

## **Restrictive Housing Proposal**

We, the prisoners of the TDCJ, especially those held in indefinite solitary confinement (AKA: Administrative segregation/ Restrictive Housing). The purpose of this advanced notice is to provide the TDCJ with a 90-day notice to begin on 10-13-2022 and end on 1-10-2023 in which the TDCJ must make immediate, necessary changes to promote effective and equal access to rehabilitation, restoration of human rights. If no real and lasting change is made before the END DATE on this notice no future promises of improvements will be accepted, and we will escalate our efforts. For decades we have accepted lies of improved conditions, abuse of power, deprivations of our senses, inhumane treatment and conditions, the TDCJ has admitted solitary confinement/Administrative Segregation/ Restrictive Housing causes, long term mental, physical and emotional harm. The effects of which endure long after release cannot be undone, but merely treated in hopes of maintaining a functioning and socially acceptable quality of life. The Texas State House representatives will be receiving many examples of ineffective grievance process, true out of cell time, unnecessary loss of life and proof of documented attempts to resolve these issues by the guidelines of the PLRA. The Texas courts have expressed reluctance to intervene on behalf of prisoners and because of that the fall out has been seen in recent news of deaths, overdose, suicides, escapes, cell fires, excessive use of force, sexual harassment beginning in the juvenile system, and assaults on staff. Even the employees put in place to provide adequate care are suffering for mental health symptoms due to the treatment not only from superiors placing extra demands on job duties but prisoners from who are experiencing the long-term effects of solitary confinement.

5 points towards progress- practical solutions

1.) To abolish the use of indefinite solitary confinement for alleged or confirmed Security Threat Groups members, we demand no less than the settlement terms of Ashker v Governor of California which ended the practice of indefinite solitary confinement in California under the following:

a.) Transform the use of Restricted Housing (RH) from a status based to a behavioral based system to address the behavior of individuals. Stop locking people in RH indefinitely for being a "confirmed STG member". Only those who engage in serious rule violations should be placed in RH. Most RH prisoners have not even been placed in RH due to any STG related rule infraction. The TDCJ's claim that placing STG members in RH is necessary for the safety and security and has been disproven by multiple other states and the federal bureau of prisons nationwide who manage these groups and allow them to remain in general population. There they can engage in constructive, educational, and rehabilitative programs. The practice of Restrictive Housing serves no rehabilitative purpose and only causes unnecessary and permanent mental, physical and emotional harm to prisoners who are denied all educational and rehabilitative programs then released directly into your community which does not contribute to public safety or the prisoner's reintegration to society.

b.) Upon assignment to RH the prisoner will be informed of the firm criteria for their release, upon meeting these criteria be released back to the General population. SCC members must consider all criteria/ factors for release or face real sanctions

c.). Confirmed STG affiliates who are found guilty of an RH eligible offense will enter a two-year step-down program for return to General population after serving their determinate RH term. Only legitimate violent or dangerous contraband major cases should reset to an additional two-year or five-year term if involved in serious bodily injury

d.) TDCJ will create a new Restricted Custody General Population (RCGP) custody level as a secure alternative to solitary confinement/ RH (like California), For those STG validated prisoners who refuse to participate in the step-down program or who have committed numerous acts of misconduct while in RH which may not rise to the level of an RH-eligible offence. This RCGP will include allowing prisoners to move around without restraints, afford sufficient out of cell time, small group recreation, contact visits with family, rehabilitative and educational programming.

e.) Any prisoner in RH for any reason (STG or NON-STG) who has been in Ad-Seg/ RH for more than 5 years as of January 10<sup>th</sup>, 2023 and has not had a RH- eligible major disciplinary infraction within the last 2 years must be immediately released to General Population, and under no circumstances will any prisoner remain in RH/ solitary confinement for more than 10 years.

f.) The current state classification review is ineffective and nothing more than a perfunctory charade. Ruiz v Estelle, 503 F.Supp 1365-67 (S.D.Tex 1980) established periodic reviews to protect prisoner's 14<sup>th</sup> Amendment Due Process rights. These reviews are supposed to be meaningful (Mathews v Eldridge, 424 U.S. 319, 333 (1976)) and cannot be a perfunctory sham review with a predetermined outcome. Review with a predetermined outcome does not satisfy due process and is tantamount to no review at all. (Hewitt v Helms, 459 U.S. 460 (1983)) ; (Grissom v Roberts, 902 F.3d 1162, 1179 (10<sup>th</sup> Cir. 2018).

