
LEGAL AID JUSTICE CENTER

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Statement for the Record of Abigail Turner, Attorney

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND HUMAN RIGHTS

Hearing on

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

June 19, 2012

Chairman Durbin, Ranking Member Graham and members of the Subcommittee, thank you for holding this important hearing on a topic which needs congressional scrutiny. Thank you for the opportunity to share our experience about the human rights violations our clients experience in solitary confinement in Virginia's prisons.

The Legal Aid Justice Center represents twelve men who have been held in prolonged solitary confinement in Virginia's supermax prison, Red Onion State Prison. Eight of the twelve have diagnoses of serious mental illness. A few have recently been transferred to the Wallens Ridge State Prison, but they write that they continue to be held in solitary cells.

Among the twelve men, several who have mental illness have been in solitary confinement for 15 years, 6 years, 5 years, with the shortest time being 1.5 years. The Department of Corrections (DOC) has no limits on how long a person with mental illness can be kept in solitary confinement.

The Virginia Department of Corrections holds about 1,700 men and women in "segregation." In addition, I regularly get letters from adults held in local jails, some of whom are held for months in solitary. Solitary confinement in Virginia is not confined to adults. Youth are often confined to their rooms or held in segregation units where there are barriers in accessing education and other services.

The Virginia Department of Corrections sends all men classified as "segregation" to Red Onion. However, not all men classified as "Segregation" and assigned to Red Onion have committed violent crimes or have displayed violent behaviors at other prisons.

All prisoners held in segregated pods spend 23/7 in solitary confinement at Red Onion. At most, they have one hour five days a week in recreation outside of their cells; they can shower three days a week. They eat all of their meals alone in their cells and have no group or social activity of any kind. When they leave their cells, they are in shackles and handcuffs. Most are required to kneel on the concrete floor for guards to place and remove the leg shackles. Recreation is in cages surrounded by wire fencing. Some can see the sky from the cages, but often prisoners cannot see the sky because plexiglass covers the top of the cage.

Prisoners with mental illness should not be held in solitary confinement. Federal courts have consistently ruled that holding prisoners with serious mental illness in solitary or supermax confinement violates the Eighth Amendment. The 2010 ABA Criminal Justice Standards on the Treatment of Prisoners state: "No prisoner diagnosed with serious mental illness should be placed in long-term segregated housing." Standard 23-2.8(a).¹ [hereafter Standards] Even for prisoners without mental illness, the ABA Standards state: "[N]o placement in disciplinary housing should exceed one year." Standard, 23-4.3.

Our clients explain that their mental illnesses become much worse after the lengthy solitary. Prisoners' medical records confirm these facts. Solitary confinement does not facilitate rehabilitation and can create and exacerbate existing mental illness. Normal human contact with the outside world is essential for ensuring successful reentry to the community and reducing recidivism rates for prisoners with mental illness. Except during the one hour five times per week recreation, prisoners can talk to other prisoners only through the heating vents. For prisoners with mental illness, years of isolation with minimal face-to-face communication with others ill equips them for successful reentry in the community.

The ABA Standards state that all prisoners in solitary should "be provided with meaningful forms of mental, physical and social stimulation." Standard 23-3.8(c). This includes "daily face-to-face interaction with both uniformed and civilian staff." *Id.* Subsection (c) (iv). We are troubled that prisoners with mental illness experience long years of isolation without mental and social contact. We do not believe that such isolation prepares them to be successful in returning home.

Solitary can create other social, mental and emotional problems. It can have shattering psychological effects even for prisoners without mental illness.² The ABA

¹http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html

² "[T]here is not a single published study of solitary or supermax-like confinement in which nonvoluntary confinement lasting for longer than 10 days, when participants were unable to terminate their isolation at will, that failed to result in negative psychological effects." Haney, Craig, Mental Health Issues in Long-Term Solitary and "Supermax" Confinement, 49 *Crime and Delinquency* 132, Jan. 2003.

Standards require that shortly after a person is placed in segregated housing, he or she should receive a “mental health screening, conducted in person by a qualified mental health professional. . . If the assessment indicates the presence of a serious mental illness, or a history of serious mental illness. . .the prisoner should be placed in an environment where appropriate treatment can occur.” Standard 23-2.8(b).

As far as we can tell, upon entering Red Onion, no treatment staff has a face-to-face mental health assessment interview with a prisoner. Qualified Mental Health Practitioners (QMHP’s) do the assessments speaking to the prisoner through the steel door jam with CO’s and possibly other prisoners standing close by. A visit with the psychiatrist may occur for prescribing drugs, but CO’s are present in those meetings as well.

The ABA Standards require “appropriate and individualized mental health care treatment and habilitation services to prisoners with mental illness, mental retardation, or other cognitive impairments.” Standard 23-6.11(a).

The primary treatment Red Onion provides to prisoners with mental illness is psychotropic drugs. QMHP’s periodically pass through the pods to speak with prisoners. Such mental health “treatment” is primarily monthly assessments or reviews conducted by QMHP’s standing in a pod corridor talking through the door to the prisoner, with, a CO and possibly other prisoners within earshot.

The presence of CO’s when cell-side talks occur between the QMHP’s and the prisoner, and the presence of CO’s in prisoners’ visits in the psychiatrist’s office, hinder open communication and make meaningful treatment impossible. Given the stigma attached in the prison environment to anything that could be perceived as weakness or vulnerability, this lack of confidentiality virtually guarantees that prisoners with mental illness will downplay or deny their illnesses.

