

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

TODD ASHKER, et al.,

Plaintiffs,

v.

GOVERNOR OF THE STATE OF
CALIFORNIA, et. al.,

Defendants.

Case No.: 4:09-cv-05796-CW

CLASS ACTION

Judge: Honorable Claudia Wilken

EXPERT REPORT OF TERRY J. COLLINS

1. I am the retired Director of the Ohio Department of Rehabilitation and Correction. I hold a Bachelor's degree in Sociology with Emphasis in Corrections (1977) from Morehead State University, Morehead, Kentucky and a Master's degree in Correctional Administration (1980) from Xavier University, Cincinnati, Ohio.

2. I began my career with the Ohio Department of Rehabilitation and Correction in 1977 as a social worker at the Southern Ohio Correctional Facility. In 1980, I transferred to the London Correctional Institution where I served in various capacities to include social services director, labor relations officer, administrative assistant to the warden, and deputy warden of programs. I was appointed to the position of warden in 1991 at the Lorain Correctional Institution. I also served as warden at the Southern Ohio Correctional Facility and Ross Correctional Institution before being promoted to South Regional Director at Central Office in 1999, Deputy Director of Institutions in 2000, and Assistant Director in 2005. In May 2006, Governor Taft appointed me as Director of the Department of Rehabilitation and Correction and Governor Ted Strickland reappointed me in February 2007. On January 31, 2010, I retired from the agency, with over 32 years of service to the State of Ohio. My resume is attached as Exhibit A.

3. As Director of DRC, I was responsible for approximately 12,000 employees and an inmate population of nearly 51,000, and over 34,000 offenders under supervision of the Adult Parole Authority. I also managed a department budget of over \$1.7 Billion.

4. I am a member of various organizations including the American Correctional Association (ACA), the Ohio Correctional and Court Services Association, the National Association of Wardens and Superintendents, the Ohio Wardens Association, the Correctional Accreditation Association of Ohio, the National Association of Blacks in Criminal Justice, the Midwest Directors Association (past member), the National Association of Correctional Record Administrators & Supervisors (past member), and the Association of State Correctional Administrators (Associate Member).

5. Since February 2011 I have worked as a corrections consultant on various correctional issues and projects across the nation. For Management Training Corporation (MTC) based in Centerville, Utah, I have conducted security audits, developed training in Incident Command System, Back to Basics, and served on MTC's committee to develop policy on Restrictive Housing. My work with Union Supply based in Rancho Dominguez, CA, includes advising on inmate sundry/food packages and commissary operations. I previously served on the Board of Managers of TouchPay, LLC based in Irving, TX and continue to consult with them in their inmate banking operation.

6. I have conducted training sessions for the American Correctional Association (ACA) on correctional operations to representatives from Saudi Arabia. In addition for ACA I traveled to

the United Arab Emirates (UAE) on two occasions to provide training to UAE prison officials on prison operations.

7. I have been retained by plaintiff attorneys to provide an opinion on the management of high security inmates based of my extensive and continuing corrections career and experience.

8. I will provide an overview of the Ohio Department of Rehabilitation and Corrections management of high security inmates held at the Ohio State Penitentiary (OSP) in Youngstown, Ohio. This information will be provided for the Court in consideration of changes in operational practices at issue in the plaintiff's lawsuit involving Pelican Bay State Prison.

9. I am being compensated at the rate of \$150.00 an hour plus expenses for my work in this matter.

10. I have not testified before as an expert witness.

11. I reserve the right to supplement or amend the report if other information becomes available.

12. I have a great deal of experience and knowledge about the situation at OSP due to my former positions with the ODRC. To refresh my knowledge, on February 24, 2015 I met with officials at the Ohio State Penitentiary (OSP) in Youngstown, Ohio and toured cellblock pods and the visiting room. The purpose of this meeting was to define, clarify, and ensure full understanding of the programs and privileges granted to inmates at this facility since my retirement. I met with the Warden, Deputy Wardens, and Assistant to the Northeast Regional Director.

