



**Senate Committee on Public Safety
Honorable Loni Hancock, Chair**

**Assembly Committee on Public Safety
Honorable Tom Ammiano, Chair**

Informational Hearing

Segregation Policies in California Prisons: Current Conditions and Implications on Prison Management and Human Rights

Wednesday, October 9, 2013

1 p.m. – 3:30 p.m.

State Capitol, John L. Burton Hearing Room (4203)

Sacramento, California 95814

CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

Segregation Policies in California Prisons: Current Conditions and Implications on Prison Management and Human Rights

AGENDA

- I. *Welcome and Introductory Remarks*** (10 minutes)
 - Assembly Member Tom Ammiano, Chair, Assembly Committee on Public Safety
 - Senator Loni Hancock, Chair, Senate Committee on Public Safety
 - Other Members of the Legislature

- II. *Segregated Housing in California's Prisons Today: A Foundational Overview Describing the Physical and Programming Conditions of Segregated Confinement*** (20 minutes)
 - Robert A. Barton, Inspector General
 - Michael Stainer, Director, Division of Adult Institutions
 - Kelly Harrington, Deputy Director, Division of Adult Institutions

- III. *The Policy and Practice of Segregated Housing in Prisons: The National Dialogue of Scrutiny, Analysis and Reform*** (60 minutes)
 - Margaret Winter, Associate Director of the National Prison Project for the American Civil Liberties Union
 - Keramet Reiter, Assistant Professor, University of California, Irvine

- IV. *Observations and Aftermaths: The Personal Experience, Effect and Lasting Impact of Segregated Confinement in California Prisons*** (30 minutes)
 - Steven Czifra, University of California, Berkeley, student formerly incarcerated in CDCR SHU; Phoenix Scholars Project of Berkeley
 - Dolores Canales, family member of current Pelican Bay SHU inmate; Advisory Board Member of Californians United for a Responsible Budget
 - Dorsey Nunn, Executive Director of Legal Services for Prisoners with Children; Member of All of Us or None

- V. *Concluding Remarks; Next Steps*** (5 minutes)
 - Assembly Member Tom Ammiano, Chair, Assembly Committee on Public Safety
 - Senator Loni Hancock, Chair, Senate Committee on Public Safety

- VI. *Public Comment*** (25 minutes)

BACKGROUND MATERIALS

Physical and Programming Conditions of Segregated Confinement

A
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CLOSE ME







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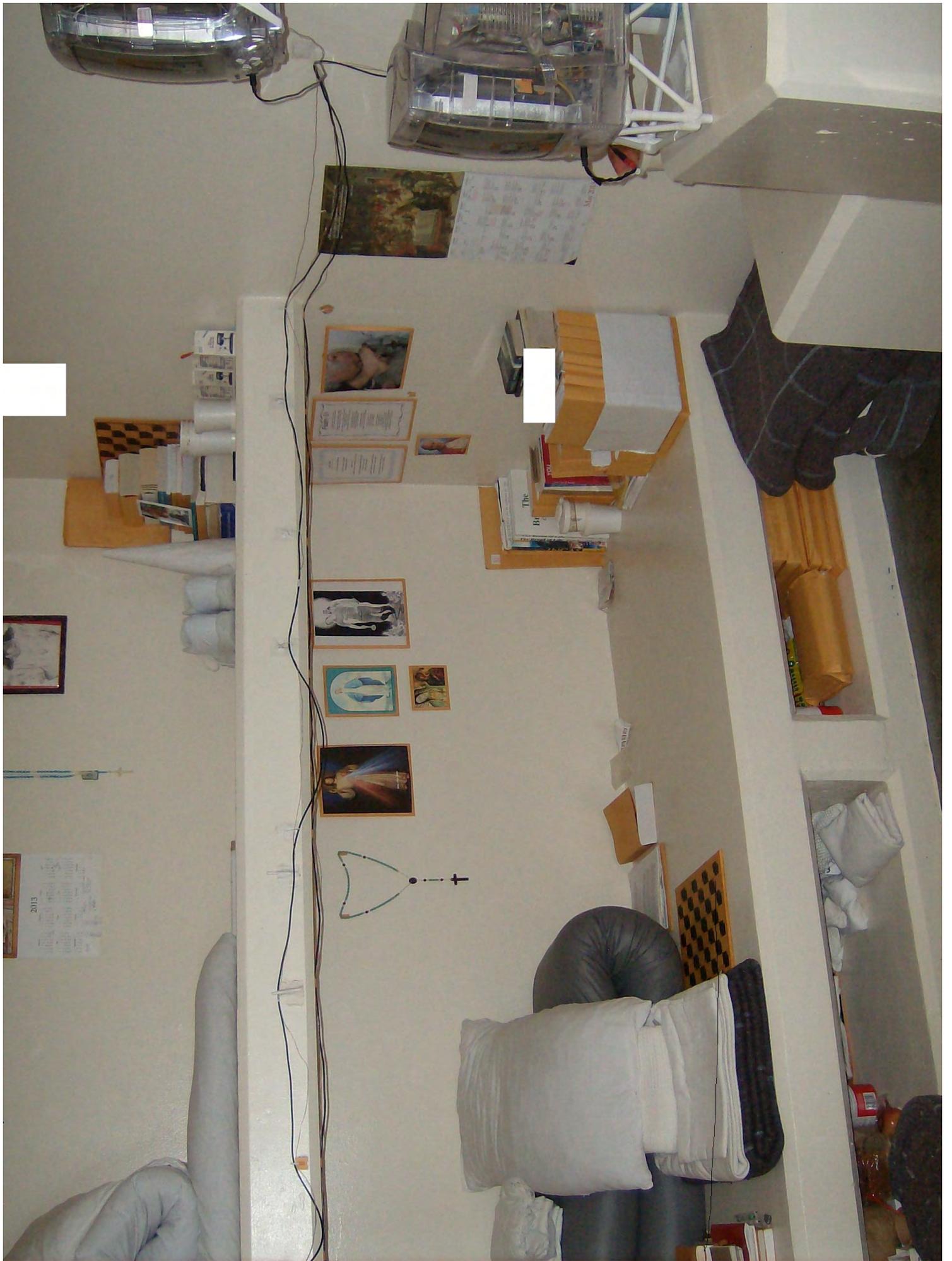




DANGER
DO NOT WALK
WITH SHOES

103



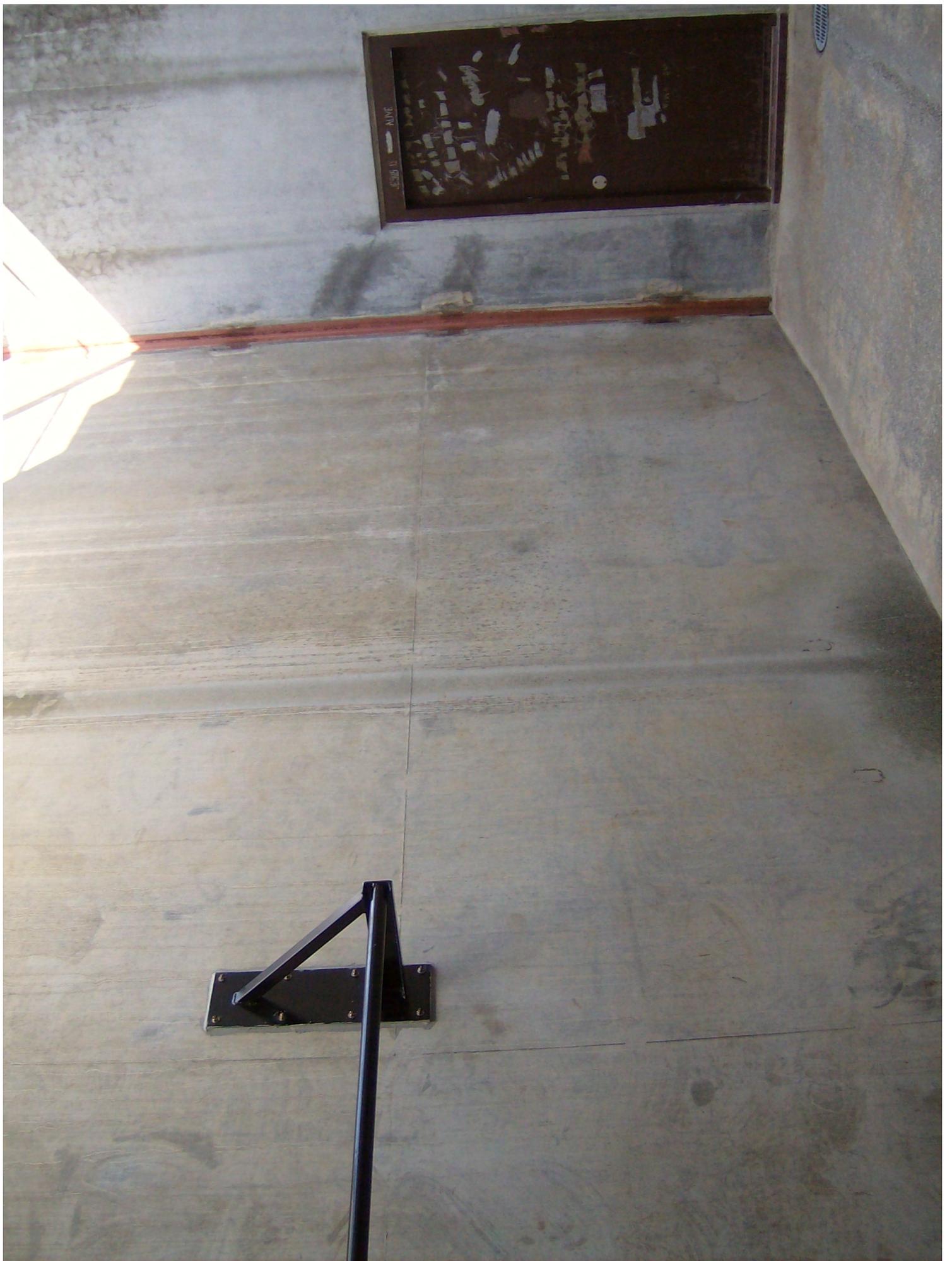














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October 2013

(916) 445-4950

Security Housing Units

The California Department of Corrections and Rehabilitation (CDCR) manages approximately 2,200 gang members and associates and 1,400 violent offenders in Security Housing Units (SHU). The SHU is specifically designed to house offenders whose conduct endangers the safety of others or the security of the prison. There is no "solitary confinement" in California prisons and the SHU is not "solitary confinement." The SHU is not designed nor intended as punishment for misbehavior.

Pursuant to state law, an inmate can earn his way into the SHU by committing a serious or violent offense while in prison. This includes murder, attempted murder, drug trafficking, arson and extortion. An inmate found guilty of specified offenses serves a determinate term in the SHU; the maximum term is 60 months.

An inmate validated as a security threat group (prison gang, street gang, disruptive group) member or associate can be assessed an indeterminate term in the SHU. However, security threat group associates – the majority of inmates housed in SHUs – are no longer placed in a SHU based solely upon their validation to a security threat group (STG) unless there is a nexus to confirmed gang activity.

SHU inmates are housed at California Correctional Institution in Tehachapi, California State Prison-Corcoran, California State Prison-Sacramento and Pelican Bay State Prison in Crescent City.

The conditions of confinement in CDCR facilities, including the SHU, have been reviewed and monitored by external agencies for decades, including the Office of the Inspector General, federal courts and monitors in class action lawsuits including *Madrid, Coleman, Plata, Armstrong, Clark, Perez, etc.*), and members of the California legislature.

Eight California state prisons including two prisons with a SHU are accredited by the American Correctional Association, the recognized expert in establishing measurable standards in prison management and the oldest, most respected and largest international correctional association in the world.

Approximately 2,900 inmates in CDCR are validated STG members and associates. Gangs are connected to major criminal activity in our communities and influence gangs in other prison systems and communities throughout the U.S.

Nearly 21 percent of inmates serving an indeterminate SHU term are validated STG members who maintain a high level of influence over subservient street gangs and other individuals incarcerated within the prison population and represent a significant threat to the safety of others and institution security. The remaining 79 percent are validated STG associates, who under the direction of gang members assist in carrying out illicit, disruptive, violent and/or criminal activities in the operations of these criminal organizations.

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October 2013

(707) 465-9040

Pelican Bay State Prison

Inmate Population (as of Sept. 30, 2013)

Total: 2,715
General Population: 983
SHU: 1,179
Psychiatric Services Unit: 115
Enhanced Outpatient Unit: 34
Administrative Segregation Unit: 244
Minimum Support Facility: 127
Firehouse: 7
Infirmary: 9

Staffing

Custody: 954
Non-custody: 480 (includes health care)

Operating budget for FY 2013/2014

\$158,820,252 (does not include medical)

Quick Facts About the Pelican Bay SHU

- The pods in the SHU at Pelican Bay are exposed to natural light through large skylights.
- The temperature in the SHU is electronically controlled. The indoor SHU temperature is monitored and recorded every three hours.
- SHU inmates exercise in the yard 90 minutes per day seven days a week.
- The yard provides fresh air through an open roof.
- Inmates in the SHU eat the same food all inmates eat based on their dietary needs and preferences.
- SHU inmates can visit with their friends and family every weekend, just like all inmates.
- SHU inmates routinely visit with their attorneys in confidential settings during the week.
- SHU inmates visit the law library, which is open five days a week.
- SHU inmates get mail, publications and packages.
- SHU inmates have access to educational programs. The Voluntary Education Program includes adult basic education, general education development and college correspondence courses.
- SHU inmates can earn Associate of Arts or Bachelor of Arts degrees.
- Assessments, mid-term tests and final exams are administered in the visiting areas of the SHU and proctored by credentialed teachers.
- All SHU inmates have access to books in the SHU library.
- Nearly all SHU inmates have personal radios and televisions in their cells. They have 23 cable channels including ESPN.
- SHU inmates communicate with one another frequently and talk to each other. Many have cell mates.
- All SHU inmates, like all state prison inmates, have access to medical and mental health services.

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For informational Purposes
October 2013

(559) 992-6104

California State Prison-Corcoran

Inmate Population (as of Sept. 26, 2013)

Total: 4,386
General Population: 558
Sensitive Needs Yards: 1,785
Facility 4A SHU: 613
Facility 4B SHU: 645
Administrative Segregation Unit: 383
Minimum Support Facility: 319
Firehouse: 6
Acute Care Hospital: 76

Staffing

Custody: 1,225
Non-custody: 342
Health care: 436

Operating budget for FY 2013/2014

\$192,154,652 (does not include medical, educational or community resources)

Quick Facts About the CSP-Corcoran SHU

- The cells in the SHU at CSP-Corcoran have windows.
- The temperature in the SHU is electronically controlled and monitored by staff.
- SHU inmates exercise in walk-alone yards seven days a week. Cell partners exercise together.
- Inmates in the SHU eat the same food all inmates eat based on their dietary needs and preferences.
- SHU inmates can visit with their friends and family every weekend, just like all inmates.
- SHU inmates routinely visit with their attorneys in confidential settings during the week.
- SHU inmates visit the law library, which is open five days a week.
- SHU inmates get mail, publications and packages.
- SHU inmates have access to educational programs. The prison's Visions Adult School provides adult basic education, general education development and college correspondence courses.
- SHU inmates can earn Associate of Arts or Bachelor of Arts degrees.
- Assessments, mid-term tests and final exams are administered in the visiting areas of the SHU and proctored by credentialed teachers.
- All SHU inmates have access to books from the law library.
- Nearly all SHU inmates have personal radios and televisions in their cells. They have digital antennas that allow them to receive seven channels in addition to the 14 channels the prison provides.
- SHU inmates communicate with one another frequently and talk to each other. Many have cell mates.
- All SHU inmates, like all state prison inmates, have access to medical and mental health services.

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Institutions shall not instruct vendors to stop shipment of packages unless authorized by the Deputy Director, DAI. Upon receiving authorization from the Deputy Director, DAI, the institution shall be responsible for notification of the inmate population. The inmates shall be responsible for notification of family or other correspondents.

Packages shall not be returned based solely on the existence of a lockdown.

54030.7.2 Service Charge

The amount charged an inmate for a self-purchased personal property package order shall include normal taxes and a ten percent service charge. Service charges shall be deposited in the inmate welfare fund. This service charge is exclusive of such costs as state sales tax, freight, and handling. Personal property packages sent from third parties via approved vendor shall not be subject to any service charge.

54030.8 Personal Property Package Criteria

Items of personal property may be purchased from approved vendors by third parties of the inmate or purchased directly by the inmate. Authorized items, appliances, or food may be acquired by utilization of this package procedure consistent with the APPS in Section 54030.17. The determining factor in the number of packages an inmate may receive per year is the privilege group in which the inmate is placed in accordance with the work/training program.

Inmates may obtain approved appliances and/or musical instruments from approved vendors by having them ordered by correspondents or using the funds in their inmate trust account. A limit of two appliances applies to all inmates based upon the following definition, with the exception of female hair care appliances as described in Section 54030.10.6

Note: For purposes of this Article, an appliance is defined as:

- 1) Any electrical appliance, (excluding prescribed medical appliances and battery rechargers) that relies on institution/facility power resources to operate (all electrical appliances are subject to the two appliance limit).
- 2) Any audio/visual entertainment appliances, such as radios, televisions, cassette/disk players, etc. (all audio/visual appliances are subject to the two-appliance limit, regardless of electric or battery operated power source.)
- 3) Battery operated, non-entertainment appliances that do not rely on institution/facility power resources (battery operated, non-entertainment appliances are not subject to the two-appliance limit).

Items shall be shipped to the inmate's respective institution/facility by the approved vendor in a factory sealed container.

It is the responsibility of the inmate and/or the third party to ensure that packages are ordered in advance to ensure adequate delivery time.

The year shall begin January 1 and end on December 31. The quarters are:

- 1st - January 1 through March 31.
- 2nd - April 1 through June 30.
- 3rd - July 1 through September 30.
- 4th - October 1 through December 31.

Privilege Group A/Privilege Group B

Inmates in Privilege Group A & B shall be allowed four packages per year (one per quarter) not to exceed 30 pounds each.

Privilege Group C

Inmates in Privilege Group C shall not be allowed a Personal Property Package. Inmates prohibited from receiving a package resulting from recent placement into Privilege Group C shall not be allowed to retain a package which was ordered prior to Privilege Group C placement. Disallowed packages shall be disposed of pursuant to Section 54030.12.2.

Privilege Group D

Inmates in Privilege Group D, including those inmates housed in ASU/Security Housing Unit (SHU) and Psychiatric Services Unit (PSU) shall be permitted to acquire one personal property package per year not to exceed 30 pounds each. Eligibility to acquire a personal property package commences one year after the date of Privilege Group D assignment.

Inmates in SHU/PSU may also purchase an entertainment appliance via the Special Purchase Process. Eligibility to acquire an entertainment appliance commences one year after the date of Privilege Group D assignment.

Inmates prohibited from receiving a package as a result of ASU placement shall be allowed to retain the package in their stored personal property if the package was ordered prior to ASU placement and the inmate was otherwise qualified to receive it.

Privilege Group U

Inmates in Privilege Group U shall not be allowed a Personal Property Package.

Note: The local Inter-Disciplinary Treatment Team (IDTT) may further restrict or allow additional authorized personal property on a case-by-case basis above that allowed by the inmate's assigned Privilege Group.

54030.9 Personal Property Package Vendor Approval

Vendors for Personal Property Packages, except those vendors approved locally for special religious foods as provided for in Section 54030.7.1, must receive Department approval prior to providing services to institutions/facilities.

The Deputy Director, DAI, has the authority to establish vendor approval guidelines for Personal Property Packages and to add or remove vendors from the approved list.

Vendors must submit a completed vendor application package to the Deputy Director, DAI. Requests for approval must include all additional materials and catalogs of items provided with prices. The vendor name and contact information will be provided to the institutions/facilities upon approval.

It is the intent of the Department to ensure Inmate Package Program catalog items are priced competitively with common retailers in major markets.

The CDCR reserves the right to withdraw any vendor approval subject to 30 calendar day's written notice to the vendor. However, any agreement can be immediately terminated for cause. The term "for cause" shall mean that the vendor fails to meet the terms, conditions, and/or responsibilities of an agreement. In this instance, the agreement termination shall be effective as of the date indicated on the State's notification to the vendor.

54030.9.1 Personal Property Package Vendor Criteria

Vendors submitting requests for Department approval shall meet the following minimum requirements:

1. All merchandise offered for sale by the vendor is subject to price comparison. Price comparison shall be conducted by the CDCR during initial vendor approval and throughout the length of any agreement or contract based upon advertised catalog prices.

Vendor prices will be compared with non-sale prices on an identical product for product basis at major retailers in the following major California markets:

- Fresno
- Los Angeles
- Sacramento
- San Diego

A resulting median price for the specific product will be identified. The vendor's advertised catalog price shall not exceed the median price by more than ten percent.

If identical items are not located during the initial price comparison in the major California markets identified above, the CDCR may extend the price comparison to include other states, if necessary.

If identical items are not located during an extended price comparison, similar items may be relied on as determined by the CDCR. The basis for any price comparison shall be the sole discretion of the CDCR.

The vendor will be notified if the prices of merchandise are in excess of the ten percent limit. If prices are determined by the CDCR to be excessive, the vendor will be requested to reduce prices within the acceptable price range as determined by the CDCR or remove the item from inmate availability. Inability or unwillingness of or by the vendor to comply with a CDCR price reduction/removal request within 30 calendar days of notification shall be cause for termination of any agreement or contract and shall result in disapproval of the vendor to provide services.

2. Vendor shall maintain insurance with Commercial General Liability with Warehouse Legal Liability for a minimum of \$1,000,000 per occurrence.
3. Vendor shall possess a valid California city or county business license (if applicable) or if a corporation located within the State of California, incorporation documents or letter from the Secretary of State or if not a California business, an affidavit that business is in good standing with the state, province, or country in which business is headquartered.
4. Vendor must provide a self-certified Inventory Report showing a minimum of \$250,000 worth (advertised retail value) of merchandise on premises (subject to physical verification by the CDCR).
5. All merchandise purchased by a single order must be packaged in one single container. Multiple boxes are not permitted.
6. Must provide copies of CDCR approved catalogs and order forms, free of charge, to institutions/facilities. Catalog must indicate prices for all

- items and expiration dates of prices. Prices advertised in catalogs must have a guaranteed minimum term of 12 months.
7. Upon vendor approval, all catalogs, order forms, and web sites must prominently display the following disclaimer:
The California Department of Corrections and Rehabilitation (CDCR) has approved this independent vendor to sell merchandise to inmates and the public. CDCR's brief review and approval of this vendor was strictly limited to minimum security requirements and general business intent. The CDCR is not affiliated with this vendor and does not guarantee that the vendor will fulfill any obligations, perform as expected, nor permanently remain in business, nor does the CDCR guarantee the vendor's products in any way. Any purchases from this vendor are at the buyer's sole risk. The CDCR assumes no liability whatsoever for such purchases, nor any aspect thereof. Any issues or disputes regarding the vendor's products are the sole responsibility of the buyer and/or the vendor, and the CDCR is not obligated to mediate or resolve any such disputes.
 8. CDCR approved catalog must only present items authorized for purchase by CDCR inmates based upon Privilege Group.
 9. Catalog must identify items allowable by Privilege Group as identified in Section 54030.17.
 10. Vendor must require customer to select a Privilege Group prior to completion of a purchase. The selection of a Privilege Group shall act to restrict the purchase of merchandise not allowed by the selected Privilege Group. Refer to the APPS located in Section 54030.17 for more information.
 11. Items listed in catalogs must regularly be in stock. Catalogs and order forms shall clearly indicate that back orders or substitutions shall not be permitted. In the event that an item is out of stock, a refund will be issued to the purchaser.
 12. Two copies of the purchase receipt or shipping invoice shall be included in each package and a copy shall be forwarded to the purchaser if purchased by a non-inmate. (*E-mail confirmation is acceptable for orders placed over the Internet.*)
 13. Maximum allowable package weight is 30 pounds. This weight limit includes merchandise, packing material, and packaging (tare weight). Packages in excess of 30 pounds shall not be accepted and returned at the vendor's expense.
 14. The catalogs and web sites must include the shipping weight of each individual item and a method of calculating the total gross weight of the inmate package as customers are limited to a gross weight of 30 pounds or less.
 15. Maximum allowable package dimensions are 24" x 24" x 24".
 16. All catalogs and web sites must clearly inform customer of the 30 pound weight limit.
 17. All packages must be labeled either Privilege Group A/B or Privilege Group D based upon the contents of the package. Privilege Group D packages may only contain items authorized for Privilege Group D.
 18. The vendor's return policy must be clearly stated in catalogs and on web sites. The CDCR shall not be a party in any dispute between the vendor or the purchaser.
 19. The vendor is responsible to correct any errors in package contents. When an incorrect item is received in a vendor package, CDCR staff shall verify and may contact the vendor to request a United Parcel Service call tag in order to ship the incorrect item back to the vendor. This does not preclude individual facilities from alternative methods of resolution.
 20. Must restrict knowledge of identities of both package recipients and purchasers from staff responsible for assembling packages.
 21. Vendor staff responsible for receiving orders, assigning purchase order numbers, and/or secure numerical identifiers shall not be allowed to assemble packages.
 22. Vendors must conduct pre-employment urinalysis testing on all employees and provide evidence of such on demand.
 23. Vendors must provide names and identification information of all staff on demand. Current state driver's licenses are accepted as valid identification.
 24. Vendors employing staff possessing felony convictions less than 10 years old shall be disqualified. Vendors employing staff possessing drug-related arrests or convictions less than 5 years old shall be disqualified.
 25. Vendors must be willing to submit to, and cooperate with, frequent CDCR inspections without notice.
 26. Vendors' receiving, packaging, and shipping areas must be monitored by a Closed Circuit Television System. Video tapes or other medium providing a record of activities in packaging and shipping areas must be maintained for a minimum of 30 days. All videos must provide a date and time stamp and the ability to identify vendor staff.
 27. Vendors must employ the security measures described in Section 54030.9.2.
 28. Packages must be sealed with tamper resistant tape.
 29. Approval and use of vendors must result in no expense to the CDCR.
 30. Vendors must be capable of supplying packages within no more than 10 days after purchase. Occasional delays in shipments are understood and will not be reason for disapproval of a vendor.
 31. Institution personnel shall maintain a verified copy of the shipping invoice in order to assist in the resolution of any disputes between the vendor and the purchaser. However, all order disputes are solely between the purchaser and the vendor and must be settled without additional involvement of the CDCR.
- 54030.9.2 Shipping Security**
- Prior to each shipment of packages, the vendor shall provide the receiving institution a shipping manifest containing inmate names, CDC numbers, and a list of secure numerical identifiers (confidential purchase order numbers) that corresponds to each package shipped. The shipping manifest shall be sent to the institution via e-mail or facsimile (FAX) as determined by the institution. Under no circumstances shall the shipping manifest accompany the shipment of packages.
- Packages shall display only the secure numerical identifier. Neither the inmate's name, CDC number, shipping manifest containing secure numerical identifiers, nor any other inmate identifying information may be shipped with a package. Standard shipping labels may be used, but shall only provide the vendors return address, the institution's address, and the secure numeric identifier. The numeric identifier and inmate's Privilege Group shall be clearly displayed on each package to facilitate comparison with the shipping manifest.
- 54030.10 Property Classifications/Restrictions**
- The following subsection gives direction on the control, possession, recording, and disposition of inmate property.
- 54030.10.1 Food and Hygiene**
- Inmates may possess food and personal care/hygiene items in their quarters/living area consistent with their privilege group unless otherwise prohibited by departmental policy as outlined in CCR Section 3190(a). The maximum amount of food and personal care/hygiene items an inmate may possess shall not exceed the amount which can be purchased through the canteen by the inmate in one month, as required by CCR Section 3094 and as described in CCR Section 3190(e). Inmates shall be required to maintain their purchase receipt to verify purchases until such items are expended. Possession of canteen items (personal hygiene and other miscellaneous items), except for consumable food items, shall be consistent with the six cubic foot limitation.
- Inmates shall be permitted to temporarily exceed the six cubic foot volume limit by the amount of the current month's purchase of consumable food items verifiable by the current month's canteen receipt. By the following month's canteen draw, the inmate is expected to be within established volume limits.
- In the event the inmate does not comply with these provisions for consumable food items (canteen in excess of the one month standard as described in CCR Section 3094 or exceeds the temporary excess allowed for consumable food items or is not able to produce a receipt for items) as described above, the inmate will be required to dispose of property of his/her choice pursuant to Section 54030.12.2 to become compliant with the volume limitation policy.
- 54030.10.2 Legal Materials**
- Inmates may possess legal materials/documents and/or books in their quarters/living area consistent with the six cubic foot limitations, except as otherwise set forth in this Section. In addition to the six cubic feet limitation of authorized property as set forth in this Article, inmates may possess up to one cubic foot of legal materials/documents related to their active cases in their assigned quarters/living area. Inmates may request that the institution/facility security store excess legal materials/documents related to their active case(s) when such materials/documents exceed this one cubic foot additional allowance. Only that material in excess of the additional one

cubic foot shall be stored. *Note:* An active case may be defined as any legal action, cause, suit, writ, etc. that an inmate is currently involved in writing or responding to.

A suitable area as designated by the Warden shall be reserved for the storage of excess legal material. A log record of material(s) stored showing inmate's name, number, date of storage, and the materials receipt and removal shall be required.

The material shall be placed in a box and sealed at the time of storage with the initials of the inmate and staff member involved. When the material is removed, the inmate shall acknowledge its removal by signing the log record.

Upon an inmate's request, staff shall schedule appointments for the inmates to have access to their stored materials. Inmates shall have access to their stored legal material one time per week, if they have an active case.

Inmates assigned to ASU/SHU/PSU shall provide the necessary identifying information for staff to access stored legal material. The inmate is responsible for organizing stored legal material in a manner that allows staff to identify a specific box for exchange.

Legal books shall not be stored by the institution/facility. Inmates who require access to the excess active case legal materials/documents from secured storage may exchange such documents for active case materials/documents in their quarters/living area upon written request to the property coordinator or designee on a box-for-box basis while adhering to the limitations set forth in this Section. Legal materials/documents and books that do not pertain to the inmate's active case(s) and are in excess of the allowable property limitation shall be disposed of pursuant to Section 54030.12.2.

54030.10.3 Correspondence Course Materials

Inmates may possess correspondence course materials, including textbooks, in their quarters/living area as approved by the Supervisor of Correctional Education Programs (SCEP) or designee and designated custody staff consistent within the six cubic feet limitation. Correspondence courses requiring tools, construction kits, or other materials that may pose a threat to the institution's security or the safety of persons shall not be allowed. The SCEP or designee shall provide the inmate with a CDC Form 128B, General-Chrono, indicating approval of the course and materials supplied. The inmate must display this chrono conspicuously in their quarters/living area.

54030.10.4 Inmate Handicraft

Inmates who participate in handicraft programs may possess in their quarters/living area, handicraft articles, and written and artistic material produced or created by that inmate, consistent with departmental regulations and within the six cubic feet limitation. Facilities may designate additional storage for handicraft articles and materials based upon availability of space. Excess handicraft items, articles, or materials in an inmate's possession shall be confiscated and disposed of in accordance with Section 54030.12.2.

Inmate donation of handicraft items, articles, tools, and materials to the institution is subject to provisions of Section 101050.14. Such articles shall be controlled by the handicraft manager, become the property of the State, and shall be utilized in the same manner as other State owned tools and materials.

54030.10.5 Education Materials

In addition to the six cubic feet limitation of authorized property as set forth in this Article, inmates who are assigned to institution Academic or Vocational Educational Programs shall be allowed to possess State provided textbooks/materials necessary to complete their education requirements in their quarters/living area. Inmates must sign a CDC Form 193, Trust Account Withdrawal, for replacement costs prior to being issued the material. Inmates shall have posted in their cell a CDC 128-B signed by the appropriate instructor indicating the inmate is authorized to possess the listed texts and/or materials. Any course textbooks furnished by the State shall be returned to the Education Department at the end of the course or upon the inmate's transfer or parole. State supplies not returned in serviceable condition will result in the Trust Account Withdrawal form being submitted for the replacement value. The Supervisor of Correctional Education Programs shall be responsible for determination of the replacement value of educational supplies.

54030.10.6 Appliances / Musical Instruments

Privilege Groups A and B

Inmates assigned to Privilege Group A or B may possess up to two appliances, with the exception of female hair care appliances, as indicated in Section 54030.8.

Based upon inmate grooming standards as described in CCR Section 3062(f) female inmates may possess up to three appliances when one of the appliances is a hair care appliance.

Note: In order to facilitate female hair care needs, female institutions shall maintain a hairdryer in each housing unit for inmate use.

One musical instrument with case may be substituted as one of the two appliances in their quarters/living area consistent with the six cubic foot limitations. When an inmate assigned to Privilege Group A or B is placed in Administrative Segregation, any appliances and/or musical instrument shall be inventoried and stored pending the outcome of ASU placement. If the inmate is released back to the general population and maintains their Privilege Group A or B status, the appliance(s) and/or musical instrument shall be returned to the inmate. If the inmate receives a SHU/PSU term, the inmate shall be required to dispose of the appliance(s) and/or musical instrument in accordance with Section 54030.12.2.

Note: Inmates housed at conservation camps shall not possess personal television sets.

Privilege Groups C and U

Inmates assigned to Privilege Group C or U may not possess any appliances (i.e., television, radio, CD player, etc.) or musical instruments, nor may they purchase any electrical entertainment or battery-operated type of appliances.

When an inmate is placed on Privilege Group C via a classification committee action, the inmate shall be required to dispose of any appliance(s) and/or musical instrument in accordance with Section 54030.12.2.

Privilege Group D (ASU/SHU/PSU)

Inmates assigned to ASU may not possess any appliances or musical instruments.

Inmates assigned to SHU/PSU may possess and/or acquire through the inmate personal property package process or Special Purchase process, one entertainment appliance as outlined above and as identified in Section 54030.17. Eligibility to receive an entertainment appliance commences one year after date of Privilege Group D assignment. Inmates assigned to Privilege Group D may not possess a musical instrument.

