific housing units, the most common sleeping spaces in both disciplinary and administrative units were single cells, and the least common sleeping space was dorms. Given that these housing types are meant to isolate people—whether for punishment, protection, or investigation—it is notable that double cells account for one-fifth of restrictive housing units. Total isolation is not inherently more or less punitive than sharing a cell with another person in restrictive housing—both situations can be difficult or harmful. However, this highlights the fact that "solitary confinement" can be a misnomer; tracking and studying restrictive housing requires documenting different situations.

Figure 38
Type of sleeping space available

	Disciplinary	Administrative
Single cell	69.57%	68.33%
Double cell	22.17%	22.62%
Dorm	1.30%	1.36%
Other	6.96%	7.69%

Access to programs available in general population

Another feature of restrictive housing is that people in these units are often barred from accessing programs. To compare program access between the general population and restrictive housing, jail administrators were asked whether those housed in specific and restrictive housing units had the same access to programming as the general population. In this study, available programming included in-person visits, education programs, library, substance use disorder treatment, anger management/conflict resolution, arts & music programming, sports programming, religious programming, and parenting classes. Responses could include none, some, or all.

Specific housing units

Across all specific housing units, respondents indicated that some of the programming that was available in general population was also available in specific (nonpunitive) housing units. For example, 40 percent of intake, 49 percent of medical, 51 percent of mental health, and 49 percent of protective custody units offered a least some of the same programming offered in the general population. The least amount of programming was offered in intake, which is not surprising given that people are likely to move to another unit prior to receiving programming.

Figure 39
Type of programming available

	Intake	Medical	Mental health	Protective custody
None	34.31%	14.21%	15.38%	10.00%
Some	39.71%	48.63%	50.64%	49.05%
All	25.98%	37.16%	33.97%	40.95%

Restrictive housing units

As indicated in Figure 40, some of the same programming in the general population was available in disciplinary and administrative units, in 55 percent and 59 percent of jails, respectively. The results also revealed that disciplinary segregation units offered less programming than administrative; for example, only 12 percent of disciplinary units offered all the same programming as the general population, compared to 25 percent of administrative units. Assuming that reduced program access is part of the punitive experience, particularly in disciplinary segregation, these patterns within restrictive housing are not surprising.

Figure 40
Type of programming available

	Disciplinary	Administrative
None	33.33%	15.67%
Some	54.67%	59.45%
All	12.00%	24.88%

Taken together, as expected, restrictive housing units offered less programming than specific housing units. However, it is encouraging that at least some programming is offered in restrictive housing units, as this is not always the case.[118] Still, the Vera survey included very basic activities, such as access to a library or a chaplain, as programming, which is quite different than meaningful out of cell or congregate activities. Given that research has demonstrated that part of the harms of restrictive housing stem from total isolation and from an abrupt shift back to general population (or, in some cases, release to community), it is beneficial to have some programming, even if it is limited.[119]

[118] ASCA and Liman Center, *Reforming Restrictive Housing*, 2018, 61-62.
[119] See generally Elena Vanko, *Step-down Programs and Transitional Units* (New York: Vera Institute of Justice, 2019), https://perma.cc/VK9F-FP5Y.

Access to phone calls

Similar to program access, phone calls are generally considered a privilege that authorities can restrict for punitive or investigative reasons, despite many advocates and scholars arguing that connecting incarcerated people with loved ones and outside communities through visits and calls has positive effects.[120]

Specific housing units

Most jails' specific housing units provided people with access to phone calls. The highest access was provided in protective custody units (76 percent of jails); the least, in mental health units (55 percent of jails). Further research should explore the reason for this lack of access for people in mental health units. Although most intake units offered access to phone calls, one-quarter of people arriving in jail do not have phone call access. This is a matter of concern, given that intake is the first unit that people are placed in, and they likely need to notify friends, family, employers, and others to discuss their situation and make arrangements.

Figure 41
Phone call access

	Intake	Medical	Mental health	Protective custody
No	25.28%	34.94%	45.15%	24.16%
Yes	74.72%	65.06%	54.85%	75.84%

Restrictive housing units

Most restrictive housing units allowed access to phone calls. This is an encouraging finding. However, it is important to remember that phone access in these units may be very limited in frequency or duration. In the federal prison system, it is common for people in restrictive housing to be permitted only one call per month; more broadly, phone calls in restrictive housing are limited or not permitted.[121]

[120] William M. Casey, Jennifer E. Copp, and William D. Bales, "Releases From a Local Jail: The Impact of Visitation on Recidivism," *Criminal Justice Policy Review* (May 2020) (online only). For an analysis of telephone and video calls as "visitation" options with similar impact see Alicia H. Sitren, Hayden P. Smith, Tia Stevens Andersen, et al., "Jail Visitation: An Assessment of Alternative Modalities," *Criminal Justice Policy Review* 32, no. 3 (2020).
[121] Department of Justice, *US Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing* (Washington, DC: Department of Justice, January 2016), https://perma.cc/823B-J599, 29; National Institute of Justice, *Restrictive Housing in the U.S.*, 2016, 298.

Figure 41
Phone call access

	Disciplinary	Administrative
No	34.67%	13.30%
Yes	65.33%	86.70%

Overall, across the specific and restrictive housing units, mental health units restricted phone call access the most, followed by medical units, even though neither housing unit is supposed to be punitive. In fact, both mental health and medical housing units restricted phone calls more than disciplinary units by a slight margin, and administrative units by a large margin. This might mean that these units are, in practice, more punitive than the disciplinary and administrative segregation units.

