

January 27, 2014

Brad Livingston  
Executive Director, Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, TX 77342-0099  
FAX: 936-437-2123

Bryan Collier  
Deputy Executive Director, Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, TX 77342-0099  
FAX: 936-437-2123

Oliver Bell  
Chairman, Texas Board of Criminal Justice (TBCJ)  
P.O. Box 13084  
Austin, Texas  
FAX: 512-305-9398

**SUBJECT: REVISION TO TDCJ'S DEATH ROW PLAN**

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

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

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

Inmates on death row have stated, “[t]here is no incentive for good behavior at Polunsky” because all inmates are housed in punitive conditions. And research has found that removing inmates from solitary confinement to more humane and less restrictive housing can improve security, whereas “on average, long-term administrative segregation—especially if prisoners perceive it as being unfair and indefinite—

will in many cases exacerbate misconduct and psychiatric dysfunction.”<sup>1</sup> More privileges for people on death row will improve security by giving people an incentive to comply with prison regulations.

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

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

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

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

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

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

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

Sincerely,

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

Enclosures: 11

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

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

To Whom It May Concern:

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

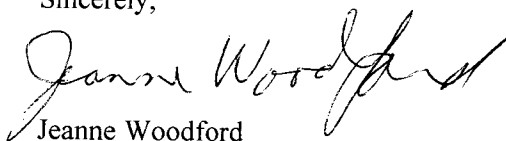
I write to support this coalition's demand that Texas cease to house death-row inmates in permanent solitary confinement. Based on my experience as a warden in California, I believe automatically housing death-row inmates in permanent solitary confinement decreases prison security.

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

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

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

Sincerely,



Jeanne Woodford



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



January 20, 2014

Greetings,

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

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

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

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

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

Respectfully,  
*Lance L Lowry*  
Lance Lowry  
President Local 3807



January 14, 2014

To Whom It May Concern,

The Texas chapter of the National Alliance on Mental Illness (NAMI) would like to express support for the letter recently submitted to TDCJ regarding suggested revisions to the Death Row Plan. NAMI Texas is affiliated with the National Alliance on Mental Illness (NAMI) and has 28 local affiliates throughout Texas and nearly 5,000 members made up of mental health consumers, family members, friends, and professionals. Our purpose is to help improve the lives of people affected by mental illness through education, support, and advocacy.

We wholeheartedly support the recommendations in the Death Row Plan letter to TDCJ. As indicated in the letter, increasing certain privileges of individuals on death row improves prison security, amounts to more humane treatment, and can have profoundly positive consequences for inmates, correctional staff, and family members. The specific recommendations made would make criminal justice facilities managed by TDCJ a safer environment.

NAMI has concerns about the common practice of placing death row inmates in long-term solitary confinement. Studies have shown that depriving inmates of human contact and keeping them in solitary confinement for long periods of time may exacerbate mental health disturbances, assaultive and other antisocial behaviors, and chronic and acute health disorders.<sup>1</sup> Psychological effects can include anxiety, depression, anger, cognitive disturbances, perceptual distortions, obsessive thoughts, paranoia, and psychosis.<sup>2</sup> Solitary confinement is also linked to increased suicide risk. A review of past studies found that 50% of completed suicides by inmates occur among the 2-8% of prisoners who are housed in solitary confinement.<sup>3</sup> Increasing certain privileges of inmates on death row would help to address the negative psychological and security consequences associated with solitary confinement.

We strongly recommend that TDCJ consider the suggested revisions in the upcoming Death Row Plan review. Additionally, we respectfully request further investigation into the issue of individuals not receiving psychotropic medications upon transfer to death row.

Sincerely,

Greg Hansch  
Policy Coordinator, NAMI Texas  
Email: [ghansch@namitexas.org](mailto:ghansch@namitexas.org)  
Phone: 908-229-7082

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<sup>1</sup> Angela Browne, Alissa Cambier and Suzanne Agha, "Prisons within Prisons: The Use of Segregation in the United States," Federal Sentencing Reporter, Vol. 24, no. 1 (October 2011), p. 46 (citing David Lovell, L. Clark Johnson, and Kevin C. Caine, Recidivism of Supermax Prisoners in Washington State, 53 CRIME DELINQUENCY 633-56 (2007); David Lovell & Clark Johnson, FELONY AND VIOLENT RECIDIVISM AMONG SUPERMAX PRISON INMATES IN WASHINGTON STATE: A PILOT STUDY (University of Washington, 2004), available at <http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidism-4-19-04.pdf>).

<sup>2</sup> Smith PS: The effects of solitary confinement on prison inmates: a brief history and review of the literature. Crim Just 34:441-568, 2006

<sup>3</sup> *The Colorado Study vs. the Reality of Supermax Confinement*, Stuart Grassian, M.D., J.D., and Terry Kupers M.D, M.S.P., Correctional Mental Health Report, Volume 13 No. 1, May/June 2011

January 22, 2014

To Whom It May Concern:

Mental Health America of Texas expresses our support for the attached letter regarding suggested changes to the death row plan.

Mental Health America of Texas is the oldest statewide mental health advocacy organization in Texas—79 years. We continue to work diligently to prevent mental illness and substance abuse, and ensure all Texans have access to effective, culturally competent mental health care.

In addition, Mental Health America of Texas serves on the Texas Council on Offenders with Medical and Mental Impairments (TCOOMMI) and we believe the recommendations in the death row plan are consistent with the principles of the Committee.

