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Parole, Snitch, or Die: California's Supermax Prisons & Prisoners, 1987-2007

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Abstract:

Supermax prisons across the United States detain thousands in long-term solitary confinement, under conditions of extreme sensory deprivation. They are prisons within prisons, imprisoning those who allegedly cannot be controlled in a general population prison setting. Most supermaxes were built in a brief period, between the late 1980s and the late 1990s. In 1988 and 1989, California opened two of the first and largest of the modern supermaxes: Pelican Bay and Corcoran State Prisons. Today, California houses more than 3,300 prisoners in supermax conditions. Each month, between 50 and 100 people are released directly from these supermaxes onto parole. Using statistics obtained from the California Department of Corrections and Rehabilitation, this paper explores who these parolees are: what race are these prisoners, how long did they spend in solitary confinement, how frequently are they released, and how frequently are they returned to prison? These supermax-specific statistics are then compared with publicly available state statistics describing the overall race and return-to-prison rates of parolees in California, revealing that supermax prisoners are disproportionately Latinos who have served long prison sentences, under severe conditions. The potential effects of supermax confinement on levels of violence within supermax institutions and throughout the state prison system are also explored, through the lens of prisoner death and assault statistics; no conclusive data establish a direct relationship between supermaxes and reductions in violence. Analysis of interviews with correctional department administrators about the original goals and purposes of the supermaxes further contextualizes these data, revealing that supermaxes today function rather differently than their designers envisioned twenty years ago. In sum, this research provides one of the first evaluations of how supermaxes function, in terms of whom they detain and for how long, and how these patterns relate to their originally articulated purposes.



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**Parole, Snitch, or Die:
California's Supermax Prisons & Prisoners, 1987-2007**

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Supermax prisons across the United States detain thousands in long-term solitary confinement, under conditions of extreme sensory deprivation. They are prisons within prisons, imprisoning those who allegedly cannot be controlled in a general population prison setting. Most supermaxes were built in a brief period, between the late 1980s and the late 1990s. In 1988 and 1989, California opened two of the first and largest of the modern supermaxes: Pelican Bay and Corcoran State Prisons. Today, California houses more than 3,300 prisoners in supermax conditions. Each month, between 50 and 100 people are released directly from these supermaxes onto parole. Using statistics obtained from the California Department of Corrections and Rehabilitation, this paper explores who these parolees are: what race are these prisoners, how long did they spend in solitary confinement, how frequently are they released, and how frequently are they returned to prison? These supermax-specific statistics are then compared with publicly available state statistics describing the overall race and return-to-prison rates of parolees in California, revealing that supermax prisoners are disproportionately Latinos who have served long prison sentences, under severe conditions. The potential effects of supermax confinement on levels of violence within supermax institutions and throughout the state prison system are also explored, through the lens of prisoner death and assault statistics; no conclusive data establish a direct relationship between supermaxes and reductions in violence. Analysis of interviews with correctional department administrators about the original goals and purposes of the supermaxes further contextualizes these data, revealing that supermaxes today function rather differently than their designers envisioned twenty years ago. In sum, this research provides one of the first evaluations of how supermaxes function, in terms of whom they detain and for how long, and how these patterns relate to their originally articulated purposes.

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Introduction

Supermax prisons across the United States detain thousands in long-term solitary confinement, under conditions of extreme sensory deprivation. They are prisons within prisons, imprisoning those who allegedly cannot be controlled in a general population prison setting. Most supermaxes were built in a brief period, between the late 1980s and the late 1990s. In 1988 and 1989, California opened two of the first and largest of the modern supermaxes: Pelican Bay and Corcoran State Prisons. California's supermax prisons are equipped to incarcerate more than 3,300 people, under conditions international human rights standards describe as torture (United Nations Committee Against Torture 2006; United Nations Economic and Social Council 2006; Lobel 2008).¹ Prisoners remain in their supermax cells twenty-three to twenty-four hours a day. They have little to no human contact for weeks, months, or even years at a time, save brief interactions with correctional officers, who place hand, ankle, and waist cuffs on each prisoner before removing him² from his cell. Meals arrive through a small slot in an automated cell door. The fluorescent lights are always on, day and night. Prisoners only leave their cells four or five times per week for showers or for brief, solitary exercise periods in "dog runs" – concrete pens with roofs only partially open to natural light (Shalev 2009).

A prisoner is not sentenced by a court of law to a supermax prison, nor is he usually sent to a supermax as a result of an initial classification of dangerousness when he enters the federal or state prison system. Rather, supermaxes are designed to hold those prisoners who cannot be

¹ Although California's two supermaxes were designed, like most such institutions throughout the United States, to detain people in solitary confinement, approximately half of California's supermax prisoners today are actually double-celled, due to overcrowding. This is discussed further in Section III, below.

² All but about 40 of California's 3,300 supermax prisoners are men; these male supermax prisoners are therefore the focus of this paper.

controlled in a general population setting within the state prison system, prisoners who correctional officials assign, after an administrative hearing, to supermaximum, deprivation conditions. These “worst of the most violent, maximum-security prisoners in the state” often include the severely mentally ill and those affiliated with gangs (Griffith 1989). Indeed, the California Department of Corrections and Rehabilitation (CDCR) website notes that 1,024 supermax beds at Corcoran State Prison are reserved for “validated prison gang members,” or prisoners deemed to be dangerous gang leaders based on in-prison assessments (CDCR 2009).

However, supermaxes do not hold prisoners forever. Because placement in supermax prisons is based on in-prison behavior, or in-prison determinations of gang status, such placement usually has no effect either on a prisoner’s initial sentence or on the prisoner’s overall time-served. Indeed, just as with 97 percent of the prisoners across the United States, many supermax prisoners are eventually released from prison.³ In fact, in California, as I will demonstrate, an average of 75 prisoners per month are released directly from their supermax cells onto parole, returned to the county from which they were originally sentenced. This means that in any given year in California, almost 40 percent of the state’s total supermax population is released directly from supermaxes onto parole. Who are these prisoners? How long have they spent confined in supermax conditions? How often do they return to prison, or to supermaxes? What are their racial backgrounds? How do these supermax populations and supermax parolees compare to general prison populations and to overall parolee populations? Do supermaxes today

³ The 97 percent figure is based on my own calculation: adding the number of people sentenced to death in the United States (3,305) and the number of people sentenced to life without the possibility of parole (41,095) together, and dividing by the number of sentenced people currently in state or federal prison (1,540,805), to get a percentage of people who will never be released: 2.88 percent (*Sourcebook* 2009; Nellis & King 2009; West & Sabol 2009). Similarly, the number of people sentenced to death in California (678) plus the number of people sentenced to life without the possibility of parole (3,679) divided by the number of sentenced people in prison in California (173,320) produces 2.51 percent, slightly lower than the national percentage of people who will never be released from prison (*Id.*). Of course, in some states, including California, life *with* parole terms can turn into de facto life without parole terms if especially conservative parole boards refuse to release parole-eligible prisoners; however, the potential for release, especially for older or terminally ill prisoners, remains a possibility, so I do not include these “lifers,” who make up 20 percent of California’s prison population, in the calculation of people who will never be released (Moore 2009). Joan Petersilia uses a similar calculation in her book *When Prisoners Come Home* (2003).

operate the way their builders intended them to operate, in terms of who is incarcerated and for how long?

Drawing on recently obtained data describing ten years of supermax releases in California and on interviews with former correctional department officials who participated in California's decision to build the state's first two supermaxes, this paper will explore these questions. Although I am seeking additional data about supermax populations for further research, the data I analyze on prisoners released from supermaxes are currently the best available window into the prisoner populations at the state's first two supermaxes, Pelican Bay State Prison and Corcoran State Prison. The analysis reveals that, in fact, supermaxes were not intended to detain so many people, for such long periods, and then release them directly back onto the streets. California's two supermaxes, then, represent an important case study both in assessing the impacts of supermax confinement and in understanding how and when criminal justice practice departs from original intent.