Visitation

Visits, like phone calls, are an important way of maintaining social ties with loved ones, yet jails may cut off visits as punishment or for logistical or security reasons.[122] Jails were asked if people who were housed in specific and restrictive housing units had access to visits and, if so, what type (e.g., in-person, video, both, none). In-person visitation provides the best and most intimate access to family and friends and, thus, is the strongest option for maintaining family and community ties during incarceration, whether people are in general population or not.[123]

Several jails have implemented video visitation, which provides an opportunity for people to communicate with loved ones via a tablet or video monitor within the facility. Video visitation can provide a supplement to in-person visitation, since many friends and family members are unable to travel to the facility.[124] However, when used alone, video visitation does not provide the same level of interaction.

Specific housing units

Video visitation access ranged from a low of 42 percent (in intake units) to a high of 61 percent (in protective custody units), when combining the jails that reported video visits only with those that reported both video and in-person visits. Presumably, if someone is in protective custody or in a medical or mental health unit, it is more difficult to facilitate in-person visits, and video visits may be a good alternative in

[122] Chesa Boudin, Trevor Stutz, and Aaron Littman, "Prison Visitation Policies: A Fifty-State Survey," *Yale Law & Policy Review* 32, no. 1 (2013), 149–189, 162, https://perma.cc/DV7N-P7LD.
[123] Branden A. McLeod and Janaé Bonsu, "The Benefits and Challenges of Visitation Practices in Correctional Settings: Will Video Visitation Assist Incarcerated Fathers and Their Children?," *Children and Youth Services Review* 93 (2018): 30–35, https://doi.org/10.1016/j.childyouth.2018.07.004.
[124] Léon Digard, Margaret diZerega, Allon Yaroni and Joshua Rinaldi, *A New Role for Technology? Implementing Video Visitation in Prison* (New York: Vera Institute of Justice, 2016), https://perma.cc/23WJ-V4J8.

those instances. In-person visitation ranged from 32 percent in intake units to 38 percent in medical units.

Figure 42
Type of visits

	Intake	Medical	Mental health	Protective custody
None	26.39%	5.41%	6.83%	4.74%
Video only	28.24%	37.84%	36.02%	39.81%
In-person only	32.41%	37.84%	36.02%	34.12%
Both	12.96%	18.92%	21.12%	21.33%

As indicated in Figure 42, intake units restricted visitation the most, with an average of 26 percent of jails not offering any form of visitation in intake. Finally, in line with these findings, jails offered people both options for visits the least frequently in intake (13 percent of jails), compared to 21 percent of jails offering both video and in-person visits in protective custody units.

Restrictive housing units

Approximately 41 percent of jails did not allow any type of visit for people in disciplinary housing units, whereas 15 percent of jails did not allow any type of visit for people in administrative housing units. These results indicate that disciplinary units restricted visitation more than administrative units, which were more likely to use video visitation—55 percent of jails compared to 36 percent of jails for disciplinary units. This is not surprising given that restricting visits can be used as a punishment.

Figure 43
Type of visits

	Disciplinary	Administrative
None	40.65%	15.38%
Video	27.57%	37.50%
In-person	22.90%	29.81%
Both	8.88%	17.31%

Compared to specific housing units, fewer visits are permitted in restrictive housing units. Although this fits with the logic of punishment, it is worth exploring exactly how, when, and for whom such restrictions are imposed. The fact that a substantial portion of people in general population also face

limitations on in-person visits is also concerning, particularly if video visits are replacing in-person visits as a standard practice.

Use of restraints when out of cell

Restraints are another aspect of restrictive conditions. These may be restraints on wrists and/or ankles, usually when people are outside their cell, even if just going to the shower. By policy and practice, restraints are meant for people who may be an immediate threat, and therefore, in general population they are less prevalent.

Specific housing units

Across all specific housing units, jails' protective custody units were the least likely to use restraints (40 percent), followed by medical units (33 percent). Comparatively, mental health units were more likely to always use restraints (18 percent), followed by intake (13 percent). Further research should explore whether restraints are used based on an individualized assessment of whether a detained person poses a danger that restraints would mitigate.

Figure 44
Use of restraints

	Intake	Medical	Mental health	Protective custody
Never	27.44%	32.88%	19.08%	39.29%
Sometimes	59.76%	56.16%	63.36%	48.81%
Always	12.80%	10.96%	17.56%	11.90%

Restrictive housing units

As indicated in Figure 45, administrative units were less likely to use restraints (15 percent do not use them at all) than disciplinary units (10 percent do not use restraints). Still, most people in restrictive housing experience restraints at least some of the time. This is not surprising, as research indicates that when people in restrictive housing are allowed to leave their cells, restraints are often used.[125]

[125] National Institute of Justice, *Restrictive Housing in the U.S. Issues, Challenges, and Future Directions*, 2016, 98-99.

Figure 45
Use of restraints

	Disciplinary	Administrative
Never	10.40%	15.15%
Sometimes	65.90%	66.06%
Always	23.70%	18.79%

Restrictiveness scale

To gain a clearer understanding of how the experience of restrictive conditions differed between specific housing units and restrictive housing units, the Vera team created a restrictiveness scale. To create this scale, the various components of the housing units were recoded into binary variables, with lower values corresponding to more restrictiveness. This resulted in the following coding for the housing variables: out of cell more than two hours (0=no; 1=yes), programs offered (0=none; 1= some, all), personal calls (0=no; 1=yes), visits (0=none; 1=video, in-person, both), and use of restraints (0=always; 1=sometimes, never). The scale ranges from 0 to 5, with 0 corresponding to all components fully restrictive and 5 corresponding to no components fully restrictive.

While this scale allows for comparisons within and across specific and restrictive housing units, it is important to note that this is an exploratory scale whose binary coding cannot capture intricacies in the conditions of confinement. The scale was designed to reflect the intended experience of restrictive housing: isolation and limited movement.

