IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON JUSTICE RESOURCE CENTER, Petitioner, v. OREGON DEPARTMENT OF CORRECTIONS, Respondent.	)	Court of Appeals No. _____

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MOTION – OTHER
MOTION TO STAY ENFORCEMENT OF RULE PENDING JUDICIAL REVIEW

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EMERGENCY MOTION UNDER ORAP 7.35

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Judicial Review of Oregon Department of Corrections Permanent Disciplinary Solitary Confinement Rules: OAR 291-105-0015, OAR 291-105-0021; OAR 291-105-0046; OAR 291-105-0066; OAR 291-105-0066; OAR 291-105-0072; OAR Exhibit 1, OAR Ch. 291, Div. 105; OAR Ch. 291, Div. 011.

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Rules

Other

MOTION

Petitioner hereby moves for a stay of enforcement of Oregon Department of Corrections (hereafter "DOC") rules governing disciplinary solitary confinement, to the extent those rules authorize punishment of adults in custody (hereafter "AIC") in solitary confinement in excess of 15 days.

Petitioner further requests, pursuant to ORAP 7.35, that the Court grant immediate and temporary relief pending the filing of a response to this motion. The reason that this emergency motion for a stay should be granted within less than 21 days is that each day that prisoners remain in prolonged disciplinary solitary confinement inflicts irreparable harm on those prisoners, the prison population as a whole, prison staff, and the public. Petitioner has filed a facial challenge to these rules pursuant to ORS 183.400 and will file an Opening Brief according to the briefing schedule ordered by the Court. In the meantime, this emergency motion is necessary to prevent irreparable harm.

Pursuant to ORAP 7.35(2), petitioner notified and provided opposing counsel with a courtesy copy of this emergency motion via email, with service to follow by first class mail. Opposing counsel Denise Fjordbeck of the Oregon Department of Justice, opposes this motion and further stated that respondent would file an opposition to this motion.

Petitioner is an incorporated nonprofit that seeks holistic reform of the criminal justice system. Petitioner uses client-centered and integrative advocacy as its approach to criminal justice reform, including legal representation, advocacy, providing information to the public, and working to advance legislation and policy. Petitioner's clients are currently and formerly incarcerated individuals. Petitioner works to ensure that fairness, accountability, and evidence-based practices are the foundation of our criminal justice system. Petitioner is a person who can bring suit as provided in ORS 183.400(1). *City of West Linn v. Land Conservation and Development Com'n*, 113 P.3d 935, 200 Or.App. 269 (2005) ("persons" for purposes of statutory standing included citizens' groups, corporations and governmental subdivisions.); *Oregon Newspaper Publishers v. Dept. of Corrections*, 329 Or. 115, 988 P.2d 359 (1999) (petitioners met the statutory standing requirement of being "any person,").

This motion is supported by the arguments below and by the attached declarations and exhibits.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

The suffering and long-term psychological damage wrought by solitary confinement have been starkly revealed by modern research. At the same time, humane alternatives that are far more effective at preventing violence, supporting reform and rehabilitation, and improving the wellbeing of staff have developed. The old rationale for solitary confinement has been discredited and debunked. The world is turning away from the brutality of solitary confinement and calling it torture. National and international standards condemn the use of long term disciplinary solitary confinement. Many state departments of corrections have abolished it and turned to more effective alternatives.

Despite these changes in knowledge and norms, DOC persists in using its disciplinary solitary confinement rules to inflict irreparable harm on AICs within DOC institutions. The rules purportedly authorizing this action exceed the statutory authority of the DOC and violate the principles and purposes of incarceration in our constitution and the protections against cruelty and unnecessary rigor. Harm increases with each day and week that AICs are detained in long term disciplinary solitary confinement. An immediate stay of enforcement of these rules until this court is able to declare these discredited prison practices invalid is in the public interest.

II. BACKGROUND OF THE RULES BEING CHALLENGED

A. Defining Terms Used Herein: Solitary Confinement, LTDSC

In this rule challenge, petitioner challenges only disciplinary solitary confinement of a duration longer than 15 days. Petitioner uses the term long term disciplinary solitary confinement (LTDSC) to refer to this prolonged use of disciplinary solitary confinement subject to challenge herein. Occasionally, it is necessary to refer more generally to the use of disciplinary solitary confinement of any length, including a duration of more or less than 15 days. For this, Petitioner uses the term disciplinary solitary confinement (DSC).

Petitioner uses a definition of solitary confinement, relied upon by many states, national organizations, other nations, and international bodies, which is essentially confinement to a cell for 22-24 hours a day with limited human interaction and little or no access to constructive activity.[1] Petitioner defines

[1] *See* UN General Assembly Resolution, Mandela Rules 2015, at 17, Rule 44 (hereafter "Mandela Rules") *available at* https://undocs.org/A/RES/70/175; Allison Hastings, Elena Vanko, and Jessi LaChance, Vera Inst. of Justice, *The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the Oregon Department of Corrections* at 12-13 (October 2016) (hereinafter "Vera Report"), *available at* https://www.vera.org/downloads/publications/safe-alternatives-segregation-initiative-findings-recommendations-odoc.pdf; ABA Resolution Against Prolonged Solitary Confinement 2018 at 2, *available at* https://www.americanbar.org/content/dam/aba/directories/policy/2018-midyear/2018-mm-108a.pdf.

LTDSC as solitary confinement pursuant divisions 11 and 105 of Chapter 291 of the Oregon Administrative Rules that lasts longer than 15 consecutive days.[2] These rules allow for LTDSC of as much as 180 consecutive days. OAR 291-105-066.

DOC uses solitary confinement for purposes other than discipline, which petitioner does not challenge in this case. These special housing classifications go by many names including Administrative Segregation, Behavioral Health Unit, and Intensive Management Unit. *See* OAR Ch. 291, divisions 46, 48, and 55, respectively. The rules pertaining to DSC and subject to challenge herein are in OAR Ch. 219, Division 011, titled "Segregation (Disciplinary)" and Division 105 titled "Prohibited Conduct and Processing Disciplinary Actions".

B. The Challenged Rules

Petitioner challenges the rules within divisions 011 and 105 that individually and in concert authorize and provide for the use of LTDSC. These include the rules which authorize the following:

- Solitary confinement up to 180 consecutive days. OAR 291-105-0066(12)(a).
- Presumptive sanctions for level 1, 2, and 3 violations of 120, 60, and 28 days respectively. Exhibit 1 to OAR Ch. 291, Division 105 §§ 0015, 0021, 0046, and 0066.

[2] Mandela Rules at 17, Rule 44 ("Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.").

- Upward deviations from presumptive sanctions by up to 50%. OAR 291-105-0072(1).
- Consecutive sanctions. OAR 291-105-0066(5) and (6)(b).
- Imposition of disciplinary solitary confinement longer than 15 consecutive days without any finding of necessity or need. OAR Ch. 219, divisions 011 and 105.

The rules begin with a policy statement which says that inmates in disciplinary segregation will be treated "with the best interest of staff, inmates, and the institution in mind." OAR 291-011-0005(3). However, as explained below, LTDSC is harmful to staff, inmates, and the function of each institution. Though it includes many hardships, the defining feature of DSC is isolation. DSC is defined as,

> "The placement of an inmate in a housing program status which separates him/her from the main population of the facility in accordance with Department of Corrections rule on Prohibited Inmate Conduct and Processing Disciplinary Actions"

OAR 291-011-010(2). This "status which separates" entails far more separation and deprivation than this definition reveals, as explained below.

A central piece of the rules authorizing LTDSC sanctions for rule violations is the Major Violation Grid attached as Exhibit 1 to the Rules of Misconduct in OAR chapter 291, Division 105. Major rule violations are sorted by seriousness into levels I through IV, with presumptive sanctions of 120, 60, 28, and 14 days, respectively. The burden of proof for finding that an inmate has committed a violation is preponderance of the evidence. OAR 291-105-0028(3). Upon finding

a violation the rules direct that the hearings officer shall impose the sanction in accordance with the grid. 291-105-028(14). The Grid includes the word "max" next to the sanction for each level of violation. However, the hearings officer may impose a deviation above or below the number of days indicated in the grid. 291-105-028(14)(e). A deviation can be up to 50% of the sanction specified in the grid. OAR 291-105-0072(1). Any deviation must be supported by substantial reasons in writing, and is subject to review by the functional unit manager. *Id.* Thus, for a Level I violation, for which the Grid specifies a sanction of 120 days, a prisoner may be sanctioned with term of DSC ranging from 60 to 180 days.

DOC rules limit LTDSC to 180 days. 291-105-066(12)(a). There are two ways to get from the 120 day maximum sanction for a single violation to 180 days. A 50% upward deviation, discussed above, is the first.

The second is consecutive sanctions. For rule violations arising from the same misconduct report, sanctions may be concurrent or consecutive. OAR 291-105-066(6) and (10).[3] Consecutive sanctions arising from violations in the same report must be supported by substantial reasons. *Id.* However, consecutive sanctions arising from violations in different reports are required. "For rule violations arising from separate misconduct reports, disciplinary segregation

[3] "Report" is not defined. Presumably, in this context, separate reports must refer to separate incidents.

sanctions *shall* be served consecutively, up to 180 days." OAR 291-105-066(5) (emphasis added).

A copy of the current Division 11 and 105 of Chapter 291, published on the Oregon Secretary of State webpage, are attached to this motion.

III. ARGUMENT

A. Standard for Issuance of Stay

The Court of Appeals has the "inherent authority" to stay enforcement of an administrative rule pending judicial review of that rule's validity. *Nw. Title Loans, LLC. v. Div of Fin. & Corp. Sec., Div. of Dep't of Consumer & Bus. Servs.,* 180 Or App 1, 10 (2002).[4] In determining whether to grant a stay of a rule pending completion of rule-challenge proceedings, the Court considers (1) the likelihood that petitioner will prevail on judicial review, (2) the likelihood of irreparable harm to petitioner; and (3) the likelihood of harm to the public if a stay is granted. *See id.* at 13 & n. 7 (stating that a stay will not be granted in the absence of a showing that failure to grant a stay will result in irreparable harm; suggesting that, in evaluating whether a stay should be granted on judicial review under ORS 183.400, the court

[4] The Court of Appeals later withdrew its *Northwestern Title Loans* decision by unpublished order because the underlying controversy was ultimately found to be moot. *See Lovelace v. Board of Parole,* 183 Or App 288 n. 3 (2002). The Court, however, has continued to cite the portions of the *Northwestern Title Loans* opinion "that remain persuasive." *Id*.

could require a petitioner to meet requirements analogous to those imposed in ORS 183.482); *see, e.g., Herban Industries Or, LLC v. OLCC,* CA No. A172546 (Appellate Commissioner's Order Granting Stay, November 14, 2019). To demonstrate injury, petitioners are allowed to reference facts that are not involved in the rule challenge itself. *Nw. Title Loans, LLC.,* 180 Or App at 12.

Petitioner's arguments about the damage to individuals and society caused by LTDSC, the alternatives used successfully by other state departments of corrections, and the ways that LTDSC violates statutory and constitutional constraints each bear upon petitioners burden in this motion to show the likelihood that petitioner will prevail on the merits, the likelihood of irreparable harm, and the lack of harm to the public interest if this motion is granted before the Court rules on the merits. Therefore, petitioner addresses all three factors in tandem in its argument.

A. Petitioner is Likely to Succeed on the Merits.

The Oregon Administrative Procedure Act grants jurisdiction to the Court of Appeals to review the validity of any administrative rule. ORS 183.400(1). Rule means any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency. ORS 183.310(9). The Court shall declare a rule invalid if it finds that the rule violates constitutional provisions;

exceeds the statutory authority of the agency; or was adopted without compliance with appliable rulemaking procedures. ORS 183.400(4).

Here, petitioner argues that the challenged rules are facially invalid on the grounds and for the reason that those rules exceed the statutory authority of the DOC and violate constitutional provisions.

1. DOC rules authorizing LTDSC contravene ORS 421.105

This Court must declare a challenged rule invalid if it "[e]xceeds the statutory authority of the agency." ORS 183.400(4)(b). A rule exceeds an agency's statutory authority if it "departed from the legal standard expressed or implied in the particular law being administered, or contravened some other applicable statute." *Planned Parenthood Assn. v. Dept. of Human Res.*, 297 Or 562, 565 (1984); *State ex rel Engweiler v. Felton,* 350 Or 592, 620 (2011). A rule also exceeds an agency's statutory authority if it purports to amend, alter, enlarge or limit the terms of a legislative enactment. *Miller v. Employment Division,* 290 Or 285, 289 (1980).

Petitioner asserts that the challenged solitary confinement rules exceed the DOC's statutory authority by contravening ORS 421.105. That statute provides:

> "(1) The superintendent may enforce obedience to the rules for the government of the adults in custody in the institution under the supervision of the superintendent by *appropriate punishment* but neither the superintendent nor any other prison official or employee

> may strike or inflict physical violence except in self-defense, or *inflict any cruel or unusual punishment*.
>
> "(2) The person of an adult in custody sentenced to imprisonment in the Department of Corrections institution is under the protection of the law and the adult in custody *shall not be injured* except as authorized by law."

ORS 421.105 (emphasis added). Though DOC cites many statutes for authority to implement its rules for LTDSC, this statute is absent from the agency's list. This statute expressly addresses DOC's authority to enforce obedience to DOC's rules by limiting that authority. The Oregon Court of Appeals has made clear that ORS 421.105 is a "limitation on sanctions against prisoners for rule violations" by requiring those sanction to be "appropriate punishment" and "not 'inflict any cruel or unusual punishment.'" *Hessel v. Dept. of Corr.*, 280 Or App 16, 23 (2016), *rev den,* 361 Or 350 (2017) (quoting *Clark v. Schumacher,* 103 Or App 1, 5 (1990)) (citing ORS 421.105).

Petitioner contends that DOC's solitary confinement rules contravene ORS 421.105 because the sanctions under those rules are not "appropriate punishment" and "inflict * * * cruel and unusual punishment" and needlessly injure prisoners.

The term "appropriate punishment" is an inexact term. *See Penn v. Board of Parole,* 365 Or 607, 627 (2019) ("'Inexact' terms embody a complete expression of the legislature's intentions, but those intentions are not evident, and it is for the courts to interpret them and the legislative policy they convey, and then

to decide whether the agency action conforms to that policy." (citing *Springfield Education Assn. v. School Dist.,* 290 Or 217, 224-28 (1980)). *See generally Donnell v. E. Oregon State Coll.,* 59 Or App 246, 249 (1982) (holding that the term "appropriate" was an inexact term). Accordingly, the term is to be construed without deference to the DOC's interpretation, following the statutory construction methodology described in *State v. Gaines,* 346 Or 160, 171-72 (2009) to the legislature's intended meaning of the statute.

The ordinary definition of the term "appropriate" is "specially suitable: FIT, PROPER." *Websters Third New Int'l Dictionary* 106 (unabridged ed. 2002). The ordinary meanings of the term "punishment" as "a penalty inflicted by a court of justice on a convicted offender" and "the suffering in person, rights, or property which is annexed by law or judicial decision to the commission of a crime or public offense[.]" *Websters* 1843. Therefore, "appropriate punishment" in the context of the legislature's grant of authority to the DOC in ORS 421.105 are those that are specially suitable or proper to "enforce obedience to the rules for the government of the adults in custody in the institution under the supervision of the superintendent."

In addition to the punishment being appropriate for that purpose, ORS 421.105 further limits the DOC's authority by prohibiting striking or inflicting physical violence or inflicting "any cruel or unusual punishment." The phrase

"cruel or unusual punishment" is a phrase used under Article I, section 16 of the Oregon Constitution and the Eighth Amendment of the United States Constitution. Whether the legislature intended those constitutional provisions to govern the meaning of that phrase in ORS 421.105 is not clear. However, for purposes of this motion, petitioner accepts that those constitutional standards are what the legislature intended to further limit the DOC's sanction authority. Petitioner concedes that neither the Eighth Amendment or Ar1. § 16 has been held to limit the duration of solitary confinement per se. However, under those standards, a punishment would be cruel and unusual if it amounts to "the unnecessary and wanton infliction of pain." *Rhodes v. Chapman,* 452 U.S. 337, 346, 101 S Ct 2392 (1981). Unnecessary and wanton inflictions of pain are those that are "totally without penological justification." *Id.* (citing *Gregg v. Georgia,* 428 U.S. 153, 183, 96 S.Ct. 2909 (1976)); *see also Billings v. Gates,* 323 Or 167, 180-181 (1996) (applying the deliberate indifference to serious medical needs standard to Article I, section 16 of the Oregon Constitution).

That being true, in construing whether ODOC's rule exceed what ORS 421.105 allows, the test is twofold: (1) whether the punishment is appropriate; and, if it is, (2) whether it is "inflicts *any* cruel and unusual punishment."

With that understanding of the limitations to DOC's authority under ORS 421.105, the punishments inflicted on AIC under the solitary confinement rule at

issue here exceed the DOC's authority. Specifically, petitioner asserts that a sanction imposed on an AIC for violating DOC rules that includes DSC for duration longer than 15 days is not an "appropriate punishment" because it is well understood to cause long term, irreparable harm to AICs. (discussing harmful effects of LTDSC). The LTDSC at issue in this rule challenge is specifically and entirely a punishment. Other uses of solitary confinement are provided for in other divisions of OAR Chapter 291. A sanction that has such a harmful effect on a person for violating institutional rules is never an "appropriate punishment" under ORS 421.105. A sanction that simultaneously undermines fundamental purposes of incarceration by blocking reform and increasing the risk of violence inside and outside the prison, as explained below, even more profoundly violates the requirement to use appropriate punishment.

2. DOC rules authorizing LTDSC violate state constitutional provisions.

As explained below, petitioner asserts that the rules that authorize disciplinary solitary confinement longer than 15 consecutive days violate Art. I, §§ 13, 15, and 41 of the Oregon Constitution.

a) Or. Const., Article 1, § 13 – Unnecessary Rigor

Article I, section 13 is "directly addressed to prison practices." *Sterling v. Cupp*, 290 Or 611, 619 (1981). It states in relevant part: "No person arrested, or confined in jail, shall be treated with unnecessary rigor."

Art. 1, § 13 is directed toward humanizing prison conditions. *Sterling*, 290 at 619. The original framers of the article thought a commitment to humanizing penal laws and the treatment of offenders was a principle of constitutional magnitude. *Id.* at 618. The guarantee against unnecessary rigor is not confined to historical practices or physically brutal conditions. *Id.* at 619. In summary, Art. 1, § 13 represents "a commitment to humanizing penal laws and the treatment of offenders" of constitutional magnitude independent of protections in the Bill of Rights of the U.S. Constitution. *Id.* at 130.