The first section of this paper provides background information about California and why it is an important case study within the supermax phenomenon, as well as about how prison releases work in California, and particularly, how people are released from supermaxes, by paroling, by snitching, or by dying. The second section explains the mixed methods applied in this study to integrate analysis of data obtained from the California Department of Corrections and Rehabilitation with analysis of interviews with correctional administrators. The third section outlines the findings: evidence about how supermaxes were designed to function in the 1980s, descriptive statistics about who is released from supermax prisons in California and about the levels of violence in supermax institutions, and an analysis of the mismatch between the design of the supermaxes and their current functioning. The final section addresses shortcomings in the data and suggests directions for future research.

Background: Supermaxes, California, & Parole

Between 1986, when Arizona built the first supermax (Lynch 2010), and 2000, when Delaware opened the newest supermax in the United States, almost every state either built a free-standing supermax facility, or retrofitted an existing prison to create the standardized supermax conditions of long term solitary confinement with maximum sensory deprivation.⁴ Exact definitions of what constitutes a supermax vary, as do precise counts of how many people annually experience supermax confinement (Riveland 1999). The most conservative estimate is that there are at least 20 supermaxes in the United States, although estimates range as high as 57 (Naday 2009). Similarly, population estimates suggest that there are anywhere from 5,000 to 100,000 prisoners in supermax confinement at any given time in the United States; 20,000 has frequently been cited as an accurate count, although a recently published article challenged the accuracy of this number (Id.). The very debate over how to define a supermax or count the number of people contained therein suggests just how little is known about this correctional phenomenon. This paper seeks to address this shortage of knowledge by exploring a data set including specific characteristics of people paroled from two supermaxes in the state of California.⁵

⁴ I am still working on identifying the supermaxes in each state (if they exist) and cataloguing the overall national picture of the phenomenon, but this is my best available description at this point, based in part on Mona Lynch's assertion in *Sunbelt Justice* that Arizona built the first supermax. Prior to 1986, solitary confinement was in use in American prisons, but the facilities were more makeshift, and the terms were usually much shorter than supermax terms (see, e.g., McLennan 2008; Friedman 2005; Rothman 1971).

⁵ California's largest supermax is Pelican Bay State Prison, located in Del Norte County, on the state's border with Oregon, and opened in 1989. Pelican Bay was planned as the state's first supermax. However, Corcoran State Prison, located in King's County in the Central Valley, was converted at the last minute into a supermax facility, and opened in 1988, just one year before Pelican Bay. Each prison has both supermax wings and high-security general population wings. In the last ten years, California has also begun to operate two supermax units at the California Correctional Institution in Tehachapi, California. This paper, however, focuses on the state's first two supermaxes.

While no scholar has yet documented who invented the supermax, precisely defined the institution, or accurately counted the people inside, a number of scholars have criticized the practice of long-term solitary confinement. Psychologists, psychiatrists and anthropologists have documented the mental health impacts for prisoners consigned to supermaxes; all have found dramatic and irreparable deterioration in mental health for prisoners in supermaxes, after even a few months of solitary detention (Haney 2003; Kupers 1999; Rhodes 2004). Rehabilitation, however, is not the goal of the supermax. There is no pretense, as there was with the eighteenth century Pennsylvania and New York penitentiaries, that solitary confinement will give prisoners time to think, repent, and reform (McLennan 2008; Friedman 2005; Rothman 1971). Rather, prisoners are incarcerated in these facilities indefinitely, often with the explicit understanding that nothing the prisoner does, or refrains from doing, could possibly earn his release (*Austin v. Wilkinson* 2005). In a recent *New Yorker* feature article, Atul Gawande called these facilities “hellholes,” and the international community has condemned them as torture (Gawande 2009; Lobel 2008).

Although the supermax phenomenon is relatively unexplored, it is critically important to understanding the shape of correctional innovation in the United States in the last few decades. The supermaxes built across the United States in the last thirty years are part of a broader trend of massive criminal justice system expansions, including both exponential increases in the numbers of people in prison and in the numbers of facilities built to house these prisoners (Zimring & Hawkins 1991). Specifically, in 1970, there were just over 100,000 people in prison in the United States; today, there are more than two million people in prison (Id.; West & Sabol 2009).

While many researchers have documented and studied this overall criminal justice system expansion, no researchers have looked systematically at the specific justifications, uses, or long

term impacts of supermaximum security confinement. By conservative estimates, supermax prisoners make up anywhere from one to five percent of the overall prison population in the United States, or in any given state; in addition to the thousands of people impacted by supermaxes every year, this class of confinement is important for the sheer extreme it represents. Although maintaining people in conditions of intense sensory deprivation – indefinitely – has been upheld under the Eighth Amendment cruel and unusual punishment prohibition and Fourteenth Amendment due process clauses of the U.S. Constitution (*Austin v. Wilkinson* 2005), the practice has been criticized in international human rights documents (United Nations Committee Against Torture 2006; United Nations Economic and Social Council 2006). Even though supermax prisons make up only one small piece of the United States prison expansion, they represent the most severe manifestation of this expansion, a severity that is novel in both intensity and duration. Supermaxes, then, are an important subject of inquiry – necessary to understanding both the sources and shape of the U.S. prison expansion and the impacts of U.S. tough-on-crime policies.

California: A Special Case

Within both the broad context of the United States prison expansion, and the narrower context of the supermax phenomenon, California is a leader – at least in terms of sheer numbers, if not in terms of economic efficiency or desirable policy outcomes. California’s prison expansion was the largest in magnitude of any state’s, and California today has more people incarcerated than any other state in the United States (West & Sabol 2008).⁶ Similarly, my

⁶ Louisiana, on the other hand, has the highest *rate* of incarceration at 858 prisoners per 100,000 population; California’s *rate* is almost half of Louisiana’s, at 471 prisoners per 100,000 population. In fact, California’s rate of incarceration hovers just above the national average (of all 50 states) incarceration rate of 447 prisoners per 100,000 population.

preliminary analyses suggest that California has more prisoners incarcerated in supermaxes than any other state, by a factor of ten; this high supermax population matches California's high overall state prison population.

California, then, makes for an important case study of supermaxes, both as a criminal justice policy trendsetter within the United States, and as a self-contained criminal justice system in itself. The state of California alone exceeds the scale and costs of the criminal justice systems in many other nations. Moreover, because California's raw prison and parole population numbers, and even its supermax population and parole numbers, are so large, the state provides a rich forum for statistical analyses of criminal justice trends.

Paroling (& Snitching & Dying)

Just as scholars in the early 1990s started to explore the United States' incarceration and prison building boom, so, in the last few years, have scholars turned their attention to one of the most significant long term effects of this boom: the hundreds of thousands of people in the United States who are now being released annually from prison. An obvious, but until recently, overlooked corollary of our prison policies is that most people sentenced to prison will eventually be released from prison. Although sentence lengths have increased steadily with the incarceration expansion, the percentage of people in the United States being sentenced to death or life without the possibility of parole is still well under five percent of all those sentenced to prison (*Sourcebook* 2009; Nellis & King 2009; West & Sabol 2009). Only slightly more people (an additional seven percent) are serving life sentences *with* the possibility of parole (Id.). The vast majority of the two million people currently in prison in the United States, therefore, are serving sentences shorter than life and will eventually be released from prison. In the United

States, as of January of 2007, there were almost 800,000 people on parole, with over one-half-million people entering the parole system annually (Glaze & Bonczar 2009).⁷ The state of California is the most significant contributor to this national parole population. There are 120,000 people on parole at any given time in California; this is 15 percent of all people in the United States on parole (Garrett 2008).⁸

Given the large numbers of people who are annually released from prison onto parole in the United States, researchers have increasingly been paying attention to the process of release. Petersilia has done extensive work nationally and in California describing the demographics of parolees, who largely reflect the demographics of prisoners: minorities, the undereducated, and the mentally ill are all over-represented with respect to the general population (2003). Mauer and others have argued for attention to collateral consequences – those administrative policies not officially part of a prison sentence, which nonetheless prevent released prisoners from successful re-integration into society, such as limitations on welfare and education access for drug offenders, or disenfranchisement of those with criminal records (Mauer 2002; King 2008).

