

Rethinking Death Row: Variations in the Housing of Individuals Sentenced to Death

The Arthur Liman Public Interest Program
Yale Law School

July 2016

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Inquiries:

Judith.Resnik@yale.edu
Yale Law School
PO Box 208215,
New Haven, CT 06520-8215
Courier: 127 Wall Street
New Haven, CT 06511

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The primary authors of this Report are Celina Aldape, Ryan Cooper, Katie Haas, April Hu, Jessica Hunter, and Shelle Shimizu, Yale Law School students participating in this Liman Project from 2014 to 2016 and working under the supervision of Johanna Kalb, Visiting Associate Professor of Law and Director, Arthur Liman Public Interest Program, and Judith Resnik, Arthur Liman Professor of Law. This project has been generously supported by Yale Law School, the Liman Program, the Vital Projects Fund, and the Oscar M. Ruebhausen Fund at Yale Law School.

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In 2015, individuals sentenced to death in the United States were housed in varying degrees of isolation. Many people were kept apart from others in profoundly isolating conditions, while others were housed with each other or with the general prison population. Given the growing awareness of the debilitating effects of long-term isolation, the placement of death-sentenced prisoners on what is colloquially known as “death row” has become the subject of discussion, controversy, and litigation.

This Report, written under the auspices of the Arthur Liman Public Interest Program at Yale Law School, examines the legal parameters of death row housing to learn whether correctional administrators have discretion in deciding how to house death-sentenced individuals and to document the choices made in three jurisdictions where death-sentenced prisoners are not kept in isolation. Part I details the statutes, regulations, and policies that govern the housing of those sentenced to death and reviews prior research on the housing conditions of death-sentenced prisoners. Part II presents an overview of decisions in three states, North Carolina, Missouri, and Colorado, where correctional administrators enable death-sentenced prisoners to have meaningful opportunities to interact with others. Given the discretion that correctional officials have over housing arrangements, these states provide models to house capital-sentenced prisoners without placing them in solitary confinement.

Table of Contents

I.	A Nationwide Look at Discretion in “Death Row” Housing	3
	A. Laws Governing Isolation of Death-Sentenced Prisoners	4
	1. Placement in Isolation or Segregation	4
	2. Visiting and Time Out-of-Cell	5
	B. Policies Governing Isolation of Death-Sentenced Prisoners	6
	C. Prior Research Regarding Death-Sentenced Prisoner Housing	7
II.	Housing Arrangements for Death-Sentenced Prisoners in North Carolina, Missouri, and Colorado	8
	A. North Carolina	9
	B. Missouri	11
	C. Colorado	14
III.	Looking Forward	17

Appendix A: Table of Statutes, Administrative Regulations and Case Law by Jurisdiction

In 2015, nearly 3,000 death-sentenced prisoners were incarcerated in state and federal facilities in the United States.² Most were housed in some form of isolation. A growing body of research documents the harms of long-term isolation on prisoners' mental and physical health, and correlates isolation with increased violence in prison.³ Further, prison administrators report the challenges and costs of staffing isolation units.⁴ Proposals for reducing the use of isolating conditions in prison have been put forth by the executive branch of the federal government,⁵ by state correctional leaders,⁶ and by the legislative branches of the federal⁷ and state governments.⁸ Detention of juveniles in solitary has been a specific source of concern. In 2016, both the Colorado legislature and the Los Angeles County Board of Supervisors enacted provisions banning the use of isolation for juveniles, defined in Colorado as individuals under the age of 21,⁹ and in Los Angeles as individuals younger than 18.¹⁰ Lawsuits have successfully challenged isolating conditions – resulting in consent decrees to limit the use of isolation either for all prisoners¹¹ or for subpopulations, such as the seriously mentally ill and juveniles.¹² Reports and articles document the harms of such isolating confinement and analyze its legal parameters.¹³

These concerns raise questions – in terms of both practices and as a matter of law – about the use of long-term isolation for a specific set of prisoners, those serving capital sentences and often housed on what is colloquially known as “death row.” A few prior reports have surveyed conditions; for example, in 2013, the American Civil Liberties Union (ACLU) detailed the severity of isolation experienced by death-sentenced prisoners and criticized the practice of imposing long-term isolation as an automatic consequence of death sentences.¹⁴

Lawsuits challenging the practice have also been filed. In 2012, Alfred Prieto, a death-row prisoner in Virginia, argued that automatic segregation violated his constitutional right to an individualized decision about the need for placement in isolation. A trial-level judge agreed¹⁵ but on appeal, the Fourth Circuit reversed. The court held (over a dissent) that because all death-sentenced prisoners in Virginia were subjected to the same treatment, Mr. Prieto's isolation was not “atypical” and therefore he had no liberty interest protected by the Due Process Clause in avoiding such confinement.¹⁶ Although U.S. Supreme Court review was sought, after Mr. Prieto was executed¹⁷ his petition for certiorari was dismissed as moot.¹⁸

More generally, members of the U.S. Supreme Court have questioned the constitutionality of profound isolation.¹⁹ In June 2015, Justice Kennedy raised the issue when concurring in the reversal of a grant of habeas corpus relief obtained by Hector Ayala, who had been sentenced to death. Justice Kennedy wrote that in all likelihood, Mr. Ayala would have spent “the great majority of his more than 25 years in custody in ‘administrative segregation’ or, as it is better known, solitary confinement.”²⁰ Justice Kennedy explained that, if following “the usual pattern,” the prisoner had likely been held “in a windowless cell no larger than a typical parking spot for 23 hours a day; and in the one hour when he leaves it, he likely is allowed little or no opportunity for conversation or interaction with anyone.”²¹ Justice Kennedy drew attention to the “human toll wrought by extended terms of isolation,” and called for change through more “public inquiry;” through judicial discussion of the harms; and, in an appropriate case, through decisions by judges about “whether workable alternative systems for long-term confinement exist, and, if so, whether a correctional system should be required to adopt them.”²²

The isolation of prisoners is also the subject of case law in many jurisdictions and of international concern. The European Court of Human Rights has concluded that the Convention on Human Rights imposes limits on isolating conditions,²³ and research in Great Britain detailed the injuries of what it termed “deep custody.”²⁴ International standards also address isolation. In 2015, the United Nations Commission on Crime Prevention and Criminal Justice met to revise its standards for the treatment of prisoners. The result are the Standard Minimum Rules for the Treatment of Prisoners (known as the “Nelson Mandela Rules”), which were adopted by the U.N. General Assembly in 2015.²⁵

These rules define “solitary confinement” to be “confinement of prisoners for 22 hours or more a day without meaningful human contact;” “[p]rolonged solitary confinement” is “solitary confinement for a time period in excess of 15 consecutive days.”²⁶ The Mandela Rules state that, “[i]n no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment.” The Mandela Rules provide specific “practices, in particular” that “shall be prohibited;” included are “[i]ndefinite solitary confinement;” and “[p]rolonged solitary confinement.”²⁷ Moreover, the Rules state that “[s]olitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority,” and “shall not be imposed by virtue of a prisoner’s sentence.”²⁸ In addition, “solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures” as well as for “women and children.”²⁹

This Liman Report contributes to this discussion by providing an analysis of the statutory, administrative, and procedural rules governing the housing of death-sentenced prisoners in the United States; by summarizing past research on conditions for death-sentenced prisoners; and by offering a detailed account from correctional administrators in three states who have chosen to use their discretion not to put individuals sentenced to death in isolation. Part I provides both an overview of the legal parameters governing the housing of death-sentenced individuals in the thirty-five jurisdictions that had such prisoners in 2015,³⁰ and a review of prior research on housing conditions of death-sentenced individuals. After examining statutes, administrative codes, and available department of correction policies in those jurisdictions, we learned that correctional officials have substantial discretion to decide how to house death-sentenced prisoners. An appendix provides the legal rules and policies of each jurisdiction.

Part II summarizes interviews conducted in the spring of 2015 with correctional administrators in three jurisdictions – North Carolina, Missouri, and Colorado – that permitted death-sentenced prisoners some degree of direct contact with each other or the general prison population. Specifically, as of 2015:

North Carolina housed 156 death-sentenced prisoners, separated them from the general population, but afforded them similar access to resources and programs as other prisoners. Death-sentenced prisoners were able to spend sixteen hours each day in a common room and were permitted to exercise and dine in groups.

Missouri housed 28 death-sentenced prisoners, integrated them into the general population of a maximum-security prison. Death-sentenced prisoners shared cells with other prisoners and had all the same privileges and opportunities as those who had not been sentenced to death.

Colorado, which confined 3 death-sentenced prisoners, placed them in a designated unit together with other prisoners classified as in need of increased supervision. All prisoners housed in the unit had access to a common room in small groups for at least four hours each day; death-sentenced individuals had most of the opportunities available to other prisoners in the unit.

A central finding of this Report is that prison officials have many options when determining the housing of individuals sentenced to death. Our hope is that this Report will provide models for lessening the isolation of death-sentenced individuals and invite innovations in the housing arrangements for all prisoners.

I. A Nationwide Look at Discretion in “Death Row” Housing

As of 2015, thirty-five jurisdictions (thirty-four states and the federal government) housed death-sentenced prisoners. These thirty-five jurisdictions varied widely in the number of death-sentenced prisoners in custody. As of the fall of 2015, California had the largest number – 745. Both Wyoming and New Hampshire each housed one person sentenced to death.³¹

We searched the statutes and administrative codes of these jurisdictions to identify materials governing death-sentenced prisoners.³² Such provisions may be found in a jurisdiction’s criminal laws, capital sentencing provisions, or rules governing the execution of death sentences. We also reviewed case law discussing housing for death-sentenced prisoners.

We sought to learn about whether laws addressed single-celling; hours in cell; participation in groups for meals, recreation, and programming; contact with other death-sentenced prisoners, the general population, visitors, or prison staff; access to books, television, or other media; and opportunities, if any, for periodic reviews of and changes in housing. As we detail below, many of these topics were not the subject of statutes, regulations, and administrative policies. A summary of this research is compiled in Appendix A.

We also researched policies adopted by state and federal corrections departments to govern the housing of death-sentenced prisoners. We consulted the publicly available policy and procedure manuals for each jurisdiction’s department of corrections, and supplemented our findings with secondary sources, such as law review articles and newspaper reports.

Further, we sought to learn about prior resources on the housing of people serving capital sentences. Below, we summarize four surveys that included information on housing practices for death-sentenced prisoners: a 2013 survey by the ACLU; a 2014 survey by the Association of State Correctional Administrators (ASCA) and the Liman Program at Yale Law School; a 2013 survey by ASCA; and a 2008 survey that was prepared by Professor Sandra Babcock for the

Death Penalty Information Center. The surveys all reported high degrees of isolation for death-sentenced prisoners.

To preview what follows, this review of statutes and regulations documents that most jurisdictions do not require isolation of death-sentenced prisoners and leave correctional officials substantial discretion to determine housing conditions. Many correctional departments' policies impose isolation; the four surveys further document how profoundly isolating the conditions have been for many prisoners. In contrast, in a few jurisdictions, correctional officials have published policies describing the placement of death-sentenced prisoners in less restrictive housing conditions.

A. Laws Governing Isolation of Death-Sentenced Prisoners

1. Placement in Isolation or Segregation

In nineteen of the thirty-five jurisdictions with death-sentenced prisoners, statutes and regulations specifically address death-sentenced prisoner housing. Seventeen states do so by statute,³³ and four of those seventeen also address housing in regulations.³⁴ Two (Florida and Ohio) do so by regulation.³⁵ A compilation of relevant statutes, regulations and policies is included in Appendix A.

In three states – Idaho, Pennsylvania and Wyoming – statutes require, but do not define, “solitary confinement” for death-sentenced prisoners.³⁶ Idaho’s statute states, “Whenever a person is under death warrant, execution of which has not been stayed, the warden of the prison in which the person is incarcerated shall keep the condemned person in solitary confinement until execution.”³⁷ Pennsylvania’s statute provides, “Upon receipt of the warrant, the secretary shall, until infliction of the death penalty or until lawful discharge from custody, keep the inmate in solitary confinement.”³⁸ The Wyoming statute states that a death-sentenced prisoner shall be kept “in solitary confinement until execution of the death penalty”³⁹

Three state statutes – Washington, Texas and Florida – reference single cells. Washington’s statute provides that a death-sentenced prisoner “shall be confined in the segregation unit, where the defendant may be confined with other prisoners not under sentence of death, but prisoners under sentence of death shall be assigned to single-person cells.”⁴⁰ Texas’s governing statute calls for prisoners confined in “death row segregation” to be held “in single occupancy cells.”⁴¹ Florida’s administrative regulations require “single-cell special housing . . . of an inmate who, upon conviction or adjudication of guilt of a capital felony, has been sentenced to death”⁴²

Florida, South Dakota, and Texas call for death-sentenced prisoners to be segregated from the general prison population, although not necessarily from each other. The governing regulation in Florida provides, “Death row housing shall be separate from general population housing.”⁴³ South Dakota’s statute directs that death-sentenced individuals “shall be segregated from other inmates at the penitentiary.”⁴⁴ In a general provision not limited to death-sentenced prisoners, Texas states that institutions “may not house inmates with different custody classifications in the same cellblock or dormitory unless the structure of the cellblock or dormitory allows the physical separation of the different classifications of inmates.”⁴⁵

Administrative regulations in Oregon and Ohio reference “death row.” Oregon regulations state: “It is the policy of the Department of Corrections to assign inmates with a sentence of death to the Death Row Housing Unit or to a Death Row status cell.”⁴⁶ Ohio’s regulations provide both that prisoners sentenced to death “may be assigned to an area of the institution . . . which area shall be known as ‘death row’” (and that “absent significant extenuating circumstances, no inmate shall be assigned to or housed in death row unless that inmate has been sentenced to death . . .”),⁴⁷ as well as that correctional officials “may assign or reassign an inmate who has been sentenced to death to a security classification or special management status other than that which is normally used for such inmates, based on the security or medical and mental health requirements for the inmate.”⁴⁸

Connecticut has legislation crafted in 2012 when the state legislature abolished the death penalty. In lieu of the death penalty, the statute created a new category, “murder with special circumstances,” and specified certain conditions of confinement for individuals convicted under the statute.⁴⁹ The Connecticut statute states that the Commissioner of Correction place “special circumstances” inmates in administrative segregation until reclassification.⁵⁰

In Alabama, California, Colorado, and New Hampshire, statutes name specific institutions at which death-sentenced individuals are to be housed.⁵¹ Alabama directs death-sentenced prisoners to the “William C. Holman unit of the prison system at Atmore”;⁵² California references San Quentin State Prison;⁵³ Colorado directs prisoners to the “correctional facilities at Canon City” after a death warrant is delivered;⁵⁴ and New Hampshire names the “state prison at Concord.”⁵⁵

In a few jurisdictions, statutes expressly state that corrections officials have discretion when making decisions on housing death-sentenced prisoners. For example, Louisiana’s statute directs the Department of Public Safety and Corrections “to incarcerate the offender in a manner affording maximum protection to the general public, the employees of the department, and the security of the institution.”⁵⁶

In sum, most jurisdictions do not have statutes mandating segregation, isolation, or other particulars related to the housing conditions provided to death-sentenced prisoners.

2. *Visiting and Time Out-of-Cell*

Some jurisdictions discuss visiting and out-of-cell time for death-sentenced prisoners. Colorado, Idaho, South Dakota, and Wyoming all state that a death-sentenced prisoner should be permitted visits with his lawyer, spiritual adviser, and family.⁵⁷ Under Colorado’s statute, prison “rules shall provide, at a minimum, for the inmate’s attendants, counsel, and physician, a spiritual adviser selected by the inmate, and members of the inmate’s family” to have “access” to the inmate.⁵⁸ Idaho permits “access” to “the attorney of record, attending physicians, a spiritual adviser of the condemned’s choosing, and members of the immediate family of the condemned.”⁵⁹ South Dakota, which requires segregation of death-sentenced prisoners, mandates that “[n]o other person may be allowed access to the defendant without an order of the trial court except penitentiary staff, Department of Corrections staff, the defendant’s counsel, members of the clergy if requested by the defendant, and members of the defendant’s family.”⁶⁰ Wyoming

authorizes access by “physician and lawyers [and] . . . [r]elatives and spiritual advisers of the prisoner.”⁶¹

The laws of Alabama, Indiana, and Pennsylvania address visiting and describe categories of individuals who may do so.⁶² Under Alabama’s statute, “while so confined, all persons outside the said prison shall be denied access to [a death-sentenced prisoner], except his physician and lawyer . . . , and the relatives, friends and spiritual advisers of the condemned person, who shall be admitted to see and converse with him at all proper times, under such reasonable rules and regulations as may be made by the Board of Corrections.”⁶³ In Indiana, the death-sentenced prisoner’s “(1) attorney; (2) physician; (3) relatives; (4) friends; and (5) spiritual advisor may visit the convicted person while the convicted person is confined.”⁶⁴ If a death warrant has been issued, Pennsylvania requires that death-sentenced prisoners be housed in solitary confinement and that, other than correctional staff, “no person shall be allowed to have access to the inmate without an order of the sentencing court,” other than “counsel of record or other attorney requested by the inmate” and “a spiritual adviser selected by the inmate or the members of the immediate family of the inmate.”⁶⁵

Most jurisdictions’ laws do not address in-cell conditions or the number of hours that death-sentenced prisoners must spend in cell each day. A few – including Florida, Ohio and Oregon – discuss out-of-cell time and certain other conditions.⁶⁶ For example, Florida’s regulations provide for a minimum of six hours per week of outdoor exercise.⁶⁷ Ohio’s regulations specify “[f]ive hours of recreation per week.”⁶⁸

B. Policies Governing Isolation of Death-Sentenced Prisoners

Eighteen states had published policies addressing death-sentenced prisoners.⁶⁹ Further, in jurisdictions where we could locate no official policy, we supplemented our knowledge by reviewing the Department of Corrections’ websites or handbooks, as well as secondary sources such as reports in periodicals and law review articles.

Policies varied widely in terms of specificity and topics. For example, Ohio’s policies do not require automatic assignment of death-sentenced prisoners to the highest security classification, which carries the most restrictive housing conditions.⁷⁰ In Idaho, death-sentenced prisoners are initially placed in restrictive housing (also known as administrative segregation), and corrections officials must then conduct a hearing to determine if the prisoner can be moved to the less restrictive “close-restrictive custody.”⁷¹ If remaining in segregation, the death-sentenced prisoner’s placement must be reviewed “at least once a year” to decide if a shift to close-restrictive custody is appropriate.⁷² In contrast, as of the fall of 2015, in Virginia, death-sentenced prisoners were required under Department of Corrections’ policy to be held in single-person cells and confined for 23 hours per day. According to news reports, when the *Prieto* litigation was pending, policy shifts occurred to allow death-sentenced prisoners some access to each other and to visitors.⁷³ Jurisdiction-by-jurisdiction policies are included in Appendix A.

C. *Prior Research Regarding Death-Sentenced Prisoner Housing*

This Report is not the first to consider death-sentenced prisoner housing, which has been the subject of research focused specifically on the topic, as well as on solitary confinement more generally. Four such surveys, based on different information sources, are detailed below. The reports consistently portray corrections officials as housing death-sentenced prisoners in very restrictive and isolating conditions. In addition, some commentators have also raised questions about the necessity and the legality of isolation on death row.