In *Sterling*, male inmates sought injunctive relief against DOC's policy of assigning female guards to duties which involved frisking male prisoners or observation of prisoners in showers or toilets. *Sterling*, 290 Or at 613. The Court held that Art. 1, § 13 protected against these searches absent a necessity. *Id.* at 625. This protection required an injunction directing that guards of the opposite sex may not conduct a search of plaintiffs' anal-genital area except in the event that the immediate circumstances in a particular situation necessitated it. *Id.* at 632.

The touchstone of the analysis is whether a brutal practice is necessary. "Article I, section 13, itself makes necessity the test of the practices it controls." *Sterling,* 290 Or at 619. "Since it is "unnecessary" rigor that is proscribed, the first question under this clause is whether a particular prison or police practice would be recognized as an abuse to the extent that it cannot be justified by necessity." *Sterling*, 290 Or at 620; *see also Schafer v. Maass*, 122 Or App 518, 522 (1993) (recurring assaults in the IMU are unnecessary abuse and therefore a violation of Art. 1, § 13).

As discussed next, petitioner asserts that the DOC's practice of disciplinary solitary confinement longer than 15 consecutive days is an abuse that cannot be justified by necessity.

1) National and International Standards

National and international standards are contemporary expressions of the same concern with minimizing needlessly harsh, degrading, or dehumanizing treatment of prisoners that is expressed in Art. 1, § 13. *Sterling*, 290 Or at 621-22. Indeed, the Court looked to standards of the Federal Bureau of Prisons, the American Bar Association's Standards of Criminal Justice, the American Correctional Association's Manual of Correctional Standards, and standards and proclamations by the United Nations and other multinational bodies to decide whether Art. 1, § 13 permitted cross-gender searches. *Id*.

In 2011, the United Nations Special Rapporteur on Torture stated that solitary confinement "can violate the international prohibition against torture and cruel, inhuman or degrading treatment.[5] The Committee Against Torture — the governing body of the Convention Against Torture, to which the United States is a party — expressed concern in 2014 about the use of solitary confinement in the United States and recommended that the United States, in its capacity as a party to

[5] World Health Organization, Solitary Confinement as a Prison Health Issue, Ch. 5, at 32 (citing the United Nations Special Rapporteur on Torture "Interim report to the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment", New York, NY, United Nations, August 2011 (DOC A/66/268)) *available at* https://www.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf

the Convention Against Torture, limit the use of solitary confinement to a measure of last resort for as short a time as possible.[6]

In 2015, the United Nations General assembly unanimously adopted a resolution tiled "Standard Minimum Rules for the Treatment of Prisoners", which it also called the Nelson Mandela Rules.[7] The Nelson Mandela Rules provide a clear international consensus that solitary confinement longer than 15 days is excessive and unnecessary. The Mandela Rules state in relevant part,

> "In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: … Prolonged solitary confinement;"[8]

The Rule continues:

> "Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days."[9]

In further limitation, the Mandela Rules provide that:

> "Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible".[10]

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[6] *Id.* at 10.
[7] Mandela Rules 2015.
[8] *Id*. at 16 (Rule 43).
[9] *Id*. at 17 (Rule 44).
[10] *Id.* at 17 (Rule 45).

The Mandela Rules represent widely accepted international principles on the treatment of prisoners. Moreover, as demonstrated by the examples below, the Mandela Rules have influenced reforms in many U.S. states, and several national organizations have taken positions following its lead.

The National Commission on Corrections Healthcare (NCCHC) provides widely respected guidance within the industry. The NCCHC establishes standards for health services in correctional institutions, operates a voluntary accreditation program for institutions, conducts educational conferences, and offers certification for correctional health professionals. NCCHC is supported by major national organizations representing the fields of health, law and corrections.[11] These include corrections industry organizations such as the American College of Correctional Physicians, American Academy of Psychiatry and the Law, Academy of Correctional Health Professionals, National Sheriff's Association, and American Jail Association, each of which sends a liaison to the NCCHC board of directors.[12]

The NCCHC states that solitary confinement greater than 15 days "is cruel, inhumane, and degrading treatment, and harmful to an individual's health."[13] It

[11] https://www.ncchc.org/about (last visited 12/17/2021).

[12] https://www.ncchc.org/supporting-organizations (last visited 12/17/2021)

[13] NCCHC Position Statement on Solitary Confinement, *available at* https://www.ncchc.org/solitary-confinement at 4.

should be eliminated as a means of punishment.[14] In those rare cases where longer isolation is required to protect the safety of staff and/or other inmates, more humane conditions of confinement need to be utilized.[15] The NCCHC concludes, "In systems that do not conform to international standards, health care staff should advocate with correctional officials to establish policies … limiting its use to less than 15 days."[16]

The American Bar Association has for a long time issued Standards for the Treatment of Prisoners. In 2018 the Bar supplemented these standards with a resolution holding as follows:

> "Solitary confinement should be used only in exceptional cases as a measure of last resort, where less restrictive settings are insufficient, and for no longer than is necessary to address the specific reason for placement, typically not to exceed 15 consecutive days."[17]

[14] *Id.*
[15] *Id.*
[16] *Id.* at 5
[17] ABA Resolution Against Prolonged Solitary Confinement 2018 at 1, 5, 7.

2) DSC Practices in Other States

The practices of other states that have stopped using LTDSC also show that it is not necessary and other disciplinary methods satisfy any governmental need in the management of its institutions.

- *New York*

New York state limits disciplinary solitary confinement by statute. Amendments passed on March 18, 2021 that become effective on March 21, 2022 provide, "No person may be placed in segregated confinement for longer than necessary and no more than fifteen consecutive days." NY Correct Law § 137(6)(i) (McKinney). It is noteworthy that New York first limits DSC to no longer than necessary in all instances, followed by a maximum cap of 15 days. Consecutive DSC sanctions are prohibited. Even for violent acts committed while in DSC, New York requires an intervening period of detention in a residential rehabilitation unit of at least 15 days between each placement in DSC. *Id*.

New York's use of DSC is grounded in necessity. "De-escalation, intervention, informational reports, and the withdrawal of incentives shall be the preferred methods of responding to misbehavior" and DSC can only be used "*as a last resort*" after the department determines that alternative means have failed or would not succeed. *Id.* at § 138(7). If a person is sanctioned with DSC, the conditions of confinement "shall create the least restrictive environment necessary

for the safety of incarcerated persons, staff, and the security of the facility." *Id.* at § 137(6)(j).

New York legislators explained that the purpose of the legal reforms was to end the unnecessary brutality of DSC. The bill sponsor stated,

> "It is no secret that the use of solitary confinement is inhumane, unethical, and constitutes torture under international law if it extends more than fifteen days. It must be discontinued immediately."[18]

The senate majority leader stated,

> "Prolonged segregated confinement can cause permanent harms and does not properly address the root causes that lead to the punishment. These reforms are morally right, fiscally responsible, and will improve outcomes at jails and prisons."[19]

The deputy Senate majority leader added, "There should be no place in civilized society for the legalized torture of solitary confinement, which serves no useful purpose."[20] Another senator noted,

> "Solitary confinement has been shown to cause hallucinations, panic attacks, paranoia, and difficulties with thinking, concentration and memory. And when we force young adults, elders, or people with disabilities into solitary confinement, the impacts are exacerbated."[21]

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[18] NY Limits Solitary to 15d, Senate Press Release 3-18-21, *available at https://www.nysenate.gov/newsroom/press-releases/senate-passes-halt-solitary-confinement-act*.

[19] *Id*.

[20] *Id.*

[21] *Id*. at 7.

NY provides additional safeguards on DSC to prevent inhumane conditions. These include out-of-cell programming at least four hours per day.[22] A person has a right to an attorney at any hearing to determine if the person may be placed in segregated confinement. *Id.* at § 137(6)(l).

- *Washington State*

The Washington State Department of Corrections (WDOC) abolished the use of DSC on September 16, 2021.[23] It did so because it found that DSC is not an effective deterrent or sanction and needlessly harms people. "The science is clear on this and the science says stop doing it" said WDOC Secretary Cheryl Strange.[24] "We know a lot more now than we did years ago when our practices were designed," added Mike Obenland, Assistant Secretary of Prisons.

> "We must continue to examine our processes and make meaningful changes that are both safe and humane. The data shows that the use of disciplinary segregation has many shortcomings, including failing to improve negative behavior."[25]

Governor Jay Inslee said, "Disciplinary segregation has been proven to be ineffective in our state correctional facilities and ending their practice as a form of discipline is the right thing to do,"

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[22] *Id.*

[23] Press Release, WDOC Ends DSC 2021-09-30 at 1, *available at* https://www.doc.wa.gov/news/2021/09302021p.htm.

[24] *Id.*

[25] *Id*.

In a statement to staff, WDOC explained the reasons for eliminating DSC:

1. It is physically and mentally harmful to prisoners;
2. It has potential negative impacts on staff who work in disciplinary segregation units.
3. It is not effective at changing behavior, deterring future infractions, or preventing violence;
4. Some studies show that DSC increases misconduct;
5. It does not reduce recidivism[26]

WDOC emphasized that it has better ways of responding to violent behavior and protecting staff and incarcerated people including tailoring each sanction to the individual, and transfer to administrative segregation.[27] However, WDOC emphasized that it would not use administrative segregation instead of or as de facto DSC. It reminded staff that administrative segregation is only for individuals who pose a significant risk to safety. Even a person who has committed a serious infraction, if they have calmed down and no longer present a threat, should not be sent to administrative segregation.[28]

[26] Elimination of Disciplinary Segregation FAQ 2021-09-01" at 1, *available at* https://www.doc.wa.gov/docs/publications/300-GU001.pdf

[27] *Id.* at 1 & 2.

[28] *Id.* at 2.

WDOC had already greatly reduced the use of DSC.[29] WDOC said all facilities needed to promptly transition to more effective sanctions.[30]

- *Idaho*

Idaho limits DSC to 15 days, though a second consecutive sanction is possible with approval by the division chief or designee.[31] The director of the Idaho Department of Corrections said that his goal was to entirely stop using solitary confinement for disciplinary purposes. The only time a prisoner will be temporarily isolated is when the prisoner is a threat to staff or other prisoners.

> "But even then, we're going to follow the Mandela rules, which say that if you put an inmate in a segregation cell, in solitary confinement, for more than 15 days, that's considered torture."[32]

- *California*

California limits DSC to ten days. 15 CCR § 3315(a). Limited extensions may be available only with approval of the statewide director or deputy director of

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[29] WDOC Memo to Incarcerated Individuals 2021-09-13" at 1, *available at* https://www.doc.wa.gov/information/policies/showFile.aspx?name=460000a2

[30] WDOC Memo to Prison Staff Ending Disciplinary Solitary issued 2021-09-13 eff. 2021-09-16 at 2, available at https://www.doc.wa.gov/information/policies/showFile.aspx?name=320200a3

[31] Idaho Disciplinary Procedures for Inmates at 31, 33, *available at* https://forms.idoc.idaho.gov/WebLink/0/edoc/281212/Disciplinary%20Procedures%20for%20Inmates.pdf

[32] Aviva Stahl, Solitary Watch, "This is a Public Safety Approach," *available at* https://solitarywatch.org/2016/05/31/this-is-a-public-safety-approach-solitary-confinement-reform-begins-in-idaho/

institutions. 15 CCR § 3315(c); 15 CCR § 3330.

- *Nevada*

The only state bordering Oregon that allows DSC longer than 15 days is Nevada. Even Nevada limits DSC more than Oregon. Only two offenses can be sanctioned with more than 60 days, Assault and Battery on Staff (180 days), and Murder (one year). Nevada Dept. of Corrections, Administrative Rule 707. All other violations are ranked from Class A to Class E in a manner similar to the Oregon Major and Minor Violations Grids. The maximum sanction for a Class A violation is 60 days, one third of the length permitted by the Oregon rules. Only one sanction can be imposed for an incident and sanctions cannot be consecutive. *Id.*

- *Nebraska*

The Nebraska Department of Correctional Services ended the use of DSC in July 2016. 2020 Nebraska DOC Policy Discipline Rules at 6.

- *Colorado*

Colorado limits the use of DSC to 15 days. The Department's former Director explained the reasons for the cap:

> "In Colorado, long-term solitary confinement used to be a tool that was regularly used in corrections. The problem is that it was not corrective at all.

> It was indiscriminate punishment that too often amounted to torture and did not make anyone safer."[33]

He continued,

> "The research has shown that housing someone in a cell the size of a parking space for 22 or more hours per day for extended periods of time damages them both mentally and physically. Since most people who go to prison — 97 percent — return to their community, that means we were releasing people back into their communities in worse shape than when they arrived. That's why long-term restrictive housing needs to end, not only for the health and well-being of incarcerated people — but for the communities to which they will return."[34]

He added that DSC "too often amounted to torture and did not make anyone safer."[35]

3) Oregon Youth Authority Abolished DSC

For an example of the replacement of DSC with more humane and more effective practices, the Court need not look farther than the Oregon Youth Authority (OYA). The OYA limits the use of solitary confinement to no more than five days. OAR 416-490-0032(4).

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[33] Rick Raemisch, Why I Ended the Horror of Long-Term Solitary in Colorado's Prisons (ACLU) (2018) at 2, *available at https://www.aclu.org/blog/prisoners-rights/solitary-confinement/why-i-ended-horror-long-term-solitary-colorados-prisons*

[34] *Id.*

[35] *Id.*

Moreover, OYA stopped using solitary confinement, which it calls "isolation", for discipline in 2005. The current rules states, "Isolation must not be used as punishment, as a convenience or substitute for staff supervision, or a substitute for individualized treatment." OAR 416-490-0032(2). Instead, solitary confinement is used only as a last resort to stop or prevent violence.

> "Isolation must only be used to manage an offender's crisis behavior when the offender is in danger of physically harming others, where a serious threat of violence is present, or violence has occurred."

OAR 416-490-0032(1)(b).

> "Isolation must only be used until the offender regains self-control and can return to a less restrictive setting."

OAR 416-490-0032(4).

In 2017 the OYA sponsored a bill to incorporate the rule against punitive solitary confinement into a statute.[36] Erin Fuimaono, assistant director of Development Services for the youth authority, explained that the OYA did so because the statute will allow the well-established practice to extend beyond current leadership. *Id.* In support of the bill, state Sen. James Manning, D-Eugene, who carried the bill on the Senate floor, said in 2017

> "We know that locking any person up in isolation as punishment is

[36] Natalie Pate, Statesman Journal "Oregon Senate Votes to Prohibit Solitary Confinement of Youth" (Feb. 28, 2017), *available at* https://www.statesmanjournal.com/story/news/2017/02/24/oregon-senate-votes-prohibit-solitary-confinement-youth/98319606/

harmful to them mentally and emotionally."[37]

The bill passed as amendments to ORS 420A.108, which now provides in relevant part,

> "Sanctions and punishment for violation of rules regulating the conduct of youth offenders and other persons in the custody of the youth authority:
>
> ****
>
> (C) May not include placing a youth offender or other person in the custody of the youth authority alone in a locked room."

ORS 420A.108(1)(b).

In a Policy Statement issued in June 2021 the OYA explained its rules against solitary confinement.

> "Isolation must be used sparingly and as a final course of action. Lengthy use of isolation has been linked to adverse psychological reaction, which may exacerbate histories of trauma, cultural trauma (whether personal, historical, or generational), mental health concerns, developmental disability or other cognitive delays. … Once it is determined that a youth is emotionally regulated and ready to engage in reintegration planning, the youth must spend as much time out of the isolation room as possible during waking hours."[38]

4) Harm Caused by Solitary Confinement

The rigor of solitary confinement includes physical and mental damage that endures long after release from solitary and after release from prison. Att. 1

[37] *Id.*

[38] OYA Policy Statement on Isolation and Alternatives (2021).

(Kupers Decl. at 3-6).[39] A vast amount of research over several decades has "consistently and unequivocally"[40] demonstrated that solitary confinement is profoundly harmful.[41] The data demonstrates that these environments cause serious physical and mental health problems, even after short time periods.[42]

> "The combination of social isolation, sensory deprivation, and enforced idleness is a toxic exposure that results in distinctive psychiatric symptoms, including anxiety, depression, anger, difficulties with impulse control, paranoia, visual and auditory hallucinations, cognitive disturbances, obsessive thoughts, hypersensitivity to stimuli, post-traumatic stress disorder, self-harm, suicide, or psychosis."[43]

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[39] Dr. Terry Kupers provided a declaration in support of this motion. Dr. Kupers completed his residency in psychiatry in 1972 and a fellowship in social and community psychiatry in 1974. He has been a professor at the Wright Institute since 1981. He has researched and published extensively on mental health in prisons and specifically in solitary confinement. He has testified more than thirty times in state and federal courts about the psychiatric and physiological effects of prison conditions including solitary confinement and the quality of correctional management and mental health treatment. *See* Att. 1 (Kumpers Decl. at 1-2).

[40] Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement* at 130 (Jan. 1, 2003), available at https://journals.sagepub.com/doi/abs/10.1177/0011128702239239

[41] *See, e.g.*, Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature* 441, 475 Crime & Justice Vol. 34, No. 1 (2006), *available at* https://www.jstor.org/stable/10.1086/500626?seq=1#metadata_info_tab_contents

[42] *See, e.g., Id.* at 488-93. Solitary confinement creates health problems at a higher rate than "normal" imprisonment. *Id.* at 476.

[43] Allison Hastings, Elena Vanko, and Jessi LaChance, Vera Report, (citing scholarship by experts Craig Haney, Stuart Grassian, and others).

Given these grave risks, unsurprisingly, solitary confinement has also been found to exacerbate pre-existing mental illness.[44] Physical health conditions caused by solitary confinement include frequent severe headaches,[45] dizziness,[46] lethargy,[47] "gastrointestinal and genitourinary problems, diaphoresis, insomnia, deterioration of eyesight, profound fatigue, heart palpitations, migraines, back and joint pain, weight loss, diarrhea, and aggravation of preexisting medical problems."[48]

Just one week of solitary confinement of prisoners resulted in decreased electroencephalogram (EEG) activity increased theta wave activity, which are related to stress, tension, and anxiety.[49]

Even if some prisoners manage endure LTDSC without suffering the most devastating effects, DOC's LTDSC rules are still subject to facial challenge for violating Art. 1, § 13 because they severely harm a substantial percentage of the

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[44] Southern Poverty Law Center, *Solitary Confinement: Inhumane, Ineffective, and Wasteful* 9-10 (2019), https://www.splcenter.org/sites/default/files/com_solitary_confinement_0.pdf

[45] Smith, at 89-90.