54030.10.6.1 Additional Appliance/Musical Instrument Requirements

Appliances may be AC plug-in or may use an AC/DC adapter. Battery operated non-entertainment appliances shall not be counted against the two-appliance limit. Inmates may purchase and use rechargeable batteries with a recharger unit. Recharger units and AC/DC adapters are considered appliance accessories and shall not be counted as a separate appliance. Inmates shall not possess or use a remote control device. Entertainment appliances with internal mechanisms for recording, downloading, or transmitting shall not be allowed. All appliances, including entertainment appliances, shall be portable models. Entertainment appliances with antennas shall be built in. Entertainment appliances shall have earphones or earplugs that shall be worn on the head or in the ear when the appliance is in use within the housing units.

All appliances shall have the inmate's name and number engraved on the back and be sealed by staff. Staff shall make the necessary entries on the inmate's CDC Form 160-B before releasing the property to the inmate. Any inmate who breaks or tampers with the seal may be subject to disciplinary action and confiscation of the item. Inmates that are found guilty of breaking or tampering with the seals of any personal appliance may have the appliance confiscated and disposed of in accordance with Section 54030.12.2.

Inmates ordering new or replacement appliances shall be required to purchase clear-case appliances. Non-clear case appliances shall be eliminated through attrition.

Musical instruments and case combined dimensions shall not exceed 46" x 24" x 12".

54030.10.6.2 Repair of Appliances

In the event of a malfunctioning appliance, the inmate shall be responsible for returning the unit to R&R for shipment to an authorized repair vendor or institution vocational repair shop, if available. The inmate shall have a minimum of \$50 on their trust account for estimates only. If the unit costs more to repair, the inmate shall be contacted regarding the cost. The inmate must forward the necessary funds to the vendor prior to repair.

Inmates are prohibited from keeping inoperable appliances in their possession. Appliances that cannot be repaired or for which the inmate has insufficient funds for repair shall be disposed of per Section 54030.12.2.

54030.10.7 Clear Technology

Inmates shall be restricted to only clear personal care/hygiene items encased in clear containers or tubing based upon availability. An exemption from using clear personal care/hygiene items encased in clear containers or tubing

shall only be authorized by the institution's health care manager or chief medical officer and only when an exemption is deemed medically necessary by a physician. Such exemption shall not exceed one year. If the condition persists, another exemption request shall be submitted by the inmate.

Inmates ordering new or replacement appliances shall be required to purchase clear case appliances. Inmates currently possessing non-clear case appliances shall be allowed to keep those appliances until they are no longer functioning. Non-functioning, non-clear case appliances are considered contraband and shall be disposed of according to Section 54030.12.2.

54030.10.8 Personal Clothing

Inmates shall not be permitted any personal clothing items other than those listed in the APPS Section 54030.17. No advertising, letters, or pictures depicting or reasonably associated with alcohol, gangs, profanity, sex, nudity, weapons, drugs, or drug paraphernalia shall be authorized.

54030.10.9 Religious Items

Personal religious items may be authorized as described in, but not limited to, Section 101660. Inmates may possess authorized religious items consistent within the six cubic feet limitation.

Religious items are subject to approval by designated custody staff and the institutional chaplain. Custody staff shall consult institutional chaplains and spiritual leaders whenever possible when considering the disapproval of religious items.

Procedures

Institutional chaplains shall be responsible for approving all inmate requests for spiritual items. Spiritual packages must be received from an approved, recognized vendor and must be received in one of the following ways:

Purchased by a third party from an approved vendor.

Purchased by the inmate from an approved vendor.

Items arriving via family or friends, or items shipped from other than approved, recognized vendors, shall be disposed of in accordance with Section 54030.12.2.

54030.10.10 Membership Cards

Inmates shall not possess any membership cards, identification cards, or service-type cards other than those issued by the Department.

54030.10.11 Contraband

Anything not permitted or in excess of the maximum quantity permitted or no longer functioning as designed or that have been modified or tampered with or which is received or obtained from an unauthorized source is contraband. Possession of contraband may result in disciplinary action and confiscation of the contraband (CCR 3006).

The inmate shall be given a written notice for any item(s) of personal and authorized State-issued property that is removed from their quarters during an inspection/search and the disposition made of such property. The notice shall also list any contraband or any breach of security noted during the inspection/search.

54030.11 Health Care Appliances

Approval for an inmate to permanently or temporarily possess or retain a health care appliance requires a clinical prescription for the appliance and shall be documented on a CDC Form 128C Medical, Psych, Dental, Chrono.

Inmates shall be allowed to retain possession of a prescribed health care appliance until a health care evaluation is performed providing that safety and security of the institution/facility will not be compromised. Health care appliances are not subject to the six cubic foot volume limitation nor count towards the two-appliance limit as described in Section 54030.8.

Approved health care appliances include durable medical equipment, assistive devices, adaptive equipment, prosthetic or orthotic appliances, or equipment or medical support equipment, which include, but are not limited to:

Eyeglasses.

Prosthetic Eyes.

Dental prosthesis.

Prosthetic limbs.

Orthopedic braces or shoes.

Hearing aids.

Wheelchairs.

Canes.

54030.11.1 Disallowance of Health Care Appliances

Following review and/or inspection of the appliance should custody supervisor determine that a significant safety or security concern appears to

exist, the institution Health Care Manager, Chief Medical Officer, Chief Physician and Surgeon, or Chief Dentist, Correctional Health Services Administrator, or Physician on Call, or Medical Officer of the Day shall be consulted immediately to determine actions required to safely accommodate the affected inmate-patient's needs. Accommodation appropriate to the safety and security of the institution may include, but should not be considered limited to:

Modification of the appliance. If this alternative is chosen, equivalent, effective, alternative accommodation must be provided the inmate/patient while the original appliance is being modified.

Replacement of the appliance with an acceptable one. If this alternative is chosen, equivalent, effective, alternative accommodation must be provided the inmate/patient while the alternate appliance is being procured.

Special housing. If this alternative is chosen, and housing in a medical bed is required because of nursing care needs that would not be necessary if the inmate/patient could be allowed an effective appliance, the inmate/patient must be seen as being housed solely on the basis of a disability.

Expedited transfer to a designated institution.

Substitution of non-medical personal services for an appliance (where Inmate Assistant programs have been established) or expedited transfer to an institution where such programs exist.

54030.12 Property Issuance

When issuing items of property to an inmate, whether originating from a special purchase or an inmate package, issuing staff are required, at a minimum, to visually observe and physically hand each item of registerable and non-registerable property to the inmate. Staff shall not be responsible for conducting an inventory of non-registerable property during the issuance process.

At the completion of the issuance process, the inmate shall verify that the property is correct as compared with the shipping invoice contained inside the package by signing the staff copy of the shipping invoice. If a discrepancy is identified, the inmate is responsible for showing the discrepancy to staff who shall note the discrepancy on the staff copy of the invoice. One copy of the invoice is retained by the institution/facility for a minimum of one year and one copy of the invoice is provided to the inmate. While resolution of discrepancies is strictly between the purchaser and the vendor, the copy of the invoice maintained by institutional staff shall serve as verification of any discrepancy claims.

54030.12.1 Property Registration

Personal property items, which are not consumable and that possess enough intrinsic value to be a significant target for theft or bartering, are considered registerable property. Registerable personal property is identified in Section 54030.17.

When designated items are identified as registerable, such items must be registered under the inmate's name and number on the CDC Form 160-II, Inmate Property Control Card. Staff shall include the purchase date and purchase price, and attach a copy of the purchase receipt to the CDC Form 160-II, if available.

It is the responsibility of the inmate to account for all registerable property listed on the CDC Form 160-II. Staff shall document property inmates cannot account for on appropriate forms (CDC 128 A, CDC 115).

The inmate, in writing, shall report all registerable property that is lost, stolen, or worn-out to R&R personnel as soon as the loss or unusable wear is discovered. A description of the item(s) and the circumstances surrounding the loss shall be included in the report.

54030.12.2 Processing Disapproved Property

Unauthorized inmate personal property, including that which is altered, exceeds volume limitations, or is beyond repair, shall be disposed of in accordance with the provisions of this Section. The institution shall not store unauthorized inmate property except as provided for inmates placed in ASU as provided for in Section 54030.13.2.

Inmates shall sign the CDC Form 1083 indicating their choice of disposition and agreement to the method for disposing of their property. If the inmate makes no selection or has insufficient funds, staff shall document that fact and determine the method of disposition. Unauthorized personal property shall be disposed of as follows:

Mail the item to an address provided by the inmate via United States Postal Service (USPS) or common carrier at the inmate's expense. This option is not available for inmates with insufficient funds in their trust account.

Return the item to the sender via USPS or common carrier at the inmate's expense. This option is not available for inmates with insufficient funds in their trust account.

54030.20

HIGH SECURITY AND TRANSITIONAL HOUSING

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54030.20.1

GRANTED EXEMPTION REQUESTS

California Correctional Institution

No Exemptions

California State Prison, Sacramento

All Dormitory Facilities

- Fans, televisions, and musical instruments are restricted from all dormitory housing.

Gymnasium Dormitory Facilities

- AC appliances are restricted from gymnasium dormitories.

ASU and PSU

- Shower shoes and slippers are restricted from ASU and PSU.

Corcoran State Prison

Dormitory Facilities

- Fans, televisions, and musical instruments are restricted from all dormitory housing.

High Desert State Prison

Level IV Facilities

- Disposable razors and manual typewriters are restricted from all Level IV housing.

Kern Valley State Prison

No Exemptions

Pelican Bay State Prison

All Facilities

- Personal toothbrushes are excluded from all facilities, state-issue only.

Level I and Gym Facilities

- AC appliances are restricted from Level I and Gym housing.

Level II Facilities

- Hand held mirrors, nail clippers, disposable razors, ballpoint pens, pencil sharpeners, and fans are restricted from Level II facilities.

Level IV Facilities

- Hand held mirrors, nail clippers, ballpoint pens, and fans are restricted from Level IV facilities.

Salinas Valley State Prison

No Exemptions.

NOTE: Institutions listed in this matrix are administered by the mission-based region High Security and Transitional Housing. Individual facilities with Security Levels outside the scope of this region are subject to property requirements of the mission-based matrix most closely associated with the facility Security Level, unless an exemption has been granted.

"YES"=NO LIMIT ON PRODUCTS. HOWEVER, TOTAL MUST REMAIN WITHIN SIX CUBIC FEET.

54030.20.2

PERSONAL CLOTHING FOR HIGH SECURITY AND TRANSITIONAL HOUSING MALE INMATES

- INMATES ARE ONLY PERMITTED ITEMS OF PERSONAL CLOTHING LISTED IN THIS SCHEDULE UNLESS AUTHORIZED FOR MEDICAL REASONS.
- INMATES ARE PERMITTED TO WEAR SOLID COLORS ONLY UNLESS OTHERWISE INDICATED.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING PERSONAL CLOTHING ITEMS IN ANY SHADE OR TINT OF GREEN, BLACK, BROWN, TAN, RED, OR BLUE UNLESS OTHERWISE INDICATED.
- INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING PERSONAL CLOTHING WITH HOODS, PICTURES, DECORATIVE ZIPPERS, INSIDE POCKETS, OR ZIPPED POCKETS.
- ALL INMATES ARE PROHIBITED FROM POSSESSING, USING, OR WEARING ITEMS WHICH ARE OBSCENE OR WHICH HAVE LOGOS, LETTERING, PICTURES WHICH ADVERTISE OR DEPICT ALCOHOL, GANGS, PROFANITY, SEX, WEAPONS, DRUGS, OR DRUG PARAPHERNALIA.
- MALE INMATES SHALL NOT RECEIVE OR POSSESS ITEMS OF CLOTHING DESIGNED AND MANUFACTURED SPECIFICALLY FOR WOMEN UNLESS AUTHORIZED FOR MEDICAL REASONS.

Item Description With additional requirements and restrictions.	General Population			SHU	ASU
	PRIVILEGE GROUP			PRIVILEGE GROUP	
	A	B	C	D	
ATHLETIC SHORTS (White or light gray only, no logos or printing).	2	2	2	0	0
ATHLETIC SUPPORTER	2	2	2	0	0
BRIEFS (White only).	10	10	10	0	0
GLOVES (Cold weather gloves upon approval of Warden, no zippers, pockets, or metal).	1	1	1	0	0
HATS and CAPS <ul style="list-style-type: none"> • BASEBALL (White or light gray only, no black). • WATCH CAPS (No black). • Additional hats consistent with these regulations may be allowed by local institution discretion. (No stripes, designs, or logos, neutral colors only).	3	3	3	0	0
HEAD BAND (Terry cloth, plain, white, or gray).	2	2	2	0	0
RAIN COAT/PONCHO (Transparent only).	1	1	1	0	0
SHOWER SHOES (Foam or soft rubber, single layer, thong type construction, not exceeding 1" in thickness).	1 pair	1 pair	1 pair	1 pair	1 pair
SLIPPERS / HOUSESHOES (No leather or leather-like materials).	1 pair	1 pair	1 pair	0	0
SOCKS (White only. Any combination of short to knee-high).	7	7	7	0	0
SWEAT SHIRT (Light grey, white, or off-white only).	2	2	2	0	0
SWEAT PANTS (Light grey, white, or off-white only).	2	2	2	0	0
TENNIS SHOES (No shades of red or blue. Low, mid, or high tops are permitted. Must be predominantly white in color. No K-Swiss, Bugle Boys, Joy Walkers, Pumps, Gels, British Knights, or Airlifts. Shoe laces white only. Not to exceed \$75.00. No hidden compartments, zippers, or laces that are covered or concealed. No metal components including eyelets).	1 pair	1 pair	1 pair	0	0
UNDERWEAR, THERMAL OR LONG (Grey, white, or off-white only. One pair consists of top and bottom or solid one piece).	2 sets	2 sets	2 sets	1 set	1 set
UNDER SHIRTS/T-SHIRTS (Solid colors only, exclusive of colors noted above. Any combination of crew neck, v-neck, or sleeveless athletic tank-top).	5	5	5	0	0
WALKING SHOES (Beige, Brown, or White only).	0	0	0	0	0
WAVE CAPS (White or grey only).	2	2	2	0	0

54030.20.3

PERSONAL CARE / HYGIENE FOR HIGH SECURITY AND TRANSITIONAL HOUSING MALE INMATES

- NO ALCOHOL-BASED PRODUCTS AND NO AEROSOL CONTAINERS ALLOWED.
- NO METAL CONTAINERS.
- PRODUCTS CONTAINING PHOSPHATES ARE NOT ALLOWED.
- DISPOSABLE RAZORS ARE RESTRICTED FROM ALL LEVEL IV, 180 DESIGN PROGRAM YARDS AND HOUSING.
- INSTITUTIONS MAY REQUIRE DISPOSABLE RAZORS TO MEET SAFETY TAMPER PROOF SPECIFICATIONS.

Item Description With additional requirements and restrictions.	General Population			SHU	ASU
	PRIVILEGE GROUP			PRIVILEGE GROUP	
	A	B	C	D	
BODY POWDERS (Baby powder, foot powder, etc.).	2	2	2	0	0
COMB (Non-metal, maximum of 6" in length, no handle).	1	1	1	0	0
COSMETIC/SHAVING BAG (Not to exceed 6" x 6" x 8").	1	1	1	0	0
COTTON SWABS	100	100	100	0	0
DENTAL ADHESIVE (For approved denture wearers only).	2	2	2	2	2
DENTAL FLOSSERS/GLIDERS (No more than 3" in length, amount allowed in possession to be determined by local institutional procedure).	YES	YES	YES	YES	YES
DENTURE CLEANSER	2 boxes	2 boxes	2 boxes	1 box	1 box
DEPILATORYS (Hair removers, Magic Shave, etc.).	2	2	2	0	0
DEODORANT/ANTIPERSPIRANT (Stick or roll-on, deodorant must be clear and in clear container only).	4	4	4	2	2
HAIR CONDITIONER	2	2	2	0	0
HAIR OIL / GREASE	2	2	2	0	0
INSECT REPELLANT (Must contain N,N-diethyl-m-toluamide (DEET) as main active ingredient).	2	2	2	0	0
LAUNDRY DETERGENT (Powder or liquid).	1	1	1	0	0
LIP BALM (No pigmentation added).	2	2	2	0	0
LOTIONS (Includes sun-block and baby oil). Baby Oil is restricted from Level IV housing.	2	2	2	0	0
MEDICATIONS, OVER-THE-COUNTER (Only those OTC medications permitted by the Division of Correctional Health Care Services shall be stocked by institution canteens, OTC medications are not approved for inmate packages).	YES	YES	YES	YES	YES
MIRROR (Maximum of 6" diameter).	1	1	1	0	0
MOUTHWASH (Non-alcohol only).	2	2	2	0	0
NAIL CLIPPER (Maximum of 2" length, no file blade).	1	1	1	0	0
PALM BRUSH/COMB (No handle, plastic only).	1	1	1	1	1
PETROLEUM JELLY (Restricted from level IV design housing).	2	2	2	0	0
RAZOR, DISPOSABLE (Not permitted in Level IV 180 design housing).	10	10	10	0	0
SHAMPOO	2	2	2	1	1
SHAVING CREAM (Non-aerosol).	2	2	2	1	0
SOAP, BAR	6	6	6	2	2
SOAP DISH (Non-metal)	1	1	1	0	0
SOAP, LIQUID	2	2	2	0	0
TOOTHBRUSH (Subject to local determination of maximum length, local facility is required to shorten if necessary, to meet local requirements).	2	2	2	1	1
TOOTHBRUSH HOLDER (Plastic only, may only cover head of toothbrush).	1	1	1	0	0
TOOTHPASTE / POWDER (Toothpaste must be clear and in clear container).	3	3	3	2	2
WASHCLOTHS (White only).	3	3	3	0	0

54030.20.4

FOOD FOR HIGH SECURITY AND TRANSITIONAL HOUSING MALE INMATES

- NO GLASS CONTAINERS.
- CANNED ITEMS AND METAL CONTAINERS ARE RESTRICTED FROM SECURITY LEVEL IV, ASU, AND SHU.
- NO PRODUCTS REQUIRING REFRIGERATION ARE PERMITTED.
- NO FOIL PACKAGED ITEMS PERMITTED.
- FOODS MEETING SPECIFIC RECOGNIZED RELIGIOUS DIETARY REQUIREMENTS MAY BE ORDERED FROM A LOCALLY APPROVED RELIGIOUS SPECIALTY VENDOR. RELIGIOUS SPECIALTY FOODS MUST MEET REQUIREMENTS OF THE APPS
- THE APPS IS NOT INTENDED TO REFLECT ITEMS INTENDED FOR IMMEDIATE CONSUMPTION, SUCH AS ICE CREAM.

Item Description With additional requirements and restrictions.	General Population			SHU	ASU
	PRIVILEGE GROUP			PRIVILEGE GROUP	
	A	B	C	D	
BEVERAGES (Soda, water, etc. No fruit juice containing sugar. Canned soda in aluminum cans is permissible for all Security Levels. Privilege Group D is restricted from plastic bottles and aluminum cans).	YES	YES	YES	YES	YES
CANDY (Shall not contain alcohol or liqueurs, hard candy shall be sugar free only).	YES	YES	YES	1 pound limit	1 pound limit
CANNED GOODS (Canteen only. Not approved for inmate packages. Restricted from Level IV, ASU, and SHU). NOTE: for canned soda, refer to BEVERAGES.	YES	YES	YES	0	0
CEREALS (Dry, single serving packets only)	YES	YES	YES	YES	YES
CHEESE (Non-acrosol).	YES	YES	YES	YES	0
CHIPS	YES	YES	YES	YES	YES
COCOA (Sugar free).	YES	YES	YES	YES	YES
COOKIES	YES	YES	YES	YES	YES
COFFEE (Instant only).	YES	YES	YES	YES	YES
CONDIMENTS (Hot sauce, mustard, etc., are permissible. Items containing sugar such as ketchup, jams, jellies, honey, syrup, juices, and sugar are restricted from personal possession).	YES	YES	YES	0	0
CRACKERS	YES	YES	YES	YES	YES
CREAMER (Powdered only).	YES	YES	YES	0	0
DRY MIX DRINKS (Non-flammable, sugar-free only).	YES	YES	YES	YES	YES
MEATS, DRY (Salami, jerky, sausages, etc.).	YES	YES	YES	YES	YES
FOODS, VACUUM PACKED (Tuna, sardines, vegetables, etc.).	YES	YES	YES	0	0
MISCELLANEOUS SNACK ITEMS (Snack cakes, bars, pies, etc., are permissible. Dried fruit is not permitted).	YES	YES	YES	YES	YES
NUTS (No shells).	YES	YES	YES	YES	YES
PROTEIN SUPPLEMENTS (Solid tablet or capsule form only. No bulk powdered products).	YES	YES	YES	Medical Rx. Only	Medical Rx. Only
SOUPS (Styrofoam containers are restricted from ASU and SHU).	YES	YES	YES	YES	YES
ARTIFICIAL SWEETENER	YES	YES	YES	YES	YES
TEA (Bags and instant).	YES	YES	YES	YES	YES
VITAMIN / MINERAL SUPPLEMENTS (Solid tablet or capsule form. No bulk powdered products).	YES	YES	YES	YES	YES

54030.20.5

MISCELLANEOUS ITEMS FOR HIGH SECURITY AND TRANSITIONAL HOUSING MALE INMATES

Item Description With additional requirements and restrictions.	General Population			SHU	ASU
	PRIVILEGE GROUP			PRIVILEGE GROUP	
	A	B	C	D	
ADDRESS BOOK (Paperback only, 3" x 5" maximum).	1	1	1	1	1
AUDIO CASSETTES (Professionally pre-recorded only).	10	10	0	0	0
BALLPOINT PENS (Non-metal, clear plastic only, flexible pens or pen fillers may be required for ASU/SHU by local facility procedure).	4	4	1	1	1
BATTERY RECHARGER (Does not count as an electrical appliance).	1	1	0	0	0
BATTERIES	8	8	0	0	0
BOOKS, MAGAZINES, AND NEWSPAPERS (Paperback or hardback with cover removed only. Limits do not apply to legal materials).	10	10	5	5	5
BOWL (Plastic, maximum of 8" in diameter).	2	2	1	0	0
CALENDAR (12" x 12" maximum dimensions, no metal).	1	1	1	0	0
CLOCK (Non-electric, no alarm).	1	1	0	0	0
COAXIAL CABLE (Based on local facility determination, maximum 6' in length).	1	1	0	0	0
COMPACT DISCS (Factory pre-recorded only, sets including DVDs shall not be permitted).	10	10	0	0	0
CORRESPONDENCE COURSE (Does not impact the limit on books, must be within the established 6-cubic feet limit of allowable property).	1	1	1	YES	YES
ENVELOPES, BLANK AND/OR PRE-STAMPED	40	40	40	40	40
ENVELOPES, METERED (Indigent inmates only).	5	5	5	5	5
EXTENSION CORD (Maximum length of 6', UL approved only, must adhere to requirements established in California Electric Code Section 400.8, three prong outlet only, upon local facility discretion).	1	1	0	0	0
GREETING CARDS	10	10	5	5	5
HANDKERCHIEFS (White or light gray only).	5	5	2	0	0
INSTRUMENT STRINGS, SPARE (As determined by local institutional procedures).	1	1	0	0	0
LEGAL MATERIAL (Books, pamphlets, and other legal reference).	YES	YES	YES	YES	YES
LEGAL PADS / TABLETS AND NOTEBOOKS (No spiral bound).	4	4	2	1	1
PENCILS, DRAWING (Colored), OR WRITING (Non-mechanical only).	20	20	20	0	0
PENCIL SHARPENER (Non-electric, hand held only, no metal cover, maximum 2" length). Use in Level IV facilities subject to approval of Warden.	1	1	1	0	0
PHOTOS / PORTRAITS (Maximum of 8" x 10").	YES	YES	YES	15	15
PHOTO ALBUMS (Maximum of 9" x 12").	4	4	4	0	0
PLASTIC TUMBLER (16 ounce or less).	2	2	2	0	0
READING GLASSES – NON PRESCRIPTION (Magnifying glasses).	1	1	1	1	1
RELIGIOUS ITEMS (As approved by the local religious review committees, i.e., kufi caps, yamikas, prayer rugs, etc.).	YES	YES	YES	YES	YES
SPLITTER (For use with Television).	1	1	0	0	0
STAMPS (U.S. Postal only).	40	40	40	40	40
STATIONERY (For written correspondence, may be decorated and have matching envelopes).	500 sheets	500 sheets	500 sheets	15 sheets	15 sheets
SUN GLASSES – NON-PRESCRIPTION (No steel frames, non-mirrored, no red or blue lenses. Purchase value not to exceed \$50.00, excludes prescription sun glasses).	1	1	1	0	0
STORAGE CONTAINER (As permitted by local institutional authority, may include clear storage containers, foot lockers, denture holders, etc.).	YES	YES	YES	0	0
WALLET (Plain brown or black, no engravings).	1	1	1	0	0

54030.20.6

GAMES FOR HIGH SECURITY AND TRANSITIONAL HOUSING MALE INMATES

Item Description With additional requirements and restrictions.	General Population			SHU	ASU
	PRIVILEGE GROUP			PRIVILEGE GROUP	
	A	B	C	D	
CARDS (No role playing).	1	1	0	0	0
CHECKERS	1	1	0	0	0
CHESS	1	1	0	0	0
DOMINOS	1	1	0	0	0

54030.20.7

REGISTERABLE PROPERTY FOR HIGH SECURITY AND TRANSITIONAL HOUSING MALE INMATES

- A MAXIMUM OF THREE ELECTRICAL APPLIANCES OF ANY TYPE ARE ALLOWED PER MALE INMATE.
- BATTERY OPERATED, NON-ENTERTAINMENT APPLIANCES SHALL NOT COUNT TOWARDS THE APPLIANCE LIMIT.
- APPLIANCES WITH INTERNAL MECHANISMS FOR RECORDING OR TRANSMITTING CAPABILITY SHALL NOT BE ALLOWED. VENDOR OR MANUFACTURER ALTERATIONS THAT DISABLE AN APPLIANCE'S CAPABILITY TO RECORD OR TRANSMIT SHALL NOT BE ALLOWED. COMPACT DISC AND CASSETTE TAPE PLAYERS ARE RESTRICTED TO ORIGINAL MANUFACTURER PLAY CAPABILITY ONLY.
- APPLIANCES SHALL BE PORTABLE MODELS, AND HAVE AN INTERNAL ANTENNA. NO REEL-TO-REEL OR SPOOL TYPE PLAYERS.
- ENTERTAINMENT APPLIANCES SHALL HAVE EARPHONES/EARPLUGS, WHICH SHALL BE WORN, ON HEAD OR IN EAR WHEN APPLIANCE IS IN USE. EARPHONES/EARPLUGS MAY BE PURCHASED AND POSSESSED WHEN INMATE HAS TV, OR AUDIO DEVICE AS PERSONAL PROPERTY.
- THE POSSESSION OF ACCESSORIES FOR APPLIANCES AND MUSICAL INSTRUMENTS SUCH AS RIBBONS AND DAISY WHEELS FOR TYPEWRITERS IS AUTOMATICALLY IMPLIED. INSTITUTIONS MAY LIMIT ACCESSORIES BASED UPON SAFETY/SECURITY CONCERNS.
- MANUAL TYPEWRITERS ARE RESTRICTED FROM LEVEL IV, 180 DESIGN PROGRAM YARDS AND HOUSING.

NOTE: CERTAIN INMATE HOUSING CONFIGURATIONS MAY JUSTIFY THE PRECLUSION OF THE POSSESSION AND USE OF SPECIFIC APPLIANCES. WARDENS MUST REQUEST APPROVAL FOR AN EXEMPTION FROM THE DEPUTY DIRECTOR, DAI

54030.20.7.1

REGISTERABLE APPLIANCES FOR HIGH SECURITY AND TRANSITIONAL HOUSING MALE INMATES

Item Description With additional requirements and restrictions	General Population			SHU	ASU
	PRIVILEGE GROUP			PRIVILEGE GROUP	
	A	B	C	D	
AUDIO ENTERTAINMENT APPLIANCE (PG A and B, AM/FM radio/CD/cassette tape player or any combination allowed. AC power or battery operated. Must have earphone jack and headphones. Clear Case only. No detachable speakers. Outside measurements not to exceed 3" x 6" x 6". PG D, AM/FM radio only, AC power only, with earphone jack and earphones/earbuds. Possession by PG D precludes any other entertainment appliance. Purchase value not to exceed \$150).	1	1	0	1	1
FAN (AC power or battery operated, plastic blade and cage. Not to exceed 9", not to exceed \$25).	1	1	0	0	0
HAIR/TRIMMER (AC power, battery operated, or rechargeable, includes attachments and combs. Spare blades may not be kept in possession of inmate).	1	1	0	0	0
HOT POT (UL approved, maximum 350 watts, 40 oz liquid capacity. Clear, non-removable base from body, temperature sensitive thermal fuse, allowable based upon local facility determination). <i>NOTE: If this item is used in an assault or in a manner that constitutes a safety/security threat, the inmate shall permanently lose the privilege of possession of this item.</i>	1	1	0	0	0
LAMP (Not to exceed 3 pounds or 12" extended length. Not to exceed 30 watts. Not to exceed \$25. Flexible neck only. AC power or battery operated).	1	1	0	0	0
RAZOR, ELECTRIC (AC power or battery operated, purchase value not to exceed \$50).	1	1	0	0	0

54030.20.7.1 (Continued)

REGISTERABLE APPLIANCES FOR HIGH SECURITY AND TRANSITIONAL HOUSING MALE INMATES

Item Description With additional requirements and restrictions.	General Population			SHU	ASU
	PRIVILEGE GROUP			PRIVILEGE GROUP	
	A	B	C	D	
TELEVISION SET (PG A and B, AC power or battery operated, portable models only). Must have jack and earphones or headphones. Outside cabinet clear case only and not to exceed 16" x 15" x 20" deep. Screen not to exceed 13" measured diagonally. PG D, AC power only, with earphone jack and earphones/earbuds. Possession by PG D precludes any other entertainment appliance. (Purchase value not to exceed \$300. NO REMOTE CONTROL DEVICES).	1	1	0	1	1
TYPEWRITER, ELECTRIC AC power or battery operated, portable only. Not to exceed 24" x 18" x 12". No removable memory storage device, disks, tapes, chips (CPUs). Temporary internal memory up to one-line for correction purposes is permissible. Memory must automatically clear when device is turned off. No capability to transfer information. Existing memory typewriters may be retained with owner's manual until no longer operational. (Purchase value not to exceed \$200).	1	1	0	0	0

54030.20.7.2

OTHER REGISTERABLE ITEMS FOR HIGH SECURITY AND TRANSITIONAL HOUSING MALE INMATES

Item Description With additional requirements and restrictions.	General Population			SHU	ASU
	PRIVILEGE GROUP			PRIVILEGE GROUP	
	A	B	C	D	
CALCULATOR Hand held battery or solar battery operated. No games, clock, or alarm. No removable memory storage device, disks, tapes, chips (CPUs). No capability to transfer information. (Purchase value not to exceed \$25)	1	1	0	0	0
HANDICRAFT (Requires institutional approval).	YES	YES	0	0	0
HEADPHONES (Not to exceed \$25).	1	1	0	1	0
HEALTH CARE APPLIANCE (Dr. Rx. Only).	YES	YES	YES	YES	YES
MUSICAL INSTRUMENT (As determined by local institutional procedures. Combined instrument and case dimensions shall not exceed 46" x 24" x 12". New purchases of keyboards are no longer permitted in male facilities, existing keyboards are permitted).	1	1	0	0	0
RELIGIOUS MEDAL AND CHAIN (Not to exceed \$100, chain not to exceed 18" in length, obtainable as a set only, chains may not be purchased separately from medal).	1	1	1	0	0
RING (Wedding band, one only, yellow or white metal only. Not to exceed \$100, maximum declared value, and may not contain a set or stone).	1	1	1	1	1
TYPEWRITER, MANUAL (Restricted from Level IV 180 design housing. Portable only. Not to exceed 24" x 18" x 12". No removable memory storage device, disks, tapes, chips (CPUs). No capability to transfer information.) (Purchase value not to exceed \$200).	1	1	0	0	0
WATCH Wrist or pocket style. No sets or stones. No memory storage device, disks, tapes, or CPUs. No alarm, calculator, radio, TV, game, or communication capabilities. No capacity to transfer information. (Purchase value not to exceed \$50).	1	1	0	0	0

- Medical or mental health case factors.
- Integrated Housing Code.

Staff will continue to ensure current housing policies regarding special category inmates such as *Coleman, Plata, Madrid, Armstrong, and Clark*, covered under specific litigation, remain in place during the housing process. Staff will also ensure those inmates in need of effective communication will be provided appropriate accommodation during the process.

Additionally, the screening authority shall review prior in-cell behavior towards cell partners. Verification an inmate is or has been predatory towards a cell partner, has a history of in-cell sexual abuse, is or has been assaultive towards a cell partner, has been the victim of in-cell physical or sexual abuse, or demonstrates any significant in-cell violence against a cell partner, shall require the inmate be referred to a Unit Classification Committee (UCC) and/or an Institution Classification Committee (ICC) for single-cell status consideration.

The screening authority shall document the placement concerns which require single-cell assignment on the CDCR Form 1882, and shall also document his or her signature, printed name, and title on the form. If the information is derived from the inmate interview, the screening authority shall document the interview information on a CDC Form 128-B, General Chrono, and reference it as supporting documentation by date on the CDCR Form 1882. If single-cell status is recommended by a screening authority at the level of Correctional Sergeant, an approving authority at the level of Correctional Lieutenant or above will document their approval, or disapproval, on the CDCR Form 1882.

54046.5.1 Initial Screening--Administrative Segregation Unit/Security Housing Unit

Upon placement in an ASU or SHU, inmates shall be screened for an appropriate cell assignment. The segregation authority shall be a designated staff member at the level of Correctional Lieutenant or above. The segregation authority shall review the C-file and other available information, interview the inmate, and shall be responsible for ensuring the completion of CDC Form 114A-1, Inmate Segregation Profile.

Based on the available information, including an interview with the inmate, the segregation authority shall determine if the inmate is suitable for single/double-cell housing.

Verification an ASU or SHU inmate is or has been predatory towards a cell partner, has a history of in-cell sexual abuse, is or has been assaultive towards a cell partner, has been the victim of in-cell physical or sexual abuse, demonstrates any significant in-cell violence against a cell partner, or has a history of propensity for victimization, shall require the inmate be single celled pending administrative review and subsequent ICC review and approval.

