

**OUT OF SIGHT:
Super-Maximum Security Confinement in the United States**

I. SUPERMAX PRISONS: AN OVERVIEW2
 Why Supermaxes?3
 A Human Rights Analysis.....3
 Criteria for Supermax Confinement.....4
 Conditions.....4
 Duration.....4
 Abuse.....5
 Internal Review and Public Scrutiny.....5
II. RECOMMENDATIONS6
III. ACKNOWLEDGMENTS8

I. SUPERMAX PRISONS: AN OVERVIEW

THERE ARE CURRENTLY MORE THAN TWENTY THOUSAND PRISONERS IN THE UNITED STATES, NEARLY TWO PERCENT OF THE PRISON POPULATION, HOUSED IN SPECIAL SUPER-MAXIMUM SECURITY FACILITIES OR UNITS. PRISONERS IN THESE FACILITIES TYPICALLY SPEND THEIR WAKING AND SLEEPING HOURS LOCKED IN SMALL, SOMETIMES WINDOWLESS, CELLS SEALED WITH SOLID STEEL DOORS. A FEW TIMES A WEEK THEY ARE LET OUT FOR SHOWERS AND SOLITARY EXERCISE IN A SMALL, ENCLOSED SPACE. SUPERMAX PRISONERS HAVE ALMOST NO ACCESS TO EDUCATIONAL OR RECREATIONAL ACTIVITIES OR OTHER SOURCES OF MENTAL STIMULATION AND ARE USUALLY HANDCUFFED, SHACKLED AND ESCORTED BY TWO OR THREE CORRECTIONAL OFFICERS EVERY TIME THEY LEAVE THEIR CELLS. ASSIGNMENT TO SUPERMAX HOUSING IS USUALLY FOR AN INDEFINITE PERIOD THAT MAY CONTINUE FOR YEARS. ALTHOUGH SUPERMAX FACILITIES ARE OSTENSIBLY DESIGNED TO HOUSE INCORRIGIBLY VIOLENT OR DANGEROUS INMATES, MANY OF THE INMATES CONFINED IN THEM DO NOT MEET THOSE CRITERIA.

SUPERMAX CONFINEMENT, NO LESS THAN ANY OTHER, IS SUBJECT TO HUMAN RIGHTS STANDARDS CONTAINED IN TREATIES SIGNED BY THE UNITED STATES AND BINDING ON STATE AND FEDERAL OFFICIALS.¹ ACCORDING TO THESE STANDARDS, CORRECTIONS AUTHORITIES MUST RESPECT THE INHERENT DIGNITY OF EACH INMATE AND MAY NOT SUBJECT PRISONERS TO TREATMENT THAT CONSTITUTES TORTURE OR THAT IS CRUEL, INHUMAN, OR DEGRADING. UNFORTUNATELY, STATE AND FEDERAL CORRECTIONS DEPARTMENTS ARE OPERATING SUPERMAX FACILITIES IN WAYS THAT VIOLATE BASIC HUMAN RIGHTS.

² THE CONDITIONS OF CONFINEMENT ARE UNDULY SEVERE AND

¹ The principal relevant treaties are the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the U.S. June 8, 1992 and October 21, 1994 respectively. Detailed guidelines fleshing out the treatment of prisoners consistent with human rights principles are contained in the United Nations Standard Minimum Rules for the Treatment of Prisoners. Both treaties and the Standard Minimum Rules can be found at www.un.org.

² This briefing paper draws on extensive research on the operation of super-maximum security facilities in the U.S., including the inspection of eight state and federal supermax facilities. Human Rights Watch has published two human rights analyses of supermax facilities. See Human Rights Watch, *Cold Storage: Super-maximum Security Confinement in Indiana* (New York: Human Rights Watch, 1997) and *Red Onion State Prison: Super-Maximum Security Confinement in Virginia* (New York: Human

DISPROPORTIONATE TO LEGITIMATE SECURITY AND INMATE MANAGEMENT OBJECTIVES; IMPOSE POINTLESS SUFFERING AND HUMILIATION; AND REFLECT A STUNNING DISREGARD OF THE FACT THAT ALL PRISONERS -- EVEN THOSE DEEMED THE "WORST OF THE WORST" -- ARE MEMBERS OF THE HUMAN COMMUNITY.