Treatment staff reported that additional mental health treatment can include packages of written materials called Cognitive Behavior Therapy distributed by QMHP’s at the cell doors. A prisoner completes written assignments and receives a new package. Given the lack of opportunity to discuss questions and issues with psychology trained staff and the low levels of literacy in prison populations, written exercises are likely to be accessible to only a small minority of prisoners and of little rehabilitative value.

Prison officials stated that every person in segregation has a classification review every 90 days which is conducted by the counselor and unit manager. A more formal annual classification review occurs also. Prisoners complained to Legal Aid attorneys that the 90-day reviews are often skipped and are pro forma without meaningful opportunities to provide evidence of improved behaviors.

In February, 2011, Red Onion established a stricter segregation pod—B-300. This pod has additional shakedowns and strip searches. Prisoners complained to Legal Aid attorneys that searches in the cage allowed other prisoners and guards, including females, to observe them naked. Conducting strip searches where others can see the man naked does not conform to the ABA Standards. “Visual searches of a prisoner’s private bodily areas, . . . should: (i) be conducted only . . . in a private place out of the sight of other prisoners and of staff not involved in the search. . .” Standard 23-7.9 (d). The recreation cage for B-300 is inside the prison.

A new warden assigned to Red Onion in September 2011 purportedly closed the B-300 cell. However, our clients tell us it is still being used, and one of our clients with serious mental illness has recently been housed in the cell.

We are also very concerned about the frequent use of physical restraints. One man with serious mental illness was placed in restraints on forty-six occasions during a period of a little over three years. In fifteen of those instances, five point restraints were used, and for thirty-one he was in ambulatory restraints. He spent between ten and seventy-six hours in five point restraints and between twelve hours and eleven days in ambulatory restraints.

As many as 75% of the prisoners at Red Onoin are African American and many are from urban areas. Almost all of the staff is white and live in the nearby small towns and rural areas. Staff appear to have little training in personal interactions with men of other races and even less accountability which insists on respectful interactions. One client succeeded in getting a decision in the federal court that an officer had used unauthorized excessive force. It is not unusual for guards to call African American men “nigger.” A very vulnerable prisoner feels that staff harass him to set him off. He goes for long periods without recreation to stay safe and avoid officers who try to get him to snap. Others had written us about concerns that CO’s were picking on this man.

Suicide is a dominant theme from our clients. Many turn their frustration and rage inward and attempt suicide: we heard how to make a rope from a bed-sheet, swallowing metal, batteries, or cleaning fluids, and saw the scars from wrist slitting. One stated: “I always think of suicide in here.” Suicide was so palpable during a 2011 visit that we counseled several men against killing themselves, pointing out they had family they had to live for. Some reported that it is not rare for a man to injure himself by sticking items in his penis.

One man explained: “Solitary is making my mental health worse. I had not had suicidal thoughts since 1997-98.” But he now wakes up every morning wanting to kill himself.

Safety procedures for men with mental illness have also been neglected. Two men who suffered from mental illness have been murdered at Red Onion. In July 2010, Aaron Cooper, a man with mental illness, was choked to death at the hands of a prisoner who was a known murderer. Robert Gleason had murdered his cell mate at Wallens Ridge Prison and had told the prison officials he would kill again. Mr. Gleason was transferred to Red Onion where Mr. Cooper was his second victim. Both of the victims suffered with mental illness.

Kawaski Bass was murdered on September 6, 2011 at Red Onion. Mr. Bass was living in Progressive Housing, where prisoners live two men to a cell. The alleged murderer is a Mr. Watson, Bass's cell mate. The reason for the murder sounds frighteningly similar to Gleason's first murder at Wallens Ridge Prison. According to a client, Bass was "allegedly exhibiting deranged behavior in the cell. (i.e. walking around in the nude, talking to himself.)" Prisoners report that Watson told prison authorities to move Bass out of the cell but prison officials did not address the situation.

Marion Correctional Treatment Center is the DOC's hospital for acutely mentally ill male offenders. Self-harm such as attempted suicide is often the reason a Red Onion prisoner is committed to Marion. A prisoner's classification of "segregation" continues at Marion and greatly limits his ability to leave his cell and participate in treatment.

A front page feature on Red Onion appeared in the Washington Post on January 8, 2012³ and legislators introduced bills in the General Assembly in January to require the State to hire outside experts to recommend how to reduce the use of solitary. Then the Department of Corrections announced it intended to make changes in solitary.⁴ In April, DOC announced the introduction of an incentive system with rewards for good behavior such as more access to commissary items and movement without shackles with the possibility of moving to population. Our clients have reported seeing very few changes in opportunities to date and no increase in treatments for mental illness.

Solitary confinement as operated in Virginia's high security prisons is inhumane. The practices exacerbate the symptoms of mental illness, lead to despair and suicide

³ Va. Prisons' Use of Solitary Confinement is Scrutinized, The Washington Post, Jan. 8, 2012, p. A-1.

⁴ Va. Plans to Modify Prisoner Isolation, The Washington Post, Mar. 31, 2012, A-1.

attempts and threaten the safety of the community when prisoners are released after suffering barbaric practices.

Respectfully submitted,

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