The segregation authority shall document placement concerns which require single-cell assignment on the CDC Form 114A-1. If the information is based on the inmate interview, then the segregation authority shall document the interview information on a CDC Form 128-B, and reference it as supporting documentation by the date on the CDC Form 114A-1. In cases where the segregation authority temporarily approves an inmate for double-cell assignment pending Administrative Review, the decision shall be based upon an evaluation of the inmate's case factors through review of the C-file or completed CDC Form 114A-1, consideration of reasons for ASU placement, and the interview with the inmate. The segregation authority shall complete a CDCR Form 1882-B, Administrative Segregation Unit/Security Housing Unit Double-Cell Review, and sign the CDC Form 114A-1, Inmate Segregation Profile, in the Special Information section, in the Double Cell/Pending Administrative Review box.

During the first workday following an inmate's placement in ASU, the Administrative Reviewer shall review the screening authority's cell determination and confirm or amend the screening authority's temporary cell assignment.

The Administrative Reviewer decision shall be based on:

- Interview with the inmate.
- Review of the C-file and/or completed CDC Form 114A-1.
- Circumstance of ASU/SHU placement.
- Any medical issues and/or mental health clinical staff input.

The Administrative Reviewer shall note the decision for double cell or single cell assignment on the CDC Form 114-A, Inmate Segregation Record, in the Daily Activity section, CDC Form 114A-1, and the CDC Form 114-D, Order for Placement/Retention ASU. The case shall be referred to ICC to review the inmate's long-term housing assignment.

ICC shall review the inmate's housing and safety concerns. ICC shall determine if the inmate is compatible with the other inmate assigned to the cell, if double celled. If the inmate is the only inmate assigned to the cell, ICC shall evaluate if the inmate is cleared for double-cell occupancy, or designate the inmate as being on single-cell status.

If ICC confirms single cell assignment, an "S" suffix shall be applied to the inmate's custody designation. This information shall be documented as a committee action on the CDC Form 128-G, Classification Chrono, entered in the Distributed Data Processing System (DDPS), and noted on the CDC Forms 114A, 114A-1, and 262, Custody Classification Assigned. Additionally, at each subsequent ASU/SHU review, ICC shall determine the suitability for double/single-cell occupancy.

54046.6 Documentation

The decision regarding inmate housing and determination of suitability for dormitory or celled housing, eligibility for double housing, or designation of single-cell status, shall be documented as follows:

- CDCR Form 1882
- CDCR Form 1882-B.
- In the Evaluation section of the Institutional Staff Recommendation Summary for Reception Center inmates.
- On the CDC Form 128-G during the following actions:
 - Initial Review.
 - Annual Review.
 - Housing Review (including reasons for segregation).
 - Referral to the Classification Staff Representative.
 - Referral to the Departmental Review Board.

The designation of an "S" suffix shall be documented and affixed to the inmate's custody on the following documents and data

- CDC Form 262.
- Distributed Data Processing System.
- CDC Form 128-G.
- CDC Form 1882.
- Graphic Arts Form (GA) 154, Inmate Transfer/Inmate Housing Assignment Change.
- Double-Cell Prohibition Software (DCPS).

The DCPS shall be used as an additional resource to reduce the possibility of housing single-cell status inmates with another inmate. The DCPS enables the Control Room Sergeant to enter an "S" suffix in the DDPS when the Approving Authority designates an inmate as requiring single-cell housing pending UCC/ICC review, correct single-cell designation data entry errors prior to UCC/ICC actions, and run reports of inmates with an "S" suffix. The four menu options are:

- Conflict Message Report—This report identifies any housing conflicts that currently exist with inmates who are designated as single cell.
- Single-Cell Inmate Report—This report identifies inmates designated as single cell within an institution.
- Single-Cell Update—This option allows the Control Room Sergeant to add an "S" suffix to the Custody Suffix Field of the DDPS for inmates designated by the Approving Authority as requiring single-cell status.
- Single Error Correction—This option allows the Control Room Sergeant to correct errors.

Upon the determination of the Approving Authority, at the level of Lieutenant or above, there is a need for an inmate to be placed on single-cell status, the need for an "S" suffix shall be noted on the GA Form 154 and submitted to the Control Room staff for housing of the inmate. Control Room staff shall enter the single-cell status designation into the DDPS via the DCPS located under the "Reports for the Control Room" menu.

Prior to the actual housing of an inmate, a "Conflict Message Report" shall be run to ensure the assigned housing does not create a conflict with the inmate's single-cell housing requirement or the single-cell housing requirement of another inmate.

If an inmate has been incorrectly identified as single-cell status prior to a UCC/ICC action, the Control Room Sergeant can correct/remove the "S" suffix. In cases where the error has been identified after a UCC/ICC action, the Control Room Sergeant does not have the authority to remove/correct the "S" suffix. In these cases, a subsequent UCC/ICC action shall be required to remove/correct the "S" suffix.

To reduce the possibility of housing single-cell status inmates with another inmate or non-designated single-cell housing status inmate, staff shall review

the housing status of all inmates being processed for a bed cell move via the DDPS prior to authorization.

54046.7 Double-Cell Assignments in General Population

Unless approved for single-cell assignment, inmates are expected to share occupancy of living quarters, either in a dormitory setting or within an individual cell. The day of arrival at an institution, facility, or a reception center, a CDCR Form 1882 shall be completed, and if the screening authority determines there are no double-cell prohibitions, the inmate shall be expected to double cell. If the inmate refuses to double cell, progressive discipline shall be initiated, and the inmate will be considered for alternative and more restrictive housing.

54046.7.1 Double-Cell Assignments in ASU or SHU

In an ASU or SHU, determining double-cell assignment shall be based upon an evaluation of the involved inmate's case factors through a review of the C-file, the reason for ASU or SHU placement, and an interview with the affected inmate(s). In these cases, the segregation authority shall complete a CDCR Form 1882-B, and sign the CDC Form 114A-1, Special Information section, in the Double-Cell/Pending Administrative Review box. The segregation authority shall note the decision for single or double-cell assignment on the CDC Form 114-A, Daily Activity section, and CDC Form 114A-1. The case shall be referred to ICC to review the inmate's long-term housing assignment.

Unless approved for single-cell assignment, an inmate in ASU or SHU is expected to share a cell with another inmate. The process for assigning more than one inmate to the same cell in ASU and/or SHU shall be initiated by a staff recommendation or per request by the inmate candidate. The documentation of the process shall be recorded on the CDCR Form 1882-B.

Approval of double-cell assignments shall be based upon a review of the C-file, an interview with each inmate candidate, consideration of each inmate's signature affirming compatibility, and an evaluation of security concerns. Each inmate candidate who agrees to the assignment is expected to sign the CDCR Form 1882-B to indicate compatibility prior to double celling the inmates. If an inmate refuses to sign the agreement, then this shall also be documented in the designated section of the CDCR Form 1882-B.

A staff member at the level of Correctional Officer, CC-1, or above shall complete parts 1 and 2 of the CDCR Form 1882-B by identifying the initiator of the request, interviewing each inmate candidate, and having the inmate candidates sign the form to indicate their placement in the same cell is a compatible assignment. The staff member performing this function shall also provide his or her printed name and signature as the staff witness, and date the CDCR Form 1882-B.

The staff witness shall then forward the CDCR Form 1882-B to a staff member at the level of Correctional Lieutenant, CC-II, or above. The approving authority shall be responsible for considering each inmate's case factors and deciding whether to approve or disapprove the proposed cell assignment. An approving authority may determine there is no information available to indicate the inmates are incompatible, but there are other circumstances that lead the evaluator to believe approving the assignment would be contrary to legitimate penological interests or may threaten institution safety and security.

54046.8 Single-Cell Criteria

Single-cell status shall be considered for those inmates who demonstrate a history of in-cell abuse, significant in-cell violence towards a cell partner, verification of predatory behavior towards a cell partner, or who have been victimized in-cell by another inmate. Staff shall consider the inmate's pattern of behavior, not just an isolated incident. Staff must weigh information in the inmate's C-file with correctional awareness and knowledge of the inmate population, facility environment, and the level of supervision in the housing unit. The following factors must be considered when evaluating single-cell status:

- An act of mutual combat in itself does not warrant single-cell status.
- Predatory behavior is characterized by aggressive, repeated attempts to physically or sexually abuse another inmate.
- Documented and verified instances of being a victim of in-cell physical or sexual abuse by another inmate.

Staff shall consider whether the inmate has since proven capable of being double celled.

The classification committee shall consider the circumstances of a prior assault, length of time in general population without disciplinary violations, precipitating factors, or new issues affecting the inmate's behavior.

When confidential information is relied upon to designate single-cell status, the reliability of the source shall be determined in accordance with the

California Code of Regulations (CCR), Title 15, Section 3321, and shall be properly disclosed to the inmate via the CDC Form 1030, Confidential Information Disclosure.

54046.8.1 Single-Cell Assignments in ASU or SHU

In cases where an inmate on single-cell status is being referred for transfer to the General Population, the ICC is required to address the removal or the retention of the single-cell status as part of the referral for transfer review. The committee shall document the specific reason(s) on a CDC Form 128-G supporting the removal or retention of the single-cell status.

54046.9 Classification Review

The UCC/ICC shall review and determine an inmate's need for single-cell status as part of the Initial and the Annual Classification Review. If upon review a UCC determines the "S" suffix is no longer warranted and an ICC imposed the "S" suffix, the UCC shall refer the case to ICC for review and final determination.

As it is the expectation all inmates will double cell, the determination of single-cell status shall be documented as part of the ICC review and updated at the inmate's annual classification committee review. Prior to referral for transfer or placement consideration, the UCC or ICC shall determine the inmate's need for continued single-cell status. A classification committee's decision regarding involuntary cell assignments or housing status reevaluations shall be documented on a CDC Form 128-G.

54046.10 Recommendation for Double Cell or Single Cell Due to Mental Health Concerns

In cases where single-cell status is recommended by clinical staff due to mental health or medical concerns, a classification committee shall make the final determination of an inmate's cell assignment. The classification committee shall consider the clinical recommendations made by the evaluating clinician with assistance from the clinician who participates in the committee and review the inmate's case factors when determining the housing assignment. Single-cell status based upon clinical recommendation is usually a temporary short-term measure and must be periodically reviewed, minimally at an inmate's annual review or more frequently at the UCC/ICC or clinician's request.

54046.11 Disciplinary Factors

If an inmate refuses to be housed in appropriately determined housing, they shall be subject to the disciplinary process, with the potential to be housed in alternative and more restrictive housing. Refusal to participate will result in the issuance of a RVR for Conduct, CCR subsection 3005(c), Refusing to Accept Assigned Housing, for the specific act of Willfully Resisting, Delaying or Obstructing any Peace Officer in the Performance of Duty (CCR subsection 3323(f)(6)), and shall be considered after the first RVR for placement in more restrictive housing such as an ASU or a SHU.

Violation of Refusing to Accept Assigned Housing of subsections 3005(c), 3323(f)(6), and 3323(g)(8) shall result in:

- First offense violation shall result in placement in Privilege Group C for up to 90 days.
- Second offense and subsequent offense violation(s) within a 12-month period shall result in placement on Privilege Group C for up to 180 days and a referral as a program failure to classification committee for placement on Work Group C and Privilege Group C. An inmate who is deemed a program failure by a classification committee is subject to having their personal property/appliances disposed of in accordance with procedures outlined in Section 3191.

Following the completion of the disciplinary process and a finding of guilt, security precautions and disciplinary restrictions may remain in effect for a period of time designated by the Senior Hearing Officer consistent with this policy. If a finding of not guilty results, the security precautions shall be removed.

54046.11.1 Placement in more Restrictive Housing

Any inmate charged with Refusing to Participate in the IHA shall be considered for placement in an ASU and reviewed by the ICC to determine the appropriateness of ASU retention, pending disciplinary matters and/or future housing considerations. At each ICC review, the inmate's case factors shall be reviewed for the appropriateness of the double cell or dormitory approval status, and to determine if the inmate will participate in the IHA if case factors do not preclude such.

54046.11.2 Assessment of SHU Term

A determination period of confinement in a SHU may be established for an inmate when found guilty of Refusing to Participate in an IHA. The term shall be established by an ICC utilizing the standards set forth in the SHU Term Assessment Chart in CCR Section 3341.5.

**The Policy and Practice of Segregated
Housing in Prisons: The National
Dialogue of Scrutiny, Analysis and
Reform**

Keramet Reiter

Keramet Reiter is an Assistant Professor in the Department of Criminology, Law & Society and at the School of Law at the University of California, Irvine. Her research focuses on prisons, prisoners' rights, and the impact of prison and punishment policy on individuals, communities, and legal systems. She is currently working on a book project on the history and uses of U.S. supermax prisons, where people are in long-term solitary confinement. Recent publications include "Parole, Snitch, or Die: California's Supermax Prisons and Prisoners, 1987-2007" in *Punishment and Society* and "Experimentation on Prisoners: Persistent Dilemmas in Rights and Regulations" in the *California Law Review*.

Margaret Winter

Margaret Winter is Associate Director of the ACLU's National Prison Project. She has litigated prison and jail reform cases in trial and appellate courts around the country and has argued and won a prisoner's rights case in the U.S. Supreme Court. She has won far-reaching remedial decrees in class action lawsuits challenging prolonged solitary confinement, conditions of confinement on death row, abusive treatment of youth sentenced as adults, and HIV-based discrimination. Her litigation in Mississippi was instrumental in reducing by 85 per cent the State's use of solitary confinement. Her work with the ACLU of Southern California in exposing a pattern and practice of excessive force in the Los Angeles County jails was instrumental in the formation of the Citizens' Commission on Violence in the Los Angeles County Jails. She testified as an expert before the National Commission on Safety and Abuse in America's Prisons, the National Prison Rape Elimination Commission, and the Citizens' Commission on Violence in the Los Angeles County Jails. She was a panelist on solitary confinement at the National Correctional Association's 2013 Conference. Her cases have been featured in the *New York Times*, the *Wall Street Journal*, the *Washington Post*, National Public Radio, and other national media. She was a finalist for the Public Justice Trial Lawyer of the Year Award for 2013 for her work in successfully challenging Alabama's policy of categorically segregating all prisoners with HIV. She is an adjunct professor of law on prisoners' rights litigation and policy at Georgetown University Law Center.

Keramet Reiter*

The Origins of and Need to Control Supermax Prisons

Abstract: Supermaxes are prisons designed to impose long-term solitary confinement. Supermax prisoners spend 23 h or more per day in windowless cells. Technology, like centrally controlled automated cell doors and fluorescent lights that are never turned off, allows prisoners to be under constant surveillance, while minimizing all human contact. California built two of the first and largest supermaxes in 1988 and 1989. Corcoran State Prison and Pelican Bay State Prison, which together house more than 3000 prisoners in supermax conditions, were two of 23 new prisons built in California during the late twentieth century era of rapidly increasing incarceration rates and prison capacities. This article will address three stages of supermax operation in California: (1) the early, tumultuous years of total administrative discretion and egregious abuses; (2) the middle years of controlled expansion and entrenchment of supermax use; and (3) the recent events and reforms initiated following a hunger strike in California's segregation units in the summer of 2011. The history of California's use of supermax prisons reveals both the role of administrative discretion in shaping the initial design and day-to-day operation of the institutions, as well as the perverse incentives that made these institutions increasingly invisible and decreasingly governable. Supermaxes, then, serve as an important piece of the story of mass incarceration in California, a microcosm of the larger trends in administration, law, and politics, which have created the social and economic behemoth of a state prison system facing Californians today.

Keywords: California prison system; correctional institutions; penology; prisons; solitary confinement; supermax.

*Corresponding author: Keramet Reiter, Assistant Professor of Criminology, Law and Society and of Law, University of California, Irvine, CA, USA, e-mail: reiterk@uci.edu

They had sent me up there saying that I was a gang member, that I was a shot caller, that I was involved in violence . . . I'll never forget that day . . . I remember go[ing] up on a bus, and it took forever to get there . . . I'm just looking at trees, birds. And you see it's a beautiful coast out there . . . the big old pelicans and I'm trying to get every[thing] I can because I know that it's over . . . There's rumors, Lord . . . They say that you are 24 hours a day in your cell. That's what they were bragging about the place – it's the worst of the worst. It's the new Alcatraz . . . Then

finally, we get to Pelican Bay . . . And the best way I can describe the front of the entrance of the [supermax] is it's like – remember the old Star Wars movie? . . . Hans Solo's ship – the big old glass vessel? It's the first thing that came into my mind right then and there.

– A.L., former Pelican Bay prisoner

1 Introduction

In the opening quote, A.L. describes his first memory of arriving at the Pelican Bay supermax, in Crescent City, California, on the state's northern border with Oregon. The prison he entered in 1990 lived up to his worst expectations. He would spend at least 23 h per day in a windowless, 8-by-10 foot, poured concrete cell, with the fluorescent lights always on, for the next 10 years. Three-to-five times per week, an officer in a central control booth would press a button, remotely opening A.L.'s cell door. He would then be permitted to leave his cell, for an hour, or 2 at most, in order to shower, alone, or to go out into a solitary, empty exercise "yard," also made of poured concrete and not much larger than his cell. In an interview in 2010, A.L. painted a vivid picture of his first sight of Pelican Bay; he recalled being struck by the futuristic newness of the physical structure, comparing it to a Star Wars' space ship. Indeed, when A.L. arrived at Pelican Bay, the institution had been open only a few months, and it was one of the first such facilities built in the US.

Arizona opened the first supermax prison in 1986 (Lynch 2010). California opened two more, Corcoran State Prison and Pelican Bay State Prison, in 1988 and 1989. Over the next 20 years, almost every state would follow California's model, building tens of thousands of long-term solitary confinement cells. And California itself would continue to expand its use of long-term solitary confinement and segregation, converting additional units to supermax status during the 1990s. Just as in the rest of the California prison system, these "solitary confinement" units have frequently been overcrowded; more than half of the prisoners in these supermax facilities have been double-bunked over the last 20 years of operation (Reiter 2012).

Supermaxes are part of the trend of mass incarceration, which has increasingly dominated both California state politics and budgets. Between 1984 and 1996, California built 23 new prisons (Gilmore 2007). In the 1980s, California's prison expansion was the largest in magnitude of any state's, and California today

¹ Louisiana, on the other hand, has the highest rate of incarceration at 858 prisoners per 100,000 population; California's rate is almost half of Louisiana's, at 471 prisoners per 100,000 population. In fact, California's rate of incarceration hovers just above the national average (of all 50 states) incarceration rate of 447 prisoners per 100,000 population.

has more people incarcerated than every state other than Texas.¹ California prison building barely kept up with increases in the state prison population: between 1980 and 1990, the state's prison population more than quadrupled, from 23,000 to 100,000 people (Zimring and Hawkins 1994). Between 1990 and 2006, the California prison population nearly doubled again, reaching a high of 173,000 prisoners (Thompson 2012). During these years, the California Correctional Peace Officers Association (CCPOA), the union representing prison guards in the state, slowly gained political power. By the mid-1990s, the union had established the coffers and clout to determine electoral decisions about everything from the lengths of prison sentences to who would be governor (Page 2011). State corrections spending kept up with the rising prison population and CCPOA demands for increased investments in prisons and staff. Between 1980 and 2012, spending on prisons and corrections in California increased 436%, while spending on higher education decreased 13% (Anand 2012, numbers adjusted for inflation).

In spite of these large and continued investments in prison building and operation, California's prisons have faced persistent legal challenges to their constitutionality. Most recently, in 2011, the US Supreme Court ruled that the state's prison system was so overcrowded that it could not possibly provide constitutionally adequate healthcare to its prisoners. In light of this finding, the Supreme Court upheld a lower court's order to reduce the prison population by tens of thousands of prisoners (*Brown v. Plata* 2011).

Supermaxes in particular are one of the more expensive, and ambiguously constitutional, aspects of California's prison system. Whereas California spends an average of \$49,000 per prisoner per year in most state prisons, the average annual cost of keeping a prisoner in Pelican Bay State Prison, the state's main supermax, is more than \$70,000 per year (Small 2011). Indeed, supermax prisons represent the outer extreme of the control problems the state's department of corrections has had over the past 20 years – problems controlling scale and overcrowding, problems controlling abuses, and problems adhering to constitutional mandates and managing court interventions. But supermaxes are not merely an exaggeration of the problems within the California prison system; supermaxes are a problem in and of themselves, imposing long-term solitary confinement, with minimal oversight and few limitations on the extremity of deprivations or the duration of confinement.

This article will address three stages of supermax operation in California: (1) the early, tumultuous years of total administrative discretion and egregious abuses; (2) the middle years of controlled expansion and entrenchment of supermax use; and (3) the recent events and reforms initiated following a hunger strike in California's segregation units in the summer of 2011. The history of California's use of supermax prisons reveals both the role of administrative discretion in shaping the initial design and day-to-day operation of the institutions, as well

as the perverse incentives that made these institutions increasingly invisible and decreasingly governable. Supermaxes, then, serve as an important piece of the story of mass incarceration in California, a microcosm of the larger trends in administration, law, and politics, which have created the social and economic behemoth of a state prison system facing Californians today.

2 Discretion and Abuse, 1986–1995

In 1986, the California Legislature passed Senate Bill 1222, authorizing construction of a new prison in California's Del Norte County. There was a brief legislative debate about what to name the prison, but little legislative discussion of what the remote prison would look like and no acknowledgement that it would be "the new Alcatraz," "a Hans Solo ship," or "a prison of the future" (Corwin 1990; A.L. interview 2010).

Craig Brown, who was the undersecretary of corrections in California during the peak prison-building years in the 1980s, explained that correctional administrators, not legislators determined the form Pelican Bay would take: "You're not going to find much in the record; it was all negotiated [off the record], and we [the correctional authority] pretty much had our way with the legislature" (Brown interview 2010). Usually, California administrative agencies govern construction details, like the issuing of bonds to fund building projects and the review of environmental impact decisions (Gilmore 2007), and usually the California legislature determines punishment structures, like the range of possible prison sentences for particular crimes, and the range of punishments to which prisoners convicted of certain crimes may be subjected, whether probation, prison, or death, for instance. In the case of the supermax at Pelican Bay State Prison, however, correctional administrators designed and built the prison with little independent agency oversight, negotiating their own, private bond funds and avoiding the usual requirements of independent environmental impact reviews (Keller 1986; Gilmore 2007). In addition to designing the physical structure of Pelican Bay with little political oversight, correctional administrators determined who was sent to Pelican Bay, why, and for how long. In other words, correctional administrators imposed long terms of total solitary confinement on prisoners, often changing the conditions of prisoners' confinement and effectively lengthening prison sentences, with little legislative (or judicial) oversight.

The supermax represents a different kind of punishment innovation, especially for California, a state known for tough-on-crime legislators (Gilmore 2007, p. 94) and tough-on-crime voters (Zimring et al. 2001, p. 3) driving punishment

innovations like the Three Strikes and You're Out sentencing law, which mandated life in prison for people convicted of three felonies. The combination of design discretion and punishment discretion correctional administrators exerted in constructing Pelican Bay State Prison allowed the institution to develop initially out of sight and un-noticed, nestled in the redwoods in a tiny coastal town in the northernmost county in California. A few local newspapers noted that a technologically-advanced prison had opened in Del Norte County (Griffith 1989; Corwin 1990), but at first judges and lawyers were not even aware of the novel conditions at the institution.

Over the next few years, however, stories of horrific abuse trickled out of both Pelican Bay and California's other main supermax, Corcoran State Prison.² As early as 1990, Judge Thelton Henderson, then the chief judge of the federal district court of the Northern District in California, the court with jurisdiction over Pelican Bay, started receiving letters from prisoners complaining about the harsh conditions at the prison. Henderson recalled: "We got a ton of handwritten letters and petitions from this place we had never heard of before – Pelican Bay" (Henderson interview 2011). And Steve Fama, a long-time prisoners' rights advocate with a non-profit law office outside of San Quentin State Prison, remembered knowing very little about the prison until years after it opened. At first, Fama mistakenly thought "it was not all that unusual or extraordinary – another prison" (Fama interview 2010). But when Judge Henderson appointed a group of lawyers, including Fama, to investigate the conditions at Pelican Bay State Prison, Fama quickly realized this was a new kind of prison, imposing newly harsh conditions. The lawyers Henderson appointed eventually brought a lawsuit, *Madrid v. Gomez*, challenging the constitutionality of the conditions of confinement and the operational procedures at the prison, especially within the supermax unit.

Before the initial, 1995 ruling in the *Madrid* case, disturbing investigative reports of abuse in California's Pelican Bay supermax surfaced. In 1994, the *San Francisco Chronicle* reported that Vaughn Dortch had won nearly one million dollars in a settlement with the California Department of Corrections (CDC).³ According to the settlement, in 1992, correctional officers had forced Dortch, a

² Both Corcoran and Pelican Bay have supermax units and general population units, within the larger prison complex. Note that California prison officials and department documents refer to these supermax units as "Secure Housing Units," or "SHUs." For ease of comprehension, however, the terms "supermax" and "supermax unit" will be used in this article.

³ Note that in 2003, the California Department of Corrections (CDC) changed its name to the California Department of Corrections and Rehabilitation (CDCR). In references in this article to the pre-2003 California prison system, the Department will be referred to by its former name (CDC). In references to the post-2003 California prison system, the Department will be referred to by its current name (CDCR).

prisoner in solitary confinement at Pelican Bay, to take a bath in boiling water. His skin peeled off in chunks before he was removed from the “bath”; Dortch ultimately sustained third-degree burns over half his body. The investigative news show *60 Minutes* also reported on this case (“Former Inmate” 1994). Next, in 1993, while Judge Henderson was visiting Pelican Bay in preparation for the hearings in the *Madrid* case, officers at the institution invited him up into a tower overlooking one of the larger prison yards. When he got to the top and looked down, Judge Henderson saw everyone on the yard – including “my law clerks in their suits” – lying flat (Henderson interview 2011). Then shots were fired, and a “dramatic takedown” of prisoners allegedly involved in inciting a riot ensued. Later investigations established that correctional officers had known about the potential for unrest and staged the takedown as Henderson was ascending the steps to the overlook tower (US Attorney’s Office, Northern District of California 2002).

Meanwhile, at Corcoran State Prison, in California’s Central Valley region, five prisoners died between 1989 and 1994, after being shot by officers for alleged participation in gang fights. An additional 40 prisoners were injured. Criminal and civil cases brought against 20 correctional officers, along with investigative reports, revealed that these 45 prisoners were injured and killed in the course of “gladiator fights.” Correctional officers coordinated these gladiator events, by forcing known rival gang members, who were otherwise isolated from each other in the Corcoran supermax, into one small exercise yard. Officers then watched from the safety of prison control booths as the rival prisoners fought. Eventually, officers would shoot into the small exercise yards, often with fatal consequences (Gunnison 1998; Heller 2001).

The initial decision in the *Madrid* case, issued in January of 1995, demonstrated that the abuses uncovered in these investigatory reports and prosecutions against individual correctional officers were, in fact, more systemic. The *Madrid* case involved a class of prisoners – everyone housed at Pelican Bay State Prison – and detailed many more instances of abuse at Pelican Bay, especially in the supermax units. Correctional officers chained one prisoner, naked, into a “fetal restraint” position, and left him that way for 24 h. Officers beat another prisoner unconscious after he threw a food tray out of his cell. Dozens of prisoners experienced injuries ranging from fractured ribs to comas and brain damage after they were housed two-to-a-cell in the supermax units designed for total solitary confinement (*Madrid v. Gomez* 1995, pp. 1168–1169, 1165, 1239).

The *Madrid* court highlighted two important factors underlying the abuses at Pelican Bay: invisibility and discretion. First, the court described the “code of silence” among officers at the prison, who faced near-certain “retaliation and harassment” if they reported excessive force incidents like those described above (*Ibid.*, p. 1156). Not only did this code of silence obscure and conceal abuses at

Pelican Bay, it also expanded the discretion correctional officers had over the lives and well-being of individual prisoners. The *Madrid* court described this multi-faceted discretion, noting that Pelican Bay correctional officers received insufficient training and operated with inadequate written guidelines, especially for situations involving uses of force against prisoners. As the *Madrid* court explained: “the absence of authoritative written guidelines allows policy to shift according to the predilections of individual mid-level staff” (*Ibid*, p. 1182). In sum, correctional officers had control over every aspect of the day-to-day conditions of confinement of Pelican Bay prisoners, from whether prisoners were housed with violent cellmates to whether prisoners were allowed out of their cells into the shower or exercise yard, whether they were given medical or mental health treatment, and whether they were beaten up and burned, or not.

Not only did correctional officers have discretion over use-of-force and other basic operational rules at Pelican Bay in the early years, but they also had significant discretion over who was sent to supermaxes and why. Correctional officers determine which individuals are assigned to supermax units, based on in-prison observations and behavioral assessments, by applying rules written by other correctional officers. In California, correctional officers usually assign prisoners to supermax units, like those at Pelican Bay and Corcoran, for one of two reasons. Either the prisoner breaks an in-prison rule, and is assigned to the supermax for a fixed period of time, ranging from a few months to a few years. Or the prisoner is labeled a gang member (as A.L. was in the quote opening this article) and is assigned to the supermax for an indeterminate period of time, possibly extending for the duration of the prisoner’s criminal sentence.

Not only do correctional officers, as opposed to judges or juries, assign prisoners to supermaxes, but correctional officers also define and apply the assignment rules. For instance, if a prisoner with a known infectious disease, like hepatitis C or HIV, spits on a correctional officer, the officer might choose among three possible responses: (a) ignoring the event, (b) charging the prisoner with throwing a caustic substance, resulting in a short-term supermax placement, or (c) charging the prisoner with attempted murder (because of the risk of the officer being infected with the prisoner’s disease), resulting in long-term supermax placement, for up to 5 years (California Code of Regulations 2009: Title 15, Section 3341.5(C)(9); Reiter 2012).

Similarly, correctional officers define and categorize evidence that indicates gang membership; in California, gang validation requires three pieces of evidence. For instance, known gang tattoos, observed associations on a prison yard with other gang members, correspondence with known gang members, or possession of gang drawings might all be used in a gang validation file. A California assemblywoman recently commented at a hearing about the state’s supermaxes that “as an African American with tattoos who reads political literature” she could be

validated as a prison gang member (Rodriguez 2013). Gang validation, in turn, *may*, at the discretion of correctional administrators, result in indefinite placement in a supermax (California Code of Regulations 2009: Title 15, Section 3000, 3341.5, 3378(4); Reiter 2012). In the 1990s, these administrative decisions included few procedural protections; as of 2005, the US Supreme Court required that prisoners be told why they are being assigned to a supermax and have some opportunity to rebut the evidence against them (*Austin v. Wilkinson* 2005). But prisoners are not guaranteed a hearing, a lawyer, the right to call witnesses, or any other traditional criminal procedural protections during the supermax assignment process.

In sum, the invisibility and discretion noted by the *Madrid* court represents only one piece of the invisibility and discretion inherent in the design and operation of the supermaxes at Pelican Bay and Corcoran State Prison. First, as described above, correctional officials, in collaboration with architects, designed California's first supermax institutions with little oversight from independent state agencies, legislators, or judges. Prisoners' advocates only learned of the institution's existence (and futuristic design) after prisoners living there described the newly harsh conditions in letters and legal complaints. Second, California's supermaxes are in out-of-the-way places. Pelican Bay State Prison is nearly 400 miles north of San Francisco and more than 700 miles north of Los Angeles, and Corcoran State Prison is roughly 200 miles from both San Francisco and Los Angeles. Finally, California's supermaxes are invisible in the sense that they are prisons within prisons; correctional officers assign prisoners to supermaxes, based on in-prison behaviors and assessments. As former Pelican Bay prisoner A.L. explained above, he was sent to the Pelican Bay supermax not because of a specific rule he violated, but because of his assumed status as a gang member, along with allegations that he had been "a shot caller . . . involved in violence."

By 1995, both of California's supermax units, at Pelican Bay and at Corcoran, had faced critical public and legal scrutiny. Both institutions looked less like prisons of the future and more like torture chambers, or dark dungeons of the past. Following the initial order and settlement in the *Madrid* case, however, conditions at Pelican Bay, and California's other main supermax improved considerably. Over the next 10 years, the two supermaxes became an integral part of California's prison system.

3 Expansion and Entrenchment, 1996–2010

California's two main supermaxes continued to face occasional public scrutiny throughout the late 1990s and early 2000s. For instance, in 2000, Angela Davis,

a prison activist famous in California from the mid-1970s for her involvement with George Jackson and the Black Panthers, co-authored a feature article in the *San Francisco Chronicle* arguing that the expanded use of long-term solitary confinement in California, in new supermax prisons like Pelican Bay and Corcoran, constituted “extra-legal” punishment (Davis and Shaylor 2000). But the *Madrid* court, along with other federal courts in California considering challenges to the constitutionality of supermax operations and procedures throughout the 1990s and 2000s, never agreed with Davis’s conclusion that supermaxes were inherently “extra-legal.” Instead, courts worked with prison officials and lawyers to establish policies and practices that eliminated the most egregious abuses. These refined policies and practices, in turn, streamlined supermax operation; the legally approved supermax institutions became an integral and entrenched piece of the expanding California prison system. As the prison system grew, the use of supermaxes kept pace.

The resolution of the *Madrid* case, along with a series of cases challenging the policies governing placement of alleged gang members in supermaxes, provide good examples of this refinement and integration of supermaxes into the overall state prison system. Although the *Madrid* court found that the actions of staff at Pelican Bay had violated constitutional prohibitions against cruel and unusual punishment, the court never found that the conditions of long-term solitary confinement themselves were inherently unconstitutional. Instead, the court worked with lawyers and expert monitors to ensure that adequate policies and procedures were in place to prevent the abuses described in the previous section. The *Madrid* settlement forbid the placement of prisoners with pre-existing, serious mental illnesses in supermaxes, protecting some of the most vulnerable prisoners from supermax confinement. The *Madrid* court also oversaw the appointment of a new warden at Pelican Bay, Steve Cambra, who served from 1995 through 1998, and systemically reformed attitudes at the prison: “It was easy to change actually . . . it took me about four days to figure out what was going on. They used to fight the guys over their trays . . . [but I told them] just let them keep [the trays] and not get fed . . . Why fight these guys?” Cambra gave his orders to the officers at Pelican Bay: “We’re not going to play games with these guys . . . You [officers] don’t belong in lock-up if you ever stop looking at them [prisoners] as human beings” (Cambra interview 2010). Cambra explained his philosophy as if it was elementary math: if you stop engaging with the tough prisoners, they have no reason to antagonize you.