13. In 1998 the Ohio Department of Rehabilitation and Correction opened the Ohio State Penitentiary in Youngstown, Ohio. This prison houses inmates that are classified as having the need for the highest security level. Inmates confined at OSP are classified as either level 4 commonly referred to as maximum security or level 5 commonly referred to as Administrative/Supermax. Level 5 is the highest security in the department. It should be noted that this prison undertook massive reforms during and after a class action lawsuit on conditions in the mid 2000's. As a result, Level 4 inmates must in essence agree to be housed at OSP and must be moved if they request such via the established procedures. In addition NO inmate with serious mental health issues can be housed at OSP. Each level of security has privilege levels defined as A or B. The initial assignment to level 5 starts at 5B and progresses downward to level to 5A, 4B, 4AT, 4A, and transfer to other prison for lower security housing. The status of 4AT is a transition to 4A from 4B. Finally the prison also has inmates assigned as Level 1 (the lowest level of security) who perform facility cleaning and yard work in/on prison grounds. They are housed separately from all others but are inside the main complex of OSP.

14. I was the Deputy Director of Institutions when Ohio undertook major reforms to super maximum confinement at OSP and supervised those reforms. The Director of ODRC developed a committee to review, revise, create and implement policies for OSP and the agency as a whole. I was the highest ranking member of the committee and reported progress to the Director. Our work on this committee resulted in three major initiatives: a dramatic reduction in population at OSP, new procedures which were affirmed by the courts, and the development of substantive criteria which limited who could be placed in long term supermax confinement commonly referred to as "restrictive housing". While these reforms were partially the result of the lawsuit brought by inmates, Ohio recognized the need to reform its procedures and policies. I agreed with these reforms and was instrumental in implementing them; first as Deputy Director of Institutions, then Assistant Director, and finally as Director. The reforms resulted in a dramatic reduction in overall inmate population at OSP security level 5. I believe that the new procedures and criteria were working well when I was Director and continue to work well. I believe that the reforms improved our system for the inmates and staff.

15. How many inmates are housed at OSP:

The prison has capacity for 504 total inmates. On 2-24-15 the prison reported a total of 409 inmates: 66 in 5B, 64 in 5A, 206 in 4B, 62 in 4A, 7 in level 1, 4 in 5A long term (described below).

16. How many Level 5 inmates at OSP:

134 inmates at OSP are classified as level 5. The department population as reported on weekly count of February 23 was 50,101. This makes Ohio the state with the 6th or 7th largest prison population. Having this low a number of inmates at the highest level of security is remarkable in a system this large, but it should not be. I believe this is a growing trend, and I am aware of other state prison systems such as Colorado, Wisconsin, and Mississippi that have undertaken similar reforms to their high security prisons to successfully reduce the number of inmates in restrictive housing.

17. Who goes to OSP Level 5:

Placement in level 5 is controlled by policy 53-CLS-04 Level 5 Classification¹. This policy limits placement at level 5 to certain demonstrated behavior criteria. Inmates must engage in seriously dangerous behavior such as murder, assault, riot, or escape to be placed in level 5. Simple gang membership or affiliation would not allow placement at level 5. Level 5 is reserved for those individuals who by their actions have proven to be predatory, assaultive and

¹ The policy is available on the department website at www.drc.ohio.gov. Dropdown tab agency policies and click on DRC policies.

disruptive to overall prison security. Placement in level 5 requires a thorough investigation along with a guilty finding of an established rule violation.

18. Security Threat Group (gang) members in Level 5:

I was advised that the entire Ohio Department of Rehabilitation and Corrections has approximately 8,500 inmates profiled with Security Threat Group (STG)/gang affiliations. On the day of my visit ONLY five (5) of the 134 level 5 inmates were placed there for STG related disruptive activities. Based on their involvement in an incident or an investigation of illegal activity inmates can be issued a conduct report sent to the Rules Infraction Board and be referred for level 5 placement. Level 5 placement for STG/gang activity is controlled by the above mentioned policy 53-CLS-04 paragraph C.5 which states "the inmate functions as a leader, enforcer, or recruiter of a security threat group, which is actively involved in violent or disruptive behavior."

The Ohio system manages and monitors STG/gang activity by the level of participation defined as passive, active, or disruptive. These levels mean:

- Passive participants are those identified as STG/gang but are not continuing activity.
- Active participants are those identified in the past twenty-four months having STG photos, tattoos, or possession of STG contraband (alphabet, codes, insignias) or notification by law enforcement that substantiates STG/gang membership. Documentation shall include a guilty finding at the Rules Infraction Board.
- Disruptive participants are those identified in the past twenty-four months who function as a leader, enforcer, recruiter actively involved in violent, disruptive behavior, i.e. threats or assault of staff or inmate, encouraging/creating an uprising to disrupt normal operations, convey or attempt to convey major contraband, possession of weapon, cell phone or device to aide escape, and or committed disruptive acts such as extortion, threats, robberies. Documentation shall include a guilty finding at the Rules Infraction Board.