In 2013, the ACLU published a report, *A Death Before Dying: Solitary Confinement on Death Row*, which was drawn from a survey of “advocates for death row prisoners and others knowledgeable about death row conditions.”⁷⁴ Based on responses about housing conditions in twenty-six states,⁷⁵ the Report concluded that ninety-three percent of those states held death-sentenced prisoners in their cells for twenty-two hours or more per day.⁷⁶ The cells ranged in size from thirty-six to one hundred square feet; most were “the size of an average bathroom.”⁷⁷ Meals and medication often came through slots in the cell door,⁷⁸ and death-sentenced prisoners were allotted an hour or less of exercise a day, alone in a small pen.⁷⁹

As the ACLU survey put it: “Many prisoners will go years without access to fresh air or sunshine.”⁸⁰ Policies on visits were highly restrictive.⁸¹ In most of these states, death-sentenced prisoners were not permitted to have physical contact with their visitors⁸² and, in some, prisoners were required to remain in arm and leg restraints during visits.⁸³ In general, the ACLU found that prisoners were forced to live in a state of “extreme social isolation” and “enforced idleness,” as the “overwhelming majority of states” did not provide access to work opportunities, educational programming or vocational training.⁸⁴

In 2014, ASCA joined with the Liman Program to gather information on the numbers of people in isolation and the conditions in “administrative segregation,” one form of restrictive housing. The resulting Report, *Time-in-Cell*, was based on survey responses from forty-six jurisdictions. Thirty-four of those jurisdictions – housing about 73% of the more than 1.5 million people incarcerated in U.S. prisons – provided data on all the people in restricted housing, whether termed “administrative segregation,” “disciplinary segregation,” or “protective custody.” In that subset, more than 66,000 prisoners were in restricted housing. Given that number, ASCA and Liman estimated that some 80,000 to 100,000 people were, in 2014, in restrictive housing settings in prisons. *Time-in-Cell* focused on conditions in administrative segregation across the country; demographic information regarding these prisoners; the length of prisoners’ stay in administrative segregation; their weekly time in-cell; conditions within these cells; and segregated prisoners’ access to recreation, programming, visits, and social contact.⁸⁵ One subset of the survey’s questions, answered by some of the responding jurisdictions, addressed the housing conditions of death-sentenced prisoners. Twenty-eight jurisdictions reported that death-sentenced prisoners were housed in administrative segregation or some other form of separation from the general population.⁸⁶

A third source of information comes from a 2013 ASCA survey, asking correctional directors about housing policies; officials in twenty-nine states responded, providing jurisdiction-specific information.⁸⁷ Two states, Maryland (which has since abolished the death penalty) and Missouri, reported holding death-sentenced individuals in the general population.⁸⁸ Correctional

departments in the other twenty-seven jurisdictions all indicated that death-sentenced prisoners were held in some form of “segregated” or “other” housing.⁸⁹ Of these twenty-seven jurisdictions, fourteen reported that segregated death-sentenced prisoners could engage in some form of congregate activity.⁹⁰ In addition, eleven states indicated that death-sentenced individuals were permitted some movement without restraints.⁹¹ Twenty-five jurisdictions reportedly provided programming for death-sentenced prisoners.⁹²

Another survey, for the Death Penalty Information Center, conducted in 2008 by Professor Sandra Babcock working with a group of her students, compiled a state-by-state comparison of thirty-one jurisdictions based on interviews with capital defense attorneys and through materials published by various departments of corrections.⁹³ This research identified twenty jurisdictions that held death-sentenced prisoners in cells for twenty-two hours or more per day.⁹⁴ Eleven permitted death-sentenced prisoners to participate in group recreation,⁹⁵ and nine provided some educational opportunities, occupational training, or work opportunities.⁹⁶ Ten jurisdictions allowed contact visits with the prisoner’s family,⁹⁷ and seventeen permitted contact visits with the prisoner’s lawyer.⁹⁸

As noted, other commentators have also raised concerns about death-row housing. For example, in 2005, Andrea Lyon and Mark Cunningham reviewed analysis of the “mainstreaming” of death-sentenced prisoners in Missouri and argued that evidence of the success of that practice raised questions about the constitutionality of imposing profound isolation.⁹⁹ More recently, Marah Stith McLeod also relied on the Missouri data as well as on other literature to argue that prison administrators ought not have the discretion to impose the isolation of death row; given the severity of conditions on most death-rows, she argued that the democratic processes of legislatures ought to decide whether that form of punishment is necessary and just.¹⁰⁰

II. Housing Arrangements for Death-Sentenced Prisoners in North Carolina, Missouri, and Colorado

We identified at least six states – California, Colorado, Missouri, Montana, North Carolina, and Ohio – that did not impose confinement of 20 hours or more in cells each day for death-sentenced prisoners. To learn more about the policies and their implementation, we chose North Carolina, Missouri and Colorado, three states that varied in the size of their death-sentenced prisoner populations and in the degree of these prisoners’ integration with the general prison population. We then reviewed their statutes, administrative regulations, and prison policies, as well as scholarly research, surveys, and media reports, and we interviewed administrators from each state’s corrections department. Like many states, neither North Carolina nor Missouri have a specific statute or regulation governing the housing of death-sentenced prisoners. As noted, Colorado’s statute leaves correctional administrators significant discretion by providing for incarceration at the correctional facilities at Canon City and for visiting by the prisoner’s “attendants, counsel, . . . physician, a spiritual adviser . . . and members of the inmate’s family.”¹⁰¹

Below, we begin with North Carolina, the state with the largest death-sentenced prisoner population – 156 people – of the three. We interviewed Kenneth Lassiter, Deputy Director of Operations for the North Carolina Department of Public Safety (NCDPS); he served as the warden at Central Prison, the facility holding male prisoners sentenced to death. In April of 2015, at the time of the interview, North Carolina’s death-sentenced housing arrangement had been in place for over a decade.

We then turn to Missouri, and the materials provided by George Lombardi, Director of the Missouri Department of Corrections (MDOC), who was the Director of Adult Institutions in 1989, when MDOC changed its policies on death-sentenced prisoners; Director Lombardi also co-authored a report on the transition. As noted, others have also done research on the Missouri “mainstreaming” practices; we had the benefit of a study by Mark D. Cunningham, Thomas J. Reidy, and Jonathan R. Sorensen, who compared the rate between 1991 to 2002 of violent misconduct by integrated death-sentenced prisoners to that of non-death sentenced prisoners,¹⁰² as well as a follow-up study published in 2016 and reviewing twenty-five years of data.¹⁰³

To learn about Colorado, we interviewed Rick Raemisch, Executive Director, and Kellie Wasko, Deputy Executive Director, of the Colorado Department of Corrections (CDOC).¹⁰⁴ Director Raemisch, who was appointed in 2013, instituted a series of changes in the housing of death-sentenced prisoners and for the general prisoner population.

As is detailed below, in each state, correctional officials praised their own systems, each of which enabled death-sentenced individuals to live with other prisoners. In each interview, the Directors explained the reasons for and the process of transition, and why they understood the reforms to be a success in terms of improving the lives of those in prison, lowering rates of violence, and reducing the challenges faced by staff.

A. North Carolina

North Carolina has one of the largest death-sentenced populations in the country, with 156 death-sentenced prisoners as of 2015.¹⁰⁵ Since 1984, the state has executed forty-three people.¹⁰⁶ As of the spring of 2016, the last execution was in 2006.¹⁰⁷

According to Deputy Director Lassiter, North Carolina’s death row policies have been in place for more than a decade.¹⁰⁸ Deputy Director Lassiter recalled having looked into the history of death row during his time as warden of Central Prison; he reported finding no information suggesting that the prisoners had previously been held in a greater degree of isolation.¹⁰⁹

Deputy Director Lassiter explained that, as of 2015, the NCDPS housed 153 male and three female death-sentenced prisoners.¹¹⁰ The men were incarcerated in Central Prison,¹¹¹ and the women at the North Carolina Correctional Institution for Women, both in Raleigh.¹¹² Men sentenced to death were placed in what was known as Unit III of Central Prison.¹¹³ Though they were housed separately from the general population, they were afforded roughly the same privileges as other serious offenders held in Central Prison.¹¹⁴

Deputy Director Lassiter described Unit III as including eight cell pods.¹¹⁵ In each pod, twenty-four single cells opened onto a central dayroom.¹¹⁶ Each cell measured approximately

eleven-by-seven feet and was equipped with a bed, a sink, a toilet, a small writing table, a narrow window, and a radio.¹¹⁷ The dayrooms were outfitted with a television, several stainless steel tables, and showers.¹¹⁸ Death row prisoners could spend time and watch television in the dayroom together from 7 a.m. until 11 p.m.¹¹⁹

Death-sentenced prisoners ate their meals as a group in a common dining hall, at a different time than other prisoners.¹²⁰ Individuals sentenced to death were permitted at least one hour per day to exercise in groups and to shower.¹²¹ Deputy Director Lassiter estimated that, depending on which unit activities were scheduled, the prisoners typically spent more than one hour a day in their recreation yard.¹²² Death-sentenced prisoners were also permitted to work jobs within Unit III, including as a barber, janitor, recreation clerk, and in the library, canteen, or clothes house.¹²³

North Carolina permitted two noncontact visitors each week.¹²⁴ Access to religious services was within the unit.¹²⁵ The religious services consisted of a one-hour Christian worship service every Sunday; a one-hour Islamic worship service every Friday, and a ninety-minute Bible study class every Tuesday morning.¹²⁶ Programming, such as working towards a GED, was not regularly available to death-sentenced prisoners, but Director Lassiter indicated that case managers would try to find volunteers to fulfill individual requests.¹²⁷ In the case of a disciplinary infraction, a death-sentenced prisoner would be sent to what was called Unit I, the restricted housing unit, where he would eat meals, exercise, and shower apart from other prisoners.¹²⁸

Deputy Director Lassiter also explained that, if an execution date were set, both male and female death-sentenced prisoners would be moved three to seven days prior to the scheduled execution to the “death watch” area of Central Prison.¹²⁹ The single cells in the death watch area each had a bed, lavatory, commode, and writing table. The prisoner, who spent the entire day in the cell except fifteen minutes for a shower, had no contact with other prisoners.¹³⁰ Visits from attorneys, religious advisers, psychologists, and family were permitted; contact visits were at the warden’s discretion.¹³¹

Housing policies for death-sentenced prisoners had not been a subject of significant political debate.¹³² One brief flurry took place after a death-sentenced prisoner wrote a letter in 2012 to a newspaper and claimed that he enjoyed a luxurious life on death row.¹³³ In response, legislators introduced a bill that would have banned television on death row.¹³⁴ Deputy Director Lassiter, then the warden of Central Prison, testified that television served the Department as a management tool.¹³⁵ Although the bill came out of committee, it was not enacted.

Deputy Director Lassiter expressed unequivocal support for NCDPS’s death row policies.¹³⁶ He explained that prisoner-on-officer violence was nearly non-existent on death row, and prisoner-on-prisoner violence was extremely rare.¹³⁷ Death row had fewer disciplinary infractions, fewer fights, and fewer assaults than any of the other units at Central Prison.¹³⁸ According to Lassiter, death row prisoners who subsequently had their death sentences commuted had better behavioral records in the general population than other prisoners.¹³⁹

Deputy Director Lassiter explained that “giving inmates an opportunity to create social connections with other inmates and providing some sense of normalcy is an important part of why our policies are successful.”¹⁴⁰ He acknowledged that some corrections officials believed that death-sentenced prisoners were inherently more dangerous, but said that North Carolina had a “totally opposite mentality.”¹⁴¹ “Our inmates police themselves within their own community,” he continued, “Part of the reason that works is that they are not isolated twenty-three hours each day.” The mental health consequences of isolating death row prisoners were, from his point of view, likely to lead to more problems with violence and discipline than isolation solved.¹⁴²

Deputy Director Lassiter also believed that the relatively safe conditions on North Carolina’s death row were in part because most of the prisoners no longer viewed death row as the place where they were going to die. “The majority of inmates sentenced to death ultimately don’t end up being executed. The list of people removed from death row is a lot longer than the list of executions,” he explained.¹⁴³ Accordingly, death row prisoners had a strong incentive to behave well. Moreover, he noted that many death row prisoners were of a different profile than other prisoners at Central Prison.¹⁴⁴ They were generally not habitual offenders, but tended to have been convicted of a single, serious crime. Deputy Director Lassiter speculated that this difference in background helped explain the success of North Carolina’s policies.¹⁴⁵

Deputy Director Lassiter noted that when he was the warden of Central Prison, he dined on a regular basis with the death row prisoners on Unit III, in part because they were his “favorite prisoners to interact with.” He added that death row prisoners tended to be “extremely remorseful and take responsibility for what they have done and wish they could go back and change it. Generally, prisoners with a death sentence have a totally different view of life than another inmate.”¹⁴⁶ When asked whether he had ever considered changing North Carolina’s approach to housing death-sentenced prisoners, Deputy Director Lassiter responded emphatically: “Our system is proven to work and we have no desire to tweak it.”¹⁴⁷

B. Missouri

As of January 2016, Missouri had 28 death-sentenced prisoners, all of whom were housed at the Potosi Correctional Center (PCC) in Mineral Point. Since 1989 and as of the spring of 2016, the state had executed 86 people.¹⁴⁸ The state’s last execution occurred in May 2016.

The housing system for death-sentenced prisoners in Missouri was designed in response to protest and litigation challenging the use of isolation and poor conditions. Before 1989, death-sentenced prisoners in Missouri were housed in a separate, below-ground unit at the now-closed Missouri State Penitentiary (MSP).¹⁴⁹ Death-sentenced prisoners did not leave the housing unit for services, programming, or recreation; the limited program opportunities available were brought to the unit.¹⁵⁰ Prisoners were allowed to exercise an hour each day in a separate area,¹⁵¹ and were kept in six-by-ten foot cells for the other twenty-three hours of the day.¹⁵² Director George Lombardi characterized conditions on death row in MSP as “marginal.”¹⁵³

In August 1985, a class of death-sentenced prisoners at the Missouri State Penitentiary filed a lawsuit pursuant to 42 U.S.C. § 1983.¹⁵⁴ The prisoners alleged that defendants, administrators in the MDOC, had violated their First, Sixth, Eighth, and Fourteenth Amendment rights.¹⁵⁵ According to Director Lombardi, opposing this lawsuit seemed “futile.”¹⁵⁶

On May 22, 1986, the parties initially entered into a consent decree intended to eliminate conditions that “may” have denied death-sentenced prisoners their constitutional rights.¹⁵⁷ The consent decree included provisions to protect prisoners’ access to legal mail, religious services, telephones, medical and mental health services, visitation, and recreation.¹⁵⁸ The decree provided for specialized training for corrections staff, including administrative segregation training for custody staff and mental health care training for caseworkers.¹⁵⁹ The consent decree also described a multi-tiered classification system for death-sentenced prisoners, with different custody or security levels, in which death-sentenced prisoners with good behavior could receive greater privileges.¹⁶⁰ MDOC was also permitted, with court approval, to transfer death-sentenced prisoners to a new location.¹⁶¹ In 1989, with court approval, the MDOC moved all death-sentenced prisoners to PCC, a recently opened maximum security prison.¹⁶²

When death-sentenced prisoners were first moved to PCC, they were housed in a separate unit, with death-sentenced prisoners classified as minimum custody in one wing, and all other death-sentenced prisoners in another wing.¹⁶³ Director Lombardi described PCC as better and cleaner than MSP, but noted that staff still had to arrange for services to be brought separately to death-sentenced prisoners.¹⁶⁴ Following the transfer, death-sentenced prisoners filed a motion for contempt to challenge conditions at PCC and their segregation from other prisoners.¹⁶⁵

While the renewed challenge was pending, administrators and staff in the MDOC began to consider better ways to manage death-sentenced prisoners and to provide them with a similar level of services as provided to the general population.¹⁶⁶ The process of bringing meals and medical services to death-sentenced prisoners, as well as locking down the prison whenever these prisoners left their cells, was cumbersome.¹⁶⁷ Director Lombardi stated that the idea that capital offenders were inherently more dangerous than other long-term prisoners did not make sense to corrections staff.¹⁶⁸ The conversation developed into a discussion of the feasibility of integrating death-sentenced prisoners into the general population at PCC.¹⁶⁹

The full integration of PCC took place incrementally.¹⁷⁰ Prison officials started calling death-sentenced prisoners “capital punishment inmates,” and began to escort minimum custody death-sentenced prisoners to the dining room to eat with the general population.¹⁷¹ Death-sentenced prisoners were then given permission to visit the law library and to work in the laundry. For the first time, these individuals were classified using the Adult Internal Management System (AIMS).¹⁷² Prisoners were able to play softball together, and did so without incident.¹⁷³ By January of 1991, all individuals with capital sentences were mainstreamed into the general population.¹⁷⁴ At the time, corrections staff “expressed surprise at the ease with which the transition occurred.”¹⁷⁵

The transition was completed before the district court ruled on the plaintiffs’ motion for contempt, and the defendants moved thereafter to vacate the consent decree.¹⁷⁶ The District Court of the Eastern District of Missouri (to which jurisdiction had been transferred following the transfer of the prisoners to PCC) found that the defendants had complied with the requirements of the consent decree and that no unconstitutional conditions existed. The court vacated the decree and terminated its continuing jurisdiction over the matter.¹⁷⁷ The prisoners appealed, but the Eighth Circuit affirmed the lower court decision.¹⁷⁸

As of the winter of 2015, all of Missouri's death-sentenced prisoners were housed at PCC.¹⁷⁹ PCC houses death-sentenced prisoners, life-sentenced prisoners, and parole-eligible prisoners.¹⁸⁰ As of 2015, the procedure for receiving and housing prisoners was that death-sentenced prisoners were transferred directly from courts and jails to PCC, a maximum security facility (Custody Level 5);¹⁸¹ non-death sentenced prisoners were first sent to one of three diagnostic centers in the state to determine their custody level before being assigned to a facility.¹⁸² Once death-sentenced prisoners arrived at PCC, they were treated no differently than other prisoners in the institution.¹⁸³

Upon arrival at PCC, all prisoners were initially assigned to one of the administrative segregation units during their reception and orientation,¹⁸⁴ and could then be moved to a double cell in the transitional administrative segregation unit.¹⁸⁵ PCC then used its AIMS classification system to categorize all prisoners into one of thirteen housing units.¹⁸⁶

Prisoners could be promoted from the transitional unit to one of two "baseline" general population units, where they ate meals with the rest of the prisoners and could attend religious and educational services.¹⁸⁷ If approved, prisoners could advance to one of the two general population units, where they had access to recreation and programming in large groups and could purchase a television and radio.¹⁸⁸ Prisoners who were conduct-violation free for a certain period of time could be moved to the "honor dorm,"¹⁸⁹ where they were "out of their cells most of the day."¹⁹⁰ Death-sentenced individuals could be double-celled with other general population prisoners, regardless of sentence.¹⁹¹

Like the rest of the prison population, death-sentenced prisoners could be assigned to the protective custody unit, where they ate and participated in recreation as a group.¹⁹² Prisoners could be placed in the special needs unit, where they exercised and attended mental health programming separately but took meals with the general population.¹⁹³ Correctional administrators assigned some death-sentenced prisoners who were not special needs to this unit for the purpose of ensuring a permanent single cell.¹⁹⁴ Prisoners who had "difficulty in adjusting to institutional life" were placed in the partial treatment unit.¹⁹⁵

Death-sentenced prisoners had the same privileges and could access the same services afforded to all prisoners in their housing unit. For example, death-sentenced prisoners in general population were allowed eight hours of recreation each day and permitted to do crafts for six of those hours.¹⁹⁶ PCC offered Narcotics Anonymous and Alcoholics Anonymous programs and vocational education programs.¹⁹⁷ Prisoners at PCC could also participate in a dog adoption program that enabled prisoners to train dogs that had been held in shelters and could be adopted by people in the community.¹⁹⁸ Death-sentenced prisoners could apply for jobs, access the commissary, enjoy equal access to visitation and phones, and visit the law library.¹⁹⁹ Visitation hours were three days a week for eight hours each day.²⁰⁰

Unique to death-sentenced prisoners was their housing prior to execution: after an execution date was set, a death-sentenced prisoner was moved into protective custody. The prisoner was subsequently taken to a segregated holding cell two to three days prior to the scheduled execution.²⁰¹

Director Lombardi stated that mainstreaming death-sentenced prisoners eliminated the burdensome costs of maintaining separate death row facilities.²⁰² PCC no longer had to assign staff to escort death-sentenced prisoners around the facility.²⁰³ There was no longer a need to arrange for death-sentenced prisoners to have access to health care and medications, psychological counseling, and the law library.²⁰⁴ Commissary hours, visitation days, and medical services access were expanded after the transition because separate time windows for death-sentenced prisoners were no longer required.²⁰⁵ Jobs in the laundry also became available for administrative segregation prisoners when death-sentenced prisoners gained access to all employment.²⁰⁶ Director Lombardi thought that the MDOC would incur less in legal expenses arising from prisoners' litigation about death row conditions.²⁰⁷

Director Lombardi noted that in the prison as a whole, disciplinary infractions and violence had decreased after the integration of death-sentenced prisoners.²⁰⁸ He stated that while there was some initial skepticism, staff encountered no problems with the gradual process of integration, and that he had generally found no difference between death-sentenced prisoners and other long-term prisoners.²⁰⁹ Additionally, Director Lombardi believed that because death-sentenced prisoners were no longer subject to automatic long-term administrative segregation, there were fewer mental health problems following integration.²¹⁰

Director Lombardi stated that it seemed that death-sentenced prisoners at PCC have slightly lower rates of assaultive behavior than other prisoners.²¹¹ Director Lombardi credited the incentive structure: just like any other prisoner, a death-sentenced prisoner could be sent to administrative segregation for harming someone but could earn the highest level of privileges available with a good disciplinary record.²¹² Furthermore, most prisoners facing execution were still engaged in appeals or collateral attacks on their convictions, motivating them to avoid sanctions.²¹³ Lombardi believed that such a system, in conjunction with services such as counseling and the dog adoption program, motivated death-sentenced prisoners to behave well.²¹⁴

Lombardi considered the integration of death-sentenced prisoners into the general population a success. He stated that integration is "so ingrained in the system now that it's no big deal. We don't even think about it."²¹⁵ According to him, "We did the right thing, and it's proven time and again that it is the right thing."²¹⁶

C. Colorado

As of 2015, the Colorado Department of Corrections (CDOC) had a total of three death-sentenced prisoners, all male, who were housed at Sterling Correctional Facility in Sterling, Colorado, which was overseen by Warden James Falk. As of 2016, the last execution in Colorado was in 1997.²¹⁷

The question of solitary confinement has been an issue for the Colorado prison system for several years. Relatively few individuals were sentenced to death, but a significant number of other prisoners were held in isolation until 2011, when Tom Clements became the Director of Corrections. Under his leadership, Colorado reduced that population from more than 1,400 to about 700.²¹⁸ After Director Clements was murdered by a former prisoner in 2013, Rick

Raemisch, who had been the head of the Wisconsin Department of Corrections, was appointed,²¹⁹ he continued Director Clements's efforts to lower the number of individuals in isolation.

