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# Supermax Prisons

## What We Know, What We Do Not Know, and Where We Are Going

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Supermax prisons have substantially increased in popularity during the last 20 years. This article presents an examination of the current state of knowledge on supermax prisons, in terms of both case law and criminal justice research, to assess the potential future of these facilities. Three research questions are posed: (a) What does the academic community know or not know about supermax prisons? (b) How have U.S. courts ruled in supermax prison litigation? and (c) Do current supermax case law and research indicate that their administration, existence, and operation will change in the near future?

**Keywords:** *supermax; solitary confinement; inmate rights*

The increase in the U.S. prison population during the past 20 years has contributed to numerous problems within correctional facilities, such as overcrowding and violence (Wooldrege, Griffin, & Pratt, 2001). In the face of these issues, prison administrators have sought new means for dealing with disruptive inmates in an efficient manner. Consequently, during the past two decades, a number of new policies in corrections have developed—one of which is the placement of “disruptive inmates” in supermaximum, or “supermax,” prisons (Pizarro, Stenius, & Pratt, 2006).

The National Institute of Corrections (NIC, 1997) defined supermax prisons as “free-standing facilities, or a distinct unit within a facility, that provides for the management and secure control of inmates who have been officially designated as exhibiting violent or seriously disruptive behavior while incarcerated” (p. 1). More than 95% of state prison wardens who were surveyed in a recent study concurred with this definition (Mears, 2006).

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The purpose of these facilities is to house the “worst of the worst” inmates (NIC, 1997; Riveland, 1999). In doing this, they make use of the latest architectural and technological security advances (Horwitz, 2001; Neal, 2003) to control and monitor inmates designated by corrections practitioners as violent, assaultive, and/or a major escape risk (Mears, 2006; NIC, 1997; Pizarro & Stenius, 2004; Riveland, 1999). The rationale behind these practices is to segregate the most dangerous inmates to protect prison staff and inmates in the general prison population while at the same time having a deterrent effect on inmates who are contemplating engaging in violent or disruptive acts while incarcerated (Mears, 2006). As such, it is a form of double incapacitation, in which inmates are isolated not only from the rest of society but also from other prisoners and staff.

Supermax prisons have substantially increased in popularity during the past 20 years. The number of supermax institutions in the United States has grown from only 1 confirmed facility in 1984, the Federal Penitentiary at Marion, Illinois (King, 1999; Kurki & Morris, 2001), to approximately 60 facilities in 1999 (Briggs, Sundt, & Castellano, 2003). A recent study revealed that as of 2004, 44 states throughout the country are operating one or more supermax facilities (Mears, 2006). Current estimates indicate that approximately 25,000 inmates are serving their sentence in one of these institutions (Mears, 2006). The growing popularity of these facilities has made them “one of the most dramatic features of the great American experiment with mass incarceration during the last quarter of the 20th century” (King, 1999, p. 163).

A review of the penology literature suggests that supermax prisons have gained support during recent years because of changes in the ideologies that drive corrections. Garland (2001) and other penologists (i.e., Ambramsky, 2002; Feeley & Simon, 1992; Gonnerman, 1999; Roberts, Stalans, Indermaur, & Hough, 2003) have attributed the shifts in penal policy to the decline of rehabilitation as a guiding philosophy of corrections, which has led to changes in the goals of the penal institution. The decline of the rehabilitation ideal had a major impact in the popularity of supermax prisons because, in the absence of rehabilitation as a primary aim in corrections, prisons have acquired a different reason for being (Pizarro et al., 2006). The prisons of today are intended to punish offenders, to prevent them from committing new offenses, and to deter others from engaging in criminal behavior. Within this context, a new managerial style in corrections developed. Feeley and Simon (1992) coined the term *new penology*, which refers to a new management style in corrections that focuses on managing risk. The new penology is not concerned with responsibility, fault, moral sensibility, diagnosis, or

intervention and treatment of offenders but with techniques to identify, classify, and manage groups sorted by levels of perceived dangerousness (Feeley & Simon, 1992).

Despite the reason for their popularity, the advent of these institutions is not without controversy. Supermax prisons impose on inmates unique deprivations not found in maximum-, medium-, or minimum-security prisons. Some scholars and practitioners consider that these unique deprivations push constitutional limits on conditions of confinement (Weidman, 2004). Opponents argue that supermax institutions violate prisoners' constitutional rights, contribute to inmates' psychological problems, and are extremely costly (Fellner & Mariner, 1997). Conversely, proponents claim that the "toughening" of the inmate population, increased gang activity, and difficulties associated with maintaining order in severely crowded prisons necessitate supermax facilities (Mears, 2005; Mears & Castro, 2006; Riveland, 1999). Some proponents also assert that these institutions increase safety, order, and control throughout the prison system by incapacitating disruptive and dangerous inmates and deterring those who may contemplate engaging in disruptive behavior (Mears, 2005).

