

**WOMEN IN SOLITARY CONFINEMENT:
IMPROVING CALIFORNIA STANDARDS WITH INTERNATIONAL
GUIDELINES**

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ABSTRACT:

*Solitary confinement is a long-standing practice of isolating inmates in horrific conditions of trauma, and loneliness in a small concrete cell. Solitary confinement has impacted women's mental, and physical health. It is often misused by guards as a way of retaliation or disguised as protective custody for the female population especially, transgender women. Additionally, the lack of hygiene, degradation of mental health and unavailability of adequate sanitary products in solitary confinement violate the Eighth Amendment rights of female inmates. Women are also more likely to suffer sexual victimization compared to men. The Vera Institute Report mentioned that, "Between 2009 and 2011, women represented approximately 13% of people held in local jails, but 27% of victims of inmate-on-inmate sexual victimization and 67% of victims of staff-on-inmate sexual victimization."*¹

With the current laws in place, the number of women placed in California's solitary confinement has reduced. But the lack of accountability, transparency, and regulation from the CDCR continue to violate the basic rights of many female inmates who are kept in solitary confinement. In order to protect their basic human rights and Eighth

1. KRISTINE RILEY, ET AL., OVERLOOKED: WOMEN AND JAILS IN AN ERA OF REFORM 14 (2016), https://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-and-jails-report-updated.pdf.

Amendment rights, the California legislature needs to step up. Some policy recommendations are to use the UN approved Mandela Rules as the basis of new guidelines that the CDCR should follow. The guidelines include defining solitary confinement, the criteria under which women should be kept in isolation, having twofold inspections to bring accountability, and transparency on how the CDCR operates, CDCR providing data that is more cohesive, and comprehensible and having mandatory screening exams for women to ensure their mental health is not at risk.

PART I: BACKGROUND

A. *What is Solitary Confinement?*

The California Department of Corrections and Rehabilitation (CDCR) does not have an official definition of solitary confinement; rather, they use the term single-cell housing.² Other common names are isolation, Special Housing Units (SHU), Administrative segregation units (ASU), Management control units (MCU), voluntary or involuntary protective custody, etc.³ Some common isolation practices include confining behind steel doors for 22-24 hours a day, limiting contacts with other people, limiting/prohibiting phone calls and/or family visits, severely limiting access to rehabilitative programs, physical torture, chemical torture, or sexual intimidation.⁴ Some justifications for solitary confinement are that

(1) it can isolate inmates to ensure prison safety and protects other inmates and staff from dangerous inmates,

2. Sal Rodriguez, *How Many people Are in Solitary Confinement in California's Prisons?*, SOLITARY WATCH (Dec. 4, 2013), <https://solitarywatch.org/2013/12/04/many-california-prisoners-solitary-confinement/#:~:text=CDCR%20does%20not%20officially%20acknowledge,single%2Dcelled%20voluntarily%20or%20involuntarily.>

3. Solitary Confinement Facts, AMERICAN FRIENDS SERVICE COMMITTEE, <https://www.afsc.org/resource/solitary-confinement-facts> (last visited Nov. 15, 2020).

4. *Id.*

(2) it potentially disciplines inmates by giving prison guards control over their negative behavior,

(3) it can help reform the inmate's behavior/ character because staying isolated can help them engage in self-reflection, and

(4) it can be used to protect some vulnerable inmates from others, i.e. protective custody.⁵

B. Breakdown of People in Solitary Confinement on a Federal Scale

As per a Yale Study in 2014-2015, 2% of women were held in solitary confinement.⁶ But there was a significant disparity in the numbers when broken down by race. White women comprised 58% of the female general population, but 42% of them were solitary inmates.⁷ Whereas Black women made up 24% of the general population, but 41% of those were held in isolation.⁸ As per this study, about 29% of the general population stays in solitary confinement from one to three months.⁹ As per the Federal Bureau of Prisons data in 2014, out of those who were already incarcerated, 78% of those found guilty of engaging in sexual acts, 100% of those found guilty of killing offenses, 45% of those found guilty of offenses of destroying property, 22% of those found guilty of smoking in an unauthorized area, and

5. Juan E. Méndez (Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment), *Seeing into Solitary: A Review of the Laws and Policies of Certain Nations Regarding Solitary Confinement of Detainees* (2016), https://www.weil.com/~media/files/pdfs/2016/un_special_report_solitary_confinement.pdf.

6. Chris Amico & Dan Nolan, *Solitary by the Numbers*, FRONTLINE (Apr.18, 2017), <http://apps.frontline.org/solitary-by-the-numbers/>.

7. *Id.*

8. *Id.*

9. *Id.*

17% of those found guilty of indecent exposure offenses all led to solitary confinement.¹⁰

C. Breakdown of People in Solitary Confinement in California

As per the October 2020 population report from the CDCR, 126,420 people are incarcerated across all the correctional facilities in California.¹¹ The female incarcerated population consists of 5,475 inmates. The Yale study from 2014-2015 reported that 30% of the prisoners stay in solitary confinement for three years or more in California.¹² In 2019, the CDCR reported that CCWF housed 1,998 female inmates but gave no insight of how many of those women were put in solitary confinement.¹³ An older data set revealed 2013 statistics from the CDCR which indicated that 107 women that year were housed in Administrative Segregation at the Central California Women's Facility (CCWF) even though their budgeted capacity was for 38 inmates.¹⁴ The average stay of these inmates was 131 days.¹⁵ The process of encapsulating this number stays ambiguous. There is no indication of what comprised of administrative segregation, why these women were held there, or if all the women kept in isolation were counted accurately or not. But when investigated by California Coalition for Women

10. *Id.*

11. DIV. OF CORR. POL'Y RSCH. & INTERNAL OVERSIGHT, CALIFORNIA DEP'T OF CORR. & REHAB., MONTHLY REPORT OF POPULATION (Nov. 1, 2020), <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/11/Tpop1d2010.pdf> [hereinafter CDCR MONTHLY REPORT].

12. Amico & Nolan, *supra* note 6.

13. Chris Amico and Dan Nolan, *Solitary by the Numbers*, FRONTLINE (Apr. 18, 2017),

14. Victoria Law, *Women in Solitary Confinement: "The Isolation Degenerates Us Into Madness,"* SOLITARY WATCH, (Dec. 11, 2013), <https://solitarywatch.org/2013/12/11/women-solitary-confinement-isolation-degenerates-us-madness/>.

15. *Id.*

Prisoners, it was found that the use of solitary confinement had drastically increased in 2013.¹⁶ CDCR stated that the increase was due to concerns with threats or violence.¹⁷

When it comes to solitary confinement, there is a lack of data from the CDCR. From its 2019 report, CDCR stated that 1,045 inmates were housed in SHU but does not give a breakdown based on gender, race, or any other demographic.¹⁸ The issue remains that when the CDCR reports the numbers, it does not distinguish the reasons for isolating women in confinement.¹⁹ Meaning, it does not report whether the inmates were put in isolation due to rule violation, violent attacks, gang activity etc.²⁰ For instance, the California Coalition for Women Prisoners noted that the women who were isolated for “enemy concerns” were put into confinement for incidents that took place years ago and weren’t necessarily valid at the time of isolation.²¹ Holding women in isolation for reasons that may not be valid at the time is an unnecessary use of force and resources. Guards and the CDCR need to be held accountable to report the accuracy of the isolated inmate population.

