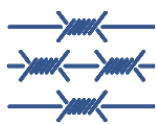


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ENSURING DECENT

Detention Conditions

Decent, rehabilitative prisons are a basic human right²⁸⁷ and crucial to the successful reintegration of formally incarcerated people. Yet, the conditions in some prisons are so abysmal and abusive that incarcerated people leave the facilities in far worse physical and emotional shape than they entered. It is crucial that prison conditions do not violate the basic human rights of incarcerated individuals. In order to foster successful reintegration, which will in turn reduce recidivism and promote safe communities, prison conditions should be decent, offer rehabilitation, and respect the human rights of individuals who are incarcerated.

In order to facilitate successful reentry, policies should encourage prison education initiatives, vocational training, and proper health protection.

Respecting incarcerated people' right to health care

The actual health of incarcerated people cannot be ignored in promoting successful reentry into their home communities. While most prisons provide access to basic medical services, policies should be adopted to allow persons who have been incarcerated and recently released to maintain their Medicaid status with little or no interruption.

Medical care should be inclusive and responsive to people of various genders, sexualities, and gender expressions. Moreover, there should be legislation allowing for active Medicaid enrollment during periods of incarceration.

²⁸⁷ Office of the United Nations High Commissioner for Human Rights, Human Rights and Prisons, <http://www.ohchr.org/Documents/Publications/training11Add3en.pdf>.

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The National Council for Incarcerated and Formerly Incarcerated Women has identified several policy initiatives that **Congress** and **state governments** should take:²⁸⁸

- ▶ Affirmatively including the voices of incarcerated and formerly incarcerated individuals in assessing policy initiatives that affect incarcerated people;
- ▶ Requiring the provision of gender-specific and gender-sensitive medical care;
- ▶ Providing education and care for women with HIV, AIDS, and Hepatitis C, including treatment for curable Hepatitis C;
- ▶ Providing mental health and drug treatment;
- ▶ Allowing access to essential medical care and appropriate feminine hygiene products including condoms and dental dam.

To achieve the goal of protecting incarcerated people' health, **Congress and state governments** should additionally:

- ▶ Increase Medicaid insurance enrollment of people in the criminal justice system;²⁸⁹
- ▶ Maintain active Medicaid enrollment during periods of incarceration.²⁹⁰

Prison officials and the **Bureau of Prisons** (BOP) should:

- ▶ “[E]nsure that LGBT-inclusive sexual health care is available as part of essential medical care in its facilities, and make condoms and other barriers freely available to federal prisoners as part of basic sexual health care and sexual health care literacy programs. The BOP should also provide guidance to states and local recipients of federal law-

²⁸⁸ These policy recommendations are taken from recommendations by the Council although they are not fully listed on the website. Founding Council member Topeka K. Sam reviewed the recommendations on August 25, 2016.

²⁸⁹ See generally, Chloe Cockburn et al., American Civil Liberties Union & Drug Policy Alliance, *Healthcare Not Handcuffs: Putting the Affordable Care Act to Work for Criminal Justice and Drug Policy Reform* (Dec. 2013) (describing how the Affordable Care Act expanded coverage for mental health issues), 14-15.

²⁹⁰ Ibid.

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enforcement funding on the elements of basic sexual health care and literacy programming, including condom availability in all facilities of confinement.”²⁹¹

- ▶ Provide incarcerated people who are transgender with any required medical therapies, including hormone therapy;
- ▶ Prohibit the use of shackles on women during labor or postpartum recovery and provide adequate postpartum care including a minimum recovery period and depression screenings;
- ▶ Allow independent commissions that allow formerly incarcerated people to inspect prison conditions;
- ▶ Ensure that HIV-positive incarcerated individuals receive care consistent with Department of Health and Human Services treatment standards and guidelines upon detention and transfer.²⁹²

Respecting the dignity of incarcerated individuals

The conditions in prisons should ensure that incarcerated people’ basic human rights are respected. Solitary confinement is commonly used in American prisons.²⁹³ However, even short periods of time in solitary confinement can cause mental health issues and severely affect imprisoned persons. “[P]risoners exposed to solitary confinement become verbally and physically aggressive; develop fantasy worlds and other paranoid psychoses; and grow anxious, withdrawn, and hopeless,” wrote Alex Kozinski in the *Yale Law Review*. “One early study found that nearly all of the prisoners in Maine’s isolation unit had either contemplated or attempted suicide.”²⁹⁴

President Obama acknowledged the impact of solitary confinement and has called for its ban for young people and people with mental health issues in federal facilities, noting that it is “linked to depression, alienation, withdrawal, a reduced ability to interact with others, and the potential

291 Catherine Hanssens et al., *A Roadmap for Change: Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV* (2014), https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf.