Cambra’s management style apparently worked. By the early 2000s, lawyers from California’s Prison Law Office, a non-profit firm of prisoners’ rights advocates, who monitored Pelican Bay pursuant to the *Madrid* settlement, reported that the prison was functioning within constitutional bounds. There were no

more reports of gladiator fights or egregious uses of force, and there were many fewer reports of inadequate medical care. In 2010, Judge Henderson closed the *Madrid* case, finding that the constitutional violations documented at Pelican Bay in the 1990s had long been resolved (“Judge Closes” 2011).

Other cases litigated in the late 1990s and early 2000s similarly helped to refine and streamline the state’s use of supermaxes. Throughout the mid-1990s, a few prisoners challenged the constitutionality of the rules governing their placement in supermaxes, especially the vague and discretionary rules permitting correctional officers to “validate” a prisoner’s membership in a gang and then assign that prisoner to supermax confinement for an indefinitely long period of time. Just as the *Madrid* case facilitated better treatment of prisoners, through better training and management of officers, so these cases about gang validation established consistent procedures, incorporating at least minimal due process protections and further streamlining the policy and practice of supermax confinement.

Steve Castillo initiated one of the more successful of these cases challenging gang validation procedures. In 1994, Castillo filed a claim alleging that he was validated as a gang member and placed in a California supermax in retaliation for working as a jailhouse lawyer. After 9 years of litigation, Castillo ultimately agreed to a settlement that promised substantial revisions to California’s prison gang validation procedures (Carbone 2004). Specifically, the settlement in *Castillo v. Alameida* required that prisoners be provided with copies of the documentation used to allege gang membership and be permitted an opportunity to rebut this evidence. The *Castillo* settlement also limited the ability of correctional officers to rely on either hearsay evidence or evidence provided by confidential informants, and the settlement required regular, 6-month reviews to re-establish that “validated” prisoners remained active gang participants, thereby justifying their continued supermax confinement (*Castillo v. Alameida* 2004).

California prisoners, however, continued to challenge the state’s gang validation procedures, especially the ambiguous evidence on which gang validation decisions are often based. For instance, Ernesto Lira challenged the gang validation that landed him at Pelican Bay, where he spent 8 years in solitary confinement. According to court records, correctional officers based Lira’s validation on three pieces of tenuous evidence: (1) a confidential inmate de-briefing report in which a prisoner in the process of formally dissociating from the Northern Structure gang listed low-level members of the gang, and included Lira in this list; (2) a drawing found in Lira’s cell allegedly containing a number, a star, and a bird all associated with the Northern Structure gang; and (3) a report from the Merced County Jail describing an incident at which Lira was present involving rival gang members accidentally entering the jail yard at the same time, provoking concerns about a fight that never happened. At the time correctional officials validated Lira

as a gang member, he was actually on parole, so he never participated in any kind of hearing and was never given a chance to rebut the evidence used to establish his gang membership. A Northern District Court of California ultimately found that Lira had been subject to an “improper validation” (and therefore had unnecessarily spent 8 years in solitary confinement). The court ordered the validation expunged from Lira’s prison record (*Lira v. Cate* 2009, p. *6). While the experiences of Lira and Castillo might have been singular mistakes in a system that processes hundreds, if not thousands, of gang validations annually, the settlement in *Castillo* suggests that greater limits on the administrative discretion inherent in the process were required. Given the discretion characterizing the gang validation process, and the lack of information about exactly how many prisoners are validated and assigned to supermaxes annually, whether Lira and Castillo represent isolated mistakes or two examples of a much larger phenomenon is impossible to determine.

In part, more clear rules and regulations governing the gang validation process were necessary because of the sheer numbers of prisoners being validated and assigned to supermaxes. Throughout the years that Lira and Castillo were litigating their gang validation challenges, the use of long-term solitary confinement was steadily increasing in California. The California Department of Corrections never seemed to have quite enough supermax cells. The prison system began adding extra supermax units before Pelican Bay even opened its doors, and the cells in these supermax units have frequently been overcrowded, housing two prisoners each in cells designed for total isolation.

Correctional administrators originally intended Pelican Bay to be the state’s one supermax. However, before Pelican Bay even opened, planners realized that the prison’s 1056 supermax beds would be insufficient to house the state’s growing isolation population. So, while construction workers were putting the final touches on Pelican Bay, in 1988, more than 500 cells at Corcoran State Prison were quickly converted to supermax cells and filled with prisoners. Corcoran was originally designed as a general, high-security prison with space for communal activity, like common dining areas, large prison yards, and classroom spaces. But construction of these planned communal areas was simply never finished for one 512-bed unit of the prisons. Instead, small, solitary exercise yards were added to this prison unit, to permit prisoners to go outside without having any contact with other prisoners (Larson interview 2010). In 1995, correctional administrators converted another 512-bed unit at Corcoran into a supermax unit. In 2000, correctional administrators opened yet another, overflow supermax unit at the California Correctional Institution at Tehachapi, with an additional 378 cells. Throughout these years, the California Department of Corrections also operated a small, 44-cell supermax unit for women at Valley State Prison (Reiter 2012). From

1990 to 2010, the supermax populations in California increased almost every year, rising from a low of around 1900 prisoners in 1990 to a high of about 3300 prisoners in 2010.⁴ California's supermax population has consistently represented about 2% of the state's overall prison population (Reiter 2012, p. 546), meaning that increases in supermax use have simply kept up with increases in the overall state prison population.

The number of available supermax beds in California prisons, however, has often lagged behind population increases. The *Madrid* court noted that, as of 1993, about half of the beds in the Pelican Bay supermax were double-bunked. California correctional officials have used double-bunking – the practice of housing two prisoners in the supermax cells designed for total isolation – consistently throughout the last 20 years. Double bunking rates at the Corcoran and Pelican Bay supermaxes peaked between 1993 and 1997, when between 40% and 70% of all supermax prisoners at both facilities were double-bunked. Today, double-bunking rates in the Pelican Bay supermax are much lower – around 10%. But double-bunking rates at the Corcoran and Tehachapi supermaxes remain high – around 60% and 100%, respectively (Reiter 2012, p. 544). In sum, California's supermax cells were overcrowded from the day they opened, and they have remained overcrowded over the last 20 years.

This overcrowding, like expanding supermax use more generally, is part of the pattern of mass incarceration in California. In 2011, the US Supreme Court upheld an order from a federal district court in California, to reduce the state's prison population by at least 30,000 prisoners, in order to relieve the statewide prison overcrowding crisis, which had led to constitutionally inadequate medical and mental health care throughout the state's prisons (*Brown v. Plata* 2011).

Overcrowding represents just one way in which California's supermaxes have operated in violation of the best intentions of their designers. Although courts, prisoners, and prisoners' rights advocates have worked to control the most egregious abuses within the supermaxes, more subtle misuses of supermax units

⁴ In the early 2000s, the California Department of Corrections began building small, free-standing Administrative Segregation Units (ASUs) on the grounds of existing prisons. These "Ad. Seg." units are designed for short-term isolation of a few months at most, as opposed to the long periods of isolation in the supermaxes of months-to-years. However, the Ad. Seg. units are modeled on the state's supermax units, with "corridors, cells without windows to the outside," and often hold prisoners for extended periods of time (Fama interview 2010). Even though these units could be construed as another expansion of California supermax capacity and population, the populations of these units are not usually counted with the populations of supermax units (SHUs as opposed to ASUs, in corrections jargon) in state reports.

have been frequent and growing. For instance, the original supermax designers argued that Pelican Bay was designed to hold all but “a handful of inmates” for a limited period of time, “something like 9 months, but no more than 18 months” (Brown interview 2010). Instead, today, the average length of stay in the Pelican Bay supermax prior to release is 30 months, or 2.5 years, and the average length of stay in the Corcoran supermax prior to release is about 6 months (Reiter 2012, pp. 547–48). These are average lengths of stay for prisoners who are eventually released; many prisoners at these institutions have spent years, and even decades, in total solitary confinement and may never be released. Specifically, as of 2011, there were more than 500 prisoners who had spent more than 5 years in solitary confinement in the Pelican Bay supermax; 291 prisoners had spent more than 10 years in solitary confinement there; and 78 prisoners had spent more than 20 years in solitary confinement there (Small 2011).

In addition to holding hundreds of prisoners for years, and in some cases decades more than the original supermax designers intended, Pelican Bay and Corcoran have also failed to provide the kind of transitional programming and housing that the original supermax designers describe intending. Both prisons have supermax units, which impose total isolation, and general population units, in which prisoners can congregate together over meals and in prison yards. Supermax designers like Larson and Brown, quoted previously, hoped that the close proximity of these general population units to the supermax units would facilitate “step-down” programs, allowing prisoners to ease back into socializing with other people, after spending time in a supermax, and before being released from prison completely (Reiter 2012). While these transitions happen sometimes, at other times, prisoners are released directly from supermax units onto California streets. An average of just over 900 prisoners per year are released directly from the supermax units at Pelican Bay and Corcoran, onto parole (*Ibid*, p. 553). Although California’s supermaxes are located hundreds of miles from the nearest urban areas, these release figures suggest that the connections between California’s supermax prisons and other communities throughout the state are closer than might be expected, since hundreds of prisoners annually are paroling directly from supermaxes back to their home counties.

Though California’s supermax units were constantly expanding throughout the 1990s and 2000s, and were less disconnected from their communities than might have been expected, the institutions remained largely invisible during these years. Corcoran and Pelican Bay, once a blight on the state’s prison system, with staff accused of a range of inhumane and unconstitutional abuses in the early 1990s, avoided any scandals throughout the 2000s. A combination of court oversight of the supermaxes, ensuring compliance with constitutional standards,

and the inaccessibility of the institutions to journalists and investigators has likely facilitated their low media profiles.

Reporters have not been especially welcome in California prisons in the last few decades, and they are especially unwelcome at the supermaxes. As one journalist, who has conducted extensive investigative reporting on solitary confinement in the US over the last few years said recently: “If the First Amendment ever manages to make it past the prison gates at all, it is stopped short at the door to the isolation unit” (Ridgeway 2013). Ridgeway noted that Shane Bauer, who himself spent time in solitary confinement in an Iranian prison, was one of the few journalists who had been granted access to visit Pelican Bay. But even Bauer had “severely limited and carefully orchestrated access,” – prison officials hand selected the prisoners interviewed and limited the prison tour to communal areas of the prison (*Ibid*). In 2012, the California legislature passed a bill to allow broader media access to prisons, such as permitting journalists to request interviews with specific, individual prisoners. Governor Brown vetoed the bill in October of 2012, and the strict limitations on access to individual prisoners remain in place in California (“Brown rejects” 2012).

Even basic descriptive statistics about Corcoran and Pelican Bay are difficult to obtain. The statistics quoted above, about lengths of supermax stay and numbers of supermax releases directly to parole, were obtained following a formal information request. And those statistics represent extremely limited data; more detailed information, like how many prisoners in California’s supermaxes are serving indeterminate supermax terms, how many are mentally ill, or how many assaults and violent deaths occur specifically in supermax facilities are simply not available – either never collected or simply not published – from the California Department of Corrections and Rehabilitation (CDCR). Public data reports from the CDCR often report aggregated data about prison population demographics and violent incidents by institution, rather than by units within institutions. Because the supermax units at Corcoran and Pelican Bay are only one segment of a larger prison institution, data about these specific units is essentially invisible.

Even in the absence of data about supermax units, the institutions appeared to be relatively well-governed throughout the early 2000s. After all, Judge Henderson closed the *Madrid* case in 2010. Through some combination of actual improvements in operational policies and concerted efforts to keep journalists out and information in, the institutions attracted little public attention. That all changed in 2011, when a prisoner-initiated effort brought California’s supermaxes, especially Pelican Bay, back into the local, state, national, and even international limelight for the first time in more than a decade.

4 Hunger Strikes and International Attention, 2011 and beyond

In the summer of 2011, prisoners in the Pelican Bay supermax coordinated a large (thousands of prisoners participated throughout the state prison system) and extended (lasting for 3 weeks) hunger strike, protesting what prisoners described as basic injustices in supermax conditions of confinement. The July 2011 hunger strike both re-opened the question, which had been seemingly closed in the *Madrid* case, of whether the conditions at the Pelican Bay supermax were constitutional, and inspired international outcry that the conditions amounted to torture, whether or not they were constitutional under US law. These renewed debates about the constitutionality of and ethical justifications for supermaxes highlight just how invisible California's supermaxes were over the last 10 years, as well as how integral the supermax units have become to the California prison system, making reform a slow and contentious process. This section details the events leading up to the Pelican Bay hunger strike, the terms of the initial resolution of the strike, and the parameters of the ongoing debate among lawyers, politicians, activists, and correctional administrators about what reforms can and should be implemented within California's supermaxes.

In the spring of 2011, a group of prisoners housed in the Pelican Bay supermax, in a unit known as "the short corridor," allegedly the home of the state's most dangerous gang leaders, announced their intention to initiate a hunger strike in July, to protest "25 years of torture via CDCR's arbitrary, illegal, and progressively more punitive policies." Their five demands were poignantly simple. Two demands concerned issues that had been litigated over the last 20 years in lawsuits like *Madrid* and *Castillo*: (1) limit the use and duration of solitary confinement and mitigate the harshness of the conditions, and (2) reform the gang revalidation policy, to allow more prisoners to earn release from indefinite solitary confinement. Three demands sought improvement in the basic, spare conditions of supermax confinement: (1) "provide adequate food," (2) "provide constructive programming," and (3) cease the "application of 'group punishments' " in response to individual rule violations (Ashker and Troxell 2011).

On July 1, 2011, the Pelican Bay short corridor prisoners initiated the hunger strike as planned. According to CDCR, 5300 prisoners at nine prisons refused meals on July 1. On July 3, CDCR documented 6500 prisoners refusing meals. Initially, CDCR officials publicly argued that federal courts had upheld the constitutionality of the conditions at Pelican Bay, and that the alleged gang members leading the strike were exemplifying the very ability to wield dangerous influence over other prisoners that necessitated their isolation. Terry Thornton, the

department spokeswoman, explained in the *New York Times* on July 8, 2011: “The department is not going to be coerced or manipulated . . . That so many inmates in other prisons throughout the state are involved really demonstrates how these gangs can influence other inmates, which is one of the reasons we have security housing units in the first place” (Lovett 2011). The *New York Times*, however, noted that participants in the strike actually “transcended the gang and geographic affiliations that traditionally divide prisoners, with prisoners of many backgrounds participating” (*Ibid*). The *Times* understated the remarkable reality that alleged rival gang leaders, from prison gangs like the Aryan Brotherhood, the Black Guerilla Family, and the Mexican Mafia, known for decades of racially-charged enmity, were actually cooperating, in a fundamentally peaceful protest, to bring attention to the extreme conditions in which they were being held. Thornton’s rhetoric, however, re-packaged the peaceful protest as evidence of the dangerous influence of gangs. This re-packaging re-enforced the public justifications for supermaxes, as necessary to control “the worst of the worst” prisoners, thereby re-asserting the power of correctional administrators to define prison rules, identify prison rule breakers, and determine the punishments meted out.

As Goodman has observed in non-supermax prison contexts, race in California prisons consists of “patterned, negotiated settlements” and “racial categorization, and later segregation, is a fundamental element of how California currently punishes those it incarcerates” (2008, p. 766). In the case of the hunger strike, prisoners in Pelican Bay’s supermax resisted categorization and characterization as members of dangerous, racialized prison gangs, inspiring a re-negotiation of the patterns of their segregation. This negotiation has taken place at conference tables behind closed doors, between the hunger strike leaders and CDCR staff in July and August of 2011; in legislative hearings in August of 2011 and February of 2013; in new litigation re-opening the question of the constitutionality of the supermax; and in the public media, as national news reporters and international human rights organizations have increasingly sought and gained access to the supermax units at Pelican Bay State Prison.

Throughout July of 2011, the number of hunger strike participants at prisons across the state fluctuated, but prisoners in the Pelican Bay supermax continued the hunger strike until late July, tapering off between July 20 and July 26. A few of these prisoners were transferred to the prison’s infirmary, suffering dangerous health consequences from the lack of food (Barton 2011). The strike ended after “top CDCR officials,” including California’s then-Undersecretary of Corrections Scott Kernan, agreed to sit down with the four hunger strike leaders and discuss their demands and a potential resolution to the strike (Ashker et al. 2011). At this July 20 meeting, CDCR officials promised to “conduct a comprehensive review

of SHU policies” including considering implementing a step-down program for supermax prisoners. Officials also promised to expand the privileges available to supermax prisoners: providing limited exercise equipment (a ball) and warm clothing for prisoners on the solitary, outdoor exercise yards and allowing prisoners to receive one family photo per year and to possess colored chalk (Barton 2011).

The prisoners’ concerted, non-violent action attracted national and international attention. Major California news sources like the *Los Angeles Times*, the *San Francisco Chronicle*, and the *Sacramento Bee* followed the strike closely. *The New York Times* ran an op-ed condemning the harsh conditions in solitary confinement at Pelican Bay (Dayan 2011). In August of 2011, the California Assembly held hearings on conditions in the state’s supermaxes. For the first time in the history of California’s supermaxes, the state legislature was paying close attention to the institutions – scrutinizing institutional policies, procedures, and populations. In October of 2011, the United Nations Special Rapporteur on Torture condemned the use of prolonged solitary confinement, especially as demonstrated by US policies, as torture (“Solitary confinement should be banned” 2011). Amnesty International sent a delegation of human rights and prison experts to visit Pelican Bay in November of 2011 and published a report condemning the conditions there a few months later (Amnesty International 2012). For the first time in years, journalists were welcomed in to tour the prison and talk to prisoners (Bauer 2012; Montgomery 2013). Solitary confinement in California was no longer invisible.

As of early 2013, prisoners, prison officials, and legislators were still engaged in an active debate about the fairness of the gang validation procedures underlying supermax confinement. In February, California Assembly member Ammiano held a hearing on the proposed revisions to CDCR’s gang validation policies, and Ammiano publicly promised he would hold further hearings to examine the conditions of confinement in the units (Rodriguez 2013). Meanwhile, the national civil rights organization, Center for Constitutional Rights, filed a lawsuit in May of 2012, seeking to re-open the question of the constitutionality of the conditions in the Pelican Bay supermax. The suit alleged that prisoners who have spent 10 or more years in the Pelican Bay supermax have suffered “predictable psychological deterioration” and been “denied any meaningful review” of their “effectively permanent” isolation status (*Ruiz v. Brown* 2012). This suit, along with the renewed legislative attention to supermaxes, suggests that the institutions will not be receding back into invisibility within the California prison system in the immediate future, anyway.

Even as legislators and lawyers are re-scrutinizing the conditions of confinement in California’s supermaxes, prison officials are working to further refine the institutions, to assert that with the right policies and procedures, the institutions

can be operated within acceptable constitutional and ethical norms. In August of 2012, CDCR released a substantially revised “Gang Validation and SHU Exit Policy.” The policy places many additional restrictions on the gang validation procedure underlying indeterminate placement in supermax confinement. Under the new policy, more reliable evidence (like a prisoner’s admission that he is a gang member) is given more weight than less reliable evidence (like the simple presence of a gang tattoo) in the gang validation process. Gang validation will not automatically result in the prisoner serving an indeterminate period in the supermax; instead, the prisoner must first be found guilty, through an administrative hearing, of a specific gang-related offense. Finally, CDCR promised to begin reviewing the files of those prisoners currently serving indeterminate supermax terms as validated gang members, to see whether they might be eligible for release under the new policies (McDonald 2012). As an example, under the new gang validation policy proposed by CDCR, A.L., quoted in the introduction to this article, might never have been validated as a gang member. And had he been validated, he likely would not have been sent to the Pelican Bay supermax, because his file did not contain any evidence of an actual gang incident in which he was directly involved.

In February of 2013, CDCR officials reported that the status of 144 gang-validated prisoners held in the supermaxes had been reviewed; of these, 78 had been released back into the general prison population, 52 had been placed in transitional programs with the goal of eventually releasing them back into the general prison population, and 10 had agreed to formally dissociate from gangs by providing gang activity information to prison officials (St. John 2013). Of course 144 prisoners represents only about 10% of the supermax population at Pelican Bay State Prison, and less than 5% of the state’s overall supermax population, so many more files still need to be reviewed. Prisoners in the Pelican Bay supermax, hundreds of whom have spent more than 10 years in total solitary confinement, remain impatient with the slow reviews and limited change. Noting that many of their initial demands remain unmet, they have called for another hunger strike in July of 2013 (Ashker et al. 2013). Prisoner advocates have joined the chorus of frustration, noting that these preliminary reviews and decisions indicate that many prisoners were unnecessarily held in supermaxes and improperly labeled as dangerous gang members (Small 2013). Indeed, following the July 2011 hunger strike, CDCR’s claims regarding the necessity of supermax confinement and the dangerousness of the prisoners held there have been both publicly questioned and internally re-evaluated. The hunger strike and its aftermath have both revealed how invisible California’s supermaxes were and opened up the possibility for greater oversight, reform, and reductions in the use of supermaxes statewide. Whether oversight will be maintained, reform completed, and reductions achieved remains to be seen.

5 Conclusion

Twenty-plus years of hindsight suggest that California's supermaxes represent an arguably failed experiment in unchecked discretion and punitiveness in prison operation. Courts intervened to refine the operations of the institutions, to render them constitutional, if not humane, but prisoners continue to spend years, if not decades, in these institutions, and prison officials continued to expand the scale and duration of supermax confinement throughout the 2000s. Supermax use in California tracked overall prison population growth in the state, and supermaxes experienced overcrowding, just as other prisons throughout the state did.

Just as the expanding use of supermaxes paralleled the expanding use of prisons statewide, so the proposed contractions in the use of supermax confinement, following the 2011 hunger strike, have also tracked a contraction in the use of state prisons overall. In 2010, California relinquished its long-standing status as the American state with the most prisoners – to Texas (Carson and Sabol 2012). As of 2012, California was in the midst of a dramatic downsizing of its state prison population, following a federal district court population reduction order in the *Plata* case. Perhaps the contractions in California's overall prison populations, and the concerted re-evaluation, by legislators, judges, and correctional officials, of the state's use of supermax prisons, represent a turning point in California corrections, away from mass incarceration. Regardless of what trends in supermax incarceration rates and overall incarceration rates Californians witness in the coming years, the state's 24 years of supermax incarceration suggest that prison systems lacking adequate oversight are susceptible to abuses of human rights and excesses of incarceration, in terms of the numbers of people incarcerated, and the durations and severity of their experiences of incarceration.

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Parole, snitch, or die: California's supermax prisons and prisoners, 1997–2007

Keramet A Reiter

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What is This?

Parole, snitch, or die: California's supermax prisons and prisoners, 1997–2007

Keramet A Reiter

University of California, Irvine, USA

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Abstract

Supermaximum security prisons ('supermaxes') across the United States detain thousands in long-term solitary confinement, under conditions of extreme sensory deprivation. In 1988 and 1989, California opened two of the first and largest of the modern supermaxes: Corcoran and Pelican Bay State Prisons. Today, California houses more than 3300 prisoners in supermaxes. Each month, between 50 and 100 people are released directly from these supermaxes onto parole. Using statistics obtained from the California Department of Corrections and Rehabilitation, this article explores who these prisoners and parolees are: what race are these prisoners, how long did they spend in solitary confinement, and how frequently are they released? Relative to non-supermax prisoners and parolees in California, supermax prisoners and parolees are disproportionately Latinos, who have served long prison sentences, under severe conditions. Analysis of interviews with correctional department administrators about the original goals and purposes of the supermaxes further contextualizes these data, revealing that supermaxes today function rather differently than their designers envisioned 20 years ago. In sum, this research provides one of the first evaluations of how supermaxes function, in terms of whom they detain and for how long, and how these patterns relate to the originally articulated purposes of the institutions.

Keywords

parole, prison, solitary confinement, supermax

Corresponding author:

Keramet A Reiter, Assistant Professor, Department of Criminology, Law & Society, & School of Law, University of California, Irvine, 3370, Social Ecology II, Irvine, CA 92697-7080, USA.

Email: reiterk@uci.edu

Introduction

Supermaximum security prisons (generally referred to as 'supermaxes') across the United States detain thousands in long-term solitary confinement, under conditions of extreme sensory deprivation. Prisoners remain in their supermax cells 23 to 24 hours a day. The fluorescent lights are always on, day and night. Meals arrive through a small slot in an automated cell door. Prisoners leave their cells four or five times per week for showers or for brief, solitary exercise periods in 'dog runs' – concrete pens with roofs only partially open to natural light. They have little to no human contact for weeks, months, or even years at a time. In 1988 and 1989, California opened two of the first and largest of the modern supermaxes: Pelican Bay and Corcoran State Prisons.¹ Today, California's supermaxes incarcerate more than 3300 people.

A prisoner is not sentenced by a court of law to a supermax prison, nor is he² usually sent to a supermax as a result of an initial classification of dangerousness when he enters a prison system. Rather, supermaxes are designed to hold those prisoners who cannot be controlled in a general population prison setting, prisoners who correctional officials assign, after an administrative hearing, to supermax, deprivation conditions. According to correctional administrators, supermax prisoners are the 'worst of the worst', 'most violent' prisoners in the state system (Corwin, 1990; Heller, 2001: 4). One architect, who worked on the design of Pelican Bay State Prison, described the prisoners the facility was designed to maintain as the 'Hannibal Lecters' of the world, referencing a fictional serial murderer and cannibal (Justice architect (California), 2010 interview).

However, supermaxes do not hold prisoners forever. Because placement in supermax prisons is based on in-prison behavior, or in-prison determinations of gang status, such placement has no effect on a prisoner's criminal sentence. (Supermax placement might indirectly affect a prisoner's overall time served, if a prisoner's supermax status prevents him from participating in prison programs, like education or drug treatment, in exchange for a reduction in prison time served, or if a given state's parole board delays discretionary parole hearings for prisoners in supermaxes (Austin, 2005: 215).) In other words, a prisoner's administrative assignment to a supermax is subsequent to and not directly related to a prisoner's initial criminal sentence. Indeed, just as with 97 percent of prisoners in the United States, many supermax prisoners are eventually released from prison.³

In fact, in California, as I will demonstrate, an average of 75 prisoners per month are released directly from state supermax cells onto parole; these prisoners are returned to the county from which they were originally sentenced. This statistic motivated the analyses presented in this article, which seek to answer the following questions: Who are these former supermax prisoners? How long have they spent confined in supermax conditions? How often do they return to prison, or to supermaxes? What are their racial backgrounds? How do these supermax populations and supermax parolees compare to general prison populations and to overall parolee populations? And, what do 10 years' worth of retrospective data tell us about

supermax policies? Have the institutions operated the way their builders intended them to operate, in terms of who is incarcerated and for how long?

These questions are critical to understanding both the specific shape and the broader impacts of the mass incarceration trends of the 1980s and 1990s (Zimring and Hawkins, 1991). Indeed, the data analyzed in this article respond to the call made by Roy D King (1999), in a *Punishment & Society* article published more than 10 years ago, for further attention to and investigation of the impacts of the rise of the supermax prison in the United States.

This article draws on (1) quantitative data describing 10 years of supermax releases in California and (2) qualitative interviews with former correctional department officials and prison architects, who participated in the design and construction of the state's first two supermaxes. These previously unreleased data provide the best available window into both the prisoner populations at California's first two supermaxes and the correctional justifications for building and operating the institutions. The analysis reveals that, in fact, supermaxes were not intended to detain so many people, for such long periods, and then release them directly back onto the streets. California's two supermaxes, then, represent an important case study both in assessing the impacts of supermax confinement and in understanding how and when criminal justice practice departs from original intent.

The first section of this article provides background information about California and why it is an important case study within the supermax phenomenon, as well as about how prison releases work in California, and particularly, how people are released from supermaxes, by paroling, by 'snitching', or by dying. The second section explains the mixed methods applied in this study to integrate analysis of data obtained from the California Department of Corrections and Rehabilitation (CDCR) with analysis of interviews with correctional administrators. The third section outlines the findings: evidence about how supermaxes were designed to function in the 1980s, descriptive statistics about who is released from supermax prisons in California, and an analysis of the mismatch between the design of the supermaxes and their current functioning. The final section addresses shortcomings in the data and suggests directions for future research.

Background: Supermaxes, California, and parole

Between 1986, when Arizona built the first supermax (Lynch, 2010), and 2010, when Colorado opened the newest US supermax, almost every state (and the federal Bureau of Prisons) either built a free-standing supermax facility, or retrofitted an existing prison to add a supermax unit, creating the standardized supermax conditions of long-term solitary confinement with maximum sensory deprivation.⁴ Exact definitions of what constitutes a supermax vary, as do precise counts of how many people annually experience supermax confinement (Riveland, 1999). By the most conservative estimate, there are at least 20 supermaxes in the United States, although estimates range as high as 57 (Naday et al., 2008; Riveland, 1999). Similarly, population estimates suggest that there are anywhere from 5000 to

100,000 prisoners in supermax confinement at any given time in the United States; 20,000 has frequently been cited as an accurate count (King, 1999), although a recently published article challenged the accuracy of this number (Naday et al., 2008).

Based on the working definitions that have been proposed by Riveland, King, and Naday et al., and the author's own research into the use of supermaxes across the United States, this article uses the term 'supermax' to mean a facility, either free-standing, or a separate unit within a larger prison complex, where prisoners are (1) isolated from the general prison population and from each other under conditions of sensory deprivation, (2) for long durations of more than a few months, (3) based on post-conviction security assignment decisions of correctional administrators. Supermax facilities, then, are different from smaller disciplinary segregation facilities, often called 'the hole', which exist in most prisons for short-term, or temporary isolation of prison trouble-makers. While 'the hole' is a classic feature of the US prison, referenced in court decisions throughout the 20th century (Reiter, 2012a), the supermax is a product of the 1980s mass incarceration boom, deploying modern technologies like computer-automated doors, poured concrete molds, and fluorescent lighting to impose unprecedentedly secure isolation for unprecedentedly long periods of time.⁵

The very debate over how to define a supermax and count supermax prisoners suggests just how little is known about this correctional phenomenon. This article seeks to address this shortage of knowledge by exploring a data set including specific characteristics of former prisoners, who spent time in one of California's two main supermaxes while they were incarcerated.

A limited body of work in both criminology and anthropology has investigated the supermax phenomenon. This research includes an anthropological account of life in Washington state's supermax (Rhodes, 2004), a descriptive account of the physical structure and day-to-day operation of California's Pelican Bay supermax (Shalev, 2009), and various studies documenting the detrimental psychological impacts of long-term isolation (see, for example, Grassian, 2006; Haney, 2003; Kupers, 1999). More recently, King (2007) surveyed more than 80 prisoners in two facilities: a high-security prison in Minnesota (Oak Park Heights, often mistakenly labeled a 'supermax', though Oak Park Heights prisoners participate in out-of-cell programs for eight or more hours per day, rather than spending 23 hours per day isolated in their cells) and a supermax in Colorado (Colorado State Penitentiary). King found that prisoners experienced some positive benefits from high-security and supermax confinement, but most prisoners also experienced the detrimental psychological impacts described by Grassian (2006), Haney (2003), and Kupers (1999). And one 2011 study purported to use an experimental model to evaluate the psychological impacts of solitary confinement in Colorado (O'Keefe et al., 2011); however this study has been criticized as flawed in design and operationalization (Grassian, 2010). Finally, a few authors theorized about the origins and scope of the supermax phenomenon in the early 2000s, but much

of this work has not been updated in the last decade (Kurki and Morris, 2001; Ward and Werlich, 2003).

No study has looked systematically at the operation of supermaxes over time, in terms of whom they detain and for how long, nor has any study addressed the particular population of prisoners who are released from supermaxes.⁶ In other words, this article seeks to contextualize what is known from interview data documenting the negative experiences of prisoners in supermaxes, with statistical data about the scope and scale of these experiences, and qualitative data about the policy context in which supermax institutions operate.

Although the supermax phenomenon is relatively unexplored, it is critically important to understanding the shape of correctional innovation in the United States in the last few decades. The supermaxes built across the United States in the last 25 years are part of a broader trend of massive criminal justice system expansions, including both exponential increases in the numbers of people in prison and in the numbers of facilities built to house these prisoners (Zimring and Hawkins, 1991). In 1970, there were just over 100,000 people in prison in the United States; today, there are more than two million people in prison (West and Sabol, 2009; Zimring and Hawkins, 1991). While many researchers have documented and studied this overall criminal justice system expansion, few researchers have looked systematically at the specific justifications, uses, or long-term impacts of supermaximum security confinement. Even though supermax prisons make up only one small piece of the United States prison expansion, they represent the most severe manifestation of this expansion, a severity that is novel in both intensity and duration.

The California case

Within both the broad context of the United States prison expansion, and the narrower context of the supermax phenomenon, California is a leader – at least in terms of sheer numbers, if not in terms of economic efficiency or desirable policy outcomes. California's prison expansion was the largest in magnitude of any state's, and California in 2008 had more people incarcerated than any other state in the United States (West and Sabol, 2008). In 2010, Texas surpassed California in terms of raw prison population numbers. (California's *rate* of incarceration, 471 prisoners per 100,000 population, hovers just above the national average, 447 prisoners per 100,000 population (West and Sabol, 2008).) The state of California alone exceeds the scale and costs of the criminal justice systems in many other nations. Similarly, my preliminary analyses suggest that California has more prisoners incarcerated in supermaxes than most other states, by a factor of 10. Some states (like Texas and New York) report thousands of prisoners held in small isolation facilities scattered throughout the state, but do not distinguish between facilities holding prisoners for short-term stays in isolation and facilities holding prisoners for long-term stays in isolation. A few other states with relatively large prison populations (like Virginia) estimate supermax populations comparable to California's. Because California's raw prison and parole population numbers, as well as its supermax population and

parole numbers, are so large, the state provides a rich forum for statistical analyses of criminal justice trends. California, then, makes for an important case study of supermaxes, both as a criminal justice policy trendsetter within the United States, and as a self-contained criminal justice system.