16. *Id.*

17. *Id.*

18. DIV. OF CORR. POL’Y RSCH. & INTERNAL OVERSIGHT, CALIFORNIA DEP’T OF CORR. & REHAB., SPRING 2020 POPULATION PROJECTIONS (May 2020), <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2021/03/Spring-2020-Population-Projections.pdf> [CDCR POPULATION PROJECTIONS].

19. Law, *Supra* note 14.

20. *Id.*

21. *Id.*

D. Current Laws Regarding Solitary Confinement in California

Prominent laws such as Prop 47 and Prop 57 have significantly helped reduce the overall incarceration rate in CA.²² Prop 47 was passed in 2014 and it changed some low-level crimes from felonies to misdemeanors.²³ Prop 57—passed in 2016— encourages better behavior in inmates by giving them credit earning opportunities for sustained behavior and considers parole for nonviolent offenders.²⁴ The data project a significant reduction in prison population among men and women in from 2010-2020. In 2010, 10,096 women were incarcerated. That number was reduced to almost half in 2019, when the population of incarcerated women consisted of 5,691 inmates. These criminal justice ballot measures are important because their implementation brings awareness to the public about what is happening in Californian prisons. Meaning, if more of these issues are being placed on ballots, the public will learn about the disparities in the criminal justice system and have the authority to change the conditions of these inmates with their vote. Having such ballots can also help reduce isolation rates because they focus on reducing overall incarceration and reward inmates for good behavior, rather than punishing them. As depicted by the data earlier, implementation of these props has significantly reduced incarceration numbers. But even though the Props are targeting overall incarceration

22. CDCR Population Projections, *Supra* note 18.

23. *PROP 47*, <https://myprop47.org/> (last visited Nov. 12, 2020).

24. *Proposition 57*, CA DEP'T. OF CORR. AND REHAB., <https://www.cdcr.ca.gov/proposition57/> (last visited Nov. 9, 2020).

rates, there remains some lack of clarity on how exactly these props can impact solitary confinement rates unless they directly target it as a main issue.

Despite the lack of data from CDCR, legislation and some lawsuits have helped improve some conditions for inmates in solitary confinement. Title 15 elaborates on how the CDCR is supposed to handle the usage of solitary confinement. Section 52080.24 states that an inmate from the general population should be put under administrative segregation unit (AD-SEG) if she is a serious threat to the safety of other inmates or if she jeopardizes the integrity of an investigation in any way.²⁵ The regulations ask that placing an inmate in AD-SEG should be followed by a review from the Institutional Classification Committee (ICC) within ten days of the placement. ICC then can make recommendations of whether to keep an inmate under isolation or continue staying in AD-SEG.²⁶ But despite being an extensive document, Title 15 leaves a lot of discretion for the prison staff to make the decision of who to isolate. For instance, Title 15 provides that if an inmate is put in AD-SEG due to “apparent” physical or psychological concerns, they should immediately notify the medical facilities. However, it fails to explain what those apparent concerns may be. Neither does it explain under what circumstances guards can claim that an inmate has a psychological concern which requires isolating her. It also says that an

25. *California Department of Corrections and Rehabilitation Adult Institutions, Programs, and Parole Operations Manual* (Jan. 2019), <https://www.cdcr.ca.gov/regulations/>

26. *Id.*

assessment of the isolated inmate's mental health would be included in her case review but provides no details of whether that assessment would comprise of prior records of mental illnesses or the deterioration caused as a result of putting them solitary confinement. Therefore, Title 15 is helpful in documenting the basic procedure of how the CDCR is supposed to handle solitary confinement concerns but remains an incomplete set of guidelines.

E. The Landmark Case of Ashker v. Governor of California

Ashker v. Governor of California was a class action filed in 2012 that dealt with prolonged confinement in SHU at Pelican Bay State Prison in CA.²⁷ Even though the settlement arose out of the circumstances in Pelican Bay and the agreement did not exclusively aim to improve women's facilities, it was meant to be binding to all Californian facilities and improve the conditions of all inmates in solitary confinement, overall. Pelican Bay State Prison is a maximum-security facility for California's most serious criminal offenders.²⁸ More than 500 inmates had been held in SHU for over 10 years based on vague allegations of their associations with gangs.²⁹ The isolation conditions included windowless concrete cells for almost 24 hours a day, no phone calls, infrequent visits through plexiglass preventing physical contact, meager rehabilitative opportunities, and no opportunity for normal social interaction with other prisoners.³⁰ The plaintiffs alleged that prolonged

27. *Summary of Ashker v. Governor of California Settlement Terms*, CCRJUSTICE.ORG., <https://ccrjustice.org/sites/default/files/attach/2015/08/2015-09-01-Ashker-settlement-summary.pdf> (last visited Nov. 11, 2020).

28. *Id.*

29. *Id.*

30. *Id.*

isolation violated their Eighth Amendment rights and that inadequate review of their SHU placements violated their right to due process.³¹ The settlement agreement memorialized an intent to:

- 1) end the practice of putting inmates in solitary confinement without violation of prison rules,
- 2) cap the duration that an inmate can be isolated in Pelican Bay, and
- 3) provide restrictive but not isolated alternatives for inmates who violate prison rules regarding affiliation with gangs.³²

This agreement stated that CDCR would create a new Restricted Custody General Population Unit for inmates with serious security concerns as an alternative to solitary confinement.³³ The prisoners admitted into RCGP would remain under high security but would not have to sacrifice their indulgence in recreational opportunities.³⁴ As per the agreement, CDCR also committed to reviewing all gang validated SHU prisoners within one year to determine if they should be released from isolation or not.³⁵ Those who have been in solitary confinement for more than ten years

31. *Ashker V. Governor of California*, CENTER FOR CONSTITUTIONAL RIGHTS, <https://ccrjustice.org/home/what-we-do/our-cases/ashker-v-brown#:~:text=The%20case%20reached%20settlement%20on,an%20additional%20year%20of%20monitoring> (last visited Nov. 1, 2020).

32. *Summary of Ashker v. Governor of California Settlement Terms*, CCRJUSTICE.ORG., <https://ccrjustice.org/sites/default/files/attach/2015/08/2015-09-01-Ashker-settlement-summary.pdf> (last visited Nov. 11, 2020).