292 Ibid.

293 Alison Shames et al., Vera Institute of Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives* (May 2015), <http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report.pdf>.

294 Alex Kozinski, “Worse than Death,” 125 *Yale L.J.* F. 230 (2016), <http://www.yalelawjournal.org/forum/worse-than-death>.

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for violent behavior.”²⁹⁵ Local and state governments should adopt measures similar to those adopted by the federal government.

Prisons should also be able to accommodate persons of varying abilities and gender profiles. Incarcerated persons should not be subject to hostile conditions because of their sexuality, race, gender, or age. There should be adequate protections in place to prevent sexual abuse in prisons.²⁹⁶ Women and LGBTQ incarcerated people should be protected against targeting by prison staff and from sexual exploitation and abuse. Incarcerated people should also be provided with access to adequate hygiene products. Moreover, persons with physical disabilities should be provided with reasonable accommodations pursuant to the provisions of the Americans with Disabilities Act.²⁹⁷ These provisions should include, for example, access to a video phone for incarcerated individuals who are deaf. Imprisoned persons should also have access to educational programs and vocations to facilitate their successful reintegration into the community.

To achieve the goal of fostering positive prison conditions,

Congress and state governments should:

- ▶ Provide incentives to state governments and prisons that successfully reduce the occurrence of prison rape consistent with the mandates of the Prison Rape Elimination Act;²⁹⁸
- ▶ Abolish the use of solitary confinement for juveniles and individuals with mental,²⁹⁹ psychiatric, and/or physical issues;
- ▶ Prohibit the use of solitary confinement for longer than 15 days in all circumstances and bar its use as a form of punishment;³⁰⁰

295 Barack Obama, “Barack Obama: Why We Must Rethink Solitary Confinement,” *The Washington Post* (Jan. 25, 2016), https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html.

296 Miriam Zolia Pérez, “The Movement to Stop Prisons from Shackling Women in Labor Builds,” *ColorLines* (Oct. 4, 2011, 9:31 AM), <http://www.colorlines.com/articles/movement-stop-prisons-shackling-women-labor-builds>; *see also* compliance with the Prison Rape Elimination Act SOURCE/LINK?

297 The Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (1994) prohibits discrimination against individuals with disabilities.

298 42 U.S.C. Ch. 1, aiming to “make the prevention of prison rape a top priority in each prison system.”

299 NM Center on Law and Poverty & American Civil Liberties Union of New Mexico, *Inside the Box: The Real Costs of Solitary Confinement in New Mexico’s Prisons and Jails* 12 (2013), <https://www.aclu-nm.org/wp-content/uploads/2010/04/Solitary-Confinement-Report-FINAL.pdf>.

300 Juan Mendez (Special Rapporteur on Torture), *General Recommendations of the Special Rapporteur on Torture*, U.N. Doc. E/CN.4/2003/68, <http://www.ohchr.org/Documents/Issues/SRTorture/recommendations.pdf>.

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- ▶ Promote flexible visitation policies that encourage incarcerated individuals to maintain familial and community relationships;
- ▶ Ensure that video phone calls are treated solely as a supplement to in-person visits, rather than a replacement for them;³⁰¹
- ▶ Place incarcerated people in the least restrictive housing required for their safety and adopt policies in line with the recommendations of the Department of Justice;³⁰²
- ▶ “Understand that to be considered ‘successful,’ a prison must reduce recidivism”,³⁰³
- ▶ Provide prison educational programs that allow individuals to obtain a trade or vocation;³⁰⁴
- ▶ Males should be separated from females in prisons;³⁰⁵
- ▶ Encourage partnerships with local colleges and educational programs to allow incarcerated people to further their education during their incarceration;
- ▶ Re-fund Pell grants for incarcerated people;
- ▶ Strongly discourage the use of detention for immigration matters;
- ▶ Phase out private prisons for immigration detention;
- ▶ Ensure that detained persons have access to appropriate health, hygiene, and mental health services and products;
- ▶ Mandate unannounced visits to prisons, jails, and other detention centers and allow selected civil society groups and United Nations special procedures and representatives to evaluate conditions;³⁰⁶