[46] *Id.*

[47] Smith, at 492. ("Lethargy [is] often described . . . as a feeling of how everything comes to a complete standstill.").

[48] Vera Report, at 7

[49] Paul Gendreau, N. L. Freedman, G. J. S. Wilde & G. D. Scott, Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement, 79 J. Abnormal Psychol. 54, 57-58 (1972).

prisoners subjected to LTDSC. *Sterling*, 290 Or at 623 (finding Art. 1, § 13 violation where psychologist employed at the prison estimated that perhaps a third of the prisoners considered the contacts involved in pat downs by female officers offensive).

Although the individual impact may vary, "a significant percentage of prisoners subjected to solitary confinement suffer from a similar range of symptoms irrespective of differences in the physical conditions and in the treatment of isolated inmates. . ."[50] The extent of mental and physical harm experienced by individuals in solitary confinement "depends on duration and circumstances and is mediated by prisoners' individual characteristics; but for many prisoners, the adverse effects are substantial."[51] The deprivation of social interaction, human touch, natural light, exercise, and visual stimulation can cause permanent changes to brain function, even after short periods of time.[52]

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[50] Smith, at 488.

[51] *Id.* In a 2003 study at the "SHU" of California's Pelican Bay State Prison, more than 40% of prisoners in isolation suffered hallucinations and perceptual distortions; 70% reported a sense of "impending nervous breakdown"; and 67% reported "overall deterioration." Haney, *supra*.

[52] Conditions of isolation are "sufficient to change the brain and change it dramatically, depending on whether it lasts briefly or is extended — and by extended I'm talking about days, not decades." Toronto Star, *Researchers study effects of prolonged isolation among prisoners* **(**Feb. 14, 2014) (quoting neuroscientist Huda Akil), https://www.thestar.com/news/world/2014/02/14/researchers_study_effects_of_prolonged_isolation_among_prisoners.html

The absence of meaningful contact with other people is a key cause of the harm.[53] One reason is that solitary confinement causes social pain that affects the brain in the same way as physical pain. Neuroimaging studies confirm that it provokes activity in the same brain regions.[54] Social pain is the distress that comes from rejection, exclusion, extreme isolation, or loss. It can actually cause longer term suffering than physical pain because of humans' ability to relive the social pain for months or years later.[55]

5) Neuroscience Shows Lasting Physical Changes to the Brain

The psychological effects of solitary confinement are accompanied by physical changes in the brain. Att. 1 (Kupers Decl. at 7-8). Neuroimaging shows that chronic pain causes long term changes to brain structure and function, and that prolonged anxiety or depression have a similar and equally profound impact on

[53] Smith, at 488.

[54] Lieberman Expert Report in Asker Solitary Challenge (2014) at 7-9, *available at* https://ccrjustice.org/sites/default/files/attach/2015/07/Lieberman%20Expert%20Report.pdf

[55] Tiana Herring, Prison Pol'y Init., *The research is clear: Solitary confinement causes long-lasting harm* (Dec. 8, 2020), https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/

brain structure and function. Indeed, imaging shows that some of the same brain regions are disrupted in both chronic pain and depression.[56]

Neuroscience studies suggest that solitary confinement can "fundamentally alter the structure of the human brain in profound and permanent ways."[57] The brain alters its structure and functioning based on stimuli from its environment. This process, termed "neuroplasticity," subsumes several mechanisms, including changes in branching or arborization of neurons to enable new connections to neighboring brain cells or severing of connections, changes in activity of certain brain circuits, and, changes in the rate of birth of new neural cells that become embedded in critical circuits.[58]

Not only does solitary confinement cause neuroplastic adaptations to the extraordinary environment of isolation that are harmful after release, but it can also lock the brain into these adaptions by impairing neuroplastic readjustment after release. One region that is normally very plastic is the hippocampus. The

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[56] Karen D. Davis, Herta Flor, and Henry T. Greely, et al., "Brain Imaging Tests for Chronic Pain: Medical, Legal and Ethical Issues and Recommendations," Nature Reviews Neurology 13 (2017): 624–638; A. C. Pustilnik, "Imaging Brains, Changing Minds: How Pain Neuroimaging Can Inform the Law," Alabama Law Review 66 (5) (2015): 1099–1158; Alexander J. Shackman, Tim V. Salomons, and Heleen A. Slagter, et al., "The Integration of Negative Affect, Pain and Cognitive Control in the Cingulate Cortex," Nature Reviews Neuroscience 12 (2011): 154–167.

[57] *Id.* at 24-25.

[58] *Id.*

hippocampus plays a critical role in handling distressing events by setting the level of emotional reactivity, anxiety, and physical stress response to events, and determining whether memories of distressing events are worthy of storage in long term memory. The hippocampus enables the individual to assess a context (physical and emotional), react to it appropriately, and remember it to refer back to for future responses.

However, under conditions of severe and sustained stress, the hippocampus loses this neuroplasticity and becomes stuck in the stress response status: it physically shrinks, the rate of birth of new cells diminishes or ceases, the arbors regress, and the opportunity for contacts with neighboring cells decreases. The result is loss of emotional and stress control, defects in memory, spatial orientation, and other cognitive processes, and in extreme cases, lasting changes in mood, including severe depression. Moreover, since the brain is highly interconnected, this is but one node of many changes that propagate across the brain and greatly diminish the individual's affective and cognitive functions, resulting in long-term deficits in each.[59]

[59] *Id.* at 25.

These effects often begin after a relatively short period of days to weeks in solitary confinement. The harm tends to increase with each passing day and week. Att. 1 (Kupers Decl. at 9).

6) Animal Studies Show Similar Neurological Changes

A large body of animal studies strongly supports the evidence of altered neuroplasticity and structural changes to the brain as a result of an impoverished environment.[60] Studies demonstrate that when mice and rats are randomly grouped into two different environments, one that is enriched with activities and another that is isolated, the rodents in the isolated environment show "enormous differences," such as a "decrease in the anatomical complexity of the brain (including fewer nerve cells and fewer connections between the remaining nerve cells) and a decrease in the number of blood vessels in the brain."

[60] Michael Zigmond and Richard Smeyne, "Use of Animals to Study the Neurobiological Effects of Isolation," "Solitary Confinement: Effects, Practices, and Pathways toward Reform," Scharff Smith (2019).

These animals also show differences in learning and memory, as well as susceptibility to a range of diseases that emulate human diseases such as Alzheimer's disease, Parkinson's disease, and strokes.[61] Changes occurred in many regions of the brain, but were particularly notable in the hippocampus and cerebral cortex. Researchers noted that the brains of the isolated rodents had smaller neurons with fewer branches in these regions, which affected learning, memory, and executive brain functions. The one region that showed more activity was the amygdala, which mediates fear and anxiety, symptoms reported by human prisoners confined in solitary.

7) Psychological Harm

While neuroimaging can explain some physical reasons for behavioral changes, the great weight of the evidence of the harm wrought by solitary confinement comes from psychological study of in the form of interviews and observations. These studies show profound damage.

The distinctive harm caused by solitary confinement can culminate in a "complete breakdown or disintegration of the identity of the isolated individual."[62]

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[61] *Id.* at 7-8.

[62] Southern Poverty Law Center, *supra* note 8, at 10. *See also* Craig Haney, quoted in Newsweek, *Solitary Confinement Screws up The Brains of Prisoners*

"After even a relatively brief period of time . . . an individual is likely to descend into a mental torpor or 'fog,' in which alertness, attention, and concentration all become impaired. . . . [T]he individual becomes increasingly incapable of processing external stimuli . . . Over time the very absence of stimulation causes whatever stimulation is available to become noxious and irritating."[63]

These damaging effects "can persist after release from segregation, making it difficult to transition to life in the prison's general population and in the community."[64] In a 2018 study of recently released prisoners, those with a history of solitary confinement were more than two and a half times more likely to report PTSD symptoms.[65] Individuals who are confined in these environments have higher rates of suicide,[66] and any amount of time spent in solitary confinement correlates with increased likelihood of early death. A 2019 study of 229,274 people

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(Apr. 18, 2017), *available at* https://www.newsweek.com/2017/04/28/solitary-confinement-prisoners-behave-badly-screws-brains-585541.html.

[63] Stuart Grassian, *Psychiatric Effects of Solitary Confinement* 335-37, Wash. U. J. Law & Pol'y, Vol. 22 (2006), *available at* https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy

[64] Vera Report; *see also* Grassian, at 332-33.

[65] Brian O. Hagan et al., *History of Solitary Confinement Is Associated with Post-Traumatic Stress Disorder Symptoms among Individuals Recently Released from Prison, J. Urban Health* volume 95, at 141–148 (2018) *available at* www.link.springer.com/article/10.1007/s11524-017-0138-1

[66] Southern Poverty Law Center, "A national study of 401 jail suicides in 1986 found that two-thirds of all jail suicides were attempted by someone being held in solitary confinement."

released from incarceration in North Carolina from 2000 to 2015 concluded, "Compared with individuals not placed in restrictive housing [*i.e.*, solitary confinement], individuals who spent any time in restrictive housing were 24% more likely to die in the first year after release, especially from suicide (78% more likely) and homicide (54% more likely); they were also 127% more likely to die of an opioid overdose in the first 2 weeks after release."[67]

A recent report for the National Aeronautics and Space Administration (NASA) recognized that prolonged sensory deprivation and isolation leads to the "development of adverse behavioral conditions and psychiatric disorders." Edward Vessel & Steven Russo, NASA, "Effects of Reduced Sensory Stimulation and Assessment of Countermeasures for Sensory Stimulation Augmentation I" (2015).

A Danish Study found that there is a significant danger that imposing solitary can cause psychosis. In that study prisoners who remained in solitary confinement for longer than four weeks had a "probability of being admitted to the

[67] Lauren Brinkley-Rubinstein et al., *Association of Restrictive Housing During Incarceration With Mortality After Release,* JAMA **(**October 4, 2019), *available at* https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350

prison hospital for a psychiatric reason [that] was about 20 times as high as for a person" in the general population.[68]

8) Consistent Patterns of Psychological Harm Are Seen

The World Health Organization (WHO) has taken a position against LTDSC because of the inherent damage.

> "Three main factors are inherent in all solitary confinement regimes: social isolation, reduced activity and environmental input, and loss of autonomy and control over almost all aspects of daily life. Each of these factors is potentially distressing. Together they create a potent and toxic mix."[69]

In particular, the WHO stated that the health effects of solitary confinement include

- paranoia and psychosis, ranging from obsessional thoughts to full-blown psychosis;
- recurrent and persistent thoughts (ruminations) often of a violent and vengeful character (for example, directed against prison staff); − paranoid ideas, often persecutory; and
- psychotic episodes or states: psychotic depression, schizophrenia.[70]

Seven "strikingly consistent" psychiatric symptoms have been found among inmates in isolation even if they were not mentally ill when they were exposed to it. These are:

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[68] Dorte Maria Sestoft, Henrik Steen Andersen, Tommy Lillebaek & Gorm Gabrielsen, Impact of Solitary Confinement on Hospitalization Among Danish Prisoners in Custody, 21 Int'l J.L. & Psychiatry 99, 103 (1998)).

[69] WHO Solitary Confinement as a Prison Health Issue, at 2.

[70] *Id.* at 2.

1. Hyper-responsitivity to external stimuli; perceptual distortions;
2. Illusions, and hallucinations;
3. Severe panic attacks;
4. Difficulty with thinking, concentration, and memory;
5. Intrusive obsessional (and often violent) thoughts that prisoners resist but cannot block out;
6. Overt paranoia; and
7. Problems with impulse control.[71]

In the past, courts sometimes gave less weight to evidence of psychological harm than evidence of objectively identifiable physical injury. Recent breakthroughs in neuroimaging discussed above have brought a new ability to measure the physical impact the rigors of solitary confinement on the brain. However, the great weight of evidence of the damage comes from the science of psychology. To distinguish psychological harm as somehow less serious than physical harm would be flawed on several grounds. First, neuroscience research clarifies that the type of severe psychological deterioration observed in solitary confinement is due to physical harms imposed on the brain, and vice versa. Second, these physical alterations in the brain can lead to what society has long considered physical harms, such as disease and death. Third, the disturbed behaviors can also lead to immediately obvious physical harm, including self-

[71] Elizabeth Bennion, *Banning the Bing: Why Extreme Solitary Confinement is Cruel and Far Too Usual Punishment*, 90 Ind. L. J. 741, 757 (2015) *available at* http://ilj.law.indiana.edu/articles/14-Bennion.pdf

mutilation and suicide. Fourth, most would agree that psychological tortures can be far worse than physical ones. Many prefer a broken arm to a broken mind.

9) DSC Disrupts Healthcare

There are specific challenges to the provision of health care to individuals in solitary confinement. Due to restrictive conditions, health care staff may decide to perform their evaluations at cell-front, through bars or slots in the doors for the own or the patient's ease due to the difficult procedures required for exiting the call. Even when clinical contact occurs, the patient may remain in a cage or behind a glass partition. Such arrangements hamper or prevent the clinician from performing an adequate evaluation.[72]

10) DSC is Harmful to Corrections Officers

Working in DSC units has severe negative impacts on staff. More broadly, the harm to inmates and the increased tension and violence throughout prisons as a result of LTDSC harms staff in other areas of the prison. DOC augmented programs for employee wellbeing in 2013. There had been four employee suicides in the preceding 18 month period. Substance abuse, divorce and other family disruptions, and behavior associated with PTSD were also on the rise among DOC staff. Programs did not begin with reforms to DSC, but eventually administrators

[72] NCCHC Position Statement on Solitary Confinement at 4.

realized that reducing and transforming their use of DSC would be an important part of improving employee health and wellbeing. First, they tried (1) improving the prison physical environment through better break rooms, gyms, outdoor areas, etc.; (2) supporting family wellbeing by hosting events for family members and providing education on the impacts of prison employment on family members; and (3) promoting overall health and wellbeing of staff by fostering a culture of openness about challenges to wellbeing, offering healthy meals, sponsoring fitness events, etc.[73]

However, "DOC leadership found that it required a more powerful catalyst". *Id.* They realized that employee wellbeing continued to be seriously impacted by stress and other health hazards. DOC director Colette Peters explained that they realized these occupational hazards were particularly associated with exposure to violence and working in DSC units. More and more "evidence emerged about the adverse impact of harsh correctional environments on officer health".[74] To advance officer wellbeing while also benefitting AICs, DOC embarked on changes to practices and culture to emphasize normalization and helping over punishment. These came to be known as the Oregon Way.[75] DOC looked to the Norway prison

[73] Oregon Way by Peters, Steward, & Ahalt, ICPA Journal 2019 at 133, *available at https://icpa.org/resources/advancing-corrections-journal.html*

[74] *Id.*

[75] *Id.* at 133-34.

system because it had emerged from a failed era of harsh punishment to implement reforms that achieved one of the lowest recidivism rates in the world and greatly improved employee wellbeing.[76] One prong of the initiative sought to reduce the use of solitary confinement by reducing the number of AICs being assigned to special housing, reducing the length of stay in special housing, and reducing the rate of returns to special housing.[77] A DOC corrections officer who visited Norway summed up the benefits for staff. "The other takeaway that was really big was just how happy and healthy this staff seemed to be … So, we saw that how they had their system not only benefited the inmates and helped them get ready for release, they have the lowest recidivism in the world, but their staff are benefiting from it as well."[78]

Other systems that have undertaken solitary confinement reform report have achieved great improvement in staff morale and measured reductions in staff's use of force and assaults against staff.[79] In Maine, for example, worker's

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[76] *Id.* at 134-35.

[77] *Id.* at 134.

[78] Ryan M. Labrecque1, Jennifer J. Tostlebe, Bert Useem and David C. Pyroo, Reforming solitary confinement: the development, implementation, and processes of a restrictive housing step down reentry program in Oregon *available at* https://healthandjusticejournal.biomedcentral.com/articles/10.1186/ s40352-021-00151-9 at 7(last visited Dec. 21, 2021)

[79] Craig Haney, Brie Williams and Cyrus Ahalt,Consensus Statement from the Santa Cruz Summit on Solitary Confinement and Health, at 350-351, *available at* https://scholarlycommons.law.northwestern.edu/nulr/ vol115/iss1/9

compensation claims declined from $200,000 to $40,000 in the span of two years following a rapid reduction in the use of solitary confinement at the state's primary maximum-security prison.[80] Systems that have prioritized staff wellbeing view changes to the working environment in their most restrictive units as essential to addressing the crisis in correctional staff health.[81]

11) Alternatives

As noted above, "Article I, section 13, itself makes necessity the test of the practices it controls." *Sterling, 2*90 Or at 619. LTDSC is not necessary because there are more effective alternatives. Att. 1 (Kupers Decl. at 12-13). Other jurisdictions have lead the way in exploring alternatives and demonstrating the effectiveness of many. After studying the DOC, the Vera Inst.of Justice recommended alternatives to LTDSC. While tailored to conditions the researchers identified at DOC, these alternatives are not novel. They have been used with success in neighboring states. The recommendations of the Vera Inst. included:

- Expanding supports, structured activities, and programming in the general population to keep people from going into DSU, particularly high-risk groups such as young adults and those with identified mental health needs.
- Providing for AICs to have sufficient contact with their counselors.
- Reducing rule violations by reducing sources of stress in general population.
- Strengthening the procedures governing informal sanctions to improve their effectiveness.

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[80] *Id.* at 355.
[81] *Id.* at 351.

- Requiring staff to discuss the reasons for informal sanctions with the inmate being sanctioned.
- Ensuring that behavioral expectations and consequences for misbehavior are understood by staff and adults in custody.[82]

Some sanctions that could be used as alternatives to DSC are already listed in DOC rules, though they are currently available as additional penalties for major violations rather than just alternatives. These include restitution, confiscation of property, extra work, and reduction in earned time or good time credits. OAR 291-105-0069.