33. *Id.*

34. *Id.*

35. *Id.*

will be released to the general population even if they committed serious misconduct in recent times.³⁶

Despite the settlement agreement, California prisons continue to violate the regulations regarding isolating inmates. The state of California is now misusing gang classifications to isolate inmates.³⁷ Prisons now claim that they have confidential information on some inmates from one informant and send those inmates to solitary confinement on that basis.³⁸ During 2012, when the settlement agreement was passed, there were a total of 1,849 inmates in the SHU in CA facilities and in 2013 that number went down by only 77. In 2013, there were still 1,772 inmates in the SHU in California prisons.³⁹ Additionally, there is no guarantee that CDCR is still holding up to its end of the bargain and employing the clauses of the agreement. Unfortunately, the lack of research does not give demographics of how many women were impacted due to this class action, but because the agreement is not completely being followed, it is safe to say that it has not done much to stabilize the conditions of women in solitary confinement.

In addition to this settlement agreement, prisons are making some efforts to better conditions. California counties are implementing various techniques to reduce solitary confinement numbers. One policy that is

36. *Id.*

37. Bob Egelko, *California Prisons' Use of Solitary Confinement Violates Court Settlement*, SAN FRANCISCO CHRONICLE (Jan. 28, 2019, 4:33 PM) <https://www.sfchronicle.com/news/article/California-prisons-use-of-solitary-confinement-13568616.php>.

38. *Id.*

39. *Supra*, note 2.

helping lower isolation rates is using positive reinforcement techniques to incentivize and encourage good behavior among inmates.⁴⁰ Such techniques include giving out extra snacks or allowing inmates to watch movies. These techniques help improve officer-inmate relationships and lower the rate at which inmates are put in solitary confinement.⁴¹ Applauding positive behavior in inmates has dropped isolation numbers from 100 to three in Contra Costa County.⁴² Santa Clara isolation numbers dropped from 400 to 40 in about two months with using positive reinforcement methods.⁴³ Additionally, California regulations such as AB 732, prohibit placing pregnant women in solitary confinement unless a medical professional announces that her medical condition requires such isolation.⁴⁴ This policy is similar to the federal general recommendation from the U.S. Department of Justice that pregnant women should not be placed under solitary confinement unless there is an extreme case.⁴⁵ Even though such measures are working to reduce the number of women being isolated, there are many issues that women face in solitary confinement that need immediate attention.

40. Alexandra Kelley, *California Jails Scale Back Solitary Confinement*, THE HILL, (Dec. 27, 2019), <https://thehill.com/changing-america/well-being/mental-health/476067-california-jails-scale-back-solitary-confinement>.

41. *Id.*

42. *Id.*

43. *Id.*

44. A.B. 732, 2020 Leg. Reg. Sess. (Cal. 2020).

45. *Still Worse Than Second-Class: Solitary Confinement of Women in the United States*, ACLU (2019), https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.

PART II: DISCUSSION

A. Women in Solitary Confinement

1. Infractions Are a Common Cause of Placing Women in Solitary Confinement.

Where men from the general prison population are usually sent to solitary confinement for the intensity of crime they commit, women are often sent to solitary confinement for activities such as “reckless eyeballing,” fighting, and other behavior triggered by mental illness, family anxieties, etc.⁴⁶ A study from Rhode Island showed that male inmates committed an estimated 1.9% disciplinary infraction per year, whereas women averaged around 6.83%, 82% of which were nonviolent, 59% of those were for “disobedience,” and 23% was comprised of contraband possession, sexual misconduct, substance abuse, and vandalism.⁴⁷ Men are more likely to be isolated for attacking guards or gang participation, but women are more frequently isolated for breaking rules, verbal abuse, and stealing from other inmates.⁴⁸ Unfortunately, correctional officers are given a lot of discretion in determining whether an infraction would lead to solitary confinement despite the guidelines mentioned earlier in Title 15.

46. Heidi Cerneka, “*We Will Not Be Invisible*” *Women and Solitary Confinement in the U.S.* 32 *WIS. J. L. GENDER & SOC’Y* 107, 116 (2017).

47. *Id.* at 117.

48. *Id.* at 119.

2. Solitary Confinement is Invasive of a Woman's Body and can be Used as a Retaliation Technique by Prison Guards.

One of the unique problems of solitary confinement for women is that it affords an opportunity for predatory guards to take advantage of those inmates. Women are prone to sexual harassment and abuse when they are placed in isolation because solitary confinement units are designed to give guards full access to cells.⁴⁹ Even though women in general population have an issue with sexual harassment as well, the situation can worsen when they are in solitary confinement. Many women complain that male guards watch them in bathrooms even when they are trying to get dressed/undressed.⁵⁰ They also describe that many male guards grope the female inmates during searches anytime the isolated women leave their solitary confinement cells.⁵¹ Reporting such abuse can often risk retaliation for the female population.⁵² Title 15 CCR § 3084 provides guidelines on how the CDCR handles sexual assault cases but reporting such cases comes with retaliation. For instance, in Kentucky, a female inmate preserved evidence of being sexually assaulted which resulted in isolation for fifty days.⁵³ Similarly, in Illinois, a prison staffer placed a woman in solitary confinement when she attempted to report her sexual assault incidents.⁵⁴

49. *Id.* at 129.

50. *Id.* at 113.

51. *Id.* at 129.

52. *Id.* at 130.

53. Victoria Law, *Women in Solitary Confinement: "Sent to Solitary for Reporting Sexual Assault,"* SOLITARY WATCH (Dec. 12, 2013), <https://solitarywatch.org/2013/12/12/women-solitary-confinement-sent-solitary-reporting-sexual-assault/>.

54. *Id.*

Often when women report sexual abuse or harassment, they are put in solitary confinement as a protective measure.⁵⁵ This protective technique only makes it worse for these female inmates because putting them in solitary confinement further hinders these women from participating in rehabilitative/ educational opportunities. The fear of being placed in solitary confinement is a reason many women do not report sexual abuse.⁵⁶

3. Women's Mental Health Takes a Special Toll in Solitary Confinement: Personal Experiences.

Solitary confinement has a harmful psychological impact on inmates, both men and women. Long term isolation can lead to hallucinations, insomnia, paranoia, uncontrollable rage and fear, PTSD, distortion of time and perception and other mental illnesses.⁵⁷ Solitary confinement can also increase the risk of suicide among inmates.⁵⁸ In comparison to men, even though women are placed in solitary confinement less frequently, the mental health needs among women who are placed in solitary confinement are much higher than men.⁵⁹ For instance, in North Carolina, 5% of women were placed in isolation; while only 18% of women in the general population needed psychiatric treatment, 38% women who were kept in

55. *See id.*

56. Riley, *supra* note 1, at 15.

57. Solitary Confinement Facts, *supra* note 3.

58. *Id.*

59. Leon Digard, Sara Sullivan & Elena Vanko, *Rethinking Restrictive Housing: Lessons from Five U.S. Jail and Prison Systems*, VERA INSTITUTE OF JUSTICE, <https://www.vera.org/rethinking-restrictive-housing>.

isolation required psychiatric treatment.⁶⁰ In California in 2012, more than 50% women held in solitary confinement were classified as mentally ill.⁶¹

Women's emotional health takes a toll when they are locked in solitary confinement. Dolores Canales spent twenty-two hours a day for nine months in Administrative Segregation in California Institute for Women.⁶² She stated she experienced heavy anxiety while she was isolated and the two hours of being able to leave the cell to go to the yard was not enough to overcome the anxiety and fear of being isolated. She said that she experienced such anxiety ever after she was released from solitary confinement and panicked every time she saw a group of officers even if she had not violated any rules.