This article presents an examination of the current state of knowledge on supermax prisons, in terms of both case law and criminal justice research, to assess the potential future of these facilities. Three research questions are posed: (a) What does the academic community know or not know about supermax prisons? (b) How have U.S. courts ruled in supermax prison litigation? (c) Do current supermax case law and research indicate that their administration, existence, and operation will change in the near future? In answering these questions, a review of the supermax prison literature follows. This review includes an overview of the management of these facilities, types of inmates serving their sentence in supermax, the effect these institutions have on inmates and the general prison population, and supermax case law. We then offer a discussion of the potential future of these facilities and avenues for future research.

## **What We Know and What We Do Not Know**

### **Operation**

Jurisdictions vary considerably in their use, operation, and management of supermax facilities (Mears, 2006; NIC, 1997). Nevertheless, research has demonstrated that all supermax facilities share certain defining features.

For example, inmates are confined in a 7 ft. by 12 ft. single, often windowless, cell for 22 to 23 hours per day (Mears, 2006; NIC, 1997; Pizarro & Stenius, 2004; Rhodes, 2005; Riveland, 1999). Meals and treatment programs are restricted exclusively to inmates' cells. In some jurisdictions, inmates are fed *nutra-loaf*, a tasteless but nutritious food that requires no utensils to eat (Kurki & Morris, 2001; Pettigrew, 2002). Should rehabilitation workers visit the inmates, no physical contact is allowed. Education instructors, for example, stand in front of inmates' cells and talk to them through openings in cell doors (Pizarro & Stenius, 2004). Physical contact happens only in periods when correctional officers place handcuffs and other restraints on inmates. Inmates go out of their cells only for showers, which are accorded to them approximately 3 times a week, and for alone exercise a couple of times a week.

When inmates refuse to obey orders or become violent, correctional officers may use proportionate and reasonable force to subdue inmates (Atherton, 2001; Pizarro & Stenius, 2004). For example, correctional officers can conduct cell extractions—the forceful removal of a prisoner from a cell—when inmates refuse to come out of their cell or cover the glass window in their cell door (Atherton, 2001; Fellner & Mariner, 1997). Administrators can also use the four-point restraint (i.e., the strapping of inmates to their beds), placement of inmates in special cells that have no amenities such as beds or toilet, and the denial of services such as food delivery (Collins, 2004; Pizarro & Stenius, 2004).

## Entry and Exit Criteria

The criteria for the placement and release from these facilities are not fully defined. States vary considerably in their criteria for placing inmates in these facilities (Mears, 2006; NIC, 1997; Pizarro & Stenius, 2004; Riveland, 1999; Toch, 2001). Some jurisdictions house less than 1% of their inmate population in these facilities (e.g., Pennsylvania), whereas others house more than 10% of their population (e.g., Mississippi) (Mears, 2006). In most jurisdictions, admission into a supermax does not depend on a formal disciplinary hearing or a court-imposed sentence but is based on the criminal and behavioral history of an inmate while incarcerated (Riveland, 1999). The Federal Bureau of Prisons appears to be the exception to this rule because some inmates (e.g., Zacarias Moussaoui) are sentenced to the federal supermax at Florence, Colorado (“Moussaoui Defiant,” 2006).

In most jurisdictions, the decision to place an inmate in a supermax is made by prison administrators. Prison administrators are permitted to base

their decision on factual evidence or simply the perception that an inmate poses a threat to the orderly operation of the general population prisons. For example, the California Department of Corrections and Rehabilitation has implemented policies that target gang members for placement in a supermax, even if they do not engage in an overt type of violence (Morris, 2002). Similarly, the Wisconsin Department of Corrections defines gang involvement as a criterion that may be used in determining placement in a supermax (DeMaio, 2001). In Wisconsin, inmates who are labeled as prison gang members by other inmates (i.e., prison snitches) and are confirmed by a correctional gang investigator to be members of a gang could be placed in a supermax (DeMaio, 2001).

Some states, however, have elaborate placement procedures. For example, Ohio's Department of Corrections established placement criteria that require potential supermax inmates to receive "factual basis" of why they are candidates for incarceration in such a facility (*Wilkinson v. Austin*, 2005). This criterion requires the Department of Corrections to provide inmates with evidence of why they are eligible for supermax placement. In addition, the inmates are allowed to defend themselves against the allegations brought against them. Once placed in the supermax, the inmates also have the right for a review of the confinement within 30 days of their placement and an annual review thereafter.