Mental Health America of Texas believes that the revisions suggested in the attached letter can safeguard individuals' mental health, and prevent some mental health-related crises from developing. It is our view that incorporating the suggested changes will lead to creating a safer, more humane environment at the Texas Department of Criminal Justice (TDCJ).

We strongly urge TDCJ to incorporate the suggested revisions in the final death row plan.

Sincerely,

Lynn Lasky Clark, President & CEO  
Mental Health America of Texas

John Theiss, Board Chair  
Mental Health America of Texas





Texas Inmate Families Association  
P.O. Box 300220  
Austin, TX 78703-0004

Jan 16, 2014

To Whom It May Concern:

The Texas Inmate Families Association (TIFA) wants to express our support of the attached letter to the Texas Department of Criminal Justice (TDCJ) in regard to the suggested revisions to the Death Row Plan. These revisions support our advocacy for families of incarcerated loved ones in Texas prisons.

TIFA knows how vitally important it is for families to be able to continue physical and verbal contact with their incarcerated loved ones. There is the importance of a child with an incarcerated parent being able to visit their parents or siblings, to be able to hug them or to hold their hand in a contact visit. Most family members suffer extreme emotional anguish over finding their mother, father, sister, brother or other family members being sentenced to prison and eventually death. Incarceration has a very real effect upon the families. As one of our members has pointed out, having contact visits makes a child realize that their father or mother is real, and not just a figure behind plexiglass. Just as some people suffer from Empty Nest Syndrome if their child goes off to college, parents whose child goes to prison suffer in the same way. But going to prison is so much more severe, especially for those families who know that their child or loved one will eventually be killed.

It would benefit our civilization as a whole, and especially the families of Death Row inmates, if we can encourage the implementation of policies that would increase privileges, such as contact visits. Solitary confinement, no contact visits with families, no privileges whatsoever for years is cruel and unusual punishment, especially for families who suffer with no recourse. Rather than make families suffer because of the inmate's incarceration, it would make life more bearable for Death Row Inmate families who are living through these emotionally traumatic years, if TDCJ could consider implementing the changes suggested in the attached letter regarding the Death Row Plan.

Sincerely,

Jennifer Erschabek  
Executive Director  
Texas Inmate Families Association

To Whom It May Concern:

In light of the upcoming revisions to the Death Row Plan, I, Chris Castillo, a murder victim family member and Coordinator of Chaplain Volunteers for Criminal Justice Ministry at the Diocese of Beaumont, submit in writing suggested revisions to the plan. Religious leaders, mental-health professionals, civil-rights advocates, lawyers, crime victims and security experts understand the import of maintaining security in all TDCJ facilities. It is our belief, based on accepted research and proven methods used in other jurisdictions, that the following revisions do not compromise security, and instead can increase security, reduce the filing of grievances, and even improve the lives of correctional staff, who currently must work in the most hostile and tense of environments.

I have a unique witness concerning the Death Penalty because my mother was murdered in 1991 and I am totally against the Death Penalty, and believe conditions on Death Row need to be changed.

I have worked in prison ministry for more than a dozen years. I am currently the Coordinator of Chaplain Volunteers for the Diocese of Beaumont. But in 1991 I was a reporter. I got a call Nov. 21, 1991 that would change my life. I learned my mother had been murdered by two men who later fled the U.S. The case remains unsolved. Years after my experience, I was led to prison ministry. It changed my life and my attitude about people. I learned that we are all sinners and that we all do bad things. Some of us just get caught.

And, as Pope Francis says “Who am I to judge.” I do believe in life without the possibility of parole, but I don’t because we have the right to take someone’s life. That should be left up to God.

In Texas prisons, the units with the best regulated air systems have pig farms. It keeps the pigs from dying. But the inmates don’t get the same regulate conditions. They freeze in the winter and burn up in the summer. And, men on death row stay in their cells 23 hours a day, only let out to shower and for recreation. For me, that is cruel and unusual punishment. They are basically left in solitary confinement for 15 or more years until their appeals run out. All the time, the family of the victims are suffering, wondering if the killer will be let go, executed or worse, face a retrial on a technicality.

We all deserve better. Please improve conditions on Death Row and in Texas prisons. We need humane conditions. We shouldn’t treat people like unwanted animals – locked away until it’s time to die. We should ask more of our criminal justice system.

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

Inmates on death row have stated, “there is no incentive for good behavior at Polunsky” because all inmates are housed in punitive conditions. And research has found that removing inmates from solitary confinement to more humane and less restrictive housing can improve security, whereas “on average, long-term administrative segregation—especially if prisoners perceive it as being unfair and indefinite—

will in many cases exacerbate misconduct and psychiatric dysfunction.”<sup>1</sup> More privileges for people on death row will improve security by giving people an incentive to comply with prison regulations.