Despite the research focus on understanding the scale, demographics, and mechanisms of the parole population in the United States in general and California in particular, little attention has been paid to the release of prisoners from supermax prisons.⁹ This lack of attention might reflect the inaccurate assumption that, because the prisoners in supermaxes are the “worst of the worst,” they are never released from prison. However, even those prisoners serving long or

⁷ Accurate data about average lengths of parole terms is not readily available through the National Bureau of Justice Statistics.

⁸ By comparison, California’s overall state prison population accounts for just 11 percent of the United States’ total federal and state prison population. In California, the combination of a mandatory three-years of parole for all prison releasees and rigidly enforced rules for behavior on release, contribute to a relatively large number of parolees as well as to higher incarceration rates in the state. Specifically, when a California parolee (which includes everyone released from prison in the state over the past three years) violates a condition of his or her parole, he or she participates in an administrative hearing, rather than a criminal court adjudication. This administrative process often bypasses many of the procedural protections of a criminal trial and results in the parolee being re-incarcerated, and serving some portion of the three-year “parole” term in prison.

⁹ One recent article did address the recidivism rates of prisoners released from Florida supermaxes, by comparing them to matched groups of prisoners who had not spent time in a supermax, and found no evidence that supermax prisoners were any more likely than other prisoners to be violent recidivists (Mears & Bales 2009).

indefinite terms in supermaxes eventually parole, upon the expiration of their criminal sentences. In California, at least 1,024 people are detained in supermaxes for indefinite (rather than fixed) terms, because the Department of Corrections has “validated” them as dangerous gang members (California Department of Corrections 2010). “Parole, snitch, or die” is common prison slang, which refers to the three ways such a gang member can leave the supermax. He can parole (recall that a supermax assignment affects only the conditions of incarceration, *not* the overall criminal sentence); he can renounce his gang membership by “snitching” on other gang members and about gang activity, in which case he will likely be placed in “protective custody,” in conditions which are often indistinguishable from standard supermax conditions (Blatchford 2008); or he can die. In other words, parole is often the only viable way out of supermax confinement.

Supermax releasees, much like supermax prisoners within overall prison populations, are not often looked at as a separate demographic within parole populations. Just as supermax prisons are important to understanding exactly how America’s prison building boom has taken shape, so supermax releasees are an important and under-studied segment of the population of people released from prison in the United States. Moreover, given the allegation that these prisoners are “the worst of the worst” who could not adjust to life within prison, as well as the conditions these prisoners have experienced in supermaxes – conditions documented to cause a variety of health and psychological problems (Haney 2003; Kupers 1999) – supermax parolees are likely to face additional barriers to successful reintegration into their communities beyond the usual collateral consequences of having a criminal record. Are prisoners released from supermax prisons demographically similar to those released from the general prison population? How

much time have they spent in prison? How likely are they to return to prison, and to supermaxes?¹⁰

Annually, California releases hundreds of prisoners from supermaxes into counties across California. These supermax releasees are part of a distinctive (and distinctively large) parole population. Simply documenting this process, and the scale of the process, raises questions about how supermaxes actually function. Are supermaxes actually detaining the worst of the worst prisoners, if over the course of a year, forty percent of California's supermax population is released directly onto the streets of the state (see Figure 9 and surrounding text)? And what can release data tell us about little-known aspects of the demographics inside supermaxes? This study will explore these questions and attempt to provide some preliminary answers.

Methodology: Demographic Statistics & Key Informant Interviews

This research project analyzes quantitative data regarding prisoners released from supermaxes and qualitative interviews assessing how correctional officials envisioned the supermaxes would function, when they were built in the late 1980s. The quantitative analysis is based on ten years' worth of unique, unpublished data, which I obtained following a request for information made to the California Department of Corrections and Rehabilitation (CDCR) in 2008. In requesting these data, I specifically asked about demographic characteristics of prisoners released from the state's two supermaxes, as well as data about lengths of stay in the two supermaxes and about repetitive cycling in and out of these two institutions. The data I obtained from the CDCR pertain specifically to prisoners who have been released directly from

¹⁰ Unfortunately, no individual-level or annual recidivism data are available regarding California's supermax parolees. However, this is an important question that should be addressed as soon as data are available. This paper will, however, present some data about how often prisoners serve multiple terms in supermaxes during a given prison sentence.

the supermax wing of either Pelican Bay State Prison or Corcoran State Prison. Because the CDCR does not keep archival records of the population of the supermaxes on every day, over time, the best way to analyze the population over a ten-year period is to look at people who are released, because releases are documented and archived on a day-by-day, incident-by-incident basis. In other words, these are point-prevalence statistics; as with any institution, like a hospital or a school, exit statistics are easier to get and more accurately reflect ongoing patterns, absent day-by-day snapshots of who is in a given institution. A recent article on prison rape described this snapshot problem, explaining that even the Bureau of Justice Statistics, the federal organization that collects and analyzes data on prisons and jails in the United States, collects data based on a “snapshot technique”, that “represent[s] only a fraction of those incarcerated every year.” For example, then, the annual jail admissions in the United States are likely seventeen times greater than the jail population on any given day (Kaiser & Stannow 2010).

An ideal data set might include demographic characteristics and length-of-stay characteristics for those prisoners in the supermax over the ten-year period (rather than those prisoners released from the supermax); however, because of the institutional snapshot problem, such data are not as readily available. Indeed, I recently asked four different CDCR administrators if they had data about lengths-of-stay and demographics within the supermaxes, and they each said explicitly that the Department does not have any data that track the length of stay of prisoners in supermax units. A researcher in CDCR explained that administrators “manage beds not people ... so their measurement is how long a bed is occupied ... they can’t tell you how long a guy has been there because they start the count over every time he moves to a new bed” (Interview May 19, 2010). These statements further confirm that the data I obtained through my data request are unique data, not usually collected by CDCR, and the best available data on California supermax populations. The one other study that has looked at similar data

about populations within a supermax was conducted in Washington state, which has just over 200 people in supermax conditions (less than one-tenth of California's supermax population). The data examined in the Washington study were obtained through the researchers' case-by-case reviews of individual prisoner's files (Lovell et al. 2000). Due to the significantly larger scale of supermax incarceration in California, such case-by-case reviews are not feasible at this time.

In the context of supermaxes, and the lack of knowledge about the overall size, composition, or distinctive character of the prisoner population, data on supermax releasees and parolees provide the best available window into the social composition of the supermax prison population. Moreover, parole data are independently revealing; I contextualize this data in the framework of parole policies and recidivism in California, looking at the frequency and characteristics of supermax releases relative to the frequency and characteristics of general paroles. This is the most accurate basis of comparison, as the data I analyze about people released from supermaxes are not directly comparable to either the state's overall prison population, or the state's overall parole population. However, the supermax release data are important for exactly this reason; the data capture unique information about the population of supermax parolees for the first time, and analysis of these data demonstrates how this population differs from both the overall prison population and the overall parole population.

In addition to supermax release data, I also requested historical data about the numbers of deaths (including homicide and suicide) and assaults in CDCR, from 1970 through the present day. This data provides some picture of the amount of violence in the Department over the last forty years, and how, if at all, the opening of the state's two supermaxes affected violence levels. Again, this is a unique data set. Only a small handful of studies have looked at the potential relationship between supermaxes and violence (in Arizona, Illinois, Minnesota, and Utah), and these studies have found no effects on inmate-on-inmate assaults, and minimal decreases in

inmate-on-staff assaults (Briggs, Sundt and Castellano 2003; Sundt, Castellano and Briggs 2008). In this paper, I look at comparable data about inmate-on-inmate and inmate-on-staff assaults to that evaluated in the Briggs, et. al. studies, and I also look at death statistics, which are less subject to administrative discretion in counting and recording, as I discuss further in the section on violence below. With these data, I am able to answer the question raised by Mears and Reisig (2006) of whether and how supermax prisons might improve system-wide order within state departments of corrections.