During the COVID Pandemic, we were not allowed to attend these SCC reviews, not allowed to make a statement or present evidence or anything else that is required for due process. The TDCJ claims that it is a covid precaution, yet they can conduct disciplinary hearings, in the same room with the same number of people. If they want to discipline prisoners, the same right should be afforded to a review process that has a far greater bearing on their future, rehabilitation and release to General Population or society. The results of the SCC review are the same whether the effort to exercise due process are the same or not, proving that these reviews have always been meaningless and just a formality as the outcome of not attending GRAD will always be to remain in RH till their release date regardless of a true lack of behavioral issues or disciplinarys. We will no longer accept this violation of our Constitutional rights and clearly established law. We demand meaningful review assisted by counsel substitute—These are due process hearings, and we are entitled to the same due process protections as a disciplinary hearing. Furthermore, all appeals and any decision to hold a prisoner in RH beyond 5 years, must be reviewed by an independent, impartial 3-person panel consisting of a TDCJ representative, a legal representative, and a mental health professional familiar with the effects of long-term solitary confinement like conditions and restrictions.

g. Parole Process – Security Threat Group (STG) members' due process rights in the current parole process are being violated. Very similar to the current SCC/RHC review process, parole review process relies on the same evidence, less in fact as the parole board doesn't question, investigate or allow meaningful opportunity to be heard. They just base a decision on the SCC and STGMO finding that the inmate is a "confirmed" member of a STG. Their reasoning for denying parole is completely determined by TDCJ/SCC/RHC decision to confirm them to a STG. In fact, the TDCJ SCC are determining the length of time done on sentences. The eligibility for parole rests in the hands of the STG. Failure to timely disclose information in their files that could be used against them in parole determinations violates due process rights. Meaningful opportunity to challenge inaccuracies in confidential information and therefore, meaningful opportunity to be heard at parole hearings. An inmate's old gang validations and/or central files without any qualifications as to their flaws, unreliability, policies and practices relating to its disclosure of confidential information relied upon for parole determination, unwritten policy that bars inmates housed in Post-Restrictive Housing being granted parole would violate due process based on a theory that STG validations alleged results in the denial of a fair opportunity for parole, can therefore be regarded as continued due process violations. Parole policies which are inconsistent with the demands we seek in reforms and remedies are a subject of concern in reaching terms of this proposal. Implement for protection from continued violations must be reached and established before resolutions are met.

h.) As in the Ashker settlement, designated prisoner representatives and legal council will meet in conference with the TDCJ officials on a regular basis to review the progress of these reforms, express concerns and solutions, discuss programs and improvements, and to monitor overall prison conditions. This allows prisoners to have a voice and be more actively involved in their rehabilitation, to inform officials, and as a forum for conflict resolution.

**WE WILL NO LONGER ACCEPT INDEFINITE SOLITARY CONFINEMENT FOR ANY REASON!!!**

2.) Modify the TDCJ policy of GRAD being the only option to gain release to General Population. This program requires prisoners to provide self-incriminating information which can potentially be used to prosecute the individual and is therefore a violation of 5<sup>th</sup> Amendment right to avoid self-incrimination. The GRAD program further requires prisoners to provide information about the gang or other prisoners resulting in a "snitch" label that places him at greater risk of harm or death. The TDCJ is aware of this which is why they require all GRAD participants to sign a waiver absolving TDCJ of liability. Furthermore, in the past, TDCJ assigned EX-STG/GRAD participants to designated units to minimize the risk of reprisals against EX-Members; however, the TDCJ no longer does this. Now they recklessly mix ex-members among active members in the process of confirmation potentially creating more safety and security risks. It has also been noted that GRAD participants often feel pressured and provoked to end the GRAD process due to repeated interrogation tactics of program facilitators often considered a move to gain promotion within the TDCJ.