Figure 46
Restrictiveness scale

	Average	Range
Specific housing units		
Intake	3.56	0—5
Medical	4.08	0—5
Mental health	4.03	0—5
Protective custody	4.26	1—5
Restrictive housing units		
Disciplinary segregation	2.66	0—5
Administrative segregation	3.46	0—5

As indicated in Figure 46, disciplinary segregation has the lowest average value, followed by administrative segregation, which means that these units are the most restrictive in a practical sense. Given that these are the official segregation areas, this is the expected outcome. Intake was the third most restrictive unit; since initial processing occurs before access to most regular activities, this is also to be expected. Finally, the least restrictive unit was protective custody.

County Type

Across all county types, disciplinary and administrative segregation units were relatively more restrictive than the specific housing units, reflecting the same pattern as the overall sample. Notably, the disciplinary segregation units in urban counties were the most restrictive, while the administrative segregation units and other specific housing units were the most restrictive in rural areas, compared to other county types. The only exception to this is intake, which is the most restrictive in urban counties, followed by suburban.

Figure 47
Restrictiveness scale, by county type

	Rural	Small & mid-sized	Suburban	Urban
Specific housing units				
Intake	3.63	3.59	3.18	3.17
Medical	3.98	4.18	4.00	4.57
Mental health	3.86	4.17	4.07	4.43
Protective custody	4.21	4.28	4.27	4.71
Restrictive housing units				
Disciplinary segregation	2.84	2.52	2.43	2.17
Administrative segregation	3.30	3.63	3.58	4.17

These findings suggest that having more resources, as large urban jails more often do, does not prevent harsh conditions in disciplinary segregation or intake housing units. However, the fact that rural areas were the most restrictive in all other units could still reflect space and staffing constraints, as the jail population in rural areas has increased more than that of any other county type in recent years.[126]

[126] Kang-Brown, Hinds, Schattner-Elmaleh, and Wallace-Lee, *People in Jail 2019*, 1.

Jail size

As depicted in Figure 48, smaller jails were more restrictive for all specific housing units and administrative segregation. Disciplinary segregation units were more restrictive in large jails. This parallels the variation between urban and rural counties described above and suggests that further exploration of how and why disciplinary segregation operates differently in large jails would be worthwhile. Finally, the restrictiveness of smaller jails could be influenced by resource constraints, but other factors, such as culture and staff discretion, may also play a role which should also be explored in future research.

Figure 48
Restrictiveness scale, by jail size

	Small	Medium	Large
Specific housing units			
Intake	3.49	3.58	3.79
Medical	3.93	4.02	4.48
Mental health	3.75	4.11	4.36
Protective custody	4.18	4.31	4.33
Restrictive housing units			
Disciplinary segregation	2.64	2.87	2.00
Administrative segregation	3.26	3.57	3.85

Policy changes

In light of international standards and national advocacy to reduce or prohibit the use of restrictive housing, many jurisdictions have changed the policies and practices in their prisons and jails. Others have taken steps to improve the conditions of restrictive housing areas and available programs.

The Vera survey asked whether jails had in the past 5 years implemented or planned to implement some of the more common policy changes on this issue: admission criteria, release criteria, prohibitions on youth (under 18) in restrictive housing, prohibitions on people with serious mental illness in restrictive housing, amount of time out of cell, and programs or services available.

Figure 49
Policy changes

	% of jails that already changed	% of jails that plan to change
RH admission criteria	43.85%	11.66%
RH release criteria	36.63%	11.52%
Youth in RH	19.11%	7.69%
RH use with serious mental illness	20.68%	12.28%
RH time out of cell	33.33%	15.43%
RH programs and services	45.45%	22.56%

As Figure 49 illustrates, the most common types of policies already changed are admission criteria (44 percent of jails have changed) and programs and services available (45 percent of jails have changed). Prohibiting the use of restrictive housing for juveniles under 18 years old was the least common, although this answer may be affected by whether the facility holds any juveniles at all. For example, a handful of jails indicated that they did not hold juveniles in their facility, or if they did, they were never held in restrictive housing. Less than one-quarter of responding jails have plans to change any of these policies in the future, with programs and services being the most commonly mentioned type of planned change.

Overall, 37 percent of responding jails said they had not changed any policies, while nearly two-thirds had changed at least some in the past five years. Only 17 percent had changed all of the types of policies listed, though this does not count changes made more than five years ago. Conversely, only 36 percent have plans for future policy changes.

The experience of Middlesex County Adult Correction Center (MCACC), New Jersey

Vera has worked with Middlesex County Adult Correction Center in New Jersey on reducing restrictive housing through changes to policy and practice.[a] The MCACC has implemented the following reforms:

- Review cases: The MCACC created a committee to review the cases of all the people in restrictive housing, with the goal of returning them to the general population. Middlesex Jail was able to return one-quarter of the people held in restrictive housing to the general population after the first meeting.
- Alternative housing areas: MCACC staff created a less-restrictive housing area for people in administrative segregation, where people could access six hours out of cell (instead of two).
- Data resources: The MCACC invested in an electronic data system in order to track its use of restrictive housing and the impact of reforms.

Further actions that Vera recommended for the jail include:

- Improving conditions for those who are in restrictive housing, including more time out of cell, more outdoor time, and more activities that can be done in cell;
- Reducing the number of infractions that are eligible for disciplinary restrictive housing;
- Ensuring that people in protective custody have similar conditions to the general population;
- Making the medical unit more therapeutic;
- Training staff on communication and de-escalation; and
- Using data resources to track individual-level data and use performance indicators.

[a] Jessa Wilcox, *The Safe Alternatives to Segregation Initiative: Findings and Recommendations on the Use of Segregation in the Middlesex County Adult Correction Center* (New York: Vera Institute of Justice, 2017), https://perma.cc/XQ2U-Q442.