In addition to this statistical analysis, I also conducted extended interviews with five key informants – executive officials who worked for Governor Deukmejian and administrative officials who worked for the Department of Corrections in the 1980s when California decided to build its two supermax prisons, and one current Department researcher. These were semi-structured open-ended interviews that lasted from two to three hours in length. During the interviews, I either took thorough notes, or, if the interviewee granted permission, I recorded the interviews. Immediately after the interviews, I either transcribed the interviews or typed up my notes. During the interviews, I focused my questions on understanding how and why California officials determined that the state needed two supermax prisons, as well as understanding how the decision was implemented once it was made. These interviews, then, are helpful for understanding how correctional officials and executive administrators thought supermaxes would function and who they hoped the prisons would detain.

I approached these interviews, and the requests I made for quantitative data, as a researcher interested in understanding how the supermax institution functions. However, I also have worked as both a volunteer educator and a paid legal advocate within California's prisons, so I bring some basic knowledge of the California prison system, as well as first-hand experiences with the ways in which the system occasionally produces human rights abuses and

unjust policy outcomes. However, throughout my work, in interviews and data requests, I emphasize that everyone, including correctional administrators, suffers from inefficient or abusive policies in prison institutions, and that understanding how policies get implemented and whether those policies function as intended is useful to correctional officials as well as to reformers, even if the two often find themselves on opposite sides of political debates.

Findings: A Design Gone Wrong

To date, my findings constitute basic descriptive data about how many people are being released from the California supermaxes, with what frequency, and after what duration of stay. In addition, the data reveal a decade's worth of trends in these descriptive statistics. While this is basic, descriptive information, it is information that has, until now, been unavailable. It sheds light on exactly who has been in supermaxes over the last ten years and exactly how the supermaxes have been functioning.

Framework: Best Intentions at Inception

In 1986, the California Legislature passed Senate Bill 1222 authorizing the construction of a two-thousand bed “maximum security complex in Del Norte County” with up to \$325 million in “lease-purchase revenue bonds.”¹¹ However, the bill did not describe exactly what form this “maximum security complex” would take; these details were left up to executive

¹¹ S. 1222, 1986 Leg., Gen. Sess. (Ca. 1986) (enacted).

officials and Department of Corrections¹² administrators. In order to understand better why these officials chose not to build just any maximum security prison, but a supermax – allegedly one of the highest security prisons in all of the United States,¹³ I interviewed two high-level government officials who made the building and financing decisions around prisons in California in the 1980s. In addition, I interviewed one of the early wardens of Pelican Bay State Prison and one correctional officer who worked in Pelican Bay State Prison for fourteen years, starting on the day the prison first opened. For the purposes of this paper, I am specifically interested in how these officials viewed the decision to build Pelican Bay and how they thought this supermaximum security institution would function, over the long term, within the California Department of Corrections.

The two government officials with whom I spoke were high level administrators in the 1980s within the Youth and Adult Correctional Authority – the California agency which oversaw the state’s Department of Corrections and served as an intermediary between the Department and politicians in the executive branch of state government. Both emphasized the problems with gangs and violence – officers and prisoners being murdered in existing high security prisons in the state – that were plaguing the California Department of Corrections in the late 1970s and early 1980s. Both explained the decision to build the supermax at Pelican Bay as necessary within this context of violence, and both argued that the supermax reduced prison violence by removing gang leaders from the general prison population. However, neither offered evidence of this decrease in violence; in fact, one acknowledged that, because what officers report as violence depends at least in part on whether they think there will be appropriate responses to

¹² Note that in July of 2005, the California Department of Corrections officially changed its name to the California Department of Corrections and Rehabilitation. Because the history I refer to in this section concerns the Department when it was simply the Department of Corrections, and for ease of short-hand naming, I refer to the Department of Corrections, rather than the Department of Corrections and Rehabilitation.

¹³ See, e.g., Associated Press, “Only hard cases fit in at this ‘resort,’” *Chicago Tribune*, Sept. 14, 1990, at 29.

violence, measures of violence trends in prison over time are both difficult to verify and fundamentally unreliable. Later in the paper, I discuss and analyze those violence trends, including homicides, suicides, and assaults.

Whether or not the supermax at Pelican Bay effectively curbed violence in the California Department of Corrections, the officials who implemented the supermax project designed the institution explicitly to isolate gang members and to limit violence. However, they were also explicit that this isolation was never intended to be indefinite. Mr. Jones,¹⁴ a former, senior correctional official from the 1980s, said of the supermax at Pelican Bay: “I don’t think we ever conceptualized it as a permanent thing for anyone other than a handful of inmates” (Interview Jan. 22, 2010). Jones said “the assumption” was that people would serve a set term at Pelican Bay, for “something like nine months, but no more than eighteen months.” In other words, the Pelican Bay designers presumed that individual prisoners would “mellow out ... get older,” essentially decide cooperation and co-existence was better than living alone in the supermax. In addition, the Pelican Bay designers thought that people might end up in the supermax who did not belong there, and this potential for error provided another important reason for limiting supermax terms in some way: “Now there should be a way out, if a guy does a lot of time. Some guys maybe go in there that don’t need that kind of restraint,” said Mr. Williams,¹⁵ another former senior correctional official from the 1980s (Interview Feb. 22, 2010).

The data examined in subsequent sections in this paper suggest that many supermax terms are indefinite, providing few ways out, and that the *average* term is longer than eighteen months at Pelican Bay. Indeed, Jones expressed frustration at this outcome: “The biggest disappointment to some of us was how long people got in there.” In some ways, though, he

¹⁴ For the purposes of this paper, pseudonyms are being used to refer to the senior correctional officials interviewed.

¹⁵ Again, Williams is a pseudonym.

implied that he had both foreseen this disappointment and thought the long terms of supermax confinement were potentially unavoidable, noting that, still “the gang leaders are the problem” (Interview Jan. 22, 2010).

The officials who implemented the supermax project not only foresaw limited terms of confinement in the supermax, they also foresaw both a demand for more supermax cells, and a need to curb this demand by limiting the availability of supermax cells. “We knew there would be a tendency to lock too many people in,” Jones said. So, he explained, when Pelican Bay was built, Youth and Adult Correctional Agency managers explicitly wanted to keep supermax cells “a relatively scarce resource, or corrections officers would be comfortable leaving inmates there” (Id.). Williams further elaborated that Pelican Bay was the original prison with a supermax design, and the only one with a “single purpose design” – the Pelican Bay supermax cannot easily be re-structured to house general population prisoners. “It’s never going to be a [general population] programming facility,” he explained (Interview Feb. 22, 2010). Although he acknowledged the severity of the conditions at Pelican Bay, he noted that the prison was unique in the Department of Corrections.

Of the twenty-one new correctional facilities California built in the 1980s, Pelican Bay was the only one that was explicitly designed to be “non-programming,” or a supermax. Correctional administrators often distinguish supermaxes as facilities where prisoners have no access to “programming,” which in a general population prison might include everything from group free time on a prison yard to actual work, education, or substance abuse treatment programs. Corcoran State Prison, on the other hand, was built as a maximum security, general population prison. However, as soon as Corcoran opened in 1988 (one year before Pelican Bay opened), two of the buildings within the new prison were converted to supermax units, functioning to detain prisoners in long-term solitary confinement. Williams said of Corcoran: “I

would call it a temporary [supermax].” He added: “If this department ever operates so well that you don’t need a [supermax] beyond Pelican Bay, Corcoran will become a fully programming . . . facility.” Specifically, he explained that Corcoran was designed to make retrofitting possible, with all the necessary space to create congregate living environments and prisoner programming, like access to a communal exercise yard (Interview Feb. 22, 2010). This discussion of Corcoran reveals two particular goals of the administrators who designed and built California’s supermaxes: they wanted to limit the number of supermax cells available within the state; and they hoped, even as they were revising building plans at the last minute to add more supermax cells, that needs for these cells would decrease, not increase.