Instead of DSC, the OYA uses interventions tailored to correct the individual prisoner's behavior. This involves assessment of circumstances including the danger of harm, and the likely effect of the intervention on the prisoner, considering the prisoner's psychological, emotional, cultural, and mental health status and medical condition.[83] A useful alternative to DSC is for an officer not involved in the incident to try to help the prisoner with emotional regulation and problem solving to dissipate the danger.[84] OYA's has been successful in terminating the use of DSC completely and limiting emergency isolation to five

[82] Vera Report at 73-74.
[83] OYA Policy Statement on Isolation and Alternatives (2021), at 4.
[84] *Id.* at 6.

days. In 2017 the OYA sponsored a bill to codify these tried and true practices into Oregon law.[85] The bill passed as amendments to ORS 420A.128.

Developing a plan for returning the prisoner to less restrictive conditions is cited by many organizations ranging from the U.S. DOJ to the OYA.[86] Shortening the period in which isolation is required to prevent danger is achieved by creating a reintegration plan with the prisoner. The plan can include ways for the prisoner to solve problems that gave rise violent or dangerous behavior. *See e.g.* OAR 416-490-0032(6) (OYA requirements for reintegration plan). Programs to reward good behavior in solitary confinement, often called step up or step down programs, support these plans.[87]

The Director and Deputy Director of DOC have tried to introduce reforms to reduce the reliance on DSC that include "a focus on proactive, pro-rehabilitative, and dignity-conserving engagement with incarcerated people, [and] de-escalating incidents, …"[88] Though they have faced some institutional inertia, described

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[85] Natalie Pate, Statesman Journal "Oregon Senate Votes to Prohibit Solitary Confinementof Youth" (Feb. 28, 2017), *available at* https://www.statesmanjournal.com/story/news/2017/02/24/oregon-senate-votes-prohibit-solitary-confinement-youth/98319606/

[86] USDOJ Executive Summary of Report and Recommendations Concerning the Use of Restrictive Housing (2015) at 3, *available at https://www.justice.gov/archives/dag/report-and-recommendations-concerning-use-restrictive-housing*

[87] Haney, Williams and Ahalt, Reforming Solitary Confinement.

[88] Oregon Way by Peters et al at 137.

above, reforms they have been able to implement have resulted in dramatically fewer incidents of violence and uses … of solitary confinement."[89] Former director Rob Persson also emphasized the importance of de-escalation.

Corrections officers in Oregon who have been to Norwegian prisons emphasized the benefits of giving prisoners more autonomy to reduce reliance on harsh methods.[90] Former director Persson said that several Oregon correctional facilities have created AIC-led councils where AICs can raise concerns or suggestions about programming.[91] These methods provide alternatives to resorting to LTDSC to maintain order and discipline.

After being hosted by Norwegian prison guards and administrators, three DOC corrections officers described their realization that their beliefs about entrenched practices about discipline were wrong. After their visit, both Lieutenant Joy McLean and Captain Toby Tooley said that they felt like quitting because the Norwegian system showed them that how they had been doing their

[89] Aysa Klocke, Evaluating the Success of Oregon's Norwegian-Inspired Prison Reform, at 47 (June 2021), *available at* https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/26536/Final_Thesis-KlockeA.pdf?sequence=1&isAllowed=y.

[90] *Id.* at 49 & 53.

[91] *Id.* at 45.

jobs was harmful. Similarly, Lieutenant Mike Real from SRCI thought, "I can't go back and be doing the same thing."[92]

Colorado's success with alternatives even for prisoners with the greatest behavioral challenges is exemplary. Since September 2017, Colorado's supermax facility has been changed to house prisoners who still pose security issues, but without the use of solitary confinement. Prisoners routinely relegated to long term solitary confinement are now using the gym, day halls, and re-entry units. The prison has undergone a cultural shift away from employing counterproductive punishments.[93]

In summary, Art. 1, § 13 prohibits LTDSC because of increases in knowledge about rigor and the lack of necessity for this punishment. Scientific research has starkly revealed the psychological and neurological harm. Alternatives adopted by other states, the OYA, and to a lesser extent the DOC, all show that it more effective and less brutal alternatives exist.

b) Or. Const., Art. 1, § 15 – Foundation Principles of Criminal Law

The current version of Art. 1, Sec. 15 was passed by the voters in 1996. This constitutional provision is unique to the State of Oregon. There have been

[92] *Id.* at 43

[93] Rick Raemisch, at 2.

very few court opinions applying it since that time. None of them bear on how it would affect the OARs governing long term DSC. In that vacuum, Petitioner urges to the court to explore and respect the protections and requirements of this constitutional provision.

Art. 1, § 15 Provides:

> "Foundation Principles of Criminal Law. Laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions and reformation."

The commonality between the pre and post 1996 provisions is the Section is a commitment to reformation as a foundation principle of criminal law. The predecessor of Art. 1, Sec. 15 provided, "Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice." This shows Oregon's longstanding emphasis on reformation as a purpose of incarceration.

However, opinions applying the former provision shed little light on the meaning of reformation in the current provision because, to the extent that they discussed reformation at all, they did so largely in the context to the prohibition of vindictive justice with is no longer present. For example, in a vagueness challenge to the vehicular homicide statute on the premise that a vague statute served vindictive justice not reformation because it did not give notice as to what

improvements a defendant should make to his driving, the Court accepted the premise that a vague statute could violate Art. 1, Sec. 15, but held that the statute was not vague. *State v. Wojahn*, 204 Or 84, 141 (1955).

Perhaps the most relevant opinion on the reformation clause in former Art. 1, Section 15 dealt with a challenge to mandatory minimum sentences for certain major felonies under ORS 137.700 (passed as Ballot Measure 11). The defendant argued that the length and non-individualized nature of the required sentences violated the principle of reformation. The Court explained that the protection of people was the most important principle of criminal law, implicit in the constitution. The Court held that the while sentencing laws must promote reformation, they "they do not require that reformation be sought at substantial risk to the people." *State ex rel. Huddleston v. Sawyer*, 324 Or 597, 613 (1997), (quoting *Tuel v. Gladden*, 234 Or. 1, 5-6 (1963)). Thus, the addition of the principle of "protection of society" in 1996 only stated that which was already implied in the constitution and already weighed in relation to reformation.

LTDSC offends the principles of reformation and protection as well as the newly added principles of personal responsibility and accountability. In contrast, the alternatives adopted by other jurisdictions to replace DSC comply with the mandate of Art. 1, § 15 to promote these principles.

1) Protection of Society

The four principles of Art. 1, § 15 work together. This is particularly true of protection of society and reformation of adults in custody. In this section on protection of society Petitioner will focus on the special importance of visitation for building the bonds the create a safer society. The following section on reformation will also bear upon public safety as the two principles work together.

DOC acknowledges the importance of visits to protection of society and reformation. The deprivation of visits inherent in DSC thwarts these interests. DOC states,

> "Visiting is an integral component of facility management, inmate habilitation and community safety. Visiting can improve public safety, encourage responsible familial relationships and reduce the risk of future criminal behavior."

OAR 291-127-400(3)(a). DOC continues

> "The Department encourages productive relationships between families and inmates and sees inmate visitation as a positive means to strengthen ties and increase the likelihood of success upon release."

OAR 291-127-400(3)(d). However, the rules specify that visiting in DSC is limited to one non-contact visit per week. OAR 291-127-0405(2).

2) Reformation

"[T]he very nature of prolonged social isolation is antithetical to the goals of rehabilitation and social integration."[94] DSC is widely recognized to impair the ability of prisoners to reintegrate into society after release, a fundamental part of reformation. In 2015 President Barak Obama wrote about the ways that DSC endangers the public and hinders reformation.

> "The United States is a nation of second chances, but the experience of solitary confinement too often undercuts that second chance. Those who do make it out often have trouble holding down jobs, reuniting with family and becoming productive members of society. Imagine having served your time and then being unable to hand change over to a customer or look your wife in the eye or hug your children."[95]

Speaking to the NAACP conference his put it simply,

> "That is not going to make us safer. That's not going to make us stronger. And if those individuals are ultimately released, how are they ever going to adapt? It's not smart."[96]

The WHO elaborated on this problem. The harm of LTDSC "is most commonly manifested by a continued intolerance of social interaction, a handicap

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[94] NCCHC Position Statement on Solitary Confinement at 2, *available at* https://www.ncchc.org/solitary-confinement

[95] Barack Obama, Why We Must Rethink Solitary Confinement, Washington Post (January 25, 2016)), *available at* https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html

[96] Labrecquel, Tostlebe, Useem and Pyroo, Reforming Oregon Solitary Confinement, at 2 (quoting statement at the NAACP Conference, July 14, 2015)).

which often prevents the inmate from successfully readjusting to the broader social environment of general population in prison and … often severely impairs the inmate's capacity to reintegrate into the broader society upon release from imprisonment.[97] The WHO continued, "Some of the very survival skills adopted in reaction to the pains of isolation, such as withdrawal and going mute, render the individual dysfunctional upon release.[98] Finally, the WHO explained, "Unable to regain the necessary social skills to lead a functioning social life, some of those held in solitary confinement in prison may continue to live in relative social isolation after their release. In this sense, solitary confinement operates against one of the main purposes of the prison, which is to rehabilitate offenders and facilitate their reintegration into society.[99]

A DOC corrections officer explained the problem of prisoners losing the ability to cope with other people due to solitary confinement.

> 'It doesn't take long for somebody to get uncomfortable with the [general population] setting when they've been in [restrictive housing]. … If we want them to be successful then we need to gradually work them out to that … They're either going to panic and do something, just enough, to get them back, or they're going to panic and freak out and do something major that's going to hurt somebody."[100]

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[97] WHO Solitary Confinement as a Prison Health Issue, at 5 n. 13.
[98] *Id.* at 5.
[99] *Id.*
[100] Labrecquel, Tostlebe, Useem and Pyroo, Reforming Oregon Solitary Confinement Reforming at 9 (quoting Oregon corrections officer).

3) Personal Responsibility

The addition of the principles of personal responsibility and accountability for one's actions and the removal of the ban on "vindictive justice" are the significant 1996 changes to this section. These have not been substantially discussed by the appellate courts. The time has come for the Court to apply the mandates of the new Art. 1, Sec. 15, because they cannot be squared with the rules allowing DSC.

Personal responsibility is defeated by long term DSC. People in long term solitary are plagued with intrusive thoughts related to anger, violence, panic, loneliness, and despair. These are anathema to the principle of personal responsibility. A person learns to take responsibility for their actions by learning how to self-regulate emotions and thoughts, and to appreciate the effect of their actions on others. As explained above, the OYA teaches personal responsibility through interventions to promote emotional self-regulation and encourage awareness and planning to prevent the conditions that lead to rule violations. Solitary confinement disrupts the development of these skills.

4) Accountability

Accountability for one's actions is promoted by the Oregon Accountability Model (OAM), which the DOC defines as follows.

> "A plan composed of six components that is designed to strengthen the department's ability to hold inmates and offenders accountable for their actions and staff accountable for achieving the mission and vision of the department."[101]

OAR 291-011-0010(10). In broad terms, the policy of the DOC for promoting accountability is explained in the OARs on discipline.

> "It is the policy of the Department of Corrections to hold adults in custody accountable for misconduct while incarcerated, and to promote and reinforce pro-social behavior by adults in custody, through a system of disciplinary rules and procedures that embrace the Oregon Accountability Model and Correctional Case Management."

OAR 291-105-0005(3)(1). LTDSC is antagonistic to this model of accountability. The six components of the OAM begin with an assessment of the AIC and development of a plan to help the AIC through prison and guide a successful reentry back into the community. The next components emphasize incentives for good behavior and programs to mitigate the risks that the AIC may be subject to, including programs to raise cognitive skills to disrupt thoughts and impulses that can lead to harmful behavior. The model also emphasizes development of work skills and habits. Strengthening ties with family members and religious leaders, and others in the outside the community is essential to the OAM. Finally, toward the end of the prison term, detailed transition planning including arrangements for stable housing and employment, continuity of medical care, and strengthening of

[101] *Available at* https://digital.osl.state.or.us/islandora/object/osl:3916

ties with supportive people in the outside community are emphasized.[102] Long term DSC wreaks havoc on all of these programs. Most acutely, it completely disrupts work, programs for learning cognitive skills related to personal accountability, contact with family members and other mentors, and transition planning prior to release. A study Oregon disciplinary segregation noted that restricting access to programs makes it unlikely that threatening behavior or rule violations will be reduced.[103]

A prisoner who participated in a pilot program implementing some of the principles of the Oregon Accountability Model, offered to a small number of prisoners in solitary confinement in the IMU explained the benefit to him,

> "I'll be honest, I'm kind of a knucklehead. The classes that are in this program... helped me sit myself down and really evaluate my life, and it's given me tools... to deal with calming yourself down or what you're going to do in a heated moment, real quick if there's a way to get around certain situations that might land you in trouble, and it's helped me evaluate more things and brought me closer with my family."[104]

Currently, neither the rules nor DOC practices allow for any such programing while in DSC. On the contrary, prisoners are summarily cut off from

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[102] *Id.*

[103] Labrecquel, Tostlebe, Useem and Pyroo, Reforming Oregon Solitary Confinement at 3.

[104] *Id.* at 11.

all programming while they are in DSC. OAR 291-011-0025(6) (strictly liming reasons for leaving the cell).

DOC states that to better fulfill the goals of public safety, accountability, and crime prevention, it has focused on humanizing the prison environment for staff and AICs.[105] These goals parallel the fundamental principles mandated by Art. 1, Sec. 15. Thus, humanizing the environment is key to DOC's plan to implementing Art. 1, Sec. 15. DOC acknowledges that humanizing the environment includes reducing the use of special housing units.[106] Director Peters said that DOC is making efforts to reduce its use of segregation and create an atmosphere of "normalcy and humanity.[107]

c) Or. Const., Art. I, § 41 – Working & Training

All inmates are required to be engaged in full time work or on-the-job training. Or Const., Art. 1, § 41. This addition to Article 1 was adopted by the people by passage of a ballot measure in 1994. It provides a clear indication that

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[105] "The Oregon Way" *available at https://www.oregon.gov/doc/about/Pages/oregon-way.aspx*

[106] *Id.*

[107] Noelle Crombie, "Oregon's death row will be dismantled by summer", OregonLive, The Oregonian, May 15, 2020, <https://www.oregonlive.com/crime/2020/05/oregons-death-row-will-be-dismantled-by-summer.html>

Oregonians have rejected the idleness and atrophy of skills necessary to contribute to society that LTDSC entails.

Art. 1, § 41 begins with a policy statement that builds on many of the directives of Art. 1, § 15 including responsibility, accountability, and reformation. It says that inmates should "work as hard as taxpayers" and "be fully engaged in productive activity if they are to successfully re-enter society with practical skills and a viable work ethic". *Id.* at § 41(1). If further provides that the corrections director shall ensure that programs are "cost-effective and are designed to develop inmate motivation, work capabilities and cooperation." *Id.* at §41(2).

The mandate is directed to the institutions and the director of corrections. "The work or on-the-job training programs shall be established and overseen by the corrections director, …" *Id.* at §41(3). "The provisions of this section are mandatory for all state corrections institutions." *Id.* at §41(6). It is also directed to inmates. "All inmates of state corrections institutions shall be actively engaged full-time in work or on-the-job training." *Id.* at § 41(2). Petitioner does not allege that Art. 1, § 41 confers any right upon prisoners to work, nor to receive training or treatment. The article confers a solemn duty upon both the institution and inmate to see that the inmate engages in work, training, or treatment. It is a commitment to avoid idleness, be productive, and learn practical skills to re-enter society. LTDSC is antithetical to this mandate. Oregon prisoners in DSU spend 23 hours a

day, on average, in conditions marked by isolation, idleness, and sensory deprivation.[108]

The article includes specific exceptions. Mere discipline without dangerousness is not among the exceptions. *Expressio unius est exclusio alterius*. *See*, *e.g., Rogue Valley Sewer Servs. v. City of Phoenix*, 357 Or 437, 453 (2015). The only exceptions are:

- "[A] short time for administrative intake and processing." *Id.* at §41(3).
- For inmates deemed mentally or physically disabled; *Id*.
- For inmates deemed "too dangerous to society to engage in such programs." *Id*.
- "Where an inmate is drug and alcohol addicted so as to prevent the inmate from effectively participating in work or training programs, corrections officials shall provide appropriate drug or alcohol treatment." *Id.* at § 41(4).

This list includes an exemption for inmates deemed to be too dangerous to engage in such programs. *Id.* at § 41(3). However, DOC rules provide for the use of LTDSC that prevents inmates from engaging in such programs even when they are not deemed to be a danger. As explained above, the rules provide for LTDSC for nonviolent offences, and other procedures specified in the rules confirm that prisoners are being sanctioned with LTDSC when they do not present a danger. Therefore, the rules violate the mandate of Art. 1, § 15. While the "too dangerous" exception is wholly compatible with the suspension of an inmate who presents a

[108] Vera Report at 26.

present danger, it does not allow exemption of an inmate from work or training who is not a present danger.

Even the exceptions in Art. 1, § 41 are narrowly qualified, indicating very limited deference to any rationale offered by DOC suspending work, training, or drug rehabilitation. For example, only a short time is conceded for intake and processing. When inmates are deemed mentally or physically disabled or too dangerous to society, "[t]he corrections director may reduce or exempt participation in work or training programs by those inmates …" The option to "reduce or exempt" in this context is not a delegation of unfettered authority to exempt instead of reduce participation in work or training programs if the inmate has the capacity to participate to a reduced degree. Many of the offenses subject to a penalty of LTDSC are non-violent. Moreover, the rules do not require any finding that an inmate presents a danger before being sanctioned with LTDSC. A strained interpretation of the exception for an inmate "too dangerous to society to engage in such programs" might grant DOC some discretion to find that a non-violent inmate nonetheless presented some form of danger sufficient to temporarily suspend or reduce the work requirement. However, the exception does not grant the agency broad enough discretion to permit wholesale revocation from all work, training, or programs for the duration of a long period in solitary confinement for such an inmate.

The revocation from work, training, or drug or alcohol treatment while in DSC is so intrinsic to the nature of the sanction solitary confinement that it is not stated explicitly in a specific section of the rules but is instead implied in many aspects of solitary confinement required by the rules. The rule most on point provides,

> "Inmates assigned to disciplinary segregation will be permitted minimally to leave their cell for visits, exercise, showers, medical, dental, mental health or authorized services or activities. An employee designated by the officer-in-charge will assign escort supervision. Disciplinary-segregated inmates will not be permitted to leave their cells without prior approval from the disciplinary segregation supervisor. Routine staff/inmate interviews shall take place at the inmate's cell."