Limitations

To Vera's knowledge, apart from the National Inmate Survey, this study is the first of its kind to investigate the prevalence and conditions of restrictive housing in U.S. jails at a national scale. While it provides insight into a significant gap in the literature, it also has some significant limitations. First, given the absence of a single clearinghouse listing all jails in the United States, Vera developed a list of all U.S. jails and their accompanying contact information for key personnel. This list was cross-checked with a list that is generated and updated annually by the National Public Safety Information Bureau. Although cross-checking the list against various sources increased the scope and reliability of the information, there were gaps and out-of-date information in the list, likely in part due to the high staff turnover rate in

corrections.[127] This means that in many facilities, the survey may have been addressed to an incorrect person or an individual no longer employed at the facility.

Second, and relatedly, is the smaller-than-desired sample size (270, or about 8 percent of jails in the country). Part of the reason for the small sample size could have been the survey not reaching its intended recipients. It is also likely that limited jail staff capacity or desire for responding to inquiries or looking up data may have caused many jails not to respond.

Finally, some of the received surveys had missing or invalid data. Some respondents skipped questions or pages without any apparent explanation. Others skipped questions or provided their own data when the requested categories did not match their internal records system. For example, the survey used the following age categories: under 18, 18 to 25 years old, 26 to 54 years old, and 55 years old or older. However, jails did not always disaggregate age in these exact categories. Similarly, respondents also noted that some of the requested data was not available—for example, data about people with a serious mental illness or transgender people. Future researchers should keep these issues in mind when developing a survey. Providing greater technological ease and other incentives to do the survey electronically might help prevent invalid answers. On the other hand, relying too much on electronic surveys might exclude more remote and smaller facilities.

Policy Implications and Recommendations

This report provides a first attempt to shed light on the practice of restrictive housing and the extent of similarly restrictive conditions in regular cells in different kinds of jails. Based on the process of developing this study and on the findings that emerged from the 270 jails that responded to the survey, the following recommendations emerged for correctional practice and for research.

The key findings in this report underscore that restrictive housing appears to be more widespread in jails than prisons. On any given day, 5.64 percent of people in jail are held in restrictive housing—1.5 times the rate reported in prisons (3.88 percent). This is further compounded by the finding that 23 percent of jails hold at least some people in general population in cell for 22 hours or more per day. Several key implications flow from these statistics:

1. **Restrictive housing is widespread in jails.** Being detained in restrictive housing or in de facto restrictive conditions in a jail may be harmful in unique ways related to the characteristics of jails. People in jail are overwhelmingly held there pretrial and are, thus, legally innocent. Given that their case is still pending, they need access to their lawyers more frequently which can be hindered—or outright made impossible—by being placed in restrictive housing. Moreover, their detention is an abrupt interruption from their lives; thus, connection with family (especially

[127] Jane Lommel, "Turning Around Turnover," *Corrections Today Magazine* 66, no. 5 (2004), 54-57.

children), employers, and services is particularly important during this time. Finally, research also highlights that more suicides occur in jails than in prisons; in fact, suicide is the leading cause of death in jails.[128] Being in restrictive housing can increase propensity for suicide and can cut people off from crucial mental health attention.[129]

Recommendations:

- Counties should work toward the elimination of the use of restrictive housing in local jails.
- Policymakers, advocates, and researchers should devote attention and resources to tracking and reducing restrictive housing in jails, possibly with different strategies than in prisons.
- Jail leaders could learn from promising practices that prisons have implemented to reduce restrictive housing and collaborate on how to adapt these practices to jail settings.

2. **To reduce, and eventually eliminate, restrictive housing in jails, policies that cap or prohibit official restrictive housing for specific populations—such as juveniles, pregnant women, or people with mental illness—will not be sufficient.** These policies do not address the fact that one-quarter of jails hold people in general population in cells for 22 hours or more per day.

   Recommendations:

   - Policies need to focus on the conditions of confinement throughout the jail (such as in the general population, specific housing units, and restrictive housing units) to ensure that people in the general population and specific housing units are not being held in de facto restrictive housing situations.
   - Jails should implement policies that require more out of cell time for people in the general population and specific housing units (when feasible) to avoid creating de facto restrictive housing situations. It is important to note, however, that if overcrowding is the cause of limited time out of cell, the solution is not jail expansion, but instead reducing the overall jail population through alternatives to incarceration.

3. **There appears to be more variation in basic conditions and ways of managing daily operations in jails than in prisons.** This means that the factors influencing the use of restrictive housing may be different in jails than in prisons. While this study did not seek to

[128] E. Ann Carson and Mary P. Cowhig, *Mortality in Local Jails, 2000-2016–Statistical Tables* (Washington, DC: BJS, 2020), 1, https://perma.cc/7S9N-W4EN.
[129] Haney, "The Psychological Effects of Solitary Confinement," 2018; and Haney, Weill, Bakhshay, and Lockett, "Examining Jail Isolation," 2016.

explore the causes of restrictive housing use, this study does demonstrate the importance of analyzing jails on their own terms, not just as an offshoot of prisons.

Recommendations:

- Researchers and governments should conduct more empirical research on jail conditions and jail operations generally.
- Future research projects focused on restrictive housing in jails should use mixed methods to understand how and why the management structure, operational policies, staff culture, infrastructure constraints, and influence of oversight bodies and advocates might shape choices and patterns about restrictive housing use.
- Future research should explore some of the more surprising results from this study. For example: small and mid-sized county jails appear to use restrictive housing more widely, and suburban counties—in addition to having the highest restrictive housing disparities—were also the most likely to hold people in general population in de facto restrictive housing. Meanwhile, conditions appear harsher and resources more scarce in the smallest jails, including those in rural counties. Given the rise in rural jail populations in recent years, a more nuanced understanding of the conditions of confinement in these different types of jails is an avenue worth exploring.