Despite these goals of limiting the availability of supermax cells, the demand for supermax cells within the California Department of Corrections continued to rise in the 1990s, and more high security prisons were converted, like Corcoran, into supermaxes, detaining prisoners in long-term solitary confinement. Today, in addition to Pelican Bay and Corcoran, the Department of Corrections operates two supermax units at the California Correctional Institution in Tehachapi, California, and one at Valley State Prison for Women in Chowchilla, California. Indeed, one correctional officer I spoke with, who had worked in Pelican Bay for more than a decade, said that the Department could definitely use more supermax cells today.

One other principle of supermax confinement is revealed in the design of Pelican Bay State Prison, and in conversations with the designers. Specifically, the designers thought that prisoners should not be released directly from supermax confinement onto parole, so they designed an institution like Pelican Bay, which included both supermaximum security units and maximum security units, where prisoners would have some access to programs and human contact. The idea was that prisoners would be released from the supermax into this general population, before they were paroled. As Jones said: “I don’t think any of us liked the idea of

knowing inmates would be released from [supermax] to the street ... The goal was they would mellow out ... get older ... go to a [maximum], general population” (Interview Jan. 22, 2010).

Williams was more explicit about his concerns with releasing prisoners directly from a supermax onto parole: “Do you want him [any prisoner] to come straight out of Pelican Bay, the zoo, to the street?” (Interview Feb. 22, 2010).

In sum, the corrections administrators who designed California’s supermaxes described three critical principles, which they attempted to implement through both structural designs of the supermaxes and the scale of supermax bed allocations: limited durations of confinement, limited use of supermax cells throughout the Department of Corrections, and integrated step-down programs to prevent releases directly from supermax cells onto parole. In addition, correctional administrators argued that supermaxes helped to control violence within the Department of Corrections. The data analyzed in the remainder of this paper demonstrate that none of these principles were actually successfully implemented, and, furthermore, that the effect of supermaxes on violence within prisons is difficult to assess. Supermaxes, therefore, appear to be functioning very differently from the original intentions of their designers.

Today: What Do We Know about People in California’s Supermaxes?

There is limited public information available, on the California Department of Corrections and Rehabilitation (CDCR) website, about who is currently detained in California’s supermaxes. However, California administrative regulations and CDCR operations rules provide a thorough explanation of when and how a supermax sentence may be imposed. Additional information about supermax confinement can be gleaned from the supermax release data analyzed for the first time in this paper, including average lengths of stay, as well as some

demographic information about the race of those confined in supermaxes. In this section, I will present basic information about the mechanics of supermax confinement in California and about what is known about the people detained in California's first two supermaxes.

Who Gets Sent to Supermaxes and How

In California, the supermax wings at the state's two highest security men's prisons are called the Secure Housing Units, or SHUs. The CDCR promulgates a Departmental Operations Manual, which sums up the SHU: "SHUS provide secure housing for inmates whose conduct endangers the safety of others or the security of the institution" (CDCR 2009). In a federal court case in which a judge found "patterns of abuse" in the use of excessive force and withholding of adequate medical care in the Pelican Bay SHU, in the 1990s, the judge summed up the two possible modes of assignment to the SHU: "SHU cells are reserved for those inmates in the California prison system who become affiliated with a prison gang or commit serious disciplinary infractions once in prison" (*Madrid v. Gomez* 1995).

For those prisoners affiliated with a prison gang, their SHU assignment is indefinite. The CDCR Operations Manual explains that these prisoners are people whose "continued presence in general population would severely endanger lives of inmates or staff, the security of the institution, or the integrity of an investigation into ... criminal activity" (2009). When the CDCR completes an administrative process to "validate" a prisoner as a member of a recognized gang, through documenting membership in any "association or group of three or more persons which has a common name or identifying sign or symbol whose members . . . engage or have engaged . . . in two or more acts which include, planning, organizing, threatening, financing, soliciting, or committing unlawful acts or acts of [serious] misconduct," that prisoner is then automatically assigned to an indefinite SHU term (California Code of Regulations 2009: Title 15, Secs. 3000, 3341.5). As the definition of gang membership suggests, the validation process is rather

discretionary; any documentation of potentially illegal *group* activity could lead to gang validation. This means that not all potential or actual gang members will actually end up in the SHU.

When an alleged gang member does receive an indeterminate SHU term, the CDCR requires that such terms be reviewed every six months. However, “review” does not mean that a prisoner has a chance at a change in status every six months; the process is often rather nominal. State rules explicitly state that a prisoner cannot become gang “invalidated” unless he either “debriefs,” proving he is no longer a member of the gang by snitching on gang activity, or remains uninvolved in gang activity for a minimum of six years (Title 15, Sec. 3341.5(C)(5)).

According to the Supreme Court, an indefinite assignment to supermax conditions is perfectly constitutional, as long as certain minimal due process protections are in place during the administrative hearing at which correctional officials determine the grounds for the SHU sentence. Specifically, prisoners must have notice of the factual basis justifying their confinement in the SHU, and they must have some opportunity to rebut this factual basis. This “opportunity for rebuttal,” however, is extremely limited; it does not necessarily allow the prisoner the right to call witnesses, or to have an attorney, or even a non-attorney advocate, present at any administrative hearing (*Austin v. Wilkinson* 2005). After a prisoner has been assigned to an indefinite SHU term, federal courts have required some minimal, but regular, review of the prisoner’s status, on at least an annual basis; however, the review need not identify what the prisoner could do to earn release from the supermax (Id.).

On the other hand, those prisoners who commit a specific, serious disciplinary offense are assigned to the SHU for a definite term, based on the Department’s SHU Term Assessment

chart.¹⁶ SHU terms range from a minimum of two months, for participation in a “disturbance, riot or strike,” for destruction of state property, or for bribery of a non-prisoner, to a maximum of five years for murder or attempted murder of a non-prisoner (Title 15, Sec. 3341.5(C)(9)).

Tellingly, murder or attempted murder of a prisoner merits a maximum SHU term of only three years – an explicit, legal devaluation of the lives of prisoners relative to the lives of prison staff. Importantly, attempted murder can involve what might ordinarily be considered a minimally aggressive activity outside of prison, such as spitting on an officer. Within the uniquely enclosed world of the prison, where a prisoner is more likely to be HIV-positive, or to have Hepatitis C, spitting is seen as an extremely dangerous and aggressive action, which might rise to the level of a serious offense meriting a SHU term of two to six months at the least (for “throwing a caustic substance on a non-inmate”), or an attempted murder charge, with the associated SHU term of up to five years, at worst.¹⁷ In other words, as with the gang validation process, correctional officers possess broad discretion regarding what kind of serious rule violation to charge a prisoner with and what kind of SHU term to impose, if the prisoner is found guilty of the rule violation. Moreover, the administrative hearing process itself is rather discretionary; as discussed above, the requirements for basic due process at such hearings are minimal. A prisoner facing a serious rule violation charge in prison has none of the rights a criminal defendant would have in a court of law, and the prison official conducting the hearing is not constrained by standard criminal law

¹⁶ The Department Operations Manual notes that a prisoner might also be assigned to a SHU voluntarily, if he requests protective custody and prison officials validate the legitimacy of the request, or for brief, involuntary terms of less than 10 days, if the prisoner is newly arrived at a high security institution, and officials need to determine whether that prisoner will be safe in the general prison population (2009). However, these two forms of assignment are not part of my evaluation of SHU populations or the focus of this study; prisoners in protective custody are counted separately, as residents of “Protective Housing Units” rather than “Secure Housing Units,” and prisoners who spend less than 10 days in the SHU are not captured by most of my data, which are focused on longer term confinements to the SHU. To the extent that a prisoner who spent only 10 days in the SHU is counted in the aggregate, average length-of-stay data I discuss below, such short stays might be pulling down the overall average stay data, which already indicates long average stays of close to two years.