Until 2014, Colorado housed death-sentenced prisoners in administrative segregation at Sterling Correctional Facility,²²⁰ no separate facility was provided for those with death sentences.²²¹ At the time, administrative segregation was the most secure custody level in the CDOC.²²² Prisoners were locked in their cells twenty-three hours a day, with one hour out for exercise and showering. Prisoners could not leave their cells unless they were in full restraints and escorted by at least two correctional officers. Meals, pharmaceutical, educational, and library services were delivered to the cells. Prisoners were permitted to have a television and two and a half hours of non-contact visitation time per week.²²³

Colorado reformed its housing policies for death-sentenced prisoners in 2014 as part of its more general effort to reduce reliance on administrative segregation.²²⁴ According to Director Raemisch, a long period of isolation is psychologically damaging and has the effect of "taking someone who has committed a very violent act and possibly making them more violent."²²⁵ Director Raemisch noted during our interview that, prior to reform:

Colorado had failed in its mission Its mission is not to run a more efficient institution, which is what segregation is for. Running an efficient institution is a noble goal, but the mission really is to protect the community. You don't do that by sending someone out worse than they came in.²²⁶

By March 2014, CDOC had decreased the population held in solitary confinement to 577²²⁷ and, as of the spring of 2016, to some 160 prisoners.²²⁸

CDOC extended its reform efforts to death-sentenced prisoners. On March 4, 2014, Deputy Executive Director Kellie Wasko sent an email to all CDOC employees announcing the planned introduction of a policy eliminating administrative segregation for death-sentenced prisoners.²²⁹ Director Raemisch noted that part of the impetus for this change was the long period that death-sentenced prisoners would likely spend living in Colorado prisons.²³⁰ While death-sentenced prisoners might never re-enter the larger community, Director Raemisch viewed reform of those prisoners' conditions as an issue for the well-being of the prison community and its safety.²³¹

As a first reform, CDOC permitted the three male death-sentenced prisoners²³² to be with each other; this change evolved into the current policy under which death-sentenced prisoners are housed with non-death-sentenced prisoners in a "close custody management control unit" (MCU), first housed at Sterling Correctional Facility in Sterling, Colorado²³³ and, by 2016, at the Colorado State Penitentiary (CSP).²³⁴

The discussion about reforming housing for death-sentenced prisoners originated in the upper level of CDOC, and administrators then sought feedback on the reforms from corrections officers. Director Raemisch called his staff's handling of segregation reform "amazing." He noted that they had achieved "a complete change in culture" in a short amount of time. Deputy Executive Director Wasko said that the biggest part of training staff on these reforms was to

point out that death-sentenced prisoners were functionally the same as many others in the prison; staff were “already walking around with that type of offender [convicted of serious crimes of violence]. The only difference is the sentence. Several hundred inmates have life without possibility of parole.”²³⁵

As of the spring of 2015, death-sentenced prisoners were classified as “close custody” prisoners.²³⁶ Within the “close custody” classification, prisoners were placed into various status designations based on their management needs.²³⁷ Death-sentenced prisoners were designated to and housed in a close custody MCU.²³⁸ Prisoners in the MCU each had their own cell, measuring about seven-by-thirteen feet. Each MCU had about sixteen prisoners, and both death-sentenced and non-death-sentenced prisoners could be housed together within the same MCU. Death-sentenced prisoners generally had the same living conditions and privileges as other close custody prisoners in the MCU. According to Wasko, “they are not identified as death-sentenced offenders. You couldn’t pick them out. They are treated like all other prisoners in the management control unit.”²³⁹

As of 2015, MCU prisoners were permitted to leave their cells for a minimum of four hours a day, seven days a week; prisoners spent two hours in the morning and two hours in the afternoon in groups of about eight prisoners, some of which was spent together in a dayroom. During such times, corrections officers, who were not physically in the dayroom, maintained visual contact at all times.²⁴⁰ Prisoners were permitted four hours of indoor or outdoor recreation per week.²⁴¹

In terms of the backdrop before the reforms under Director Raemisch, the Colorado prison system had also faced litigation (as had Missouri) about conditions for death-sentenced prisoners. In 2009, three individuals claimed that they had been subjected to cruel and unusual punishment because they were denied the opportunity for outdoor exercise for an extended period of time.²⁴² The case was settled by the joint request of the parties under an agreement in which Colorado moved death-sentenced prisoners to Sterling so they could have access to outdoor recreation.²⁴³ At the time, Sterling Correctional Facility did not have outdoor areas for groups; recreation was available on an individual basis.²⁴⁴ As noted above, death-sentenced individuals were part of the MCU, and those prisoners were later moved to another facility, the Colorado State Penitentiary (CSP). That prison was the subject of another case, brought by a non-death sentenced prisoner about its lack of outdoor recreational space.²⁴⁵ As of the spring of 2016, Colorado was building an outdoor recreation area for CSP; the expected completion date is in December 2016.²⁴⁶

Returning to the rules for the MCU prisoners in general, Colorado permits six non-contact visits a month, each lasting two hours. After thirty days, MCU prisoners become eligible for no more than two contact visits (of no more than ninety minutes) per month.²⁴⁷ In addition to legal telephone calls, death-sentenced and other MCU prisoners could make eight twenty-minute telephone calls per month.²⁴⁸

MCU prisoners received meals in their cells. They were eligible for in-unit work opportunities.²⁴⁹ They were also eligible for in-cell programming through a television or self-service kiosk.²⁵⁰ While MCU prisoners were given access to religious guidance and publications

from the prison Chaplain's Office, they were not authorized to attend group religious services or group programming.²⁵¹ Director Raemisch expected that CDOC MCUs will continue to evolve and that more programming, such as cognitive-behavioral therapy and anger management, will be added.²⁵²

These reforms have encountered some political resistance. In 2014, in *The Complete Colorado*, an online political blog, a CDOC employee, a district attorney, and a relative of a victim of a Colorado death row prisoner all expressed opposition to the proposed reforms.²⁵³ Bob Beauprez, the 2014 Republican candidate for governor, also opposed the change and referenced it in advertisements criticizing the incumbent, John Hickenlooper,²⁵⁴ who was thereafter reelected, and the reforms continued.

Director Raemisch views the revised policies on housing of death-sentenced prisoners and the larger project of reforming segregation in Colorado as a success. In his view, the changes have had a positive effect on the demeanor and personalities of prisoners. Director Raemisch and his top administrative staff "believe that in the long run this policy will lead to a safer facility . . . [A]ll the evidence is pointing in that direction." Director Raemisch reported that prisoner-on-prisoner violence had stayed the same since the segregation reforms began and that prisoner-on-staff assaults were at their lowest since 2006.²⁵⁵

When asked about the popular perception of death-sentenced prisoners as more dangerous because they have nothing left to lose, Director Raemisch explained that the CDOC "believes just the opposite." They "have no evidence to show that [death-sentenced prisoners] are more violent in the facility." Director Raemisch's sense was that, while "there may be a few inmates who are very dangerous," those inmates can be managed accordingly; their presence does not mean that isolation reform cannot be done safely. He and his administrative staff "all believe that people can change."²⁵⁶

III. Looking Forward

This review of the laws and policies governing death-sentenced individuals makes plain that many correctional systems have a range of options when deciding on the conditions of confinement for death-sentenced prisoners. The correctional leaders in North Carolina, Missouri, and Colorado report the success of their systems. In addition, as discussed below, empirical work has been done on the Missouri system and, in Colorado, studies of the impact of reforms of solitary confinement are underway.

Specifically, the assessment by Director Lombardi that death-sentenced prisoners in Missouri were not more likely to commit disciplinary infractions than their fellow prisoners was confirmed in an analysis by Mark Cunningham, Thomas Reidy, and Jon Sorenson. The researchers reviewed incidents of violent misconduct by prisoners at PCC between 1991 and 2002, a period after the integration of death-sentenced prisoners.

That study compared the rate of misconduct by prisoners sentenced to death to that of prisoners sentenced to life without parole or to shorter prison terms.²⁵⁷ The researchers found

that death-sentenced prisoners committed violent misconduct at roughly the same low rate as prisoners sentenced to life without parole.²⁵⁸ Both groups were also significantly less likely than parole-eligible prisoners to commit violent misconduct: their rate was “about one-fifth of the rate of violent misconduct among parole eligible inmates.”²⁵⁹ In addition, from 1991 to 2002, there were no homicides or attempted homicides committed by the death-sentenced prisoners.²⁶⁰ The authors concluded that the “practice of integrating death-sentenced inmates in the general population of a maximum-security prison is strongly supported by these findings” and that the findings undermined “[c]onventional assumptions that death-sentenced inmates require super-maximum security protocols.”²⁶¹ The authors concluded that this demonstrated death-sentenced prisoners could be integrated safely into the general prison population.²⁶²

In 2016, the authors published a follow up report that relied on twenty-five years of data on the Missouri “mainstreaming” policy.²⁶³ The researchers evaluated eighty-five prisoners with capital sentences who were housed in the general population, and 702 prisoners serving life-without-parole sentences, as well as 3,000 prisoners serving term sentences.²⁶⁴ The study concluded that those prisoners with capital sentences had “equivalent or lower rates of violent misconduct” than did either of the other sets of prisoners. In addition, the study found that “rates of violence among Missouri [death-sentenced] inmates were markedly lower after being mainstreamed than they had been under the prior era of heightened security conditions on ‘death row.’”²⁶⁵ The researchers argued that the “failure of assumptions of high violence risk undergirding death row has important public policy and correctional implications.”²⁶⁶ As the title, *Wasted Resources and Gratuitous Suffering: The Failure of a Security Rationale for Death Row* reflected, the authors viewed their data as supporting a national change in policies to reduce the isolation of individuals serving capital sentences.²⁶⁷

In sum, the mix of empirical work and reports of experiences of North Carolina, Missouri, and Colorado demonstrates that less restrictive, less isolating housing policies on death row have, in the judgment of correctional officials, contributed to the safety and security of prisoners and correctional staff alike.

¹ All rights reserved; Arthur Liman Public Interest Program, 2016. For additional information, contact Judith.Resnik@yale.edu. The primary authors of this Report are Celina Aldape, Ryan Cooper, Katie Haas, April Hu, Jessica Hunter, and Shelle Shimizu, Yale Law School students participating in this Liman Project from 2014 to 2016, and working under the supervision of Johanna Kalb, Visiting Associate Professor of Law and Director, Arthur Liman Public Interest Program, and Judith Resnik, Arthur Liman Professor of Law.

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² Deborah Fins, *Death Row U.S.A.*, NAACP Legal Defense and Educational Fund, Inc. 1 (Fall 2015), available at http://www.naacpldf.org/files/our-work/DRUSA_Fall_2015.pdf (identifying total number of death-sentenced prisoners as 2,959 as of October 1, 2015).

³ See, e.g., Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J. L. & POL'Y 325 (2006) (describing evidence of severe psychiatric harm resulting from solitary confinement); Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124 (2003) (reviewing literature on negative psychological effects caused by isolation and the high percentage of mentally ill prisoners confined in isolation); Fatos Kaba, Andrea Lewis, Sarah Glowa-Kollisch, James Hadler, David Lee, Howard Alper, Daniel Selling, Ross MacDonald, Angela Solimo, Amanda Parsons & Homer Venters, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUBLIC HEALTH 442 (2014) (concluding acts of self-harm are significantly associated with having been in solitary confinement); Jeffrey L. Metzner & Jamie Fellner, *Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics*, 38 J. AM. ACAD. PSYCHIATRY & L. 104 (2010) (describing effects of solitary confinement on prisoners with preexisting serious mental illness); John J. Gibbons & Nicholas de B. Katzenbach, *Confronting Confinement: A Report of the Commission on Safety and Abuse in America's Prisons*, VERA INST. OF JUSTICE 54-55 (2006), available at http://www.vera.org/sites/default/files/resources/downloads/Confronting_Confinement.pdf (noting research efforts suggesting that the increasing use of expensive segregated housing units can cause violence inside facilities and increase recidivism); *A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas*, AM. CIVIL LIBERTIES UNION OF TEX. (Feb. 2015) [hereinafter *A Solitary Failure*], available at https://www.aclutx.org/sites/default/files/field_documents/SolitaryReport_2015.pdf; see also Cyrus Ahalt and Brie Williams, *Reforming Solitary-Confinement Policy – Heeding a Presidential Call to Action*, 374 N. ENG. J. MED. 1704 (2016) (calling for new research on the health consequences of solitary confinement).

⁴ Sarah Baumgartel, Corey Guilmette, Johanna Kalb, Diana Li, Josh Nuni, Devon Porter & Judith Resnik, *Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison*, THE LIMAN PROGRAM, YALE LAW SCHOOL 58 (2015) [hereinafter ASCA-Liman, *Time-in-Cell*] (reporting that incentives for making changes to administrative segregation policies according to members of the Association of State Correctional Administrators included, *inter alia*: concerns about prisoner and staff well-being, concerns about prisoner and staff safety, space/facility constraints, and possible cost savings), available at https://www.law.yale.edu/system/files/documents/asca-liman_administrativesegregationreport.pdf; see also *A Solitary Failure*, *supra* note 3, at 9 (estimating that Texas taxpayers spend \$46 million or more per year to house prisoners in solitary confinement rather than in the general population).

⁵ President Barack Obama ordered a Justice Department review of solitary confinement in 2015, and expressed concerns about the effects of long-term solitary confinement on safety and prisoner reentry. Peter Baker & Erica Goode, *Critics of Solitary Confinement Are Buoyed as Obama Embraces Their Cause*, N.Y. TIMES (July 21, 2015), available at <http://www.nytimes.com/2015/07/22/us/politics/critics-of-solitary-confinement-buoyed-as-obama-embraces-cause.html?ref=collection%2Ftimestopic%2FSolitary%20Confinement>. The Department of Justice released a final Report in January 2016, setting out best practices for correctional facilities and policy recommendations for the Federal Bureau of Prisons and related agencies. *Report and Recommendations Concerning the Use of Restrictive Housing*, U.S. DEP'T OF JUSTICE (Jan. 2016), available at <https://www.justice.gov/dag/file/815551/download>. President Obama published a presidential memorandum ordering implementation of the DOJ Report in March. *Presidential Memorandum – Limiting the Use of Restrictive Housing by the Federal Government*, THE WHITE HOUSE, OFFICE OF THE PRESS SEC'Y (Mar. 1, 2016), available at <https://www.whitehouse.gov/the-press-office/2016/03/01/presidential-memorandum-limiting-use-restrictive-housing-federal>.

⁶ In 2013, the Association of State Correctional Administrators (ASCA) adopted new restrictive housing guidelines, calling for individual jurisdictions to develop policies to “manag[e] inmates in the least restrictive way necessary.” *Restrictive Status Housing Policy Guidelines*, ASS'N OF STATE CORR. ADMINS. (Aug. 9, 2013), available at <http://www.asca.net/system/assets/attachments/6145/B.%20ASCA%20Restrictive%20Status%20Housing%20Policy%20Guidelines-Final%2008092013.pdf?1375723019>. ASCA uses the term “restrictive status housing” to encompass restrictive forms of housing for prisoners who “would pose a serious threat” in the general prison population. *Id.* at 1.

When the ASCA-Liman *Time-in-Cell* Report was released in the fall of 2015, ASCA’s press release introducing the Report explained that it provided “one way to measure and to learn whether the hoped-for changes are taking place, to reduce and eliminate the isolation of prisoners, so as to enable prisoners and staff to live and work in safe environments, respectful of human dignity.” *New Report on Prisoners in Administrative Segregation Prepared by the Association of State Correctional Administrators and the Arthur Liman Public Interest Program at Yale Law School*, ASS'N OF STATE CORR. ADMINS. 1 (Sept. 2, 2015), <http://www.asca.net/system/assets/attachments/8895/ASCA%20LIMAN%20Press%20Release%2008-28-15.pdf?1441222595>.

⁷ The Senate Judiciary Committee’s Subcommittee on the Constitution, Civil Rights and Human Rights held hearings in 2012 and 2014 on the topic of isolation in prisons. *Reassessing Solitary Confinement: The Human Rights, Fiscal and Public Safety Consequences*, U.S. SENATE COMM. ON THE JUDICIARY (June 19, 2012), available at <http://www.judiciary.senate.gov/meetings/reassessing-solitary-confinement-the-human-rights-fiscal-and-public-safety-consequences>; *Reassessing Solitary Confinement II: The Human Rights, Fiscal and Public Safety Consequences*, U.S. SENATE COMM. ON THE JUDICIARY (Feb. 25, 2014), available at <http://www.judiciary.senate.gov/meetings/reassessing-solitary-confinement-ii-the-human-rights-fiscal-and-public-safety-consequences>.

Senator Richard Durbin, who presided over the hearings, expressed serious concerns about the psychological impact of solitary confinement, noting that half of prison suicides occur among isolated prisoners. Erica Goode, *Senators Start a Review of Solitary Confinement*, N.Y. TIMES (June 19, 2012), available at <http://www.nytimes.com/2012/06/20/us/senators-start-a-review-of-solitary-confinement.html>. Senator Durbin requested an independent review of the Federal Bureau of Prisons’ use of restrictive housing, which was completed in 2014. Kenneth McGinnis, James Austin, Karl Becker, Larry Fields, Michael Lane, Mike Maloney, Mary Marcial, Robert May, Jon Ozmint, Tom Roth, Emmitt Sparkman, Roberta Stellman, Pablo Stewart, George Vose & Tammy Felix, *Federal Bureau of Prisons: Special Housing Unit Review and Assessment*, CNA ANALYSIS & SOLUTIONS (Dec. 2014), available at https://www.bop.gov/resources/news/pdfs/CNA-SHURreportFinal_123014_2.pdf. Senator Durbin noted that, while the BOP had successfully reduced the number of prisoners in solitary confinement, further work remained to be done to reform its segregation policies. *Durbin: First-Of-Its-Kind Report on Solitary Confinement Shows Need for More Improvement*, DICK DURBIN, U.S. SENATOR, ILL. (Feb. 27, 2015), available at <http://www.durbin.senate.gov/newsroom/press-releases/durbin-first-of-its-kind-report-on-solitary-confinement-shows-need-for-more-improvement>.