4. **For practitioners, researchers, and advocates concerned about the harms of restrictive housing, it is important to consider restrictive conditions generally in jails, not just in housing that is officially labeled restrictive.** In this study, while official restrictive housing units were found to be generally more restrictive using the scale the Vera team constructed, a concerning proportion of people in jails overall spend 22 hours or more per day in their cells and/or have other restrictions on access to visits, programs, and medical services.

   Recommendations:

   - Policies aiming to reduce restrictive housing should consider the actual daily conditions of any given jail and all housing units, not just the narrowly defined official restrictive housing units.

5. **Although there are differences between jails and prisons, disparities based on race/ethnicity remain steady in terms of who is most affected by restrictive housing, with Black people bearing the largest burden**. Further, racial disparity analysis can be murky due to inconsistent documentation of race/ethnicity, particularly for Latinx and Native American people.

Recommendations:

- Governments should build more transparency around data. Additionally, more conversations—in particular with researchers and community stakeholders—on the broader structures and stereotypes that shape these patterns are important steps to rectifying unequal treatment.
- Governments and jails should implement concrete changes to policy and practice to reduce the disproportionate use of restrictive housing for younger people, and for Black people and other people of color.
- Jails should improve processes and transparency on how race and ethnicity is documented at the facility level, in particular for Hispanic/Latinx people and for "other" race/ethnicities so that analysis can more accurately disaggregate these groups from non-Hispanic white and Black groups.

6. **Despite national and international calls for restrictive housing to be eliminated for people with mental illness, this study reveals that many jails still put a surprisingly high number of people with mental illness into restrictive housing units.** Jails have varying definitions as to what constitutes a mental illness and inconsistent or unclear methods of documenting which people in their custody are affected, all of which increases the difficulty for researchers.

   Recommendations:

   - Jails should establish and implement prohibitions on restrictive housing for people with mental illness, in line with international and national standards. People with mental illness who need to be segregated from the general population should be housed in units with sufficient time out of cell and access to the same services and programs as those in the general population.
   - Local governments should provide more services for people with mental illness who are in conflict with the law, emphasizing services outside of detention centers. Diversion efforts and community-based services for those with mental illness are a more effective means of treating those people than incarceration.

7. **There is less information available from jails about two groups of people detained in local jails: transgender people and people detained by Immigration and Customs Enforcement (ICE).** While this study attempted to capture this information, many respondents wrote that they were unsure how to answer the questions relevant to this. There is national data on how many beds ICE contracts with local jails across the country. The findings of this study suggest, however, that local jail administrators do not have access to or full understanding of the situation of people detained in their jail facilities but are under the jurisdiction of ICE.

Recommendations:

- Researchers and practitioners should collaborate to build research and data to understand how these two vulnerable groups—transgender people and people detained by ICE—are treated in jails.
- Jails should establish and implement policies to limit and regulate restrictive housing for people held under federal jurisdiction, particularly those held on non-criminal charges such as immigration violations.
- Agencies and researchers focusing on federal detention trends, particularly regarding people detained by ICE, should work with local jail leaders and other stakeholders to improve integration and transparency of data and reporting on this group and how this data appears in local jail reports.
- Jails should establish and implement policies for managing transgender people's needs without resorting to isolation as a way to protect them. (This survey did not ask about the reason for placing transgender people in restrictive housing, but other studies suggest that a common reason is for people's protection, sometimes at their request.)[130]
    - Larger jails might consider units similar to protective custody that house vulnerable populations in conditions that mimic those of general population units. This would protect transgender people at risk of victimization while affording them the same out-of-cell time and programming access available.
    - Smaller jails should find ways to protect transgender people without resorting to restrictive housing. Even if they are housed separately from the general population, they should have the same access to out of cell time and programs.

8. Vast differences across jails and decentralized governance structures pose challenges to implementing standardized definitions, data collection, and analysis across the more than 3,000 jails in the United States.

Recommendations:

- National organizations that engage with jails—such as the National Institute on Corrections and the American Jail Association, among others—could collaborate to develop a single list of jails with up-to-date contact information.

[130] See for example Lydon Carrington, Low, et al., *Coming Out of Concrete Closets*, 2015, 37.

- These organizations could develop a standardized definition of restrictive housing for jails, even if this definition may include some subsets or adjustments for very small or very large jails. Standards released by the American Correctional Association (ACA) have not been uniformly adopted by jails across the country.[131]
- The CLA-Liman definition of restrictive housing only counts periods beyond 15 days, but in jails, where people typically have shorter stays, it would be more relevant to count even single-day stints and/or frequent cycling in and out of isolation cells. Jail leaders across jurisdictions could join to build a plan for applying and sustaining international and national standards—such as prohibiting restrictive housing for certain groups or for more than 15 days—to the situation of a local jail.
- Similarly, these groups could convene practitioners and researchers to develop a more robust data collection exercise for restrictive housing in prisons and jails. The CLA-Liman survey of prisons is one model, but other approaches might be needed to accurately capture the specificities of jail dynamics. For example, the Bureau of Justice Statistics could expand the information it collects from prisons and jails each year by adding a section on people housed in restrictive housing to the Prisoners Series and Jail Inmates reports released each year. Another option might be to expand the Annual Survey of Jails so that it asks clear and consistent questions about restrictive housing.