In her story,⁶³ Sarah Pender mentioned that she spent five years in solitary confinement in Indiana. She was isolated because she managed to escape from prison with the help of a guard with whom she had physical relationship and several other female inmates. But she was rearrested and classified as a high escape risk. Meaning, even within the isolation units, while other women were able to communicate with each other through their doors, the guards instructed them to stay away from Sarah specifically and not entertain conversations with her else they would be punished. She recalled her cell was subject to daily searches just like everyone else.

60. *Id.*

61. ACLU, *supra* note 45, at 8.

62. The following three stories are described in greater detail in Victoria Law, *Women in Solitary Confinement: "The Isolation Degenerates Us Into Madness,"* SOLITARY WATCH, (Dec. 11, 2013), <https://solitarywatch.org/2013/12/11/women-solitary-confinement-isolation-degenerates-us-madness/>.

63. *Id.*

However, anytime she left the unit to go to for a doctor's appointment, she could be strip searched at any time. Sarah said that she did not have any preexisting mental health issues, but the isolation made her lethargic and depressed. She said that she did not need any medication or help when she was in general population; however, staying in solitary confinement led her on a path of being on and off about half a dozen psychotropic medications.

Sarah also said she saw women trying to choke themselves with shoestrings and bras. She heard her neighbor hit her head against the concrete walls until the officers removed her from her cell. Another woman tried to commit suicide, but the guards were able to rescue her on time and hospitalize her.

Another woman⁶⁴ spent two-and-a-half years in solitary confinement initially due to disruptive behavior. She would repeatedly cut herself with razors, so she was sent to confinement for self-mutilation. When she got stitches after an attempt to cut her throat, she tried to rip them out and was sent to isolation again, this time for battery. She once threw a mop bucket at the sergeant, but by this time she had finished her sentence so was not put into isolation. This was problematic because there was an apparent mental health issue that this inmate was facing. However, instead of providing her with adequate mental health treatment, she was isolated where her condition and attempts to hurt herself only grew worse.

64. *Id.*

4. Women's Physical Health is Also Impacted When They are Placed in Solitary Confinement.

Pregnancy, menstruation, menopause, and other reproductive healthcare needs are often overlooked for incarcerated women, and such ignorance is exacerbated when women with such conditions are placed in solitary confinement. In 2020, the Federal Bureau of Prisons issued a memorandum stating that it would provide specific female hygiene products to the incarcerated population under the “Program Statement **Grooming**” to ensure that female prisoners have access to feminine hygiene products for menstruation.⁶⁵ These products were to be provided to inmates at no cost.⁶⁶ The memo stated that the purchase of such products would not impact the overall expenses for female hygiene products; therefore, monetary consumption was not an issue for providing these products to women.⁶⁷

California passed a law in 2017 stating the incarcerated population will get access to free menstrual products upon request.⁶⁸ In 2018, Paula Canny, a defense attorney met her client Kolba, who had an emotional breakdown in front of her while she was bleeding menstrual blood down her leg.⁶⁹ After this incident, Canny filed public records requests in almost all the California counties to determine how these facilities were providing menstruation

65. U.S. DEP'T OF JUSTICE, FED. BUREAU OF PRISONS, O.M. 003-2020, PROVISIONS OF FEMININE HYGIENE PRODUCTS (2020).

66. *Id.*

67. *Id.*

68. CAL. PENAL CODE § 3409(a) (Deering 2022).

69. See Samantha Michaels, *Jail is a Terrible place to Have a Period. One Woman is on a Crusade to Make it Better*, MOTHER JONES (Feb. 21, 2019), <https://www.motherjones.com/crime-justice/2019/02/jail-california-tampons-menstruation-paula-canny-sanitary-pads/>.

products to their inmates.⁷⁰ Upon investigation, Canny found that most jails in CA offered sanitary pads for free but charged women for tampons at a hefty price.⁷¹ For instance, Tampax tampons were sold on amazon for 19 cents but cost 56 cents at Fresno County Jail.⁷² She sent out letters to counties to request them to provide free tampons to inmates and eighteen sheriffs responded aggressively, saying Canny could not tell them what to do.⁷³ As a result, Canny filed a class-action lawsuit stating that denying free tampons violated the Due Process Clause of the Constitution and also caused inmates “embarrassment, stress, shame and degradation.”⁷⁴ Despite the lawsuit, some counties have improved and now provide both pads and tampons for free, but some counties continue to charge inmates for tampons, and some offer either pads or tampons based on what the jails decide, not the women’s preferences.⁷⁵

The situation for inmates worsens when they are isolated in solitary confinement. Not having access to such basic products in solitary confinement is injurious to women’s physical and emotional well-being. Bozelko, a prison reform advocate, explains that when in solitary confinement, inmates are often denied access to water within their cells to prevent flooding issues, showers are often limited to twice a week, and soap

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

can be hard to find.⁷⁶ She mentioned that when she was on her menstruation cycle and was unable to stay clean, she felt sick because of the foul smell from her body.⁷⁷ In her experience, the difficulty in trying to stay clean in prison, especially solitary confinement, is basically impossible, and the unhygienic conditions induce depression, self-loathing, and isolation.⁷⁸ She says that putting laws in place to ensure better conditions for these inmates will not do anything because the real issue is the lack of empathy on how these women are treated when they are incarcerated or isolated.⁷⁹ Often times tampons and pads are withheld from women in order to have them behave a certain way.⁸⁰

Another woman in San Luis Obispo County Jail was denied all her medications and soaked through all the pads she was given. As a result, the guards put her in solitary confinement with no clothes or tampons, and she sat in her cell with her menstrual blood.⁸¹ Unfortunately, there remains a lack of statistics on these issues. However, all these stories verify that women's physical health is at risk in solitary confinement because of poor hygiene and lack of adequate products and treatment.

76. Kristina Marusic, *The Sickening Truth About What It's Like to Get Your Period in Prison*, WOMEN'S HEALTH (Jul. 7, 2016), <https://www.womenshealthmag.com/life/a19997775/women-jail-periods/>.

77. *Id.*

78. *Id.*

79. *Id.*

80. Kimberly Haven, *Why I'm Fighting for Menstrual Equity in Prison*, ACLU (Nov. 8, 2019), <https://www.aclu.org/news/prisoners-rights/why-im-fighting-for-menstrual-equity-in-prison/>.

