

Solitary Confinement on Texas Death Row

Submission From:

**The American Civil Liberties Union of Texas, the Texas Civil Rights Project,
and Texas Defender Service**

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

Hearing On:

**Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences**

February 25, 2014

The American Civil Liberties Union of Texas, the Texas Civil Rights Project, and Texas Defender Service write together to update the Senate Judiciary Committee on proposed reforms to Texas death row.

Texas death-row prisoners once had most of the same privileges as people in general population. But then in 1999, the Texas Department of Criminal Justice moved all death row inmates to a new facility, where it automatically confined everyone to permanent solitary confinement until their execution. Ever since, death-row prisoners, regardless of their good behavior, cannot work, recreate together, participate in communal religious services, or have contact visits with their families. Because of the lengthy nature of post-conviction proceedings, these prisoners are housed in extreme isolation for years, often over a decade. While Texas death row is more restrictive than other death rows—it is only one of two death rows in the country that deprives its inmates of television—many other states also place inmates condemned to death in permanent solitary confinement.¹

The Texas Department of Criminal Justice is currently revising its Death Row Plan, which governs all aspects of life on death row. In response, a coalition of Texas organizations submitted a letter asking that TDCJ amend the death row plan so that inmates can move toward increased privileges based on good behavior. The coalition also submitted 11 supporting letters from security experts, the correctional officers' union, family members of people in prison, mental health experts, the faith community, and habeas attorneys. A selection of those letters is attached.

¹ See American Civil Liberties Union, *A Death Before Dying: Solitary Confinement on Death Row* (July 2013), available at <https://www.aclu.org/files/assets/deathbefore-dying-report.pdf>.

But TDCJ announced that it does not intend to adopt the recommendations supported by this broad coalition. In ignoring these recommendations, TDCJ made a big mistake.

Some people may wonder why it matters how Texas or other states house death-row inmates—often thought of as “the worst of the worst”—before they die. There are at least two important reasons that states must cease housing death-row inmates in permanent solitary confinement: The safety of correctional staff, and the United States Constitution.

I. Safety of Correctional Staff

First, Texas and other states must reform conditions on death row to **protect the prison guards who are on the front lines**. Correctional officers and security experts agree that extreme isolation undermines safety on the row. Lance Lowry, president of the correctional officers’ union, contributed a letter to TDCJ in support of the coalition’s efforts. He wrote: “As a result of the changes to the Texas death row plan, inmates have very few privileges to lose and staff become an easy target.” Jeanne Woodford, former Warden of San Quentin and former Director of the California Department of Corrections, wrote about how death-row inmates in California have most of the privileges of general population inmates. She explained that

allowing inmates privileges based on good behavior *enhances* security because it creates incentives for inmates to comply with prison regulations. When inmates are permanently and automatically housed in highly restrictive environments—as they are in Texas—it is more difficult to control their behavior. To make matters worse, complete idleness breeds mental illness, causing inmates to act out and putting correctional officers at risk.

And according to security expert and former death-row prison guard Steve Martin in an op ed published in the *Houston Chronicle* and the *Dallas Morning News*, “[T]he officers working on death row, not state prison executives, are in harm’s way because of poor policy making by agency leaders.”² Martin explained:

The problem with the current policies is that death row inmates have no incentive to behave well, and that endangers prison staff. . . . [C]ompliance with existing security rules gets the prisoner nothing - just more of the same: solitary confinement.

Martin discussed how the death-row work program in place before 1999 actually encouraged prisoners to follow prison rules: “Those who worked protected that privilege by acting peacefully, while others tried hard to conform to prison regulations so that they would be designated as work-eligible.”

² Steve Martin, “Texas Should End Solitary Confinement on Death Row,” *The Houston Chronicle* (Feb. 8, 2014), available at <http://www.chron.com/opinion/outlook/article/Martin-Texas-should-end-solitary-confinement-on-5217201.php>.

Permanent solitary confinement arose in response to a security concern, but in fact, it has made conditions on death row less safe. Instead of addressing the specific issues that resulted in the 1999 security concerns—in particular, lack of training of correctional staff—TDCJ employed a blanket solution that puts correctional officers at risk.

II. United States Constitution

Second, Texas and other states must reform conditions on death row because they are **unconstitutional**. In a significant ruling this November, the District Court for the Eastern District of Virginia determined that the Fourteenth Amendment protects people on death row from being confined to permanent solitary confinement without any due-process review.³ Alfredo Prieto, an inmate who had been on death row for half a decade, filed a lawsuit arguing that the Virginia department of corrections violated his right to due process by automatically housing him in near-complete isolation, without offering him any opportunity to review his placement. The district court agreed. The *Prieto* decision indicates that states violate the due-process rights of death-row inmates by housing them in permanent solitary confinement, rather than giving them an individualized assessment and housing them based on their actual behavior and security risk.