⁸ Several state legislatures have introduced bills that would place limits on the extent and duration of solitary confinement. For example, in Illinois, a pending bill would limit the permissible uses of solitary confinement, prohibit the use of solitary confinement for members of vulnerable populations in most circumstances, and prohibit

holding anyone in solitary confinement for more than five consecutive days in most situations. H.B. 5417, 99th Gen. Assemb. (Ill. 2016). In Massachusetts, several pending bills would limit the use of segregation. HB 3451 would limit the use and extent of segregation for prisoners under 21, and limit isolation for any prisoner over 21 to fifteen days for one offense. H.B. 3451, 189th Gen. Court (Mass. 2015). HB 1475 would limit disciplinary segregation to fifteen days, and prohibit segregation for certain classes of prisoners. H.B. 1475, 189th Gen. Ct. (Mass. 2015). In New Jersey, a pending bill would limit the purposes for which solitary confinement may be used, prohibit its use for more than fifteen consecutive days under most circumstances, and limit the use of solitary confinement for members of vulnerable populations. S51, 217th Leg. (N.J. 2016). In New York, a bill in committee would limit the use and length of time of segregated confinement, prohibit segregation for certain classes of prisoners, and create alternative therapeutic and rehabilitative confinement options. A8588A, 2013-2014 Legis. Sess. (N.Y. 2014).

⁹ See H.B. 1328, 70th Gen. Assemb. (Co. 2016) (defining “youth” to mean “an individual who is less than twenty-one years of age” and forbidding holding youth “in seclusion under any circumstances for more than eight total hours in two consecutive calendar days without a written court order”); and <http://aclu-co.org/colorado-legislature-passes-bill-protect-children-solitary-confinement>.

¹⁰ Motion by Chair Hilda L. Solis and Supervisor Sheila Kuehl, *Ending Juvenile Solitary Confinement in Los Angeles County*, BD. OF SUPERVISORS, CNTY. OF LOS ANGELES (May 3, 2016), available at <http://supervisorkuehl.com/wp-content/uploads/2016/05/5.3.16-Solitary-Confinement-Motion-REVISED.pdf> (providing that “[i]n very rare situations, after all other interventions have been exhausted, a juvenile may be separated from others as a temporary response” and that “[e]ven in such cases, the placement should be brief, designed as a ‘cool down’ period, and done only in consultation with a mental health professional”); see also Adam Nagourney & Timothy Williams, *Los Angeles County Restricts Solitary for Juveniles*, N.Y. TIMES (May 3, 2016), available at http://www.nytimes.com/2016/05/04/us/los-angeles-county-restricts-solitary-for-juveniles.html?_r=0.

¹¹ In 2015, a class of California prisoners reached a settlement agreement with the state of California, in which the California Department of Corrections and Rehabilitation agreed to limit the amount of time a prisoner could be held in a segregated housing unit, to cease placing prisoners in segregation solely on the basis of gang affiliation, and to speed up the rate at which segregated prisoners are reintegrated to the general population. See *Ashker v. Governor*, Case No: 4:09-cv-05796-CW (Oct. 6, 2015), available at <http://documents.latimes.com/californias-solitary-settlement/>; see also Ian Lovett, *California Agrees to Overhaul Use of Solitary Confinement*, N.Y. TIMES (Sep. 1, 2015), available at <http://www.nytimes.com/2015/09/02/us/solitary-confinement-california-prisons.html>. The United States District Court for the Northern District of California granted final approval of the settlement agreement. *Ashker v. Governor*, Case No: 4:09-cv-05796-CW (N.D. Cal. Jan. 26, 2016), available at <http://www.clearinghouse.net/chDocs/public/PC-CA-0054-9001.pdf>.

In 2016, the United States District Court for the Southern District of New York approved a settlement between a class of New York prisoners and the New York State Department of Corrections and Community Supervision that would limit the circumstances in which disciplinary solitary confinement can be imposed, implement a step-down program for prisoners leaving solitary confinement, and create alternatives to solitary confinement for juveniles and special needs prisoners. *Peoples v. Annucci*, Case No: 1:11-cv-02694-SAS (S.D.N.Y. Mar. 31, 2016), available at http://www.nyclu.org/files/releases/3_31_Solitary_Confine_settlement_approval.pdf.

¹² Several agreements illustrate the role played by such challenges. The Disability Rights Network of Pennsylvania reached a settlement agreement with the Pennsylvania Department of Corrections in 2013 to stop housing prisoners with serious mental illness in solitary confinement in the Restricted Housing Units and to establish new treatment units that provide significant out-of-cell time. *Disability Rights Network of Pennsylvania v. Wetzel*, Case No: 1:13-CV-00635 (M.D. Pa. Jan. 5, 2015), available at https://www.aclupa.org/download_file/view_inline/2714/677/. The United States District Court for the Middle District of Pennsylvania ordered the matter dismissed without prejudice in accordance with the terms of the settlement agreement. *Disability Rights Network of Pennsylvania v. Wetzel*, Case No: 1:13-CV-00635 (M.D. Pa. Jan. 15, 2015), available at <http://www.clearinghouse.net/chDocs/public/PC-PA-0031-0004.pdf>.

The Illinois Department of Corrections entered a settlement agreement under which prisoners with mental illness in solitary confinement must be allowed a certain minimum number of hours per week out of the cell, receive periodic reviews of placement, and continue to receive mental health treatment while in segregation. *Rasho v. Baldwin*, Case No. 1:07-CV-1298-MMM-JEH (C.D. Ill. Jan. 21, 2016), available at <http://www.clearinghouse.net/chDocs/public/PC-IL-0031-0009.pdf>. The settlement was approved by the United States District Court for the

Central District of Illinois in May, 2016. *See* *Rasho v. Walker*, 07-CV-1298-MMM-JEH (C.D. Ill. May 13, 2016) (finding agreement “fair and reasonable”).

The Arizona Department of Corrections entered a stipulation in 2014 to increase access to health care, increase time spent out-of-cell, and restrict the use of chemical agents for seriously mentally ill prisoners in solitary confinement. *Parsons v. Ryan*, No. CV 12-00601-PHX-DJH (D. Ariz. Oct. 14, 2014), *available at* <http://www.clearinghouse.net/chDocs/public/PC-AZ-0018-0028.pdf>.

¹³ *See, e.g., A Solitary Failure*, *supra* note 3; *Boxed In: The True Cost of Extreme Isolation in New York’s Prisons*, N.Y. CIVIL LIBERTIES UNION (2012), *available at* <http://www.nyclu.org/publications/report-boxed-true-cost-of-extreme-isolation-new-yorks-prisons-2012>; *Ending Torture in U.S. Prisons*, NAT’L RELIGIOUS CAMPAIGN AGAINST TORTURE, *available at* <http://www.nrcat.org/torture-in-us-prisons>; Margo Schlanger, *Regulating Segregation: The Contribution of the ABA Criminal Justice Standards on the Treatment of Prisoners*, 47 AM. CRIM. L. REV. 1421 (2010); Alison Shames, Jessa Wilcox & Ram Subramanian, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, VERA INST. OF JUSTICE (May 2015), *available at* <http://www.vera.org/pubs/solitary-confinement-misconceptions-safe-alternatives>; Keramet Ann Reiter, *The Most Restrictive Alternative: A Litigation History of Solitary Confinement in U.S. Prisons, 1960-2006*, 57 STUD. IN L., POL., & SOC’Y 71 (2012); *see also* ASCA-Liman, *Time-In-Cell*, *supra* note 4.

¹⁴ *A Death Before Dying: Solitary Confinement on Death Row*, AM. CIVIL LIBERTIES UNION (July 2013), *available at* https://www.aclu.org/sites/default/files/field_document/deathbeforedying-report.pdf [hereinafter *A Death Before Dying*].

¹⁵ *Prieto v. Clarke*, No. 1:12CV1199 LMB/IDD, 2013 WL 6019215, at *11 (E.D. Va. 2013).

¹⁶ *Prieto v. Clarke*, 780 F.3d 245 (4th Cir. 2015), *cert. dismissed as moot*, 136 S. Ct. 319 (2015).

¹⁷ Associated Press, *Appeals Exhausted, Alfred Prieto, Serial Killer, Is Executed*, N.Y. TIMES (Oct. 1, 2015), *available at* <http://www.nytimes.com/2015/10/02/us/appeals-exhausted-alfredo-prieto-serial-killer-is-executed.html>.

¹⁸ *See* *Petition for Writ of Certiorari, Prieto v. Clarke*, 2015 WL 4100302 (2015) (No. 15-31), *cert. dismissed as moot*, 136 S. Ct. 319 (2015). In June of 2016, the Court granted review in a death penalty case regarding the standards that should be used to determine intellectual disability; the Court declined to consider a second question in the case – whether the death-sentenced prisoner’s more than three decades of incarceration awaiting execution (spent in solitary confinement) violated the Eighth Amendment. *See Ex Parte Moore*, 470 S.W.3d 481 (Tex. Crim. App. 2015), *cert. granted in part*, *Moore v. Texas*, No. 15-797, 2016 WL 3128994, at *1 (U.S. June 6, 2016); *see also* Adam Liptak, *Supreme Court to Hear Death Penalty Cases*, N.Y. TIMES (Jun. 1, 2016), *available at* http://www.nytimes.com/2016/06/07/us/politics/supreme-court-to-hear-two-major-death-penalty-cases.html?_r=0.

¹⁹ *See* *Glossip v. Gross*, 135 S. Ct. 2726, 2765 (2015) (Breyer, J., dissenting, joined by Ginsburg, J.) (stating that “nearly all death penalty States keep death row inmates in isolation for 22 or more hours per day” and discussing the “dehumanizing effect of solitary confinement.”); *Davis v. Ayala*, 135 S. Ct. 2187, 2208-10 (2015) (Kennedy, J., concurring).

²⁰ *Ayala*, 135 S.Ct. at 2208 (2015) (Kennedy, J., concurring).

²¹ *Id.*

²² *Id.* at 2209-10.

²³ Courts review the length and nature of conditions when considering whether the confinement violates rights against degrading treatment and rights to family life. *See, e.g., Ramirez-Sanchez v. France*, App. No. 59450/00, 2006 Eur. Ct. H.R. 685; *Öcalan v. Turkey* (No. 2), App. Nos. 24069/03, 197/04, 6201/06, 10464/07, 2014 Eur. Ct. H.R. 286; *see also* *Breivik v. Ministry of Justice and Public Security*, Case No. 15-107496TVI-OTIR/02 (Oslo District Court, 2016).

²⁴ *See* Sharon Shalev & Kimmitt Edgar, *Deep Custody: Segregation Units and Close Supervision Centres in England and Wales*, PRISON REFORM TRUST (2015), *available at* http://www.prisonreformtrust.org.uk/Portals/0/Documents/deep_custody_111215.pdf. A comprehensive review of practices can be found in Sharon

Shalev, *A Sourcebook on Solitary Confinement*, MANNHEIM CENTRE FOR CRIMINOLOGY, LONDON SCH. OF ECON. (2008), available at http://solitaryconfinement.org/uploads/sourcebook_web.pdf.

²⁵ U.N. Standard Minimum Rules for the Treatment of Prisoners (the “Nelson Mandela Rules”), G.A. Res. 11745, U.N. Doc. E/CN.15/2015/L.6/Rev.1 (May 22, 2015), available at http://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_24/resolutions/L6_Rev1/ECN152015_L6Rev1_e_V1503585.pdf; see also *General Assembly Adopts 64 Third Committee Texts Covering Issues Including Migrants, Children’s Rights, Human Rights Defenders* (Dec. 17, 2015), available at <http://www.un.org/press/en/2015/ga11745.doc.htm>.

²⁶ *Id.* at 18 (Rule 44).

²⁷ *Id.* (Rule 43(1)).

²⁸ *Id.* (Rule 45(1)).

²⁹ *Id.* (Rule 45(2)).

³⁰ *Fins*, *supra* note 2, at 36 (listing the number of prisoners on death row in each jurisdiction as of October 1, 2015). These thirty-five jurisdictions included: thirty-two jurisdictions, including thirty-one states and the federal system (including the federal government and the U.S. military – counted as one jurisdiction), with a death penalty statute in effect for all of 2015; one state (New Mexico) that repealed the death penalty prospectively prior to 2016, but continued to hold prisoners whose death sentences may or may not be carried out; one state (Nebraska) in which the status of the death penalty was the subject of a pending referendum; and one state (Connecticut) in which, at the time, the retroactive application of the death penalty after a prospective legislative repeal was an issue pending before the state supreme court.

³¹ *Fins*, *supra* note 2, at 1.

³² In doing this research, at least two law students reviewed each jurisdiction’s statutes and administrative codes on LexisNexis or WestLaw, consulted each jurisdiction’s Department of Corrections policies, where publicly available, and ran a Google search for relevant news articles and reports. Specifically, the following search strings were used: “death w/3 sentence,” “death AND row,” “solitary AND confin*,” and “execut*.” In addition, the students individually read all death penalty-related sections of each jurisdiction’s statute or administrative code. This functioned as an additional accuracy check to ensure that the search strings did not omit important information.

³³ The jurisdictions are Alabama, California, Colorado, Connecticut, Georgia, Idaho, Indiana, Kentucky, Louisiana, Nebraska, New Hampshire, Oregon, Pennsylvania, South Dakota, Texas, Washington and Wyoming. See Appendix A.

³⁴ These jurisdictions are Alabama, California, Oregon, and New Hampshire. See Appendix A.

³⁵ See Appendix A.

³⁶ See Appendix A.

³⁷ IDAHO CODE ANN. § 19-2705 (2016).

³⁸ 61 PA. CONS. STAT. ANN. § 4303 (West 2016).

³⁹ WYO. STAT. ANN. §7-13-907 (2015).

⁴⁰ WASH. REV. CODE § 10.95.170 (2015).

⁴¹ TEX. GOV’T CODE ANN. § 501.113(b)(1) (West 2015).

⁴² FLA. ADMIN. CODE ANN. r. 33-601.830 (2015).

⁴³ *Id.*

⁴⁴ S.D. CODIFIED LAWS § 23A-27A-31.1 (2015).

⁴⁵ TEX. GOV’T CODE ANN. § 501.112 (2015).

⁴⁶ OR. ADMIN. r. 291-093-0005 (2015).

⁴⁷ OHIO ADMIN. CODE r. 5120-9-12 (2016).

⁴⁸ *Id.*

⁴⁹ CONN. GEN. STAT. § 18-10b (2015).

⁵⁰ *Id.* In the spring of 2016, the Connecticut Supreme Court reaffirmed that the death penalty abolition statute applied to those individuals who had been sentenced to death before the statute was enacted. *See State v. Peeler*, 321 Conn. 375 (2016).

⁵¹ *See* Appendix A.

⁵² ALA. CODE § 15-18-80(a) (2016).

⁵³ CAL. PENAL CODE § 3600(b)(1) (2015).

⁵⁴ COLO. REV. STAT. ANN. § 18-1.3-1205 (West 2016).

⁵⁵ N.H. REV. STAT. ANN. § 630:5 (West 2016).

⁵⁶ LA. REV. STAT. ANN. § 15:568 (West 2016).

⁵⁷ *See* COLO. REV. STAT. ANN. § 18-1.3-1205 (West 2016); IDAHO CODE ANN. §19-2705 (2015); S.D. CODIFIED LAWS § 23A-27A-31.1 (2015); WYO. STAT. ANN. §7-13-907 (2015). Colorado and Wyoming affirmatively protect prisoners' access to specified visitors, while Idaho and South Dakota assume the availability of such visits, but indicate that they are subject to the rules of the facility.

⁵⁸ COLO. REV. STAT. ANN. § 18-1.3-1205 (West 2016).

⁵⁹ IDAHO CODE ANN. § 19-2705 (2016).

⁶⁰ S.D. CODIFIED LAWS § 23A-27A-31.1 (2016).

⁶¹ WYO. STAT. ANN. §7-13-907 (2015).

⁶² *See* Ala. Code § 15-18-81 (2016); Ind. Code Ann. § 35-38-6-4 (2016).

⁶³ ALA. CODE § 15-18-81 (2016).

⁶⁴ IND. CODE ANN. § 35-38-6-4 (West 2016).

⁶⁵ 61 PA. CONS. STAT. ANN. § 4303 (West 2016).

⁶⁶ *See* Appendix A; FLA. ADMIN. CODE r. 33-601.830 (2015) (allotting minimum of six hours); OHIO ADMIN. CODE r. 5120-9-12 (2016) (permitting five hours); OR. ADMIN. R. 291-093-0015 (2016) (specifying minimum hours for exercise). A few jurisdictions' laws also provide for particular security classifications for death-sentenced prisoners, at least initially, which may impact out-of-cell time and other cell privileges. These jurisdictions include California, which considers a death sentence to be an "administrative determinant" that overrides other classification factors, *see* CAL. CODE REGS. tit. 15 § 3375.2(b)(5) (2015); Connecticut, *see* CONN. GEN. STAT. § 18-10b (2015); New Hampshire, *see* N.H. CODE ADMIN. R. ANN. COR 402.04 (2015); and Oregon, *see* OR. ADMIN. R. 291-104-0111 (2015).

⁶⁷ FLA. ADMIN. CODE r. 33-601.830 (2015).

⁶⁸ OHIO ADMIN. CODE r. 5120-9-12 (2016).

⁶⁹ The eighteen states with published policies were: Arizona, California, Colorado, Idaho, Indiana, Kansas, Kentucky, Montana, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, and Washington. In determining which states had published policies, we considered only states in which the state's Department of Corrections had made available online a formal statement of policy or procedure regarding the housing of death-sentenced prisoners – whether referred to as a "policy," "regulation," or by some other name – to have a published policy. States for which information regarding housing procedures for death-sentenced prisoners could be inferred from descriptions of death row conditions on Department of Corrections websites, in handbooks intended for use by prisoners and their families, or from media reports were not considered to have published policies. These states included Alabama, Arkansas, Delaware, Georgia, Mississippi, Missouri, Nevada, and Utah.

⁷⁰ See *Inmate Security Classification Levels 1 Through 4*, OHIO DEP'T. OF CORR. POLICIES, No. 53-CLS-01 (Aug. 4, 2015), available at http://www.drc.ohio.gov/web/drc_policies/documents/53-CLS-01.pdf.

⁷¹ *Restrictive Housing*, IDAHO DEP'T OF CORR., No. 319.02.01.002 (Sep. 6, 2011), available at <https://www.idoc.idaho.gov/content/policy/720>.

⁷² *Id.*

⁷³ See Alanna Durkin, *Virginia Quietly Grants Death Row Inmates New Privileges*, AP: THE BIG STORY (Oct. 16, 2015), available at <http://bigstory.ap.org/article/24129250f1b74fefb1c4d4921f3aa199/virginia-quietly-grants-death-row-inmates-new-privileges>. See also Brief in Opp'n to Cert., *Prieto v. Clarke*, 2015 WL 5312503, at *7-9, No. 15-31 (Sept. 9, 2015) (describing modifications to conditions for death-sentenced prisoners).

⁷⁴ *A Death Before Dying*, *supra* note 14, at 4.

⁷⁵ *Id.* at 4.

⁷⁶ *Id.* at 5.

⁷⁷ *Id.* at 4.

⁷⁸ *Id.* (“The majority of death row prisoners eat alone in their cells, fed on trays inserted through a slot in the door. They also receive the majority of their medical and mental health care through these slots.”).

⁷⁹ *Id.* at 5 (“In fact, 81 percent of states allow only one hour or less of exercise daily for death row prisoners. And nearly half provide only a cage, pen, or cell in which to exercise.”); accord *Inmates Sentenced to Death Housing Policy*, ASS'N OF STATE CORR. ADMINS. (Feb. 2013), available at <http://www.asca.net/system/assets/attachments/5520/WA%20-%20Death%20Penalty%20Housing.pdf?1362689706> [hereinafter 2013 ASCA Survey] (showing a majority of responding states do not allow group recreation).

⁸⁰ *A Death Before Dying*, *supra* note 14, at 5.

⁸¹ *Id.* at 5.

⁸² *Id.* at 5.

⁸³ *Id.* (“Most death row prisoners will never be able to touch or hug family members or loved ones, as 67 percent of states mandate no-contact visitation for death row prisoners. This means that all human interactions during family visits occur while the prisoner is behind some sort of barrier. Frequently, prisoners will also be in arm and leg restraints during visits.”); accord 2013 ASCA Survey, *supra* note 79.

⁸⁴ *A Death Before Dying*, *supra* note 14, at 5 (“An overwhelming majority of states do not allow death row prisoners to have access to work or employment opportunities, or provide access to educational or vocational programming of any kind.”); accord 2013 ASCA Survey, *supra* note 79 (providing qualitative responses indicating the sorts of programming available in each responding state).