California's largest supermax is Pelican Bay State Prison, located in Del Norte County, on the state's northern border with Oregon; it opened in 1989. Pelican Bay was planned as California's first supermax. However, Corcoran State Prison, located in Kings County in the state's Central Valley, was converted at the last minute into a supermax facility; it opened in 1988, just one year before Pelican Bay. Each prison complex contains both supermax buildings and high-security general population buildings. In the last 10 years, California has also begun to operate two additional supermax units at the California Correctional Institution in Tehachapi, California.

This article, however, focuses on the state's first two supermaxes. Although the supermax wings at both Corcoran and Pelican Bay were designed to impose the same, highest level of security available in the CDCR, this article will reveal that the institutions have functioned differently over time. Even within supermax units in California, then, there is a hierarchy of security, with Pelican Bay maintaining prisoners in more extreme isolation, for longer periods of time, than Corcoran. These differences will be explored in greater detail in the findings section.

Paroling (and snitching and dying)

One important impact of the US mass incarceration policies of the 1980s and 1990s has been a growth in both the number of people released from prison and the number of people supervised post-release through parole programs. As of January of 2007, there were almost 800,000 people on parole throughout the United States, with over one-half-million people entering the parole system annually (Glaze and Bonczar, 2009). The state of California is the most significant contributor to this national parole population. There are 120,000 people on parole at any given time in California; this is 15 percent of all people in the United States on parole (Grattet et al., 2008).⁷ Given the large numbers of people who are annually released from prison onto parole in the United States, researchers have increasingly paid attention to the process of release and re-entry back into society (Mauer and Chesney-Lind, 2002; Petersilia, 2003).

Nonetheless, scant attention has been paid to the release of prisoners from supermax prisons. A SAGE publications search revealed that only two recent articles have addressed the release of prisoners from supermaxes. Mears and Bales (2009) compared the recidivism rates of prisoners released from Florida supermaxes to matched groups of prisoners, who had not spent time in a supermax, and found no evidence that supermax prisoners were any more likely than other prisoners to be violent recidivists. Lovell, Johnson and Cain (2007) compared the recidivism rates of prisoners released from a Washington state supermax to matched groups of non-supermax prisoners and found that prisoners released *directly* from supermaxes had the highest felony recidivism rates among released

prisoners studied. This overall lack of attention to supermax releases might reflect the inaccurate assumption that, because the prisoners in supermaxes are the 'worst of the worst', they are never released from prison. However, even those prisoners serving long or indefinite terms in supermaxes eventually parole, upon the expiration of their criminal sentences.

Indeed, 'parole, snitch, or die' is common prison slang, which refers to the three ways a person assigned to a term of confinement in a supermax can leave. He can parole (recall that the supermax assignment affects only the prisoner's conditions of incarceration, *not* the overall criminal sentence); he can renounce his gang membership by 'debriefing', or 'snitching' on other gang members and about gang activity, in which case he will likely be placed in 'protective custody', in conditions which are often quite similar to standard supermax conditions (Blatchford, 2008); or he can die. In other words, parole is often the only viable way out of a term of supermax confinement.

Supermax releasees, much like supermax prisoners within overall prison populations, are not often looked at as a separate demographic within parole populations. Just as supermax prisons are important to understanding exactly how the US prison building boom has taken shape, so supermax releasees are an important and understudied segment of the population of people released from prison in the United States. Moreover, given both the allegation that these prisoners are 'the worst of the worst', who could not adjust to life within prison, and the conditions these prisoners have experienced in supermaxes – conditions documented to cause a variety of health and psychological problems (see, for example, Haney, 2003; Kupers, 1999) – supermax parolees are likely to face additional barriers to successful reintegration into their communities, beyond the usual collateral consequences of having a criminal record (see, for example, Mauer and Chesney-Lind, 2002).

Annually, California releases hundreds of prisoners from supermaxes into counties across California. Simply documenting this process, and the scale of the process, raises questions about how supermaxes actually function. Are supermaxes actually detaining the 'worst of the worst' prisoners, if over the course of a year, 40 percent of California's supermax capacity population is released directly onto California's streets (see Figure 5 and surrounding text)? And what can release data tell us about little-known aspects of the demographic characteristics of supermax prisoners? Finally, are people released from supermaxes likely to recidivate, or return to supermaxes? This article will explore these questions and provide some preliminary answers.

Methodology: Demographic statistics and key informant interviews

This article analyzes both quantitative data regarding prisoners released from supermaxes and qualitative interviews assessing how correctional officials envisioned supermaxes would function, when the institutions were built in the late 1980s. The quantitative analysis is based on 10 years' worth of unique, unpublished data, which I obtained following a request for information made to the CDCR in 2008. The data I obtained from the CDCR pertain specifically to prisoners who

have been released from prisons in California, after having served time in one of the supermax wings at either Pelican Bay State Prison or Corcoran State Prison.

Because the CDCR does not keep archival records of the population of the supermaxes on every day, over time, the best way to analyze the population over a 10-year period is to look at people who are released, because releases are documented and archived on a day-by-day, incident-by-incident basis. In other words, these are point-prevalence statistics; as with any institution, like a hospital or a school, exit statistics are easier to get and more accurately reflect ongoing patterns, absent day-by-day snapshots of who is in a given institution (Kaiser and Stannow, 2010). Moreover, by evaluating release data of thousands of supermax releasees, over a 10-year period, I am able to examine point-prevalence statistics for California's supermaxes that are likely quite representative in the aggregate.

An ideal data set might include demographic and length-of-stay characteristics for those prisoners in the supermax over the 10-year period (rather than those prisoners released from the supermax); however, because of the institutional snapshot problem, such data are not readily available. Indeed, four different CDCR administrators explicitly told me that the CDCR does not have any data tracking the lengths of stay of prisoners in supermax units. A researcher in the CDCR explained that administrators

manage beds not people . . . so their measurement is how long a bed is occupied . . . they can't tell you how long a guy has been there because they start the count over every time he moves to a new bed. (Departmental Researcher, 2010 interview)

These statements further confirm that the data obtained through my information request are unique data, not usually collected by the CDCR, and the best available data on California supermax populations. In August of 2011, the California Department of Corrections and Rehabilitation publicly released additional, though limited, snapshot data about the range of durations of confinement of those supermax prisoners who had been in isolation at Pelican Bay for five or more years, as of August 2011 (Small, 2011). The data release followed a hunger strike led by prisoners in the Pelican Bay supermax in protest of the harsh conditions of supermax confinement. In covering the hunger strike, national media sources like National Public Radio, the *Los Angeles Times*, and the *New York Times* pressured the CDCR to be more transparent and provide more information about supermax prisoners; the August 2011 data release responded to this pressure. These data are discussed further in the sub-section on durations of confinement.

The CDCR has faced years of criticism from federal courts about its organizational opacity. In a 1995 decision establishing a number of constitutional problems with the operation of Pelican Bay State Prison, Judge Thelton Henderson accused prison administrators of cooperating to create a 'code of silence' about what took place at Pelican Bay (*Madrid v. Gomez*, 1995). The *Madrid* case, however, was closed in 2011, when Judge Henderson found that Pelican Bay had been operating smoothly, within acceptable constitutional standards, for years. The absence of available data about supermaxes in California, then, seems to be a more systemic

problem, attributable to the overcrowded, over-budget nature of the statewide prison system, which has limited resources and very few staff allocated to manage data collection and analysis.

The one other study that has looked at similar data about populations within a supermax was conducted in Washington state, which has just over 200 people in supermax conditions, less than one-tenth of California's supermax population. The data examined in the Washington study were obtained through the researchers' case-by-case reviews of prisoner files from the state department of corrections' electronic database (Lovell et al., 2000: 33–34). Due to the significantly larger scale of supermax incarceration in California, and the absence of a comparable electronic database (the CDCR was beginning to digitize prisoner files as of 2012), such case-by-case reviews are not feasible in California at this time.

In the context of supermaxes, and the lack of knowledge about the overall size, composition, or distinctive character of the supermax prisoner population, data on supermax releasees and parolees provide the best available window into the social composition of the supermax prisoner population. Moreover, release data are independently revealing; I contextualize these data in the framework of parole policies and recidivism in California, looking at the characteristics of supermax releasees relative to the characteristics of general parolees. This is the most accurate basis of comparison, as the data I analyze about people released from supermaxes are not directly comparable to either the state's overall prison population, or the state's overall parole population. However, the supermax release data are important for exactly this reason; the data capture unique information about the population of supermax releasees for the first time, and analysis of these data demonstrates how this population differs from the overall parole population. Moreover, the limitations of the data are doubly revealing; the limitations suggest both (1) how few data the CDCR collects or analyzes about its own supermaxes and how the institutions function and (2) what kinds of data should be collected and made publicly available.

In addition to this statistical analysis, I conducted in-depth interviews with more than 30 key informants, including: the executive official who worked for Governor Deukmejian overseeing prison building in California in the 1980s; five administrative officials who worked for the California department of corrections in the 1980s, when California correctional administrators decided to build the state's two supermax prisons; two former wardens of Pelican Bay State Prison; six architects who collaborated with correctional administrators in designing supermaxes; and one lawyer and one judge who later evaluated the constitutionality of the institutions. These dozens of interviews were part of a larger institutional history project; in this article, I include only citations to those interviewees directly quoted, for their descriptions of the purposes and intentions behind the supermax design. Where quotes from these key informants appear in the text, the informant's position within the CDCR is described, and the details of the interviews are listed in the references section.

I initially identified key informants by asking lawyers and correctional officials, whom I knew through prison research work, for names of people who had participated in prison building in California in the 1980s. With each key informant I

interviewed, I asked for names of others, who had worked on the design and building projects of California's first two supermaxes. These key informant interviews were semi-structured, open-ended oral history interviews; each lasted from two to three hours. I took careful field notes throughout the interviews, including transcribing direct quotations, and I typed these notes up immediately following interviews. During the interviews, I focused my questions on understanding who designed California's supermaxes, how the designers thought the institutions would function, and which prisoners they hoped the institutions would detain.

As with the statistical data, these qualitative interview data have obvious shortcomings, but these shortcomings are critically revealing about the institution of the supermax. Specifically, documentary evidence about the design of California's supermaxes, whether from state archives, legislative debates, or written department of corrections reports, would be particularly useful in understanding how the supermax designers thought the institution would function at the time of inception, as opposed to how these designers remember thinking the institution would function, 20 years later. Unfortunately, no such documentary evidence exists in California. Pelican Bay and Corcoran were uniquely administrative innovations, coordinated by the correctional administrators interviewed in this research, with virtually no legislative or judicial oversight, free from the requirements of environmental impact reviews and public bond financing schemes, which would have ordinarily created a paper trail of documents explaining the decision process underlying the supermax design (Gilmore, 2007; Reiter, forthcoming). As one correctional administrator explained about the supermax design process: 'You're not going to find much in the record; it was all negotiated [off the record], and we [the Youth and Adult Correctional Authority] pretty much had our way with the legislature' (Brown, 2010 interview).

Findings: A design gone wrong

The findings in this section include data about how many people, who have spent time in supermaxes, are released annually from the CDCR, how long these prisoners spent in the supermaxes, their demographic backgrounds, and their odds of returning to supermaxes. In addition, the data reveal a decade's worth of trends in these descriptive statistics. While this is basic, descriptive information, it is information that has, until now, been unavailable. It sheds light on exactly who has been in California's supermaxes over the last 10 years and exactly how the supermaxes have been functioning.

Framework: Best intentions at inception

In 1986, the California Legislature passed Senate Bill 1222 authorizing the construction of a 2000-bed 'maximum security complex in Del Norte County'. However, the bill did not describe exactly what form this 'maximum security complex' would take; these details were left up to executive officials and corrections

department administrators (Reiter, 2012b). Therefore, the data from the key informant interviews I conducted constitute the best available evidence about the motivations underlying the supermax design in California in the 1980s, and the administrators' goals for the institutions. (Of course, the interviews necessarily incorporate the wisdom of hindsight; the key informants were reflecting on institutions that have now been in operation for more than 20 years.)

These key informants articulated three key principles underlying the supermax design in California: (1) limited periods of supermax isolation; (2) limited availability of supermax cells; and (3) implementation of step-down programs to ease the transition between supermaxes and parole. In this section, I present a selection of relevant quotes from these key informant interviews, in order to explore each of these three principles, which are critical to understanding the contradictions between how the supermax was conceptualized and how it actually functions.

First, correctional administrators intended that supermax isolation would be for fixed, limited periods of time. Craig Brown, who was Undersecretary of Corrections during the 1980s prison-building boom, said of the supermax at Pelican Bay: 'I don't think we ever conceptualized it as a permanent thing for anyone other than a handful of inmates.' Brown (2010 interview) said 'the assumption' was that people would serve a set term at Pelican Bay, for 'something like nine months, but no more than 18 months'. In other words, the Pelican Bay designers presumed that individual prisoners would 'mellow out...get older', essentially decide cooperation and co-existence was better than living alone in the supermax. In addition, the Pelican Bay designers thought that people might end up in the supermax who did not belong there, and this potential for error provided another important reason for limiting supermax terms in some way: 'Now there should be a way out, if a guy does a lot of time. Some guys maybe go in there that don't need that kind of restraint', said Carl Larson (2010 interview), who was Director of Finance for the Department of Corrections during the prison-building boom and who oversaw the physical design of Pelican Bay. The data examined in subsequent sections in this article suggest that, in spite of the best intentions of California's supermax designers, many prisoners today serve indefinite supermax terms, with little hope of 'a way out'. Indeed, the *average* supermax term at Pelican Bay is longer than 18 months. Brown (2010 interview) expressed frustration at this outcome: 'The biggest disappointment to some of us was how long people got in there.'

Second, correctional administrators sought to limit the availability of supermax cells. 'We knew there would be a tendency to lock too many people in', Brown said. So, he explained, when Pelican Bay was built, Youth and Adult Correctional Agency managers explicitly wanted to keep supermax cells 'a relatively scarce resource, or corrections officers would be comfortable leaving inmates there' (Brown, 2010 interview). Larson (2010 interview) further elaborated that Pelican Bay was the original prison with a supermax design, and the only one with a 'single-purpose design' – the Pelican Bay supermax cannot easily be re-structured to house general population prisoners. By contrast, Corcoran State Prison was

designed as a maximum security, general population prison. However, as soon as Corcoran opened in 1988, two of the buildings within the new prison were converted to supermax units, functioning to detain prisoners in long-term solitary confinement. But, Larson (2010 interview) said of Corcoran: 'I would call it a temporary [supermax].' Specifically, he explained that Corcoran was designed to make retrofitting possible, with all the necessary space to create congregate living environments and prisoner programming, like access to a communal exercise yard. So California administrators hoped, even as they were revising building plans at the last minute to add more supermax cells, that the demand for these cells would decrease, not increase.

Third, the correctional administrators who oversaw the design and building of Pelican Bay and Corcoran thought that prisoners should not be released directly from supermax confinement onto parole. So they designed an institution like Pelican Bay, which included both supermaximum-security units and, 'step-down', maximum-security units, where prisoners could transition into having access to programs and human contact. In this way, prisoners would be guaranteed to spend time among the general prison population, before they were paroled. As Brown (2010 interview) said: 'I don't think any of us liked the idea of knowing inmates would be released from [supermax] to the street... The goal was they would... go to a [maximum], general population.' Larson (2010 interview) was more explicit about his concerns with releasing prisoners directly from a supermax onto parole: 'Do you want him [any prisoner] to come straight out of Pelican Bay, the zoo, to the street?'

Details from these oral history interviews with correctional administrators like Larson and Brown suggest just how much control these correctional administrators had in conceptualizing and building supermax institutions in California in the 1980s. In reflecting back on the institutions they designed, though, these administrators expressed frustration that the institutions are not functioning as originally intended. Indeed, the data analyzed in the remainder of this article demonstrate that none of the three critical principles these administrators attempted to implement through both structural design of the supermaxes and the scale of supermax bed allocations, were successfully implemented. Supermaxes, then, appear to be functioning very differently from the original intentions of their designers.

The path into the supermax

This section presents basic information about the mechanics of supermax confinement in California and about what is known of the people detained in California's first two supermaxes. In California, the supermax wings at the state's two highest security men's prisons are called the Security Housing Units, or SHUs. In a federal court case in which a judge found 'patterns of abuse' in the use of excessive force and withholding of adequate medical care in the Pelican Bay SHU, in the 1990s, the judge summed up the two possible modes of assignment to the SHU: 'SHU cells are reserved for those inmates in the California prison system who become affiliated

with a prison gang or commit serious disciplinary infractions once in prison' (*Madrid*, 1995).

When the CDCR completes an administrative process to 'validate' a prisoner as an affiliated member of a recognized gang, that prisoner is then automatically assigned to an indefinite SHU term. The validation process requires a CDCR official to document three 'independent source items... indicative of association with validated gang members or associates' (California Code of Regulations, 2009: Title 15, ss. 3000, 3341.5, 3378(4)). Such items might include tattoos associated with gang members, notes passed between prisoners believed to be gang members, or documentation of association with other prisoners believed to be gang members. In other words, the validation process involves significant discretion; any documentation of potentially illegal *group* activity could lead to gang validation. The definition of gang membership is so broad, in fact, that not all potential or actual gang members could possibly end up in the SHU. Once a CDCR official validates a prisoner as a gang member, and assigns that prisoner to an indefinite SHU term, the prisoner can only be invalidated if he either 'debriefs', proving he is no longer a member of the gang by 'snitching' on gang activity, or remains uninvolved in gang activity for a minimum of six years (California Code of Regulations, 2009: Title 15, s. 3341.5(C)(5)). (In March of 2012, the CDCR issued a report proposing alterations to the validation and the invalidation processes, including decreasing the minimum stay period from six years to four years (CDCR, 2012).)

According to the US Supreme Court, an indefinite assignment to supermax conditions is constitutional, as long as certain minimal due process protections are in place during the administrative hearing at which correctional officials determine the grounds for the SHU placement. Specifically, prisoners must have notice of the factual basis justifying their confinement in the SHU, and they must have some opportunity to rebut this factual basis. This 'opportunity for rebuttal', however, is extremely limited; it does not necessarily allow the prisoner the right to call witnesses, or to have an attorney, or even a non-attorney advocate present at any administrative hearing (*Austin*, 2005). After a prisoner has been assigned to an indefinite SHU term, federal courts have required some minimal, but regular, review of the prisoner's status, on at least an annual basis; however, the review need not identify what the prisoner could do to earn release from the supermax (*Austin*, 2005).

For those prisoners who commit a specific, serious disciplinary offense, their SHU assignment is for a definite term, based on the CDCR's SHU Term Assessment chart.⁸ Determinate SHU terms range from a minimum of two months, for threatening institutional security, for destruction of state property, or for bribery of a non-prisoner, to a maximum of five years for murder or attempted murder of a non-prisoner (California Code of Regulations, 2009: Title 15, s. 3341.5(C)(9)). Attempted murder could involve what might ordinarily be considered a minimally aggressive activity outside of prison, such as spitting on an officer. Within the uniquely enclosed world of the prison, where a prisoner is more likely to be HIV-positive, or to have Hepatitis C, spitting is seen as an

extremely dangerous and aggressive action, which might rise to the level of a serious offense, meriting a SHU term of two to six months at the least (for 'throwing a caustic substance on a non-inmate'), or up to five years at the worst (for 'attempted murder'). In other words, as with the gang validation process, correctional officers possess broad discretion regarding what kind of serious rule violation to charge a prisoner with and what length of SHU term to impose, if the prisoner is found guilty of the rule violation. Moreover, the administrative hearing process itself incorporates significant discretion. As discussed above, a prisoner facing a serious rule violation charge in prison has none of the rights a criminal defendant would have in a court of law, and the prison official conducting the hearing is not constrained by standard criminal law requirements, such as the usual requirement that a defendant be guilty beyond all reasonable doubt.

In sum, prisoners in California can be sent to the SHU either because correctional administrators determine they are gang members, or upon a finding that there has been a serious rule violation. Both processes – gang validation and rule violation findings – are codified in elaborate detail in Title 15 of California state law. However, correctional administrators have broad discretion in the SHU assignment process.

This very discretion makes analyzing how and to what effect the discretion is applied all the more important. But with such internal administrative flexibility in place, determining exactly who is in the SHUs and why presents a rather challenging question that could well require analysis of thousands of separate case files on any given day. Indeed, four separate correctional administrators, who work in management at CDCR headquarters, agreed that data describing the percentage of prisoners serving determinate and indeterminate SHU terms in the state of California were not readily available (Derby et al., 2010 e-mail). Nonetheless, in the next sections, I present the facts and figures that are available – what is known, and what can be logically deduced, about how many people are confined in supermaxes and why.

Overall supermax populations

Pelican Bay State Prison has a SHU with a capacity for 1056 prisoners (CDCR, 2010). Corcoran State Prison has a SHU with a capacity for 872 prisoners (CDCR, 2010). In addition, in the past few years, the CDCR has converted two additional units at a third prison, the Central California Institution at Tehachapi, into SHUs; these newer SHUs have a capacity for 378 prisoners (CDCR, 2010). Finally, Valley State Prison for Women, California's higher security women's prison has a small SHU wing, built to house 44 women in supermax conditions (CDCR, nd). In total, then, the CDCR has what they call a 'design capacity' for 2350 SHU cells.

However, the total SHU population in the CDCR is much higher; on 17 February 2010, it was 3384 (Derby et al., 2010 e-mail). Despite the SHU cell concept of total isolation in single-occupancy cells, some prisoners in the SHU are actually double-bunked. In general, the vast majority of prisoners in the Pelican

Bay SHU are single-bunked, but more than half of the cells in the Corcoran and Tehachapi SHUs are occupied by two prisoners. Table 1 summarizes this population and double-bunking information.

In fact, historical data comparing the rates of double-bunking over time in the Corcoran and Pelican Bay SHUs reveal that at least one-third of all the SHU prisoners at these institutions have been double-bunked, since the institutions first opened in 1989. Figure 1 shows these trends over time. Double-bunking rates at both institutions have been as high as 60–70 percent of all prisoners. In the last 10 years, though, the trends at the Corcoran and Pelican Bay SHUs have diverged, with the rate of prisoners double-bunked at Corcoran increasing, and the

Table 1. California supermax cell population, by prison, as of February 2010

Prison	Design capacity (DC)	Population	Double-bunked prisoners (Pop – DC * 2)	Single-bunked prisoners	% prisoners double-bunked
Pelican Bay State Prison	1056	1118	124	994	11
Corcoran State Prison	1024	1439	830	609	58
California Correctional Institution (Tehachapi)	378	764	756 (plus 8 overflow prisoners housed elsewhere)	0	100
Valley State Prison for Women	44	63	38	25	60
Total	2502	3384	1748	1628	52

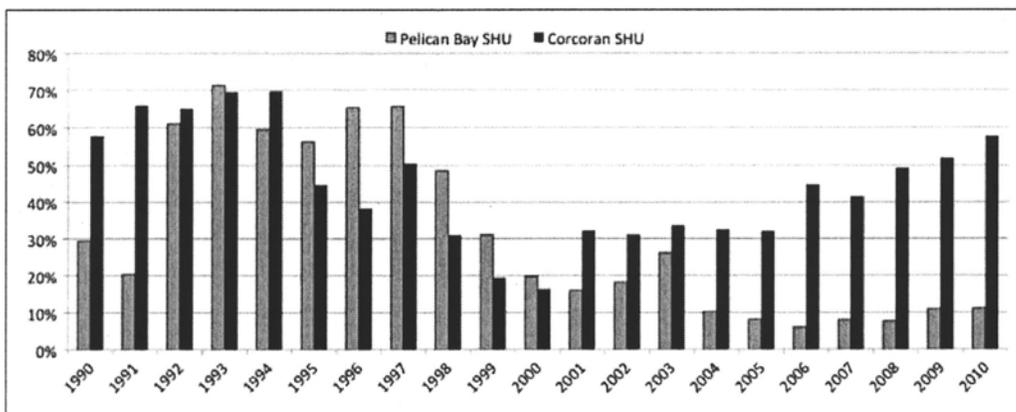


Figure 1. Percentage of double-bunked prisoners, 1990–2010.

rate of prisoners double-bunked at Pelican Bay decreasing. This suggests that the conditions at Pelican Bay are more isolating than those at Corcoran; the Pelican Bay SHU, then, imposes an even higher level of supermaximum, isolation security than the Corcoran SHU.

Table 2 shows the specific percentages of double-bunked prisoners over time, as well as the proportion of all supermax prisoners in the CDCR relative to the overall prison population throughout the Department. The proportion of supermax prisoners in the CDCR has remained relatively constant over the last 20 years, hovering around 2 percent of the overall prison population. The fact that the overall proportion of California prisoners housed in supermaxes has been relatively constant suggests that the *prevalence* of violent or dangerous prisoners in the California prison system has also been relatively constant. So, double-bunking variations must be caused by something besides a change in the *prevalence* of violent or dangerous prisoners in the California prison system. Perhaps there are variations in the *kinds* of violence this steady stream of prisoners commit, or the *kinds* of dangers they present.

Or perhaps double-bunking rates in the SHU are driven by rates of overcrowding throughout the prison system. After all, the raw number of supermax prisoners has increased steadily, with the increases in the raw numbers of the overall prison population. (This explains how the rate of supermax use has remained relatively constant.) So, in 1995, an extra supermax unit was opened at Corcoran State Prison, and in 2000, an overflow supermax unit was opened at the Central California Institute at Tehachapi (Larson, 2011 e-mail). The rules codified in California's Title 15 suggest that supermax assignment is based on whether prisoners break rules, or are established to be dangerous gang leaders, but these double-bunking data suggest that supermax assignment might actually be based, at least in part, on overcrowding rates in the CDCR.

Duration of confinement

As mentioned above, there are two categories of durations of supermax confinement: definite and indefinite SHU terms. Exact data about how many of the people assigned to supermax confinement are serving indefinite SHU terms and how many are serving definite terms are not readily available. However, based on a combination of publicly available data and analysis of the data I obtained regarding people paroled from supermaxes, some estimates of the breakdown between indefinite and definite terms can be made.

In 2010, the CDCR website noted that all of the Corcoran SHU cells were reserved for validated gang members (CDCR, 2010–2012). Today, the CDCR website notes that many gang members are housed in a second high-security unit adjacent to the Corcoran SHU (CDCR, 2010–2012); these changes are likely the result of changing policies regarding gang members within the CDCR (Amnesty International, 2012). As defined in Title 15 of the California Code of Regulations, people serving SHU terms solely because they are validated gang members are

Table 2. Rates of double-bunking and of SHU use, 1989–2010

Year	Corcoran		Pelican Bay		DOC SHU population as a percent of total prison population
	SHU population	Percent double-bunked	SHU population	Percent double-bunked	
1989	0	0	0	0	0.0
1990	720	58	1238	29	2.2
1991	764	66	1176	20	2.1
1992	759	65	1520	61	2.3
1993	785	70	1642	71	2.2
1994	786	70	1504	60	2.0
1995	1318	45	1470	56	2.3
1996	1266	38	1570	65	2.1
1997	1369	50	1573	66	2.1
1998	1212	31	1394	48	1.8
1999	1134	19	1251	31	1.6
2000	1115	16	1172	20	1.7
2001	1221	32	1148	16	2.0
2002	1213	31	1162	18	1.9
2003	1231	34	1215	26	1.9
2004	1223	33	1113	10	1.9
2005	1220	32	1101	8	1.9
2006	1319	45	1089	6	1.9
2007	1292	41	1100	8	1.8
2008	1358	49	1098	8	1.9
2009	1382	52	1117	11	2.0
2010	1439	58	1118	11	2.0

Note: In May of 1995, the California Department of Corrections opened a second Security Housing Unit at Corcoran State Prison. This housing unit had been planned as a SHU since the prison was built, but was not operated as one until 1995 (Larson, 2011 e-mail). So, prior to 1995, the design capacity of the Corcoran SHU used for calculating overcrowding in this chart was 512 single-occupancy cells. In 1995 and thereafter, the design capacity of the Corcoran SHU used for calculating overcrowding in this chart was 1024 single-occupancy cells. The calculation for the percentage of double-bunked SHU prisoners is as follows: (1) subtract the SHU design capacity from the SHU population to determine how many prisoners are housed in the SHU in excess of the design capacity; (2) multiply the difference between the design capacity and the population by two, because every prisoner in excess of the design capacity is, by definition, double-bunked with a second prisoner; (3) divide the total number of double-bunked prisoners by the total population to obtain the percentage double-bunked.

servicing indefinite terms. The CDCR provides no comparable information on their website about how many people in the Pelican Bay SHU are validated gang members, although court cases and eyewitness accounts suggest that as many as two-thirds of the prisoners in the Pelican Bay SHU are also validated gang members (Blatchford, 2008; Madrid, 1995; Shalev, 2009). Following criticism of the harsh conditions in the Pelican Bay SHU in August of 2011, the CDCR released snapshot data about the prisoners in the SHU at Pelican Bay in that month. Of the 1111 prisoners housed in the SHU at Pelican Bay in August of 2011, 513 had been there for 10 years or more (Small, 2011). Because the longest determinate SHU term the Department imposes is for five years, these 513 prisoners are likely serving (very long) indeterminate SHU terms. (It is possible that a prisoner would be assigned to a determinate SHU term, break a prison rule during that term, and be assigned to a second consecutive SHU term, so the 10-year terms do not unequivocally represent indeterminate SHU terms.)

In sum, with the more than 1000 people at Corcoran likely serving indefinite SHU terms, and as many as 500 or more people at Pelican Bay serving indefinite SHU terms (estimated at up to two-thirds of the 1000 to 1500 people in the Pelican Bay SHU), at least half of the SHU prisoners in California, and maybe more, have been assigned to indefinite SHU terms. Indefinite SHU terms are important, in part, because they likely contribute to the long periods – up to 20 years or more – that some prisoners spend in solitary confinement, as discussed in the remainder of this section.

While data about the average lengths of stay of prisoners *currently* detained in the Corcoran and Pelican Bay SHUs are limited to the August 2011 data discussed above, this section analyzes data indicating the average lengths of stay of prisoners *released* from the Corcoran and Pelican Bay SHUs over a 10-year period from 1997 through 2007. Specifically, these data capture, within a given year, people who either paroled directly from one of these two SHUs, or people who were paroled from another prison, but who had spent time in the SHU prior to being paroled. Because an average of 2300 people per year who have spent time in one of these two SHUs are paroled from prison, release data capture a substantial portion of the incarcerated SHU population in any given year (2300 represents more than two-thirds of the approximately 3400 prisoners in California SHUs on any given day).

Figure 2 shows specific data about the length of SHU terms at both Corcoran and Pelican Bay State Prison. The four lines in this figure represent the average (squares) and maximum (triangles) lengths of stay in the Corcoran (darker solid line) and Pelican Bay SHUs (lighter dotted line), displayed as a trend over 10 years. Table 3 shows the raw numbers on which the visuals in Figure 2 are based.

Figure 2 shows that the *maximum* lengths of stay in both the Pelican Bay SHU and the Corcoran SHU climbed steadily between 1997 and 2005, but then began to decrease between 2005 and 2007. The *average* SHU stay at Pelican Bay increased steadily over the entire period between 1997 and 2007, rising from just over one year of average stay-time to almost two-and-one-half years of average stay-time. The *average* SHU stay at Corcoran, on the other hand, has hovered right around

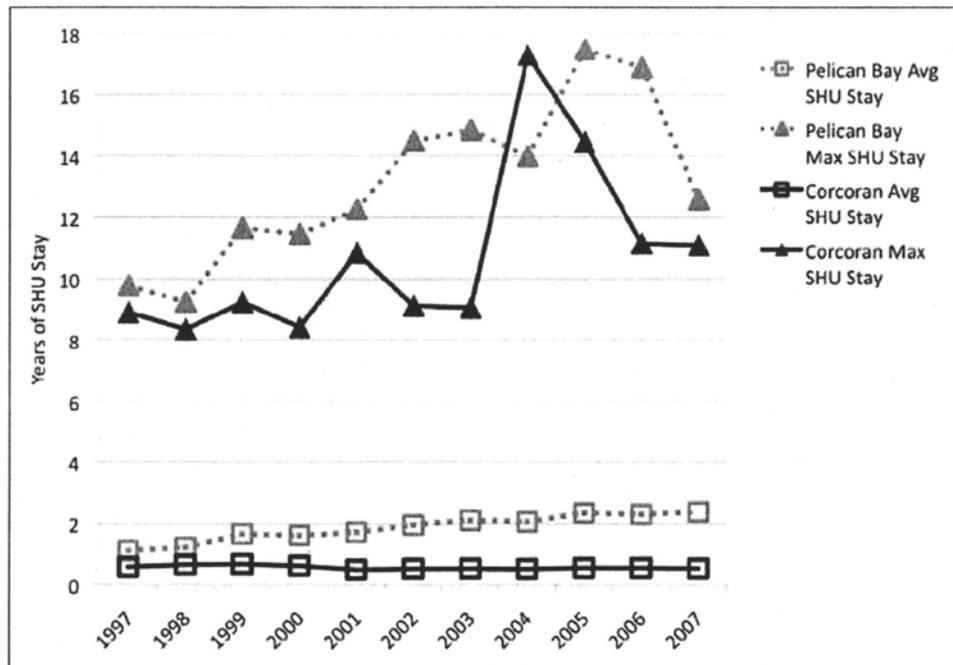


Figure 2. Average lengths of stay and maximum stays, in years, by prison, 1997–2007 (based on prior SHU terms of prisoners paroled from the CDCR within a given year).

one-half to three-quarters of a year. This suggests that the shorter *maximum* stays seen in 2006 and 2007 on the graph are not indicative of shorter *overall* stays in the SHU. Indeed, average stays in the Pelican Bay SHU appear to be increasing, while average stays in the Corcoran SHU have remained relatively stable.

Of course, the data fail to capture those people who have never been released or paroled from the SHU, so there are likely people in Pelican Bay and Corcoran who have spent periods of time in excess of 20 years, who are not captured in release data. Indeed, according to the snapshot data released in August of 2011 by CDCR, 78 prisoners in the Pelican Bay SHU have been there for 20 years or more (Small, 2011). As Figure 2 shows, even for those prisoners who have been released from the SHU, individuals' maximum periods of confinement in the sensory deprivation conditions range as high as 17 years, or more.