The amount of time an inmate serves in a supermax facility also varies across jurisdictions (Riveland, 1999). Some jurisdictions have determinate periods to be served, but most have indeterminate placement. In 22 jurisdictions, inmates can complete their court-ordered sentence while in a supermax institution (NIC, 1997). Only 6 jurisdictions surveyed by the NIC (1997) indicated that inmates placed in supermax prison go through a transitional program (e.g., move inmates from supermax prison into a maximum-security prison, let inmates participate in group activities, place inmates in institutional jobs) before they are released into society or into the general prison population.

Generally, the criteria for release from a supermax are not published or revealed to prisoners (Pizarro & Stenius, 2004; Riveland, 1999). The amount of time served may depend on the perceived risk the inmate presents, changes in an inmate's mental health, and the amount of time left on the inmate's sentence (Riveland, 1999). In some jurisdictions (i.e., California and Wisconsin), inmates can be released if they properly debrief and cooperate with authorities. This process typically involves renouncing gang membership and providing information about other gang members and gang activities (DeMaio, 2001).

## Inmate Composition

Most of what we know in this area comes from survey research that focuses on the perceptions of prison administrators (e.g., Mears, 2006; Wells, Johnson, & Henningsen, 2002) or from surveys distributed to state and federal departments of corrections (e.g., NIC, 1997; Riveland, 1999). The only study to date that has specifically focused on deciphering the characteristics of supermax prison was conducted in the state of Washington. This case study showed that supermax inmates, when compared to the general inmate population of the state (a) are more likely to have convictions for violent offenses, (b) are more likely to have engaged in infractions that are serious while in prison, (c) are younger, and (d) are serving longer sentences (Lovell, Cloyes, Allen, & Rhodes, 2000). Lovell and colleagues (2000) also found that inmates who engage in violence while in prison are not the sole occupants of these facilities. Instead, the supermax prison population is composed of an array of inmates, such as (a) inmates in protective custody, (b) inmates who have difficulty coping with life in prison, (c) inmates who committed rule infractions while in prison, and (d) inmates who are suffering from mental illnesses (Lovell et al., 2000).

Similarly, survey research suggests that the inmate composition of supermax prisons is mixed. For example, Wells and his colleagues (2002) found that supermax facilities tend to house inmates who violate institution rules, are in protective custody, or are alleged to belong to a gang. In addition, research has also shown that in some jurisdictions death row inmates and prisoners on routine segregation are housed in supermax facilities because of a lack of resources in regular maximum-, medium-, and minimum-security prisons (Lynch, 2005; Mears, 2006; NIC, 1997; Riveland, 1999).

Of interest, contrary to popular belief, some supermax inmates are there on a voluntary basis. Wardens in some jurisdictions (e.g., Ohio) point out that some inmates request to be placed in a supermax facility, and if their request is not met, they engage in violent behavior to be placed in a supermax (Mears, 2006). The warden of the Ohio State Penitentiary reports that in his jurisdiction there is a waiting list for getting into their supermax. Prison wardens suggest numerous reasons for this (Mears, 2006). For example, some inmates would rather not share their living space with others. Others view supermax as a ticket to getting out of prison work and programs, whereas others prefer supermax confinement because they fear being injured in the general prison population. Finally, other inmates prefer supermax because the facilities are cleaner and newer than those used to house the general prison population (Mears, 2006).

## The Impact of Supermax Prisons

*Institutional effect.* Prison administrators assert that supermax prisons are effective management tools because they serve as a general deterrent within the correctional population—that their presence leads to effective prison management because they curb violence and disturbances within penal institutions (King, 1999; Riveland, 1999). A recent survey administered to 601 prison wardens suggested that, overall, wardens agree with the notion that supermax prisons serve to increase systemwide safety, order, and control (Mears & Castro, 2006). Some wardens asserted that supermax facilities helped significantly reduce the number of assaults on correctional officers and that their existence provides a deterrent to gang members and to inmates who endanger prisoners and correctional staff (Angelone, 1999; Mears, 2006; Mears & Castro, 2006). Indeed, 95% of the wardens reported that supermax prisons are successful in increasing the safety, order, and control in the general prison population (Mears & Castro, 2006). Most of the wardens also reported that the presence of supermax prisons as a management tool builds confidence in their penal establishment. They also believed that the mere fact that supermax exists is an important deterrent to potential disruptive inmates (Mears & Castro, 2006).