THERE IS NO WAY, OF COURSE, TO MEASURE THE MISERY AND SUFFERING PRODUCED BY PROLONGED SUPERMAX CONFINEMENT. INMATES HAVE DESCRIBED LIFE IN A SUPERMAX AS AKIN TO LIVING IN A TOMB. AT BEST, PRISONERS' DAYS ARE MARKED BY IDLENESS, TEDIUM, AND TENSION. BUT FOR MANY, THE ABSENCE OF NORMAL SOCIAL INTERACTION, OF REASONABLE MENTAL STIMULUS, OF EXPOSURE TO THE NATURAL WORLD, OF ALMOST EVERYTHING THAT MAKES LIFE HUMAN AND BEARABLE, IS EMOTIONALLY, PHYSICALLY, AND PSYCHOLOGICALLY DESTRUCTIVE. PRISONERS SUBJECTED TO PROLONGED ISOLATION MAY EXPERIENCE DEPRESSION, DESPAIR, ANXIETY, RAGE, CLAUSTROPHOBIA, HALLUCINATIONS, PROBLEMS WITH IMPULSE CONTROL, AND/OR AN IMPAIRED ABILITY TO THINK, CONCENTRATE, OR REMEMBER. AS ONE FEDERAL JUDGE NOTED, PROLONGED SUPERMAX CONFINEMENT "MAY PRESS THE OUTER BOUNDS OF WHAT MOST HUMANS CAN PSYCHOLOGICALLY TOLERATE."

SOME INMATES SUBJECTED TO SUPERMAX CONFINEMENT DEVELOP CLINICAL SYMPTOMS USUALLY ASSOCIATED WITH PSYCHOSIS OR SEVERE AFFECTIVE DISORDERS. FOR MENTALLY ILL PRISONERS, SUPERMAX CONFINEMENT CAN BE A LIVING HORROR: THE SOCIAL ISOLATION AND RESTRICTED ACTIVITIES CAN AGGRAVATE THEIR ILLNESS AND IMMEASURABLY INCREASE THEIR PAIN AND SUFFERING. MOREOVER, FEW SUPERMAX FACILITIES OFFER MENTALLY ILL INMATES THE FULL RANGE OF MENTAL HEALTH SERVICES AND TREATMENT THAT THEIR PSYCHIATRIC CONDITIONS REQUIRE.

WHY SUPERMAXES?

IN ALMOST EVERY STATE IN THE NATION, EXPLODING PRISON POPULATIONS, MEAGER BUDGETS, AND PUNITIVE POLITICAL CLIMATES HAVE OVERWHELMED THE ABILITY OF CORRECTIONS PROFESSIONALS TO OPERATE SAFE, SECURE, AND HUMANE FACILITIES. THEY LACK THE FUNDS TO RECRUIT, PROPERLY TRAIN AND RETAIN ADEQUATE NUMBERS OF STAFF, AND TO PROVIDE PROGRAMS AND PRODUCTIVE ACTIVITIES FOR THE MEN AND WOMEN IN THEIR CUSTODY. THINLY STAFFED, OVERCROWDED, AND IMPOVERISHED FACILITIES BREED TENSION AND VIOLENCE, PARTICULARLY WHERE PRISON MANAGEMENT HAS NOT PLACED A HIGH PRIORITY ON PROMOTING STAFF-INMATE AND INMATE-INMATE RELATIONS PREDICATED ON MUTUAL RESPECT.

MANY CORRECTIONS AUTHORITIES HAVE TURNED TO PROLONGED SUPERMAX CONFINEMENT IN AN EFFORT TO INCREASE THEIR CONTROL OVER PRISONERS. THEY BELIEVE THAT IF THEY CAN CONFINE ALL THE MOST DANGEROUS OR DISRUPTIVE INMATES IN FACILITIES DESIGNED SPECIFICALLY FOR THAT PURPOSE, THEY WILL BE ABLE TO INCREASE SAFETY AND SECURITY IN OTHER PRISONS. SOME THOUGHTFUL CORRECTIONS PROFESSIONALS, HOWEVER, RECOGNIZE THAT THE PROLIFERATION OF SUPERMAX FACILITIES IS UNWISE. WHILE ACKNOWLEDGING THAT THERE WILL ALWAYS BE A FEW EXTREMELY DANGEROUS OR DISRUPTIVE INMATES IN A PRISON POPULATION WHO NEED TO BE SEGREGATED FOR EXTENDED PERIODS OF TIME, THEY BELIEVE PLACING THOUSANDS OF PRISONERS IN PROLONGED ISOLATION IS NEITHER GOOD CORRECTIONS PRACTICE NOR NECESSARY. REDUCING THE SIZE OF PRISONS AND PROVIDING INCREASED PRISON SERVICES AND PROGRAMS WOULD HELP ADDRESS THE VERY PROBLEMS SUPERMAXES ARE NOW SUPPOSED TO REMEDY. UNFORTUNATELY, FEW CORRECTIONS PROFESSIONALS HAVE BEEN WILLING TO PUBLICLY VOICE THEIR OBJECTIONS TO SUPERMAXES, URGE CORRECTIONS STRATEGIES THAT WOULD MAKE SUPERMAXES UNNECESSARY, OR EVEN SUGGEST MORE HUMANE ALTERNATIVES FOR HIGH-RISK INMATES TO THE CURRENT SUPERMAX MODEL OF ISOLATION AND DEPRIVATION.