Those inmates who demonstrate violent and disruptive actions are placed at level 5.

19. How long do inmates stay in level 5:

The OSP officials provided a chart which I have provided as Exhibit B. The chart was developed in December 2014 so not current the day of my visit but is within an acceptable time to be valid. The chart listed 128 inmates however I eliminated the four (4) long termers so total defined as 124 inmates. I note the following regarding the 124 inmates:

- 32 inmates, or 25.8%, did 0-12 months

- 34 inmates, or 27.4%, did 13-24 months
- 23 inmates, or 18.5%, did 25-36 months
- 35 inmates, or 28.2%, are doing 37 to 97+ months
- 71.8% do less than 3 years in level 5

During the discussion on length of stay in level 5 the OSP officials allowed me to inquire about those doing the longest times. I picked out six (6) cases of those inmates who had been continuous level 5 ranging from 7 to 14 years. I found all had continued disruptive actions with numerous conduct reports. Their failure to change their behavior requires they continue level 5. My years of experience also tells me that some of these inmates may continue to act out knowing it will keep them in level 5, in essence a self-imposed protective control. Some inmates who have been housed on level 5 have a generalized fear to be placed in lesser custody. They fear being housed in a large dormitory or two man cell. Their fear is generalized and not specific to a person or incident that would warrant protective control placement.

20. Privilege levels for inmates confined at OSP:

OSP has defined privileges depending on the level of security. I have attached a copy provided by the prison that defines the various privileges allowed at each level (Exhibit C). Of special interest to me are the extended privileges granted to the "long termers" in level 5. There are four (4) inmates assigned to this privilege level who have been confined at OSP since 1998. These are the inmates who are considered the most dangerous in the Ohio system based on their involvement in the 1993 riot and the 1997 death row disturbance. All are under death penalty. While I was Director I believed and currently believe that dangerous inmates in long term segregation could be given additional privileges which would approximate some of the conditions that they would have in the general population or on death row. I found that it reinforces positive behavior, gave inmates something to work toward, helped break up their time and created hope. Subsequently, these prisoners were given additional privileges. The addition privileges are:

- Phone calls for 1 hour per day, sometimes longer, via the cordless phones used at OSP.
- Recreation and out of cell time either on the pod floor area, pod indoor recreation room or enclosed outside recreation area for a 1 hour 45 minutes session (7 days a week) plus they generally are granted an additional 1 hour 45 minutes session (2 days per week). In recreation area they are provided hand ball, jump rope, exercise ball, dip bar, exercise wheel, and basketball if they go to outside area.

- Recreation and out of cell time generally includes congregate recreation with one other long term inmate who is assigned to the pod.
- Visiting is permitted 5 days a week and each visitor may visit 3 times per month. Theoretically an inmate with 10 approved visitors on his list could result in 30 visits per month. These visits are up to 5 hours in length, either semi-or full contact, may have 3 approved visitors at any one time on the visit. If the visiting room is not full the visit may be extended for an additional 1 hour. The full contact visits take place in the open visiting room. Inmate is seated at table and in leg restraints. The restraints are secured to the table by using a separate leg cuff attached to the table that is then attached to the chain of the leg restraints. The handcuffs and belly chains are removed once the inmate leg restraints have been attached and secured. Semi contact visits are held in glass front booths but have an opening that allows for inmate and visitor to hold hands.
- Increased property limits include plug and play video games that are purchased from the approved vendors, typewriters, and keyboards
- Allowed to order from the approved vendors up to 3 packages per year with a maximum of 2 being food packages.

Each inmate understands that their conduct and rule violations can result in immediate removal of the privileges. In my years of experience I have seen the use of privileges have a positive benefit especially in high security or restrictive housing.