Also, courts across the country have held that states violate the Eighth Amendment when they house seriously mentally ill people in solitary confinement.⁴ According to a recent information request by the Texas Civil Rights Project, 51 of 274 prisoners on Texas death row take psychotropic medications for a serious mental illness or other psychological issue. The Eighth Amendment protects death-row prisoners just as much as prisoners in general population. Texas violates the Eighth Amendment by failing to give individual mental-health assessments to death-row prisoners, and diverting those with serious mental illness out of solitary confinement to more appropriate housing.

Extreme isolation has a severe impact on death-row prisoners, especially those with mental illness. Some prisoners drop their appeals, preferring death to a life in permanent solitary confinement. Anthony Graves, who spent years on Texas' death row for a crime he did not commit, described the impact of solitary confinement on inmates: "I saw guys come to prison sane, and leave this world insane, talking nonsense on the execution gurney. One guy suffered some of his last days smearing feces, lying naked in the recreation yard, and urinating on himself."⁵ In interviews with the Texas Civil Rights Project, death-row inmates described how solitary confinement led some death-row prisoners to gain hundreds of pounds and refuse to

³ See *Prieto v. Clarke*, No. 1:12-cv-01199-LMB-IDD, Doc. No. 91 (E.D. Va. Nov. 11, 2013).

⁴ See *Indiana Protection and Advocacy Services Commission v. Commissioner*, No. 1:08-cv-01317-TWP-MJD, 2012 WL 6738517 (S.D. Ind. Dec. 31, 2013); *Jones'El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 912 (S.D. Tex. 1999), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

⁵ See "A Death Before Dying," *supra* n.1, at 3.

leave their cells, while others mentally deteriorated until all they possessed were what other prisoners described as their “animal instincts.”

To see the horrific impacts of solitary confinement on death-row inmates with mental illness, one needs to look no further than the case of Andre Thomas, who had a history of paranoid schizophrenia and auditory hallucinations. In the Grayson County Jail, Thomas gouged out one of his eyes. He was nonetheless found competent to stand trial, and convicted. Then, Thomas was sent to Texas death row, where little notice appears to have been taken of the description by jail medical staff in Grayson County that he was a “paranoid schizophrenic.” In solitary confinement, he tried slitting his wrists and cut his throat. On December 1, 2008, he threatened to commit suicide. Days later, a correctional officer found him with blood on his face and took him to the infirmary. Thomas had pulled out his remaining eye and eaten it.⁶

III. Conclusion

The American Civil Liberties Union of Texas, the Texas Civil Rights Project, and the Texas Defender Service urge Congress to take a close look at solitary confinement of death-row inmates. The practices of states like Texas—of housing all death-row inmates in solitary confinement until their execution—present a serious threat to the safety of correctional officers and violate the United States Constitution.

⁶ Brandi Grissom, “Andre Thomas: Struggling to Maintain Sanity in Prison,” *The Texas Tribune* (Feb. 25, 2013), available at <http://www.texastribune.org/2013/02/25/andre-thomas-part-5/>.

Attachments:

- **January 27, 2014 Letter to TDCJ re: Solitary Confinement on Death Row** from the ACLU of Texas, Texas Civil Rights Project, Texas Coalition to Abolish the Death Penalty, Texas Criminal Justice Coalition, Texas Defender Service, and Texas Impact
- **January 27, 2014 Supporting Letter to TDCJ** from Lance Lowry, President of Correctional Officers' Union
- **January 27, 2014 Supporting Letter to TDCJ** from Jeanne Woodford, Former Warden of San Quentin and Former Director of California Department of Corrections

January 27, 2014

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SUBJECT: REVISION TO TDCJ'S DEATH ROW PLAN

Dear Mr. Livingston, Mr. Collier, and Mr. Bell:

In light of the upcoming revisions to the Death Row Plan, we, members of the undersigned organizations, are writing to submit suggested revisions to the plan. Security experts, correctional officers, religious leaders, mental-health professionals, civil-rights advocates, and lawyers understand the import of maintaining security in all TDCJ facilities. It is our belief, based on accepted research and proven methods used in other jurisdictions, that the following revisions will make things safer and in no way compromise security, reduce the filing of grievances, and even improve the lives of correctional staff, who currently must work in the most hostile and tense of environments.