OAR 291-011-0025(6). These procedures are incompatible with participation in work or other programs.

The violation of the duty to engage the prisoner in work, work training, or treatment that occurs while in DSC is a self-perpetuating cycle that leads to further use of DSC because it increases the incidence of rule violations. Dr. Kupers stated,

> "Part of the growing national consensus to drastically reduce solitary confinement is based on the well-researched idea that prisoners who are occupied with educational programs, job training and meaningful activities are much less prone to get into disciplinary trouble than are prisoners who are crowded into prisons with a severe shortage of productive activities and learning opportunities."

Att. 1 (Kupers Decl. at 12-13). LTDSC is irreconcilable with the mandates of Art. 1, § 15.

C. Petitioner Will Suffer Irreparable Harm Absent a Stay.

"[A]n injury is irreparable if the party cannot receive reasonable or complete redress in a court of law." *Bergerson v. Salem-Keizer School Dist.,* 185 Or App 649, 660 (2003) (*citing Arlington Sch. Dist. No. 3 v. Arlington Ed. Assoc.,* 184 Or App 97, 101-102 (2002)); *Levasseur v. Armon,* 240 Or App 250 (2010) (same). An injury is irreparable if it cannot be adequately compensated in damages or no pecuniary standard exists for measuring damages. *Crouch v. Central Labor Council,* 134 Or 612, 620 (1930).

The harms of solitary should be evident from the section above. *See* III(2)(a). These harms include physical and mental damage, including brain damage, psychological harm, disrupted healthcare. These harms establish an irreparable injury justifying an immediate stay.

D. The Stay Will Not Cause Substantial Public Harm.

There is no discernable public harm that will result from a stay of DOC's segregation rules. On the contrary, as explained above, LTDSC reduces public safety.

IV. CONCLUSION

For all of the reasons above, petitioner's emergency motion for a temporary stay should be granted and enforcement of DOC's rules authorizing disciplinary solitary confinement of AICs for more than 15 days should be stayed pending the outcome of this case. Knowledge of the harmfulness and ineffectiveness of long term solitary confinement as a form of discipline has grown while knowledge of more effective alternatives has also grown, such that the Constitution and laws of Oregon do not permit the damage inflicted by this discredited practice to continue.

DATED this 21th day of December, 2021

By: *s/Benjamin Haile*

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INDEX OF ATTACHMENTS

Page

Expert Report of Terry A. Kupers, M.D., M.S.P.

Re: Oregon Solitary Confinement Litigation

I. Background and Qualifications

I am a board-certified psychiatrist, Professor at the Wright Institute, Distinguished Life Fellow of the American Psychiatric Association, and an expert on correctional mental health issues. I graduated from UCLA School of Medicine with an M.D. degree in 1968, completed an internship in medicine and pediatrics at Kings County Hospital/Downstate Medical Center in 1969, completed residency in psychiatry at UCLA NPI in 1972, and completed a Fellowship in Social and Community Psychiatry in 1974 with an MSP degree from UCLA (Masters in Social and Community Psychiatry). I have testified more than thirty times in state and federal courts about the psychiatric and physiological effects of jail and prison conditions, the quality of correctional management and mental health treatment, and prison sexual assaults. I have served as a consultant to the U.S. Department of Justice, Human Rights Watch and Disability Rights. I am the author of Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It (Jossey-Bass/Wiley, 1998) and Solitary: The Inside Story of Supermax Isolation and How We Can Abolish It (University of California Press, 2017), co-editor of Prison Masculinities (Temple University Press, 2001), and a Contributing Editor of Correctional Mental Health Report. I have authored and co-authored dozens of professional articles and book chapters, including "A Community Mental Health Model in Corrections" in Stanford Law & Policy Review, 26, 119-158, Spring, 2015; and "The Asylum, The Prison and the Future of Community Mental Health," a chapter in *Community Mental Health: Challenges for the 21st Century*, Editors Jessica Rosenberg and Samuel J. Rosenberg, New York & London: Taylor & Francis/Routledge, 2017.

I served as consultant to the Connections Program in San Francisco, California, a collaboration between San Francisco Court Case Managers, San Francisco Jail Mental Health Services and Community Mental Health agencies designed to provide alternatives to jail for mentally ill and substance-abusing offenders. I have served as an expert witness in multiple class action lawsuits concerning the conditions of confinement in solitary confinement units, including Jones 'El v. Litscher, Dockery v. Hall and Ashker v. Governor of California (see

curriculum vitae, Exhibit A). I served as monitor of the *Presley v. Epps* consent decree (federal court) in Mississippi, involving prisoners with mental illness in isolated confinement at Mississippi State Penitentiary.[1] I was the recipient of the Exemplary Psychiatrist Award presented by the National Alliance on Mental Illness (NAMI) at the 2005 annual meeting of the American Psychiatric Association, the William Rossiter Award for "global contributions made to the field of forensic mental health" at the 2009 Annual Meeting of the Forensic Mental Health Association of California, and the Gloria Huntley Award from NAMI in 2020.

I have been asked by counsel to discuss the effects of disciplinary solitary confinement in corrections, and the alternatives to disciplinary solitary confinement. I have based my analysis of and opinions about the Oregon Department of Corrections' use of disciplinary solitary confinement, and the effects on prisoners, on my research with prisoners in solitary confinement, the extensive body of published scientific research, specific information about practices and conditions in Oregon prisons cited in this declaration, and my knowledge and experience.

My curriculum vitae, which includes publications of the past ten years, and a list of cases in which I have served as an expert in the past four years are attached to this report as Exhibits A & B.

II. Introduction

Solitary confinement, the confinement of an individual in a cell, alone or with a cellmate, for 22 hours or more per day with very little in the way of productive or educational activities, causes quite a lot of psychological harm and meanwhile provides little or no benefit in terms of reducing violence and gang activity in correctional settings. It does not lead to behavioral reform, rehabilitation, or deter future rule breaking. It increases rates of violence and recidivism. It blocks behavioral reform, rehabilitation, and job training. There is no opportunity for developing healthy relationships while subjected to the harms of extended isolation. The current trend, to resort to solitary confinement much more than previously, began in the 1980s, by which time overcrowding and the downscaling of rehabilitation programs had led to so much violence -

[1] No. 4:05CV148-JAD (N.D. Mississippi, 2005 & 2007).

- including violence towards others as well as self-harm and suicide[2] -- that the prisons in many localities were facing a crisis. The construction of supermaximum security units, as cellblocks within existing facilities or as separate supermax facilities, where all cells are utilized for solitary confinement, accelerated through the nineties and into the new millennium. By 2004, corrections departments in 44 states as well as the Federal Bureau of Prisons contained supermaximum solitary confinement units. Since that time, there has been a growing consensus in corrections circles that solitary confinement for more than 15 days is a human rights abuse. In 2015 the UN General Assembly unanimously adopted the Nelson Mandela Rules, which state that Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible, and never for longer than 15 consecutive days. Several states have passed laws banning the consignment of individuals suffering from serious mental illness to solitary confinement, and prohibiting solitary confinement for anyone for longer than 15 days.

III. Research and Literature about Solitary Confinement

There is a large literature reflecting thorough research on the effects of long-term solitary confinement or isolative confinement in prison,[3] long-term confinement (greater than fifteen days) in an isolated confinement unit. It has been known for as long as solitary confinement has been practiced that human beings suffer a great deal of pain and mental deterioration when they remain in solitary confinement for a significant length of time. Thus, in 1890, the U.S. Supreme Court wrote that in isolation units, "[a] considerable number of 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; while those who stood the

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[2] Toch, Hans, and Terry Kupers. 2007. "Violence in Prisons, Revisited." *Journal of Offender Rehabilitation* 45 (3/4)

[3] I employ the terms "solitary confinement" and "isolated confinement" interchangeably. Some correctional officials object to the use of the term solitary confinement because, they claim, individuals in their isolative confinement units have some contact with the officers who pass them their food trays, search them and escort them to appointments. I am not convinced this constitutes adequate human contact, so I continue to employ the two terms synonymously. For an overview of supermaximum security and isolated confinement, see LORNA RHODES, TOTAL CONFINEMENT: MADNESS AND REASON IN THE MAXIMUM SECURITY PRISON, (University of California Press, 2004); and SHARON SHALEV, SUPERMAX: CONTROLLING RISK THROUGH SOLITARY CONFINEMENT, (Willan Publishing, 2009).

ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community."[4]

A significant amount of research echoes the Court's findings.[5] Hans Toch provided early narrative reports from prisoners at the highest levels of security and Isolation.[6] Craig Haney has been researching the detrimental effects of long-term isolation for over forty years, including physiological and psychiatric consequences.[7] He has found that more than four out of five of the prisoners he evaluated in one study suffered from feelings of anxiety and nervousness, headaches, troubled sleep, and lethargy or chronic tiredness, and over half complained of nightmares, heart palpitations, and fear of impending nervous breakdowns. Equally high numbers reported obsessive ruminations, confused thought processes, an oversensitivity to stimuli, irrational anger, and social withdrawal. Well over half reported violent fantasies, emotional flatness, mood swings, chronic depression, and feelings of overall deterioration, while nearly half suffered from hallucinations and perceptual distortions, and a quarter experienced suicidal ideation.

Stuart Grassian has conducted similar research.[8] He found that among the more vulnerable population, including those with serious mental illness, solitary confinement can result in an acute agitated psychosis, random violence, often directed towards the self and resulting in suicide. About half of the prisoners in his study suffered from perceptual disturbances including hallucinations and perceptual illusions, and another half complained of

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[4] In re Medley, 134 U.S. 160 (1890)

[5] For reviews of this research, see Peter Scharff Smith, The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature, CRIME & JUST., 34 441, 488–90 (2006); and Bruce Arrigo & Jennifer Leslie Bullock, The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What We Should Change, INT'L J. OFFENDER THER. COMP. CRIMINOLOGY 52:, 622-640 (2008). See also ACLU OF TEXAS, A SOLITARY FAILURE: THE WASTE, COST AND HARM OF SOLITARY CONFINEMENT IN TEXAS (2015).

[6] HANS TOCH, MOSAIC OF DESPAIR: HUMAN BREAKDOWN IN PRISON, (American Psychological Association 1975, 1992).

[7] Craig Haney, Mental Health Issues in Long-Term Solitary and "Supermax" Confinement, CRIME & DELINQUENCY, 49(2), 124-156 (2003).

[8] Stuart Grassian & Nancy Friedman, Effects of Sensory Deprivation in Psychiatric Seclusion and Solitary Confinement, INT'L J. OF LAW & PSYCHIATRY, 8(1), 49-65 (1986).

cognitive difficulties such as confusional states, difficulty concentrating, and memory lapses. About a third also described thought disturbances such as paranoia, aggressive fantasies, and impulse control problems. For all prisoners, long-term solitary confinement has the effect, on average, of making post-release adjustment very problematic and worsening recidivism rates.[9]

An alarmingly large proportion of prisoners consigned to supermaximum security isolation in recent decades suffer from serious mental illness. Sheilagh Hudgins and Gilles Cote performed a research evaluation of penitentiary inmates in a Supermaximum Security Housing Unit and discovered that 29% suffered from severe mental disorders, notably schizophrenia.[10] David Lovell has described typical disturbed behavior.[11] I have reported my own findings from litigation-related investigations.[12] It is stunningly clear, and there is an evolving consensus in the community of researchers, mental health clinicians and correctional administrators, that for prisoners prone to serious mental illness time served in isolation and idleness greatly exacerbate the mental illness, worsen the disability and prognosis, and too often result in suicide. This is the main reason that federal courts have ruled that prisoners with serious mental illness must not be subjected to long-term isolation.[13]

It is predictable that prisoners' mental and physical state deteriorates in isolation. Human beings require at least some adequate or relatively normal social interactions and productive activities to establish and sustain a sense of identity and to maintain a grasp on reality. In the absence of adequate social interactions, unrealistic ruminations and beliefs cannot be tested in conversation with others, so they build up inside and are transformed into unfocused and

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[9] David Lovell, L. Clark Johnson, & Kevin Cain, Recidivism of Supermax Prisoners in Washington, CRIME & DELINQ., 52,4, 633-56 (2007).

[10] Sheilagh Hodgins & Gilles Cote, The Mental Health of Penitentiary Inmates in Isolation, CANADIAN J. OF CRIMINOLOGY, 177-182 (1991).

[11] David Lovell, Patterns of Disturbed Behavior in a Supermax Population, CRIM. JUST. & BEHAVIOR, 35,8, 985-1004 (2008).

[12] TERRY KUPERS, PRISON MADNESS: THE MENTAL HEALTH CRISIS BEHIND BARS AND WHAT WE MUST DO ABOUT IT (Jossey-Bass/Wiley 1999); TERRY KUPERS, SOLITARY: THE INSIDE STORY OF SUPERMAX ISOLATION AND HOW WE CAN ABOLISH IT (University of California Press, 2017).

[13] Madrid v. Gomez , 889 F. Supp. 1146 (N.D. Cal. 1995); Jones 'El v. Berge, 164 F. Supp. 2d1096 (W.D. Wis. 2001); Presley v. Epps, 4:05-cv-148 (JAD) (N.D. Miss. 2005 & 2007).

irrational thoughts. Disorganized behaviors emerge. Internal impulses linked with anger, fear and other strong emotions grow to overwhelming proportions, especially if there is any degree of mania.[14] Sensory deprivation is not total; there is the intermittent slamming of steel doors and there is yelling (one typically has to yell in order to be heard from within one's cell), but this kind of noise does not constitute meaningful human communication. Prisoners in this kind of segregation do what they can to cope. Many pace relentlessly or clean their cell repeatedly, as if desperately trying to find a way to engage in productive activity. Those who can read books and write letters do so. The tendency to suffer psychiatric breakdown and become suicidal is made even worse by sleep deprivation, which is a frequent occurrence among prisoners in isolated confinement.[15] Loss of sleep intensifies psychiatric symptoms by interfering with the normal diurnal rhythm (the steady alternation of day and night that provides human beings with orientation as to time), and the resulting sleep loss creates fatigue and magnifies cognitive problems, memory deficits, confusion, anxiety, and sluggishness. It is under these extreme conditions that psychiatric symptoms begin to emerge in previously healthy prisoners.[16] Detainees are too often caught in a vicious cycle as their mental health declines. Their ability to conform their behavior to the rules and even to understand orders and rules declines, leading to additional sanctions and extensions of their time in solitary confinement.

It has been known for decades that suicide is approximately twice as prevalent in prison as it is in the community, and recent research confirms that, of all successful suicides that occur in a correctional system, approximately fifty percent involve the 3 to 8 percent of prisoners who are in some form of isolated confinement at any given time.[17] This is a stunning statistical

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[14] Peter Scharff Smith. (2006). The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature. *Crime and Justice* 34:441–528

[15] Craig Haney, Mental Health Issues in Long-Term Solitary and "Supermax" Confinement, CRIME & DELINQUENCY, 49(2), 124-156 (2003).

[16] Terry Kupers. (1999). Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It. New York: Free Press.

[17] Daniel P. Mears & Jamie Watson, Towards a Fair & Balanced Assessment of Supermax Prisons, JUST. Q., 23,2, 232-270, (2006); Bruce Way, Richard Miraglia, Donald Sawyer, Richard Beer & John Eddy, Factors Related to Suicide in New York State Prisons, INT'L J. OF LAW & PSYCHIATRY, 28,3, 207-221 (2005); Raymond F. Patterson & Kerry Hughes, Review of Completed Suicides in the California

finding. The strength of the statistical correlation provides conclusive evidence that long-term consignment to segregation is a major causal factor in the high suicide rate among prisoners.

There is also research demonstrating that the psychological effects of trauma are accompanied by physical changes in the brain.[18] For many reasons, it is difficult to conduct research with prisoners, but a body of research is accumulating that shows the effects of solitary confinement on the brain.[19] There is even more research about brain changes with Posttraumatic Stress Disorder (PTSD), and while the harmful effects of solitary confinement are not identical to those with PTSD, the human response to solitary confinement and PTSD share some characteristics. For example, we know that anxiety and anger are prominent among symptoms found in the denizens of solitary confinement prison units and also in returning soldiers who suffer from PTSD. It is well-established that when anxiety and anger continue for a period of time, the adrenal glands secrete adrenaline and cortisol, which speed up brain function as well as cardiovascular performance. This is the physiological underpinning of the well-known "fight/flight" reaction.

More recent research using brain imaging technology such as functional MRIs and PET scans (Photon Emission Tomography) demonstrate that when anxiety and anger continue for any length of time, certain pathways in the brain are enlarged relative to other pathways.[20] The ruts

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Department of Corrections & Rehabilitation, 1999 to 2004, PSYCHIATRIC SERVICES, 59, 6, 676-682 (2008).

[18] See Taber, K. H., & Hurley, R. A., PTSD and combat-related injuries: Functional neuroanatomy, *The Journal of Neuropsychiatry & Clinical Neurosciences, 21*, pp. 1-4, 2009; Vaishnavi, S., Rao, V., & Fann, J. R., Neuropsychiatric problems after traumatic brain injury: Unraveling the silent epidemic. *Psychosomatics 50,* pp. 198-205, 2009; Taber, K. H., & Hurley, R. A., "PTSD and combat-related injuries: Functional neuroanatomy," *The Journal of Neuropsychiatry & Clinical Neurosciences, 21,* pp.1-4, 2009; and van Reekum, R., Cohen, T., & Wong, J., "Can traumatic brain injury cause psychiatric disorders?" *Journal of Neuropsychiatry and Clinical Neurosciences, 12*, pp. 316-327, 2000.