A SIGNIFICANT IMPETUS FOR SUPERMAX CONFINEMENT ALSO COMES FROM POLITICIANS. CRIME AND PUNISHMENT HAVE BEEN CENTRAL ISSUES IN AMERICAN POLITICS FOR OVER TWO DECADES, AND ADVOCATING HARSH PUNITIVE POLICIES FOR CRIMINAL OFFENDERS REMAINS A POLITICALLY POPULAR POSITION. ELECTED OFFICIALS ADVANCING TOUGH-ON-CRIME POLICIES HAVE PROMOTED LARGE SUPERMAX PRISONS FOR THEIR SYMBOLIC MESSAGE, REGARDLESS OF ACTUAL NEED. FEARFUL OF BEING ACCUSED OF “CODDLING INMATES” OR BEING “SOFT ON CRIME,” FEW POLITICIANS HAVE BEEN WILLING TO PUBLICLY CHALLENGE SUPERMAXES ON HUMAN RIGHTS GROUNDS.

THERE HAS BEEN SCANT PUBLIC DEBATE ABOUT THE PENOLOGICAL JUSTIFICATION FOR SUPERMAX CONFINEMENT, ITS HIGH PRICE IN TERMS OF THE MISERY AND SUFFERING IT INFLICTS, AND THE LIKELIHOOD THAT IT REDUCES AN INMATE’S ABILITY TO MAKE A SUCCESSFUL TRANSITION TO SOCIETY UPON RELEASE. THE PUBLIC HAS EITHER BEEN INDIFFERENT OR HAS UNCRITICALLY ACCEPTED THE PUNITIVE PENAL VIEWS OF THOSE WHO ENDORSE THE SUPERMAX APPROACH. JUDICIAL SCRUTINY HAS BEEN LIMITED BY BOTH THE COURTS’ TRADITION OF DEFERENCE TO THE JUDGMENTS OF PRISON OFFICIALS AND BY JURISPRUDENCE THAT SETS AN EXTRAORDINARILY HIGH THRESHOLD FOR FINDING PRISON CONDITIONS TO BE UNCONSTITUTIONALLY CRUEL.

IN SHORT, NEITHER ELECTED OFFICIALS, THE COURTS, THE PUBLIC, NOR CORRECTIONS PROFESSIONALS HAVE OPPOSED THE PROLIFERATION OF SUPERMAX FACILITIES OR INSISTED ON BETTER CONDITIONS WITHIN THEM. PROLONGED SEGREGATION THAT PREVIOUSLY WOULD HAVE BEEN DEEMED EXTRAORDINARY AND INCONSISTENT WITH CONCEPTS OF DIGNITY, HUMANITY, AND DECENCY HAS BECOME A CORRECTIONS STAPLE.

A HUMAN RIGHTS ANALYSIS

A HUMAN RIGHTS ASSESSMENT OF SUPERMAX CONFINEMENT REQUIRES CONSIDERATION OF THREE FACTORS: ELIGIBILITY CRITERIA, SPECIFIC

CONDITIONS, AND THE DURATION OF CONFINEMENT. EACH MUST BE CONSIDERED IN RELATION TO THE OTHERS. FOR EXAMPLE, EXTREME RESTRICTIONS AND CONTROLS THAT MIGHT BE CONSIDERED REASONABLE IN DEALING WITH INCORRIGIBLY VIOLENT INMATES BECOME EXCESSIVE FOR INMATES WHO ARE NOT. DEPRIVATION OF SOURCES OF STIMULATION, HUMAN CONTACT, AND ACTIVITY THAT MAY NOT BE UNBEARABLY CRUEL FOR SOME INMATES CAN BECOME TORTURE WHEN IMPOSED ON MENTALLY ILL INMATES. HARSH CONDITIONS THAT MIGHT NOT BE UNACCEPTABLE FOR A MONTH OR TWO BECOME INHUMAN AND DEGRADING WHEN IMPOSED FOR YEARS.