As you are aware, until 1999, inmates on Texas death row were housed at the Ellis Unit, where inmates could work in manufacturing jobs, eat with other inmates, participate in communal religious services, and recreate together in outdoor recreation yards and in the dayroom. Following the move to the Polunsky unit, all individuals on death row, regardless of their prison record, are housed in what amounts to permanent solitary confinement. They are not allowed to work, they eat their meals alone, they cannot practice their faith with others, and they are not permitted to recreate with one another.

Inmates on death row have stated, “[t]here is no incentive for good behavior at Polunsky” because all inmates are housed in punitive conditions. And research has found that removing inmates from solitary confinement to more humane and less restrictive housing can improve security, whereas “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.”¹ More privileges for people on death row will improve security by giving people an incentive to comply with prison regulations.

We ask TDCJ to implement a formal classification system that allows people on death row to move toward increased privileges, based on good behavior while housed at the Polunsky Unit. These changes should not compromise security, as these privileges will not apply to all individuals on death row, but only to those who have demonstrated through their behavior that they do not present a security risk. Moreover, individuals on the female death-row unit already have the capability of moving toward similar increased privileges, and there have been no security issues associated with such a policy on that unit. Privileges should include permitting individuals to work towards:

- **Contact visits with families:** People on death row used to be allowed to have contact visits with families at Ellis, but now they can only meet their families from behind a glass window. This isolation has a profound impact not just on inmates, but on their families.
- **Communal recreational activities:** In the Ellis unit, inmates were able to recreate with one another. At the Polunsky Unit, inmates are completely alone during their recreational time.
- **Work capability:** People on death row were allowed to work on the Ellis Unit. Working provided a sense of purpose and community, and an incentive for good behavior. Although the new death row unit may not be constructed for manufacturing jobs, people on death row could still usefully participate in chores on their own unit, like cleaning, kitchen, and laundry.
- **Religious services:** People on death row participated in communal religious services in the Ellis Unit, but inmates report this is no longer the case at the Polunsky Unit.
- **Television:** At the Ellis Unit, people were able to watch television in the dayroom, and the televisions were also visible from their cells. For people on death row, television is not just entertainment; it is a life-line. As Anthony Graves explained, “television [at Ellis] was really important. It kept us all connected to the outside world. It kept us sane.” Now death-row inmates are not allowed to watch television at all.
- **Wide range of in-cell arts and crafts:** Inmates on death row used to have access to a wider range of arts and crafts. Arts were a meaningful activity. At Polunsky, the craft program is greatly circumscribed.
- **Phone privileges:** There is no phone in the day room. This is extremely troubling for people on death row, who often need to communicate urgently with their counsel, or may need to quickly find new counsel if their current attorney drops their appeal. Also, inmates are rarely allowed to call their families. TDCJ should increase phone privileges for inmates both for legal and personal calls.

In addition to the above suggestions, conditions in death row are a significant concern to a broad range of individuals. We ask the Department to facilitate dialogue with outside groups regarding death row policies and conditions. Among other matters for discussion, organizations have reported that people are not receiving their **psychotropic medications** upon their transfer to death row. We are also concerned

¹ Terry A. Kupers et al., “Beyond Supermax Administrative Segregation: Mississippi’s Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs,” *Criminal Justice and Behavior* (July 21, 2009), at 12.

about lawyers' ability to meet with their clients in **confidential attorney meeting rooms**. Attorneys used to be able to meet with their clients in confidential meeting rooms, where their attorney-client communications could not be overheard by other visitors or TDCJ staff. Now, attorneys can only communicate with their clients in the general meeting area, where they have no privacy to discuss confidential issues in their clients' criminal cases. Moreover, attorneys used to be able to buy snacks and beverages for their clients during their often-times lengthy meetings. Lately, attorneys have been told that they can no longer provide snacks or beverages for their clients. Finally, we are concerned about inmates' reports that their **mail** is being held up to 72 hours before being distributed to them, inhibiting their communication with counsel about urgent matters and causing them to miss court deadlines.