⁸⁵ See ASCA-Liman, *Time-in-Cell*, *supra* note 4.

⁸⁶ *Id.* at 52-53.

⁸⁷ ASCA received responses from the following states reporting that they housed death-sentenced prisoners at the time of the survey: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, and Wyoming. 2013 ASCA Survey, *supra* note 79. This survey is also discussed in Marah Stith McLeod, *Does the Death Penalty Require Death Row? The Harm of Legislative Silence*, 77 OHIO STATE L.J. 2016 (forthcoming 2016), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2589716 (last visited June 6, 2016).

⁸⁸ 2013 ASCA Survey, *supra* note 79, at 3-4. The 2013 ASCA survey was from February 2013. Maryland abolished the death penalty later that year. See Ian Simpson, *Maryland Becomes Latest U.S. State to Abolish Death Penalty*, REUTERS (May 2, 2013), available at <http://www.reuters.com/article/us-usa-maryland-deathpenalty-idUSBRE9410TQ20130502>.

⁸⁹ 2013 ASCA Survey, *supra* note 79, at 1-8.

⁹⁰ *Id.* at 9-16. These states were Alabama, Arizona, Arkansas, California, Florida, Kentucky, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oregon, Tennessee and Utah.

⁹¹ *Id.* These states were Alabama, Delaware, Kentucky, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oregon, South Carolina and Utah.

⁹² *Id.* at 25-32. The states reporting programming opportunities were Alabama, Arkansas, Arizona, California, Delaware, Florida, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Washington, Wyoming, Tennessee, Texas and Utah. The states permitting contact visitation opportunities were Alabama, Arkansas, California, Connecticut, Florida, Idaho, Kentucky, Louisiana, Missouri, Nebraska, Nevada, Ohio and Tennessee.

⁹³ See Sandra Babcock, *Survey of Death Row Conditions*, DEATH PENALTY INFO. CTR. (2008), available at <http://www.deathpenaltyinfo.org/death-row>.

⁹⁴ *Id.*

⁹⁵ *Id.* These jurisdictions were Alabama, California, Illinois, Indiana, Missouri, Nevada, North Carolina, Ohio, Oregon, South Carolina and Utah.

⁹⁶ *Id.* These jurisdictions were Connecticut, Missouri, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Virginia and Washington.

⁹⁷ *Id.* These jurisdictions were Alabama, Arkansas, California, Georgia, Indiana, Louisiana, Missouri, Nevada, Virginia and Washington.

⁹⁸ *Id.* These jurisdictions were Alabama, California, Colorado, Connecticut, Georgia, Idaho, Indiana, Missouri, Nevada, New Jersey, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, Washington and Wyoming.

⁹⁹ Andrea D. Lyon & Mark D. Cunningham, “Reason Not the Need”: Does the Lack of Compelling State Interest in Maintaining a Separate Death Row Make It Unlawful?, 33 AM. J. CRIM. L. 1, 4-5 (2005); see also Mark D. Cunningham, Thomas J. Reidy, & Jon R. Sorenson, *Wasted Resources and Gratuitous Suffering: The Failure of a Security Rationale for Death Row*, 22 PSYCHOL. PUB. POL’Y & L. 185 (2016) [hereinafter Cunningham, Reidy & Sorenson, *Wasted Resources*].

¹⁰⁰ See McLeod, *supra* note 87.

¹⁰¹ COLO. REV. STAT. ANN. § 18-1.3-1205 (West 2016).

¹⁰² Mark D. Cunningham, Thomas J. Reidy & Jonathan R. Sorenson, *Is Death Row Obsolete? A Decade of Mainstreaming Death-Sentenced Inmates in Missouri*, 23 BEHAV. SCI. & L. 307 (2005) [hereinafter Cunningham, Reidy & Sorenson, *Is Death Row Obsolete?*].

¹⁰³ See Cunningham, Reidy, & Sorenson, *Wasted Resources*, *supra* note 99.

¹⁰⁴ Director Raemisch and Deputy Director Wasko were interviewed together.

¹⁰⁵ *Fins*, *supra* note 2, at 35.

¹⁰⁶ *Executions Carried Out Under Current Death Penalty Statute*, N.C. DEP’T OF PUB. SAFETY (2016), available at <https://ox.dps.prod.nc.gov/Adult-Corrections/Prisons/Death-Penalty/List-of-persons-executed/Executions-1984-2006>.

¹⁰⁷ *Id.*

¹⁰⁸ Telephone Interview with Kenneth Lassiter, Deputy Dir. for Operations, N.C. Dep’t of Pub. Safety (April 2, 2015). Although death-sentenced prisoners were moved within Central Prison in 2000, the relocation did not entail a change of conditions.

¹⁰⁹ *Id.*

¹¹⁰ *Fins*, *supra* note 2, at 52.

¹¹¹ A description of the conditions on North Carolina's death row for men at Central Prison can be found on the NCDPS website. See *Death Row and Death Row Watch*, N.C. DEP'T OF PUB. SAFETY [hereinafter *Death Row and Death Row Watch*], available at <https://www.ncdps.gov/index2.cfm?a=000003,002240,002327>. The policies on conditions of confinement are available online. See Division of Prisons, *Policies and Procedures: Conditions of Confinement*, N.C. DEP'T OF CORR. (Nov. 1, 2011), available at http://www.doc.state.nc.us/dop/policy_procedure_manual/C1200.pdf. In addition, a number of media accounts have reported on Unit III. See Steve Daniels, *I-Team: Inside the Walls of Raleigh's Central Prison*, ABC NEWS (Feb. 24, 2014), available at <http://abc11.com/archive/9443918/>; *Life on Death Row: 'Am I Going to Be Next?'*, WRAL (Feb. 27, 2013), available at <http://www.wral.com/life-on-death-row-am-i-going-to-be-next-/12160383/>; *WRAL Visits NC's Death Row*, WRAL (Feb. 27, 2013), available at <http://www.wral.com/news/local/video/12161641/>; *Inside NC's Death Row*, WRAL (Feb. 27, 2013), available at http://www.wral.com/news/local/image_gallery/12155529/; *On Death Row...a Rare Look Inside the Chambers*, WFMY NEWS (May 17, 2012), available at <http://archive.digtriad.com/news/article/229062/1/On-Death-RowA-Rare-Look-Inside-The-Chambers>.

¹¹² *Death Row and Death Row Watch*, *supra* note 111. This Report focuses on Central Prison, which houses male prisoners. However, NCDPS reported that the conditions for women were similar, consisting of a single cell with a bed, lavatory, and commode, in a cellblock with a dayroom that had a television and table and chairs for meals. Women were given at least an hour per day for exercise and showers and had access to religious services.

¹¹³ Interview with Lassiter, *supra* note 108; *Death Row and Death Row Watch*, *supra* note 111.

¹¹⁴ Interview with Lassiter, *supra* note 108; *Death Row and Death Row Watch*, *supra* note 111.

¹¹⁵ Interview with Lassiter, *supra* note 108.

¹¹⁶ *Death Row and Death Row Watch*, *supra* note 111.

¹¹⁷ Interview with Lassiter, *supra* note 108; *Death Row and Death Row Watch*, *supra* note 111.

¹¹⁸ *Death Row and Death Row Watch*, *supra* note 111.

¹¹⁹ Prisoners watching television listened to the audio through portable headsets. The television channel was determined by a committee of prisoners. Interview with Lassiter, *supra* note 108.

¹²⁰ *Id.*

¹²¹ *Id.*; *Death Row and Death Row Watch*, *supra* note 111.

¹²² Interview with Lassiter, *supra* note 108.

¹²³ *Id.*; *Death Row and Death Row Watch*, *supra* note 111.

¹²⁴ Interview with Lassiter, *supra* note 108; *Death Row and Death Row Watch*, *supra* note 111.

¹²⁵ Interview with Lassiter, *supra* note 108.

¹²⁶ *Death Row and Death Row Watch*, *supra* note 111.

¹²⁷ Interview with Lassiter, *supra* note 108.

¹²⁸ *Id.*; *Death Row and Death Row Watch*, *supra* note 111.

¹²⁹ *Death Row and Death Row Watch*, *supra* note 111.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Interview with Lassiter, *supra* note 108. Lassiter stated that the only time he could remember North Carolina's death row policies being subject to political criticism was the incident discussed here.

¹³³ Gary D. Robertson, *North Carolina House Committee Votes to Remove TVs for Death Row Inmates*, FAYETTEVILLE OBSERVER (Jun. 7, 2012), available at http://www.fayobserver.com/news/crime_courts/north-carolina-house-committee-votes-to-remove-tvs-for-death/article_1a20530c-7991-59f8-921f-ca722192d168.html.

¹³⁴ H.B. 1008, 2011-2012 Leg. Sess. (N.C. 2011).

¹³⁵ Interview with Lassiter, *supra* note 108.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ See *Execution List 2016*, DEATH PENALTY INFO. CTR. (2016), available at <http://www.deathpenaltyinfo.org/execution-list-2016>.

¹⁴⁹ George Lombardi, Richard D. Sluder & Donald Wallace, *Mainstreaming Death Sentenced Inmates: The Missouri Experience and Its Legal Significance*, 61 FED. PROBATION 3 (1997).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Lyon & Cunningham, *supra* note 99, at 4.

¹⁵³ Telephone Interview with George Lombardi, Dir., Mo. Dep't of Corr. (April 16, 2015).

¹⁵⁴ McDonald v. Armontrout, Case No. 85-4422-CV-C-5 (W.D. Mo. Aug. 19, 1985), available at <http://www.clearinghouse.net/chDocs/public/PC-MO-0001-0005.pdf>.

¹⁵⁵ *Id.* at 1.

¹⁵⁶ Interview with Lombardi, *supra* note 153.

¹⁵⁷ Consent Decree, McDonald v. Armontrout, No. 85-4422-CV-C-5 (W.D. Mo. May 22, 1986), available at <http://www.clearinghouse.net/chDocs/public/PC-MO-0001-0001.pdf>.

¹⁵⁸ *Id.* at 4–15.

¹⁵⁹ *Id.* at 8, 10.

¹⁶⁰ *Id.* at 9.

¹⁶¹ *Id.* at 19.

¹⁶² See McDonald v. Armontrout, No. 85-4422CVC5, 1989 WL 1128973, at *1 (W.D. Mo. May 10, 1989). The physical structure and security measures at PCC were “quite similar” to most other maximum-security facilities in the nation. Lyon & Cunningham, *supra* note 99, at 7.

¹⁶³ Lombardi, Sluder, & Wallace, *supra* note 149, at 9.

¹⁶⁴ Interview with Lombardi, *supra* note 153.

¹⁶⁵ McDonald v. Bowersox, 1995 WL 17013058, at *1 (E.D. Mo. Sep. 18, 1995) (describing history of litigation).

¹⁶⁶ Lombardi, Sluder, & Wallace, *supra* note 149, at 9.

¹⁶⁷ Interview with Lombardi, *supra* note 153.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Lombardi, Sluder, & Wallace, *supra* note 149, at 10.

¹⁷² *Id.* at 13.

¹⁷³ Interview with Lombardi, *supra* note 153.

¹⁷⁴ *Id.*; *see also* McDonald v. Bowersox, No. 89-1086 C (2), 1995 WL 17013058, at *1 (E.D. Mo. Sep. 18, 1995) (noting that officials at the PCC altered the conditions of class members' confinement by "mainstreaming" them with other prisoners at the PCC and that by 1995 death-sentenced prisoners at the PCC were treated the same as other maximum security prisoners incarcerated there).

¹⁷⁵ Lombardi, Sluder, & Wallace, *supra* note 149, at 13.

¹⁷⁶ McDonald v. Bowersox, No. 89-1086 C (2), 1995 WL 17013058, at *1-2 (E.D. Mo. Sep. 18, 1995) ("By their motion to vacate, defendants seek an order dissolving the decree adopted by the May 10, 1989, ruling and terminating the Court's jurisdiction over this case Defendants urge the purposes of the decree have been fulfilled because the changes in conditions meet or supersede the requirements of the May 10, 1989, decree. Because the purposes and goals of that decree are achieved by the present conditions of plaintiffs' confinement, movants argue, it is proper to vacate the decree.")

¹⁷⁷ *Id.* at *3-27.

¹⁷⁸ McDonald v. Carnahan, 109 F.3d 1319 (8th Cir. 1997).

¹⁷⁹ Lombardi, Sluder, & Wallace, *supra* note 149, at 8-9.

¹⁸⁰ Interview with Lombardi, *supra* note 153.

¹⁸¹ Cunningham, Reidy & Sorenson, *Is Death Row Obsolete?*, *supra* note 102, at 311.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Interview with Lombardi, *supra* note 153.

¹⁸⁵ Cunningham, Reidy & Sorenson, *Is Death Row Obsolete?*, *supra* note 102, at 311.

¹⁸⁶ *Id.* These units included: four administrative segregation units; one transitional administrative segregation unit; two levels of "baseline" general population units; two levels of general population units; one "positive action community" or "honor dorm;" one protective custody unit; one special needs unit; and one partial treatment unit.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Interview with Lombardi, *supra* note 153.

¹⁹⁰ Cunningham, Reidy & Sorenson, *Is Death Row Obsolete?*, *supra* note 102, at 311.

¹⁹¹ Interview with Lombardi, *supra* note 153.

¹⁹² Cunningham, Reidy & Sorenson, *Is Death Row Obsolete?*, *supra* note 102, at 311.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Lombardi, Sluder, & Wallace, *supra* note 149, at 11.

¹⁹⁷ *Joint Committee on Corrections: Information for Legislative Institutional Visits*, MO. GEN. ASSEMBLY JOINT COMM’N 1, at 3 (2012), available at <http://www.moga.mo.gov/corrections/Potosi.pdf>.

¹⁹⁸ Interview with Lombardi, *supra* note 153.

¹⁹⁹ Lombardi, Sluder, & Wallace, *supra* note 149, at 11–12.

²⁰⁰ *Visiting Hours by Institution*, MO. DEP’T OF CORR. (2010), available at http://doc.mo.gov/DAI/Visiting_Hours.php.

²⁰¹ *Id.* at 311–12.

²⁰² Interview with Lombardi, *supra* note 153.

²⁰³ Lombardi, Sluder, & Wallace, *supra* note 149, at 11–12.

²⁰⁴ Interview with Lombardi, *supra* note 153.

²⁰⁵ Lombardi, Sluder, & Wallace, *supra* note 149, at 12.

²⁰⁶ *Id.* at 10.

²⁰⁷ *Id.* at 11–12.

²⁰⁸ *Id.* at 7.

²⁰⁹ Interview with Lombardi, *supra* note 153.

²¹⁰ Director Lombardi notes that at MSP, where capital punishment prisoners were locked down in segregation day after day, he saw more prisoners acting out. *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ Cunningham, Reidy & Sorenson, *Is Death Row Obsolete?*, *supra* note 102, at 311.

²¹⁴ Interview with Lombardi, *supra* note 153.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ See *Execution List by State*, DEATH PENALTY INFO. CTR. (2016), available at <http://www.deathpenaltyinfo.org/node/5741#CO>.

²¹⁸ See Erica Goode, *After 20 Hours in Solitary, Colorado’s Prisons Chief Wins Praise*, N.Y. TIMES (Mar. 15, 2014), available at <http://www.nytimes.com/2014/03/16/us/after-20-hours-in-solitary-colorados-prisons-chief-wins-praise.html>. Tom Clements’s brief two-year tenure as the head of CDOC came to an end in March 2013 when a former CDOC prisoner murdered him at his home. See Keith Coffman, *Prosecutors Say Neo-Nazi Killed Colorado Prison Chief, Pizza Delivery Man*, REUTERS (Feb. 10, 2014), available at <http://www.reuters.com/article/us-usa-colorado-shooting-idUSBREA1A03C20140211>. The prisoner, Evan Ebel, had spent much of his eight-year prison sentence housed in administrative segregation and had been released directly from isolation to the community. *Id.*

²¹⁹ Rick Raemisch, COLO. OFFICIAL STATE WEB PORTAL, <https://www.colorado.gov/governor/rick-raemisch>; Press Release, Colo. Office of the Governor, Gov. Hickenlooper Names New Department of Corrections Executive Director (June 14, 2013), available at <https://www.colorado.gov/governor/news/gov-hickenlooper-names-new-department-corrections-executive-director>.

²²⁰ *Death Row FAQ*, COLO. DEP’T OF CORR., available at <http://www.doc.state.co.us/death-row-faq>. This is an archived website that is no longer active.

²²¹ *Id.*

²²² *Id.* The most secure custody level in Colorado today was “Restrictive Housing Maximum Security Status.” *Offender Classification*, COLO. DEP’T OF CORR., Administrative Regulation 600-01, at 3 (effective Jan. 1, 2015), available at http://www.doc.state.co.us/sites/default/files/ar/0600_01_010115_3.pdf. For information on conditions,

see *Restrictive Housing*, COLO. DEP'T OF CORR., Administrative Regulation 650-03, (effective Jan. 15, 2015), available at http://www.doc.state.co.us/sites/default/files/ar/0650_03_011515_1.pdf.

²²³ *Death Row Daily Routine*, COLO. DEP'T OF CORR., available at <http://www.doc.state.co.us/daily-routine> (on file with authors).

²²⁴ Telephone Interview with Rick Raemisch, Dir., and Kellie Wasko, Deputy Dir., Colo. Dep't of Corr. (Mar. 30, 2015).

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ Goode, *supra* note 218.

²²⁸ E-mail from Rick Raemisch, Dir., Colo. Dep't of Corr. (May 5, 2016) (on file with authors).

²²⁹ E-mail from Kellie Wasko, Deputy Exec. Dir., Colo. Dep't of Corr., to staff (Mar. 4, 2014, 14:57 MST), available at <http://www.scribd.com/doc/244050829/Death-Row-Ad-Seg-Colorado-DOC>.

²³⁰ Telephone Interview with Raemisch and Wasko, *supra* note 224. Colorado Governor John Hickenlooper granted prisoner Nathan Dunlap a temporary reprieve from his 2013 execution date and announced that it is “highly unlikely” that he will reconsider allowing the execution to go forward during his time in office. Karen Augé & Lynn Bartels, *Nathan Dunlap Granted ‘Temporary Reprieve’ By Governor*, THE DENVER POST (May 22, 2013), available at http://www.denverpost.com/breakingnews/ci_23299865/nathan-dunlap-temporary-reprieve-from-governor; Karen Augé & Adrian Garcia, *Judge: Nathan Dunlap to Face Execution on Week of Aug. 18*, THE DENVER POST (May 1, 2013), available at http://www.denverpost.com/ci_23147555/nathan-dunlap-execution-date-august-18-24-2013. Hickenlooper won a second term in November 2014.

²³¹ Telephone Interview with Raemisch and Wasko, *supra* note 224.

²³² *Death Row*, COLO. DEP'T OF CORR., available at <http://www.doc.state.co.us/death-row> (last visited May 2015) (on file with authors). There are currently no female death-sentenced prisoners in Colorado. *Id.*

²³³ Telephone Interview with Raemisch and Wasko, *supra* note 224.

²³⁴ E-mail from Kellie Wasko, Deputy Dir., Colo. Dep't of Corr. (May 5, 2016) (on file with authors).

²³⁵ Telephone Interview with Raemisch and Wasko, *supra* note 224.

²³⁶ *Management of Close Custody Offenders*, COLO. DEP'T OF CORR., Administrative Regulation 600-09, at 3 (effective June 30, 2014). CDOC defined close custody as “[a] general population offender classification level which requires an increased level of housing, supervision, controlled movement, and monitored programming. Close custody offenders may have an additional designation based on their management needs.” *Id.* at 2.

²³⁷ The designations were: Close Custody General Population; Close Custody Management Unit; Close Custody Management Unit / Protective Custody; Close Custody Management Unit / High Risk; Close Custody Transition Unit. *Id.* at 1-2.

²³⁸ *Id.* at 3.

²³⁹ Telephone Interview with Raemisch and Wasko, *supra* note 224.

²⁴⁰ *Id.*

²⁴¹ *Management of Close Custody Offenders*, *supra* note 236, at 3; see also Telephone Interview with Raemisch and Wasko, *supra* note 224.

²⁴² See *Dunlap v. Zavaras*, No. CIV.A 09CV01196BNB, 2009 WL 2006848, at *2 (D. Colo. Jul. 9, 2009).