81. Allie Lawrence, *A California Attorney Is Fighting Local Jails That Withhold Menstrual Products*, BUST, <https://bust.com/feminism/195707-attorney-fighting-for-menstrual-products-in-prison.html>.

B. Transgender Women in Solitary Confinement

1. Transgender Women Battle an Additional set of Issues When it Comes to Solitary Confinement.

Solitary confinement appears even worse for the physical and mental health of transgender individuals. “Transgender” is a term that refers to the people whose gender identity is different from the sex they are assigned at birth.⁸² The data for the transgender population indicates that they are incarcerated at a higher rate than other individuals. For instance, the ACLU reports that “black transgender women are incarcerated at ten times the rate of the general population.”⁸³ Transgender individuals are placed in male or female institutions correlating with their gender after they have undergone gender conforming surgery.⁸⁴ Often, prison officials assign transgender people to solitary confinement in lieu of other protective measures, thus exposing them further to the risk of being victimized.⁸⁵ The BOP explains that LGBTI inmates are more likely to experience victimization compared to other prison populations.⁸⁶ As per the Federal Bureau of Justice Statistics, 40% of the transgender population experiences victimization compared to 4% of all other incarcerated individuals.⁸⁷

Putting trans women in protective custody worsens their conditions emotionally and physically. The transgender population overall has a high

82. ACLU, *supra* note 45, at 13.

83. *Id.*

84. *See id.*

85. *See id.*

86. U.S. DEP’T OF JUSTICE, FED. BUREAU OF PRISONS, P.S. 5200.07, FEMALE OFFENDER MANUAL (2021).

87. S.B. 132, 2020 Leg. Reg. Sess. (Cal. 2020).

risk of suicide (30-50% trans adolescents versus 14% adolescents).⁸⁸ The process of regular and random strip searches while being isolated heightens their vulnerability.⁸⁹ Self-defense, retaliation for filing grievances, sexual activity, and gender expression are some key reasons transgender individuals are placed in solitary confinement.⁹⁰ Additionally, placing them in solitary confinement can lead to a lack of proper medical attention that they may seek, which worsens the matter even more.⁹¹ According to a study in Pennsylvania prisons, 23.7% trans women were denied hormones, 8.5% were denied appropriate medical treatment, and another 1.7% were denied mental health treatment.⁹²

The transgender community is often subjected to abuse from correctional officers, and retaliation against these actions often leads to solitary confinement for the transgender inmates, at least anecdotally. Thirty-eight percent of transgender women reported that they were harassed by correctional officers or staff.⁹³ In California, Candice Crowder was a trans woman who tried to report a violent sexual assault incident and as a result, was placed in solitary confinement by the guards.⁹⁴ She alleged that when she complained to the correction's guard about exercising in the same area as her rapist, the officer placed her in solitary confinement and was

88. ACLU, *supra* note 45, at 13.

89. *See id.*

90. Pascal Emmer et al., *This is a Prison, Glitter is Not Allowed: Experiences of Trans and Gender Variant People in Pennsylvania's Prison Systems* 22, HEARTS ON A WIRE COLLECTIVE (2011), <https://www.prisonpolicy.org/scans/thisisaprison.pdf>.

91. ACLU, *supra* note 45, at 13.

92. Emmer et al., *supra* note 91, at 23.

93. S.B. 132, 2020 Leg. Reg. Sess. (Cal. 2020).

94. ACLU, *supra* note 45, at 9.

later put into solitary confinement again for being “repeatedly targeted for assault.”⁹⁵

In November 2017, four inmates from the Central California Women’s Facility (CCWF)—one transgender man, one gender non-conforming person, and two queer female inmates—filed a lawsuit against the California Department of Corrections and Rehabilitation (CDCR).⁹⁶ The allegation was that correctional officers beat up, sexually harassed, made homophobic and transphobic insults to, and tortured these inmates.⁹⁷ The inmates were prevented from filing grievances and were put into solitary confinement without cause.⁹⁸ They were neither provided with medical treatment for the injuries they incurred, nor were they allowed to use the bathrooms.⁹⁹

Another transgender inmate at CCWF named Isaac Medina was denied access to his medication in 2017.¹⁰⁰ When he asked why his medication access was denied, the guards attacked him violently, refused to provide Medina the accommodations that he was entitled to under the Americans With Disabilities Act, pulled his pants down to his ankles, and smashed his head against a brick wall.¹⁰¹ After this, Medina was placed in isolation,

95. *Id.*

96. *Lawsuit Filed Denouncing Assaults on Trans & Queer Prisoners at CCWF*, CCWP (Jan. 15, 2018), <https://womenprisoners.org/2018/01/lawsuit-filed-denouncing-assaults-on-trans-queer-prisoners-at-ccwf/>.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

prohibited from using the restroom, and was further denied medical treatment for the injuries he incurred.¹⁰²

Such behavior from correctional officers and guards traumatizes the inmates; then, to scare these inmates and prevent them from taking action, they are isolated from the general population. This use of solitary confinement to cover brutality abuses not just the bodies of these inmates, but also their basic human rights.

2. S.B. 132: California's Attempt to Respect Gender Identity of Inmates During Incarceration.

In order to accommodate transgender individuals in prisons, the California Legislature passed Senate Bill 132, the Transgender Respect, Agency and Dignity Act, in September 2020.¹⁰³ This bill requires that during the initial intake process of transgender individuals, they should be given the preference of whether they want to be housed in male or female facilities.¹⁰⁴ They can make this judgment based on their own self-identification instead of the sex they are assigned at birth.¹⁰⁵ The bill says that the inmates should be asked about the gender pronouns they identify with and should be free to refuse to answer these questions if they desire.¹⁰⁶ The California Assembly recognizes that gender identity can lead to a significant risk of violence.¹⁰⁷ However, S.B. 132 does not provide any

102. *Id.*

103. The Transgender Respect, Agency, and Dignity Act, S.B. 132, 2020 Leg., Reg. Sess. (Cal. 2020).

104. *Id.* at §§ 3(a)(1)-(3), 4(a)(3).

105. *See generally id.*

106. S.B. 132, 2020 Leg. Reg. Sess., ch. 182, 2020 Cal. Stat. 92.

107. *Id.*

protections for transgender inmates regarding solitary confinement, leaving the transgender population vulnerable to the unnecessary use of solitary confinement against them.

3. Federal Regulations for Protecting Transgender Women

Federal regulations from BOP acknowledge that different groups of women need to be accommodated in prisons in the female offender guide. It mentions that older women may need more time to comply with instructions when it comes to mobility, and due to their age there may be placement adjustments such as keeping them in cells closer to the dining halls or having other inmates for company.¹⁰⁸ The guide also recognizes that trans women are more likely to experience victimization, so the institutions are encouraged to consult the current policies and practices for additional guidance on how to work with such inmates.¹⁰⁹ But it fails to provide what those current rules or policies are.