301 Bernadette Rabuy & Peter Wagner, Prison Policy Initiative, *Screening Out Family Time: The for-profit video visitation industry in prisons and jails* 29 (2015).

302 U.S. Department of Justice, *U.S. Department of Justice Report and Recommendations Concerning the Use of Restrictive Housing* (Jan. 2016), <https://www.justice.gov/dag/file/815551/download>.

303 *Prisons*, Right on Crime, <http://rightoncrime.com/category/priority-issues/prisons> (accessed 7 July 2016).

304 See Ryan, *supra* note 189 at 59.

305 Statement to the Media, *supra* note 76.

306 *General Recommendations of the Special Rapporteur on Torture*, E/CN.4/2003/68, <http://www.ohchr.org/Documents/Issues/SRTorture/recommendations.pdf>.

“Independent non-governmental organizations should be authorized to have full access to all places of detention, including police lockups, pretrial detention centres, security service premises, administrative detention areas, detention units of medical and psychiatric institutions and prisons, with a view to monitoring the treatment of persons and their conditions of detention. When inspection occurs, members of the inspection team should be afforded an opportunity to speak privately with detainees.”

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- ▶ Use “the most powerful incentive—earned time off one’s sentence—should be used to encourage participation in addiction treatment, cognitive behavioral therapy, educational classes, faith-based programs, and other self-betterment activities prescribed in accordance with individualized case plans.”³⁰⁷

The Federal Communications Commission should regulate the voice and video call industries, instituting rate caps on calls, prohibiting the use of either as a replacement for in-person visitation, requiring that calls be charged on a per-minute basis, and developing minimum quality standards for calls.³⁰⁸

Prison officials and the BOP should:

- ▶ Adopt and enforce policies that protect incarcerated people against sexual abuse in prison;
- ▶ Eliminate prison practices that violate incarcerated people’ human rights, including the shackling of incarcerated pregnant women;³⁰⁹
- ▶ “The BOP should implement an actuarial risk and needs assessment tool,³¹⁰ ensuring that the tool is used only to inform treatment, programming, and service-delivery decisions ... develop case plans and deliver programming based on individual risk to reoffend, criminogenic needs, and other personal factors and characteristics that may influence the rehabilitative process ... [and] conduct a system-wide assessment to identify surpluses and shortages in programming³¹¹ capacity at each facility.”³¹²

307 Charles Colson Task Force on Federal Corrections, *supra* note 234.

308 Bernadette Rabuy & Peter Wagner, Prison Policy Initiative, *Screening Out Family Time: The for-profit video visitation industry in prisons and jails* 29 (2015).

309 See Letter from National Advocates for Pregnant Women to Governor Andrew Cuomo, SUPPORT for A.6430-A/S.983-A– *An Act to Amend the Correction Law, in Relation to the Restraint of Pregnant Female Prisoners During Childbirth* (Sept. 25, 2015), http://advocatesforpregnantwomen.org/Letter_Gov_Cuomo_Shackling_NAPW.pdf. Shackling pregnant women is a demeaning practice that puts a woman’s health and pregnancy at grave risk. For example, shackling increases a woman’s risk of falling and renders her unable to break potential falls. It heightens the risk of blood clots, limits the mobility needed for a safe pregnancy and delivery, and interferes with doctors’ ability to care for their patients and provide medical services during emergencies.