21. In my experience and in current discussions with OSP officials this is working well. There has been no incidence of violence with those defined as long termers. Inmates value these privileges and are generally well behaved. Contact visits have proven to be no threat to the security of the institution, nor has small group recreation or phone calls. It is my belief that similar privileges could be used in other states. In my experience, Ohio could use this model in the future with other inmates who have been in level 5 for a very long time, even though not as long as the 4 long termers. The modern trend is to reform restrictive housing and is a current focal point of the American State Correctional Administrators. In addition the American Correctional Association (ACA) has held plenary sessions regarding use of restrictive housing. At the most recent ACA conference it was announced that a committee was developed to review all current standards regarding inmates in restrictive housing.



Date: 3-7-15

EXHIBIT B

Attachment 2

Length at Level 5

128 inmates as of December 2014 Mean=35.4 months

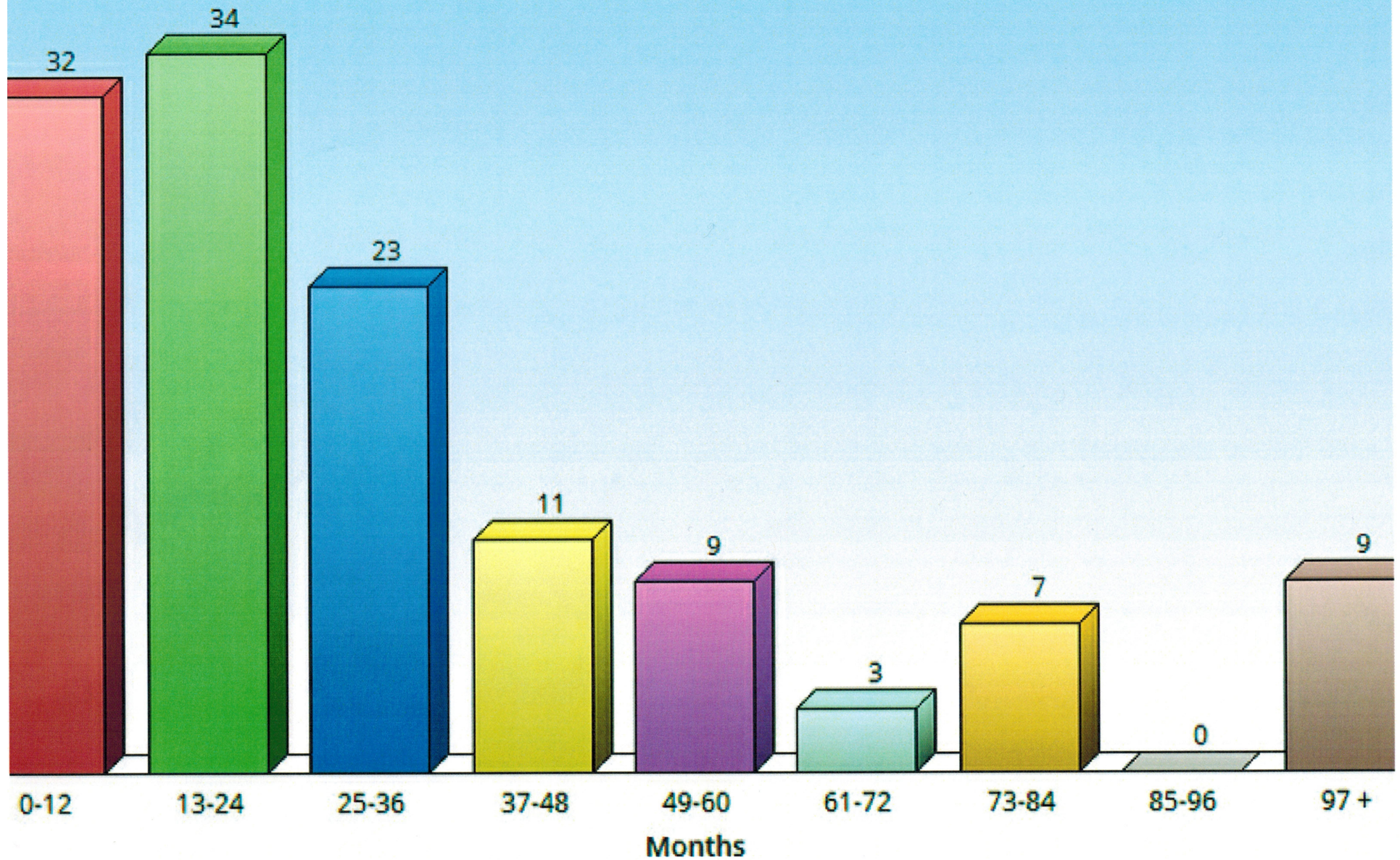


EXHIBIT C

**OHIO STATE PENITENTIARY
PRIVILEGE LEVEL OVERVIEW
Revised 1/05/2015**

Privilege	Level 4A	Level 4AT	Level 4B	Level 5A	Level 5A Long term	Level 5B	Special Management
Commissary Spending Limit	\$100.00	100.00	\$90.00	\$70.00	\$70.00	\$50.00	Approved Items Only \$7.50
Phone Calls All calls are fifteen (15) minute in duration	One 15 minute call available per day during out of cell time.	One 15 minute call available per day during out of cell time.	One (1) fifteen (15) Minute Calls Per Week	Two (2) Fifteen (15) Minute Calls Per Month	Up to one (1) hour per day allowed for calls.	One (1) Fifteen (15) Minute Call Per Month	One (1) Fifteen Minute Call Per Month after 30 days in SMU
Pod Porter Phone Calls	Level 5 pod porter's only gets one additional call per month. Level 5 only						
Special Phone Calls	All levels Arranged by Unit staff: Current Case Attorney of Record or a confirmed Serious Illness or Death Notification call at Warden's discretion.						
Recreation Handbook: Outdoor recreation is one (1) hour for all levels.	Seven (7) days per week for up to 5 hours. Total Congregate up to four(4) inmates	One (1) hour and forty-five (45) minutes per day Seven (7) days per week Congregate up to four (4) inmates	One (1) Hour and Forty-five (45) minutes, five (5) days per week. No congregate	One (1) Hour Periods, Five (5) Days per Week. No congregate	One (1) Hour and Forty Five (45) Minutes Periods, seven (7) days per week. No congregate	One (1) Hour, Five (5) Days Per Week, No congregate	One (1) Hour, Five (5) Days Per Week, No Congregate