There is, however, no empirical evidence to support the notion that supermax prisons are effective (Kurki & Morris, 2001). Rather, this belief is primarily supported by anecdotal reports from correctional departments throughout the country or descriptive studies that do not control for possible spurious effects. For example, the Texas Department of Criminal Justice claimed that supermax is effective in restoring order and breaking up gangs. They reported that homicides in their jurisdiction decreased to fewer than 10 incidents since the opening of their supermax units (Austin, Repko, Harris, McGinnis, & Plant, 1998). Likewise, the Colorado Department of Corrections reported that since the opening of its supermax facility in 1993, they experienced a 50% drop in their number of violent incidents (Atherton, 2001). Similarly, Irwin and Austin (2001) speculated that the reason for the decline of gang violence in California prisons is because of the extensive use of supermax segregation units.

Only one study to date has attempted to empirically assess with robust analytic methods whether supermax prisons contribute to a decrease in prison violence. This study assessed the effect of supermax confinement in Illinois, Arizona, and Minnesota and found that the opening of a supermax facility in these jurisdictions did not reduce the levels of inmate-on-inmate violence (Briggs et al., 2003). Out of the three jurisdictions that were studied,



only in Illinois did the opening of a new supermax facility coincide with reductions in assaults against staff. The authors, however, are reluctant to attribute this decrease to the supermax facility because of numerous confounding factors. For example, the Illinois Department of Corrections changed its policies regarding the control of inmates, organizational management, and staffing after opening the supermax facility.

*Individual effect.* A major concern voiced by critics of supermax facilities is their potential effect on inmates' mental health because of the isolation and lack of activity imposed in these facilities. Only a handful of studies have directly examined the impact that supermax prisons have on those confined in them (i.e., Cloyes, Lovell, Allen, & Rhodes, 2006; Haney, 2002, 2003; Korn, 1988; Kupers, 1996). A recent study conducted in Washington State's supermax found that inmates housed in the state supermax on average suffer from moderate levels of psychosocial impairment (Cloyes et al., 2006). Other studies corroborate this finding by showing that supermax institutions have the potential to damage inmates' mental health (Haney, 2002, 2003). Kupers (1996) and Haney (2002, 2003), for example, show that inmates placed in an environment as stressful as that of a supermax prison begin to lose touch with reality and exhibit symptoms of psychiatric decomposition, including difficulty concentrating, heightened anxiety, intermittent disorientation, and a tendency to strike out at people. Similarly, Korn (1988) notes that conditions in control units, such as supermax units or facilities, produce feelings of resentment, rage, and mental deterioration.

Contrary to the bulk of studies, King (2005) found through interviews with 42 supermax inmates that these institutions might have a positive effect on inmates. His findings suggested that some inmates reflect on the wrongfulness of their actions. Inmates also reported that they learned how to be patient and practice self-control because of their stay in supermax. Other inmates reported that placement in the supermax allowed them to release themselves from the negative influences of other problematic inmates in the general prison population.

Another recent study, which examined inmates who were released from supermax confinement from the Federal Penitentiary at Marion and from Alcatraz, suggested that placement in federal supermax facilities did not exacerbate inmate mental health but instead was beneficial to inmates because it served as a specific deterrent (Ward & Werlich, 2003). According to Ward and Werlich (2003), only 16.0% of the 1,020 inmates who served time at the Federal Penitentiary at Marion from 1983 to 1994 returned to supermax after release. They also found that only 3.1% of 520 inmates who served time in

Alcatraz were returned to isolation for engaging in disruptive and/or violent behavior. They further reported that out of 80 inmates released from Marion to the community (i.e., who completed their court-ordered sentence), less than half of them recidivated and thus returned to prison. In terms of mental health, their findings suggest that overall placement in these institutions did not negatively affect inmate's mental health. Only 8.0% of Alcatraz and 3.1% of Marion inmates had to be transferred to a mental institution because of developing a mental illness while housed in these facilities.

Most, if not all, of these studies, however, are methodologically weak. For example, these studies did not administer a pretest or examine the inmates' past psychological and behavioral records. In the absence of information on inmates' presegregation psychological status, it is difficult to make valid assessments of changes in status because inmates could have been suffering from psychological problems before being placed in isolation. In addition, some of these studies draw inferences based on inmates under special circumstances, such as a class-action suit against a jurisdiction for the treatment they received in isolation (i.e., Haney, 2002, 2003; Korn, 1988; Kupers, 1996), which makes it difficult to generalize to other populations. Another limitation stems from the researchers' lack of control for rival causal factors (Ward & Werlich, 2003). Finally, making general inferences from studies using small sample sizes is similarly problematic (King, 2005; Korn, 1988).