We urge TDCJ to incorporate these changes in the upcoming Death Row Plan review. Please contact Cindy Eigler of Texas Impact to follow up on the progress of our request, at 512-472-3903 or cindy@texasinterfaith.org. Also, we have enclosed letters of support from the following broad range of advocates and organizations:

- Jeanne Woodford, Former Warden and Former Director of California's Department of Corrections
- AFSCME Correction Employees Union Local 3807
- National Alliance on Mental Illness (NAMI) Texas
- Mental Health America of Texas
- Texas Inmate Family Association
- The Criminal Justice Ministry of the Diocese of Beaumont
- Catholic Pastoral Center, Diocese of Beaumont
- Texas Impact
- Texas Defender Service
- Richard Burr, Attorney
- Texas Civil Rights Project

Sincerely,

American Civil Liberties Union of Texas
Texas Civil Rights Project
Texas Coalition to Abolish the Death Penalty
Texas Criminal Justice Coalition
Texas Defender Service
Texas Impact

Enclosures: 11

cc: Gary Hunter, Warden, Polunsky Unit
State Senator John Whitmire
State Representative Tan Parker
Tom Mechler, Vice-Chairman, TBCJ
Leopoldo Vasquez III, Secretary, TBCJ

Eric Gambrell, TBCJ
Judge Lawrence Gist, TBCJ
Carmen Villanueva-Hiles, TBCJ
Janice Harris Lord, TBCJ
R. Terrell McCombs, TBCJ



AFSCME Texas
Correctional Employees
Local 3807
“We Patrol Texas' Toughest Beat”



January 20, 2014

Greetings,

As the president of the largest correctional professional organization in Texas I am calling on the Texas Department of Criminal Justice to change the death row plan to positively impact both the correctional staff and offenders on Texas death row. After the November 1998 escape of Offender Martin Gurule, the Texas Department of Criminal Justice engaged in a knee jerk reaction regarding the administration of Texas death row inmates.

Staff incompetency and lack of proper security equipment were the biggest factors resulting in Gurule's escape from the O.B. Ellis death row. As a result of the escape the agency ignored the root of the problem and addressed the lack of security equipment by increasing the physical perimeter security, in addition to the number of firearm rounds issued to perimeter pickets. Lack of staff competency was never addressed in a positive manner and has resulted in a less experienced force securing Texas death row.

The changes in the death row plan following the Gurule escape have resulted in the solitary housing of “D1” offenders who were capable and had additional privileges which could be used as management tools for negative behavior. As a result of the changes to the Texas death row plan, inmates have very few privileges to lose and staff become an easy targets.

The Texas death row plan needs to address tools that can manage positive behavior. D1 offenders who are work capable should be utilized. Housing death row D1 offenders in a solitary cell is a waste of valuable security personnel and money. D1 offenders should be housed 2 offenders to a cell and treated similar to G3 offenders in terms of privileges such as work assignment and allowed TV privileges by streaming over the air television to a computer tablet using a closed WiFi network. Use of technologies such as computer tablets and streaming TV should be offered to offenders who exhibit positive behavior. Lack of visual or audio stimulation result in increased psychological incidents and results in costly crisis management.

Staff incompetency should be addressed by offering death row officers a salary differential and substantially increase their training for staff committed to working death row. A greater pay differential will insure we have the best officers watching Texas most dangerous population. Other correctional agencies have successfully used differentials to address staffing issues. Let's make Texas a model for successful death row criminal justice reforms.

Respectfully,
Lance L Lowry
Lance Lowry
President Local 3807

To Whom It May Concern:

I am the former warden of San Quentin, which houses the largest death-row population in the country. I have also served as Director of the California Department of Corrections and the Undersecretary of the California Department of Corrections and Rehabilitation, the largest correctional system in the United States. I have over 30 years of experience in criminal justice.

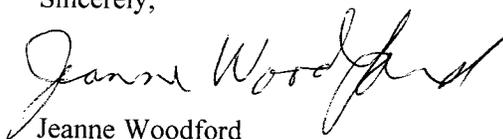
I write to support this coalition's demand that Texas cease to house death-row inmates in permanent solitary confinement. Based on my experience as a warden in California, I believe automatically housing death-row inmates in permanent solitary confinement decreases prison security.

Unlike inmates on Texas death row, death-row prisoners in California are classified into different security levels based on their behavior. Those inmates who demonstrate good behavior have greater privileges, including group recreation, contact visits, communal religious programming, and the ability to purchase televisions. These privileges do not present a security concern.

Indeed, allowing inmates privileges based on good behavior *enhances* security because it creates incentives for inmates to comply with prison regulations. When inmates are permanently and automatically housed in highly restrictive environments—as they are in Texas—it is more difficult to control their behavior. To make matters worse, complete idleness breeds mental illness, causing inmates to act out and putting correctional officers at risk.

I recommend that the Texas Department of Criminal Justice create a classification system that allows inmates increased privileges based on good behavior. These changes will benefit TDCJ by making it easier for correctional officers to manage death-row inmates.

Sincerely,



Jeanne Woodford