Shower	Two (2) Fifteen (15) Minute Periods, seven (7) days per week	Fifteen (15) minutes, Five (5) days per week to be included in the 1 hour and 45 minute recreation	Fifteen (15) minutes, Five (5) days per week to be included in the 1 hour and 45 minute recreation	Fifteen (15) minutes, Five (5) days per week to be included in the 1 hour and 45 minute recreation	Fifteen (15) minutes, Five (5) days per week to be included in the 1 hour and 45 minute recreation	Fifteen (15) minutes, Five (5) days per week to be included in the 1 hour and 45 minute recreation	Fifteen (15) minutes, Five (5) days per week to be included in the 1 hour and 45 minute recreation
Shaving	Ten (10) Minutes periods, five (5) days per week	Ten (10) Minutes periods, five (5) days per week	Ten (10) Minutes periods, Five (5) days per week	Ten (10) Minutes periods, five (5) days per week	Ten (10) Minutes periods, seven (7) days per week	Ten (10) Minutes periods, three (3) days per week	Ten (10) Minutes periods, three (3) days per week
Visits	Three (3) visits per month per visitor for up to four hours Full contact or non-contact visits	Three (3) visits per month per visitor for up to four hours Non-contact	Two (2) four (4) hour visits per month per visitor Non-contact	Two (2) per month three 3 hours and thirty(30) minutes Non-contact	Three (3) visits per month, per approved visitor at up to five (5) hours per visit semi contact or full contact. Full day if available	2 per month Two (2) hours and thirty (30) minutes Non-contact	DC One (1) two (2) hour visit for each visitor, limit two (2) visitors per visit Wednesday through Friday SC same as security level Saturday & Sundays All Non-contact Level change from SC to DC or LC will have their Saturday or Sunday scheduled visit cancelled.
Library Softback only	Six (6) books per week	Six (6) books per week	Five (5) books per week	Four (4) books per week	Four (4) books per week	Three (3) books per week	Three (3) total all books
Access Securepak, Walkenhoursts or Union Supply	Up to two (2) total packages per year (maximum one food box)	Up to two (2) total packages per year (maximum one food box)	Specific Items TV, shoes, CD FM radio players ear buds, head phones	NONE	Up to three (3) total packages per year with a (Maximum two food boxes)	NONE	NONE