## Supermax Case Law

In recent years, the controversies surrounding these institutions have reached the U.S. judiciary. The debate over legal aspects of the existence and operation of these institutions is no longer an academic or practitioner debate but one in which judges have begun to examine controversial issues. As with other aspects of corrections law, new legal issues arise within the context of the contemporary U.S. Supreme Court's generally deferential posture toward actions of corrections administrators that are justified by claims of safety and security. In particular, the Supreme Court's decision in *Turner v. Safely* (1987) instructed lower court judges to evaluate prisoners' rights claims with a deferential eye toward administrators' assertions that specific policies and practices are essential to institutional safety and security needs. The *Turner* standard does not preclude rights claims in the context of supermax prisons. Indeed, many federal judges feel responsible for ensuring that correctional practices are not needlessly restrictive or harsh. However, the Supreme Court's deferential stance generally limits the range of possible claims that prisoners may successfully assert through litigation.

The bulk of supermax litigation concentrates on challenges based on either Eighth Amendment or Fourteenth Amendment issues (Collins, 2004). Challenges to the existence of supermax prisons based on the Eighth Amendment stem from issues related to the mental health of inmates, use of force, and conditions of confinement. Specifically, inmates claim that specific policies and practices in the supermax context violate their right to be protected against cruel and unusual punishments. Challenges based on the denial of the due process rights as granted by the Fourteenth Amendment stem from inmates' challenges to placement criteria used to send offenders to these facilities.

*Eighth Amendment challenges.* When inmates present Eighth Amendment challenges against supermax prisons, they ask the courts to consider whether the conditions in supermax constitute cruel and unusual punishment. The difficulty with challenges of this nature is that there is no precise definition of what truly constitutes cruel and unusual punishment. Indeed, the U.S. Supreme Court's stance on the definition of cruel and unusual punishment is that it is not a static concept but instead draws its meaning from the evolving standards of society (*Trop v. Dulles*, 1958). Hence, the meaning of cruel and unusual punishment changes over time.

The Supreme Court initially spoke of the need to examine the "totality of conditions" in institutions to identify Eighth Amendment violations that may exist because of the "wanton and unnecessary" infliction of pain or conditions that are grossly disproportionate to the severity of the crime (*Rhodes v. Chapman*, 1981). If this language alone still constituted the sole guiding standard for lower court judges, then challenges to conditions to supermax prisons would seem to have greater prospects for success. However, two developments that began with *Rhodes* have effectively diminished the prospects for successful Eighth Amendment challenges.

First, Justice Lewis Powell's majority opinion in *Rhodes* itself seemed to warn lower court judges to show deference to corrections officials in Eighth Amendment conditions of confinement cases by saying that "courts cannot assume that state legislatures and prison officials are insensitive to the requirements of the Constitution or to the . . . problems of how best to achieve the goals of the penal function." This message of deference was reiterated in the non-Eighth Amendment context by the specific tests articulated in the aforementioned *Turner v. Safely* (1987) decision and appears to have become a dominant theme in corrections law.

Second, the Supreme Court increased its emphasis on a subjective standard for determining Eighth Amendment violations. In *Estelle v. Gamble*

(1976), the Court ruled that an Eighth Amendment violation exists when there is a deliberate indifference to the serious medical needs of prisoners. Later, Justice Antonin Scalia seized on this subjective standard and expanded its application to all Eighth Amendment conditions of confinement cases (*Wilson v. Seiter*, 1991). In effect, the Court made it much more difficult to prove Eighth Amendment violations because of the need to demonstrate the thoughts and motives of corrections officials and the objective conditions that cause, for example, “unnecessary and wanton” inflictions of pain.

This concern with the difficult to prove subjective motivations of corrections officials also affects Eighth Amendment claims concerning use of force. In *Whitley v. Albers* (1986), a case in which corrections officials seeking to quell a disturbance mistakenly shot a prisoner who was not involved in the situation, the Supreme Court said that the officers did not violate his rights unless their actions were taken “maliciously and sadistically for the very purpose of causing harm.” This standard gives corrections officials a great deal of leeway—but not unlimited discretion and authority—for the use of reasonable force as long as they can claim that their actions were intended to ensure the security of the institution and the safety of prisoners and staff.

Eighth Amendment challenges to supermax prisons primarily focus on (a) the claim that prolonged isolation constitutes cruel and unusual punishment because it may lead to the deterioration of an inmate’s mental health, (b) use of force tactics employed, and (c) conditions of confinement. Traditionally, the courts have held the stance that the Eighth Amendment does not preclude prison administrators from altering the conditions of confinement or tightening institutional security (*Bruscino v. Carlson*, 1988). Some legal scholars have interpreted this approach to mean that the courts validated the concept of the supermax prison by accepting prison administrators’ authority to establish and operate these facilities (Feeley & Rubin, 1998).