9. **More broadly, jails should resist the temptation to expand facilities or scope as a solution to restrictive housing problems.** Jails are expensive operations, and many counties are facing tough budget decisions. While investing in better data collection is important, this is yet another budget line dedicated to jail operations. If resources are scarce, local authorities should allocate resources in a way that generates the largest reduction in the use and scope of restrictive housing. They should also consider evidence-based strategies that reduce jail incarceration generally and allow people to remain safely in the community, with supports as needed.

   Recommendations:

- Above all, counties should discourage expansion of the size or budgets of local jails as a solution to the problems of restrictive housing. Rather, resources should be saved through reducing the number of people in jail and the length of stay. These resources could then be invested in programs to reduce arrests and jail admissions and to divert people away from jail detention.
- Resources should also be invested in reducing the use of restrictive housing in jails. As noted above, policies to prohibit restrictive housing for vulnerable groups and to cap maximum length of stay are important. Additional steps could include changing jail disciplinary procedures to

[131] CLA and Liman Center, *Time in Cell 2019,* 2020, 76-77.

emphasize proportional sanctions and using restrictive housing only as a last resort. Preventive programs and positive incentives can be used to reduce problematic behaviors leading to infractions. Procedural reviews and step-down programs can help shorten stays in administrative segregation. Vera's *Rethinking Restrictive Housing* report provides additional details and proposals for reducing the use of restrictive housing.[132]

- For people who are held in restrictive housing, resources should be invested to provide proper services and conditions, including access to meaningful activities out of cell, medical and mental health services, communication with loved ones, and positive ways to pass time.[133]
- Finally, given the inherent data issues in jails, resources could also be invested in simple, consistent data tracking and analysis.

Conclusion

As a gateway to the criminal justice system, jails have been overlooked for far too long; this is especially the case considering that they implicate one of the most punitive aspects of incarceration—restrictive housing.[134] This study is an initial step in understanding the use of restrictive housing in jails.

The high-level finding that about 6 percent of people in jails are in restrictive housing, by the definition of 22 hours or more in-cell per day, on a given day is important as a point of comparison and as a benchmark for measuring the effect of future reforms, though this study's sample is not nationally representative. This is more than twice the proportion of people in jail held in restrictive housing on an average day in the 2011 national survey.[135] Also, it is 1.5 times the rate at which people experience restrictive housing in prisons, according to the more recent CLA-Liman survey.[136] Thus, there is an urgent need for research and policy attention to this issue in jails specifically.

The second major finding is that jail staff place a disproportionate number of people with mental illnesses, transgender people, and people of color (especially Black people and, with less clear patterns, Latinx people) in restrictive housing, which perpetuates the inequalities faced by these groups throughout justice systems and society as a whole. In some cases, these disparities were the strongest in suburban areas.

Furthermore, the results indicate that people experience restrictive conditions in cells that are not specifically designated as solitary confinement—in specific housing units, as well as the general population. For example, 23 percent of jails held people in general population in their cell for 22 hours or

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[132] Digard, Sullivan, and Vanko, *Rethinking Restrictive Housing*, 2018.
[133] See "Innovative Programming in Restrictive Housing" in Digard, Sullivan, and Vanko, *Rethinking Restrictive Housing*, 2018.
[134] Subramanian, Delaney, Roberts, et al., *Incarceration's Front Door*, 2015.
[135] The 2011-2012 National Inmate Survey estimated that between 2.2 to 2.7 percent of people in jails and up to 4.4 percent of people in prison are held in restrictive housing on a given day. Beck, *Use of Restrictive Housing*, 2015, 3.
[136] The 2019 survey found that 3.8 percent of people in prison were in restrictive housing on a given day, but this is using the more conservative definition of 15 days or more. CLA and Liman Center, *Time in Cell 2019,* 2020.

more per day, which is concerning and should spark the attention of local authorities and advocates. Future research is needed to understand why restrictive housing (official or otherwise) is such a ubiquitous tool in jails.

Finally, with a few exceptions, results show the degree of restrictiveness generally matches the purpose of the housing unit. For example, disciplinary segregation is the most restrictive housing unit, followed by administrative segregation. Moreover, both types of restrictive housing units were more restrictive than specific housing units, where the most restrictive unit was intake. Overall, however, both restrictive and specific housing units are generally quite restrictive, with limited access to programs, visits, and medical services.

This study is a first step toward a better understanding of the use of restrictive housing in jails. It is also a testament to the practical challenges of doing national-level research within the constraints of jails' real day-to-day operations and data systems. As jails become more prominent in conversations about criminal justice reforms generally, Vera hopes that there will be more scrutiny of restrictive housing inside jails. Collaborations across sectors and regions of the country to implement new policies and practices and track their effects will be increasingly important.

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Appendix

Vera INSTITUTE OF JUSTICE

2019 Survey of Restrictive Housing in Jails
Today's date: _____

INSTRUCTIONS: Please see instructions and definitions sheet attached to the cover letter and to this survey.

Please fill this out online at http://bit.ly/VeraRHStudy or by fillable-PDF, at http://bit.ly/VeraRHStudyPDF.

For handwritten answers, please scan the survey and return it to us at rhstudy@vera.org.

Please return the survey by June 30, 2019.

1. **Name of agency and jurisdiction (please include your state): _____**
   (*We keep all responses confidential and your jail will never be identifiable in publications.*)

2. **Number of full-time staff (# of FTE): _____ Number of part-time staff (# of PTE): _____**

3. **Please provide the Average Daily Population for this jail system in 2018** (excluding people held in private facilities or out-of-jurisdiction): _____
   How many jail facilities are in your jurisdiction's jail system? _____

4. **Please provide the number of people held in this jail system TODAY: _____**
   If you do not have today's number, provide a # for the most recent date: _____ Date: _____

*For the remaining questions, please use numbers for **TODAY or the recent date** specified in Question 5.*
Please fill in the numbers as much as possible: total men & women, plus breakdown by age and race.