¹⁷ Another problem particularly associated with SHU confinement itself is “gassing” – the correctional lingo for the action of a prisoner who takes a mixture of his own feces and urine and throws it through the cell door at an officer (Rhodes 2003). Correctional officers dwell on this particularly unpleasant experience; one high-ranking official told me that he had never heard of gassing taking place before the advent of the SHU at Pelican Bay, but once the Pelican Bay SHU opened, gassing became a frequent occurrence, tormenting correctional officers (Interview with former Pelican Bay correctional officer, December 8, 2009).

requirements, such as the usual requirement that a defendant be guilty beyond all reasonable doubt.

Historically, there was one other unofficial path to supermax confinement: severe mental illness. Prisoners who were confined in the general prison population but who had mental illness so severe that they had difficulty adjusting to prison life and following prison rules often incurred the punishment of a term in the SHU. However, this is one practice that federal courts have stepped in to curb, finding that confining the already mentally ill in such extreme conditions of sensory deprivation constitutes cruel and unusual punishment in violation of the Eighth Amendment. Indeed, in 1995, a federal court in California ordered the state's Department of Corrections to cease the assignment of prisoners with documented, pre-existing mental illnesses to the SHUs; prisoners' rights attorneys in the state agree that this order has largely been obeyed (*Madrid v. Gomez*).¹⁸

In sum, prisoners in California can be sent to the SHU either because correctional administrators determine they are gang members, or because correctional administrators find they have committed a serious rule violation. Both processes – gang validation and rule violation findings – are codified in elaborate detail in Title 15 of California state law. Ironically, however, the elaborate codification provides broad discretion to correctional administrators through flexible terms like “gang,” a wide array of potentially “serious offenses,” and a significant range in sentence lengths even for any given serious offense. In fact, this kind of discretion has been demanded by correctional officers and lauded by federal courts as absolutely necessary to running secure institutions. But with such internal administrative flexibility in

¹⁸ However, a recent *Sacramento Bee* feature story found that mentally ill prisoners have been placed in new, SHU-like wings of six prisons in California since 2005; these new prison wings, originally designed as intermediary units for prisoners who cannot function in a general prison population, but who do not require the intense security of a SHU placement, are called Behavior Management Units and have functioned in practice like SHUs, with long term solitary confinement, little access to outdoor time, and no programming of any sort (Piller 2010).

place, determining exactly who is in the SHUs and why presents a rather challenging question that could well require analysis of thousands of separate case files on any given day. Indeed, I asked four separate correctional administrators, who work in management at CDCR headquarters, whether there were data describing the percentage of prisoners serving determinate and indeterminate SHU terms in the state of California; each agreed that that information was not readily available (E-mail exchanges on March 2, 2010 with four current research staff members in the CDCR). Nonetheless, in the next sections, I present the facts and figures that are available – what is known, and what can be logically deduced, about how many people are confined in supermaxes and why.

Overall Population

Pelican Bay State Prison has a SHU with a capacity for 1,056 prisoners (CDCR Data Analysis Unit Feb. 22, 2010). Corcoran State Prison has a SHU with a capacity for 872 prisoners (Id.). In addition, in the past few years, CDCR has converted two additional units at a third prison, the Central California Institution at Tehachapi, to SHU units; this SHU has a capacity for 378 prisoners (Id.). Finally, Valley State Prison for Women, California's higher security women's prison has a small SHU wing. It is built to house 44 women in supermax conditions (CDCR, "Valley State Prison for Women").¹⁹ In total, then, CDCR has what they call a "design capacity" for 2,350 SHU cells.

¹⁹ Note that the bulk of my analysis focuses on the male SHU prisoners; few states have a female supermax facility at all, and California's facility is so small that the available data are too limited to analyze.

However, the total SHU population in CDCR is much higher; on February 17, 2010, it was 3,384.²⁰ This means that, despite the SHU cell design as single-occupancy cells, some prisoners in the SHU in California are actually double-celled. In general, the vast majority of prisoners in the Pelican Bay SHU are single-celled, but more than half of the cells in the Corcoran and Tehachapi SHUs are occupied by two prisoners.²¹ The CDCR, then, appears to be using an even greater proportion of double-celling in SHU cells than intended: 6 percent of Pelican Bay SHU cells house two prisoners, and 65 percent of Corcoran SHU cells house two prisoners.

California is unique for the proportion of its supermax cells that contain two prisoners per cell. Little analysis exists on whether solitary confinement in a cell twenty-three to twenty-four hours per day, with the lights always on, or confinement in a cell with one other person twenty-three to twenty-four hours per day, with the lights always on, is preferable. Both situations present severe hardships; for instance, solitary confinement likely presents a greater danger of self-harm, while double-celling likely presents a greater danger of cellmate-on-cellmate assault.²²

²⁰ Incidentally, the exact numbers reported on the Department of Corrections website are different from these numbers reported in the more precise, Data Analysis Unit Weekly Population Report, as explained to me in an e-mail exchange I had with the Deputy Director of the Facilities Planning Branch at CDCR. The Deputy Director explained that “the inmate population is a fluctuating number and will change daily, so all CDCR reports reflect a ‘moment in time,’” and that the design capacity and occupied capacity statistics are not always precisely accurate, because they depend on who is defining design capacity, which can vary (E-mail exchange with Deputy Director of the Facilities and Planning Branch, March 2, 2010).

²¹ Specifically, in an e-mail exchange, the Deputy Director of the Facilities Planning Branch at CDCR said: “Due to various factors, double-celling of the state’s most difficult and violent inmates who are housed at [Pelican Bay] is only 5 percent.” However, “CDCR tries to achieve double-celling in 40 percent of the [SHU] cells” at Corcoran, Tehachapi, and the women’s unit at Valley State Prison (E-mail exchange with Deputy Director of the Facilities Planning Branch, March 2, 2010). On February 17, 2010, Pelican Bay had 1,118 prisoners in SHU cells. There were 62 more prisoners than the single-cell design capacity of the institution could accommodate (1,118 population - 1,056 design capacity); therefore, 124, or 11 percent of Pelican Bay’s 1,118 prisoners were sharing a cell. On the other hand, on February 17, 2010, Corcoran had 1,439 prisoners in SHU cells. In other words, there were 567 more prisoners than the single-cell design capacity of the institution could accommodate (1,439 population - 872 design capacity); therefore 1,134, or 79 percent of Corcoran’s 1,439 prisoners were sharing a cell. See Appendix A for a presentation of this information in a comprehensive way, including the comparable information for the SHU cells at Tehachapi and Valley State, as well as those at Corcoran and Pelican Bay.

²² I have requested data about assaults and self-harm by prison, broken down by prison and SHU units. However, at this point, this data is only available in aggregate, department-wide numbers. Therefore, I cannot prove the accuracy of the hypotheses that single-celling might be more dangerous for self-harm and double-celling might be more dangerous for prisoner-on-prisoner assault.

In total, then, California houses more than 3,300 prisoners, at any given time, in supermax conditions. The overall state prison population in California is over 170,000 people, so roughly two percent of the state prison population is assigned to supermax conditions at any given time. Of these prisoners, roughly half are in solitary confinement, and roughly half are double-celled.

As mentioned above, exact data about how many of the people assigned to supermax confinement are serving indefinite SHU terms and how many are serving definite terms are not readily available. However, based on a combination of publicly available data and analysis of the data I obtained regarding people paroled from supermaxes, some estimates of the breakdown between indefinite and definite terms can be made.

The CDCR website notes that all of the beds in the Corcoran SHU are reserved for validated gang members (CDCR, “California State Prison - Corcoran” 2010). Definitionally, people serving SHU terms solely because they are validated gang members are serving indefinite terms (CDCR 2009). The CDCR provides no comparable information on their website about how many people in the Pelican Bay SHU are validated gang members, although court cases and eyewitness accounts suggest that many prisoners in the Pelican Bay SHU are also validated gang members (*Madrid v. Gomez* 1995; Blatchford 2004). One analysis of the Pelican Bay SHU suggests that two-thirds of the people detained there are validated gang members, although no source is provided for this estimate (Shalev 2009). In addition, the data I analyze in greater detail below, about people paroled directly from the Pelican Bay SHU, indicate that the average lengths of stay in the Pelican Bay SHU are quite long – two-to-three times as long as the average lengths of stay in the Corcoran SHU. Moreover, Pelican Bay SHU releases are more likely to be significantly disproportionately Hispanic than Corcoran SHU releases, or then the general parole population, which I discuss in greater detail below. Because validated gang members are likely

to be detained indefinitely, and are also likely to be Hispanic,²³ extended SHU terms and disproportionately Hispanic releases likely indicate that at least some indefinitely sentenced validated gang members are assigned to Pelican Bay.