Nonetheless, some federal judges have expressed alarm over the possible psychological consequences supermax prisons may have on inmates. The U.S. Court of Appeals for the Ninth Circuit described these facilities as hovering “on the edge of what is humanly tolerable” (*Madrid v. Gomez*, 1995). Despite this statement by one particular federal court, the courts have repeatedly ruled that the placement of mentally and physically fit inmates in supermax settings does not constitute a violation to their Eighth Amendment right against cruel and unusual punishment. In short, the courts have established that the conditions in supermax prisons are constitutional for healthy inmates but not for ill inmates (*Jones ‘El v. Berge*, 2001; *Madrid v. Gomez*, 1995; *Ruiz v. Johnson*, 1999).

Another area in which supermax prisons have been challenged under the Eighth Amendment pertains to the use of force tactics employed by correctional officers. As previously stated, corrections officers are allowed to use "reasonable" force to make inmates comply with institutional rules. The use of force in one supermax facility was formally challenged in *Madrid v. Gomez* (1995). The court acknowledged that in supermax prisons, like other correctional settings, the use of force may be necessary; however, it established that in Pelican Bay (the California institution under examination) officers were using excessive force in their cell extractions and unjustified beatings of inmates. Consequently, the court emphasized the subjective element of officers' motives by ruling that force is deemed legitimate only if it is applied in a "good faith" effort to maintain or restore discipline.

The courts have also ruled on specific conditions of confinement in supermax facilities that may violate inmates' Eighth Amendment rights. For example, courts have ruled in cases dealing with inmate safety, nutritional needs, and the regimes imposed on inmates. In *Rich v. Bruce* (1997), the Fourth Circuit Court ruled that deliberate disregard of inmates' safety constitutes a violation of their Eighth Amendment protection. This case involved an inmate-on-inmate assault inside Maryland's supermax facility. In another case, the courts ruled that feeding an inmate nutra-loaf or denying an inmate out-of-cell exercise does not constitute a violation of Eighth Amendment rights. Feeding inmates nutra-loaf does not constitute a violation of Eighth Amendment rights because it provides the inmates with an excess of the daily required nutritional intake. The denial of out-of-cell exercise is not unconstitutional because of the dangerousness of inmates. In short, the court stated that an inmate "has the key to his cell through his own behavior" (Collins, 2004, p. 38). Finally, the Seventh Circuit Court ruled that denial of food to inmates when they refuse to adhere to the prison-imposed rules of food distribution does not constitute cruel and unusual punishment because the inmates choose not to adhere by the rules of the prison (*Freeman v. Berge*, 2003).

*Fourteenth Amendment challenges.* The due processes clauses of the Fourteenth (state) and Fifth (federal) Amendments provide the basis for challenges concerning the procedures used to select and transfer offenders to the supermax setting. In deferential context of corrections law, the Supreme Court has limited many procedural due process protections to those instances in which prisoners possess a protected "liberty interest." If prisoners are transferred from one prison facility to another, typically no due process rights are at issue because they are merely moving from one restricted environment to another restricted environment. However, the Supreme Court

kept open the possibility that due process rights may exist, thereby requiring specific hearings or other procedures if a prisoner is transferred, for example, from a regular prison to a secure psychiatric facility (*Vitek v. Jones*, 1980). A liberty interest triggering the existence of due process protections may be found to exist if a transfer “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life” (*Sandin v. Conner*, 1995). Such liberty interests were found not to exist in transfers to isolated conditions of disciplinary segregation for relatively brief periods, such as a 30-day punishment, but obviously the long detentions in supermax create the possibility that courts will view that situation differently.

In *Wilkinson v. Austin* (2005), the U.S. Supreme Court examined whether placement in a supermax as imposed by the Ohio Department of Corrections violates an inmate’s Fourteenth Amendment due process protections. As previously discussed, inmates placed in Ohio’s supermax go through in an informal process in which they have the right to defend themselves from the allegations made against them and may object to their placement. In this case, the Court ruled that inmates have a “liberty interest” in avoiding transfer to Ohio State Penitentiary; hence, placement in a supermax prison is subject to scrutiny under the Fourteenth Amendment. According to the Court, the severe conditions and indefinite placement at Ohio State Penitentiary, combined with the loss of parole eligibility, impose an “atypical and significant hardship on inmates” (*Wilkinson v. Austin*, 2005). Despite this observation, the Court ruled that the less formal processes in which inmates are given avenues to evaluate their placement in a supermax meet the standards of due process required by the Fourteenth Amendment. The Supreme Court justices pointed out that their ruling was based on two very important factors. First, the due process rights granted to inmates are more limited than those granted to individuals who have not been convicted of a crime. Second, courts must give deference to prison management when they conclude that a prisoner has engaged in disruptive behavior.