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

- **Contact visits with families:** People on death row used to be allowed to have contact visits with families at Ellis, but now they can only meet their families from behind a glass window. This isolation has a profound impact not just on inmates, but on their families.
- **Communal recreational activities:** In the Ellis unit, inmates were able to recreate with one another. At the Polunsky Unit, inmates are completely alone during their recreational time.
- **Work capability:** People on death row were allowed to work on the Ellis Unit. Working provided a sense of purpose and community, and an incentive for good behavior. Although the new death row unit may not be constructed for manufacturing jobs, people on death row could still usefully participate in chores on their own unit, like cleaning, kitchen, and laundry.
- **Religious services:** People in death row participated in communal religious services in the Ellis Unit, but inmates report this is no longer the case at the Polunsky Unit.
- **Wide range of in-cell arts and crafts:** Inmates on death row used to have access to a wider range of arts and crafts. Arts were a meaningful activity. At Polunsky, the craft program is greatly circumscribed.
- **Phone privileges:** There is no phone in the day room. This is extremely troubling for people on death row, who often need to communicate urgently with their counsel, or may need to quickly find new counsel if their current attorney drops their appeal. Also, inmates are rarely allowed to call their families. TDCJ should increase phone privileges for inmates both for legal and personal calls.
- **Confidential attorney meeting rooms:** Attorneys used to be able to meet with their clients in confidential meeting rooms, where their attorney-client communications could not be overheard by other visitors or TDCJ staff. Now, attorneys can only communicate with their clients in the general meeting area, where they have no privacy to discuss confidential issues in their clients' criminal cases. Moreover, attorneys used to be able to buy snacks and beverages for their clients during their often-times lengthy meetings. Lately, attorneys have been told that they can no longer provide snacks or beverages for their clients.

In addition to the above suggestions, conditions in death row are a significant concern to a broad range of individuals. We ask the Department to facilitate dialogue with outside groups regarding death row policies and conditions. Among other matters for discussion, organizations have reported that people

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

are not receiving their psychotropic medications upon their transfer to death row. We are also concerned about inmates' reports that their mail is being held up to 72 hours before being distributed to them, inhibiting their communication with counsel about urgent matters and causing them to miss court deadlines.

I urge TDCJ to incorporate these changes in the upcoming Death Row Plan review.

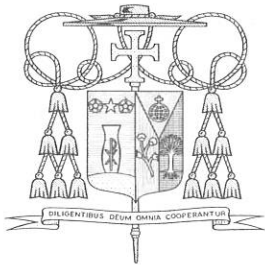
Sincerely,

James "Chris" Castillo



1-17-2014

Coordinator of Chaplain Volunteers  
Criminal Justice Ministry  
Diocese of Beaumont  
P.O. Box 3948  
Beaumont, TX 77704-3948  
[ccastillo@dioceseofbmt.org](mailto:ccastillo@dioceseofbmt.org)  
(409) 924-4316 office



## Diocese of Beaumont

Catholic Pastoral Center

Website: [www.dioceseofbmt.org](http://www.dioceseofbmt.org)

Mail: Post Office Box 3948  
Beaumont, Texas 77704-3948

Telephone: (409) 924-4300

Fax: (409) 838-4511

(Location: 710 Archie Street at Forsythe Street, 77701-2802)

January 21, 2014

To Whom It May Concern:

We have reviewed the letter of Revisions to the Death Row Plan in detail and find it to be very comprehensive. We support these recommendations.

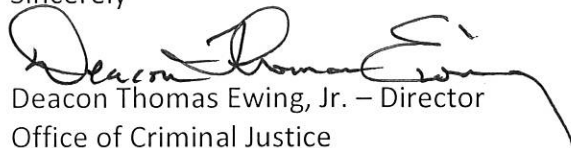
As one of the Chaplains who has visited and ministered to men on Death Row, we have one additional important recommendation.

Currently, Volunteer Chaplains who visit death row offenders are required to be escorted by a TDCJ guard at all times during their cell-to-cell pastoral visits.

Recommendation: The lack of guard availability is often a severe impediment to Chaplains being allowed to see death row offenders. This often requires that "scheduled escort time" be cancelled. A solution to this problem would be to allow a trained Certified Volunteer Chaplain Assistant (CVCA) "with the approval of TDCJ" the ability to visit death row offenders without an escort. This would not be a threat to security since death row visits are being recorded and monitored by TV cameras. The increase in Chaplain visits would be very beneficial to the death row offenders. An additional benefit would be the offender may be more likely to open up to the Chaplain because a guard is not standing by the cell next to the Chaplain. The Correctional Officer would then be free from escort service in order to perform his more important duties. Chaplaincy visits often bring a calming effect to Death Row.

We appreciate your consideration in this matter.

Sincerely



Deacon Thomas Ewing, Jr. – Director  
Office of Criminal Justice  
Diocese of Beaumont

CC: Bishop Curtis J Guillory, S.V.D, D.D.



**Member Organizations**

**Christian Church  
(Disciples of Christ)**  
Bluebonnet Area  
Coastal Plains Area  
Trinity-Brazos Area  
Southwest Region

**Episcopal Church**  
Episcopal Diocese of West Texas

**Evangelical Lutheran Church  
in America**  
Northern Texas-Northern Louisiana  
Synod  
Texas-Louisiana Gulf Coast Synod  
Southwestern Texas Synod

**Presbyterian Church (USA)**  
Grace Presbytery  
Mission Presbytery  
Palo Duro Presbytery

**Society of Friends**  
South Central Yearly Meeting

**United Church of Christ**  
South Central Conference

**United Methodist Church**  
Central Texas Conference  
North Texas Conference  
Northwest Texas Conference  
Southwest Texas Conference  
Texas Conference  
United Methodist Women

**Texas Baptist Christian Life  
Commission**  
Union Baptist Fellowship  
American Jewish Committee  
National Council of Jewish Women  
Church Women United  
Freedom and Justice Foundation  
Interfaith Action of Central Texas  
CitySquare  
Tarrant Area Community of  
Churches

**Bee Moorhead**  
Executive Director



January 27, 2014

To Whom It May Concern:

Texas Impact is the state's largest and oldest interfaith network representing the people and values of over two dozen Christian, Jewish, and Muslim denominational bodies; as well as hundreds of faith communities and thousands of Texans.