In sum, with the more than 1,000 people at Corcoran likely serving indefinite SHU terms, and the unknown number of people at Pelican Bay serving indefinite SHU terms (estimated at up to two-thirds of the 1,000 to 1,500 people in the Pelican Bay SHU), at least half of the SHU prisoners in California, and maybe more, have been assigned to indefinite SHU terms. Indefinite SHU terms are important, in part, because they likely contribute to the long periods – up to twenty years or more – that some prisoners spend in solitary confinement.

Indeed, the long average stays in the Pelican Bay SHU suggest that either many people in this SHU are serving indeterminate terms, or they are repeatedly committing serious disciplinary violations and thereby receiving consecutive, long, definite terms in the SHU. Either way, the result is the same: extended terms being served in the SHUs in California. In the next section, I present these data in greater detail.

Duration of Confinement

While data about the average lengths of stay of prisoners *currently* detained in the Corcoran and Pelican Bay SHUs are not available, I analyze data below indicating the average lengths of stay of prisoners *released* from the Corcoran and Pelican Bay SHUs over a ten-year period from 1997 through 2007.²⁴ Specifically, these data capture people within a given year who either paroled directly from one of these two SHUs, or people who were paroled from another prison, but who had spent time in the SHU prior to being paroled. Because an average of

²³ According to the National Youth Gang Survey, approximately 50 percent of all gang members in the United States in 2006 were Hispanic (National Youth Gang Center 2009). Furthermore, four of the seven gangs recognized by the CDCR are Hispanic (California Department of Justice Criminal Intelligence Bureau 2005).

²⁴ Note that although I discussed the current SHU populations in four prisons in California, the focus of the remainder of the analysis will be on the Corcoran and Pelican Bay SHUs, the larger supermax institutions, which have been operating for the longest periods of time, and on which more data is therefore available.

2,300 people per year who have spent time in one of these two SHUS are paroled from prison, release data capture a substantial portion of the incarcerated SHU population in any given year (2,300 represents more than two-thirds of the 3,384 prisoners in SHU on any given day).²⁵ For the Corcoran SHU, the average number of people released annually from CDCR who have spent time in the Corcoran SHU is more than the average daily population of the SHU, indicating that the facility experiences substantial turn over every year. (However, without knowing the lengths of stay of every person currently *in* the Corcoran SHU, the exact proportion of the population turned over every year cannot be determined.) For the Pelican Bay SHU, the average number of people released annually from CDCR who spent time in the SHU ranges from 140 to 586 people, indicating that less of the Pelican Bay SHU population turns over annually. These release data reflect the fact that, on average, prisoners serve longer terms in the Pelican Bay SHU than in the Corcoran SHU.²⁶

The fact that so few of the people being released from CDCR have spent time in Pelican Bay suggests that well over half of the people detained at the Pelican Bay SHU fall into one of two categories. Either they are serving indefinite SHU terms *and* have very long overall prison sentences, so they are not being released from the SHU. Or, they are serving definite SHU terms and are released from the SHU back into general prison populations elsewhere in the state, but have long prison terms left to serve in general population prison settings, and so are not released onto parole. In sum, even the absences in the parole release data are helpful for what they indicate about those people not captured in the data. Moreover, by evaluating release data of

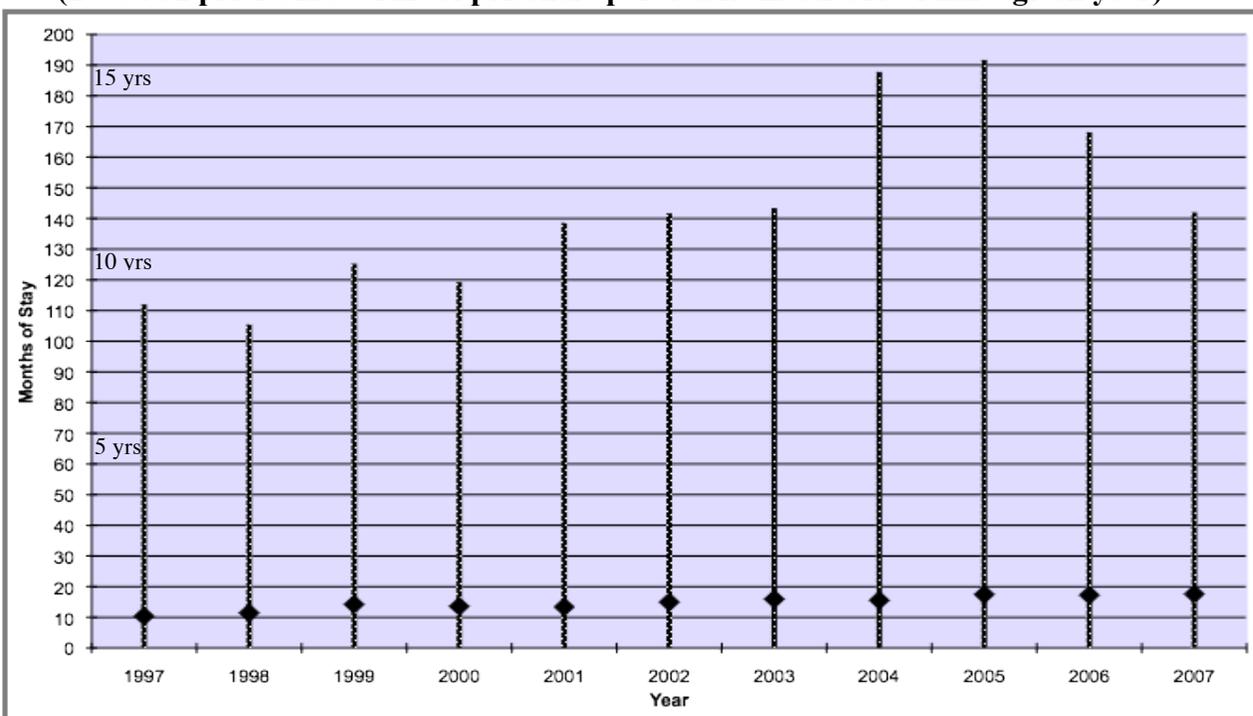
²⁵ Unless otherwise noted, the data in this section concerns both people paroled directly from the Pelican Bay and Corcoran SHUs *and* people paroled from the general prison population within a given year, who had previously spent time within the Pelican Bay and Corcoran SHUs. However, Figure 9, documenting annual releases directly from supermaxes concerns a more narrow population of paroled supermax prisoners.

²⁶ Note that only data about longest, shortest, and average lengths of stay for a given year in each supermax are available. Median length of stay data, if available, would have provided additional helpful perspective on lengths of supermax stays; unfortunately, these data are not available.

thousands of supermax parolees, over a ten-year period, I am able to examine point-prevalence statistics for the SHU that are likely quite representative in the aggregate.

In the remainder of this section, I present and discuss two graphs detailing the lengths of SHU stays in California between 1997 and 2007. Figure 1, below, shows both the *average* lengths of stay, by month (marked by the diamond on the line representing the range of stays in each year) as well as the *range* of lengths of stay, from shortest to longest, of all the prisoners, who had previously served a term in the supermax, paroled from CDCR in a given year.²⁷ For ease of reading, three markers indicate where five, ten, and fifteen years fall on the graph.