[19] Carol Schaeffer, *"Isolation Devastates the Brain": The Neuroscience of Solitary Confinement,* SOLITARY WATCH (May 11, 2016).[19]

[20] See Mirzaei, S., et al., Regional cerebral blood flow in patients suffering from post-traumatic stress disorder, *Neuropsychobiology*, 43, 4, pp. 260-264, 2001; Vyas, A., et al., Effect of chronic stress on dendritic arborization in the central and extended amygdala," *Brain Research*, 965, 1-2, pp. 290-294, 2003; McEwen, B.S., "The neurobiology of stress: From serendipity to clinical relevance," *Brain Research*, 886, 1-2, pp. 172-189, 2000.

in a dirt road during the rainy season provide an analogy. When automobiles repeatedly traverse the road the ruts are enlarged and deepened, and become more difficult to remove. The brain is like that, the neuronal pathways that are activated by adrenaline and cortisol become more prominent in the brain, as reflected in PET scans, and those enlarged pathways become habitual and more likely to be activated by future episodes of rage and anxiety. And we know which part of the brain contains enlarged pathways that are activated by anxiety and anger. They are in the "temporal lobe" of the brain, or the "limbic system," which is located in the part of the brain beneath the temple. Normally, human behavior is controlled in part by the limbic system, and in part by the "pre-frontal cortex," the part of the brain beneath the forehead, which controls cognitive activities, judgement and administrative functions. Normal human functioning requires a balance between limbic system and pre-frontal lobe activity, wherein the pre-frontal lobe supplies cognitive and moral components and the limbic system supplies raw emotion. Of course, appropriate behavior relies on the relative strength of the pre-frontal cortex so that the emotions can be modulated and put to good use. A PET scan shows which parts of the brain are active while the person studied does or experiences one thing or another. When a person is angry or anxious, the PET scan shows more than usual activity in the temporal lobe. When a person is contemplative or weighing moral options, the pre-frontal cortex housed beneath the forehead lights up on the PET scan. On average, people with PTSD (and it is reasonable to conclude, people who are in solitary confinement) have more activity in the temporal lobe, and this physical finding correlates with the ease and frequency with which they get anxious or enraged. In other words, when we see someone who angers easily, or who permits emotions to shape his or her behavior without much second thought, that person clearly has relatively enlarged and active neural pathways in the temporal lobe, and relatively less activity in the pre-frontal cortex, the site related to executive function and judgement.[21] Meanwhile, there is evidence from animal studies that isolation decreases the level and effectiveness of learning,

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[21] Bremner, J.D., Neuro-imaging studies in post-traumatic stress disorder, *Current Psychiatry Rep*, 4,4 pp. 254-263, 2002.

memory and executive brain function, and these changes are related to decreased activity in the pre-frontal lobe and other areas of the cerebral cortex, as well as heightened activity in the amygdala (an area of the limbic system that is active during angry outbursts).[22] The relative activity in the limbic system vs. the pre-frontal cortex is merely one of many changes in brain structure being studied. A recent article in *Scientific American* reports on a national conference where neuroscientists shared their findings of structural changes in the hippocampus (another region of the brain) with prolonged solitary confinement.[23]

The enlargement or hypertrophy of temporal lobe pathways is merely one example of results of brain studies conducted in recent years. In general, the distinction between physical/medical illness on one hand and functional or psychological illness on the other has become relatively outdated in the field of psychiatry. Since the 1990s, and with the advent of newer technologies, there is a consensus in Medicine and Psychiatry/Psychology about causal links between apparent psychological disorders and physical changes in the structure and physiology of the brain, and psychiatric disorders are increasingly viewed as results of changes in the brain.[24]

These effects often begin after a relatively short period of days to weeks in solitary confinement.[25] The harm tends to increase with each passing day and week. All of the solitary-induced psychological and brain damage I have described thus far in this section appear when the prisoner has been isolated for days, weeks, or months. Recent research has uncovered a shockingly increased mortality rate during the first year following release from solitary

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[22] "Isolated Housing of Non-Human Animals," by Michael Zigmond, See Expert Report of Michael J. Zigmond, *British Columbia Civil Liberties Association and the John Howard Society of Canada v. Attorney General of Canada*, SCBC Vancouver Registry No. S-150415 (February 22, 2017), 2 [report was not admitted into evidence].

[23] Smith, D. G., Neuroscientists Make a Case Against Solitary Confinement, Scientific American, November 9, 2018, https://www.scientificamerican.com/article/neuroscientists-make-a-case-against-solitary-confinement/.

[24] See, for example, Pert CB. *Molecules of Emotion: The Science Behind Mind-Body Medicine*. New York: Simon & Schuster; 1999; Markowitz JC. There's such a thing as too much neuroscience. *New York Times*. October 14, 2016. https://www.nytimes.com/2016/10/15/opinion/theres-such-a-thing-as-too-much-neuroscience.html?_r=0. Accessed June 12, 2017.

[25] Peter Scharff Smith, The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature, CRIME & JUST., 34 441, 466 and 471 (2006)

confinement.[26] Violence ranks high among the causes of death, but is certainly not the only problem. A volume edited by Jules Lobell and Peter Scharff Smith summarizes recent research on the harms of solitary confinement.[27]

While the human damage wreaked by solitary confinement has been thoroughly researched and documented, there is little or no evidence of any benefit from the widespread utilization of solitary confinement behind bars. In other words, the experiment with solitary confinement for rule-breaking and violent individuals has failed, causing immense psychological damage but producing no desirable benefits. The violence rate in prisons, the suicide rate, and the gang problem are essentially unchanged by the solitary confinement of approximately 80,000 to 100,000 prisoners in the USA at any given time.[28] In fact, counting self-harm and suicide as acts of violence (upon the self), there is significant evidence that solitary confinement greatly exacerbates the rate of violence in prison.[29]

XI. Recommendations for Alternatives to Solitary Confinement

1. There is a growing national consensus among correctional professionals, correctional mental health providers and forensic scientists that the harm of solitary confinement is so large, and the benefits so minimal, that it is time to downsize and advance toward ending

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[26] Wildeman, C., & Andersen, L. H. (2020). Solitary confinement placement and postrelease mortality risk among formerly incarcerated individuals: A population based study. *The Lancet Public Health*, 5(2), 107–113; Brinkley-Rubinstein, L., Sivaraman, J., Rosen, D. L., Cloud, D. H., Junker, G., Proescholdbell, S., … Ranapurwala, S. I. (2019). Association of restrictive housing during incarceration with mortality after release. JAMA Network Open, 2(10), <https://doi.org/10.1001/jamanetworkopen.2019.12516>.

[27] Jules, Lobell & Peter Scharff Smith, Editors, Solitary Confinement: Effects, Practices, and Pathways Toward Reform, Oxford University Press, 2021.

[28] Briggs, C. S., Sundt, J. L., & Castellano, T. C. (2003). The effect of supermaximum security prisons on aggregate levels of institutional violence. Criminology, 41(4), 1341–1376. <https://doi.org/10.1111/j.1745-9125.2003.tb01022.x.>; Luigi, M., Dellazizzo, L., Giguère, C. É., Goulet, M. H., Potvin, S., & Dumais, A. (2020). Solitary confinement of inmates associated with relapse into any recidivism including violent crime: A systematic review and meta-analysis. *Trauma, Violence, & Abuse*. <https://doi.org/10.1177/1524838020957983>

[29] Toch, Hans, and Terry Kupers. 2007. "Violence in Prisons, Revisited." *Journal of Offender Rehabilitation* 45 (3/4): 1–28; Kaba, F., Lewis, A., Glowa-Kollisch, S., Hadler, J., Lee, D., Alper, H., … Parsons, A. (2014). Solitary confinement and risk of self-harm among jail inmates, *American Journal of Public Health*, 104(3), 442–447.

solitary confinement altogether. Thus, the former United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan Mendez, has declared that solitary confinement lasting longer than 14 days constitutes a human rights abuse or torture.[30] The 2015 United Nations Minimum Rules on the Treatment of Prisoners, known as the "Mandela Rules," prohibit the use of solitary confinement lasting longer than 15 days except in very rare cases, and then only with very rigorous review by a higher authority.[31] The National Commission on Correctional Health Care, the agency that accredits health and mental health programs for United States correctional facilities, published in 2016 a "New Position Statement on Solitary Confinement" that begins with the statement: "Prolonged (greater than 15 consecutive days) solitary confinement is cruel, inhuman and degrading treatment, and harmful to an individual's health."[32] The American Psychiatric Association, the American Psychological Association, and the American Public Health Association have all published equivalent opinions and standards, with special emphasis on the need to prohibit solitary confinement for prisoners with serious mental illness. Quite a few states have passed laws or adopted rules (including Maine, Colorado, Idaho, Nebraska, New Jersey, New York, and Washington) or are currently considering legislation (including Illinois) to reduce significantly the use of solitary confinement in adult and juvenile corrections

2. In order to end solitary confinement, alternatives to solitary must be and indeed have been created. This involves a number of programmatic developments. After studying the use of solitary confinement in partnership with the Oregon DOC, the Vera Institute for Justice recommended alternatives to long term disciplinary solitary confinement in Oregon prisons.[33] While tailored to conditions the researchers identified in Oregon, these alternatives are not novel. They have been used with success in neighboring states and they are based in part on psychological research I am familiar with. Interventions can

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[30]<https://www.prisonlegalnews.org/media/publications/International%20Human%20Rights%20Law%20on%20Solitary%20Confinement%2C%20HRF%2C%202015.pdf>
[31] <http://solitaryconfinement.org/mandela-rules>
[32] <https://www.ncchc.org/solitary-confinement-position-statement>
[33] Allison Hastings, et al., "The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the Oregon Department of Corrections," (October 2016). https://www.vera.org/downloads/publications/safe-alternatives-segregation-initiative-findings-recommendations-odoc.pdf

begin with strategies to reduce rule violations by reducing sources of stress in the general population and helping prisoners solve problems and conflicts before they give rise to rule violations. When sanctions are necessary, sanctions tailored to the circumstances of the individual are most effective. For example, suspending access to the weight training gym could be a highly motivating deterrent for one prisoner but a relatively insignificant intervention for another. The effectiveness of sanctions is bolstered by improving communication about the reasons they are being imposed and the behavioral changes necessary to avoid them in the future. Prisoners who are temporarily isolated as an intervention to prevent harm benefit from counseling to create a reintegration plan. The plan can include ways, both cognitive and logistical, for the prisoner to solve problems that had created the risk of violent or dangerous behavior.

3. Initial implementation of some of these reforms by the Oregon DOC has been very effective. The director of the DOC wrote about the results of providing officers with the skills, tools, and correctional policies they need to transform the nature of correctional work with a focus on proactive, pro-rehabilitative, and dignity-conserving engagement with incarcerated people, de-escalating incidents, and delegating decision-making in the correctional context down to the employees who work with and know incarcerated people most closely. DOC saw a dramatic reduction in incidents of violence alongside a reduction in the use solitary confinement.[34] Prison staff wellbeing also increased.
4. Improved mental health treatment programs are needed, and there is a large amount of clinical and forensic research reflecting that adequate mental health treatment is the best preventative to rule violation and assault on the part of prisoners suffering from serious mental illness.
5. Other essential programs, basically rehabilitation programs, include educational pursuits, workshops where prisoners learn industrial skills that will increase the likelihood of their success at "going straight" after they are released, and voluntary work programs such as

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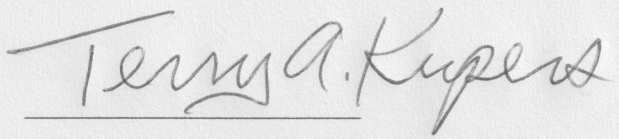
[34] Cyrus Ahalt, Colette S. Peters, et al., "Transforming Prison Culture to Improve Correctional Staff Wellness and Outcomes for Adults in Custody "The Oregon Way": A Partnership Between The Oregon Department of Corrections and the University of California's Correctional Culture Change Program," Advancing Corrections Journal: Edition #8-2019, <https://icpa.org/advancing-corrections-journal-edition-8/> (publicly available at <https://drive.google.com/file/d/14pch3YfhCsPWe2KoK4GnymmPIe2cwWPM/view>).

fire-fighting. Part of the growing national consensus to drastically reduce solitary confinement is based on the well-researched idea that prisoners who are occupied with educational programs, job training and meaningful activities are much less prone to get into disciplinary trouble than are prisoners who are crowded into prisons with a severe shortage of productive activities and learning opportunities. .

6. Solitary confinement longer than 15 days is not appropriate punishment enforce obedience to the rules because of the psychological injury it inflicts. Further, the impairment of communication skills, impulse control, executive function, and emotional regulation caused by solitary confinement reduces the capacity of the individual to follow orders and obey rules. These effects tend to increase with each passing day and week. It is my strong recommendation that solitary confinement in the Oregon Department of Corrections be limited to 15 days. To accomplish that end, and to keep the prisons running smoothly and peacefully, there needs to be robust enhancement of mental health treatment as well as educational and rehabilitation programming.

I declare under penalty of perjury, under the laws of the State of California and the United States, that the foregoing is true and correct.

Executed in the City of Berkeley, County of Alameda, California, on this 17th day of December, 2021.



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Curriculum Vitae

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Born: October 14, 1943, Philadelphia, Pennsylvania

Education:
B.A., With Distinction, Psychology Major, Stanford University, 1964
M.D., U.C.L.A. School of Medicine, 1968
M.S.P. (Masters in Social Psychiatry), U.C.L.A., 1974

Training:
Intern (Mixed Medicine/ Pediatrics/ Surgery), Kings County Hospital/Downstate Medical Center, Brooklyn, New York, 1968-1969.
Resident in Psychiatry, U.C.L.A. Neuropsychiatric Institute, Los Angeles, 1969-1972
Registrar in Psychiatry, Tavistock Institute, London (Elective Year of U.C.L.A. Residency) 1971-1972
Fellow in Social and Community Psychiatry, U.C.L.A. Neuropsychiatric Institute, 1972-1974

License: California, Physicians & Surgeons, #A23440, 1968-

Certification: American Board of Psychiatry and Neurology (Psychiatry, #13387), 1974-

Honors:
Alpha Omega Alpha, U.C.L.A. School of Medicine,1968.
Distinguished Life Fellow, American Psychiatric Association
Listed: Who's Who Among Human Services Professionals (1995-); Who's Who in California (1995-); Who's Who in The United States (1997-); Who's Who in America (1998-); International Who's Who in Medicine (1995-); Who's Who in Medicine and Healthcare (1997-); The National Registry of Who's Who (2000-); Strathmore's Millenial Edition, Who's Who; American Biographical Institute's

International Directory of Distinguished Leadership; Marquis' Who's Who in the World (2004-); Marquis' Who's Who in Science and Engineering, (2006-); Who's Who Among American Teachers & Educators (2007-); The Global Directory of Who's Who (2012-); International Association of Healthcare Professionals' The Leading Physicians (2012-).

Helen Margulies Mehr Award, Division of Public Interest (VII), California Psychological Association, Affiliate of American Psychological Association, March 30, 2001.

Stephen Donaldson Award, Stop Prisoner Rape (Just Detention, Int'l), 2002.

Exemplary Psychiatrist Award, National Alliance for the Mentally Ill, 2005

William Rossiter Award for "global contributions made to the field of forensic mental health," Annual Meeting, Forensic Mental Health Association of California, March 18,2009, Monterey, California

Albert Nelson Marquis Lifetime Achievement Award, Marquis Who's Who, 2018-

Gloria Huntley Award, National Alliance on Mental Illness (NAMI), presented at annual NAMI meeting in Atlanta via video, July 15, 2020

Clinical Practice:

Los Angeles County, SouthEast Mental Health Center, Staff Psychiatrist, 1972-1974

Martin Luther King, Jr. Hospital, Department of Psychiatry, Los Angeles; Staff Psychiatrist and Co-Director, Outpatient Department, 1974-1977.

Contra Costa County, Richmond Community Mental Health Center, Staff Psychiatrist and Co-Director, Partial Hospital, 1977-1981

Private Practice of Psychiatry, Los Angeles and Oakland, 1972 to present

Teaching:

Assistant Professor, Department of Psychiatry and Human Behavior, Charles Drew Postgraduate Medical School, Los Angeles, and Assistant Director, Psychiatry Residency Education, 1974-1977.

Institute Professor, Graduate School of Psychology, The Wright Institute, Berkeley, 1981 to present

Courses Taught at: U.C.L.A. Social Science Extension, California School of Professional Psychology (Los Angeles), Goddard Graduate School (Los Angeles), Antioch-West (Los Angeles), New College Graduate School of Psychology (San Francisco).

Professional Organizations:

American Psychiatric Association (Distinguished Life Fellow); Northern California Psychiatric Society; East Bay Psychiatric Association (President, 1998-1999); American Orthopsychiatric Association (Fellow); American Association of Community Psychiatrists; Physicians for Social Responsibility; American Academy of Psychiatry and the Law.

Committees and Offices:

Task Force on the Study of Violence, Southern California Psychiatric Society, 1974-1975
Task Force on Psychosurgery, American Orthopsychiatric Association, 1975-1976
California Department of Health Task Force to write "Health Standards for Local Detention Facilities," 1976-77
Prison/ Forensic Committee, Northern California Psychiatric Society, 1976-1981; 1994-
Psychiatry Credentials Committee, Alta Bates Medical Center, Berkeley, 1989-1994 (Chair, Subcommittee to Credential Licensed Clinical Social Workers)
President, East Bay Chapter of Northern California Psychiatric Society, 1998-1999
Co-Chair, Committee on Persons with Mental Illness Behind Bars of the American Association of Community Psychiatrists, 1998-2003

Consultant/Staff Trainer:

Contra Costa County Mental Health Services; Contra Costa County Merrithew Memorial Hospital Nursing Service; Bay Area Community Services, Oakland; Progress Foundation, San Francisco; Operation Concern, San Francisco; Marin County Mental Health Services; Berkeley Psychotherapy Institute; Berkeley Mental Health Clinic; Oregon Department of Mental Health; Kaiser Permanente Departments of Psychiatry in Oakland, San Rafael, Martinez and Walnut Creek; Human Rights Watch, San Francisco Connections collaboration (Jail Psychiatric Services, Court Pre-Trial Diversion, CJCJ and Progress Foundation); Contra County Sheriff's Department Jail Mental Health Program.