CRITERIA FOR SUPERMAX CONFINEMENT

MANY CORRECTIONAL AUTHORITIES USE OVERLY BROAD AND VAGUE CRITERIA FOR DETERMINING SUPERMAX ELIGIBILITY AND FAIL TO EXERCISE APPROPRIATE CONTROL OVER PLACEMENT DECISIONS. AS A RESULT, INMATES ARE PLACED IN SUPERMAX CONFINEMENT EVEN WHEN SUCH RESTRICTIVE CONTROLS ARE CLEARLY EXCESSIVE IN LIGHT OF THEIR BEHAVIOR—FOR EXAMPLE, PRISONERS WHO ARE DIFFICULT BUT NOT DANGEROUS, WHO HAVE BEEN INVOLVED IN A SINGLE FIGHT, WHO HAVE ACCUMULATED A RECORD OF MINOR, NON-VIOLENT DISCIPLINARY INFRACTIONS, OR WHO ARE GANG MEMBERS BUT HAVE NOT BEEN INVOLVED IN ANY MISCONDUCT.

THOUGHTFUL CORRECTIONS PROFESSIONALS WOULD ACKNOWLEDGE THAT SUCH INMATES COULD BE MANAGED ADEQUATELY THROUGH OTHER AVENUES OF CONTROL. BUT IF A STATE HAS A SUPERMAX FACILITY, THERE ARE OVERWHELMING INSTITUTIONAL TEMPTATIONS TO SEND ANY TROUBLESOME INMATE THERE. THE TEMPTATIONS ARE PARTICULARLY DIFFICULT TO RESIST WHEN A STATE HAS A SHORTAGE OF PRISON BEDS AT LOWER SECURITY LEVELS. FACED WITH PRISON POPULATION PRESSURES AND UNWILLING TO LEAVE EXPENSIVE SUPERMAX FACILITIES HALF EMPTY, OFFICIALS IN PRACTICE EXPAND THE CRITERIA FOR SUPERMAX ELIGIBILITY. CORRECTIONS OFFICIALS ALSO FREQUENTLY PLACE DISRUPTIVE, MENTALLY ILL INMATES IN SUPERMAX CONFINEMENT BECAUSE THEY LACK OTHER HOUSING OPTIONS, SUCH AS SECURE

MENTAL HEALTH TREATMENT UNITS OR SEGREGATION UNITS SPECIFICALLY DESIGNED FOR MENTALLY ILL OFFENDERS.

CONDITIONS

WHETHER INCORRIGIBLY VIOLENT OR SIMPLY A NUISANCE, ALL INMATES SENT TO SUPERMAX FACILITIES LIVE UNDER CONDITIONS, RULES, AND POLICIES DESIGNED FOR THE FORMER. THE EXTRAORDINARY SECURITY CONTROLS, ISOLATION, AND LACK OF IN-CELL AS WELL AS OUT-OF-CELL PROGRAMS AND ACTIVITIES CANNOT, HOWEVER, BE JUSTIFIED ON SECURITY GROUNDS FOR INMATES WHO ARE NOT CHRONICALLY DANGEROUS. EVEN FOR TRULY DANGEROUS INMATES, MANY OF THE STRICTURES OF SUPERMAX CONFINEMENT ARE POINTLESSLY HARSH AND DEGRADING, PARTICULARLY IF IMPOSED FOR LONG PERIODS OF TIME. IN SOME STATES, THE CONDITIONS ARE SO EXTREME—E.G., LACK OF WINDOWS, DENIAL OF READING MATERIAL, A MAXIMUM OF THREE HOURS A WEEK OUT-OF-CELL TIME, LACK OF OUTDOOR RECREATION—THAT THEY CAN ONLY BE EXPLAINED AS REFLECTING AN UNWILLINGNESS TO ACKNOWLEDGE THE INMATES' BASIC HUMANITY.