²⁴³ See *Dunlap v. Clements*, No. 09-CV-01196-WJM-MEH, (D. Colo. Aug. 4, 2011); see also Kirk Mitchell, *Colorado Moves Death-Row Inmates So They Can Exercise Outdoors*, THE DENVER POST (Jul. 28, 2011), available at http://www.denverpost.com/ci_18564471.

²⁴⁴ Telephone Interview with Raemisch and Wasko, *supra* note 224.

²⁴⁵ Troy Anderson challenged the conditions of confinement in administrative segregation at Colorado State Penitentiary (CSP). *See Anderson v. Colorado, Dep't of Corr.*, 848 F. Supp. 2d 1291, 1294 (D. Colo. 2012). Mr. Anderson alleged that he had been denied appropriate diagnosis and treatment for serious mental health issues; that the Colorado State Penitentiary provided no facility for outdoor exercise and therefore caused physical and mental harm; and that an arbitrary system prevented him from earning his way out of administrative segregation and effectively punished his improperly treated mental illness. *Id.*

The district court held that the long-term lack of access to outdoor exercise, coupled with the problems in conditions, violated the Eight Amendment. *See Anderson v. Colorado*, 887 F. Supp. 2d 1133, 1140-42 (D. Colo. 2012). The court ordered the CDOC to develop and present a plan that “ensures that Troy Anderson has access for at least one hour, at least three times per week, to outdoor exercise in an area that is fully outside and that includes overhead access to the elements, e.g., to sunlight, rain, snow and wind.” *Id.* at 1157. Colorado initially transferred Mr. Anderson to Sterling. *See Anderson v. Colorado*, 10 Cv. 1005 (RBJ/KMT), at 3 (D. Col. Apr. 7, 2015). Subsequently, Colorado agreed to build an outdoor recreation area at CSP. *See Alan Pendergrast, Colorado Supermax Will Build Rec Yards to Settle Prisoners' Lawsuit*, WESTWARD (Dec. 7, 2015), available at <http://www.westword.com/news/colorado-supermax-will-build-rec-yards-to-settle-prisoners-lawsuit-7402391>.

²⁴⁶ E-mail from Kellie Wasko, Deputy Exec. Dir., Colo. Dep't of Corr. (May 5, 2016) (on file with authors).

²⁴⁷ *Management of Close Custody Offenders*, *supra* note 236, at 5-6.

²⁴⁸ *Id.* at 8-9.

²⁴⁹ Telephone Interview with Raemisch and Wasko, *supra* note 224.

²⁵⁰ *See Management of Close Custody Offenders*, *supra* note 236, at 9.

²⁵¹ *Id.* at 7.

²⁵² Telephone Interview with Raemisch and Wasko, *supra* note 224.

²⁵³ Todd Shepherd, *Dept of Corrections Wants Less Solitary, More 'Leisure Time' for Death Row Inmates*, THE COMPLETE COLORADO: PAGE TWO (Oct. 22, 2014), available at <http://completecolorado.com/pagetwo/2014/10/22/dept-of-corrections-wants-less-solitary-more-leisure-time-for-death-row-inmates/>.

²⁵⁴ Joey Bunch, *Tom Clements' Widow Tells Bob Beauprez to Stop Using Prison Chief's Death*, THE DENVER POST: THE SPOT (Oct. 23, 2014, 3:39 pm), available at <http://blogs.denverpost.com/thespot/2014/10/23/tom-clements-widow-tells-bob-beauprez-stop-using-prison-chiefs-death/114478>.

²⁵⁵ Telephone Interview with Raemisch and Wasko, *supra* note 224.

²⁵⁶ Telephone Interview with Raemisch and Wasko, *supra* note 224.

²⁵⁷ Cunningham, Reidy & Sorenson, *Is Death Row Obsolete?*, *supra* note 102, at 310.

²⁵⁸ *Id.* at 313-314.

²⁵⁹ *Id.* at 316.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.* at 316.

²⁶³ *See generally* Cunningham, Reidy, & Sorenson, *Wasted Resources*, *supra* note 99.

²⁶⁴ *Id.* at 191.

²⁶⁵ *Id.* at 195.

²⁶⁶ *Id.* at 185.

²⁶⁷ “From a violence risk-management standpoint, widespread adoption of mainstreaming [capital punishment] inmates is fiscally sound, promotes the most efficient use of limited staffing resources, reflects a scientifically

informed approach to classification, and reduces the substantial psychological costs of death row. The closing of death row is efficient, enlightened, and humane. To do otherwise is to perpetuate a legacy of wasted resources and gratuitous suffering.” *Id.* at 197.

Appendix A: Statutes, Administrative Regulations and Case Law by Jurisdiction

Jurisdiction	Statute	Administrative Regulation	Case Law	Other Sources
Alabama	<p>Ala. Code § 15-18-80 (2016): “(a) Whenever any person is sentenced to death, the clerk of the court in which the sentence is pronounced shall, within 10 days after sentence has been pronounced, issue a warrant under the seal of the court for the execution of the sentence of death, . . . which shall be directed to the warden of the William C. Holman unit of the prison system at Atmore, commanding him to proceed, at the time and place named in the sentence, to carry the same into execution, as provided in Section 15-18-82, and the clerk shall deliver such warrant to the sheriff of the county in which such judgment of conviction was had, to be by him delivered to the said warden, together with the condemned person as provided in subsection (b) of this section; provided, however, that in case of appeal to the Supreme Court of Alabama by the defendant and the suspension of execution of sentence by the trial court, said condemned person shall remain in the county jail of the county in which the conviction was had</p>	<p>Ala. Admin. Code r. 240-X-1-01 (2016): “(2) The Commissioner is vested with the authority to carry out and enforce the provisions of Title 14, Code of Ala. 1975, and to promulgate rules and regulations not inconsistent with Title 14 [Criminal Correctional and Detention Facilities].”</p>	<p>Laube v. Haley, 234 F. Supp. 2d 1227, 1238 n. 5 (M.D. Ala. 2002): “Disciplinary segregation is different from other types of segregation. Inmates may be housed in segregation [at Tutwiler] for a variety of reasons; for example, they are in protective custody, are on death row, or their security classification calls for constant segregation.”</p> <p>McCray v. Bennett, 467 F. Supp. 187, 190 (M.D. Ala. 1978): “The segregation unit is located on the west side of Holman prison; it consists of 244 individual cells, including 48 cells in the old death row unit. Not all of these cells are in operation at the present time. Inmates who are housed in the segregation unit are restricted to single cells. They are not allowed to work. They receive a maximum of thirty</p>	<p>Alabama Department of Corrections Male Inmate Handbook: Level VII, the highest security level, “is the security level for Death Row housing.”¹</p> <p>Alabama Department of Corrections website: “As planned in response to Kilby Prison’s continued deterioration, the Main Office moved . . . [in] November 1968. To accommodate the inmates, during November of 1969, Holman Prison was completed. . . . [T]he maximum security unit housed all death row inmates and was designated by statute to be the location for all electrocutions.”²</p> <p>“The Holman Correctional Facility houses Death Row inmates and is the only facility in the state that carries out executions. Additional housing of Death Row inmates is located at the William C. Donaldson Correctional Facility in Bessemer, Alabama. The present population of Holman C.F. consists of minimum through closed custody inmates, including life without parole and</p>

	<p>unless the court in which the case is tried orders otherwise, in which case, upon the affirmation of the appeal by the Supreme Court, said warrant for the execution of the death sentence, under seal of the court, together with the person of the condemned shall be delivered within 10 days after such affirmation to the warden of Holman prison as provided above.”</p> <p>Ala. Code § 15-18-81 (2016): “Upon the receipt of a condemned person by the warden of Holman prison, he shall be confined therein until the time for his execution arrives; and, while so confined, all persons outside the said prison shall be denied access to him, except his physician and lawyer, who shall be admitted to see him when necessary to his health or for the transaction of business, and the relatives, friends and spiritual advisors of the condemned person, who shall be admitted to see and converse with him at all proper times, under such reasonable rules and regulations as may be made by the Board of Corrections.”</p>		<p>minutes of exercise per day. They have no access to the general population of the prison. They are allowed to have visitors, but even on these occasions they are kept isolated from the rest of the prisoners. Normally, a prisoner is released from his segregation cell only when he is accompanied by two guards.”</p> <p>Mitchell v. Fuqua, 2000 WL 362040, at *3 (S.D. Ala. Mar. 20, 2000): “First, plaintiff has provided this Court with no evidence whatsoever that the defendant knew that housing a segregation inmate on the death row side of the segregation unit would increase the likelihood of an attack on that inmate’s person particularly since death row inmates are housed in single cells almost the entire day.”</p> <p>Eaton v. Capps, 348 F. Supp. 237, 242 (M.D. Ala. 1972), aff d, 480 F.2d 1020 (5th Cir.</p>	<p>Death Row inmates. . . . There are 200 segregation unit beds and Death Row has a capacity of 194 for a total of 1031 beds.”³</p> <p>Alabama Department of Corrections Administrative Regulations: Does not contain a section on housing death row inmates.</p>
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			<p>1973): “Petitioner is not being confined on death row for purposes of reasonable maintenance of prison discipline . . . nor for “administrative” purposes, . . . rather, Petitioner is being held on death row segregated from the general prison population solely because of a now invalid sentence which was imposed upon him. . . . [C]ontinued segregation solely because of this invalid sentence cannot be sanctioned. It is, therefore, the Order, judgment and decree of this Court that . . . Petitioner be removed from death row and placed in general population in the prison system of Alabama . . .”</p>	
<p>Arizona</p>				<p>Arizona Department of Corrections website: “Arizona’s Death Row for men is located in the Browning Unit at Arizona State Prison Complex-Eyman which is located just outside the city of Florence Arizona. Female inmates on Death Row are housed at the Lumley Unit at the Arizona State Prison Complex-Perryville, near</p>

				<p>Goodyear Arizona. All executions are performed in Central Unit at the Arizona State Prison Complex-Florence in Florence Arizona.</p> <p>The Browning Unit at ASPC-Eyman has 720 single-man cells. In addition to confining Condemned Death Row male inmates, Browning Unit also houses 230 validated gang members of eight certified Security Threat Groups. In addition Browning Unit has a Violence Control unit where inmates requiring exceptional management are housed.</p> <p>All male and female inmates on Death Row are classified as maximum custody. All inmates are in single cells which are equipped with a toilet, sink, bed and mattress. Each Death Row inmate has no contact with any other inmate. Out-of-cell time is limited to outdoor exercise in a secured area, two hours a day, three times a week, and a shower, three times a week. All meals are delivered by correction officers at the cell front. Limited non-contact visitation is available. Death Row inmates may place two ten minute telephone calls per week. Personal property is limited to hygiene items, two appliances, two books and writing materials, which can be purchased from the inmate</p>
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commissary. Health care is provided at the Health Unit; medication is passed out at the cell front. Clergy contacts are provided at the cell.^{3,4}

Arizona Department of Corrections Orders, Chapter 800, Sec. 801.09, 1.1.1 (2010):
Classifying death-sentenced inmates as maximum custody prisoners.⁵

Arizona Department of Corrections Orders, Chapter 800, Sec. 801.03, 1.3 (2010):
“Non-discretionary overrides – The following criteria requires the inmate to be classified no lower than the highest custody level associated with the criteria as applicable to the inmate. . . .

1.3.1 Death Sentence – maximum custody.”⁶

Arizona Department of Corrections Orders, Chapter 700, Sec. 704.08, 1.5.11.1 (2013):
“Neither inmate placed together in a double cell environment shall have: . . . A sentence to condemned row or an active court appeal pending the death sentence.”⁷

Arizona Department of Corrections Orders, Chapter 100, Sec. 101.02, 1.4 (2010):

				Provides that all orders must be approved by the Director of the Arizona DOC. ⁸
Arkansas				<p>Department of Corrections Inmate Handbook (2016): “Special Status/Assignment . . . Death Row visits are held in accordance with the appropriate administrative directive.”⁹</p> <p>News Sources: An account from a released former death row prisoner describes his experience at the super maximum security facility in Grady, Arkansas. He described being in a single cell in solitary confinement; being able to communicate orally with other death-sentenced prisoners held in single cells; being transported in shackles to an exercise yard; having no-contact visitation with a non-spouse and chaperoned visitation with a spouse.¹⁰</p>
California	<p>Cal. Penal Code § 3600 (2016): “(a) Every male person, upon whom has been imposed the judgment of death, shall be delivered to the warden of the California state prison designated by the department for the execution of the death penalty, there to be kept until the execution of the judgment, except as</p>	<p>15 Cal. Code Regs., tit. 15 § 3375.2 (2016): “(b) [A]dministrative determinants . . . may be imposed by Departmental officials to override the placement of an inmate at a facility according to his/her placement score. (5) DEA. Inmate was</p>		<p>CA Department of Corrections Operation Manual: Section 61010.11.5 (Placement): “Apply Mandatory Minimum Score Factor Code A to inmates sentenced to Death.” Code A is a Mandatory Minimum Score of 52, the highest minimum possible. The Mandatory Minimum Score determines the minimum Placement Score. “The</p>

	<p>provided in subdivision (b). (b) Notwithstanding any other provision of law: (1) A condemned inmate who, while in prison, commits any of the following offenses, or who, as a member of a gang or disruptive group, orders others to commit any of these offenses, may, following disciplinary sanctions and classification actions at San Quentin State Prison, pursuant to regulations established by the Department of Corrections, be housed in secure condemned housing designated by the Director of Corrections, at the California State Prison, Sacramento: (A) Homicide. (B) Assault with a weapon or with physical force capable of causing serious or mortal injury. (C) Escape with force or attempted escape with force. (D) Repeated serious rules violations that substantially threaten safety or security. (2) The condemned housing program at California State Prison, Sacramento, shall be fully operational prior to the transfer of any condemned inmate. (3) Specialized training protocols for supervising condemned inmates shall be provided to those line staff and supervisors at the</p>	<p>formerly or is currently sentenced to death.”</p>	<p>Placement Score is one of the factors used to determine the security level to which the inmate is assigned.”¹¹</p> <p>Section 62050.6 (Inmates with Death Sentences): San Quentin “is the reception center for all male inmates with a death sentence unless the Director has designated another institution as the place of reception. Death sentence inmates shall not be transferred to any other institution without the prior approval of the DRB and the Director. Exceptions may be made for temporary transfer to CMF for urgent or emergency medical treatment with prior approval . . .” The California Institution for Women “is the reception center for all female inmates with a death sentence. Upon exhaustion of her appeal and by order of the Deputy Director, Institutions, a female inmate sentenced to death shall be transferred to [San Quentin] within three days of her execution date.”¹²</p> <p>News Sources: According to an article in 2015, each row at San Quentin was a five-tiered unit, housing over 500 prisoners in 6-by-9 foot single cells. California had a 40-inmate psychiatric unit to treat death-sentenced prisoners suffering from mental illness, and</p>
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	<p>California State Prison, Sacramento, who supervise condemned inmates on a regular basis.</p> <p>(4) An inmate whose medical or mental health needs are so critical as to endanger the inmate or others may, pursuant to regulations established by the Department of Corrections, be housed at the California Medical Facility or other appropriate institution for medical or mental health treatment. The inmate shall be returned to the institution from which the inmate was transferred when the condition has been adequately treated or is in remission.</p> <p>(c) When housed pursuant to subdivision (b) the following shall apply:</p> <p>(1) Those local procedures relating to privileges and classification procedures provided to Grade B condemned inmates at San Quentin State Prison shall be similarly instituted at California State Prison, Sacramento, for condemned inmates housed pursuant to paragraph (1) of subdivision (b) of Section 3600. Those classification procedures shall include the right to the review of a classification no less than every 90 days and the</p>		<p>was about to open a 100-inmate wing to shift some death-sentenced prisoners. 68 death-sentenced prisoners are held in the “North Block,” which houses prisoners with good behavior.¹³</p> <p>According to an article in 2014, all female death-sentenced prisoners were housed at the Central California Women’s Facility, and all male death-sentenced prisoners were housed in three units at San Quentin. Those three units included: the Adjustment Center, where death-sentenced prisoners were initially housed, and to which they were returned “if they behave badly;” North Segregation, for prisoners “who have behaved well for years;” and East Block, which housed “everyone else.” Prisoners housed in the Adjustment Center were in single cells for 23 ½ hours of the day. In North Segregation, prisoners were released from their cells from 7AM to 1:30PM and permitted to walk freely in a contained environment.¹⁴</p>
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opportunity to petition for a return to San Quentin State Prison.

(2) Similar attorney-client access procedures that are afforded to condemned inmates housed at San Quentin State Prison shall be afforded to condemned inmates housed in secure condemned housing designated by the Director of Corrections, at the California State Prison, Sacramento.

Attorney-client access for condemned inmates housed at an institution for medical or mental health treatment shall be commensurate with the institution's visiting procedures and appropriate treatment protocols.

(3) A condemned inmate housed in secure condemned housing pursuant to subdivision (b) shall be returned to San Quentin State Prison at least 60 days prior to his scheduled date of execution.

(4) No more than 15 condemned inmates may be rehoused pursuant to paragraph (1) of subdivision (b).

(d) Prior to any relocation of condemned row from San Quentin State Prison, whether proposed through legislation or any other means, all maximum security Level IV, 180-degree housing unit facilities with an electrified perimeter shall be evaluated by the

	<p>Department of Corrections for suitability for the secure housing and execution of condemned inmates.”</p>			
<p>Colorado</p>	<p>Colo. Rev. Stat. Ann. § 18-1.3-1205 (West 2016): “When a person is convicted of a class 1 felony, the punishment for which is death, and the convicted person is sentenced to suffer the penalty of death, the judge passing such sentence shall appoint and designate in the warrant of conviction a week of time within which the sentence must be executed; the end of such week so appointed shall be not fewer than ninety-one days nor more than one hundred twenty-six days from the day of passing the sentence. Said warrant shall be directed to the executive director of the department of corrections . . . and shall be delivered to the sheriff of the county in which such conviction is had, who, within three days thereafter, shall proceed to the correctional facilities at Canon City and deliver the convicted person, together with the warrant, to said executive director or designee, who shall keep the convict in confinement until execution of the death penalty. Persons shall be permitted access</p>		<p>Dunlap v. Clements, No. 09-CV-01196-WJM-MEH, (D. Colo. Aug. 4, 2011): Order granting parties’ request to administratively close § 1983 suit based on parties’ entry of settlement agreement. The agreement provided that death-sentenced inmates would be moved to Sterling Correctional Facility to give them the opportunity for outdoor exercise, which was not available at the Colorado State Penitentiary at Canon City.¹⁵</p>	<p>Colorado Department of Corrections Policies, Regulation Number 600-01, (IV)(D)(6)(b) (2016): “All offenders received with a death penalty sentence will be reviewed for Close Custody Management Control Units, in accordance with AR 600-09, <i>Close Custody Offenders</i>. All male offenders will be initially assigned to the Sterling Correctional Facility (SCF) or the Colorado State Penitentiary (CSP) and all female offenders will initially be assigned to the Denver Women’s Correctional Facility (DWCF).”¹⁶</p> <p>Colorado Department of Corrections Policies, Regulation Number 600-09, (2014): “(III)(C) Close Custody Management Control Unit (MCU): A close custody designation that provides an increased level of housing, supervision and control to maintain the safety of the public, volunteers, staff and offenders. . . .</p> <p>(IV)(A)(6) Offenders with death penalty sentences may initially be assigned to Restrictive Housing</p>

to the inmate pursuant to prison rules. Such rules shall provide, at a minimum, for the inmate's attendants, counsel, and physician, a spiritual adviser selected by the inmate, and members of the inmate's family to have access to the inmate.”

Maximum Security Status in accordance with AR 650-03, (Restrictive Housing), prior to transitioning to Close Custody Management Control Units. The Director of Prisons/designee will be consulted and shall approve all initial placements and transition plans for these offenders.

(IV)(C)(6) Telephone Access: Offenders designated as Close Custody shall be allowed limited telephone privileges unless phone restrictions have been invoked by the Warden or designee. . . .

(IV)(C)(7) Access to Services: Offenders designated as Close Custody shall have access to Programs and services that include, but are not limited to the following; educational services, commissary services, library services, social services, counseling services, religious guidance and recreational programs. . . .

(IV)(C)(9) Visiting Privileges: Offenders designated as Close Custody shall have opportunities for contact, non-contact and attorney visiting, unless there are documented substantial reasons for withholding such privileges. . . .