Consultant to Protection & Advocacy, Inc. (Disability Rights), re Review of State Hospital Suicides
National Advisory Panel, The Equitas Project, Denver, CO

Forensic Psychiatry (partial list):

Testimony in Madrigal v. Quilligan, U.S. District Court, Los Angeles, regarding informed consent for surgical sterilization, 1977
Testimony in Rutherford v. Pitchess, Los Angeles Superior Court, regarding conditions and mental health services in Los Angeles County Jail, 1977
Testimony in Hudler v. Duffy, San Diego County Superior Court, regarding conditions and mental health services in San Diego County Jail, 1979
Testimony in Branson v. Winter, Santa Clara County Superior Court, regarding conditions and mental health services in Santa Clara County Jail, 1981
Testimony in Youngblood v. Gates, Los Angeles Superior Court, regarding conditions and mental health services in Los Angeles Police Department Jail, 1982
Testimony in Miller v. Howenstein, Marin County Superior Court, regarding conditions

and mental health services in Marin County Jail, 1982

Testimony in Fischer v. Geary, Santa Clara County Superior Court, regarding conditions and mental health services in Santa Clara County Women's Detention Facility, 1982

Testimony in Wilson v. Deukmejian, Marin County Sup Court, regarding conditions and mental health services at San Quentin Prison, 1983

Testimony in Toussaint/Wright/Thompson v. Enomoto, Federal District Court in San Francisco, regarding conditions and double-celling in California State Prison security housing units, 1983

Consultant, United States Department of Justice, Civil Rights Division, regarding conditions and mental health services in Michigan State Prisons, 1983-4

Testimony in Arreguin vs. Gates, Federal District Court, Orange County, regarding "Rubber Rooms" in Orange County Jail, 1988

Testimony in Gates v Deukmejian, in Federal Court in Sacramento, regarding conditions, quality of mental health services and segregation of inmates with HIV positivity or AIDS at California Medical Facility at Vacaville, 1989

Testimony in Coleman v. Wilson, Federal Court in Sacramento, regarding the quality of mental health services in the California Department of Corrections' statewide prison system, 1993

Testimony in Cain v. Michigan Department of Corrections, Michigan Court of Claims, regarding the effects on prisoners of a proposed policy regarding possessions, uniforms and classification, 1998

Testimony in Bazetta v. McGinnis, Federal Court in Detroit, regarding visiting policy and restriction of visits for substance abuse infractions, 2000

Testimony in Everson v. Michigan Department of Corrections, Federal Court in Detroit, regarding cross-gender staffing in prison housing units, 2001

Testimony in Jones 'El v. Litscher, Federal Court in Madison, Wisconsin, regarding confinement of prisoners suffering from severe mental illness in supermax, 2002

Testimony in Russell v. Johnson, Federal Court in Oxford, Mississippi, regarding conditions of confinement and treatment prisoners with mental illness on Death Row at Parchman, 2003

Testimony in Austin v. Wilkinson, Federal Court in Cleveland, Ohio, regarding proposed transfer of Death Row into Ohio State Penitentiary (supermax), August, 2005

Testimony in Roderick Johnson v. Richard Watham, Federal Court in Wichita Falls, Texas, regarding staff responsibility in case of prison rape, September, 2005

Testimony in Presley v. Epps, No. 4:05CV148-JAD, N.D., Oxford, Mississippi, 2005 & 2007, involving consitions in Supermax Unit 32 at Mississippi State Penitentiary and Treatment of Prisoners with Serious Mental Illness.

Testimony in DAI, Inc. v. NYOMH, Federal Court, So. Dist. NY, April 3, 2006, regarding

mental health care in NY Dept. of Correctional Services

Testimony in Neal v. Michigan DOC, State of Michigan, Circuit Court for the County of Washtenaw, January 30, 2008, File No. 96-6986-CZ, regarding custodial misconduct & sexual abuse of women prisoners

Testimony in Hadix v. Caruso, No. 4:92-cv-110, USDistCt, WDistMichiganTestimony, USDistCt, WDistMichigan, Grand Rapids, Michigan, regarding mental health care in prison, April 29, 2008

Testimony in John Doe v. Michigan D.O.C., Detroit, 2014.

Testimony in A.B. v. WA State Dept Soc'l & Health Services, USDistCtWDistWA, No. 14-cv-011 78-MJP, Seattle, March 17, 2015, regarding Competency Evaluations and Competency Restoration Treatment

Testimony (deposition) in Ashker v. Governor of California, USDistCtNoDistCA, Oakland, No. C 09-05796 CW, 2015, regarding confinement in excess of 10 years in Security Housing Unit at Pelican Bay State Prison.

Testimony in Dockery v. Hall, USDistCtSoDistMississippi, Jackson, No. 3:13CV326WHB-JCG, March 14-15, 2018, regarding psychiatric effects of conditions in solitary confinement Unit at Eastern Mississippi Correctional Facility.

Testimony (deposition) in John Doe et al. v. Michigan DOC, et al., Washtenaw County (MI) Circuit Court, Case Nos. 13-1196-CZ and 15-1006-CZ, August 7 & 8, 2019, Oakland, CA, regarding the situation of minors sentenced as adults to the Michigan D.O.C.

Testimony in Michael Hall (SC212933) et.al. & In Re Von Staich (SC212566), Sup. Ct., Co. of Marin, May 27, 2021. Case No. SC212933, et al, Case No. SC213244, et al., Case No. SC213534, et al. Regarding COVID-19 and response by CDCR at San Quentin Prison.

Journal Editorial Positions:

Men and Masculinities, Editorial Advisory Panel (in the past)

Juvenile Correctional Mental Health Report, Editorial Board (in the past)

Correctional Mental Health Report, Contributing Editor (current)

Presentations and Lectures (partial list):

"Expert Testimony on Jail and Prison Conditions." American Orthopsychiatric Association Annual Meeting, San Francisco, March 30, 1988, Panel 137: "How Expert are the Clinical Experts?

"The Termination of Psychotherapy." Psychiatry Department Grand Rounds, Mills/Peninsula Hospitals, Burlingame, February 24, 1989.

"Big Ideas, and Little Ones." American Psychiatric Association Annual Meeting, San Francisco, April, 1989.

"Men in Psychotherapy." Psychiatry Department Grand Rounds, Mills/Peninsula Hospitals, Burlingame, September 29, 1989.

"Psychodynamic Principles and Residency Training in Psychiatry." The Hilton Head Conference, Hilton Head Island, South Carolina, March 15, 1991.

Panelist: "The Mentally Ill in Jails and Prisons," California Bar Association Annual Meeting, Annaheim, 1991.

"The State of the Sexes: One Man's Viewpoint." The Commonwealth Club of California, San Mateo, March 25, 1992.

Keynote Address: "Feminism and the Family." 17th National Conference on Men and Masculinity, Chicago, July 10, 1992.

Panel Chair and Contributor: "Burnout in Public Mental Health Workers." Annual Meeting of the American Orthopsychiatric Association, San Francisco, May 22, 1993.

Panel Chair and Contributor: "Socioeconomic Class and Mental Illness." Annual Meeting of the American Psychiatric Association, San Francisco, May 26, 1993.

"Public Mental Health." National Council of Community Mental Health Centers Training Conference, San Francisco, June 12, 1993.

Psychiatry Department Grand Rounds: "Men's Issues in Psychotherapy." California Pacific Medical Center, San Francisco, February 24, 1993.

"The Effect of the Therapist's Gender on Male Clients in Couples and Family Therapy." Lecture at Center for Psychological Studies, Albany, California, April 15, 1994.

"Pathological Arrhythmicity and Other Male Foibles." Psychiatry Department Grand Rounds, Alta Bates Medical Center, June 7, 1993.

Roger Owens Memorial Lecture. "Prisons and Mental Illness." Department of Psychiatry, Alta Bates Medical Center, March 6, 1995.

Keynote Address: "Understanding Our Audience: How People Identify with Movements and Organizations." Annual Conference of the Western Labor Communications Association, San Francisco, April 24, 1998.

"Men in Groups and Other Intimacies." 44th Annual Group Therapy Symposium, University of California at San Francisco, November 6, 1998.

"Men in Prison." Keynote, 24th Annual Conference on Men and Masculinity, Pasadena, July 10, 1999.

"Trauma and Posttraumatic Stress Disorder in Prisoners" and "Prospects for Mental Health Treatment in Punitive Segregation." Staff Training Sessions at New York State Department of Mental Health, Corrections Division, at Albany, August 23, 1999, and at Central New York Psychiatric Institution at Utica, August 24.

"The Mental Health Crisis Behind Bars." Keynote, Missouri Association for Social Welfare Annual Conference, Columbia, Missouri, September 24, 1999.

"The Mental Health Crisis Behind Bars." Keynote, Annual Conference of the Association

of Community Living Agencies in Mental Health of New York State, Bolton Landing, NY, November 4, 1999.

"Racial and Cultural Differences in Perception Regarding the Criminal Justic Population." Statewide Cultural Competence and Mental Health Summit VII, Oakland, CA, December 1, 1999.

"The Criminalization of the Mentally Ill," 19th Annual Edward V. Sparer Symposium, University of Pennsylvania Law School, Philadelphia, April 7, 2000.

"Mentally Ill Prisoners." Keynote, California Criminal Justice Consortium Annual Symposium, San Francisco, June 3, 2000.

"Prison Madness/Prison Masculinities," address at the Michigan Prisoner Art Exhibit, Ann Arbor, February 16, 2001.

"The Mental Health Crisis Behind Bars," Keynote Address, Forensic Mental Health Association of California, Asilomar, March 21, 2001.

"Madness & The Forensic Hospital," grand rounds, Napa State Hospital, 11/30/01.

Commencement Address, The Wright Institute Graduate School of Psychology, June 2, 2002.

"Mental Illness & Prisons: A Toxic Combination," Keynote Address, Wisconsin Promising Practices Conference, Milwaukee, 1/16/02.

"The Buck Stops Here: Why & How to Provide Adequate Services to Clients Active in the Criminal Justice System," Annual Conference of the California Association of Social Rehabilitation Agencies, Walnut Creek, California, 5/2/02.

Keynote Address, "Mental Illness in Prison," International Association of Forensic Psychotherapists, Dublin, Ireland, May 20, 2005

Invited Testimony (written) at the Vera Institute of Justice, Commission on Safety and Abuse in America's Prisons, Newark, NJ, July 19, 2005

Invited Testimony at the National Prison Rape Elimination Commission hearing in San Francisco, August 19, 2005

Lecture, Prisoners with Serious Mental Illness: Their Plight, Treatment and Prognosis," American Psychiatric Association Institute on Psychiatric Services, San Diego, October 7, 2005

Grand Rounds, "The Disturbed/Disruptive Patient in the State Psychiatric Hospital," Napa State Hospital, June 26, 2007

Lecture, "Our Drug Laws Have Failed, Especially for Dually Diagnosed Individuals," 19th Annual Conference, California Psychiatric Association, Huntington Beach, CA, October 6, 2007

Panel: "Mental Health Care and Classification," Prison Litigation Conference, George Washington University Law School, Washington, D.C., March 28, 2008.

Keynote Address: "Winning at Rehabilitation," Annual Meeting of the Forensic Mental Health Association of California, Monterey, California, March 18, 2009

Panel: "Construction of Masculinity and Male Sexuality in Prison," UCLA Women's Law

Journal Symposium, Los Angeles, April 10, 2009

Panel: "Solitary Confinement in America's Prisons," Shaking the Foundations Conference, Stanford Law School, October 17, 2009.

Commencement Address, San Francisco Behavioral Health Court Graduation Ceremony, October 21, 2009.

Panel: "Negotiating Settlements of Systemic Prison Suits," Training & Advocacy Support Center, Protection & Advocacy Annual Conference, Los Angeles, June 8, 2010.

Grand Rounds, "Recidivism or Rehabilitation in Prison?," Alta Bates Summit Medical Center, November 1, 2010

Keynote Address: "Prison Culture & Mental Illness: a Bad Mix," University of Maryland Department of Psychiatry Cultural Diversity Day, Baltimore, Maryland, March 24, 2011.

Grand Rounds, "The Role of Misogyny & Homophobia in Prison Sexual Abuse," Alta Bates Summit Medical Center, October 17, 2011

Special Guest, "Offering Hope and Fostering Respect in Jail and Prison," 2011 ZIA Partners UnConvention, Asilomar Conference Center, October 24, 2011.

Invited Lecture, "Suicide Behind Bars: The Forgotten Epidemic," 2011 Institute on Psychiatric Services, American Psychiatric Association, San Francisco, October 28, 2011.

Lecture: "How Can We Help Persons with Mental Illness in the Criminal Justice System?," Solano County Re-entry Council, Fairfield, CA, January 15, 2012.

Lecture: "The Prison System in the U.S.A.: Recent History and Development, Structure, Special Issues," Conference of the American Bar Association Rule of Law Initiative, Cross-National Collaboration: Protecting prisoners in the US and Russia, Moscow, Russia, January 20, 2012.

Continuing Medical Education (CME) Presentation: "Correctional Psychiatry Overview," The Center for Public Service Psychiatry of Western Psychiatric Institute and Clinic (co-sponsored by the American Association of Community Psychiatrists), national videoconference originating in Pittsburg, PA, February 2, 2012.

Grand Rounds, "Mental Health Implications of the Occupy Movement," Alta Bates Summit Medical Center, October 8, 2012

Invited Speaker: "Solitary Confinement: Medical and Psychiatric Consequences," Session: Multi-Year Solitary Confinement in California and the Prisoner Hunger Strikes of 2011-2012, American Public Health Association Annual Meeting, Moscone Convention Center, San Francisco, October 29, 2012.

Keynote Address: "Solitary Confinement and Mental Health," Conference of the Midwest Coalition for Human Rights, Northeastern Illinois University, Chicago, November 9, 2012.

Symposium Presentation: "The Experience of Individuals with Mental

Illness in the Criminal Justice System," American Psychiatric Association Annual Meeting, Moscone Center, San Francisco, May 20, 2013.

Presentation: Incarceration and Racial Inequality in the U.S., Roundtable on the Role of Race and Ethnicity Among Persons Who Were Formerly Incarcerated, California Institute for Mental Health, Sacramento, California, February 28, 2014.

Testimony at Nevada Advisory Commission on the Administration of Justice on Isolated Confinement, Las Vegas, Nevada, March 5, 2014.

Lecture, "The Death Penalty and Mental Health," General Assembly of the World Coalition Against the Death Penalty, San Juan, Puerto Rico, June 21, 2014.

Staff Training: "Ethical Care in Managing and Treating the Disturbed/Disruptive Patient," Napa State Hospital, October 2, 2014.

Lecture: "The Multiple Traumas of Youth in Detention," American Psychiatric Association Institute on Psychiatric Services, San Francisco, November 1, 2014.

Guest Expert: Community Psychiatry Forum: "The Social, Economic and Political Impact of Incarceration."; The Center for Public Service Psychiatry at the University of Pittsburg, and the American Association of Community Psychiatrists, video-conference from Pittsburg, March 12, 2015.

Lecture: "The Struggles of People with Mental Illness in Jails," The Mental Health Board of San Francisco, San Francisco Department of Public Health, September 16, 2015.

Lecture: "A Psychoanalytic Response to the Effects of Forced Isolation in the Age of Mass Incarceration," Northern California Society for Psychoanalytic Psychology, Scientific Meeting, San Francisco, April 2, 2016.

Panel: "Mental Health, Neuroscience and the Physical Environment," Academy of Neuroscience for Architecture Conference, September 23, 2016, Salk Institute, University of California at San Diego.

Paper presentation: "Gender and Domination in Prison," Law Review Symposium on Gender and Incarceration, Western New England School of Law, Springfield, MA, October 14, 2016.

Presentation, " Working with Experts: An Expert and Lawyer Conversation," with Rachel Higgins, New Mexico Criminal Defense Lawyers' Association, Solitary Confinement & Prisoner Civil Rights, Albuquerque, New Mexico, May 5, 2017.

Keynote Address: "Corrections, Solitary Confinement and Prisoner Mental Health," Conference on Supporting Prisoner Mental Health, Vancouver, British Columbia, June 2, 2017.

Webinar, "The Humane Imperative: Ending Solitary Confinement. SAMHSA & NAMI, July 27,2017.

Lecture, "Masculinity Behind Bars: Violence on the Yards, Terror in Isolation," Center for the Study of Men and Masculinities, SUNY Stony Brook, delivered at Fordham University, Manhattan, October 24, 2017.

Lecture and Panel, "Solitary Confinement," Georgetown University, January 16, 2018

Participant, "National Summit on Mental Health & Criminal Justice Law & Policy," sponsored by the Equitas Project at Georgetown University, Washington, D.C., Jan. 17-18, 2018.

Featured Speaker, "Mental Illness and the Criminal Justice System," NAMI (National Alliance on Mental Illness), Contra Costa County, Feb 21, 2019

Presentation, "The Harm of Solitary Confinement," Washington State House Of Representatives, Public Safety Committee (by video), March 5, 2019.

Panel: "Solitary Confinement," University of California Human Rights Law Student Association and National Lawyers' Guild, University of California School of Law, Boalt Hall, Berkeley, March 5, 2019.

Panel: "Knowledge and Power: Contending with Science in Psychiatry," annual meeting of the American Psychiatric Association, San Francisco, May 19, 2019.

Panel: "Psychologists and Mass Incarceration," Healing Justice: Ending Mass Incarceration Conference, The Wright Institute, Berkeley, November 2, 2019.

Panel: "COVID-19 AND INCARCERATION: Mental Health Implications." UCLA Center for Social Medicine, Zoom Conference, April 18, 2020.

Panel: Solitary Confinement in Queensland, and University of Queensland Law School, Australia, May, 2020, video available at <https://law.uq.edu.au/research/human-rights/solitary-confinement-panel>

Panel: Solitary Confinement: A Public Health Hazard, The Louisiana Stop Solitary Coalition, New Orleans via video, July 15, 2020

Panel: Open MI Door: Ending Segregation in the State of Michigan, Lansing via video https://www.facebook.com/MICitizensforPrisonReform/videos/384069609652610/

Presentation: "The Decimation of Life Skills and the SHU Post-Release Syndrome," International Symposium on Solitary Confinement, Thomas Jefferson University, Philadelphia, PA (virtual), November 5, 2020.

Panel Moderator & Panelist, "Mass Incarceration in the Pandemic: Health Care Inside & Out," UCLA Center for Social Medicine & UCLA Law COVID-19 Behind Bars Data Project, Los Angeles (virtual), May 8, 2021.

Presentation, "Correctional Psychiatry," The Center for Public Service Psychiatry of Western Psychiatric Institute and Clinic, Pittsburg, PA via video, October 21, 2021.

Panelist, "Solitary Confinement: Peers Leading a Path Towards Elimination," Annual Conference of the National Association of Peer Supporters, October 21, 2021.

Panelist, "From Baraga to Brazil: A Historic Conversation on Solitary Confinement," Human Rights Watch, HaltSolitary, Open MI Door & Unlock the Box, November 11, 2021, Detroit MI via video.

Books Published:

Public Therapy: The Practice of Psychotherapy in the Public Mental Health Clinic. New York: Free Press/ MacMillan, 1981. Re-published as e-Book, 2015, at <http://www.freepsychotherapybooks.org/product/208-public-therapy-the-practice-of-psychotherapy-in-the-public-mental-health-clinic/category_pathway-14>

Ending Therapy: The Meaning of Termination. New York: New York University Press, 1988. Re-published as e-Book, 2014, at <http://freepsychotherapybooks.org/product/118-ending-therapy-the-meaning-of-termination>

(Editor): Using Psychodynamic Principles in Public Mental Health. New Directions for Mental Health Services, vol. 46. San Francisco: Jossey-Bass, 1990.