5. **Please provide total numbers by population category and for as many subgroup boxes as possible.**

Population by Race	TOTAL	Black	Latino/Hispanic	White	All Other
MEN					
WOMEN					
Total Population					

Population by Age	TOTAL	Under 18 years	18-25 years	26-54 years	55 years & older
MEN					
WOMEN					
Total Population					

Please add any further details here: _____

6. **Of the population held in segregation (restrictive housing) today, please specify how many are:**

Population by Race	TOTAL	Black	Latino/Hispanic	White	All Other
MEN					
WOMEN					
Total Population					

Population by Age	TOTAL	Under 18 years	18-25 years	26-54 years	55 years & older
MEN					
WOMEN					
Total Population					

Please add any further details here: _____

7. How many people in segregation today been in for the following numbers of days?

3 days or less	4-15 days	16-30 days	31-60 days	61-90 days	91-365 days	366 days +

Please add any further details here: _____

8. How many transgender people are incarcerated in this jail system today?

Total Number: _____ If no data collected, mark X: ____

a. Of these, how many are held in segregation today? _____

b. Notes or details on this topic: _____

9. How many people with any mental health designations are incarcerated in this jail system today?

Total Number: _____ # with a Serious Mental Illness (SMI) designation: ____ If no data collected, mark X: ___

a. Of those <u>with any mental health designation</u>, how many are held in segregation today? _____

b. Of those <u>with a Serious Mental Illness designation</u>, how many are held in segregation today? _____

c. Notes or details on this topic: _____

10. How many people who are ICE detainees or on ICE holds are incarcerated in this jail system today?

Total Number: _____ If no data collected, mark X: ____

a. Of these, how many are held in segregation today? _____

b. Notes or details on this topic: _____

11. Has this jail made policy changes in the last five years related to segregation?

	Admission criteria		Release criteria		Eliminate seg. for youth under 18 yrs		Eliminate seg. for people w/ SMI		Time out of cell		Programs & Services	
Already changed	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*
Plan to change	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*	*Yes*	*No*

Please add any further details here: _____

12. Medical & mental health services: which characteristics apply to this jail system? (Circle all that apply.)

Availability →	*24/7 services*	*Daytime 7 days*	*Daytime Mon-Fri*	*On-call*	*Local clinic/ hospital*	*No services*
Medical Staff →	*Physician*	*Registered Nurse or Nurse Practitioner*	*Licensed Practical Nurse (LPN)*	*Other (specify):*		
Mental Health Staff →	*Psychiatrist*	*Psychologist*	*Physician*	*Counselor*	*Social Worker*	*Other (specify)*

Please add any further details here: _____

13. What type(s) of sleeping space does your jail system have for <u>General Population</u>? (Circle all that apply.)

Single cell	*Double cell*	*Dorm, 12 beds or less*	*Dorm, more than 12 beds*	*Other (specify)*

14. In <u>General Population</u>, is anyone held in their cell for 22 or more hours per day, <u>today</u>? (For any reason)

Yes	*No*	*If yes, how many?*

15. What type(s) of programs and services can people in General Population access? (Circle all that apply.)

Medical Care	*Mental Health Care*	*Legal Advice*	*In-person visits*	*GED*	*College*	*Library*	*Vocational Training*	*Medication-assisted drug treatment*
Substance abuse treatment (therapy)	*Counselling*	*Anger Mgmt*	*Arts/Music*	*Sports*	*Religious*	*Parenting*	*Conflict Resolution*	*Other (specify)*

16. Does your jail system release people directly from segregation to the community?
Yes _____ No _____

17. Does your jail system use a step-down process for people to leave restrictive housing?
(This refers to a structured progress with increasing levels of out of cell time, activities, and privileges.)
Yes _____ No _____

18. Please write in or circle the best answer for each type of condition for each type of housing.

For each type of housing, please circle Yes if it exists in this jail system.		How many hours out of cell per day? (average)	Mostly, the type of cell/ sleeping space is:	Access to programs available in General Pop'n?	Personal phone calls?	Types of personal visits permitted?	Use of restraints (when out of cell)?
Specific Housing Areas (People held here are separated from GP for specific reasons or periods, but are not formally segregation.)							
Yes *No*	Intake	__ hours	*Single* *Double* *Dorm* *Other*	*All (see Q15)* *Some* *None*	*Yes* *No*	*In-person* *Video* *Both* *None*	*Always* *Sometimes* *Never*
Yes *No*	Medical	__ hours	*Single* *Double* *Dorm* *Other*	*All (see Q15)* *Some* *None*	*Yes* *No*	*In-person* *Video* *Both* *None*	*Always* *Sometimes* *Never*
Yes *No*	Mental Health	__ hours	*Single* *Double* *Dorm* *Other*	*All (see Q15)* *Some* *None*	*Yes* *No*	*In-person* *Video* *Both* *None*	*Always* *Sometimes* *Never*
Yes *No*	Protective Custody	__ hours	*Single* *Double* *Dorm* *Other*	*All (see Q15)* *Some* *None*	*Yes* *No*	*In-person* *Video* *Both* *None*	*Always* *Sometimes* *Never*
Restrictive Housing Areas (These refer to the reason for placement; the physical space may be the same. See cover letter for definitions.)							
Yes *No*	Disciplinary Segregation	__ hours	*Single* *Double* *Dorm* *Other*	*All (see Q15)* *Some* *None*	*Yes* *No*	*In-person* *Video* *Both* *None*	*Always* *Sometimes* *Never*
Yes *No*	Administra-tive Segregation	__ hours	*Single* *Double* *Dorm* *Other*	*All (see Q15)* *Some* *None*	*Yes* *No*	*In-person* *Video* *Both* *None*	*Always* *Sometimes* *Never*
Yes *No*	Other (specify)	__ hours	*Single* *Double* *Dorm* *Other*	*All (see Q15)* *Some* *None*	*Yes* *No*	*In-person* *Video* *Both* *None*	*Always* *Sometimes* *Never*

Please add any further details here: _____
_____

This form expires one year from the date noted, unless special permission is obtained from Vera's General Counsel to extend the expiration date. Such permission will be documented here:
_____

19. Is your team developing any initiatives, plans, or ideas related to restrictive housing? Please add any information you would like to share.
(Please use the reverse of this page and/or add pages if you need more room on this and/or for any other comments.)