As people of faith, we are called to love all people, regardless of their condition. Even those who have committed crimes and who are separated from the public should be treated with dignity and given the chance to live meaningful lives. Texas Impact supports revisions to the state's Death Row Plan that would recognize the inherent dignity of prisoners on death row without diminishing public safety, as suggested in the letter.

In the Judeo-Christian tradition, God declares, "It is not good that a person should be alone" (Genesis 2:18). Privileges like communal recreation time, work detail, and even television mitigate the loneliness of segregation while encouraging good behavior. We must also remember that all people on death row come from and will leave behind families. Contact visits and phone calls give loved ones the chance to make the most of their remaining time while a person awaits execution. As people of faith, we are particularly concerned when people are not allowed to freely practice their religion while in prison.

We urge TDCJ to consider the attached letter's proposed changes to the Death Row Plan "with all humility and gentleness, with patience, bearing with one another in love, eager to maintain the unity of the Spirit in the bond of peace" (Ephesians 4:2-3). We appreciate the opportunity to comment and thank you in advance for your attention.

Sincerely,

Bee Moorhead, Executive Director

Texas Impact

**Member Signatures of Support**  
***Affiliations and Titles for Identification Purposes Only***

Bishop Joe Wilson, United Methodist Church Bishop-in-Residence, Southwestern University  
Rev. Dr. Ray Tiemann, Bishop, Southwestern TX Synod, Evangelical Lutheran Church in America  
Rev. Ellen Willett, Pastor, First United Methodist Church, Huntsville, TX  
Dr. Edwin S. Davis, Coordinator of Restorative Justice, Episcopal Diocese of Texas  
Rev. Cheryl Smith, Pastor, Wesley Memorial United Methodist Church, Huntsville, TX  
Rev. Scott Moore, Executive Pastor, First United Methodist Church, Conroe, TX  
Rev. Mel Caraway, Pastor, Button Memorial United Methodist Church, Little Elm, TX  
Elder Edward George, Chair of Outreach Committee, Covenant Presbyterian Church, Lubbock, TX  
Elder Cecelia George, Covenant Presbyterian Church, Lubbock, TX  
Rev. Jennifer Veres-Schrecengost, St. John's United Methodist Church, Richmond, TX  
Rev. Ronald Smith, Mt. Calvary Baptist Church, Houston, TX; President/co-founder, United Baptist Fellowship  
Rev. Dr. Randall Smith, Texas Annual Conference of the United Methodist Church, Tyler, TX  
Susan Aguilar, United Methodist Church  
Rev. Dr. Whitney Bodman, Austin Presbyterian Theological Seminary, Austin, TX  
Rev. Bobby J. McMillan, United Methodist Church, Lubbock, TX  
Rev. Kevin D. Young, St. Johns United Methodist Church, Lubbock, TX  
Rev. Ted Dotts, United Methodist Church, Lubbock, TX  
Rev. Dr. Anthony J. Thieman-Somora, United Church of Christ, Lubbock, TX  
Laura Young, United Methodist Church, Lubbock, TX  
Deborah Randolph Bratcher, United Methodist Church, Lubbock, TX  
Craig Rutherford, United Methodist Church, Lubbock, TX  
Margaret Elizabeth Pressley, United Methodist Church, Lubbock, TX  
John McLarty, United Methodist Church, Lubbock, TX  
Sara McLarty, United Methodist Church, Lubbock, TX  
Sylvia Ashby, United Methodist Church, Lubbock, TX  
Donna Echols, United Methodist Church, Lubbock, TX  
Martha Vaughan, Laity, First United Methodist Church, Waskom, TX  
Rev. Lisa Beth White, Faith United Methodist Church, Richmond, TX  
Rev. Milton Jordan, Chair, Central Texas Methodist Federation for Social Action  
Rev. Sue Abold, Southwest Texas Annual Conference of the UMC  
Betsy Singleton, United Methodist Women's Legislative Committee  
Helen Harkreader, United Methodist Women  
Rev. Dr. Sansom Williams, University Presbyterian Church of Austin  
Wanda Holcombe, United Methodist Church  
Trish Merrill, United Methodist Women  
Dr. Michael G. Renquist, St. John's United Methodist Church of Austin  
Rev. Dr. Georjean Blanton, St. John's United Methodist Church of Austin  
Amanda Quraishi, North Austin Muslim Community Center  
Rita Carlson, Southwestern TX Synod Evangelical Lutheran Church in America