In this case, the Court was focused on whether the Ohio procedures met constitutional standards. The justices did not purport to establish specific procedures to be applied for transfers to supermax in all states. However, the case gives rise to the possibility that federal courts will require the existence of certain procedures prior to transfer to supermax. However, in light of the limited nature of the due process right as discussed in this case, the expected procedures will be relatively minimal in scope and are unlikely to impede corrections officials’ ability to transfer offenders to supermax when there is any basis to make claims concerning potential dangerousness, violence, persistent rule violations, gang affiliations, or other matters that affect institutional safety and security.

## The Future of Supermax Prisons

Overall, the previous review of both academic and legal literature suggests that supermax prisons are here to stay. Despite a dearth of empirical findings to prove their effectiveness and efficacy, and despite the possible detrimental effects they may pose for individual inmates' psychological health, supermax prisons will continue to be a fixture of the United States correctional system. There are three reasons that are indicative of this trend. First, supermax prisons provide a semblance of operational efficacy, which prison administrators view as indispensable for the management of unruly prisoners. Second, American courts have generally maintained a posture of deference to prison management, and since the early 1980s the Supreme Court has warned lower court judges away from intervening too actively in prison operations. Third, and most important, supermax prisons provide a symbolic meaning that subscribes to a societal bent toward a more punitive stance on crime.

### Semblance of Operational Efficacy

Supermax prisons provide wardens with a tool to manage unruly prisoners. As earlier noted, 95% of the state wardens believe that supermax prisons provide order and safety to correctional institutions by incapacitating violent offenders (Mears, 2006; Mears & Castro, 2006). Overall, wardens approve of supermax prisons because they increase their arsenal in the control of unruly prison populations. In doing this, these facilities build the confidence of prison officials in their capacity to deal with different inmate populations. Though perceptual, this provides a powerful drive to justify their presence (Mears & Castro, 2006).

Along this line, these facilities have become a sort of "waste management" approach to correctional administration. According to prison administrators and the courts, incorrigible inmates, who are not amenable to any kind of treatment and who pose threats to others, deserve a special form of control (Collins, 2004; Mears, 2006). U.S. legislators and prison administrators alike point out that there is currently no better strategy available for dealing with disruptive and violent inmates (Mears & Castro, 2006; Wells et al., 2002). Echoing the analysis of Feeley and Simon (1992), supermax is a mechanism of "herding a specific population that cannot be disaggregated and transformed but only maintained—or a kind of waste management function" (p. 470). However, this operational efficacy has not been empirically proven (Pizarro et al., 2006). As reported earlier, research by Briggs and colleagues (2003) found that prison order and violence are not associated with the

operation of supermax prisons in three states. Likewise, the composition of inmates in the supermax, coupled with the lack of criteria for placement, mutes the deterrent value of supermax (Mears & Reisig, 2006; Pizarro & Stenius, 2004).

### **Courts' Limited Intervention**

Another key factor that will contribute to the continued operation of supermax prisons is the courts' acceptance of the legality of supermax prisons. First, there is a Supreme Court–mandated posture of American courts to show deference toward correctional administrators (Weidman, 2004). Specifically, this is exemplified by the Court's view that managing prisons requires expertise, comprehensive planning, and the commitment of resources that is within the purview of corrections administrators and generally beyond the scope of judges' expertise and authority (Weidman, 2004).

This posture of judicial deference is reflected in judicial rulings on Eighth Amendment and Fourteenth Amendment challenges to supermax prisons and other correctional institutions. In these cases, some federal judges expressed their alarm over the conditions of supermax facilities and the possible effects to the inmates' mental health. However, in general, the courts' decisions ultimately deferred to prison managers on the need of supermax institutions for the efficient control of prisons and the advancement of correctional goals. In the eyes of some critics, instead of engaging in a detailed analysis of the challenged conditions of the supermax, the courts relied on the strategy of shifting the focus to the characteristics of the inmates and tied relief to the vulnerability of a subgroup of mentally ill prisoners (Weidman, 2004). Although removing mentally ill inmates from supermax is a partial victory for inmate rights groups, it legitimizes the use of supermax for non–mentally ill inmates. According to some legal scholars, this strategy is used by the courts to defuse the tension between their desire to intervene and their obligation to defer (Weidman, 2004).