3.) For those who remain assigned to RH for legitimate reasons:

a.) Must be housed at a climate controlled 12- building or high security- type facilities. During extreme heat the majority of RH does not have access to respite areas and needs consistent distribution of ice water when it is needed most.

b.) Must be provided with meaningful rehabilitative and educational programs. Which can be facilitated by inmate field ministers and approved trustees to assist the teachers, educators and volunteers.

c.) Must be provided firm criteria for them to EARN their release from RH based on their individual behavior. In other words, base the SCC Hearing, release decision on the factors/ criteria on the current form, as it logically should be.

d.) Must be eligible for the securus tablet system with access to ALL content (entertainment and educational) for level one prisoners. And a minimum of 3-4 hours of video calls per week to mirror visitation, which is essentially a virtual visit

e.) Televisions for level one prisoners (either in cell or in dayroom)

f.) Make small group recreation an option for those who maintain an expected standard of behavior for three months and who agree to attend rec with those approved and agreed upon individuals

g.) access to the video visitation program (offenders are often transferred away from family to help ease staff shortage but this often causes negative mental health effects of further isolation)

h.) For level one prisoner's access to the prisoner phone system: either in the dayrooms, a designated booth or a cordless system. RH will no longer accept a single five-minute phone call every 90-days at rapacious collect call fees that are as high as \$15.00 for a 5-minute call, when the general population is unlimited at 6 cents per minute.

### **FOR ALL TDCJ PRISONERS**

4.) Grievance procedure

The current grievance process is ineffective and lacks a great amount of transparency. The officials whose policies or actions are being grieved are the very same officials who respond to the grievances. The "grievance coordinator" never discloses what steps were taken to address the grievance and merely responds with what has been called the rubber stamp response. The Step 1 responses now are near always drafted by the unit grievance investigator ("UGI") who merely takes a statement from the person responsible and/or involved in the issue, then that UGI recommends the Asst Warden provide that response- which they almost always do- and he/ she signs the step 1.

Reviewing Step 2 officials of the Unit (step 1) Grievances must address genuine issues and resolve promptly to include true accountability of Step 1 reviewer who did not resolve appropriately.

## 5.) Visitation

a.) to facilitate visitation and family connections necessary for successful reintegration into society, the TDCJ shall make it a priority to assign prisoners to facilities near their families and make a hardship transfer easier to obtain with good behavior.

b.) END the practice of indefinitely removing people from visitation lists over vague, unproven infractions. There are people who haven't seen their immediate family for years because they were removed over minor infractions; the review process is a farce. Removal of visitors from visitation lists must be for proven and demonstrably serious infractions, with meaningful appeals, and only for definite terms.

c.) The TDCJ rule prohibiting contact visitation with non-immediate family is unreasonable, arbitrary, and unrelated to any legitimate penological justification. Why would both prisoner and family be permanently punished with denial of contact visits with a loved one who isn't immediate family, despite years of good behavior? What rehabilitative purpose does this have to incident that is completely unrelated to visitation privileges? We demand a reasonable and equal application of visitation policy to allow SPD-coded prisoners who are eligible for contact visits to include visitation with non-family.

### FOR ALL TDCJ OFFICIALS

Recognize this is your opportunity to stand up for all that is morally right in fair treatment of all individuals - which results in true rehabilitation & safer communities where all have environment to thrive by drawing out our unique, diverse talents. Leading by example is real, but you/we must know what we are doing is right/fair/ just for all involved.

We the incarcerated, our family, friends, activists, lawmakers and community leaders know the Correctional Officers are tired of having staff reduced to better cover shortages, excessive overtime, of the security risks the strain Restrictive Housing creates. The health risks you're exposed to daily from gassing, fires, throwing of bodily fluids without proper PPE, and the sexual harassment are a direct result of the mental strain created by this housing. Many of you veteran employees pushed to the brink which can lend to creating the issues we observed over the last year. A pay raise only helps in the short term as shown by gas prices consume most of your latest pay increase. How about creating lasting, progressive changes that will ease the strain and make the incarcerated far more accountable for their own personal behavior thus creating a safer work environment with more independent and occupied inmates that will now be far more able to retain conversational skills, reasoning and problem solving now with the ability to use it for their betterment.

We ask you to understand how important making this necessary change is not only to reduce recidivism, but to focus on our rehabilitation, human rights and to help maintain a healthy and safe work environment the employees, incarcerated and tax payers can be confident in the ability to correct and make accountable those within the TDCJ Restrictive Housing units for their individual efforts and behavior before returning them to the community by giving them the ability to actively be more proactively involved in their rehabilitation, held accountable for their behavior and effort.

Thank you for your consideration

Submitted by: The men of Texas Prison Reform on behalf of themselves and similarity situated participants