Lin Team, Mission Presbytery Church  
Galia Harrington, Friends Meeting of Austin  
Howard Hawhee, Friends Meeting of Austin  
Hodges Lee Martin, M. D., M. P. H., Friends Meeting of Austin  
Glenna Balch, Friends Meeting of Austin  
Elizabeth Yeats, Friends Meeting of Austin  
South Central Yearly Meeting of the Religious Society of Friends  
Mary Hampton, Friends Meeting of Austin  
Rev. Glynden Bode, Texas Annual Conference of the United Methodist Church  
Tim Marlowe, South Central Conference of the United Church of Christ  
Jude Filler  
Frank Dietz, United Church of Christ clergy and Retired Exec. Director, TX Conference of Churches  
Kathleen Burke, Friends Meeting of Austin  
Rev. Douglas Anders, South Central Conference Minister, United Church of Christ  
Dorothy Kraemer, Southwestern TX Synod Evangelical Lutheran Church in America  
Gulielma Leonard Fager, Friends Meeting of Austin  
Joanna R. Vaughn, Friends Meeting of Austin  
Linda Ormand, First UMC Conroe  
Reverend Judy O'Donnell, Trinity-Brazos Area Christian Church (DOC)  
Reverend Ernie O'Donnell, Trinity-Brazos Area Christian Church (DOC)  
Jackee Cox, Trinity-Brazos Area Christian Church (DOC)  
Brian Wharton, Faith United Methodist Church, Spring, TX  
Rick Ertel, Southwestern TX Synod Evangelical Lutheran Church in America  
Rev. Herb Palmer [Texas-Louisiana Gulf Coast Synod, Evangelical Lutheran Church In America](#), Houston, TX  
Rev. Melinda Veach, Executive Director of Tarrant Area Community of Churches, Ft. Worth, TX  
Rev. Todd A. Cooper, St. Paul's United Methodist Church, Tyler, TX  
Rabbi Neal Katz, Congregation Beth El, Tyler, TX  
Rabbi Neil F. Blumofe, Congregation Agudas Achim, Austin, TX





Please respond to Houston office.  
Email: [KMKase@texasdefender.org](mailto:KMKase@texasdefender.org)

January 24, 2014

Brad Livingston  
Executive Director, Texas Department of Criminal Justice  
209 West 14th Street  
5th Floor, Price Daniel Building  
Austin, TX 78701

Bryan Collier  
Deputy Executive Director, Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, TX 77342-0099

Oliver Bell  
Chairman, Texas Board of Criminal Justice (TBCJ)  
P.O. Box 13084  
Austin, Texas

Re: **Revision of Death Row Plan**

Dear Director Livingston, Deputy Director Collier and Chairman Bell:

*Austin Office*  
510 S. Congress  
Suite 304  
Austin, Texas 78704  
[v] 512 320-8300  
[f] 512 477-2153

*Houston Office*  
1927 Blodgett St.  
Houston, Texas 77004  
[v] 713 222-7788  
[f] 713 222-0260

[www.texasdefender.org](http://www.texasdefender.org)

*Executive Director*  
Kathryn M. Kase

*Interim Post-Conviction  
Director*  
Lee Kovarsky

*Trial Project Director*  
Ken Murray

*Board of Directors*  
Prof. Jordan Steiker  
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Alison Leland  
Neal S. Manne  
Prof. Jeff Pokorak  
Douglas Robinson  
Prof. Elisabeth Semel  
Raoul Schonemann  
Gretchen S. Sween  
Andrew Tauber

Texas Defender Service submits this separate letter in support of specific revisions to the Death Row Plan, which we understand is slated for reconsideration and amendment. We support the Plan's amendment because we seek conditions that allow us to better serve our clients.

Texas Defender Service is a non-profit legal services organization focused on improving indigent defense through the lens of the death penalty in Texas. Since our founding in 1995, our attorneys have represented scores of condemned prisoners. In so doing, our attorneys, mitigation specialists, paralegals, and law interns have regularly traveled to death row – whether located at the Ellis, Polunsky or Mountain View units – to confer with clients, observe mental evaluations, conduct depositions, and otherwise represent the interests of those facing Texas' most severe punishment.

The foundation of the lawyer-client relationship is a client's trust that the lawyer will exercise appropriate professional judgment on the client's behalf. This "relationship of trust" is so important in death penalty cases that both the State Bar of Texas and the American Bar Association explicitly require that post-conviction counsel and the members of their defense teams build such a relationship with condemned clients.<sup>1</sup>

<sup>1</sup> American Bar Association, Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Guideline 10.2 (Rev. ed. 2003), *reprinted in* 31 HOFSTRA L. REV. 913 (2003) (hereinafter "ABA Guidelines"); State Bar of Texas, Guidelines and Standards for Texas Capital Defense Counsel, Guideline 10.2 (Apr. 21, 2006), *reprinted in* 69 TEX. BAR J. 966 (Nov. 2006) ("Texas Guidelines").

The ABA acknowledges that a death-row client may be unwilling to trust counsel because, by the time the post-conviction lawyer is appointed, “the client will have put his life into the hands of at least one other lawyer and found himself on death row.”<sup>2</sup> Trust also may be impeded by mental illness, mental retardation, chronic health conditions, as well as language and cultural barriers.<sup>3</sup> Thus, amid these obstacles to trust, it is even more critical that post-conviction counsel seek and obtain the client’s confidence.

Previously, visitation practices on the Polunsky Unit – and, in particular, the use of the attorney-client visitation booths and the ability of counsel to purchase food for clients – assisted the building of a trust relationship between condemned inmates and their counsel. The recent unexplained elimination of those accommodations has made it much more difficult to establish and maintain the attorney-client relationship.

While prison personnel may see no need for use of the visitation booths by counsel, the booths ensure the privacy of attorney-client communications. The Texas Disciplinary Rules of Professional Conduct make clear that lawyers must keep their communications with clients confidential.<sup>4</sup> The Polunsky Unit’s current requirement that attorneys sit in the general visitation area to conduct legal visits creates an unacceptable risk that TDCJ staff, other visitors, and other inmates will overhear attorney-client conversations and that staff and other visitors will view documents that attorneys have brought to discuss with clients.