310 Nathan James, Congressional Research Service, *Risk and Needs Assessment in the Criminal Justice System* (Oct. 2015), <https://www.fas.org/sfp/crs/misc/R44087.pdf>. “Risk and needs assessment instruments typically consist of a series of items used to collect data on behaviors and attitudes that research indicates are related to the risk of recidivism.... The Risk-Needs-Responsivity (RNR) model has become the dominant paradigm in risk and needs assessment. The risk principle states that high-risk offenders need to be placed in programs that provide more intensive treatment and services while low-risk offenders should receive minimal or even no intervention.”

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- ▶ Comply with human rights standards for prison conditions that respect the culture, gender, hygiene, and sexuality of incarcerated individuals.³¹³

In addition, the [National Council for Incarcerated and Formerly Incarcerated Women](#) has identified several policy initiatives that **Congress** and **state governments** should take:³¹⁴

- ▶ Gender-specific programs informed by incarcerated and formerly incarcerated women and men;
- ▶ Prohibition of the video taping of strip searches;
- ▶ Ongoing and regular training of corrections officers and prison staff;
- ▶ Restoration of G.E.D. and Pell grants.

The **Department of Justice** should:

- ▶ “[I]ssue a clarification through the Frequently Asked Questions section on the Prison Rape Elimination Act (PREA) Resource Center [which] aim[s] to provide assistance to those responsible for state and local adult prisons and jails, juvenile facilities, community corrections, lockups, tribal organizations, and [incarcerated individuals] and their families in their efforts to eliminate sexual abuse in confinement”³¹⁵ website indicating that transgender people must be allowed to specify the gender of the officer they would prefer to be searched by in the event a search is legally justified and necessary.”
- ▶ “[I]ssue a clarification through the Frequently Asked Questions section on the Prison Rape Elimination Act (PREA) Resource Center website indicating that transgender people must be allowed to specify the gender of the officer they prefer to be searched by in the event a search is legally justified and necessary.” The Resource Center provides

311 Programming may include G.E.D. programs and other educational opportunities. This assessment should look to expand available programming to ensure that incarcerated people are able to benefit.

312 Charles Colson Task Force on Federal Corrections, *supra* note 234.

313 *Standard Minimum Rules for the Treatment of Prisoners*, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, <http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf>.

314 These policy recommendations are taken from recommendations by the Council although they are not fully listed on the website.

315 National PREA Resource Center, About, <http://www.prearesourcecenter.org/about>.

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assistance to those responsible for state and local adult prisons and jails, juvenile facilities, community corrections, lockups, tribal organizations, and [incarcerated individuals] and their families in their efforts to eliminate sexual abuse in confinement.³¹⁶

- ▶ Aggressively pursue the enforcement of PREA³¹⁷ in holding cells.³¹⁸

Banning Private Prisons and Excessive Fees

The high levels of incarceration have forced cash-strapped states into unseemly public-private partnerships with perverse incentives. The business of incarceration turns incarcerated people—and the desperation of their friends and family—into profit by cutting costs necessary for the safety of those in and outside the prison; charging families excessive fees to maintain communication with incarcerated individuals; and making sure that prisons stay full regardless of the needs of the community. Private prisons have had a profound effect on the landscape of incarceration.

While studies by the **U.S. Government Accountability Office** and the **U.S. Attorney General, in addition to other private institutions**, have found no evidence that private corrections reduced cost or raised performance quality, they have shown that the cost-cutting measures have resulted in withheld medical care and unqualified and abusive corrections officers that have undermined the safety of incarcerated individuals³¹⁹ and the community.³²⁰ Perhaps even more concerning than the conditions of private prisons is their political investment in increasing incarceration. Beyond even minimum occupancy contracts, private prisons actively invest in policies and legislation that increases prison populations, such as mandatory minimum sentences, three-strikes laws, and truth-in-sentencing.³²¹ Occasionally the relationship between private prison companies and public officials are even more sinister.³²²

The DOJ has taken the first step in reducing the Bureau of Prisons' reliance on private prisons and asked the BOP to “help in beginning the process of reducing—and ultimately ending—our

316 National PREA Resource Center, About, <http://www.prearesourcecenter.org/about>.

317 2 U.S.C. ch. 147 § 15601 et seq.