La Conclusione della Terapia: Problemi, metodi, conseguenze. Rome: Casa Editrice Astrolabio, 1992. (trans. of Ending Therapy.)

Revisioning Men's Lives: Gender, Intimacy and Power. New York: Guilford Publications, 1993. (trans. into Chinese, 2000; re-published as e-Book, 2014, at < https://www.freepsychotherapybooks.org/ebook/revisioning-mens-lives-gender-intimacy-and-power/>

Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It. San Francisco: Jossey-Bass/Wiley, 1999.

(Co-Editor & contributor): Prison Masculinities. Philadelphia: Temple University Press, 2001.

Solitary: The Inside Story of Supermax Isolation and How We Can Abolish It. Berkeley, CA: University of California Press, 2017.

Other Publications:

"The Depression of Tuberculin Delayed Hypersensitivity by Live Attenuated Mumps Virus," Journal of Pediatrics, 1970, 76, 716-721.

Editor and Contributor, An Ecological Approach to Resident Education in Psychiatry, the product of an NIMH Grant to the Department of Psychiatry and Human Behavior, Drew Medical School, 1973.

"Contact Between the Bars - A Rationale for Consultation in Prisons," Urban Health, Vol. 5, No. 1, February, 1976.

"Schizophrenia and History," Free Associations, No. 5, 1986, 79-89.

"The Dual Potential of Brief Psychotherapy," Free Associations, No. 6, 1986, pp. 80-99.

"Big Ideas, and Little Ones," Guest Editorial in Community Mental Health Journal, 1990, 26:3, 217-220.

"Feminist Men," Tikkun, July/August, 1990.
"Pathological Arrhythmicity in Men," Tikkun, March/April, 1991.
"The Public Therapist's Burnout and Its Effect on the Chronic Mental Patient." The Psychiatric Times, 9,2, February, 1992.
"The State of the Sexes: One Man's Viewpoint," The Commonwealth, 86,16, April, 1992.
"Schoolyard Fights." In Franklin Abbott, Ed., Boyhood. Freedom, California: Crossing Press, 1993; Univeristy of Wisconsin Press, 1998.
"Menfriends." Tikkun, March/April, 1993
"Psychotherapy, Neutrality and the Role of Activism." Community Mental Health Journal,1993.
"Review: Treating the Poor by Mathew Dumont." Community Mental Health Journal, 30(3),1994, 309-310.
"The Gender of the Therapist and the Male Client's Capacity to Fill Emotional Space." Voices, 30(3), 1994, 57-62.
"Soft Males and Mama's Boys: A Critique of Bly." In Michael Kimmel, Ed., The Politics of Manhood: Profeminist Men Respond to the Mythopoetic Men's Movement (And Mythopoetic Leaders Respond). Philadelphia: Temple University Press, 1995.
"Gender Bias, Countertransference and Couples Therapy." Journal of Couples Therapy, 1995.
"Jail and Prison Rape." TIE-Lines, February, 1995.
"The Politics of Psychiatry: Gender and Sexual Preference in DSM-IV." masculinities, 3,2, 1995, reprinted in Mary Roth Walsh, ed., Women, Men and Gender, Yale University Press, 1997.
"What Do Men Want?, review of M. Kimmel's Manhood in America." Readings, 10, 4, 1995.
Guest Editor, issue on Men's Issues in Treatment, Psychiatric Annals,2,1, 1996.
"Men at Work and Out of Work," Psychiatric Annals, 2,1, 1996.
"Trauma and its Sequelae in Male Prisoners." American Journal of Orthopsychiatry, 66, 2, 1996, 189-196.
"Consultation to Residential Psychosocial Rehabilitation Agencies." Community Psychiatric Practice Section, Community Mental Health Journal, 3, July, 1996.
"Shame and Punishment: Review of James Gilligan's Violence: Our Deadly Epidemic and its Causes," Readings, Sept., 1996.
"Community Mental Health: A Window of Opportunity for Interracial Therapy," Fort/Da, 2,2,1996.
"Men, Prison, and the American Dream," Tikkun, Jan-Feb., 1997.
"Dependency and Counter-Dependency in Couples," Journal of Couples Therapy, 7,1, 1997, 39-47. Published simultaneously in When One Partner is Willing and the Other is Not, ed. Barbara Jo Brothers, The Haworth Press, 1997, pp. 39-47.
"Shall We Overcome: Review of Jewelle Taylor Gibbs' Race and Justice," Readings,

December, 1997.

"The SHU Syndrome and Community Mental Health," The Community Psychiatrist, Summer, 1998.

"Review of Jerome Miller's Search and Destroy," Men and Masculinities, 1, 1, July, 1998.

"Will Building More Prisons Take a Bite Out of Crime?," Insight, Vol. 15, No. 21, June 7, 1999.

"The Mental Health Crisis Behind Bars," Harvard Mental Health Letter, July, 2000.

"Mental Health Police?," Readings, June, 2000.

"The Men's Movement in the U.S.A.," in Nouvelles Approches des Hommes et du Masculine, ed. Daniel Weizer-Lang, Les Presses Universitaires du Mirail, Toulouse, France, 2000.

"Symptoms, Meanings and Social Progress," Voices, 36, 4, 2000.

"Psychotherapy with Men in Prison," in A New Handbook of Counseling & Psychotherapy Approaches for Men, eds. Gary Brooks and Glenn Good, Jossey-Bass, 2001.

"A Very Wise Decision by the Montana Supreme Court," Correctional Mental Health Report, 5,3, 35-36, Sept./Oct, 2003.

"Review of William Roller's The Dead are Dancing," Psychiatric Services, 54,11,1660-1661, 2003.

"The Future of Correctional Mental Health," Correctional Mental Health Report, 6,1, May/June, 2004.

"Foreword," David Jones (ed.): Working with Dangerous People: The Psychotherapy of Violence, Oxon, UK: Radcliffe Medical Press Ltd., 2004.

"Malingering in Correctional Settings," Correctional Mental Health Report, 5, 6, 81-, March/April, 2004.

"Prisons," in Michael Kimmel & Amy Aronson (eds.), Men & Masculinities: A Social, Cultural, and Historical Encyclopedia, Santa Barbara, CA & Oxford, GB, ABC Clio, pp. 630-633, 2004.

"Mental Illness," in Michael Kimmel & Amy Aronson (eds.), Men & Masculinities: A Social, Cultural, and Historical Encyclopedia, Santa Barbara, CA & Oxford, GB, ABC Clio, pp. 537-539, 2004.

"Toxic Masculinity as a Barrier to Mental Health Treatment in Prison," Journal of Clinical Psychology, 61,6,1-2, 2005.

"Posttraumatic Stress Disorder (PTSD) in Prisoners," in Managing Special Populations in Jails and Prisons, ed. Stan Stojkovic,Kingston, NJ: Civic Research Institute, 2005.

"Schizophrenia, its Treatment and Prison Adjustment," in Managing Special Populations in Jails and Prisons, ed. Stan Stojkovic, Kingston, NJ: Civic Research Institute, 2005.

"The Prison Heat Issue," Correctional Mental Health Report, 7,2, July/August, 2005.

"How to Create Madness in Prison," in Humane Prisons, Ed. David Jones, Oxford:

Radcliffe Publishing, 2006.

"Conditions on death row,Terrell Unit,Texas," in M. Mulvey-Roberts (Ed.), Writing for their lives: Death Row USA (pp. 69-77). Carbondale: University of Illinois Press, pp. 69-77, 2006.

"Prison madness in Mississippi," in M. Mulvey-Roberts (Ed.), Writing for their lives: Death Row USA, Carbondale: University of Illinois Press, pp. 281-287, 2006.

"Working with Men in Prison," In International Encyclopedia of Men and Masculinities, 1 vol., eds. M. Flood, J.K. Gardiner, B. Pease, and K. Pringle. London & New York: Routledge, 2007.

"Post-Incarceration Civil Commitments and Public Mental Health: An Essay," Correctional Mental Health Report, 9,4, 2007.

"Violence in Prisons, Revisited," Hans Toch & Terry Kupers, Journal of Offender Rehabilitation, 45,3/4, 49-54, 2007.

"Posttraumatic Stress Disorder in Prisoners," Correctional Health Care Report, Vol. 9, Nos. 2 & 3, January/February, 2008

"Prison and the Decimation of Pro-Social Life Skills," in The Trauma of Psychological Torture, Editor Almerindo E. Ojeda, Vol 5 of Disaster and Trauma Psychology Series, Series Editor Gilbert Reyes, Westport, Connecticut: Praeger, 2008

"What To Do With the Survivors?: Coping With the Long-Term Effects of Isolated Confinement." Criminal Justice and Behavior, Vol. 35 No. 8, August 2008, pp. 1005-1016

"Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs," T.A. Kupers, T. Dronet, M. Winter, et al., Criminal Justice and Behavior, October, 2009.

"Introduction." King, R. (2009). From the Bottom of the Heap: The Autobiography of Black Panther Robert Hillary King. Oakland: PM Press.

"Mutual Respect and Effective Prison Management," in Transforming Corrections: Humanistic Approaches to Corrections and Offender Treatment, Editors David Polizzi & Michael Braswell, Durham: Carolina Academic Press, pp. 121-134, 2009.

"Preparing an Expert's Report," Correctional Mental Health Report, 12,1, 2010

"Treating Those Excluded from the SHU," Correctional Mental Health Report, 12,4, 2010.

"The Role of Misogyny and Homophobia in Prison Sexual Abuse," UCLA Women's Law Journal, 18,1, 2010.

Stuart Grassian & Terry Kupers, "The Colorado Study vs. the Reality of Supermax Confinement," Correctional Mental Health Report, Vol. 13, No. 1, May/June, 2011

"Preparing an Expert's Report," in Practical Guide to Correctional Mental Health and the Law, by Fred Cohen (with Terry Kupers,) Kingston, NJ: Civic Research Institute, 2011

"The Role of Psychiatry in Correctional Settings: A Community Mental Health Model," Correctional Mental Health Report, Vol. 13, No. 3, September/October, 2011

"Testimony of Terry Kupers, M.D., at August 23, 2011 Hearing of California Assembly Public Safety Committee Regarding Conditions at Pelican Bay State Prison Security Housing Units," Correctional Law Reporter, Vol XXIII, No. 4, December/January 2012

"A Community Mental Health Model for Corrections," Correctional Mental Health Report, Vol. 13, No. 5, January/February, 2012

"Programming Cells are Neither the Problem nor the Solution," Correctional Mental Health Report, 2012

"Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment's Sake?," The Routledge Handbook of International Crime and Justice Studies, Eds. Bruce Arrigo & Heather Bersot, Oxford: Routledge, 2013, pp. 213-232.

"The Psychiatrist's Obligation to Report Patient Abuse: A Dialogue with Fred Cohen," Correctional Mental Health Report, Vol 15, No. 5, Jan/Feb 2014

"Safety, Yes; Near Total Isolation and Idleness, No," Correctional Law Reporter, XXVI, No. 1, June/July 2014.

"A Community Mental Health Model in Corrections," Stanford Law & Policy Review, 26, 119-158, Spring, 2015.

Co-signatory, Brief of Amici Curiae, *Alfredo Prieto v. Harold C. Clarke,* Supreme Court of the U.S.A., No. 15-31, 2015.

Committee Member, Group for the Advancement of Psychiatry (GAP), *People With Mental Illness in the Criminal Justice System: A Cry for Help,* Washington, D.C.: American Psychiatric Association Press, 2016.

"How to Create Madness in Prison," in Hell is a Very Small Place, Editors Jean Casella, James Ridgeway & Sarah Shourd, New Press, 2016, pp. 163-178.

"The SHU Post-Release Syndrome," Correctional Mental Health Report, 17, 6, March/April, 2016.

"Alternatives to Long-Term Solitary Confinement," *Correctional Law Reporter*, Vol. XXVIII, No. 3, Oct. – Nov., 2016.

"Gender and Domination in Prison." *Western New England Law Review,* 39, 2017.

"The Asylum, The Prison and the Future of Community Mental Health," chapter in *Community Mental Health: Challenges for the 21st Century*, Editors Jessica Rosenberg and Samuel J. Rosenberg, New York & London: Taylor & Francis/Routledge, 2017.

"Waiting Alone to Die,' In *Living on Death Row: The Psychology of Waiting to Die*, edited by Hans Toch, James Acker and V.M. Bonventre. American Psychological Association Press, 2018.

"Posttraumatic Stress Disorder in Incarcerated Offenders, Treatment of," in the *Sage Encyclopedia of Criminal Psychology*, Sage Publications, 2019.

"Imprisonment and Stress," in the *Sage Encyclopedia of Criminal Psychology*, Sage Publications, 2019.

"Prospects for Correctional Mental Health Litigation*," Correctional Mental Health Report*, 21,4, November/December, 2019.

"ASPD Then and Now," *Correctional Mental Health Report*, 22, 1, May/June, 2020.

"We Need to Talk Nondefensively About Race and Admit Shortcomings," *Psychiatric News,* American Psychiatric Association, Vol. 55, No. 14, July 17, 2020.

"Supermax Prison Isolation in Pre-Crime Society." In THE PRE- CRIME SOCIETY: Crime, Culture and Control in the Ultramodern Age. Eds. Bruce A. Arrigo & Brian G. Sellers, Bristol University Press, 2021.

"Review of What We Know: Solutions from our Experiences in the Justice System," Editor Jules Lobell, *Rutgers University Criminal Law and Criminal Justice Book Reviews*, September, 2021.

"Future Prospects for Correctional Mental Health." Correctional Mental Health Report, Vol. 23, No. 2, Fall, 2021, pp. 33-34.

Depositions and Court Testimony in Past Four Years by Terry A. Kupers, M.D.

Testimony about Walter Cruz, San Francisco Immigration Court, December 18, 2017

Testimony in Dockery v. Hall, USDistCtSoDistMississippi, Jackson, No. 3:13CV326WHB-JCG, March 14-15, 2018, regarding psychiatric effects of conditions in solitary confinement Unit at Eastern Mississippi Correctional Facility.

Testimony in State v. Travis Smoot, Bakersfield Superior Court, Case No. BF164146A, March 20, 2019, criminal trial about murder of prisoner's cellmate.

Deposition in Jay Vermillion v. Mark Levenhagen, 1:15-cv-605-RLY-TAB, U.S.Dist.Ct,So.Dist.Indiana, in San Francisco, May 30, 20 about effects of Solitary Confinement at Westville Corr. Facil.

Deposition in William Richards v. County of San Bernadino et al, Case No. 5:17-cv-00497-SJO-SP, USDistCtCentralDistCA, in Oakland, July 19, 2019, re exoneration following false conviction.

Deposition in John Doe et al. v. Michigan DOC, et al., Washtenaw County (MI) Circuit Court, Case Nos. 13-1196-CZ and 15-1006-CZ, August 7 & 8, 2019, Oakland, CA. Class action regarding effects on juveniles of incarceration in adult prison facilities.

Deposition in Luong v. Alameda County, USDistCtNoDistCA No: 3:17-cv-06675-EMC, September 5, 2019, Oakland, CA, re death in custody at Santa Rita Jail Facility.

Deposition in Finley v. Huss et al, USDISTCtWestDistMichigan, North Division, No. 2-18-cv-100, October 15, 2019, Oakland, CA, re self-harm in solitary confinement.

Deposition in Andrew Wilson v. City of Los Angeles, U.S.Dist.Ct.CentralDist.CA, CASE NO. CV18-05775-KS, April 24, 2020, Berkeley & Los Angeles, telephonic, re exoneration following false conviction.

ATTACHMENT 1

Deposition in Atayde vs. Napa State Hospital et al., Case # 1:16-cv-00398-DAD-SAB, April 29, 2020, Berkeley, CA via video, re death by suicide in jail.

Deposition in Samuel Kolb vs. County of Placer, USDistCtEDistCA Case No. 2:19-cv-00079-DB, July 8, 2020, Berkeley, CA via video, re police-involved shooting.

Deposition in Gosier/Malone v. Wicomico County, Maryland. USDistCt for the Dist of Maryland. Case No. 1:19-CV-02412-SAG, March 4, 2021, Maryland/California via video, re jail suicide.

Testimony at Trial (in person), State of Florida v. William E. Wells, Circuit Court of the Eighth Judicial Circuit, in and for Bradford County, Florida, Case No. 04-2019-CF-000706-A, April 27 & 28, 2021, Starke, Bradford County, Florida. Capital Murder Trial.

Deposition in Michael Hall (SC212933) et.al. & In Re Von Staich (SC212566), Sup. Ct., Co. of Marin, May 4, 2021. Case No. SC212933, et al, Case No. SC213244, et al., Case No. SC213534, et al. Regarding COVID-19 and response by CDCR at San Quentin Prison.

Court Testimony in Michael Hall (SC212933) et.al. & In Re Von Staich (SC212566), Sup. Ct., Co. of Marin, May 27, 2021. Case No. SC212933, et al, Case No. SC213244, et al., Case No. SC213534, et al. Regarding COVID-19 and response by CDCR at San Quentin Prison.

Deposition in Gerald Len Cooley v. William Jeha et. al, USDistCtNoDistCA, Case No. 4:18-cv-00719-YGR. Video Deposition. October 20, 2021. Regarding effects of 4 month jail confinement following wrongful arrest.

CERTIFICATE OF FILING & SERVICE

I certify that on December 22, 2021, I filed this PETITIONER'S MOTION – OTHER – STAY PENDING JUDICIAL REVIEW OF AGENCY RULE ("MOTION-OTHER-STAY") with the State Court Administrator through the Court of Appeals' eFiling system and electronically serviced upon Denise G. Fjordbeck, OSB No. 822578, attorney for Respondent, using the courts electronic filing system.

By: *s/Benjamin Haile*
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Of Attorney for Petitioner on Review
Oregon Justice Resource Center

CERTIFICATE OF COMPLIANCE

I certify that this Motion is proportionately typed with 14-point font and contains 15240 words, contains a table of contents, table of authorities with pages, and list and description of attachments.

By: *s/Benjamin Haile*
Benjamin Haile OSB# 040660
Attorney for Petitioner on Review
Oregon Justice Resource Center