Also damaging to the attorney-client relationship is the Polunsky Unit’s elimination of the opportunity for counsel to purchase food and drink for clients during the visit. Post-conviction counsel are mandated to explain the state and federal law that governs capital habeas cases to their clients.<sup>5</sup> This law is complicated and not easily explained to other attorneys, let alone to clients whose education likely ended in high school. As a result, death row legal visits can stretch to hours while lawyers fulfill their professional duties. Food purchases are made to facilitate visits for clients who would otherwise miss meals because they are having a legal visit when meals are delivered to their cells or because they have health conditions or are on medications (or both) and must eat at regular intervals. When the client is hungry, legal visits become truncated and the likelihood is diminished that the client will be well-informed about his case and the law that governs it.

It is no solution that post-conviction counsel could theoretically explain the law in letters to clients. Many death row prisoners are barely literate, some because their cognitive functioning is extremely low. Others suffer from mental illnesses that make it difficult for

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<sup>2</sup> Commentary to ABA Guideline 10.5.1.

<sup>3</sup> Commentary to ABA Guideline 10.5.

<sup>4</sup> Texas Disciplinary Rules of Professional Conduct, Comment 1 to Rule 1.05.

<sup>5</sup> Texas Guideline 12.2(B)(2)(b).

Director Livingston, Deputy Director Collier and Chairman Bell  
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them to communicate straightforwardly in writing. For these prisoners, verbal communication is the only way that they can hope to understand their legal cases.

For these reasons, the Death Row Plan should permit prisoners greater access to telephones for confidential consultation with their legal teams. The current policy limits phone calls to those requested by counsel and then to topics that cannot be addressed during visits or in correspondence. This practice effectively ensures that communication runs in only one direction (from counsel to the client) and prevents prisoners from communicating with legal counsel who have been non-responsive by mail.

Texas Defender Service asks TDCJ to amend its Death Row Plan in order to eliminate the practices discussed here that impede the delivery of legal services to death row inmates. We would be more than willing to meet with you to discuss these requests in greater detail.

Very truly yours,



Kathryn M. Kase  
*Executive Director*

**BURR & WELCH**  
**Attorneys at Law**  
**P.O. Box 525**  
**Leggett, Texas 77350**

**Richard Burr**  
*(dick@burrandwelch.com)*  
**Mandy Welch**  
*(mandy@burrandwelch.com)*

**(713) 628-3391**  
**fax (713) 893-2500**

January 24, 2014

Re: Revision of Death Row Plan

To Whom It May Concern:

I am writing concerning possible revision of Texas' Death Row Plan. Since 1979, I have been representing people sentenced to death, and since 1981, I have devoted my entire practice to this work. Since 1994, the primary focus of my work has been in Texas.

I am writing to urge at least three reforms of the current plan: (1) private contact legal visits, (2) contact social visits, and (3) the development of options for greater out-of-cell and social time for death row prisoners.

Private contact legal visits play a very significant role in the development of the attorney-client relationship. The development of a relationship of trust and honesty between a death-sentenced person and his or her lawyer is critical to the lawyer's ability to provide effective legal representation. The ability to meet in a room together, in private, enhances communications in every respect – assuring that the client understands information necessary to make the choices the client must make in the course of a case, allowing the client to get to know the lawyer better and to feel safe in disclosing information that might be seen as shameful or humiliating or hurtful, and creating an inviolate sanctuary that allows anything to be said in relation to the client or the case that needs to be said. I understand that it is not the job of a prison to assist lawyers in the representation of their clients. However, it is the responsibility of the prison to do nothing that constricts and make less effective the representation of a client. Failing to provide private contact visits hinders the representation of clients on death row.

I know this first-hand, because for more than ten years, before my practice focused on Texas, I represented death-sentenced people in Florida and other states. During that time, Florida State Prison provided private contact legal visits. I was able to develop a closer and more trusting relationship with my Florida clients than I could with my clients on state death rows that did not allow for such legal visits. This enhanced the quality of the assistance I was able to provide to these clients. Texas should allow for such visits.

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Contact social visits should also be provided. One of the greatest risks to people sentenced to death is that they will become depressed and suicidal, or severely mentally ill. The weight of the sentence, the isolation from others, the execution of people they come to be friends with – all take a toll on people on death row. Sometimes people on death row become both depressed and severely mentally ill, and if not suicidal, become so miserable that they hurt themselves or make others around them miserable. Everyone on death row is susceptible to depression, mental illness, acting out as a result of depression and mental illness, and suicide. Not all succumb to these disorders, but many do.

One of the best means of helping people live for however long they must live on death row without succumbing to mental illness, is to provide contact social visits. Such visits provide opportunities for people to be touched by someone who cares about them, to embrace and be embraced by those who love them, to laugh, to cry, to experience the full range of human emotion that is experienced only when human beings have direct contact with one another. Providing contact social visits nurtures the core of human-ness of people on death row and allows them to live with less suffering and less mental torture. The infliction of death should be seen as punishment enough. The gradual killing of people on death row that comes from social isolation and the deprivation of affectionate human contact should not be part of a death sentence.

This, too, is the reason to allow death row prisoners opportunities to be out of their cells more than they are and to include in their out-of-cell time opportunities for social interaction. When Texas' death row was in the Ellis Unit, these opportunities were provided through communal day rooms work. The move to Polunsky ended these opportunities. My own experience with clients is that after death row moved to Polunsky, the rate of depression, mental illness, and suffering went up significantly. While not the only cause of this, the deprivation of opportunities for social interaction surely has played a significant role in this increase in suffering. Again, we should not be about increasing the suffering of those who will pay for their offenses with their lives. That punishment and the suffering it inherently causes is surely punishment enough.