The guide goes on to further say that, “Female offenders will receive mental health screening prior to placement on this unit consistent with the procedures for male inmates referred to the Administrative Maximum Penitentiary (ADX) described in the Program Statement *Treatment and Care of Inmates With Mental Illness*.”¹¹⁰ Additionally, the Regional Director would receive a justification from the Warden each year the inmates are

108. See FED. BUREAU OF PRISONS, U.S. DEPT. OF JUST., FEMALE OFFENDER MANUAL 5 (2016).

109. *Id.* at 6.

110. *Id.* at 7.

placed in high security confinement.¹¹¹ If placing women in confinement at any point seems to deteriorate their health, the Psychological Services will step in and examine if the inmate needs an alternative placement.¹¹² It further states that pregnant women, women going through postpartum, women suffering from miscarriage, or those who recently terminated pregnancy should not be placed in restrictive housing unless there is a serious and immediate risk of physical harm.¹¹³ Even in that situation, the agency senior official must review the placement within 24 hours.¹¹⁴ These federal policies are a step in the right direction but not every state follows them, and enforcement of these rules still remains an issue. Despite all these regulations, high security confinement more often than not fails at achieving anything; rather, it increases liabilities for prisons as discussed in the next section.

PART III: SOLITARY CONFINEMENT IS AN INEFFECTIVE METHOD OF
DETERRING INMATES AND REQUIRES SERIOUS REVISION

*A. Solitary Confinement Costs More Than the Cost of Maintaining
Inmates in General Population*

Solitary confinement is an expensive and ineffective method of deterring criminals. The cost of keeping an inmate in solitary confinement is three times higher than the cost of keeping them in general population. It can cost up to \$77,000 a year for isolating an individual.¹¹⁵ In Texas, it costs

111. *Id.*

112. *Id.*

113. *Id.* at 18.

114. *Id.*

115. *Solitary Fact Sheet*, STUDENTS FOR PRISON EDUC., ABOLITION, AND REFORM [SPEAR], http://princetonpear.com/7x9-fact-sheet#_edn21 (last visited Nov. 10, 2020).

45% more to house inmates in solitary confinement versus the general population.¹¹⁶ At the federal level, the supermax facility cost for housing an inmate was \$85.74 per day, but \$216.12 a day for housing them in isolation.¹¹⁷ Furthermore, when Mississippi shut its solitary confinement unit that held 1,000 people, it cut its expenses by \$8 million annually.¹¹⁸ As per 2010-2011 data, the annual cost of an inmate in solitary confinement in Pelican Bay State Prison was \$70,641. In comparison, the average cost of an inmate of the general population was \$58,324.¹¹⁹

Studies have shown that solitary confinement may actually increase the recidivism rate instead of deterring inmates from indulging in wrongful activities. A study conducted by David Lovell (former professor at University of Washington) found that inmates who were released from solitary confinement/supermax prisons “committed new felonies at a faster and higher rate than those who were not isolated.”¹²⁰ According to the averages, the isolated individuals committed a crime within 12 months of being released compared to 27 months for those who were merely incarcerated and not isolated.¹²¹ Another study showed that 24.2% of the

116. *Solitary Confinement: Inhumane, Ineffective, and Wasteful*, S. POVERTY L. CTR. 14 (Apr. 4, 2019), https://www.splcenter.org/sites/default/files/com_solitary_confinement_0.pdf [hereinafter *Solitary Confinement*].

117. *Id.*

118. *Id.*

119. Sal Rodriguez, *The High Cost of Solitary Confinement*, SOLITARY WATCH (2011), <https://solitarywatch.org/wp-content/uploads/2011/06/fact-sheet-the-high-cost-of-solitary-confinement.pdf>.

120. Anjali Tsui, *Does Solitary Confinement Make Inmates More Likely to Reoffend?*, PBS FRONTLINE (Apr. 18, 2017), <https://www.pbs.org/wgbh/frontline/article/does-solitary-confinement-make-inmates-more-likely-to-reoffend/>.

121. *Id.*

isolated population committed a violent crime in three years after release, but only 20.5% of the inmates from the general population did.¹²² States where inmates are isolated for long time periods without transitioning or educational programs are more likely to see higher recidivism rates.¹²³ Additionally, studies show that solitary confinement does not reduce the risk of assaults on staff by inmates either. For example, Colorado decreased its isolation rate by 85% and they had the lowest assault rates on staff since 2006.¹²⁴

B. Solitary Confinement Also Raises Eighth Amendment Violations for Inmates

The Eighth Amendment of the Constitution states, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”¹²⁵ The Eighth Amendment prohibits torture, and that torture includes physical or psychological harms.¹²⁶ Denying medical care or depriving inmates of their basic human rights is seen as a violation of the Eighth Amendment.¹²⁷ The Eighth Amendment imposes an obligation on the states to provide for the basic human needs of inmates, which includes food, clothing, shelter, and medical care.¹²⁸ Promoting unhygienic practices by preventing women from taking showers or not giving them access to

122. *See id.*

123. *Id.*

124. *Solitary Confinement*, *supra* note 117, at 11.

125. U.S. CONST. amend. VIII.

126. ALLISON FRANKEL ET AL., CTR. FOR CONST. RTS., *THE DARKEST CORNER: SPECIAL ADMINISTRATIVE MEASURES AND EXTREME ISOLATION IN THE FEDERAL BUREAU OF PRISONS* 23 (Allard K. Lowenstein Int’l Hum. Rts. Clinic ed., 2017).

127. JAMELIA MORGAN, ACLU, *CAGED IN: SOLITARY CONFINEMENT’S DEVASTATING HARM ON PRISONERS WITH PHYSICAL DISABILITIES* 48 (2017).

128. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

adequate sanitary pads or tampons is disrespecting the basic needs women need to survive. Such behavior forces these women to stay “dirty” and exposes them to potential health issues due to the unsanitary conditions they are placed in when they are isolated.

Second, putting inmates in solitary confinement, especially those who show symptoms of mental illness, is cruel and unusual because isolating them only exacerbates their mental health issues. The vulnerabilities of people in solitary confinement are likely to result in psychological damage. *Coleman v. Wilson* was a class action brought against the California Department of Corrections and Rehabilitation (CDCR) alleging that there was a lack of adequate mental health care provided in California facilities and that lack of care violated the inmates’ Eighth Amendment rights.¹²⁹ In *Coleman*, the District Court affirmed a lower magistrate’s finding that inmates were being placed in solitary confinement without an adequate evaluation of their mental health,¹³⁰ and subsequently held that these inmates had their Eighth Amendment rights violated by the prison at issue, partially due to this practice.¹³¹ The magistrate judge here found that the guards lacked the skill to evaluate the mental health of inmates before placing them in solitary confinement.¹³² The lower court also found that California facilities were “seriously and chronically” understaffed when it

129. *Coleman v. Wilson*, 912 F. Supp. 1282, 1293 (E.D. Cal. 1995).