WHEN PRESSED, SOME CORRECTIONS OFFICIALS ACKNOWLEDGE THAT MANY SPECIFIC SUPERMAX CONDITIONS AND POLICIES ARE NOT, IN FACT, REQUIRED BY SECURITY. THEY ASSERT THAT HARSH CONDITIONS ARE NONETHELESS JUSTIFIED AS A GENERAL DETERRENT TO MISCONDUCT, I.E. THAT GENERAL POPULATION INMATES BEHAVE BETTER BECAUSE THEY WANT TO AVOID BEING SENT TO A SUPERMAX. THERE ARE, HOWEVER, OTHER WAYS TO ENCOURAGE GOOD CONDUCT THAN TO RAISE THE SPECTER OF SUPERMAX CONFINEMENT AND, TO DATE, THERE IS NO DATA PROVING SUCH A DETERRENT EFFECT.

IN SOME JURISDICTIONS, SUPERMAX PRISONERS CAN ACQUIRE INCREASED PRIVILEGES AND AMENITIES—E.G. MORE TELEPHONE CALLS, ACCESS TO RADIO OR A TELEVISION, THE ABILITY TO WALK TO THE SHOWER WITHOUT HANDCUFFS OR SHACKLES—AS AN INCENTIVE AND REWARD FOR APPROPRIATE BEHAVIOR. BUT

THE PRIVILEGES USUALLY ONLY REFLECT A TINKERING AT THE EDGES OF THE BASIC MODEL OF CONFINEMENT AND DO NOT SIGNIFICANTLY AMELIORATE THE CONDITIONS. MOREOVER, THESE “PRIVILEGES” ARE TAKEN AWAY AS PUNISHMENT FOR EVEN MINOR INFRACTIONS.

DURATION

THE PAIN AND PSYCHOLOGICAL DAMAGE THAT SUPERMAX CONFINEMENT INFLECTS DEPEND IN PART ON EACH INMATE’S CHARACTER AND PSYCHOLOGICAL MAKE UP. BUT THE LENGTH OF TIME TO WHICH A PERSON IS EXPOSED TO THESE CONDITIONS INDISPUTABLY AGGRAVATES THE SUFFERING. IN MOST PLACES, CONFINEMENT TO A SUPERMAX IS FOR AN INDEFINITE TERM AND MAY LAST FOR YEARS BEFORE OFFICIALS DECIDE THAT AN INMATE IS NO LONGER A THREAT TO SAFETY AND SECURITY AND CAN BE RETURNED TO A GENERAL POPULATION FACILITY. IN SOME FACILITIES, INMATES ARE SUPPOSED TO BE ABLE TO “EARN” THEIR WAY OUT THROUGH GOOD BEHAVIOR. BY MAINTAINING GOOD CONDUCT, THEY PROGRESS THROUGH DIFFERENT LEVELS OF PRIVILEGES AND PROGRAMS UNTIL BECOMING ELIGIBLE FOR RELEASE OUT OF THE SUPERMAX. BUT THE PROCESS IS AKIN TO THE GAME OF “CHUTES AND LADDERS”—A MINOR INFRACTION CAN SEND AN INMATE BACK TO THE STARTING POINT. WHEN THE LENGTH OF TIME IN SUPERMAX CONFINEMENT IS EXTENDED BECAUSE OF MINOR RULES VIOLATIONS, INMATES ARE IN EFFECT RECEIVING A DISPROPORTIONATE PUNISHMENT. MOREOVER, THERE IS NO GUARANTEE THAT GOOD BEHAVIOR WILL EVENTUALLY SECURE A RELEASE: CORRECTIONS AUTHORITIES RETAIN COMPLETE DISCRETION OVER THAT DECISION.