The supermax thrives by providing only minimal yet still constitutional services to the inmates. Thus, supermax prisons have become the “least lawful, lawful prisons” (Weidman, 2004) or what other scholars term a “modern constitutional prison” (Feeley & Simon, 1992; Kurki & Morris, 2001). For example, the courts accept the provision of minimum physical necessities such as warmth, clothing, shelter, hygiene, and services such as a minimally adequate law library, minimally adequate health services, and mental care. In addition, they approve prolonged isolation, use-of-force practices such as forced cell extractions, and limited, punitive denials of food and



exercise (Freeman v. Berge, 2003; Kurki & Morris, 2001; LeMaire v. Maass, 1993; Madrid v. Gomez, 1995). There is always an expectation that supermax prisons and other institutions will meet minimum habitability standards and make efforts to keep prisoners safe and secure. However, the posture of judicial deference that guides the federal judiciary effectively means that corrections officials have a significant range of control over the specific policies and practices in their institutions, even when those policies and practices may produce special hardships for supermax inmates. Moreover, it is important to note that the Supreme Court's decision in *Wilkinson v. Austin* (2005) was unanimous, and thus there is no reason to believe that any foreseeable shift in the Court's composition will alter the current state of the law with respect to supermax prisons.

### **Symbolic Meaning**

Another aspect that influences the future of supermax prisons is the symbolic meaning it portrays. As Ward and Werlich (2003) indicate, the first supermax unit was constructed not to control prison troublemakers but to serve as a powerful symbol of the consequences for serious criminal conduct. The NIC (1997) reports that supermax prisons have become a political symbol of how "tough" a jurisdiction has become, with recommendations for the construction of supermax coming not from correction officials but from the legislatures.

Supermax is a powerful representation of how crime does not pay and an indication that the state is willing to use its resources against criminals. Consequently, the symbolic significance of these institutions transcends the prisons walls and influences society. Inside the walls, these institutions symbolize the consequences of engaging in violent or deviant acts. They are there to remind offenders that their misbehaviors will not be tolerated and that misbehaving will result in uncomfortable consequences (Mears, 2006). Outside the walls of prisons, supermax symbolizes toughness and that the state will protect society from criminals. The claims by prison administrators that supermax prisons house the "worst of the worst" inmates is one of the biggest selling points of these institutions because it provides the public and prison administrators with an additional sense of safety (Alarid & Cromwell, 2002; Mears, 2006) while at the same time portraying the state as tough on crime. The reality of supermax prisons, however, is that these assertions have not been empirically demonstrated and are based on speculation (Pizarro et al., 2006).

## Conclusion and Implications for Future Research

Although some studies have examined supermax prisons, there are more questions about these facilities than answers. There is still a dearth in knowledge of the characteristics of inmates placed in these institutions, the covariates that influence the decision to place an inmate in a supermax, the effect these institutions have on individual inmates, the general prison population, and the community. Only one study to date has specifically examined the characteristics of inmates placed in supermax (Lovell et al., 2000). Because of its focus on only one state, however, its generalizability suffered. Similarly, only one study has examined with robust analytic methods the impact these institutions have on the general prison population (Briggs et al., 2003). Furthermore, the studies that have examined the impact these institutions have on the mental health of inmates suffered from methodological limitations. This gap in supermax knowledge is exacerbated by the fact that no study to date has systematically examined the covariates that determine which inmates are placed in the supermax or the true impact litigation such as *Madrid v. Gomez* (1995) has had on the operation and management of these facilities. As seen in the literature, although the federal courts have ruled that it is unconstitutional to house mentally ill inmates in supermax prisons, some jurisdictions (e.g., Washington) still practice this.

Despite the dearth in knowledge, supermax prisons have increased in popularity in recent years. In the past 22 years, the number of these facilities has increased from 1 to approximately 60 (Briggs et al., 2003). As Massing (2001) pointed out, it seems that everybody wants one. Consequently, supermax facilities represent an area in need of research. Future research on supermax prisons should try to uncover the effects that these institutions have on the behavior of individual inmates—it is necessary to examine whether supermax prisons damage inmates' mental health. Furthermore, there is a need for more research on the general deterrent influence these institutions have, or do not have, on the general prison population. Future research should also focus on the implications these institutions have for reoffending and other community concerns (i.e., employment, need for mental health services, homelessness), as inmates housed in these facilities could be released from prison into the community. In terms of corrections departments and institutions, research should focus on how these institutions affect overall policies. Another area worth examining is the impact that these institutions have on the staff who work there. In addition, researchers should also examine the impact that current supermax case law has had on the operation of these facilities. Finally, there is also need to assess the cost-effectiveness of these

institutions (Mears, 2006). Indeed, if these institutions are going to continue to be a fixture of the American correctional system, it is necessary to determine whether they are more beneficial to society than detrimental.

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