For visual clarity, Figure 2 does not show the minimum stays for California SHU prisoners; the annual minimum stays consistently hover around just one day at both Corcoran and Pelican Bay (Table 3 shows these data.) The spread of SHU stays, then, is extraordinarily wide, ranging from just over a week to decades. The spread at Corcoran is a bit narrower than the spread at Pelican Bay, as revealed by the shorter average and shorter maximum durations of Corcoran SHU stays. These differences suggest that, although the SHUs at both Corcoran and Pelican Bay were designed to house the same classifications of prisoners, who require isolation

Table 3. Range of lengths of stay, in months and days, by prison, 1997–2007 (based on prior SHU terms of prisoners paroled from the CDCR within a given year)

	Pelican Bay			Corcoran				
	No. prisoners paroled with prior SHU terms	Max. stay (months)	Min. stay (days)	Avg. stay (months)	No. prisoners paroled with prior SHU terms	Max. stay (months)	Min. stay (days)	Avg. stay (months)
1997	586	117	1	14	1327	107	1	7
1998	565	111	1	15	1466	100	1	8
1999	395	140	1	20	1344	111	1	8
2000	288	137	1	19	1145	101	1	8
2001	263	147	1	21	1877	130	1	6
2002	199	174	3	24	2426	109	1	6
2003	223	178	4	25	2620	109	1	7
2004	194	168	1	25	2789	208	1	6
2005	182	210	1	28	2543	174	1	7
2006	140	203	3	28	2552	134	1	7
2007	140	151	4	29	2814	133	1	7

as a result of either breaking prison rules or being gang members, the Pelican Bay SHU is in some sense tougher, housing prisoners for a broader range of durations of time and for longer average durations of time.

In another sense, these data raise more questions than they answer. In response to my data request, the CDCR provided tables, which showed the average, minimum, and maximum length of stay for the prisoners, who had served time in the SHU during their incarceration and had paroled in each year from 1997 to 2007. Of the thousands of prisoners in the SHU in any given year, these data do not reveal what proportion of prisoners served what range of time in the SHU. (In other words, breaking the data down into categories of time served, evaluating, for instance, how many prisoners spent five to 10 years in the SHU, is impossible.) Even absent this more nuanced data, one thing is clear: some prisoners are spending extended periods of time, as long as 17 years, in the SHU, prior to being released.

In sum, the data presented here about how long prisoners, who have been released from the California prison system, have spent in supermax conditions provide the first picture of both the range of lengths of stays in the SHU and the average lengths of stay over time. The data demonstrate that prisoners assigned to the SHU in California are spending extended periods in confinement there.

Moreover, the data show significant differences between lengths of stay in Corcoran and in Pelican Bay; prisoners tend to serve shorter terms of SHU confinement at Corcoran than at Pelican Bay. In one sense, then, Pelican Bay is functioning as intended: maintaining the most severe conditions for the longest periods of time. In another sense, though, both institutions are detaining prisoners for significantly longer periods of time than their designers intended, indicating that SHUs are potentially being overused, at least relative to their original intentions. Indeed, following the prisoner hunger strike at Pelican Bay in the summer of 2011, CDCR agreed to re-assess the scale of supermax use in the state (Montgomery and Terry-Cobo, 2011). The limited data presented here suggest another possible reform for the state department of corrections: collecting and making publicly available more precise data about the scale and duration of supermax use in the state.

Racial demographics of SHU populations

Figure 3 displays the racial demographics of those prisoners paroled from the CDCR in 2007 who had previously served time in the SHU. Figure 4 provides a comparison, by presenting the racial demographics of the general California parole population. (Note that these graphs refer to 'Hispanics', because this is the race category the CDCR uses to identify prisoners of Latino heritage. This is in contrast to the US Census, which uses 'Hispanic' as an ethnicity category, identified separately from the race categories.) While the racial demographics of those people paroled from the CDCR who have served SHU terms may not precisely represent

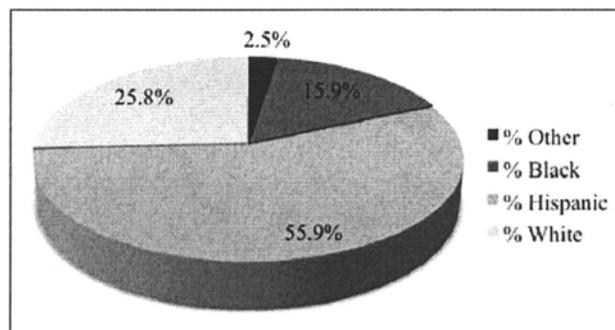


Figure 3. Racial demographics of supermax populations, 2007 (based on prisoners paroled from the CDCR who had previously served SHU terms).

Note: The percentages shown in this chart represent the *average* of the racial demographics of prisoners released from the Corcoran SHU and of the racial demographics of prisoners released from the Pelican Bay SHU, rather than a raw calculation based on the total number of SHU releases from both institutions. As discussed in the text, the disproportionate impact of SHU terms on Hispanics is more extreme at Pelican Bay than at Corcoran, although Pelican Bay also releases fewer prisoners annually than Corcoran. Therefore, the average numbers presented here better capture the overall disproportionate impact of SHU terms on Hispanics.

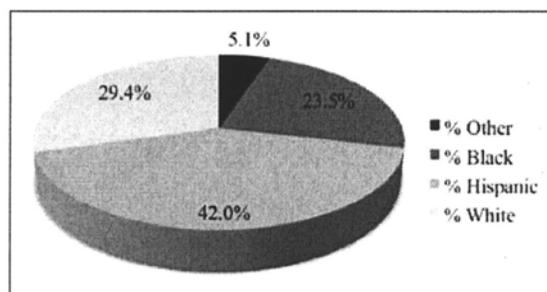


Figure 4. Racial demographics of general parole population, 2007.

the racial demographics of all those prisoners detained in the SHU, there is likely a close fit between the two populations. First, as discussed in the 'Overall supermax populations' section earlier, a substantial portion of the SHU population turns over every year; annual releases represent about two-thirds of the average daily population. Second, studies have found substantial similarities between prison populations and parole populations in California and in the United States (Petersilia, 2003).

In general, prisoners on parole who have spent time in the SHU are slightly less likely to be either white or African American than the average prisoners on parole. However, prisoners on parole who have spent time in the SHU are significantly more likely to be Hispanic than the average prisoners on parole; in 2007, almost 56 percent of the prisoners paroled after having spent time in the SHU were Hispanic, while only 42 percent of the general parole population was Hispanic. This is, perhaps, not surprising, given the already-discussed phenomenon of correctional officers 'validating' gang members and assigning them to indefinite SHU terms; indeed, some of the largest and most feared gangs in California, like the Norteños and Sureños, are associated with Latino culture (California Department of Justice, 2005; National Youth Gang Center, 2009).

In sum, Figures 3 and 4 show that Hispanics are disproportionately more likely to have spent time in the California SHUs than other racial and ethnic categories of prisoners. A chi-square test, comparing ten year's worth of California parole data with 10 years' worth of SHU release data confirms that the disproportionate impact seen on Hispanics in 2007 has been consistent and significant over the past 10 years (p -value $\leq .001$ in every year but 2001, when p -value $\leq .01$). Table 4 shows these calculations.

While this disproportionate impact of the SHU on Hispanics might be logically related to the process of gang validation, it is also important for understanding just who is most likely to experience confinement in the SHU and why. Moreover, if the SHU is disproportionately targeting some minorities, this disproportionate impact deserves legal scrutiny, to determine whether the disparate impact of this extremely

Table 4. Results of chi-square test comparing racial demographics of SHU releases to racial demographics of California parole populations, 1997–2007

Year	% Hispanic on parole	% Hispanic supermax releases	% Hispanic Pelican Bay releases
1997	42	47*	55**
1998	42	50*	58**
1999	42	47*	53**
2000	42	49**	58**
2001	41	42	52*
2002	41	38**	52**
2003	39	41*	53**
2004	39	39*	57**
2005	40	43**	62**
2006	41	46**	54
2007	42	46**	66**

Notes: * $p < .01$; ** $p < .001$. These calculations show that the higher proportion of Hispanic prisoners released from the SHU in each year between 1997 and 2007 is significant, or very unlikely to be due to chance, in every year but 2001. In addition, in 2006, the higher proportion of Hispanic prisoners released directly from Pelican Bay was *not* significantly different from the proportion of Hispanic prisoners in the overall parole population. Note that in two additional years, 2002 and 2004, the overall percentage of SHU releasees who were Hispanic was the same or less than the overall percentage of people on parole in California who were Hispanic. These percentages are still significant, however, because the overall racial demographics of SHU releases in those years still differed significantly (in terms of percentages of Whites, Others, and Blacks) from the overall racial demographics of people on parole in California.

punitive confinement on Hispanics is truly justified by gang activity or other potential safety concerns.

The path out of the supermax

In this section, I review what data are available on how many people parole from supermaxes annually. I also evaluate a few very rough estimates of the frequency with which people serve multiple terms in a supermax, as well as the recidivism rates of supermax parolees.

Figure 5 reveals that the CDCR releases hundreds of people annually, directly from the SHUs at Pelican Bay and Corcoran, into their communities, under parole supervision.⁹ The lightly shaded bottoms of the bars represent releases from the Pelican Bay SHU, and the darkly shaded tops of the bars represent releases from the Corcoran SHU. On average, 909 prisoners are released annually from the

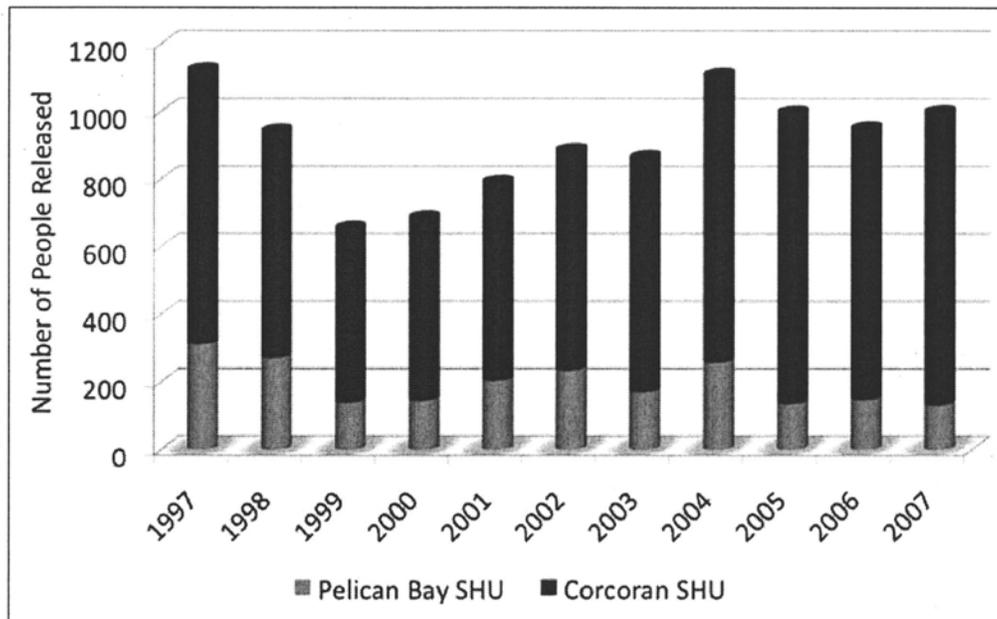


Figure 5. Annual releases from supermaxes directly to parole, 1997–2007.

supermaxes directly to parole; 909 prisoners account for roughly 38 percent of the overall annual supermax population in California.

Figure 6 reveals that about one-third of all prisoners who are paroled after having spent time in the Corcoran SHU are paroled directly from the Corcoran SHU, while the majority of all prisoners who are paroled after having spent time in the Pelican Bay SHU are paroled directly from the Pelican Bay SHU. So just as prisoners in the Pelican Bay SHU are serving longer average sentences than prisoners in the Corcoran SHU, they are also more likely to parole directly from the SHU.

The data suggest that hundreds of prisoners every month are paroling directly from the SHU, or paroling from a high security prison within a few weeks of being released from the SHU. These prisoners have spent an average of one to two years, and up to 17 or 18 years, in near-complete solitary confinement (or, possibly, in contact with only one other cellmate). The fact that they are released from these conditions directly onto parole raises immediate questions about how supermax releasees re-adjust to a world with natural light, the noise of traffic and conversation, and physical, human contact. Indeed, what little is known about the recidivism of supermax parolees – both in terms of returns to prison from the street, and returns to the supermax from within prison – suggest that re-adjusting to life outside of the supermax is potentially challenging.

Figure 7 shows the proportion of those prisoners paroled from the CDCR with any SHU experience, who had served more than one SHU term. More specifically, this percentage was calculated by dividing the number of people paroled in any

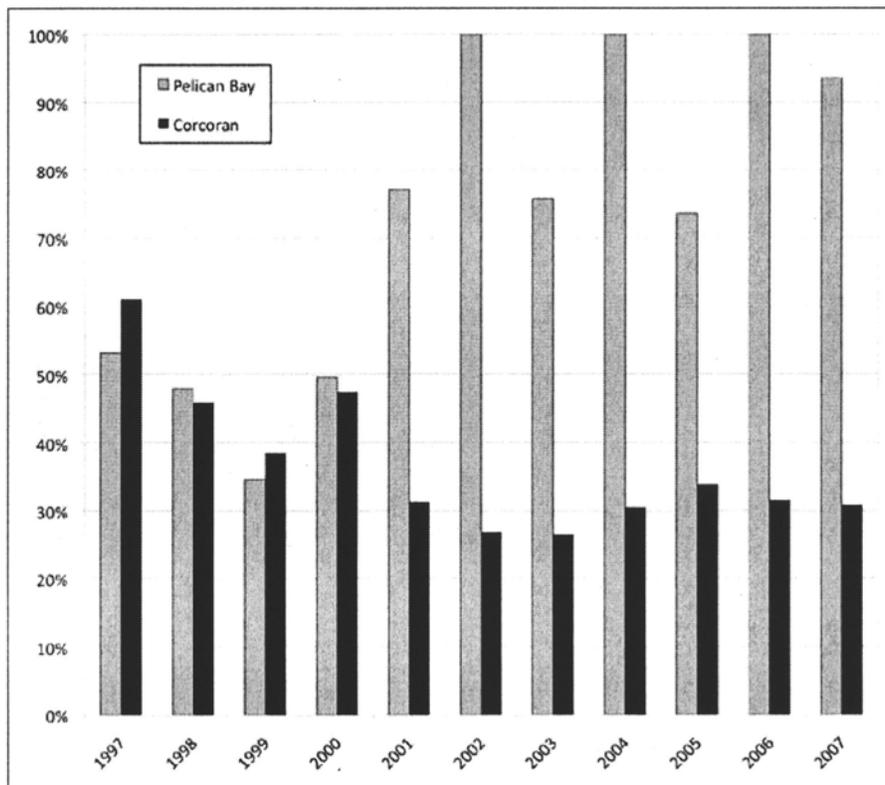


Figure 6. Percentage of total annual SHU-experienced parolees who paroled directly from Pelican Bay or Corcoran, 1997–2007.

Note: In 2002, 2004, and 2006, the CDCR reported that a few more prisoners paroled directly from the Pelican Bay SHU than paroled from throughout the prison system, with a prior history of having served time in the Pelican Bay SHU. This suggests that in each of these three years, one of these two calculations about supermax parolees was mis-reported.

given year, who had served any time at all in either the Pelican Bay or Corcoran SHU, by the number of people paroled in any given year, who had served more than one term in the SHU during their prison sentence. This provides a rough estimate of what percentage of the SHU population in any given year has served more than one term in the SHU. These data suggest that there is a significant amount of ‘SHU recidivism’: one-third to three-fourths of all the prisoners paroled in any given year with prior SHU experience had served multiple terms in the SHU.

These data again reveal that there are significant differences between the two institutional populations at the Pelican Bay SHU and the Corcoran SHU. In all but one year (2001), prisoners paroled after having served time in the Pelican Bay SHU were more likely to have served multiple SHU terms than prisoners paroled after having served time in the Corcoran SHU. In some years, in fact, all of the prisoners paroled after having served time in the Pelican Bay SHU had served multiple SHU terms there. This again suggests that the Pelican Bay SHU detains prisoners who

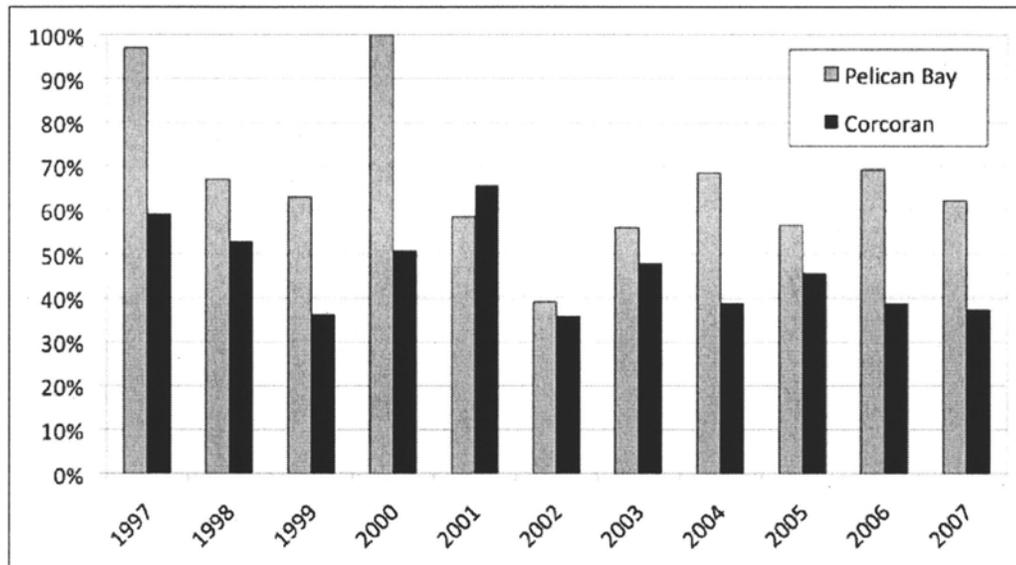


Figure 7. Percentage of total annual SHU-experienced parolees who had served multiple SHU terms, at Pelican Bay and Corcoran, 1997–2007.

Note: In 2000, the CDCR reported that 298 prisoners were paroled from Pelican Bay after having served multiple SHU terms, but that only 288 prisoners in total, who had served time in the Pelican Bay SHU, were paroled in that year. This suggests that one of these two calculations about supermax parolees in 2000 was mis-reported.

are more problematic or challenging to the prison order than those prisoners at the Corcoran SHU.

From a public policy and community re-entry perspective, the more interesting question is not about SHU recidivism, but about parole recidivism; how successful are these SHU parolees at re-integrating into their communities? Currently, no data exist regarding the recidivism statistics for prisoners paroled directly from the Corcoran or Pelican Bay SHUs, or for prisoners who are paroled from elsewhere in the prison system, but who have previously served a term in the SHU. When I requested this information from the CDCR, they gave me one aggregate number: the number of prisoners who had been paroled directly from the Pelican Bay or Corcoran SHU between January 1997 and December 2007, and who had been returned to prison for violating parole within two years of release. In total, 6195 prisoners, over 10 years, were in this category of recidivating after having been paroled directly from the SHU. This amounts to 62 percent of the total number of prisoners paroled directly from the SHU over this period. Over this same 10-year period, the average two-year return-to-prison rate for all prisoners paroled in California hovered around 60 percent. Such data are too aggregated to provide any rigorous sense of how supermax parolees fare on parole; the data simply suggest that supermax parolees might face greater challenges than the average prisoner and might have a higher likelihood of recidivating. However, more

data disaggregated by year, by criminal history, by age, and by length of stay in the supermax, are necessary to provide a truly rigorous analysis.

Overall, these data reveal that a prisoner who goes to the SHU once is extremely likely to return to the SHU again; such a prisoner might also be more likely to return to prison once he is paroled. Moreover, a parolee who was released from the SHU, and violates his parole, will be returned directly back to the SHU. These data are an indication that SHUs may not be functioning to deter misbehavior in prison; despite the harsh conditions of the supermaxes, prisoners seem to cycle in and out of these units repeatedly.

Are California's supermaxes functioning as intended?

In brief: no. First, the state's supermaxes have been continuously expanding in terms of the sheer number of people detained in conditions of extreme sensory deprivation, since they were first opened in 1988 and 1989. By 2001, the CDCR was operating two additional supermax units, detaining hundreds of additional prisoners, at the California Correctional Institution at Tehachapi. And, over the past 20 years, California has resorted to double-bunking at least some prisoners in supermax conditions, although the supermax institutions were originally designed to house prisoners in total isolation. This double-bunking happens more frequently at Corcoran and Tehachapi than at Pelican Bay. In fact, each of the state's supermaxes operates differently – detaining prisoners under different conditions for different periods of time – suggesting just how inconsistent supermax practices can be, and providing evidence of the day-to-day discretion correctional administrators exercise in assigning prisoners to supermaxes. In sum, supermax beds have not been limited to the 1056 Pelican Bay supermax cells originally designed to be the sum total of California's supermax beds.

Second, prisoners are spending long periods of time in supermaxes – an average of more than two years in Pelican Bay, and as long as 17 or 18 years, prior to being paroled. These long sentences suggest that getting out of supermaxes – whether by paroling, snitching, or dying – can be hard, if not impossible. By contrast, the correctional administrators who designed and built Pelican Bay and Corcoran in the 1980s hoped that prisoners would spend a maximum of 18 months in these institutions, and envisioned transitional programs to facilitate leaving these institutions.

Third, hundreds of people annually are released directly from supermaxes onto parole, having spent at most 90 days outside of a supermax cell before being released. Hundreds more people every year are cycling in and out of the supermaxes; more than half of the supermax population in any given year has served two or more terms of confinement in the supermax. The correctional administrators who designed and built California's supermaxes in the 1980s envisioned a functional, deterrent punishment: people would spend a fixed term in intensive solitary confinement, and then they would return to the general prison population, and, hopefully, avoid the supermax in the future. Correctional administrators also

designed facilities to ensure that supermax prisoners would spend time in a general prison population, *prior* to being released onto parole. In practice, hundreds of prisoners per year are released directly from supermaxes onto parole, and the same people appear to be cycling again and again through the supermaxes.

Conclusion

Understanding more about how supermaxes function and whether they are effective is critical to evaluating the success of one of the most popular trends in extreme punishment in the 21st century: long-term solitary confinement in conditions of extreme sensory deprivation. This article reveals as much about what is *not* known about these institutions as what is known, and suggests many further avenues of study. Better data about who is in supermaxes, why, and for how long are needed. Rigorous studies of the experiences of supermax releasees on parole – and their likelihood of returning to prison – are also needed.

Despite all these unanswered questions, this article does provide some answers. Primarily, it reveals that supermaxes are not functioning as their designers intended them to function. Secondly, California's supermax story suggests an explanation for this observation: the role of discretion in correctional administration. As discussed in the section 'The path into the supermax', correctional administrators have broad discretion in assigning prisoners to supermax terms. Even though the high-level correctional officials who originally designed and built Pelican Bay and Corcoran hoped that the Security Housing Units would provide a small, fixed number of supermax beds, forcing correctional administrators to limit how many people were assigned to these institutions as well as the lengths of the assignments, the original designers had no control over how their buildings would ultimately be used within the CDCR.

The data in this article also reveal two potentially significant public policy problems with California's supermaxes: SHU prisoners appear to be disproportionately Hispanic, relative to the general prison and parole populations in California, and SHU prisoners are frequently released directly from the SHU onto parole. These facts raise questions about whether the SHU functions in a discriminatory way; whether the SHU adequately prepares prisoners to survive on the streets, given the number of people who are released annually from long-term solitary confinement onto parole; and whether the SHU makes our communities safer.

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Notes

1. Most state prison systems have a few hundred people in supermax prisons; California has a few thousand (Naday et al., 2008: 79; Riveland, 1999). Arizona opened the first supermax in 1986 (Lynch, 2010). California correctional administrators identified the Arizona supermax as the institutional prototype on which they modeled the Pelican Bay State Prison supermax (Reiter, forthcoming). Other states, and the federal system, subsequently looked to the California model, copying many details of the design (Justice architect (Arizona), 2011 interview; Justice architect (formerly with the federal Bureau of Prisons), 2011 interview).
2. All but about 40 of California's 3300 supermax prisoners are men; these male supermax prisoners are therefore the focus of this article.
3. The 97 percent figure is based on my own calculation: adding the number of people sentenced to death in the United States (3305) and the number of people sentenced to life without the possibility of parole (41,095) together, and dividing by the number of sentenced people currently in state or federal prison (1,540,805), to get a percentage of people who will never be released: 2.88 percent (Nellis and King, 2009; *Sourcebook*, 2009; West and Sabol, 2009). Petersilia (2003) uses a similar calculation in her book, *When Prisoners Come Home*.
4. Prior to 1986, solitary confinement was in use in US prisons, but the facilities were more makeshift, and the terms were usually much shorter than supermax terms are today (see, for example, McLennan, 2008; Rothman, 1971).
5. Some scholars have identified high-security facilities in operation in the 1960s and 1970s as supermaxes; for instance, Ward and Werlich (2003) call Alcatraz federal prison a supermax. However, prisoners at Alcatraz spent many hours each day out of their cells, sharing meals in a communal dining hall, and exercising and working in groups; this daily communal activity sharply distinguishes the conditions in Alcatraz from the total isolation conditions, with minimal human contact and sensory deprivation, imposed in modern supermaxes.
6. Ward and Werlich (2003) do discuss conduct of prisoners released from Alcatraz and Marion prison, characterizing these institutions as supermax prisons. However, as discussed at note 5, neither Alcatraz nor Marion meets the working definition of a supermax – as an institution maintaining prisoners in long-term and total isolation – laid out in this article.
7. By comparison, California's overall state prison population accounts for just 11 percent of the United States' total federal and state prison population.

In California, the combination of a mandatory three years of parole for all released prisoners and rigidly enforced rules for behavior on release, contribute to the relatively large number of parolees as well as to higher incarceration rates in the state. Specifically, when a California parolee violates a condition of his or her parole, he or she participates in an administrative hearing, rather than a criminal court adjudication. This administrative process often bypasses many of the procedural protections of a criminal trial and results in the parolee being re-incarcerated, and serving some portion of the three-year 'parole' term in prison.

8. The Department Operations Manual (CDCR, 2009) notes that a prisoner might also be assigned to a SHU voluntarily, if he requests protective custody *and* prison officials validate the legitimacy of the request, or for brief, involuntary terms of less than 10 days, if the prisoner is newly arrived at a high security institution, and officials need to determine whether that prisoner will be safe in the general prison population. However, these two forms of assignment are not part of my evaluation of SHU populations or the focus of this study; prisoners in protective custody are counted separately, as residents of 'Protective Housing Units' rather than 'Secure Housing Units', and prisoners who spend less than 10 days in the SHU are not captured by most of my data, which are focused on longer-term confinements to the SHU. To the extent that a prisoner who spent only 10 days in the SHU is counted in the aggregate, average length-of-stay data I discuss, such short stays might be pulling down the overall average stay data, which already indicates long average stays of close to two years.
9. According to the researcher who provided these data, the numbers in this figure might actually include some prisoners who spent 90 days or fewer in the general population at the institution where they served their SHU term. However, the CDCR cannot say with precision exactly how many prisoners this is true of, again suggesting shortcomings in the manner and detail of data collected about the SHU.

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Keramet A Reiter is an Assistant Professor of Criminology, Law and Society and of Law at the University of California, Irvine. She holds a JD and PhD from the University of California, Berkeley, and she is currently working on a book on the history and uses of supermax prisons. Recent publications include a *California Law Review* article on prisoner participation in medical experimentation and a *Studies in Law, Politics, and Society* chapter on the history of litigation around solitary confinement in the United States.

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Before the
United States Senate
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights and Human Rights

Submitted via e-mail to: Nicholas_Deml@judiciary-dem.senate.gov
Cc to: solitarywatchnews@gmail.com

June 15, 2012

Dear Chairman Durbin and Ranking Member Graham,

My name is Keramet Reiter. I am an Assistant Professor in the Department of Criminology, Law and Society at the University of California, Irvine (as of July 1). I am an expert in the history and uses of solitary confinement in U.S. prisons; I have been researching and writing about this topic for nearly ten years.

In this testimony, I will discuss, in turn, three aspects of solitary confinement in the United States on which I have a particular expertise: (1) the history of the practice as an administrative (rather than legislative or judicial) innovation, (2) the lack of evidence that the practice promotes safety, either in prisons or in communities; and (3) the unprecedented scale of the practice – in terms of both numbers of people confined and durations of confinement.

(1) Solitary Confinement & Supermaxes: An Administrative Innovation

In 1890, the U.S. Supreme Court noted that solitary confinement as a punishment “was found to be too severe” and had been eliminated across the United States. The case concerned a condemned prisoner who had been held in isolation for one month prior to his execution; the Court ordered Medley’s release from prison.¹ And yet, more than a century later, there are tens of thousands of U.S. citizens being held in solitary confinement, from California to Maine. Moreover, these prisoners are spending not days or months in solitary confinement, but years and decades. In the United States today, 41 states and the federal prison system have at least one entire prison dedicated to confining people in long-term solitary confinement. These prisons range in size from a few dozen beds to more than 1,000 beds. Why did the United States return to this practice, so roundly condemned centuries earlier?

The answer lies at the intersection of mass incarceration and insufficient prison oversight. Between 1970 and 2010, the number of people in American prisons increased one-thousand-fold, from just over twenty thousand to just over two million.² Today, the United States has more people in prison than any other nation in the world (the closest second is China) and the highest rate of incarceration of any nation in the world (the closest second is Russia). Indeed, there are more people under correctional supervision in the United States today than there were in Stalin’s

¹ *In re: Medley*, 134 U.S. 160, 168, 161, 175 (1890).

² See Franklin E. Zimring and Gordon E. Hawkins, *The Scale of Imprisonment* (Chicago: University of Chicago Press, 1991), at Table 5.1; Heather C. West. & William J. Sabol, *Prison Inmates at Midyear 2008 - Statistical Tables* (Bureau of Justice Statistics, NCJ 225619, Mar. 2009).

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gulags.³ As the U.S. prison population rose throughout the 1980s and 1990s, states and the federal government built new prisons – often as fast as they could – to house this growing prisoner population.

During these prison-building years, forty-one of the fifty United States, as well as the federal prison system, built at least one *supermax* institution. Supermax prisons are explicitly designed to keep prisoners in solitary confinement, indefinitely. Arizona built the first supermax in 1986, and California built two more in 1988 and 1989. In both states, prison administrators, including wardens and high-level bureaucrats, collaborated with architects to design a new kind of prison. In both states, legislators had delegated control over prison design, location, and financing to correctional bureaucrats, as a means to expedite prison building.⁴ In California and Arizona, prison administrators, not legislators or governors or judges, designed a newly punitive supermax prison, which reinstated a policy that had been largely abandoned in the United States by the late nineteenth century.

Not only were the first supermax institutions designed by correctional administrators, but supermax institutions across the United States today are operated at the discretion of correctional administrators, with little judicial oversight. Judges do not assign prisoners to long-term solitary confinement in supermaxes; prison guards do. A prisoner in a supermax has either (a) been found guilty, in an in-prison administrative hearing, of breaking a prison rule or (b) been labeled a dangerous gang member through an in-prison, administrative evaluation process. A prisoner labeled as a dangerous gang member is usually sent to a supermax indefinitely – either for the duration of his prison sentence, or until he consents to “de-brief,” sharing incriminating information about other gang members.⁵

In reviewing the constitutionality of supermax prisons, federal courts have generally further expanded the discretion that correctional administrators have had to design supermaxes, and to assign prisoners to these institutions. Specifically, courts defer to administrators’ safety-and-security justifications for the institutions, with little evidence that these institutions actually promote safety and security.⁶ In sum, the administrative discretion underlying the design of

³ Adam Liptak, “U.S. Prison Population Dwarfs that of Other Nations,” *New York Times*, Apr. 23, 2008; Adam Gopnik, “The Caging of America,” *The New Yorker*, Jan. 30, 2012.

⁴ See Mona Lynch, *Sunbelt Justice: Arizona and the Transformation of American Punishment* (Stanford: Stanford University Press, 2010); Keramet Reiter, *The Most Restrictive Alternative: The Origins, Functions, Control, and Ethical Implications of the Supermax Prison, 1976 – 2010*, University of California, Berkeley dissertation (Spring 2012).

⁵ For further discussion of this process, see Keramet Reiter, “Parole, Snitch, or Die: California’s Supermax Prisons and Prisoners, 1997-2007,” under final review at *Punishment & Society* (available from author upon request).

⁶ See, e.g., *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995) (finding the concept of California’s supermax prisons to be fundamentally constitutional); *Austin v. Wilkinson*, 545 U.S. 209 (2005) (holding that placement in supermax prisons raises a liberty interest for prisoners, but is not unconstitutional).

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supermax prisons has only been expanded over the last twenty years of supermax operation and burgeoning uses of solitary confinement across the United States.

(2) There is Little Evidence that Solitary Confinement and Supermaxes Promote Public Safety

Correctional administrators justify extended uses of solitary confinement as necessary to maintain safety and security throughout a given state's prison system. However, there is little evidence that either extended solitary confinement or supermax institutions promote safety and security, either within a given state prison system, or within our communities.

Only a small handful of studies have looked at the potential relationship between supermaxes and violence (in Arizona, Illinois, Minnesota, and Utah), and these studies have found no effects on inmate-on-inmate assaults, and minimal decreases in inmate-on-staff assaults.⁷ Indeed, many states do not even systematically collect data about violence in-and-out of solitary confinement units or post-release recidivism statistics.