130. *See id.* at 1320.

131. *See id.* at 1323.

132. *Id.* at 1320.

came to mental health care services.¹³³ Further, it found that facilities had “significant delays in, and sometimes complete denial of, access to necessary medical attention, multiple problems with use and management of medication, and inappropriate use of involuntary medications.”¹³⁴

The Court here also expressed concern that in looking at the CDCR’s history, it has no faith that the CDCR will work on improving the conditions of these inmates unless a court order or injunction is granted.¹³⁵ Locking inmates into solitary confinement despite their mental health condition is a violation of their rights because it exposes inmates to worse conditions and places their health at risk. If the state is incarcerating these individuals, then it is the state’s responsibility to ensure that their basic needs are met. By not prescreening the inmates or not providing them with adequate mental health treatment, the corrections department is not fulfilling its own duties and is violating the inmates’ rights. As a result of the *Coleman* agreement, the CDCR created the Statewide Mental Health Program (SMHP) which would address the constitutional inadequacies by creating mental health programs and services to improve the confinement circumstances in California facilities. But with the limited data and information available, it is unclear if SMHP has been productive or effective in any way.

Additionally, CDCR Regulation Section 3999.226 provides a health care grievance mechanism for inmates. Under this section, inmates can

133. *Id.* at 1296.

134. *Id.* at 1297.

135. *Id.* at 1311.

complain about the health care policies, decisions, and omissions that have an adverse impact on their health or welfare.¹³⁶ But this grievance process is inadequate, especially because the section states, “patients shall not use the health care grievance process to request health care services without a previous attempt to seek health care assistance through approved processes.”¹³⁷ Such regulations limit the use of this process, especially for those who develop mental health issues while they are held in solitary confinement. The system is set for those who already have preexisting health issues that are known to the facilities, but those who develop health concerns while serving their time have no benefit of such regulations being in place.

In *Martin v. City of Boise*, the California Supreme Court explained that “the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one’s status or being.”¹³⁸ In this case, the California court explained that a state cannot punish people for being homeless because being homeless in itself is not a crime.¹³⁹ If homeless people are sitting, lying, or sleeping in a public place, that is an unavoidable consequence of being homeless and a state cannot punish homeless people for that.¹⁴⁰ Under that principle, it can be argued that when transgender women are put into solitary confinement

136. CAL. CODE REGS. tit. 15, § 3999.226(a) (2020).

137. *Id.* § 3999.226(a)(3).

138. *Martin v. City of Boise*, 920 F.3d 584, 616 (9th Cir. 2019).

139. *Id.* at 617.

140. *Id.*

under protective measures, or women are put into unhygienic conditions of solitary confinement, they are being punished for their “status” or simply “being” a woman. Being placed in solitary confinement is usually involuntary and by not providing them their basic needs, prisons are violating their Eighth Amendment rights.

PART IV: SOLUTIONS TO IMPROVE THE CONDITIONS OF FEMALE INMATES IN SOLITARY CONFINEMENT

The state legislature and courts can both play a vital role in how prisons can be reformed. Even though courts do not always set out policy rationales in their decisions, the courts’ interpretation of topics such as Eighth Amendment rights, cruel and unusual punishment, the CDCR’s actions being constitutional etc., can be persuasive in thinking about future policies that can better the situation of women in solitary confinement and prisons overall. Especially by granting injunctions or settlement agreements such as the *Ashker* agreement, courts can play a significant role in how the CDCR treats its inmates. State legislation can significantly improve the duties and rules for the CDCR, and it can come up with ways to enforce such rules. California can take inspiration from the U.N. adopted Mandela Rules, federal legislation, and other states and various nations around the globe that are trying to improve the conditions of solitary confinement.

A. The CDCR Should Have new and Strict Guidelines

The California Assembly defines what solitary confinement is and under what circumstances it can be used with a transparent process for sending inmates into solitary confinement. Moreover, the CDCR must be

held accountable for these new inmate protections, potentially through the oversight of a third party, non-profit organizations, or watchdog committees in order to see meaningful improvement in the conditions of inmates in solitary confinement.

B. The Mandela Rules can be Used as Basic Principles on how to Treat Inmates and how to Promote Accountability Within CA Prisons

In 1995, the United Nations passed the Mandela Rules that address how prisoners should be treated. The rules were revised in 2015 and have some key regulations regarding solitary confinement and women's treatment in prisons.¹⁴¹ The Mandela Rules provide an excellent set of rules that California can implement in order to improve the lives of inmates. The basic idea of these rules is to ensure that inmates are treated with dignity, that there should be no discrimination on the grounds of race, gender, religion, or other status, and that inmates should be protected from inhumane and cruel punishment.¹⁴² As per these rules, the purpose of imprisonment is to protect the society against crime and to reduce recidivism.¹⁴³ In order to accomplish that goal, prisons should offer education, vocational training, and work and other types of assistance that will provide moral, spiritual, social, and remedial support to help inmates reintegrate into society and live

141. David Fathi, *Victory! UN Crime Commission Approves Mandela Rules on Treatment of Prisoners*, ACLU (May 27, 2015, 4:30 PM), <https://www.aclu.org/blog/prisoners-rights/solitary-confinement/victory-un-crime-commission-approves-mandela-rules#:~:text=The%20revisions%20provide%20that%20solitary,consecutive%20days%20%E2%80%94%20are%20now%20prohibited.>

142. G.A. Res. 70/175, annex, *The Nelson Mandela Rules*, Rule 2 (Dec. 17, 2015) [hereinafter *Nelson Mandela Rules*].

143. *Id.* Rule 4(1).

a law-abiding life.¹⁴⁴ These rules define solitary confinement as “confinement of prisoners for 22 hours or more a day without meaningful human contact.”¹⁴⁵ Prolonged solitary confinement shall refer to solitary confinement “in excess of 15 consecutive days.”¹⁴⁶ The Mandela Rules absolutely prohibit prolonged solitary confinement.¹⁴⁷ The rules also state that only female staff can supervise and attend female inmates and male staff can only enter the female facilities with a female staff member, unless the male staff includes doctors or teachers.¹⁴⁸

As mentioned earlier, the CDCR does not have an official definition of solitary confinement, neither does it mention this concept anywhere on its website even though the CDCR regulations provide some guidance about segregating inmates.¹⁴⁹ However, there is no set standard or language referring to solitary confinement. Having a standard definition of what solitary confinement is, when it can be used, and what kind of protocol needs to be followed when someone is kept in isolation are important first steps to determine whether inmates kept in isolation are kept with dignity and provided with basic human necessities. Especially when it comes to women in solitary confinement, it is important to respect their privacy; therefore, male guards should not be allowed to strip search them and only female staff should be designated to attend these women. Implementation of

144. *Id.* Rule 4(2).

145. *Id.* Rule 44.

146. *Id.*

147. *Id.* Rule 43(1)(a)-(b).