ABUSE

THERE IS A HEIGHTENED RISK IN SUPERMAX FACILITIES THAT CORRECTIONAL OFFICERS WILL USE ABUSIVE LEVELS OF FORCE. THEY WORK IN AN ENVIRONMENT IN WHICH THE USUAL PRISON “US VS. THEM” MENTALITY IS EXAGGERATED BY THE MINIMAL STAFF-INMATE INTERACTION, THE PRIMACY OF SECURITY OVER ALL OTHER CONSIDERATIONS, AND THE FACT THAT THE INMATES

HAVE BEEN DEMONIZED AS “THE WORST OF THE WORST.” PERHAPS NOT SURPRISINGLY, CORRECTIONAL OFFICERS IN SOME SUPERMAX FACILITIES HAVE REPEATEDLY CROSSED THE LINE BETWEEN THE LEGITIMATE USE OF FORCE AND ABUSE. THEY HAVE USED FORCE -- INCLUDING CELL EXTRACTIONS AND THE DISCHARGE OF ELECTRONIC STUN DEVICES, STUN GUNS, CHEMICAL SPRAYS, SHOTGUNS WITH RUBBER PELLETS AND EVEN GUNS LOADED WITH LETHAL MUNITIONS -- UNNECESSARILY, DANGEROUSLY, AND EVEN MALICIOUSLY.

THE FREQUENCY AND NATURE OF STAFF ABUSE OF INMATES IN A SUPERMAX (AS IN OTHER PRISONS) IS A REFLECTION OF MANAGEMENT: ABUSE PROLIFERATES WHERE MANAGEMENT FAILS TO SIGNAL UNEQUIVOCALLY —THROUGH POLICIES AND THEIR IMPLEMENTATION—THAT EXCESSIVE OR ABUSIVE FORCE WILL NOT BE TOLERATED. IN SUPERMAXES WITH A PATTERN OF EXCESSIVE STAFF VIOLENCE, MANAGEMENT HAS TACITLY CONDONED THE ABUSE BY FAILING TO INVESTIGATE AND HOLD ACCOUNTABLE THOSE WHO ENGAGE IN IT.

INTERNAL REVIEW AND PUBLIC SCRUTINY

CORRECTIONS AUTHORITIES MUST BE ABLE TO EXERCISE DISCRETION AND PROFESSIONAL JUDGMENT IN CHOOSING WHERE TO CONFIN INMATES, BUT THE EXERCISE OF SUCH DISCRETION CARRIES THE INHERENT RISK OF ARBITRARINESS OR ERROR. BECAUSE OF THE EXTREME NATURE OF SUPERMAX CONDITIONS, PARTICULAR PRECAUTIONS ARE NEEDED TO MINIMIZE THOSE RISKS AND TO ENSURE THAT NO INMATE IS SENT TO, NOR KEPT UNNECESSARILY IN, SUPERMAX CONFINEMENT.

UNFORTUNATELY, IN MOST JURISDICTIONS, THE CRITERIA FOR DETERMINING ENTRY TO AND EXIT FROM SUPERMAX CONFINEMENT ARE SO VAGUE THAT ARBITRARINESS AND UNFAIRNESS ARE INEVITABLE. FEW JURISDICTIONS, MOREOVER, HAVE ADEQUATE INTERNAL REVIEW SYSTEMS TO PROVIDE A CHECK TO UNNECESSARY SUPERMAX CONFINEMENT. INMATES ALSO HAVE SCANT OPPORTUNITY TO CHALLENGE SUPERMAX DECISIONS. SOME JURISDICTIONS DO

NOT PROVIDE INMATES WITH A HEARING. WHERE HEARINGS ARE PROVIDED, THEY ARE FREQUENTLY MEANINGLESS FORMALITIES.

ONCE AN INMATE IS IN A SUPERMAX, THERE IS USUALLY SOME SORT OF PERIODIC REVIEW TO DETERMINE IF THERE IS A NEED FOR CONTINUED SEGREGATION OR, IN FACILITIES WITH PROGRESSIVE INCENTIVE LEVELS, WHETHER AN INMATE SHOULD BE MOVED UP OR DOWN. UNFORTUNATELY, THE REVIEWS ARE OFTEN PERFUNCTORY, CONCLUDING WITH REITERATIONS OF STALE JUSTIFICATIONS. STAFF RARELY HAVE ADEQUATE FAMILIARITY WITH OR BACKGROUND INFORMATION ABOUT INMATES TO MAKE CONSIDERED JUDGMENTS -- AND THERE ARE INSUFFICIENT INSTITUTIONAL INCENTIVES FOR THEM TO GIVE SUFFICIENT WEIGHT TO THE INMATES' RIGHT TO BE FREE OF UNNECESSARY RESTRICTIONS.