On the other hand, many studies have documented two serious, detrimental impacts of long-term solitary confinement on in-prison violence and public safety, more broadly: unconstitutional prisoner abuse and permanent mental health deterioration. First, the harsh conditions in supermax prisons and the extreme discretionary control prison administrators have over supermax prisoners often open the door to unconstitutional abuses – clear violations of human rights – in these institutions. As a result, especially when supermax prisons first open, serious prisoner abuses often occur. In California, at Pelican Bay State Prison, one supermax prisoner was dipped in scalding water until his skin peeled off. Also in California, at Corcoran State Prison, supermax prisoners from rival gangs were set-up to fight to the death, in “gladiator” fights on small exercise yards.⁸ Similar incidents of abuse following supermax openings have been documented by journalists and federal courts alike, in Arkansas, Colorado, Connecticut, Florida, and Virginia, to name just a few examples.⁹

⁷ Chad S. Briggs, Jody L. Sundt, and Thomas C. Castellano, “The Effect of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence,” *Criminology*, Vol. 41 (2003): 1341-1376; Jody L. Sundt, Thomas C. Castellano, and Chad S. Briggs, “The Sociopolitical Context of Prison Violence and Its Control: A Case Study of Supermax and Its Effect in Illinois,” *The Prison Journal*, Vol. 88.1 (2008): 94-122.

⁸ See “Former Inmate at Pelican Bay Wins Judgment Against State,” *San Francisco Chronicle*, March 1, 1994: A-18; Matthew Heller, “They Shoot Prisoners, Don’t They?” *Independent*, Jan. 28, 2001.

⁹ See Andy Davis, “State settles pepper-spray suits: Ex-inmate at Varner Supermax Unit to get \$4,000 for ‘05 cases,” *Arkansas Democrat-Gazette*, Feb. 17, 2011, available online at: <http://epaper.ardemgaz.com/webchannel/ShowStory.asp?Path=ArDemocrat/2011/02/17&ID=Ar00902> (last accessed 20 Feb. 2012); *U.S. v. LaVallee*, 269 F. Supp. 1297 (D. Colo. 2003) and *U.S. v. Verbickas*, 75 Fed. Appx. 705 (10th Cir. 2003) (detailing gruesome abuses of prisoners at the federal supermax facility in Colorado officers were sentenced to three-plus years in prison); American Civil Liberties Union, “ACLU Sues CT Corrections Chief Over Abuse of Prisoners

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Second, the harsh conditions in supermax prisons can cause severe mental health problems, or can exacerbate existing mental health problems. Indeed, prisoners are often sent to solitary confinement *because* they have mental health problems that preclude their adjustment to standard prison life. Once in solitary confinement, these problems often worsen. And prisoners who did *not* have pre-existing mental health problems often start to experience problems – from hallucinations, to suicidal ideation, to suicide itself – the longer they spend time in isolation. The testimony of Dr. Craig Haney at this hearing, as well as the statements of many former prisoners and advocates, further document these mental health impacts.

These two problems inherent to supermax confinement lead to a third, with devastating social implications: prisoners are often released *directly* from solitary or supermax confinement onto parole, or to the streets. In California, between 50 and 100 prisoners *per month* are released directly from supermax institutions onto parole.¹⁰ Colorado, Connecticut, Florida, Indiana, Massachusetts, and Pennsylvania, to name just a few documented examples, also release prisoners directly from long-term solitary confinement onto the streets.¹¹ Given the documented mental health challenges these prisoners are likely to face, the potential public safety challenges of these policies can well be imagined, though little research has investigated the recidivism statistics of this particular former prisoner population.

In sum, although solitary confinement and supermaxes are often justified as necessary safety and security measures in a given state or federal prison system, there is almost no evidence that the practice of solitary confinement or the institution of the supermax provides this benefit. There is, however, abundant evidence that supermax institutions facilitate abuse of prisoners, cause or exacerbate mental health problems, and then export these abused and ill prisoners back into

Housed at Notorious Virginia ‘Supermax,’” Press Release, Feb. 7, 2001, available online at: www.clearinghouse.net/chDocs/public/PC-CT-0001-0002.pdf (last accessed 22 Feb. 2012); *Osterback v. Moore*, Case No. 97-2806-CIV-HUCK (S.D. Fl.), Defendants Revised Offer of Judgment, Oct. 20, 2003, available online at: www.clearinghouse.net/chDocs/public/PC-FL-0011-0002.pdf (last accessed 23 Feb. 2012);

¹⁰ Reiter, *supra* note 5.

¹¹ Bonnie L. Barr, Chuck R. Gilbert and Maureen L. O’Keefe, *Statistical Report: Fiscal Year 2010* (Colorado Department of Corrections, Feb. 2011), available online at: <http://www.doc.state.co.us/opa-publications/97> (last accessed 20 Feb. 2012); Connecticut Department of Correction, “Northern Correctional Institution Administrative Segregation Program,” at 4, 6, available online at: www.ct.gov/doc/lib/doc/pdf/northernascc.pdf (last accessed 21 Feb. 2012); *Osterback v. Moore*, Case No. 97-2806-CIV-HUCK (S.D. Fl.), Second Report of Craig Haney, at para. 25 (on file with author); Jamie Fellner and Joanne Mariner, *Cold Storage: Supermaximum Security Confinement in Indiana* (New York: Human Rights Watch, 1997); Bruce Porter, “Is Solitary Confinement Driving Charlie Chase Crazy?” *New York Times Magazine*, Nov. 8, 1998: 52 (discussing Massachusetts supermax release policies); Terry Kupers, *Prison Madness: The Mental Health Crisis behind Bars and What We Must Do about It* (San Francisco: Jossey-Bass, 1999): 35 (discussing Pennsylvania supermax release policies).

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society, significantly less adapted to healthy societal participation than they were before entering prison.

(3) The Scale of the Use of Solitary Confinement in the United States is Unprecedented

In California, prisoners released from solitary confinement or supermax prisons have spent an average of approximately two years in isolation. Many more California prisoners serving life sentences expect never to be released from solitary confinement. As of this writing, more than 500 prisoners in the state have each spent more than 10 years in continuous isolation.¹² Individual prisoners' challenges and journalistic investigations in states like Colorado, New York, and Virginia suggest that prisoners in other states spend comparably long periods – years to decades – in total solitary confinement.¹³ Many states, however, do not even collect data about average lengths of stay of state prisoners in solitary confinement, so more systematic national data is simply not available.

By contrast, in New York in the 1820s, the experimental practice of solitary confinement was abandoned completely after 18 months, because so many prisoners suffered such obvious deterioration.¹⁴ And in legal challenges to short-term solitary confinement in the 1970s, federal courts across the United States noted that prisoners usually only spent a few days, to a month at most, in solitary confinement.¹⁵

Not only do American prisoners today spend unprecedentedly long periods of time in solitary confinement, but there is an unprecedentedly large number of prisoners being held in these

¹² Reiter, *supra* note 5; Julie Small, "Under Scrutiny, Pelican Bay Prison Officials Say They Target Only Gang Leaders," 89.3 KPCC Southern California Public Radio, Aug. 23, 2011.

¹³ James Austin, and Emmitt Sparkman, *Colorado Department of Corrections Administrative Segregation and Classification Review*, Technical Assistance No. 11P1022 (Washington, D.C.: NIC Prisons Division, Oct. 2011), available online at: <http://www.aclu.org/prisoners-rights/colorado-department-corrections-administrative-segregation-and-classification> (last accessed 14 Feb. 2012): 18 (documenting average length of stay in Colorado supermax of 24 months, or two years); *Lockdown New York: Disciplinary Confinement in New York State Prisons* (The Correctional Association, Oct. 2003), available online at: www.correctionalassociation.org/publications/download/pvp/issue_reports/lockdown-new-york_report.pdf (last accessed 14 Feb. 2012) (documenting average length of stay in one New York solitary confinement facility as 37 months, or more than 3 years); Adam Ebbin, Charniele Herring, and Patrick Hope, "Why All Virginians Should Care about the Overuse of Solitary Confinement," *The Washington Post*, Jan. 20, 2012 (noting prisoners had been in solitary confinement as long as 12 years).

¹⁴ Peter Scharff Smith, "The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature," *Crime & Justice*, Vol. 34 (2006): 441-528, at 457.

¹⁵ Keramet Reiter, "The Most Restrictive Alternative: A Litigation History of Solitary Confinement in U.S. Prisons, 1960-2006," *Studies in Law, Politics and Society*, Vol. 57 (2012): 69-123.

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conditions. Whereas in the 1970s, prior to the American prison-building boom, a small handful of prisoners in the highest security prisons might have been held in solitary confinement, today thousands of prisoners in nearly every state are held in solitary confinement. All but nine states have a supermax unit or prison, with at least a few dozen, if not a thousand, beds dedicated to total, long-term solitary confinement in each of these states. Today, there are more than 20,000 prisoners being held in more than 50 supermax prisons across the United States. And an additional 50,000 prisoners, or more, are being held in solitary confinement or segregation in shorter-term, smaller facilities scattered throughout state prison systems.¹⁶

Both the long terms prisoners spend in solitary confinement in the United States and the large number of prisoners being held under these conditions deserve further scrutiny and oversight. Are these conditions constitutional, effective, or necessary? The answer to this question is, at the very best, that we do not know.

In sum, I applaud the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights for hosting a hearing on solitary confinement in U.S. prisons. The use of solitary confinement in U.S. prisons is largely invisible, unchecked, and brutal. Congressional attention raises visibility, and will facilitate efforts to decrease the prevalence of civil and human rights violations in U.S. prisons.

Sincerely,



Keramet A. Reiter, J.D., Ph.D.
Assistant Professor
Department of Criminology, Law & Society
University of California, Irvine

¹⁶ These numbers are based on the author's own unpublished research. For published estimates of the numbers of prisoners in segregation, solitary confinement, and supermaxes across the United States, see Chase Riveland, *Supermax Prisons: Overview and General Considerations* (U.S. Department of Justice, National Institute of Corrections, January 1999), available online at: <http://www.nicic.org/pubs/1999/014937.pdf> (last accessed 13 Feb. 2012); Alexandra Naday, Joshua D. Freilich, and Jeff Mellow, "The Elusive Data on Supermax Confinement," *The Prison Journal*, Vol. 88 (1): 69-92 (2008).



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Administrative Segregation: Continuing the Conversation

By Jenna Scafuri

The practice of isolating inmates from the general population — referred to as administrative segregation, restrictive housing, isolation, solitary confinement, “the hole” or lockdown — has gained increasing public scrutiny and criticism in recent years. The plenary session, “Re-evaluating Administrative Segregation: The Human, Public Safety and Economic Impact,” at the American Correctional Association’s 2013 Winter Conference in Houston in January introduced the topic as something that corrections professionals must address and find solutions for. Seven months later, a follow-up session, “Segregation: Controversial and Complicated,” held at ACA’s 143rd Congress of Correction in National Harbor, Md., demonstrated the increased scope of the matter, and issued an even greater call to action for corrections professionals.

“It is fair to say that we are faced with a new crisis,” said moderator Christopher B. Epps, president of ACA and commissioner of the Mississippi Department of Corrections. Epps cited the increased amount of litigation surrounding the disproportionate number of mentally ill inmates in segregation as a major need for reform. “Corrections professionals know better than anyone else the pressure of administering safe, humane, clean and constitutionally-sound facilities,” he said. “It is time for us to look at segregation and examine its uses, benefits and effects on the incarcerated. If corrections professionals ignore this important topic, we risk others making the decisions for us.” This sentiment was also echoed in the comments from the panel of

experts, which included: Margaret Winter, associate director of the National Prison Project, the American Civil Liberties Union; Luis S. Spencer, commissioner of the Massachusetts Department of Correction; David Bobby, warden of the Ohio State Penitentiary (OSP), Ohio Department of Rehabilitation and Correction (ODRC); Dean Aufderheide, Ph.D., director of mental health for the Florida Department of Corrections; and Mitch Lucas, undersheriff, Charleston County, S.C.

The Effects of Segregation on Mentally Ill Offenders

“There is a growing body of evidence that the use of solitary confinement is not only harmful, but unnecessary,” Winter said. Aufderheide also agreed that, “The harsher the conditions, and the longer the duration, the more that those with mental illnesses will deteriorate, or at least not show improvement. Without the necessary treatment, they will start experiencing symptoms of depression, anxiety and poor impulse control.” He indicated that 15 to 20 percent of all inmates have a mental health disorder requiring treatment, and 50 percent of all inmates in the prison system will need mental health attention at some point. He also explained that people with mental illnesses are three times more likely to end up in a jail or prison than a mental health facility, which increases the role of mental health providers in corrections. According to Aufderheide, first defining what constitutes “mental illness,” and then evaluating inmates in administrative segregation according to those guidelines, will help effectively treat this population. Similarly, creating a consistent screening process for the mentally ill could help inmates before they are placed in segregation.

According to Winter, segregation should only be used for those who pose a serious violent threat to others, and only for as short a time as possible. “We can agree that corrections professionals must have the option, in extreme situations, to separate inmates in order to maintain security,” she said. “But even when there is a compelling need for physical separation for security reasons, that is not justification for extreme social isolation, sensory deprivation or enforced idleness.”

Winter said that inmates who are separated from the general population for long periods of time should have access to the same things that other inmates do, such as in-cell programming and face-to-face communication with mental health staff. “Isolation makes mental illness worse, and inmates with serious mental illnesses should never be housed in solitary confinement — they need to be in a therapeutic environment where they can get treatment,” she said. “Furthermore, the Americans with Disabilities Act requires correctional facilities to make reasonable accommodations so that inmates with mental disabilities can be housed in the most integrated setting possible.”

Winter also said that it is crucial for inmates to be able to earn their way out of segregation for good behavior, and that juveniles should never be housed in segregation long term. She pointed to studies conducted by the U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention that demonstrated the negative effects of segregation on youths. She indicated that several recent court rulings have deemed the segregation of inmates with disabilities or serious mental illnesses to be a violation of the eighth amendment. “We can expect to see more and more cases challenging segregation, not just for the mentally ill, but for anyone,”

she said. “By collectively developing standards to radically reduce the use of segregation, ACA has the opportunity to play a critically important leadership role in the national dialogue about solitary confinement.”

Aufderheide agreed that the development of ACA standards regarding segregation could have a positive impact on the use of segregation. He also echoed Winter’s thoughts about adhering to the law regarding segregation by identifying a few ways to protect an administrative segregation facility from litigation, including:

- Define what types of mental illnesses are not suitable for functioning in segregation, and have mental health staff conduct screenings;
- Provide access to structured in- and out-of-cell mental health treatment for those in segregation;
- Create an individualized mental health services plan by a multidisciplinary treatment team — a “one size fits all” strategy will not be effective, and must be adaptable based on the changing needs of the inmate; and
- Identify mental illness early, as early identification prevents deterioration.

Reforming the Use of Segregation for the Mentally Ill in Massachusetts

Spencer agreed that the number of mentally ill inmates in U.S. correctional facilities has become a growing concern. He cited things such as high staff-to-inmate ratios and the lack of appropriate training for correctional staff about mental illness as contributing factors to the mishandling of the mentally ill in segregation. However, during the past few years, Spencer pointed to “significant advances dedicated to the scope and quality of mental health treatment available for offenders who are placed in administrative segregation.”

For example, a mental health classification system was created in Massachusetts that Spencer indicated has been very helpful in identifying the types of services offenders need. Massachusetts prohibits the administrative segregation of inmates who are classified as seriously mentally ill, and also mandates the provision of enhanced mental health services, including out-of-cell programming and recreational activities. They also created specialized treatment units for “behavioral management,” where inmates receive both structured treatment and unstructured activities in a “self-contained, therapeutic environment.” Specialized training for staff has been implemented to identify the signs and symptoms of mental illness.

“As we look to the future and want to make a difference in how we treat the mentally ill who end up in our facilities, we must continue to partner with sister agencies like the [state’s] departments of public health and mental health, courts and probation to emphasize the need for jail diversion,” Spencer said. “This would decrease the percentage of offenders with mental illnesses who are placed in our facilities and end up in administrative segregation units ... and we must continue to help those with mental illnesses housed in administrative segregation to transition into the community by providing programs designed to address issues related to addiction and co-occurring disorders.”

Benefits of Ohio's Control Units

In order to address these challenges in Ohio, ODRC created a three-tier system consisting of different levels of prisons. OSP is one of two maximum-security (level five) "control units" that serve as administrative segregation facilities, which "house inmates who engage in violent or disruptive behavior in an environment that controls movement, but still grants inmates access to various programs that are designed to encourage personal growth," Bobby explained.

OSP does not house inmates who are seriously mentally ill. Inmates who meet the criteria for level five, but who are classified as seriously mentally ill are placed in the Southern Ohio Correctional Facility — a control unit with a psychiatric treatment unit and mental health staff who interact with inmates on a daily basis.

Bobby outlined the guiding principles of the control units. In ODRC, control units:

- Are controlled environments that are not intended to be disciplinary environments;
- Are intended to control inmates' movements and access to other inmates;
- Are intended to provide inmates with access to the programs and services they require;
- Function in a way that will provide a gradual transition back to an appropriate general population, with the pace of the transition based on an inmate's progress and program completion;
- Provide programming that focuses on the individual and evolves into a cognitive curriculum that is responsive to the issues that brought the inmate into the controlled environment;
- Have teams that create a program plan for the inmate that explains the rules, descriptions of the levels of control and the expectations to move to the next level; and
- Have unit teams, inclusive of correctional officers, who are involved in the decision to move an inmate to another level of control.

To be placed in a level five control unit such as OSP, inmates must have been found guilty of a very serious rule infraction such as physical assault, escape or attempted escape, or leading a disturbance. According to Bobby, every inmate is reviewed for appropriate placement and given an expected timeframe for length of stay. All inmates receive an annual security review by a classification committee, and the decision is made to either continue their current placement, or reduce them to level four.

Bobby indicated that the greatest challenge of the tiered system is determining when the inmate is ready to move from level to level, but that the detailed initial screening process has proven effective in helping inmates' progress by providing programming that is relevant to their recovery. "Every inmate has the opportunity to decrease their security level, which provides hope for those in administrative segregation," Bobby said. "Control prisons, or administrative segregation, has and will continue to play a vital role in accomplishing Ohio's mission of reducing recidivism."

The Use of Segregation in Jails

Lucas provided a different perspective on the use of administrative segregation in jails. He explained that most jails have a different intake process than prisons, as inmates come to them in a different physical condition than they come to prison. There is no pre-existing medical information about the inmate, and attempts to get this information from the inmate at intake are often difficult, because a significant portion of those who are admitted to jail are under the influence of alcohol or other substances. With a few exceptions, jails receive inmates in whatever condition they are in at the time of arrest, Lucas explained. If the inmate's behavior is disruptive, it can create a negative impact on the existing inmate population, which may lead to a security problem.

"The fastest way to deal with a disruptive inmate is to segregate them from the rest of the population," Lucas said. In regard to the issue of the mentally ill population in segregation, he remarked, "It is always good to have mental health services available as soon as possible, but when inmates are admitted at all hours of the day or night, sometimes those services are not available right away." Lucas said that some jails are so small that they do not have these types of resources. "As difficult as it may be to accept, segregation may be the only option," he said. "Even the most forward-thinking small jail administrator who wants to provide services for inmates' needs, but simply cannot due to budgetary constraints and limited resources, may find that segregation is the only way to house disruptive inmates."

According to Lucas, the question becomes: "How can we assist jails with limited resources to understand that inmate behavior management involves more than isolated concrete rooms with heavy steel doors?" One solution that Lucas offered was to develop standards that specifically address the issue of administrative segregation in jails. "ACA's adult local detention standards and the core jail standards could be a good place to start to establish common terminology about segregation and provide a philosophy for how segregation can be utilized," Lucas said. "There should not be a 'one size fits all' approach ... creating a standardized language that recognizes the need to monitor those in segregation and to re-evaluate them routinely, as well as teaching values in the use of segregation, should be achievable."

Conclusion

All of the panelists agreed that the use of administrative segregation is an important topic that warrants further discussion. While several advances have been made, there is still much work to be done. In an illustration, Aufderheide said that the Chinese use two brush strokes to write the word "crisis" — "danger" and "opportunity." As this applies to administrative segregation, he concluded that, "The danger before us today is to continue doing things the old way, and the opportunity for us today is to adopt ACA standards that address the issue with consistency and dignity in the way that we approach segregation. I am convinced that the opportunity for us when we leave this room will be to do the right thing, the right way [and] for the right reason."

Jenna Scafuri is ACA's senior editor of periodicals.

BEYOND SUPERMAX ADMINISTRATIVE SEGREGATION

Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs

TERRY A. KUPERS

Wright Institute

THERESA DRONET

Wexford Health Sources

MARGARET WINTER

National Prison Project of the American Civil Liberties Union

JAMES AUSTIN

JFA Institute

LAWRENCE KELLY

Mississippi Department of Corrections

WILLIAM CARTIER

Wexford Health Sources

TIMOTHY J. MORRIS

Mississippi Department of Corrections

STEPHEN F. HANLON

Holland & Knight, LLP

EMMITT L. SPARKMAN

Mississippi Department of Corrections

PARVEEN KUMAR

Wexford Health Sources

LEONARD C. VINCENT

JIM NORRIS

Mississippi Department of Corrections

KIM NAGEL

JENNIFER MCBRIDE

Wexford Health Sources

Litigation in Mississippi required the Department of Corrections to ameliorate substandard conditions at the supermaximum Unit 32 of Mississippi State Penitentiary at Parchman, remove prisoners with serious mental illness from administrative segregation and provide them with adequate treatment, and reexamine the entire classification system. Pursuant to two federal consent decrees, the Department of Corrections greatly reduced the population in administrative segregation and established a step-down mental health treatment unit for the prisoners excluded from administrative segregation. This article describes and discusses not only the process of enacting the changes but also the outcomes, including the large reductions in rates of misconduct, violence, and use of force.

Keywords: supermaximum security; administrative segregation; classification; use of force; mental health step-down unit

Between the 1970s and the 1990s, the prison population in the United States multiplied several times over, and prisoners who were suffering from serious mental illness (SMI) grew to a greater proportion of the prison population (U.S. Bureau of Justice Statistics, 2006). Meanwhile, and predictably (based on the crowding), correctional facilities experienced a sharp rise in rates of misbehavior and violence. In response to what many perceived as unmanageable prisons, departments of correction increasingly turned to lockdown and administrative segregation as the way to manage the rising rates of violence and misbehavior. Sections of prisons and even entire newly constructed facilities were dedicated to administrative segregation. The supermaximum security prison thus emerged (Riveland, 1999; Scharff-Smith, 2006).

In administrative segregation units and supermaximum security facilities, prisoners are confined to their cells, by themselves or with cellmates, nearly 24 hours per day. They eat meals in their cells, and their out-of-cell activities are limited to solitary trips to a small yard for recreation (several hours per week) and to relatively rare, noncontact visits with family and friends.

Immediately following the advent of the supermaximum security prison in the early 1990s, litigation challenged the constitutionality of the conditions (*Jones 'El v. Berge*, 2001; *Madrid v. Gomez*, 1995). The argument of plaintiffs was that the extreme isolation and idleness caused unnecessary pain, suffering, and serious psychiatric harm. The courts concurred and so ordered amelioration of some of the harshest conditions, as well as the removal of prisoners with SMI from long-term administrative segregation. Cohen (2008) provides a comprehensive history of this litigation. By the late 1990s, some states began to realize that supermaximum security and other forms of long-term administrative segregation were expensive. It also became apparent that a disproportionate number of prison suicides were occurring among prisoners in administrative segregation and that recidivism rates were rising. Furthermore, it had never actually been proved that the advent of supermaximum security units diminished the prison and postrelease rates of misconduct and violence (Briggs, Sundt, & Castellano, 2003).

Clinical research supported the notion that many prisoners suffering from SMI were being consigned to long-term administrative segregation (Rhodes, 2004), that the idleness and isolation tended to make psychiatric conditions and prognoses worse (Grassian & Friedman, 1986; Hodgins & Cote, 1991), and that providing treatment to prisoners with SMI resulted in their involvement in far fewer disciplinary infractions (Condelli, Dvoskin, & Holanchock, 1994). Several states—including Virginia, Maryland, Ohio, and Michigan—converted facilities that had been dedicated to administrative segregation, utilizing the buildings for other purposes.

Beginning in 2002, advocates of prisoners' rights brought litigation aimed at improving the plight of prisoners in Unit 32 at Mississippi State Penitentiary, Parchman (*Presley v. Epps*, 2007; *Russell v. Johnson*, 2003). A 1,000-cell supermaximum security facility, Unit 32 contained the state's death row, plus a large number of cells for administrative segregation. In other states, this type of litigation leads to endless court battles and little change; in Mississippi, however, the adversarial relationship, at some point, shifted to a mostly collaborative one. As a result, the litigation was amicably settled, and the monitoring of the required changes commenced. The Mississippi Department of Corrections (MDOC) changed course after a few court hearings, instituting the changes in classification and the mental health programming that the plaintiff class had been demanding. There are legal, organizational, and programmatic aspects to the changes that ensued. The subsequent decreases in rates of violence, disciplinary infractions, and use of force were substantial.

CONDITIONS AT UNIT 32 BEFORE LITIGATION

Beginning in the early 1990s, prisoners at Unit 32 described a harsh environment: severe isolation, unrelieved idleness and monotony, little access to exercise, stench, and filth. The toilet in every cell had a "ping-pong" mechanism: Whenever it was flushed, it pushed the waste in the bowl into the bowl in the adjoining cell. Infestations of mosquitoes and other stinging insects forced prisoners to keep their windows closed and their bodies completely covered, even in the hottest weather—and the temperatures in the cells during the long Delta summers were extreme. The light was too dim for reading and writing. Medical, dental, and mental health care was inadequate. Psychotic prisoners started fires, flooded the tiers, smeared feces, and screamed, often all night. Prisoners were moved into cells that had been smeared from floor to ceiling with excrement from previous, psychotic tenants. Takedown teams extracted prisoners from their cells and subdued them with pepper spray, adding to the toxic environment caused by fire and flooding. Many prisoners stayed in Unit 32 for the duration of their sentences, some for life. In January 2002, the prisoners on Mississippi's death row went on a hunger strike to protest the conditions of their confinement.

THE LITIGATION

In July 2002, the National Prison Project of the ACLU (American Civil Liberties Union), the ACLU of Mississippi, and the law firm of Holland & Knight filed suit on behalf of the death row prisoners. In May 2003, U.S. magistrate judge Jerry Davis entered an opinion and injunction granting the relief that plaintiffs had requested (*Russell v. Johnson*, 2003). The Fifth Circuit issued a decision, for the most part, upholding Judge Davis's injunction (*Gates v. Cook*, 2004).

Meanwhile conditions in the rest of Unit 32 continued to deteriorate. In 2005, the prisoners filed a new suit to extend the remedies ordered in the death row case to all of Unit 32 (*Presley v. Epps*, 2005). The new case, however, addressed additional, more complex correctional issues. The most severe problems stemmed from the classification system, which effectively assigned most of the 1,000-man population in Unit 32 to permanent

administrative segregation. A negotiated consent decree in *Presley v. Epps* incorporated all the relief upheld by the Fifth Circuit in the death row case, including the exclusion of administrative segregation for prisoners suffering from SMI. The parties added provisions on excessive force, procedural due process, and classification.

Plaintiffs retained a classification expert, Dr. James Austin, to carry out an objective analysis of the Unit 32 population, which concluded that nearly 80% of the unit's population did not belong in administrative segregation and should thus be transferred to general population. In December 2006, the parties met and agreed to collaborate to reform the classification system within a 12-month period. MDOC Commissioner Christopher Epps promptly established a classification task force under the direction of Deputy Commissioner Emmitt Sparkman to work closely with Dr. Austin and key Department of Corrections officials.

Meanwhile, progress on the mental health issues was slow. Addressing the mental health issues was essential to fully addressing the classification issues. Prisoners with untreated mental illness became more disturbed in administrative segregation; their illness led them to misbehave; security staff sprayed them with chemicals; and their mental health further deteriorated. This cycle of psychosis, disturbed behavior, use of force, further clinical deterioration, and increasingly psychotic behaviors put severe pressure on, not just prisoners with SMI, but everyone who lived and worked in Unit 32.

In April 2007, Judge Davis held an evidentiary hearing on the mental health issues. At the end of 6 hours of testimony, the judge called the lawyers into chambers. He advised them, in the most urgent terms, to make every effort to come up with a joint plan to remedy the situation. He said that he feared Unit 32 was a tinderbox about to explode.

A few weeks later, Unit 32 did explode. At the end of May 2007 and continuing into August, there was an outburst of gang warfare in which many inmates were stabbed and some died. One may wonder how prisoners in a segregation unit can attack one another. Although prisoners were mostly confined to their cells, some worked as tier tenders and had unsupervised access to the front of other cells; as such, there were occasions when cell doors were accidentally left ajar, and prisoners had sufficient access to one another to permit violence.

Then came an extraordinary development: Commissioner Epps and Deputy Commissioner Sparkman decided, even in the face of this deep crisis in security, to go forward and implement the recommendations of the classification task force. Deputy Commissioner Sparkman left his home in Jackson to live at Parchman for months, overseeing the release of several hundred carefully selected men into general population, walking among them, speaking and interacting with them, getting to know their histories, showing his staff at the prison that these men were not so dangerous that they needed to be in administrative segregation.

These were remarkable acts of courage—and they worked. Within a few months, a striking transformation of Unit 32 had taken place. In accordance with Dr. Austin's recommendations—and following a procedure to be described below—more than three fourths of the unit's population had been reclassified from administrative segregation to general population. Program and recreation areas were constructed. General population housing areas were created in housing areas that had previously been used to lock down prisoners. The prisoners in these housing areas could spend several hours per day out of their cells. Education and general mental health services were expanded. A dining hall was constructed, and for the first time, prisoners could eat meals together. In November 2007,

the parties entered into a far-reaching supplemental consent decree with the MDOC on classification, mental health, and use of force (*Presley v. Epps*, 2007).

REVISION OF CLASSIFICATION AND SECURITY PROCEDURES

Before 2002, the MDOC used a subjective prisoner classification system, placing inmates in facilities and custody levels based solely on the subjective judgment of staff, as guided by agency policies. The MDOC decided to implement an objective prisoner classification system in 2002, consisting of an initial classification process and a reclassification process that, in theory, would allow prisoners to lower their custody levels if their conduct was good. The system was fully automated, which allowed for a comprehensive analysis of how prisoners were being classified and what factors were used to determine custody levels.

But the system had some serious design flaws that fostered overclassification and, in particular, increased the number of prisoners assigned to Unit 32. Dr. Austin found that prisoners were transferred directly from reception to Unit 32 even if they had not engaged in serious misconduct in prison; that redundancies in scoring resulted in overclassification; that some of the scoring items had never been validated among the MDOC population; that classification staff were making scoring errors; that some prisoners who simply required protection were being transferred to Unit 32; that a large number of prisoners were being retained in Unit 32 even though they had no serious misconduct reports for years; that required reassessments were not being done; and that the caseload for case managers was so large that they could not have adequate contact with prisoners.

Given these findings, Dr. Austin recommended a number of reforms. The first step was to develop more objective criteria for placement at Unit 32. Deputy Commissioner Sparkman worked with Dr. Austin to establish the criteria and implement the new system. The criteria that were finally adopted mandate that prisoners in Mississippi may be held in administrative segregation only if they have committed serious infractions, are active high-level members of a gang, or have prior escapes or escape attempts from a secure facility. The only permissible subjective basis for overriding these criteria is a finding by the commissioner (or the commissioner's designee) that housing the inmate in the general population would pose an unacceptable risk to the safety of staff and other prisoners.

When the classification staff employed the new criteria and reviewed all the prisoners in Unit 32, they discovered that nearly 80% of the population in administrative segregation did not meet the new criteria. Over the following 6 months, the number of prisoners assigned to administrative segregation at Unit 32 dropped from 1,000 to fewer than 150. Death-sentenced prisoners remained in segregation.

Criteria were also established, as modeled on a process in the Ohio Department of Corrections, that would allow the majority of prisoners to be released from administrative segregation within 12 months. The MDOC created a process that mandated a 90-day review for all prisoners in administrative segregation and a written case plan for each prisoner specifying what he must do to gain release from administrative segregation.

The changes that the MDOC adopted were not limited to Unit 32. The new classification system is expected to dramatically decrease the number of women in maximum custody and to increase the proportion of the statewide male population in minimum custody.

A STEP-DOWN UNIT FOR PRISONERS WITH SMI

As required by the *Presley v. Epps* consent decree, mental health staff worked in close collaboration with custody staff to develop an intermediate-level treatment program, or step-down unit, for prisoners with SMI (Lovell, Allen, Johnson, & Jemelka, 2001; O'Connor, Lovell, & Brown, 2002). Prisoners who require an intermediate level of mental health treatment—equivalent to halfway house or day treatment in the community—are candidates for the step-down unit, which is jointly administered by Wexford Health Sources, the health and mental health contractor, and the MDOC.

Wexford and MDOC opted to keep the step-down mental health treatment unit inside Unit 32 but to move prisoners with SMI from administrative segregation status into congregate activities in program phases, at a pace that would not jeopardize safety in the facility (Adams & Ferrandino, 2008). Prisoners who require inpatient psychiatric services are transferred to an inpatient psychiatric unit at another facility—namely, the East Mississippi Correctional Facility.

The step-down unit was developed to treat prisoners who have to remain segregated for the time being and open-population prisoners (i.e., general-population prisoners) with SMI. The unit occupies two tiers, each containing 16 cells: an upper tier, housing segregated prisoners, and a lower tier, which is reserved for prisoners who have proved, by exhibiting appropriate behavior, that they can get along in an open unit. In fact, the step-down unit provides, for many prisoners, the portal for leaving administrative segregation. The program fosters movement from the closed tier to the open tier.

The target population is patients who have the most serious and intractable symptoms of mental illness and who experience the greatest impairment in functioning. The main criterion for admission to the step-down unit is a diagnosis that qualifies as a SMI. In addition, prisoners with other diagnoses, such as severe generalized anxiety disorder and posttraumatic stress disorder, qualify if there is significant disability. Any psychiatric disorder characterized by repetitive self-harm also qualifies a prisoner for admission. Preference for admission is given to motivated prisoners.

Prisoners begin in the closed or segregated tier, progress through the open tier, and then graduate and transfer from the step-down unit to general population. Treatment in the step-down unit is modeled on the assertive community treatment approach (Drake et al., 1998; Marx, Stein, & Test, 2003; Scott & Dixon, 1995). The idea is to deliver intensive mental health services to the place where the patients live and work and for staff working as a team to be assertive in gaining the patients' cooperation in the treatment. A positive psychology approach is employed, removing the focus from mental illness and, instead, focusing on "persons' intact faculties, ambitions, positive life experiences, and strengths of character, and how those buffer against disorder" (Duckworth, Steen, & Seligman, 2005, p. 631).