_____
_____
_____
_____
_____
_____
_____

20. **Can we follow up with you/your team about this study and to share results?** Yes ____ No _____

21. Please provide contact information so that we can share our study with you:

Name: _____ Position: _____

Email: _____ Phone(s): _____

PLEASE ADD EXTRA COMMENTS HERE

Exhibit B

PRESS RELEASE

DOC Announces Initial Steps Toward Elimination of Restrictive Housing

Multi-year process will follow independent report to inform structural changes

FOR IMMEDIATE RELEASE:

6/29/2021

Massachusetts Department of Correction

Executive Office of Public Safety and Security

MEDIA CONTACT

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MILFORD — The Massachusetts Department of Correction (DOC) today announced its intention to eliminate restrictive housing across its agency facilities over a multi-year process. The decision followed an independent assessment from Falcon Correctional and Community Services Inc., which the DOC commissioned to study its existing system and explore alternatives to restrictive housing in Massachusetts.

Since Spring 2020, Falcon engaged 200 stakeholders who provided feedback that informed a comprehensive review process. The group included 100 incarcerated individuals across the agency, a group of formerly incarcerated people who participated through an arrangement with Prisoners' Legal Services, DOC employees, members of the Restrictive Housing Oversight Committee and members of the Legislature. During workgroups, focus groups, individual meetings, public hearings and site visits, Falcon gathered information which informed its recommendations.

The Department invited Falcon to complete the study to help inform its approach to addressing restrictive housing. In its report, *Elevating the System: Exploring Alternatives to Restrictive Housing*, Falcon makes 11 recommendations to enhance the current system. Specifically, the report includes recommendations for DOC to develop a comprehensive implementation schedule; eliminate restrictive housing as currently defined; dissolve the Department Disciplinary Unit; assess clinical and criminogenic needs of disruptive individuals; and expand services, treatments, and programming that demonstrate success. DOC plans to implement the recommendations over a three-year period, and today, 7 of the 11 recommendations are currently in progress.

By taking these steps toward the elimination of restrictive housing, DOC is building on a strong record of leadership in corrections. The Falcon report notes that DOC "has long been a leader in correctional policy and practice across the United States. Worthy of specific attention in this regard was the use of technology and data we witnessed during the study. The community-facing image of DOC represented on its website, including an extensive series of user-friendly dashboards, and easy access to research statistics and reports is exemplary."

"This comprehensive review process was guided by input from a wide range of stakeholders, and the recommendations have put the Massachusetts Department of Correction on a path to eliminating restrictive housing across the system." **said Public Safety and Security Secretary Thomas Turco.** "I commend Commissioner Mici and her team who have led the DOC with a deep sense of obligation and pride in carrying out its mission."

Falcon assembled an independent team of world-class professionals to assess DOC's use of restrictive housing and associated programs, and to recommend improvements. The team leading the review process included a wide range of experts in areas including medical and behavioral health, administration, management of criminogenic risk, large-scale system assessment, leadership, and organizational change.

To address disruptive behavior in a more meaningful way, DOC will focus on identifying the behavioral and clinical criminogenic needs of those within the Department's care. Guided by this assessment, these individuals will be placed on tracks to connect them with appropriate programming and treatment opportunities. Falcon's continued engagement will ensure that DOC develops programmatic tracks that align with the needs of individuals across the system.

"The Department of Correction has worked hard to develop creative solutions to the challenge of restrictive housing, Falcon's independent analysis is a crucial step toward long-term, lasting change," **said Department of Correction Commissioner Carol Mici.** "While this report offers us a detailed roadmap, our continued relationship with Falcon will strengthen our ability to deliver the best correctional practices."

"This is an extraordinary step forward, and sets an example for other states also considering this important change in corrections," **said Dr. Elizabeth M. Falcon, CEO and Founder of Falcon Inc.** "Our colleagues in the Massachusetts DOC are working to significantly improve the lives and well-being of the people within its facilities, as well as the staff and professionals who provide services. We look forward to partnering in the implementation of these recommendations in the coming weeks and months."

As the three-year implementation continues, Falcon will ensure that all DOC systematic changes remain aligned with their recommendations. In the coming months, DOC will carefully develop policy and procedures, budget to ensure resources support programming, and create performance indicators to measure the success

of each track. Ultimately, every step of this reform will enhance the health and well-being of those entrusted to our care.

A link to the full Falcon report can be accessed here: **https://www.mass.gov/doc/falcon-report/download** (/doc/falcon-report/download)

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Massachusetts Department of Correction (/orgs/massachusetts-department-of-correction)

The Department of Correction oversees the state prison system, managing inmates at 16 institutions across the state.

More (/orgs/massachusetts-department-of-correction)

Executive Office of Public Safety and Security
(/orgs/executive-office-of-public-safety-and-security)

EOPSS is responsible for the policy development and budgetary oversight of its secretariat agencies, independent programs, and several boards which aid in crime prevention, homeland security preparedness, and ensuring the safety of residents and visitors in the Commonwealth.

More (/orgs/executive-office-of-public-safety-and-security)

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