I would be honored to met with you in person to discuss these and other concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard H. Burr". The signature is stylized and includes a long horizontal flourish extending to the right.

Richard H. Burr

# TEXAS CIVIL RIGHTS PROJECT - HOUSTON

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2006 Wheeler Ave.  
Houston, TX 77004  
(832) 767-3650 (phone) (832) 554-9981 (fax)

January 27, 2014

Brad Livingston  
Executive Director, Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, TX 77342-0099  
FAX: 936-437-2123

Bryan Collier  
Deputy Executive Director, Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, TX 77342-0099  
FAX: 936-437-2123

Oliver Bell  
Chairman, Texas Board of Criminal Justice (TBCJ)  
P.O. Box 13084  
Austin, Texas  
FAX: 512-305-9398

To Whom It May Concern:

The Texas Civil Rights Project enthusiastically joins this coalition to recommend changes to conditions of confinement for inmates on death row. We write separately to emphasize why increasing privileges for death-row inmates who demonstrate good behavior is not just a smart idea from a security standpoint: These changes are required by the United States Constitution.

Constitutional protections extend to *all* inmates, including those on death row. In particular, the conditions on Texas death row implicate inmates' rights under the Fourteenth and Eighth Amendments.

## **I. Fourteenth Amendment—Right to Due Process**

TDCJ violates the Fourteenth Amendment rights of death-row prisoners by placing them all in permanent solitary confinement for indefinite periods of time—in many cases nearly a decade and a half—without any procedural protections to evaluate their most appropriate housing situation on an individualized basis.

The Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” The Supreme Court has ruled that the Fourteenth Amendment requires prisons to provide inmates with procedural protections—such as a classification process—before imposing an “atypical and significant hardship within the correctional context.”<sup>1</sup> In *Wilkinson v. Austin*, the Supreme Court found that conditions of permanent solitary confinement at an Ohio supermax facility amounted to an atypical and

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<sup>1</sup> *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005).

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Houston, TX 77004  
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significant hardship, such that prisoners were entitled to procedural protections before being housed there.<sup>2</sup> Among other factors, the Court noted that the inmates at the supermax—like those on Texas death row—were “deprived of almost any environmental or sensory stimuli and of almost all human contact,” and were confined in this way for an indeterminate period.<sup>3</sup> Many “courts of appeals have held that periods of [solitary] confinement that approach or exceed one year may trigger a cognizable liberty interest.”<sup>4</sup> And the Fifth Circuit has observed that *Wilkinson* “constitutes a crucial exception to the general rule that a prisoner has no liberty interest in his classification: that is, when the prisoner is incarcerated in super-maximum security conditions.”<sup>5</sup>

In a significant ruling this November, the District Court for the Eastern District of Virginia determined that the Fourteenth Amendment protects people on death row from being confined to permanent solitary confinement without any due-process protections.<sup>6</sup> Alfredo Prieto, an inmate who had been on death row for half a decade, filed a lawsuit arguing that the Virginia department of corrections violated his right to due process by automatically housing him in near-complete isolation, without offering him any opportunity to review his placement. The district court agreed.

The conditions of confinement on Virginia’s death row were almost identical to those in Texas. Based solely on their sentences, Virginia death-row inmates were housed in a single cell measuring 71 feet squared for all but one hour a day, ate all three meals alone in their cells, had no in-pod recreation, and could not go to the gymnasium or the prison yard.<sup>7</sup> Death-row inmates could leave their cells only for three ten-minute showers per week and for an hour of recreation five days a week—which took place in an outdoor cell hardly larger than their inside cell, with a concrete floor and no exercise equipment.<sup>8</sup> Their visitation was limited to non-contact visits with immediate family members through a glass window.<sup>9</sup> And the death-row inmates were entirely prohibited from joining general-population inmates for vocational, educational, or behavioral programs, or from attending communal religious services.<sup>10</sup> If anything, the conditions in Virginia were *less* restrictive than those for death-row inmates in Texas: Inmates could purchase televisions and compact-disc players, whereas Texas death-row inmates are not permitted to use either.<sup>11</sup> (Indeed, Texas is only one of two states that prohibit death-row inmates from watching television.<sup>12</sup>)

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<sup>2</sup> *See id.*

<sup>3</sup> *Id.* at 214-15.

<sup>4</sup> *Marion v. Columbia Correction Institution*, 559 F.3d 693, 698-99 (7th Cir. 2009) (citing *Iqbal v. Hasty*, 490 F.3d 143, 161 (2d Cir. 2007); *Trujillo v. Williams*, 465 F.3d 1210, 1225 (10th Cir. 2006); *Williams v. Fountain*, 77 F.3d 372, 374 (11th Cir. 1996)).

<sup>5</sup> *Tate v. Starks*, 444 F. App’x 720, 723-24 (5th Cir. 2011).

<sup>6</sup> *See Prieto v. Clarke*, No. 1:12-cv-01199-LMB-IDD, Doc. No. 91 (E.D. Va. Nov. 11, 2013).

<sup>7</sup> *See id.* at 2-3.

<sup>8</sup> *See id.*

<sup>9</sup> *See id.* at 3.