Prisoners earn passage to each successive phase. In the first phase, they learn about their illnesses and are educated about how to appropriately cope with anger, impulses, and anxiety. An incentive plan rewards appropriate behaviors, with incrementally more time alone in an activity room where they can access media equipment, use a library of educational materials and fiction, and use drawing and writing materials.

Group treatment and psychoeducation permit interconnectedness among prisoners who must remain separated for the time being. A group of four prisoners meet weekly for group treatment. The original plan for this group treatment was to construct therapeutic cubicles

in which the prisoners would sit during the sessions while remaining in the same room. However, the staff decided that it would be more practical, humane, and therapeutic to not use cubicles but rather keep group participants in ankle restraints attached to secure bolts in the floor. This was the minimum restraint that custody staff would allow. If animosities escalate, participants in the group cannot reach one another. In fact, the prisoners in the program have never lunged at anyone, but at their level of security, the ankle-to-floor restraints are required.

The next phase of treatment involves congregate, peer-facilitated programming. This phase takes place on the open-custody tier and lasts several months. Prisoners move about and enjoy congregate activities free of cuffs and ankle restraints. Topics addressed include domestic violence, mentorship, accountability, and moral reasoning.

The step-down unit employs a collaborative treatment team approach. The Risk Assessment Team includes mental health staff and key security personnel who come together on a weekly basis to work on quality care as well as security. Of course, confidentiality is an issue, and custody staff who work on the unit must agree to respect the prisoners' confidentiality to a reasonable extent while attending to security needs. In general, custody staff and mental health staff attend to the delicate balance between confidentiality and security concerns.

Staff selection and training are critical elements of an effective program. In April 2008, before the step-down unit could be officially implemented, a comprehensive mental health training curriculum was expressly designed for correctional officers. The administration approved a plan to require that any officer working on the step-down unit undergo training on mental health issues. The intensive training is conducted by trained and experienced mental health staff and veteran MDOC correctional officers. Completion of the mental health training is considered an honor and is thus celebrated in a ceremony where officer graduates are given a special uniform patch and awarded the title *correctional mental health manager*.

Prisoners remain in the step-down unit an average of 3 to 6 months. They are considered ready for discharge from the program when their treatment plans have been accomplished and their conditions have become stable. After being discharged, a prisoner may be readmitted if he experiences a relapse. If he is discharged for lack of compliance or behavioral issues, he may be considered for readmission following intensive individual treatment with mental health staff.

CHANGES IN THE FACILITY AND IN THE BEHAVIOR OF PARTICIPANTS

SERIOUS MISCONDUCT AND USE OF FORCE

After a large proportion of prisoners were transferred to general population within Unit 32 (necessitating the physical conversion of pods and buildings), the number of incidents requiring use of force plummeted (e.g., spraying a prisoner with immobilizing gas or taking down a recalcitrant prisoner). Monthly statistics showed an almost 70% drop in serious incidents, both prisoner-on-staff and prisoner-on-prisoner. Figure 1 reflects this development. Toward the end of 2006, the number of serious incidents began to decline, and they reached a nadir by January 2008. In the same period, incidents requiring the staff's use of force also significantly declined (see Figure 2).

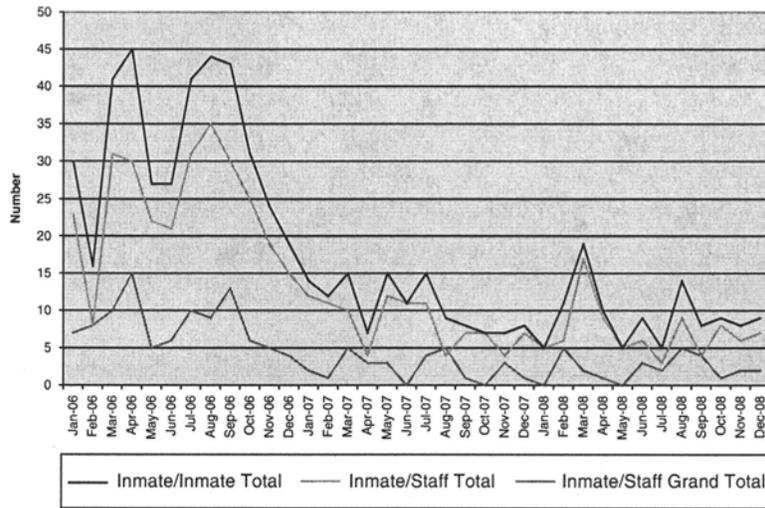


Figure 1: Serious Incidents at Unit 32, 2006–2008

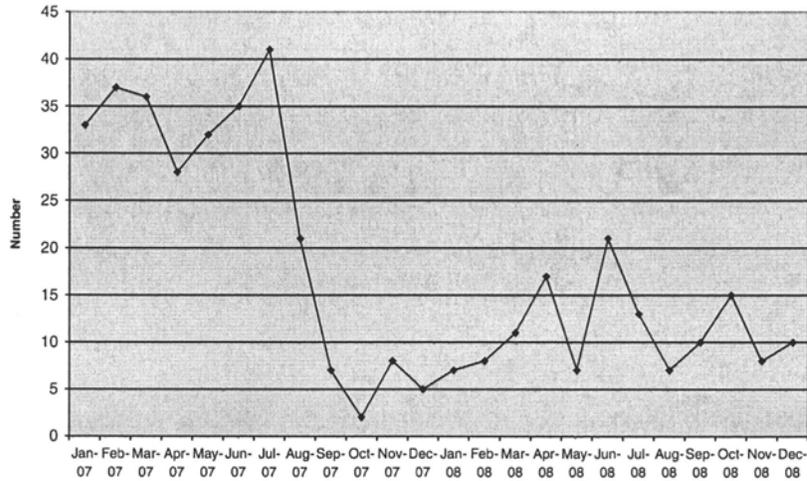


Figure 2: Use of Force at Unit 32, 2007–2008

From 2006 through 2008, the population of Unit 32 also varied, from a high of approximately 990 in August 2006 to a low of fewer than 600 by October 2008. (By this time, the census included administrative segregation and general population.) For various reasons, the MDOC transferred some of the prisoners who had been reclassified to general population out of Unit 32. January 2008 became the first time that the population dipped lower than 800. Thus, the sharp reduction in rates of serious incidents and use of force that occurred between late 2006 and January 2008 took place while the total population in Unit 32 remained relatively constant.

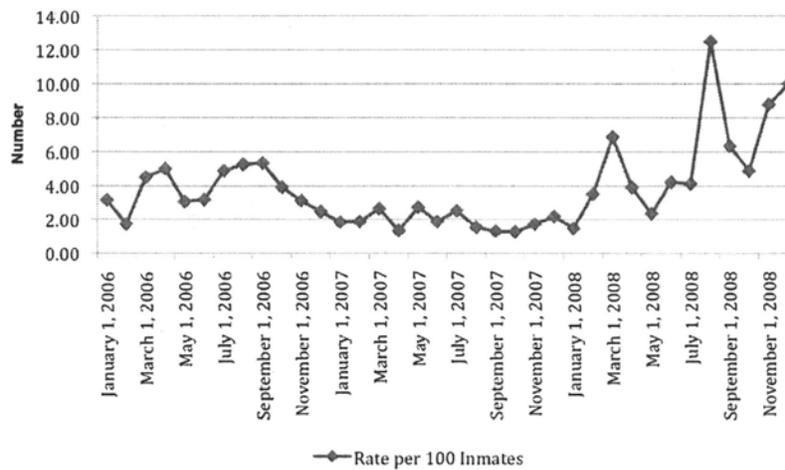


Figure 3: Rates of Serious Incidents and Use of Force per 100 Inmates

In early 2008, when the population dipped beneath 800, a calculation of the rate of serious incidents and use of force (i.e., the ratio of events to 100 prisoners) reflected occasional spikes (see Figure 3). The prisoners remaining in administrative segregation subsequent to the transfer of a majority of prisoners to general population were a relatively more disruptive subpopulation; as such, with the reduced population, repeated disciplinary infractions by a few individuals register as a larger spike on the graph. Even so, the raw number of serious incidents remained relatively low throughout.

Developments reported in this article did not occur under entirely controlled conditions in a laboratory. The results would have been more impressive had the total population in Unit 32 been kept constant subsequent to the revision of the classification system and the establishment of the step-down unit. But the MDOC had to maintain operations and could not permit outcome research to determine practices regarding institutional housing.

In reviewing changes at one unit, one must take into account changes that occur at other units and at other state facilities that may be counterproductive. In some states, compliance with a court's consent decree to downsize a supermaximum security unit or to exclude prisoners with SMI from isolated confinement has resulted in the transfer of this population to some form of segregation at a different facility not under the court's jurisdiction (e.g., *Jones 'El v. Berge*, 2001). In the MDOC, recent statewide figures reflect that this kind of nutshell game has not occurred. As noted above, by February 2009, the number of prisoners in administrative segregation at Unit 32 had decreased from just over 900 to below 100 (an additional 70 to 80 prisoners remain on segregation status on death row). Meanwhile, as of March 2009, the statewide number in administrative segregation (outside of death row) is 181. The population of MDOC is approximately 21,000, which means that about 1% of the entire prison system is housed in long-term administrative segregation. Most states have at least 3% of their prisoner population in administrative segregation at any given time (Austin & McGinnis, 2004). Thus, the percentage of MDOC prisoners in administrative segregation is relatively low, and it did not rise in other units or institutions when the percentage of prisoners on administrative segregation status at Unit 32 was vastly reduced.

TABLE 1: Rule Violation Reports Before, During, and After Participation in the Step-Down Unit

<i>Period</i>	<i>Rule Violation Reports</i>	
	<i>n</i>	<i>M</i>
Six months before step-down unit	203	4.7
While in step-down unit	50	1.2
Six months after step-down unit	27	0.6

OUTCOMES IN PRISONERS WITH SMI

Prisoners, custody staff, and mental health staff provide positive assessments of the step-down unit. Of course, prisoners with SMI had been heavily overrepresented in the earlier serious disciplinary incidents, and it is obvious to mental health and custody staff that participation in the step-down unit has helped to keep this group out of trouble.

One reflection of this outcome lies in the number of rule violation reports (RVRs), or tickets, that participants in the step-down program acquired as they went through the process—that is, before participating in the program, while participating in the program, and after being discharged from the program. A recent compilation (February 12, 2009) reflected that 43 prisoners with SMI had completed the step-down unit program and had been discharged. A search of their disciplinary records revealed that in the 6 months before their admission to the program, this group received 253 RVRs, an average of 4.7 RVRs per prisoner; while in the program (for an average stay of 6 months), they received 50 RVRs, an average of 1.2 per prisoner; and in the 6 months after they completed the program, they accounted for 30 RVRs, for an average 0.6 per prisoner (for overview, see Table 1).

Prisoners have been writing to request transfer into the program, and the program has proved to be an effective point of entry into mental health treatment for previously non-compliant prisoners with SMI. Prisoners in the program report that they expect to be treated with respect and not be inappropriately punished or otherwise abused.

Recently, the step-down unit successfully graduated most of the Security Threat Group leadership who were participants. One former leader has been granted Open C custody (essentially, general population privileges); two other leaders graduated with honors. One of these prisoners will be released from prison in the near future and plans on lecturing youth on “going straight in life.”

DISCUSSION

The results of this series of events at Unit 32 contradict some widespread assumptions about supermax administrative segregation. The popularity of supermaximum security units is premised on the assumption that the dangerous prisoners confined therein cannot program safely at any lower level of security and that violence and misconduct in the prisons cannot be controlled without keeping a growing number of dangerous prisoners in long-term administrative segregation. An extrapolation of this assumption suggests that releasing the majority of prisoners from supermax to general population will result in increases in the rates of violence, serious disciplinary incidents, and use of force. The fall

in these rates, following the transfer of a majority of prisoners out of administrative segregation at Unit 32, contradicts that assumption.

Of course, the MDOC classification system was flawed before the developments described here were initiated. Could that mean that the men consigned to administrative segregation at Unit 32 were simply not the most dangerous in the MDOC and that, because of a uniquely flawed classification system in the MDOC, the results of changes at Unit 32 cannot be generalized to other correctional settings? The number of prisoners in administrative segregation throughout the MDOC remains relatively low today. Most of the prisoners who were released from administrative segregation remain in general population, thus making it unlikely that the placement of the wrong group of prisoners in supermax security explains the reported findings. Also, attorneys and experts in the Mississippi lawsuits who have taken part in investigations and litigation in other states report that it is not unusual for supermaximum security units to contain a significant proportion of prisoners who are not especially prone to violence. Classification systems in many other departments of correction contain flaws equivalent to those in the earlier MDOC system. Furthermore, among the approximately 800 prisoners transferred from administrative segregation to general population, many had been convicted of violent crimes and had been assaultive earlier in their prison careers; however, when they were transferred out of administrative segregation, most of them did not proceed to get into trouble.

Prisoners who remain in administrative segregation at Unit 32 have relatively serious misconduct records; as such, the residual administrative segregation population at Unit 32 is a difficult population to manage and treat (Cohen, 2006). Even so, Unit 32 today has relatively low rates of serious incidents and use of force. Many factors must be considered if we are to understand this phenomenon. Because the classification system was revised and the review process permitted prisoners in administrative segregation to earn their way to general population, they must have felt as though they were being treated with fairness and that they had greater hope for gaining freedom—all of which must have helped them control their tempers and their behavior. In addition, in the course of the litigation, the MDOC administration focused greater attention on the professionalism of custody staff, and a subgroup of custody staff received training in mental health. These changes, plus the reduction in crowding as the population of Unit 32 declined, all played into a greater sense of fairness and calm within the facility (Haney, 2008). The overall result is far fewer prisoners in need of administrative segregation.

There was a sharp decrease in the number of RVRs accumulated by prisoners with SMI after they were transferred to the step-down unit, which strongly supports a conclusion that prisoners with SMI tend to suffer psychiatric deterioration and get into disciplinary trouble in supermax administrative segregation; as such, they fare much better in treatment programs (Condelli et al., 1994; Lovell, Johnson, & Cain, 2007; Metzner & Dvoskin, 2006). Clearly, the changed management of prisoners with SMI played a part in reducing the number of serious incidents and use of force at Unit 32.

Of course, this is a preliminary report of the outcome of changes in classification and mental health treatment at Unit 32. Problems remain and monitoring is ongoing, but the problems encountered are less generalized, and a collaborative approach to their resolution is much more the standard operating procedure. For example, on a recent monitoring tour, plaintiffs' attorneys and experts heard allegations from prisoners regarding excessive force—specifically, the inappropriate use of immobilizing gas. These allegations were reported to the

superintendent and deputy commissioner, and a procedure was put into place to investigate allegations as well as make absolutely clear to staff and prisoners that inappropriate use of force by officers will not be tolerated. Another problem being addressed involves delays in accomplishing warranted transfers and other rewards for successful completion of phases in the step-down unit.

Tough issues remain. The monitor and plaintiffs' attorneys would like to see more amenities and freedoms for prisoners in the step-down unit. An even more thorny issue is the management of prisoners in the step-down unit who break rules or commit assaults. Should they be ejected from the treatment program? And, if so, where can they go and receive the treatment they need? As we write, the parties are discussing the housing and mental health treatment of prisoners whose misconduct results in their ejection from the step-down unit. Meanwhile, much has been accomplished at Unit 32.

DEBATING ADMINISTRATIVE SEGREGATION

There is an ongoing national debate about the need for evermore severe restrictions and harsher punishments in corrections (Cohen, 2006; Scharff-Smith, 2006). Mounting prison violence was a major part of the rationale for transferring so many prisoners into some form of segregation. But does long-term administrative segregation actually improve the situation? The big problem with locking prisoners down is that the majority of them must be eventually released (Kupers, 2008). The results of changes at Unit 32 support the notion that, on average, long-term administrative segregation—especially if prisoners perceive it as being unfair and indefinite—will in many cases exacerbate misconduct and psychiatric dysfunction.

The developments described here also illustrate something about the effect of litigation on corrections. When litigation is brought, the state too often believes that it has to defend its policies and practices, and it is slow or resistant in responding to consent decrees and court orders. But when the parties to the litigation reach an amicable negotiated settlement, as memorialized by the court in a consent decree, then a more collaborative approach to effecting change becomes possible (Cohen & Aungst, 1997). In Mississippi, the administration of the Department of Corrections eventually welcomed the changes demanded by the plaintiffs in a series of class-action lawsuits, which cleared the way for the changes to be put into effect in an atmosphere of strong collaboration. As such, there are at least two levels of collaboration: The expert witnesses in the litigation essentially became consultants to the MDOC, and within the MDOC, there was greatly improved collaboration between custody and mental health staff in effecting the agreed-on changes. The writing of this article is just one of many products of that collaboration.

In this kind of collaborative process, it becomes possible to devise management and treatment strategies for prisoners who might otherwise be considered incorrigible. Hans Toch points out that the older notion that a prisoner's misbehavior is due to either badness or madness misses the fact that for many prisoners, there is both madness and badness—that is, the disturbed/disruptive prisoner (in Toch & Adams, 2002). In fact, effective strategies have been devised to intervene with disturbed/disruptive prisoners (Jones, 2004; Toch & Adams, 2002; Toch & Kupers, 2007). Outcome studies reflect that such methods work (Jones, 2004; Lovell et al. 2001).

The assumption that a large number of prisoners are beyond help and will never change their unacceptable behaviors, when coupled with the practice of locking them in segregation and punishing them harshly, predictably leads to worse behavior problems on the part of those locked away. Alternatively, when custody and mental health experts put their heads together, devise creative approaches to the management and treatment of some of the most difficult cases, and give prisoners clear and incremental requirements to win greater freedom, great strides are made.

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Terry A. Kupers, MD, MSP, is institute professor at the Wright Institute and practices psychiatry in Oakland, California. He serves as contributing editor of *Correctional Mental Health Report*.

Theresa Dronet, PhD, is associate director of mental health programs for Wexford Health Sources. She has also worked as a clinician in private practice and in the Office of Public Health in Louisiana.

Margaret Winter is associate director of the National Prison Project of the American Civil Liberties Union. She has argued before the U.S. Supreme Court and represented prisoners in class-action cases challenging conditions of confinement in prisons and jails around the nation. She served as a consultant to the Commissioner of the Mississippi Department of Corrections' task force on HIV-positive inmates' access to programs.

James Austin, PhD, has been president of the JFA Institute since 2003. Before that, he was the director of the Institute of Crime, Justice, and Corrections at George Washington University and an executive vice president for the National Council on Crime and Delinquency.

Lawrence Kelly is superintendent of the Mississippi State Penitentiary at Parchman. He is a 27-year veteran of corrections and holds a bachelor of science in criminal justice. He is also a recipient of the Heroism Award, Criminal Justice Professional of the Year Award and the Commissioner's Distinguished Service Award.

William Cartier, PhD, is psychologist and director of the Step-Down Unit at Unit 32. He is a neuropsychologist with an extensive background in behavioral science and addiction.

Timothy J. Morris is warden at Unit 32. He holds a bachelor of science in criminal justice. He has been with the Mississippi Department of Corrections since 1989 and is a member of the North American Association of Wardens and Superintendents.

Stephen F. Hanlon is a partner in Holland & Knight, LLP, managing the firm's Community Services Team. He has a long history in public interest and civil rights law, including housing, employment and AIDS discrimination, death penalty litigation, prisoner rights, and a constitutional challenge to nonconsensual medical experimentation.

Emmitt L. Sparkman is deputy commissioner for institutions of the Mississippi Department of Corrections. His corrections career spans 34 years, beginning as a correctional officer in Texas.

Parveen Kumar, MD, has been the chief psychiatrist for Wexford Health Sources in the state of Mississippi since 2006. He has also worked at the Mississippi State Hospital and the Veterans Administration Hospital in Jackson, Mississippi.

Leonard C. Vincent is general counsel for the Mississippi Department of Corrections. He has been in that position for 33 years and has served as an educator, psychometrist, and warden.

Jim Norris is a senior attorney with the Mississippi Department of Corrections, with 30 years of experience in correctional litigation.

Kim Nagel, MD, is a staff psychiatrist at Mississippi State Penitentiary. He trained in psychiatry at the University of Colorado and was assistant clinical professor of psychiatry there from 1983 to 2003. He has coauthored three books on sleep disorders and has written about psychopharmacology, mood disorders, and substance abuse.

Jennifer McBride is assistant regional mental health director and training ambassador for Wexford Health Sources in the state of Mississippi. She is also a doctoral student at Delta State University, Cleveland, Mississippi.

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March 10, 2012

Prisons Rethink Isolation, Saving Money, Lives and Sanity

By ERICA GOODE

PARCHMAN, Miss. — The heat was suffocating, and the inmates locked alone in cells in Unit 32, the state's super-maximum-security prison, wiped away sweat as they lay on concrete slab beds.

Kept in solitary confinement for up to 23 hours each day, allowed out only in shackles and escorted by guards, they were restless and angry — made more so by the excrement-smearred walls, the insects, the filthy food trays and the mentally ill inmates who screamed in the night, conditions that a judge had already ruled unacceptable.

So it was not really surprising when violence erupted in 2007: an inmate stabbed to death with a homemade spear that May; in June, a suicide; in July, another stabbing; in August, a prisoner killed by a member of a rival gang.

What was surprising was what happened next. Instead of tightening restrictions further, prison officials loosened them.

They allowed most inmates out of their cells for hours each day. They built a basketball court and a group dining area. They put rehabilitation programs in place and let prisoners work their way to greater privileges.

In response, the inmates became better behaved. Violence went down. The number of prisoners in isolation dropped to about 300 from more than 1,000. So many inmates were moved into the general population of other prisons that Unit 32 was closed in 2010, saving the state more than \$5 million.

The transformation of the Mississippi prison has become a focal point for a growing number of states that are rethinking the use of long-term isolation and re-evaluating how many inmates really require it, how long they should be kept there and how best to move them out. Colorado, Illinois, Maine, Ohio and Washington State have been taking steps to reduce the number of prisoners in long-term isolation; others have plans to do so. On Friday, officials in

California announced a plan for policy changes that could result in fewer prisoners being sent to the state's three super-maximum-security units.

The efforts represent an about-face to an approach that began three decades ago, when corrections departments — responding to increasing problems with prison gangs, stiffer sentencing policies that led to overcrowding and the “get tough on crime” demands of legislators — began removing ever larger numbers of inmates from the general population. They placed them in special prisons designed to house inmates in long-term isolation or in other types of segregation.

At least 25,000 prisoners — and probably tens of thousands more, criminal justice experts say — are still in solitary confinement in the United States. Some remain there for weeks or months; others for years or even decades. More inmates are held in solitary confinement here than in any other democratic nation, a fact highlighted in a United Nations report last week.

Humanitarian groups have long argued that solitary confinement has devastating psychological effects, but a central driver in the recent shift is economics. Segregation units can be two to three times as costly to build and, because of their extensive staffing requirements, to operate as conventional prisons are. They are an expense that many recession-plagued states can ill afford; Gov. Pat Quinn of Illinois announced plans late last month to close the state's supermax prison for budgetary reasons.

Some officials have also been persuaded by research suggesting that isolation is vastly overused and that it does little to reduce overall prison violence. Inmates kept in such conditions, most of whom will eventually be released, may be more dangerous when they emerge, studies suggest.

Christopher B. Epps, Mississippi's commissioner of corrections, said he found his own views changing as he fought an American Civil Liberties Union lawsuit over conditions in the prison, which one former inmate described as “hell, an insane asylum.”

Mr. Epps said he started out believing that difficult inmates should be locked down as tightly as possible, for as long as possible.

“That was the culture, and I was part of it,” he said.

By the end of the process, he saw things differently and ordered the changes.

“If you treat people like animals, that's exactly the way they'll behave,” he now says.

A Very Costly Experiment

James F. Austin held up the file of an inmate in Unit 32 and posed a question to the staff members gathered in a conference room at the Mississippi Department of Corrections headquarters in Jackson.

“O.K., does this guy really need to be there?” he asked.

It was June 2007, and the department was under pressure to make court-ordered improvements to conditions at Unit 32, where violence was brewing. Dr. Austin, a prison consultant, had been called in by the state. As the discussion proceeded, the staff members were startled to discover that many inmates in Unit 32 had been sent there not because they were highly dangerous, but because they were a nuisance — they had disobeyed orders, had walked away from a minimum-security program or were low-level gang members with no history of causing trouble while incarcerated.

“He started saying, ‘You tell me what kind of person needs to be locked up,’ and it wasn’t near the numbers that we had,” said Emmitt L. Sparkman, deputy commissioner of corrections. By the time they were done, the group had determined that up to 80 percent of the 1,000 or more inmates at Unit 32 could probably be safely moved to less restrictive settings.

Like many such prisons, Mississippi’s supermax, opened in 1990, owed its existence to the fervor for tougher punishment that swept through the country in the 1980s and 1990s.

“There was an incredible explosion in the prison population coupled with a big infusion of gangs,” Dr. Austin said. “Riots were occurring. Prison officials were literally losing control.”

Some states built special units to isolate difficult prisoners — “the worst of the worst,” prison officials said — from the general prison population. Others retrofitted existing prisons or established smaller units within larger facilities. The federal penitentiary in Marion, Ill., was locked down in 1983 after the murder of two prison guards, its inmates confined to cells 23 hours a day and then kept that way permanently. In 1989, California opened Pelican Bay State Prison in Crescent City, a remote town near the Oregon border, specially designed to control inmates in conditions that minimize human interaction.

By 2005, 44 states had supermax prisons or their equivalents. In most, inmates were let out of their cells for only a few hours a week. They were fed through slots in their cell doors and were denied access to work programs or other rehabilitation efforts. If visitors were allowed, the interactions were conducted with no physical contact.

And while prisoners had previously been sent to isolation for 10 or perhaps 30 days as a temporary disciplinary measure, they were now often placed there indefinitely.

Asked to explain the purpose of such confinement, prison wardens surveyed in 2006 by Dan Mears, a professor of criminology at Florida State University, cited "increasing safety, order and control throughout prison systems and incapacitating violent or disruptive inmates."

But beyond that, said Dr. Mears, who called the rise of supermax prisons "a big, very costly experiment," the goals seemed murky. Who exactly were "the worst of the worst"? How many people really needed such harsh control, and for how long? And how should the effectiveness of the prisons be judged, especially when measured against the costs of building and operating them?

Dr. Mears said there were no clear answers; indeed, he said, it is virtually impossible to determine how many inmates are in supermax prisons in the United States because there is no national tracking system and because states differ widely in what they call segregation units. "I don't know of any business that would do this, not something that costs this much, with so little evidence or clarity about what you're getting," Dr. Mears said.

With no precise definition of who belonged there, prison systems began to send people to segregation units who bore little resemblance to the serial killers or terrorists the public imagined filled such prisons.

"Certainly there are a small number of people who for a variety of reasons have to be maintained in a way that they don't have access to other inmates," said Chase Riveland, a former head of corrections in Colorado and Washington State who now serves as an expert witness in prison cases. "But those in most systems are pretty small numbers of people."

Mr. Epps, who is president-elect of the American Correctional Association, likes to say prison officials started out isolating inmates they were scared of but ended up adding many they were simply "mad at."

'The Real Damage'

In 1831, the French historian Alexis de Tocqueville visited the Eastern State Penitentiary in Philadelphia, where prison officials were pioneering a novel rehabilitation method based on Quaker principles of reflection and penitence. They called it solitary confinement.

"Placed alone in view of his crime," de Tocqueville wrote in a report to the French government, the prisoner "learns to hate it, and if his soul be not yet surfeited with crime,

and thus have lost all taste for any thing better, it is in solitude, where remorse will come to assail him.”

But for many prisoners, isolation was as likely to produce mental illness as remorse, and by the late 19th century, enthusiasm for the approach had flagged. In 1890, deciding the case of a death row inmate held in solitary confinement, Justice Samuel Freeman Miller of the Supreme Court wrote that many prisoners fell, “after even a short confinement, into a semifatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still committed suicide.”

It was the last time the nation’s highest court would address the psychological effects of solitary confinement directly. But lower courts in some states have acknowledged the stress that isolation puts on inmates who are already mentally ill, prohibiting their being placed in solitary except in urgent circumstances.

When Dr. Terry Kupers, a psychiatrist and expert on the effects of solitary confinement, toured Unit 32 for the plaintiffs in the A.C.L.U. lawsuit, he found that about 100 of the more than 1,000 inmates there had serious mental illness, in many cases improperly diagnosed. Some were actively hallucinating. Others threw feces or urine at guards or howled in the night.

In turn, the mentally ill inmates were mistreated by corrections officers, who had little understanding of their condition, Dr. Kupers said.

In a report filed to the court, he described the case of James Coffield, a mentally ill prisoner who had demonstrated “a long history in Unit 32 of bizarre and disruptive behaviors” that prison psychiatrists “characterized as merely ‘manipulative’ and which security staff punished with increasingly harsh force, including repeated gassing with chemicals.”

Mr. Coffield eventually tried to hang himself but failed and ended up in a vegetative state.

Many states continue to house inmates with mental illness in isolation. Some inmates appear to function adequately in solitary confinement or even say they prefer it. But studies suggest that the rigid control, absence of normal human interaction and lack of stimulation imposed by prolonged isolation can cause a wide range of psychological symptoms including insomnia, withdrawal, rage and aggression, depression, hallucinations and thoughts of suicide, even in prisoners who are mentally healthy to begin with.

A study of prisoners in the Pelican Bay supermax, for example, found that almost all reported nervousness, anxiety, lethargy or other psychological complaints. Seventy percent said they felt themselves to be at risk of “impending nervous breakdown.”

“Worse still is the fact that for many of these men, the real damage only becomes apparent when they get out of this environment,” said Craig W. Haney, a professor of psychology at the University of California, Santa Cruz, and an expert on the effects of solitary confinement, who led the study.

In fact, some research has found that inmates released from supermax units are more likely to reoffend than comparable prisoners released from conventional maximum-security prisons, and that those crimes are more likely to be violent. In Colorado, said Tom Clements, executive director of corrections, it turned out that about 40 percent of inmates held in long-term isolation were being released directly to the community with no transition period.

The psychological research has drawn attention, not least from the international community. In a report presented to the United Nations Human Rights Council in Geneva on Monday, Juan E. Méndez, the U.N.’s special rapporteur on torture and other abuse, called for a ban on solitary confinement except in limited situations and singled out the United States for its reliance on the method.

In 2010, the European Court of Human Rights blocked the extradition of four terrorism suspects from Britain, saying it wanted to study whether imprisonment at the federal supermax prison in Florence, Colo., violated a ban on inhuman or degrading treatment.

Yet for states, economic and practical arguments may prove more persuasive than humanitarian concerns.

“It’s just exceedingly expensive to hold someone in a segregation bed,” said Angela Browne, a senior fellow at the Vera Institute of Justice, a nonprofit policy and research group, and head of the institute’s segregation reduction project, which works with states to find alternatives to segregation.

Several states, citing economic reasons, have converted supermax units to more conventional prisons, and a few have closed the prisons altogether. Unit 32 was closed in 2010. The increased costs are largely a result of the staffing required to deliver food and other services to cells and escort prisoners when they are let out.

In 2010, for example, Virginia reported that it cost \$89.59 per day to keep a prisoner at Red Onion State Prison, a supermax unit with 399 employees, compared with \$60.04 per day at

Sussex II State Prison, a maximum-security facility that houses almost 500 more inmates but has a staff of 353.

Gambling on Change

Roy Harper, serving time for armed robbery, kidnapping and other charges, used to wake in his cell at Unit 32 seized with anxiety every morning. "You never know what the day is going to bring," he said recently.

Sometimes it was flooding from malfunctioning toilets. Sometimes it was inmates setting fires or cutting themselves — two prisoners cut off their own testicles in the time he spent there, he said — and sometimes it was just the sense of isolation he felt, "like being alone in the world."

Mr. Harper was a prisoner in Unit 32 from the day it opened to the day it closed, 20 years later. But the summer of 2007, he recalled, was worse than most. When the killings began, prison officials first cracked down, taking away the inmates' fans — the only relief from summer temperatures that approached 100 degrees and, according to an environmental expert who filed a report on the conditions, could feel like 120 or more. They kept prisoners in their cells around the clock, not even allowing them out for exercise, he said.

Mr. Sparkman, the deputy corrections commissioner, viewed the situation as so critical that in July he moved from his home in Jackson to Parchman, where Unit 32 sits on the grounds of the state penitentiary. It was clear that a different approach was needed, he said: "What we were doing, the 23-hour lockdown, was not working."

But the shift had to be made carefully.

"It was gradual, and it was very controlled," Mr. Sparkman said. "We started out with one building, identifying those groups that we could let out, and we let some of them out. Some of them we were able to transfer completely out."

A few guards rebelled at the new orders and resigned in protest. A few others were fired. But by the end of six months, most prisoners were spending hours a day outside their cells or had been moved to the general population of other prisons. A clothing warehouse was turned into a group dining hall, and a maintenance room was converted to an activities center. The basketball court filled with players.

Mr. Harper did not benefit immediately from the changes. He remained in 23-hour lockdown until he worked his way to greater privileges. But he was elated at what he saw, he

said, with inmates “working again, walking without chains, going to the yard, going to the chow hall.”

The A.C.L.U. continues to monitor conditions in other prisons in the state. But Margaret Winter, the lead lawyer for the A.C.L.U. in its lawsuit over Unit 32, said she watched the transformation there in wonder, especially as two men who at the beginning of the process seemed deeply entrenched in their views shifted direction. The change, she said, was “stunning.”

Mr. Sparkman said the new approach went against everything he had been trained to do. “If you’d come to me in 2002 and told me I was going to do something like that, I’d say, ‘You don’t know me,’ ” he said. “I’d have probably locked them down for anything that squeaked.”

Mr. Epps looks back at the decision as a nerve-racking gamble.

“Was it scary? Absolutely,” he said. “But it worked out just fine. We didn’t have a single incident.”

Scott Shane contributed reporting from Washington.

This article has been revised to reflect the following correction:

Correction: March 18, 2012

An article last Sunday about states that are rethinking the use of long-term solitary confinement misidentified the office held by Christopher B. Epps, Mississippi’s commissioner of corrections, in the American Correctional Association. He is president-elect, not president. (Daron Hall is the current president; Mr. Epps takes over in 2013.)

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