<p>(IV)(C)(11) Recreational Opportunities: Offenders designated as Close Custody shall receive a minimum of one hour of exercise per day outside their cells, a minimum of five days per week, unless security or safety considerations dictate otherwise. . . .</p>			
<p>(IV)(C)(19) Offender Work Assignments: Offenders designated as Close Custody shall be given consideration for facility, unit, and/or pod employment opportunities in accordance with AR 300-23”</p>			
<p>(IV)(G)(1)(b); (IV)(G)(2)(b); and (IV)(G)(3)(c): states that offenders in Management Control Unit (MCU), MCU/High Risk, or MCU/Protective Custody “will be afforded a minimum of 4 hours of out of cell time per day (7 days per week) to participate in pod/day hall, recreational, and programming activities. Out of cell time includes 3 hours of indoor or outside recreation per week.</p>			
<p>(1) A maximum of 8 offenders designated as Close Custody Management Control (MCU) may be allowed out of their cells at a time to participate in pod/day hall, recreational, and programming activities in the day hall or outside</p>			

<p>Connecticut</p>	<p>Conn. Gen. Stat. § 18-10b (2016): “(a) The Commissioner of Correction shall place an inmate on special circumstances high security status and house the inmate in administrative segregation until a reclassification process is completed under subsection (b) of this section, if . . . (2) the inmate is in the custody of the Commissioner of Correction for a capital felony committed prior to April 25, 2012, . . . for which a sentence of death is imposed . . . and such inmate’s sentence is (A) reduced to a sentence of life imprisonment without the possibility of release by a court of competent jurisdiction . . . (c)(1) The commissioner shall place such inmate in a housing unit for the maximum security population if, after completion of such reclassification process, the commissioner determines such placement is appropriate, provided the commissioner (A) maintains the inmate on special circumstances high security status, (B) houses the inmate separate from inmates who are not on</p>			<p>recreation areas. . . .”¹⁷</p> <p>Chief Attorney Report on Prison Conditions: Written in 2011, the report states that inmates sentenced to death were housed at Northern Correctional Institution, where DOC directives set out the conditions of confinement. Death-sentenced prisoners were held in single cells, had “two hours of recreation outside of their cells six days a week and [were] always by themselves,” “[late] meals alone in their cells,” were “allowed up to three non-contact visits per week that [were] limited to one hour,” needed to be “escorted by at least one staff person” and “placed in restraints when moving outside their cell,” and “may have work assignments that are restricted to the death row housing unit.”¹⁸</p> <p>News Sources: Since the Connecticut Supreme Court has ruled the death penalty unconstitutional, with another case pending, there remain questions about whether the inmates will continue to be held in death row or in similar conditions to those sentenced to life in prison without parole.¹⁹</p>
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	<p>special circumstances high security status, and (C) imposes conditions of confinement on such inmate which shall include, but not be limited to, conditions that require (i) that the inmate's movements be escorted or monitored, (ii) movement of the inmate to a new cell at least every ninety days, (iii) at least two searches of the inmate's cell each week, (iv) that no contact be permitted during the inmate's social visits, (v) that the inmate be assigned to work assignments that are within the assigned housing unit, and (vi) that the inmate be allowed no more than two hours of recreational activity per day."</p>			
<p>Delaware</p>				<p>Delaware Department of Corrections Website: "All inmates currently sentenced to the death penalty are housed in maximum security at James T. Vaughn Correctional Center (JTVCC). The inmates may be housed in any of the available maximum housing units and may be assigned to any program available to other maximum security classified inmates. The cells are approximately 13 feet long, 7 feet wide and 8 feet high. They may be housed in single cells or in cells with another inmate in some maximum security units.</p>

<p>Florida</p>		<p>Fla. Admin. Code r. 33-601.830 (2016): “(1)(a) Death Row – The single-cell special housing status of an inmate who, upon</p>		<p>Their housing assignment, program assignment, and privilege level are reviewed every 90 days.</p> <p>Meals: All inmates sentenced to the death penalty are served the same meals as the general population . . . In more restrictive units, they are served meals in their cells; those assigned to less restrictive units eat in a dining hall in a group setting.</p> <p>. . . Showers and Exercise: Inmates sentenced to the death penalty receive opportunities to shower and exercise up to seven days each week depending on their maximum security unit assignment. The weekly time permitted for [showers] and recreation can range from as few as three hours each week and can reach up to 21 hours each week.”</p> <p>Death-sentenced prisoners, depending on their security control level, may be allowed to participate in group recreation, join available programs, and move without restraints.²⁰</p>
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conviction or adjudication of guilt of a capital felony, has been sentenced to death. Death row housing shall be separate from general population housing. . . .

(5)(a) Prior to opening a death row cell for any reason, staff members shall restrain the inmate. . . .

(7)(j) Exercise – An exercise schedule shall be implemented to ensure a minimum of six hours per week of exercise out-of-doors. . . .

(7)(l) Visitation – Death row visits shall be contact visits unless security concerns indicate that a non-contact visit is necessary . . .

(15) Death Warrants – Upon receipt of a death warrant signed by the Governor authorizing execution, the warden or designee will determine the housing location of the inmate. Inmates housed at Union

		<p>Correctional Institution will be immediately transferred to Florida State Prison. . . . If the inmate is housed at Lowell Correctional Institution, the inmate shall not be transferred to Florida State Prison until Phase II. . . .</p> <p>(2) The inmate’s visiting list shall be frozen once an execution date is set. . . . All visits shall be non-contact, except that the inmate may receive a one-hour contact visit on the day of execution.”</p>		
<p>Georgia</p>	<p>Ga. Code Ann. § 17-10-33 (West 2016):</p> <p>“Upon a judgment of death made by a judge, it shall be the duty of the judge to sentence the defendant to death and to indicate the sentence in writing. . . . In all cases it shall be the duty of the sheriff of the county in which the defendant is sentenced, . . . to convey the defendant to the appropriate state correctional institution, not more than 20 days nor less than two days prior to the time fixed in the judgment for the execution of the defendant, unless otherwise directed by the</p>			<p>Georgia Department of Corrections Facility Descriptions:</p> <p>Indicates men under death sentence were housed at Georgia Diagnostic and Classification Prison.²¹</p> <p>News Sources:</p> <p>Prison Legal News reported in 2010 that the Georgia DOC had decided to revoke contact family visits and cap the number of non-family visitors. Although the rules required that prisoners be allowed one hour of yard recreation a day, the prisoners told reporters that they were receiving 2.5 hours a week instead.²² These Rules and Regulations are not</p>

	<p>Governor or unless a stay of execution has been caused by an appeal, granting of a new trial, or other order of a court of competent jurisdiction.”</p>			<p>publicly available.</p>
<p>Idaho</p>	<p>Idaho Code Ann. § 19-2705 (West 2016): “(1) Whenever a person is sentenced to death, the judge passing sentence shall . . . sign and file a death warrant fixing a date of execution not more than thirty (30) days thereafter. . . . (3) Whenever a person is under death warrant, execution of which has not been stayed, the warden of the prison in which the person is incarcerated shall keep the condemned person in solitary confinement until execution. No person shall be allowed access to the condemned person except law enforcement personnel investigating matters within the scope of their duties, the attorney of record, attending physicians, a spiritual adviser of the condemned’s choosing, and members of the immediate family of the condemned, and then only in accordance with prison rules. Persons under death warrant will be allowed contact visits with their attorneys of record and the agents</p>			<p>Idaho Department of Corrections Directive 303.02.01.001, Sec. 5 (2014): “‘Inmates under the sentence of death . . . will be housed in either the Idaho Maximum Security Institution (IMSI) for males or the Pocatello Women’s Correctional Center (PWCC) for females.’²³</p> <p>Idaho Department of Corrections Directive 319.02.01.002, Sec. 07.02.00–07.10.00 (2016): “‘Newly committed offenders under sentence of death will be placed directly into restrictive housing Investigation staff will have fifteen (15) days to . . . complete a referral file The restrictive housing committee for offenders under sentence of death has two (2) weeks to review the file submitted by the investigation staff Within seventy-two (72) hours following the two (2) week review period, the chairperson will schedule a restrictive housing hearing.’”</p> <p>After this hearing, the “director will review all the information and make</p>

<p>of their attorneys of record. Such visits will take place subject to prison rules. No other contact visits shall be permitted. Prison officials have authority to suspend or deny visits when the safe, secure and orderly operation of the facility or public safety could be compromised. . . .</p> <p>(11) When a person has been sentenced to death, but the death warrant has been stayed, the warden is not required to hold such person in solitary confinement or to restrict access to him until the stay of the death warrant is lifted or a new death warrant is issued by the sentencing court; provided however, no condemned person shall be housed in less than maximum security confinement, and provided further that nothing in this section shall be construed to limit the warden's discretion to house such person under conditions more restrictive if necessary to ensure public safety or the safe, secure and orderly operation of the facility”</p>			<p>a decision regarding the offender's housing placement If the release to close-restricted custody is not approved, the offender will remain unclassified in administrative segregation. If the release is approved, the offender will be classified as close-restricted custody and released from administrative segregation.” The restrictive housing committee will review the housing status of death-sentenced prisoners at least once a year to determine if they may be released into close-restricted housing with the rest of the general prison population that has been classified into close-restricted housing. Inmates in close-restricted housing are permitted to work.²⁴</p>
<p>Indiana</p>	<p>Ind. Code Ann. § 35-38-6-3 (West 2016): “Sec. 3. A sheriff who receives a warrant under section 2 [death warrant] or section 7 of this</p>		<p>Indiana Department of Corrections, Policy and Administrative Procedures 02-03-115, (IV), (IX) (2007): Stating that death-sentenced</p>

<p>Kansas</p>	<p>chapter shall immediately: (1) transport the person to the state prison;”</p> <p>Ind. Code Ann. § 35-38-6-4 (West 2016): “Sec. 4. (a) The convicted person shall be confined in the state prison until the date of the convicted person’s execution. The convicted person may temporarily be held in a maximum security facility for security purposes or during renovation of the state prison. A convicted female shall be confined in a maximum security women’s prison until not more than thirty (30) days before the date of her execution. A convicted female shall be segregated from male prisoners after her transfer from the women’s prison.</p> <p>(b) The convicted person’s: (1) attorney; (2) physician; (3) relatives; (4) friends; and (5) spiritual advisor; may visit the convicted person while the convicted person is confined. The department of correction shall adopt rules, under IC 4-22-2, governing such visits.”</p>			<p>prisoners are flagged as ‘Potential High Risk Offenders,’ who may upon further review be categorized as ‘High Risk Offenders’ depending on other factors; ‘High Risk Offenders’ may be placed in administrative segregation if they present a threat to safety or security.”²⁵</p> <p>Indiana Department of Corrections Website: “Offenders sentenced to death in Indiana are housed at the Indiana State Prison in Michigan City, IN. . . . All offenders on Death Row are classified as maximum security and housed in single cells.”²⁶</p>	<p>Kansas Department of Corrections, Internal Management Policy and Procedure 20-104</p>
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				<p>(2004): “(I)(A) Inmates may be confined in administrative segregation for any of the reasons or conditions articulated under procedure I.B. of this IMPP (II)(B)(16) An inmate may be placed in administrative segregation if the inmate has been sentenced to death subsequent to his or her conviction of a capital offense, and such inmates shall not be subject to the [periodic reviews] . . . unless there is some departure from their capital status due to any substantive action taken by the courts.”²⁷</p>
<p>Kentucky</p>	<p>Ky. Rev. Stat. Ann. § 532.100 (West 2016): “(3) When a sentence of death is imposed, the court shall commit the defendant to the custody of the Department of Corrections with directions that the sentence be carried out according to law.”</p>			<p>Kentucky Corrections Policies and Procedures, Policy No. 10.2, Special Management Inmates: “‘Death row’ means a maximum security housing situation to control the inmate serving a sentence of death.”²⁸ “An inmate may be placed in administrative segregation for one (1) or more of the following: . . . f. Pending orientation and classification of an inmate received under sentence of death, if necessary.”²⁹</p>
<p>Louisiana</p>	<p>La. Rev. Stat. Ann. § 15:568 (West 2016): “‘Until the time of his execution,</p>		<p>Ball v. Leblanc, 792 F.3d 584, 589-90 (5th Cir. 2015):</p>	

	<p>the Department of Public Safety and Corrections shall incarcerate the offender in a manner affording maximum protection to the general public, the employees of the department, and the security of the institution.”</p>		<p>Stating that Louisiana's death row facility, Angola, houses death row inmates in cells for 23 hours.</p>	
<p>Mississippi</p>				<p>Mississippi Department of Corrections, Inmate Handbook Chapter 1, (11)(D) (2015): “Death Row Inmates committed to the MDOC under a sentence of death and are housed in a facility/unit deemed appropriate by the MDOC Commissioner. Death Row status requires the highest level of custody supervision available. Inmates in this status are precluded from assignment to a principal custody designation.” Identifies Central Mississippi Correctional Facility and Mississippi State Penitentiary as the facilities that house Death Row custody assignments.³⁰ Mississippi Department of Corrections Website: “All male Death Row offenders are housed at MSP [Mississippi State Penitentiary], Unit 29, and all female offenders sentenced to Death are housed at Central Mississippi</p>

				Correctional Facility in Rankin County. ³¹
Missouri				<p>Missouri Department of Corrections Website: Paper detailing Missouri’s mainstreaming of death row inmates into the general prison population after January 8, 1991.³²</p>
Montana				<p>Department of Corrections, Montana State Prison Operational Procedure 4.2.1, Inmate Classification System: “Maximum custody: is the third highest custody level as determined by the prison’s objective classification system. Inmates classified to this level require the highest degree of control and supervision because of extreme misconduct or the nature of their sentence (death sentence). Inmates classified to this level must be housed in a locked housing unit.”³³</p> <p>“Inmates within the following categories will be separated from the general population, to the extent possible: . . . Maximum custody, administrative segregation, and restricted administrative segregation cases.”³⁴</p>
Nebraska	Neb. Rev. Stat. Ann. § 29-2543 (West 2016):			Department of Correctional Services Administrative

“(1) Whenever any person has been tried and convicted before any district court in this state, has been sentenced to death, and has had his or her sentence of death affirmed by the Supreme Court on mandatory direct review, it shall be the duty of the Supreme Court to issue a warrant, . . . establishing a date for the enforcement of the sentence directed to the Director of Correctional Services, commanding him or her to proceed at the time named in the warrant.”

Neb. Rev. Stat. Ann. § 29-2546 (West 2016):

“Whenever the Supreme Court reverses the judgment of conviction in accordance with which any convicted person has been sentenced to death and is confined in a Department of Correctional Services adult correctional facility as herein provided, it shall be the duty of the Director of Correctional Services, upon receipt of a copy of such judgment of reversal, duly certified by the clerk of the court and under the seal thereof, to forthwith deliver such convicted person into the custody of the sheriff of the county in which the conviction was had to be held in the jail of the county awaiting the further

Regulation 210.01:

Provides a table that shows how Death Row prisoner conditions of confinement differ from other differently classified individuals. For instance, death-sentenced prisoners may not receive meals in their cells, but can shave and shower once per day, have contact visits, can exercise outside their cell for two hours, once per day, and have work assignments.³⁵

Department of Correctional Services Administrative Regulation 201.02:

“All male inmates committed to the NDCS [Nebraska Department of Correctional Services], with the exception of males sentenced to death, shall be received at the Diagnostic & Evaluation Center Males sentenced to death shall be received at, or immediately transferred to the NDCS institution designated by the Director.”³⁶

Uses the term “death row.”³⁷

Department of Correctional Services Administrative Regulation 201.05:

“The Director shall designate Restrictive Housing units to house special management inmates. . . . SPECIAL MANAGEMENT

	judgment and order of the court in the case.”			<p>INMATES INCLUDE, BUT ARE NOT LIMITED TO, INMATES IN ONE OR MORE OF THE FOLLOWING CATEGORIES:</p> <p>B. Death Row – The confinement of inmates sentenced to the death penalty.³⁸</p>
<p>Nevada</p>				<p>Department of Corrections Website: Ely State Prison contains a “Condemned Men’s Unit” with visiting hours posted online.³⁹</p> <p>News Sources: Death-sentenced male prisoners were housed in single cells at Ely State Prison, and many spent 23 hours per day in their cells.⁴⁰</p>
<p>New Hampshire</p>	<p>N.H. Rev. Stat. Ann. § 630:5 (West 2016): “XIII. When the penalty of death is imposed, the sentence shall be that the defendant be imprisoned in the state prison at Concord until the day appointed for his execution, which shall not be within one year from the day sentence is passed.”</p>	<p>N.H. Code Admin. R. Ann., Cor 402.04 (2016): “(e) Death sentence inmates shall: (1) Not be assigned a classification score lower than C-5 [maximum custody] at initial classification; (2) Not be eligible for re-classification lower than C-5 and thus not be subject to re-classification hearings; and (3) Be afforded all the same access to</p>		<p>Department of Corrections “Time in Prison” Handbook (2001): The C-5 custody level “provides the highest degree of supervision and control. Inmates are locked in their cells approximately 22 hours daily with limited time for exercise within the living quarters.”⁴¹</p>

	<p>programs, recreation and other services as afforded to other C-5 inmates.”</p>	<p>Corrections Department, Policies and Procedures, CD-143000: “Involuntary Placement into Custody Levels V and VI: Separation from the general population of an inmate whose continued presence in the general population represents a threat to the security of the institution or the inmate is in danger of bodily harm or other violent acts from himself/herself or other inmates, if the inmate remains in the general population. This category includes all pre-trial detainees (county jail holds) and death-sentenced inmates.”⁴²</p> <p>Corrections Department, Policies and Procedures, CD-143003: “Inmates Sentenced to Death: . . . 2. Inmates in this status shall be subject to conditions of confinement as per the Table of Services, Step 4, with the exception of congregate activity, which must be approved by the Warden.”⁴³</p>
<p>New Mexico</p>		<p>North Carolina Department of Public Safety Policy & Procedure Manual, C.1201: “Death Row is the classification status established for inmates sentenced to Prisons under a death</p>

			<p>order commitment. Only Central Prison and the North Carolina Correctional Institution for Women are authorized to establish a death row housing unit. Death Row classification inmates shall be housed in a secure area of the facility and segregated from the general inmate population in so far as feasible.”⁴⁴</p> <p>Death-sentenced prisoners are “permitted to receive meals outside the cell if control can be maintained in the protective and death row facility.”⁴⁵</p> <p>Death-sentenced prisoners also “have the opportunity to shave twice a week and shower at least three times per week . . . limited to a maximum of ten (10) minutes per day.” Furthermore, “Unless specifically restricted under the provisions of this policy, inmates assigned to death row . . . shall be provided one hour per day to exercise outside the cell.”⁴⁶</p> <p>“If approved by the Director, television privileges may be authorized by the facility head for death row . . . inmates depending upon programmatic needs of the offender and physical plant characteristics.”⁴⁷ When receiving</p>
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Ohio		<p>Ohio Admin. Code § 5120-9-12 (2016): “(A) All inmates sentenced to death under Ohio law shall be confined in one or more institutions designated by the director of the department of rehabilitation and correction. Such inmates may be assigned to an area of the institution to be designated by the managing officer, which area shall be known as ‘death row.’ (B) Absent significant extenuating circumstances, no inmate shall be assigned to or housed in death row unless that inmate has been sentenced to death. . . . (C) The director or his designee may assign or reassign an inmate who has been sentenced to death to a security</p>		<p>visitors, “death row offenders will normally visit only in the noncontact visiting area.”⁴⁸</p> <p>Ohio Department of Rehabilitation and Correction Policies, 53-CLS-01: “1. . . . Death row is not a security classification, and inmates assigned to this status are not subject to security classification procedures as long as they remain in this status. 2. An inmate assigned to death row status who presents a threat to security may be subject to assignment to a security classification that is appropriate for the security risk. In the event of a potential security classification assignment for a death row inmate, the security classification procedures for the proposed security level shall be followed. Once the inmate no longer poses a threat to security in death row, he may be returned to that status.”⁴⁹</p>
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classification or special management status other than that which is normally used for such inmates, based on the security or medical and mental health requirements for the inmate. The inmate so assigned shall receive the privileges and programming that are appropriate for the other security or management status, notwithstanding paragraph (D) of this rule.