318 Hanssens, et al., *supra* note 290.

319 Studies have found that assaults in private prisons occur at double the rate found in public facilities. C. R. Blakely and V. W. Bumphus, *Private and Public Sector Prisons—A Comparison of Selected Characteristics*, 68 *Federal Probation*, 27-33 (2004), www.uscourts.gov/uscourts/FederalCourts/PPS/Fedprob/2004-06/prisons.html.

320 S. D. Camp and G. G. Gaes, *Growth and quality of U.S. private prisons: Evidence from a national survey*, Federal Bureau of Prisons, Office of Research and Evaluation (2001), http://www.bop.gov/news/research_projects/published_reports/pub_vs_priv/orepres_note.pdf; B. Lundahl et al., “Prison privatization: A meta-analysis of cost effectiveness and quality of confinement indicators,” *Research on Social Work Practice*, 19, 383-395 (2009).

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use of privately operated prisons.”³²³ This is an important first step, and state and local government should follow suit.

To create safe and appropriate corrections options, **state, federal, and local governments** should:

- ▶ Invest in community-based alternatives to incarceration;
- ▶ Prohibit “pay to stay” policies that allow prisons to charge incarcerated people the cost of room, board, and medical care;³²⁴
- ▶ Transfer the responsibility for public safety from profit-oriented corporations to public entities and prohibit the privatization of prisons;
- ▶ Ensure that video phone calls are treated solely as a supplement to in-person visits, rather than a replacement for them;³²⁵ and
- ▶ Strengthen protection for whistle-blowers to report on inappropriate relationships and corrupt practices between private entities and public officials.

The **Federal Communications Commission (FCC)** should regulate the prison phone industry by continuing to work to lower the rate caps on calls in correctional facilities.³²⁶

321 The Correction Corporation of America states their interest in their 2010 Annual Report: The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction or parole standards and sentencing practices or through the decriminalization of certain activities that are currently proscribed by our criminal laws. 2010 annual report on form 10-K, Corrections Corporation of America, <http://phx.corporateir.net/External.File?item=UGFyZW50SUQ9NDE5MTEwfENoaWxkSUQ9NDMyMjg1fFR5cGU9MQ==&t=1>; see also, Cody Mason, *Too Good to be True: Private Prisons in America*, The Sentencing Project 16 (2012), <http://sentencingproject.org/wp-content/uploads/2016/01/Too-Good-to-be-True-Private-Prisons-in-America.pdf>.

322 One example of the sinister relationship between private prisons and public officials is the Luzerne County (PA) “kids for cash” scandal in which judges were paid millions of dollars to funnel juveniles into new private facilities. See William Ecenbarger, *Kids for Cash* (2012); Cody Mason, *Too Good to be True: Private Prisons in America*, The Sentencing Project 16 (2012), <http://sentencingproject.org/wp-content/uploads/2016/01/Too-Good-to-be-True-Private-Prisons-in-America.pdf>.

323 Sally Q. Yates, Memorandum for the Acting Director, Federal Bureau of Prisons (August 18, 2016), <http://apps.washingtonpost.com/g/documents/national/justice-department-memo-announcing-announcing-the-end-of-its-use-of-private-prisons/2127/>.

324 American Civil Liberties Union, *In for a Penny: The Rise of America's New Debtors' Prisons* (2010), <https://www.aclu.org/report/penny-rise-americas-new-debtors-prisons>.

325 Bernadette Rabuy & Peter Wagner, Prison Policy Initiative, *Screening Out Family Time: The For-Profit Video Visitation Industry In Prisons And Jails*: 29 (2015).

326 Prison Phone Justice, <https://www.prisonphonejustice.org/>; see also Jon Brodtkin, “In Blow to Inmates’ Families, Court Halts New Prison Phone Rate Caps,” *ARS Technica* (Mar. 6, 2016), <http://arstechnica.com/tech-policy/2016/03/in-blow-to-inmates-families-court-halts-new-prison-phone-rate-caps/>.

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For more information on prison conditions, check out:

Human Rights Watch, which investigates human rights violations domestically and internationally, including abuses in the criminal justice in the United States and a **legacy of investigating U.S. prison conditions**.

United Nations Standard Minimum Rules for the Treatment of Prisoners, which provides the basic minimal guidelines for ensuring that the human rights of incarcerated individuals are respected during the course of their detention.