PRINCIPLED LEADERSHIP, CAREFUL STAFF TRAINING AND SUPERVISION, AND EFFECTIVE INTERNAL REVIEW PROCESSES CAN HELP MINIMIZE THE POSSIBILITIES OF UNNECESSARY SUPERMAX CONFINEMENT AS WELL AS ABUSIVE CONDUCT BY CORRECTIONAL OFFICERS. BUT EXTERNAL AND INDEPENDENT SCRUTINY IS ALSO IMPORTANT. PRESS AND CITIZEN GROUP ACCESS TO SUPERMAX OFFICIALS AND INMATES, FOR EXAMPLE, CAN HELP DETER ABUSES AND PROMOTE PUBLIC ACCOUNTABILITY. CONSTRUCTIVE DIALOGUE WITH PUBLIC GROUPS CAN LEAD TO THE IDENTIFICATION AND DEVELOPMENT OF MORE HUMANE AND PRODUCTIVE PRISON PRACTICES. UNFORTUNATELY, ALL TOO MANY CORRECTIONS OFFICIALS SEEK TO DENY THE PUBLIC INFORMATION ABOUT PRISON OPERATIONS, RESTRICT MEDIA ACCESS TO INMATES, AND REFUSE TO PERMIT PRIVATE GROUPS TO INSPECT THEIR FACILITIES. MOREOVER, FEW STATES HAVE AN IMPARTIAL AND INDEPENDENT AUTHORITY, SUCH AS AN OMBUDSMAN OR INSPECTOR GENERAL, THAT CAN MONITOR SUPERMAX CONDITIONS AND PROVIDE INMATES WITH AN EFFECTIVE RECOURSE AGAINST ARBITRARY SECURITY LEVEL DECISIONS OR MISTREATMENT.

II. RECOMMENDATIONS

TO ASSIST IN A HUMAN RIGHTS BASED REVIEW OF PROPOSED OR CURRENTLY OPERATING SUPERMAX FACILITIES, HUMAN RIGHTS WATCH HAS DEVELOPED A LIST OF CORE RECOMMENDATIONS. THESE RECOMMENDATIONS DO NOT ADDRESS BASIC STANDARDS THAT SHOULD BE ADHERED TO IN ALL PRISONS REGARDLESS OF THEIR SECURITY LEVEL, BUT FOCUS ON SELECTED ISSUES ESPECIALLY RELEVANT TO SUPERMAX CONFINEMENT.

1) THE USE OF SUPER-MAXIMUM SECURITY FACILITIES SHOULD BE STRICTLY LIMITED.

- Prisoners should not be confined in extremely restrictive conditions of isolation and extensive control except when their behavior has shown them to be so chronically violent or dangerous and to pose such a demonstrable, extremely serious threat to prison safety and security that prison officials have no other choice. Mere membership in a gang, absent actual dangerous or predatory behavior, should not be the basis for supermax confinement
- All confinement in supermax units should be for the shortest period of time possible in light of legitimate security and safety considerations. The length of time in supermax confinement should be not extended because of minor rules violations.
- Inmates should be able to reduce their time in supermax confinement through good behavior and the accomplishment of identified program goals.
- Inmates should have a meaningful opportunity to contest assignment to, or continuation of, supermax confinement, and they should have a meaningful opportunity to appeal. All inmates should be given in writing a detailed, individualized explanation of the specific reasons for their original and

continued supermax confinement. Senior central office corrections officials should periodically review the justification for supermax confinement for each inmate. Any inmate kept in supermax confinement for a prolonged period should be able to obtain a review of the justification for such placement from an impartial, independent authority.

2) **Physical conditions should be healthy and humane.**

- Cells should have windows that permit natural light to enter, heating and cooling systems that maintain reasonable in-cell temperatures, and adequate air circulation.
- Inmates should be confined individually in cells; double-celling should not be permitted.
- Cells should be constructed to permit inmates sufficient unencumbered space for exercise, should at a minimum contain a writing surface and furnishing for seating, a sleeping surface, a mattress, storage for personal property, and should be designed to permit operation of televisions and radios.
- All inmates should have access to outdoor recreation areas that expose them to sunlight and fresh air and permit views of the natural world as well as to indoor recreation areas for use during inclement weather. Recreation areas should contain sports equipment and be large enough to permit energetic physical activity.
- Facilities should include common areas that can hold small groups of inmates engaged in congregate activity and spaces in which inmates can have confidential meetings, e.g., with mental health professionals.

- Inmates should be able to control the light in their cells.
- Inmates should be able to contact officers through intercom or emergency buzzers.