(D) Inmates who are sentenced to death and who have not been reassigned to some other status shall receive cell privileges which at a minimum, shall include:

- (1) Personal hygiene articles;
- (2) Mail and kite privileges;
- (3) Access to legal materials and services, including legal kit;
- (4) Access to cleaning articles for cell sanitation as approved by the warden or his designee;
- (5) Visits by department

		<p>staff;</p> <p>(6) Adequate food;</p> <p>(7) Access to current rules of the Ohio administrative code, also known as 'ARs,' 5120-9 series;</p> <p>(8) Cell furnishings to include toilet, wash basin, running water, mattress, sheets, blanket (depending on weather conditions);</p> <p>(9) Access to medical services as required by their medical condition;</p> <p>(10) Regular assessment of their mental health condition by the bureau of behavioral health services and access to such services as required by their mental health condition;</p> <p>(11) Institution coveralls or clothing, underwear, and footwear;</p> <p>(12) Adequate lighting for reading;</p> <p>(13) Five hours of recreation per week;</p> <p>(14) Opportunity to shower and shave five times per week;</p> <p>(15) One non-contact visit per visitor, per</p>		
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		month; and (16) Limited commissary purchases.”	<p>Hooks v. State, 22 P.3d 231, 233 (Okla. 2001): “Oklahoma’s prison system has one Death Row and one place of execution, both housed in the McAlester prison.”</p>	<p>Oklahoma Department of Department of Corrections Policy & Operations Manual, OP-060107: “Offenders assigned to death row who are not employable due to lockdown status or other justifiable reasons may promote to Level 3 [a less restrictive custody level] if all other level criteria is met.”⁵⁰</p>
<p>Oklahoma</p>				
<p>Oregon</p>	<p>Or. Rev. Stat. Ann. § 137.463 (West 2016): “(1) When a sentence of death is pronounced, the clerk of the court shall deliver a copy of the judgment of conviction and sentence of death to the sheriff of the county. The sheriff shall deliver the defendant within 20 days from the date the judgment is entered to the correctional institution designated by the Director of the Department of Corrections pending the determination of the automatic and direct review by the Supreme Court under ORS 138.012.”</p>	<p>Death Row Housing Unit, Or. Admin. R. 291-093 et seq. (2016) Or. Admin. R. 291-093-0005: “(3) Policy: It is the policy of the Department of Corrections to assign inmates with a sentence of death to the Death Row Housing Unit or to a Death Row status cell.” OAR § 291-093-0015: Detailing death row inmates’ access to canteen services, clothing, exercise, mail, telephone, visiting, religious services,</p>		

education and other materials. Inmates on death row “may be provided an opportunity for inside exercise a minimum of 40 minutes per day (which may include shaving and showering), seven days per week” and “an opportunity for outside exercise for one hour per day a minimum of five days per week, if they choose to participate.”

Or. Admin. R. 291-104-0111 (2016):
“(9) Custody Classification Level: One of five levels of supervision assigned to an inmate through initial and classification review procedures.
(a) Level 5: An inmate assigned at this custody classification level meets one of the following criteria: . . .
(B) Has a sentence of death or is pending retrial in a case in which a sentence of death may be re-imposed.
(C) Has a pending trial

<p>Pennsylvania</p>	<p>61 Pa. C.S.A. § 4303 (West 2016): “Upon receipt of the warrant, the secretary shall, until infliction of the death penalty or until lawful discharge from custody, keep the inmate in solitary confinement. During the confinement, no person shall be allowed to have access to the inmate without an order of the sentencing court, except the following: (1) The staff of the department. (2) The inmate’s counsel of record or other attorney requested by the inmate. (3) A spiritual adviser selected by the inmate or the members of the immediate family of the inmate.”</p>	<p>for a case in which a sentence of death may be imposed. . . .”</p>	<p>Jones v. Sec’y Pennsylvania Dep’t of Corr., 549 F.Appx 108 (3d Cir. 2013) cert. denied sub nom. Jones v. Wetzel, 135 S. Ct. 94, 190 L. Ed. 2d 77 (2014): Court ruled that former death row prisoner’s Eighth Amendment rights were not violated by his confinement in solitary while awaiting resentencing to LWOP. State statute 61 Pa. Cons.Stat. Ann. § 4303 requires solitary confinement of death row prisoners, and prison policy requires that any death row prisoners who may still be subject to death after resentencing must reside in the CCU. Prisoner challenged that prison policy; Third Circuit held that the prison was reasonably exercising the power given to it by the legislature to house and classify prisoners, and that prisoner could not</p>	
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			<p>demonstrate that the administrative-segregation-like conditions of death row infringed on his constitutional rights.</p>	
<p>South Carolina</p>				<p>South Carolina Department of Corrections (SCDC) Policy and Procures OP-22.16 (2014): Policy Statement</p> <p>To promote safety and security, inmates assigned to the Death Row Unit at Lieber Correctional Institution will be housed in an area that is separate and independent from all other areas where other SCDC inmates are assigned. . . . NOTE: THESE PROCEDURES APPLY ONLY TO MALE INMATES ON DEATH ROW AT LIEBER CORRECTIONAL INSTITUTION. FEMALE DEATH ROW INMATES WILL BE ASSIGNED TO A HOUSING AREA WITHIN THE SPECIAL MANAGEMENT UNIT AT CAMILLE GRIFFIN GRAHAM CORRECTIONAL INSTITUTION (CGGCI). IF A FEMALE IS ASSIGNED TO DEATH ROW AT CAMILLE GRIFFIN GRAHAM CORRECTIONAL INSTITUTION, INSTITUTIONAL SPECIFIC PROCEDURES FOR THIS INMATE WILL BE DEVELOPED... [AND] WILL BE PUBLISHED AS A SUPPLEMENT</p>

				<p>TO THIS POLICY/PROCEDURE.</p> <p>(2) ASSIGNMENT OF INMATES TO LEVELS:</p> <p>Death Row inmates will be assigned to Level I, II, or III based upon their behavior/classification status. Most inmates on Death Row will be assigned to Levels II or III.</p> <p>(2.2) .. The following will be applicable for all Death Row inmates who are placed on execution status:</p> <p>(2.2.1) The inmate placed on execution status will be housed in a specific location of the B-Wing on the Death Row Unit.</p> <p>(2.2.2) The inmate placed on execution status will not be allowed to associate with other inmates at anytime while in execution status. Separate visiting hours will be established for those inmates.</p> <p>(2.2.3) Inmates placed on execution status will not be allowed out of the cell at the same time as other Death Row inmates.</p> <p>(3) DEATH ROW UNIT: The U-1 housing unit will be utilized for Death Row inmates at Lieber. Death sentenced inmates will be separated from those in Security Detention as well as from inmates in the general population for the purpose of maintaining the safety, security, and</p>
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				<p>order of the facility.</p> <p>(7) INSTITUTIONAL CLASSIFICATION COMMITTEE (ICC)</p> <p>(7.3.1) ... New arrivals will be classified as Level I.</p> <p>(7.3.3) Level I – Inmates assigned to Level I will be reviewed every 30 days for behavior change and as needed for status change.</p> <p>(7.3.4) Level II – Inmates assigned to Level II will be reviewed for a possible change in level status every 90 days following their initial placement in Level II.</p> <p>(7.3.5) Level III – Inmates assigned to Level III will have an annual status review once per year, unless a change occurs (i.e., disciplinary, court decision, or another event) that would affect status.</p> <p>(9) RECREATION</p> <p>(9.1) Schedule: Death Row inmates in any category of segregation will be allowed out-of-cell recreation privileges (indoor/outdoor) five (5) days a week, to exclude weekends and holidays, at least one (1) hour per day, weather permitting, unless safety and security reasons dictate otherwise.</p> <p>(9.1.1) Level I: Level I Death Row inmates will retain their restraints while they are secured within the</p>
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				<p>individualized recreation area. (Only one [1] inmate at a time may be recreated in these areas.)</p> <p>(9.1.2) Level II: Inmates will have general recreation with other Level II and Level III inmates. Only one (1) inmate will be allowed in recreation area.</p> <p>(28) DEATH ROW SECURITY STAFF DUTIES:</p> <p>(28.2) Death Row Escort Procedures: Death Row inmates will be strip-searched and placed in restraints before exiting the cell block.</p> <p>(28.3.1) . . . Inmates in Level I will be housed in a separate physical location. Inmates in Level II and III may be housed in the same physical location; however, an empty cell will be maintained between the two (2) levels.</p> <p>(28.3.2) Inmates on Death Row will be single-celled.⁵¹</p>
<p>South Dakota</p>	<p>S.D. Codified Laws § 23A-27A-31.1 (2016):</p> <p>“Segregation of defendant from other inmates—Access to defendant by others limited. From the time of delivery to the penitentiary until the infliction of the punishment of death upon the defendant, unless lawfully discharged from such imprisonment, the defendant shall</p>			<p>DOC Policy 1.3.D.2 (2015):</p> <p>(3)(B)(1) Capital punishment inmates will be housed one (1) inmate to a cell.</p> <p>3)(B)(2) Unless extenuating circumstances exist, capital punishment inmates will not be allowed to have personal contact with inmates in general population.</p> <p>(3)(B)(3)Capital punishment inmates will have meals brought to them by</p>

	<p>be segregated from other inmates at the penitentiary. No other person may be allowed access to the defendant without an order of the trial court except penitentiary staff, Department of Corrections staff, the defendant's counsel, members of the clergy if requested by the defendant, and members of the defendant's family. Members of the clergy and members of the defendant's family are subject to approval by the warden before being allowed access to the defendant.”</p>			<p>staff. They will eat their meals in their assigned cell. (3)(C)(1) Transportation of a capital punishment inmate throughout the facility (e.g. to Health Services, to meet with an attorney, etc.) will be scheduled when there is the least amount of potential for the capital punishment inmate to have contact with general population inmates. (4)(B) Capital punishment inmates will normally receive forty-five (45) minutes out of cell recreation each weekday.⁵²</p> <p>DOC Website: Male inmates sentenced to death are housed in a separate wing of the Jameson Annex of the South Dakota State Penitentiary in Sioux Falls. The Jameson Annex is the maximum-security area of the Penitentiary. Female inmates sentenced to death are housed at the South Dakota Women's Prison in Pierre.⁵³</p>
<p>Tennessee</p>				<p>Administrative Policy 404.11 (2011)(IV)(A) Mandatory Segregation: “Mandatory Segregation: Assignment to maximum security housing of those inmates committed to the Department under the sentence of death or in the physical custody of the Department by court order for safekeeping . . .</p>

				<p>(V) POLICY: Inmates who are sentenced to death or housed in the TDOC for the purpose of safekeeping shall be assigned to mandatory segregation...</p> <p>(VI) PROCEDURES: (A) Inmates with a sentence of death shall be: (A)(2) Designated as maximum custody and assigned to mandatory segregation on LIBD. (A)(7) Reviewed annually thereafter in compliance with Policy #401.05.⁵⁴</p> <p>Administrative Policy 506.14 (2014): “(IV)(D) Maximum Security Administrative Segregation (MSAS): The purposeful separation of inmates which are a threat to the safety and security of an institution, the welfare of staff, inmates, or public due to past or current acts of violence and/or escape or are committed to the Department under sentence of death.</p> <p>(VI)(B)(2) Inmates who are under a sentence of death shall be single-celled and housed in a Maximum Security Administrative Segregation (MSAS) unit separate from the general population.</p>
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<p>Texas</p>	<p>Tex. Gov't Code Ann. § 501.113 (West 2015): “(b) The institutional division shall house the following classes of inmates in single occupancy cells: (1) inmates confined in death row segregation; (2) inmates confined in administrative segregation;”</p> <p>Tex. Gov't Code Ann. § 501.112 (West 2015): “(a) Except as provided by Subsection (b), the institutional division may not house inmates with different custody classifications in the same cellblock or dormitory unless the structure of the cellblock or dormitory allows the physical separation of the different classifications of inmates. (b) If an appropriate justification is provided by the unit classification committee or the state classification committee, the board may permit the institutional division to house inmates with different custody classifications in the same cellblock or dormitory,</p>		<p>Trottie v. Thaler, 2013 U.S. Dist. LEXIS 19373 (E.D. Tex. 2013): Resolving a case where an inmate complained that automatic administrative segregation for death row inmates violated his due process rights.</p> <p>Young v. Stephens, 2014 U.S. Dist. LEXIS 16007 (W.D. Tex. 2014): Noting that a Texas DOC Warden testified that only death row inmates remain in administrative segregation permanently.</p> <p>Allen v. State, 2006 Tex. Crim. App. LEXIS 2545 (Tex. 2006): Noting that a correctional official testified that death row is basically identical to administrative segregation.</p>	<p>(V)(B)(3) Inmates placed in MSAS shall be single-celled and confined within a maximum security unit separate from the general population.”⁵⁵</p>
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	<p>but only until sufficient beds become available in the division to allow the division to house the inmates in the manner required by Subsection (a) and in no event for more than 30 days.’</p>			
<p>Utah</p>				<p>DOC website: “The Uintas . . . include the Maximum Security facilities at the Utah State Prison. . . . The Uintas also house high-profile inmates, death-row inmates, and inmates who pose severe management problems such as active gang members. . . .</p> <p>Uinta 1 is the highest-security building in the State’s prison system. The building is capable of housing 96 inmates. Inmates are ‘single-celled,’ meaning they do not have cellmates. Unlike traditional depictions of ‘solitary confinement,’ inmates housed in this area can communicate with one another through the doors of their cells. Each cell has a window that provides natural light, and inmates have the opportunity to recreate either indoors in a common area, or outdoors on a concrete pad confined by side walls and chain-link fencing overhead. Like inmates in other facilities, privilege levels vary based on behavior. Nearly all inmates in this section have the ability to earn</p>

				<p>greater privileges and transition to other areas over time by demonstrating positive behavior. Generally, death-row inmates are the only exception, requiring a sentence to be overturned or commuted to life. Utah currently has nine men on death row.”⁵⁶</p>
<p>US Govt./ Military</p>				<p>Army Regulation 190-47: The Army Corrections System (last updated in 2006)</p> <p>3-2. Authorized place of confinement: “Except in time of war, the USDB [United State Disciplinary Barracks] is the only ACS facility authorized to incarcerate prisoners under the sentence of death.”</p> <p>11-1. Custody procedures: “ACS facilities will place prisoners under sentence of death into administrative segregation until they are prepared for transfer to the USDB.”</p> <p>12-6. Segregation: “Prisoners who have been adjudged a sentence of death will be segregated from the remainder of the prison population at all times. These prisoners will not be commingled with other than death sentence prisoners in billets, recreation, employment, or subsistence that is separate from general population.”⁵⁷</p>

<p>Virginia</p>				<p>Virginia Department of Corrections, Operating Procedure 830.2, (IV)(D)(7) (2015): “Any offender sentenced to death Row. . . . No reclassification will be completed.”⁵⁸</p> <p>News Sources: Following Prieto, news sources have reported that the Virginia DOC relaxed some of the policies to now allow death row prisoners to interact with one another in groups of up to four, see their family on a weekly basis, and access showers and recreational opportunities more often.⁵⁹</p>
<p>Washington</p>	<p>Wash. Rev. Code § 10.95.170 (2015): “The defendant shall be imprisoned in the state penitentiary within ten days after the trial court enters a judgment and sentence imposing the death penalty and shall be imprisoned both prior to and subsequent to the issuance of the death warrant as provided in RCW 10.95.160. During such period of imprisonment, the defendant shall be confined in the segregation unit, where the defendant may be confined with other prisoners not under sentence of death, but prisoners under</p>		<p>In re Gentry, 170 Wash. 2d 711, 716, 245 P.3d 766, 768 (2010): "In contrast to Colorado statutes, Washington statutes and DOC regulations in effect at the time of Gentry's crime and sentence provide that death row inmates are initially placed in the IMU and remain there for at least one year. Ford Decl., Ex. 1A. Subsequent transfer to SHU, with its attendant privileges, is dependent upon inmate</p>	<p>DOC Policy 320.250 and 300.380 (2015): “(II)(C)(2) Inmates Sentenced to the Death Penalty (ISDPs) will be housed in the IMU at the Washington State Penitentiary (WSP) or Washington Corrections Center for Women, as applicable.”⁶⁰</p>

	<p>sentence of death shall be assigned to single-person cells.”</p> <p>Wash. Rev. Code § 72.02.250 (2015): “Female persons sentenced to death shall be committed to the Washington correctional institution for women, notwithstanding the provisions of RCW 10.95.170, except that the death warrant shall provide for the execution of such death sentence at the Washington state penitentiary as provided by RCW 10.95.160, and the secretary of corrections shall transfer to the Washington state penitentiary any female offender sentenced to death not later than seventy-two hours prior to the date fixed in the death warrant for the execution of the death sentence.”</p>		<p>conduct.”</p> <p>Jeffries v. Reed, 631 F. Supp. 1212, 1214–15 (E.D. Wash. 1986): “Plaintiff initially claims that defendants violated his rights by transferring him to IMU solely because he is subject to the death penalty. Death Row inmates are the only prisoners incarcerated in IMU for reasons other than institutional misconduct. ”</p> <p>“...[S]tate law requires that all Death Row inmates be confined in a segregation unit. R.C.W. 10.95.170. Accordingly, this court finds that Washington law does not create a protected liberty interest regarding the location of plaintiff’s confinement.”</p>	
<p>Wyoming</p>	<p>Wyo. Stat. Ann. §7-13-907 (West 2015): “(a) The administrator of the state penal institution shall keep a person sentenced to death in solitary confinement until execution of the death penalty,</p>			

	<p>except the following persons shall be allowed reasonable access to the prisoner:</p> <ul style="list-style-type: none"> (i) The prisoner’s physician and lawyers; (ii) Relatives and spiritual advisers of the prisoner; and (iii) Persons involved in examining a prisoner believed to be pregnant or mentally unfit to proceed with the execution of the sentence.” 			
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² *History of the ADOC*, Alabama Department of Corrections, <http://www.doc.state.al.us/History.aspx> (last visited May 26, 2016).

³ *Holman Correctional Facility*, Alabama Department of Corrections, <http://www.doc.state.al.us/facility.aspx?loc=33> (last visited May 26, 2016).

⁴ *Death Row Information and Frequently Asked Questions*, Arizona Department of Corrections, <https://corrections.az.gov/public-resources/death-row/death-row-information-and-frequently-asked-questions> (last visited May 26, 2016).

⁵ Arizona Department of Corrections, Department Order: 801, Inmate Classification at 12, effective Feb. 25, 2010, revised Nov. 5, 2011, <https://corrections.az.gov/sites/default/files/policies/800/0801.pdf>.

⁶ *Id.* at 5.

⁷ Arizona Department of Corrections, Department Order: 801, Inmate Classification at 13–14, effective July 6, 2013, revised Sept. 19, 2015, https://corrections.az.gov/sites/default/files/policies/700/0704_effective_9-19-15.pdf.

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⁹ Arkansas Department of Correction, *Inmate Handbook 30* (July 2015), http://adc.arkansas.gov/images/uploads/Inmate_Handbook_edited_March_25_2016.pdf.
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¹² *Id.* at Policy 62050.6 Inmates with Death Sentences, 561.

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¹⁴ Nancy Mullane, *One Reporter on California’s Death Row*, LIFE OF THE LAW (July 17, 2014), *available at* <http://www.lifeofthelaw.org/2014/07/reporter-on-death-row-2/>.

¹⁵ See also Kieran Nicholson, *Colorado Death Sentence Inmates Moved to State Penitentiary*, THE DENVER POST (Nov. 2, 2015), *available at* http://www.denverpost.com/search/ci_18564471.

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- ⁵⁸ Virginia Department of Corrections, OP 830.2, Security Level Classification at 5, effective Jan. 1, 2015, <https://vadoc.virginia.gov/about/procedures/documents/800/830-2.pdf>.
- ⁵⁹ Matt Zapotosky, *Virginia Relaxes Restrictions on Death Row Inmates*, THE WASHINGTON POST (Aug. 29, 2015), *available at* https://www.washingtonpost.com/local/crime/virginia-relaxes-restrictions-on-death-row-inmates/2015/08/29/614b4d9e-4ce3-11e5-902f-39e9219e574b_story.html.

⁶⁰ State of Washington Department of Corrections, DOC 320.250, Intensive Management/Treatment Status Placement/Transfer/Release at 3, revised Feb. 1, 2015, <http://www.doc.wa.gov/policies/showFile.aspx?name=320250>.