<sup>10</sup> *See id.*

<sup>11</sup> *See id.*

<sup>12</sup> *See* Dave Mann, “Solitary Men,” *The Observer* (Nov. 10, 2010), *available at* <http://www.texasobserver.org/solitary-men/>

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2006 Wheeler Ave.  
Houston, TX 77004  
(832) 767-3650 (phone) (832) 554-9981 (fax)

Given the lengthy nature of post-conviction proceedings, death-row inmates were confined to complete isolation for extremely long periods.<sup>13</sup> The court described these conditions as “dehumanizing.”<sup>14</sup> They were significantly more restrictive than the conditions for general-population inmates.<sup>15</sup> Moreover, non-death-row inmates received a classification procedure to determine the security level that was most appropriate for each individual.<sup>16</sup>

The court ruled that the department of corrections violated the Due Process Clause by confining the plaintiff to permanent solitary confinement without any procedural recourse.<sup>17</sup> It also determined that there was no legitimate penal objective justifying the complete lack of procedural protections.<sup>18</sup> Indeed, it rejected the argument that death-row inmates had no incentive to behave well or take rehabilitation seriously, noting that there was always “the possibility that new forensic evidence might undercut a conviction, a habeas petition might be granted, or that good behavior might improve the prospects of a commuted sentence.”<sup>19</sup>

TDCJ violates the due-process rights of inmates on death row by housing them all in permanent solitary confinement, without providing any procedural protections. The Due Process Clause requires that these inmates have the opportunity to participate in classification procedures to determine, on an individualized basis, their most appropriate housing situation. TDCJ must make changes to conditions of confinement on death row to ensure that Texas inmates are housed in accordance with the requirements of the United States Constitution.

## **II. Eighth Amendment—Cruel and Unusual Punishment**

TDCJ should also be well aware that all inmates have a right to be free from cruel and unusual punishment under the Eighth Amendment. Eighth Amendment protections unquestionably extend to death row: The Fifth Circuit has affirmed that the Eighth Amendment requires prisons to provide death-row inmates with “humane conditions of confinement.”<sup>20</sup> And in December, the District Court for the Middle District of Louisiana ruled that conditions of extreme heat on Louisiana’s death row violated the Eighth Amendment.<sup>21</sup>

Moreover, studies have found that solitary confinement causes extreme psychological suffering. In the words of one researcher, “There are few if any forms of imprisonment that appear to produce so much psychological trauma and in which so many symptoms of psychopathology are manifested.”<sup>22</sup> The Supreme Court recognized the psychological consequences of solitary confinement in 1890, observing that “[a] considerable number of the prisoners [in isolation] fell, after even a short confinement, into a semi-fatuous condition, from

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<sup>13</sup> See *Prieto v. Clarke*, *supra* n.6, at 16.

<sup>14</sup> *Id.* at 14.

<sup>15</sup> See *id.* at 14-15.

<sup>16</sup> See *id.* at 4-5.

<sup>17</sup> See *id.* at 10-25.

<sup>18</sup> See *id.* at 19.

<sup>19</sup> *Id.* at 20.

<sup>20</sup> *Gates v. Cook*, 376 F.3d 323, 332 (5th Cir. 2004).

<sup>21</sup> See *Ball v. LeBlanc*, --- F. Supp. 2d ---, 2013 WL 6705141 (M.D. La. Dec. 19, 2013).

<sup>22</sup> Craig Haney, *Mental Health Issues in Long-Term Solitary and “Supermax” Confinement*, 49 *Crime & Delinquency* 124, 125 (Jan. 2003).



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2006 Wheeler Ave.  
Houston, TX 77004  
(832) 767-3650 (phone) (832) 554-9981 (fax)

which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the 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.”<sup>23</sup>

Crucially, many courts, including a Texas district court, have ruled that the Eighth Amendment prohibits correctional departments from placing mentally ill people in solitary confinement because of the psychological suffering it causes.<sup>24</sup> Demonstrating the wide-spread recognition that housing the mentally ill in isolation is cruel and unusual, six states have agreed, in settlement decrees, to cease housing the mentally ill in solitary confinement.<sup>25</sup> TDCJ should be concerned about this case law because many mentally ill people are housed on death row. Currently, 102 people on death row have a history of a mental disorder, are currently on psychotropic medications, or receive ongoing counseling or monitoring for a mental illness.<sup>26</sup>

TCRP urges the Texas Department of Criminal Justice to comply with the United States Constitution and institute the requested changes to the death-row plan. TDCJ must make these revisions to ensure that Texas death row is operated safely, humanely, and lawfully.

Sincerely,



Burke Butler  
Staff Attorney

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<sup>23</sup> *In re Medley*, 134 U.S. 160, 168 (1890).

<sup>24</sup> See *Indiana Protection and Advocacy Services Commission v. Commissioner*, No. 1:08-cv-01317-TWP-MJD, 2012 WL 6738517 (S.D. Ind. Dec. 31, 2013); *Jones'El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 912 (S.D. Tex. 1999), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001); *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

<sup>25</sup> Thomas L. Hafemeister & Jeff George, *The Ninth Circle of Hell: An Eighth Amendment Analysis of Imposing Prolonged Supermax Solitary Confinement on Inmates with a Mental Illness*, 90 *Denv. U. L. Rev.* 1, 28 (2012).

<sup>26</sup> Data received from the Texas Department of Criminal Justice by the Texas Civil Rights Project through a Public Information Act request.