148. *See id.* Rule 81.

149. *See generally* CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, <https://www.cdcr.ca.gov>.

this policy would be difficult, but having oversight watchdog committees who can make random checks into these facilities would be helpful with ensuring that such policies are being enforced. Female staff would be able to better cater to the needs of female inmates compared to male staff, whether it be by allowing them to shower daily while kept in solitary confinement, by providing them with enough menstruation supplies, or by helping with any other physical needs that female inmates may have. Recognizing these basic needs is the first step towards improving the living conditions of females in solitary confinement.

C. Increasing Accountability and Liability for the CDCR is an Important Reform

Another step in ensuring that women are kept safe in solitary confinement is holding the CDCR accountable and being strict on requiring the department to follow the rules provided by either the courts, the legislature, or other government agencies. The Mandela Rules propose there should be regular inspections of prisons, but it should be a twofold process.¹⁵⁰ They propose that:

(1) there be regular internal inspections by the central prison administration; and

(2) external inspections should be conducted by a third party, independent of the prison administration.¹⁵¹

150. See Nelson Mandela Rules, *supra* note 143, Rule 83(1).

151. *Id.* Rule 83(1)(a)-(b).

Third parties can include non-profit organizations such as Solitary Watch, ACLU, etc. that are specially focused on prison reform.¹⁵² During these inspections, the inspectors shall have access to all the information regarding all the inmates and any medical conditions they suffer from and shall have the ability to visit the facilities unannounced at any time, to interview random inmates, and to make relevant policy recommendations to the prison administration.¹⁵³ This twofold system of investigation is helpful for a few reasons. First, keeping a record of information that a third party can review will bring in more transparency to the system. Since the CDCR would be held liable for its actions, it would have an incentive to explain its actions, which would give an insight into how these authorities handle their business. Second, allowing third parties access to information will also help hold the staff accountable for maintaining records and logs of inmates in a sensible manner so that the inspections can go smoother. Documenting such information can help track if prison authorities are taking active measures to follow and enforce rules to improve the living conditions of women in solitary confinement. Third, independent parties having the ability to interview any inmate and inspect the facilities at random times will keep the facilities alert and more cautious about following the rules put in place. Therefore, the twofold inspection system can help bring change by improving the transparency, accountability, and discipline of the prison staff.

152. *See id.* Rule 84(2).

153. *Id.* Rule 84(1).

D. Only Inmates Raising Serious Safety Concerns Should be Kept in Solitary Confinement as a Last Resort

The CDCR needs to have stricter guidelines on who can be placed in solitary confinement. Solitary confinement does not deter inmates from committing foul behavior. Additionally, as discussed, women are usually put into solitary confinement for minor infractions and behavioral issues. The conditions in solitary confinement worsen their mental and physical health at times. Therefore, there is no real benefit in isolating inmates for trivial issues. However, if an inmate is a serious threat, the authorities may need to isolate them for safety reasons. But the guidelines for what that crime is, the severity of the condition, and a well-documented report should be submitted before putting that allegedly threatening inmate in solitary confinement. But even if isolating that inmate is the only option, it needs to be ensured that their basic needs are still being met; for women, this means that they are still being provided with adequate hygiene and, if the inmate has any mental health issues, she is given the adequate treatment. Even though the *Ashker* settlement agreement restricts the use of solitary confinement by prohibiting indefinite isolation and requiring more concrete evidence of gang affiliation for isolating inmates, the legislature and courts need to ensure that the CDCR continues to enforce those rules and is held accountable for its inactivity if it chooses to not enforce the policies. Therefore, it is crucial to only use solitary confinement if it is the only option and the severity of the incident is such that not isolating that inmate would bring serious threats to the safety of others.

E. The CDCR Needs to do a Better job of Providing Clear, Detailed Data and Conducting Regular Surveys to Update the Relevant Information on its Website

Another important change that the CDCR needs to implement is improving the data and information database that it maintains for inmates. The CDCR website is difficult to navigate and does not provide adequate data. Even though the website provides weekly counts of inmates in each of the California facilities, it does not provide a thorough breakdown of the population based on various demographics. For example, the reports mention the number of female inmates incarcerated, but do not mention how many of them are put in solitary confinement. Neither does the report mention the reasons behind putting these inmates in solitary confinement. Additionally, Carolyn Suffrin, an expert in reproductive healthcare for incarcerated women, explains that there was a lack of data in women's maternal health and the data that was provided was grossly outdated.¹⁵⁴ A lot of the data about women in solitary confinement comes from third parties, i.e., non-profit organizations such as the ACLU, Vera Institute of Justice, Prison Policy Initiative, and Solitary Watch, etc.¹⁵⁵ The CDCR needs to provide detailed statistics annually and refresh the information in their databases frequently to ensure transparency and to provide an accurate portrayal of what is happening in California facilities.

154. Katie Pearce, *Landmark Study Compiles Data on Pregnant Women in Prisons*, JOHNS HOPKINS UNIV. (Apr. 11, 2019), <https://hub.jhu.edu/2019/04/11/carolyn-suffrin-pips-study>.

155. *Id.*

F. There Should be a few Mandatory Mental Health Screenings for Every Inmate in the Facilities and Inmates Should be Provided Adequate Treatment Based on Their Diagnosis

The impact of solitary confinement takes a toll on a person's mental health. In 2012, more than 50% of female inmates placed in solitary confinement were classified as mentally ill.¹⁵⁶ Often times, solitary confinement is used to house mentally ill inmates, and sometimes it causes inmates who are kept isolated to develop mental illnesses. In order to ensure that inmates are able to survive their incarceration time, there should be mandatory mental health screening exams every year, especially for those who are placed in solitary confinement. Having even two tests a year would show potential signs of deterioration even though it may drive up some financial costs for facilities. In particular, such screening will really help show the impact of solitary confinement on women's health and will provide the potential for alternatives to isolation.

CONCLUSION

Solitary confinement has long been an issue in California facilities, especially for the female population. With the growing risk of mental illnesses and physical health concerns, keeping women in isolated cells with little to no exposure to human interaction raises Eighth Amendment violations for many inmates. Retaliation, sexual abuse cases, and unnecessary isolation are common acts of misconduct that women face in

156. *Still Worse Than Second-Class: Solitary Confinement of Women in the United States*, ACLU 8 (2019), https://www.aclu.org/sites/default/files/field_document/062419-sj-solitaryreportcover.pdf.

California facilities. To improve the circumstances that women bear in such harsh conditions, the CDCR needs to be held accountable and the legislature and courts need to step up. Court ordered injunctions, settlement agreements, legislation restricting the use of solitary confinement, oversight watchdog committees, and renewing CDCR regulations are some recommendations that could improve the circumstances that women deal with in California facilities. California legislation can follow models from the U.N. adopted Mandela Rules or from some existing federal policies. Regardless of what model it follows, California must implement some strong policy decisions and enforce them vigorously to help the women in California detention facilities.