3) Mentally ill prisoners should be excluded from supermax confinement.

- Inmates should not be placed or retained in supermax confinement if they are mentally ill or have preexisting mental conditions that make them vulnerable to deterioration in supermax conditions.
- The mental health of all inmates in supermax facilities should be closely monitored. All inmates should have the opportunity to have confidential meetings with mental health staff out of ear-shot of other staff or inmates.

l
l

i
n
m
a
t
e
s

s
h
o
u

l
d

h
a
v
e

a
c
c
e
s
s

t
o

a

f
u
l
l

r
a
n
g
e

o
f

m
e
n
t
a
l

h
e
a
l
t
h

t
r
e
a
t
m
e
n
t

,

i
n
c

l
u
d
i
n
g

i
n
d
i
v
i
d
u
a
l

p
s
y
c
h
o
t
h
e
r
a
p
y

;

g
r
o
u
p

,

r
e
c
r
e
a
t
i
o
n
a
l

,

a
n
d

v
o
c
a

t
i
o
n
a
l

t
h
e
r
a
p
y
;

a
n
d

m
e
d
i
c
a
t
i
o
n
.

4) Rules and programs for inmates should acknowledge their humanity.

- Policies about inmate activities, personal property, privileges, and programs should be no more restrictive than necessary for legitimate security considerations, should permit and encourage prisoners to maintain constructive lives and should acknowledge their inherent dignity and value as human beings. Unduly harsh conditions and extreme restrictions should not be imposed for purely punitive purposes nor as a general deterrent to misconduct by inmates in the general prison population.
- Inmates should be able to earn increased privileges and amenities through positive accomplishments as well as by avoiding rules infractions.
- Inmates should be permitted out of their cells every day for exercise or other activities. They should have the opportunity every day for at least an hour of extended direct interaction and conversation with other inmates or staff. In the case of custodial staff, this requirement for social interaction is not satisfied by whatever verbal exchanges occur during the delivery of meals or during escort procedures.
- The longer an inmate is kept in isolation, the greater the obligation for compensatory conditions, e.g. increased opportunities for programs and activities, increased time interacting with staff.
- Inmates should be given access to and encouraged to participate in programs and activities that permit the development of constructive skills and capabilities.

- Congregate religious worship and confidential meetings with religious personnel should be permitted.
- Frequent contact with families through telephone calls and visits should be permitted. Absent particularized security requirements in individual cases, inmates should be able to visit with families with handcuffs removed.
- Inmates should have access at all times to recreational, educational, and other reading material.
- Inmates should be provided effective transition programming before being released into the general prison population or to society at large.

5) Staff abuses should not be tolerated.

- Staff should be carefully selected and trained to manage difficult inmates with dignity and respect.
- Physical or verbal abuse or other forms of inappropriate staff treatment of inmates should be forbidden and that prohibition should be enforced strictly.
- Policies governing the use of force, the training and supervision of correctional staff, and staff disciplinary mechanisms should be designed to prevent the unnecessary or excessive use of force or other inappropriate treatment of inmates and to identify and hold accountable those who mistreat inmates or fail to maintain high professional standards.

6) Independent and public oversight should be promoted.

- An independent review board, legislative ombudsman, inspector general reporting to the attorney general, or other impartial authority independent of a department of corrections should be given responsibility to monitor supermax conditions, including by undertaking unannounced inspection visits, publicly reporting findings, and making recommendations as needed.
- Independent private groups should be able to investigate and evaluate compliance of supermax policies and practices.
- Access to supermax facilities, and to the inmates confined in them, by the press, religious organizations, and other private groups should be facilitated and encouraged.

III. ACKNOWLEDGMENTS

This report was researched and written by Jamie Fellner, Human Rights Watch associate counsel. It was edited by Malcolm Smart, program director of Human Rights Watch. Jacqueline Brandner and Patrick Minges provided production assistance.

Human Rights Watch is grateful to the Open society Institute for the funding that made this report possible.

Human Rights Watch

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Michele Alexander, development director; Reed Brody, advocacy director; Carroll Bogert, communications director; Barbara Guglielmo, finance and administration director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Patrick Minges, publications director; Susan Osnos, associate director; Jemera Rone, counsel; Malcolm Smart, program director; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Jonathan Fanton is the chair of the board. Robert L. Bernstein is the founding chair.

Web Site Address: <http://www.hrw.org>

Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).