Figure 1
**Range and Average Lengths of Stay in Pelican Bay & Corcoran SHU,
 in Months, 1997-2007**
 (Based on prior SHU terms of prisoners paroled from CDCR within a given year)²⁸



²⁷ If median lengths of stay were available, a box plot would be an ideal way to represent this data; however, given the availability only of minimum, maximum, and average stays, I chose this alternate format.

²⁸ For this first figure, the lengths of stay are shown in months, both to dramatize the range of lengths of stay, and because SHU sentences (and criminal sentences, too) are usually assigned in terms of months.

Over time, both the average lengths of stay as well as the maximum stays have increased for people in both the Corcoran and the Pelican Bay SHUs. Between 1997 and 2007, the average lengths of stay increased from 10 months, or just under one year, to 18 months, or one-and-one-half years. While an increase in the average SHU term of eight months over ten years might seem moderate, recall the extremity of the conditions. This is the number of months that a person spends in a cell, alone, with no human contact (or, sometimes, with only the contact of a single cellmate), fluorescent lights on twenty-four hours per day, an hour or less of exercise per day, and limited access to a television or radio. An additional eight months of incarceration under these conditions might make a significant difference to any given individual's well-being.

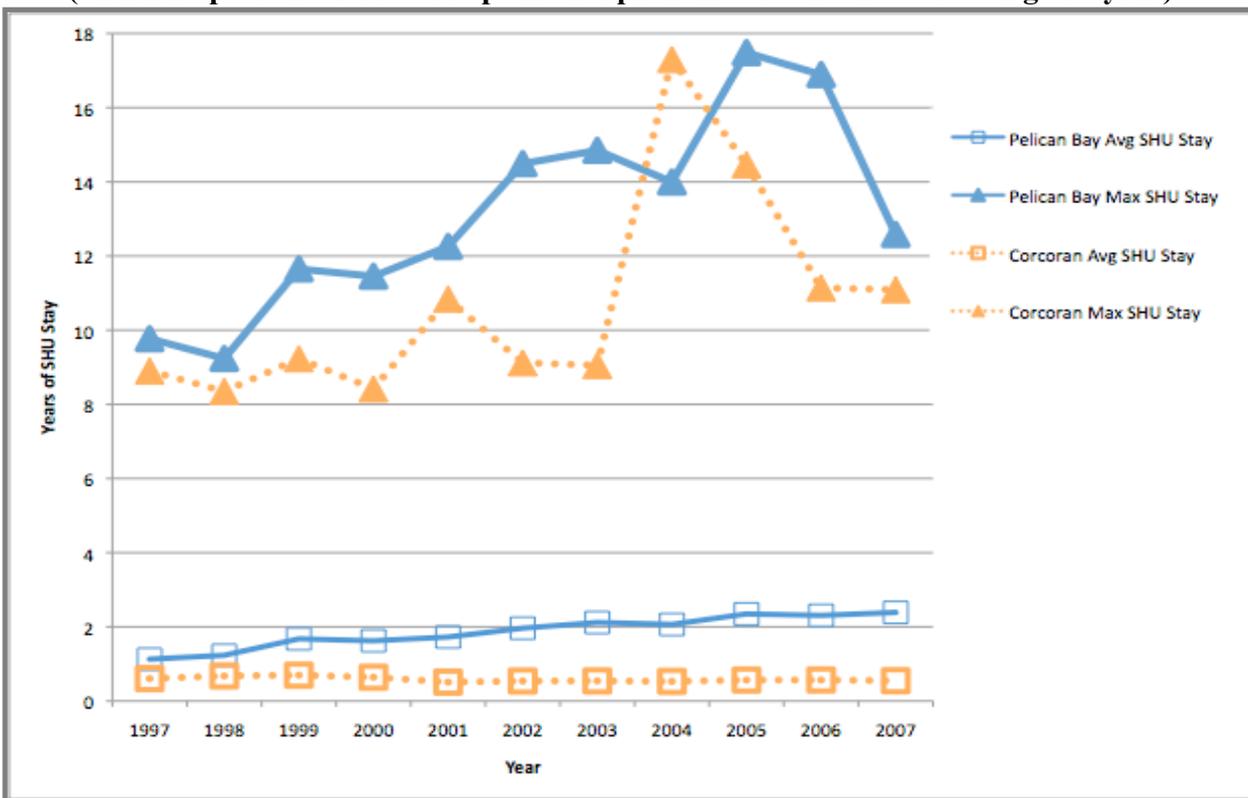
During this same ten-year period, the minimum stay in the SHU remained relatively short, at less than a month.²⁹ So, in order for the average length of stay to increase by eight months, the longest stays were necessarily increasing by much more than eight months. Indeed, this trend of the maximum SHU terms increasing over time is visible in looking at the upper reaches of the lines in Figure 1.

Figure 2 shows more specific data about the length of SHU terms at both Corcoran and Pelican Bay State Prison. The four lines in this figure represent the average (squares) and maximum (triangles) lengths of stay in the Corcoran (lighter dotted line) and Pelican Bay SHUs (darker solid line), displayed as a trend over 10 years. Figure 2 demonstrates how much longer both average and maximum SHU stays are at Pelican Bay than at Corcoran (with the exception of one spike at Corcoran in 2003). Indeed, Pelican Bay is the prison most notorious as both the "state-of-the-art" supermax and the highest security institution in California; it has been plagued by allegations of abuse within the SHU since just a few years after it opened, and it remains

²⁹ Note that one month is less than the usual minimum SHU term of two months; this shortest possible stay is likely the result either of prisoners finishing their criminal sentence and being paroled prior to finishing their SHU term or of some other administrative glitch in security classification and assignment.

under a federal consent decree, which requires regular monitoring of conditions in the SHU by prisoners' rights attorneys in California (*Madrid v. Gomez* 2005).

Figure 2
Average Lengths of Stay and Maximum Stays, in Years, by Prison
(Based on prior SHU terms of prisoners paroled from CDCR within a given year)



In addition, Figure 2 shows that the *maximum* lengths of stay in both the Pelican Bay SHU and the Corcoran SHU climbed steadily between 1997 and 2005, but then began to decrease between 2005 and 2007. However, the *average* SHU stay at Pelican Bay increased steadily over the entire period between 1997 and 2007, rising from just over one year of average stay-time to almost two-and-one-half years of average stay-time. The *average* SHU stay at Corcoran, on the other hand, has hovered right around one-half to three-quarters of a year. This suggests that the shorter *maximum* stays seen in 2006 and 2007 on the graph are not indicative of shorter *overall* stays in the SHU. Indeed, average stays in the Pelican Bay SHU appear to be increasing, while average stays in the Corcoran SHU have remained relatively stable. Of course,

the data fail to capture those people who have never been released or paroled from the SHU, so there are likely people in Pelican Bay and Corcoran who have spent periods of time in excess of seventeen or eighteen years in the SHU who are not captured in release data.

The average ranges of stay in the Pelican Bay and Corcoran SHUs are also significant. Over the 10 years between 1997 and 2007, the average stay in the SHU, for those who paroled from CDCR, ranged from a low of one half-year (or 6 months) in the Corcoran SHU in 2001 to a high of almost two and one half-years (or 29 months) in the Pelican Bay SHU in 2007. In sum, the data presented here about how long prisoners who have been released from the California prison system have spent in supermax conditions provide the first picture of both the range of lengths of stays in the SHU and the average lengths of stay over time. The data reveal both that prisoners over the past ten years have consistently spent an average of at least six months and up to two-and-one-half years in the SHU and that some prisoners have served incredibly long sentences in the SHU – up to seventeen years – prior to being released. The data demonstrate that prisoners assigned to the SHU in California are spending extended periods in confinement there. Moreover, the data show significant differences between lengths of stay in Corcoran and in Pelican Bay; prisoners tend to serve shorter terms of SHU confinement at Corcoran than at Pelican Bay. In one sense, then, Pelican Bay is functioning as intended: maintaining the most severe conditions for the longest periods of time. In another sense, though, both institutions are detaining prisoners for significantly longer periods of time than their designers intended, indicating that SHUs are potentially being overused, at least relative to their original intentions.

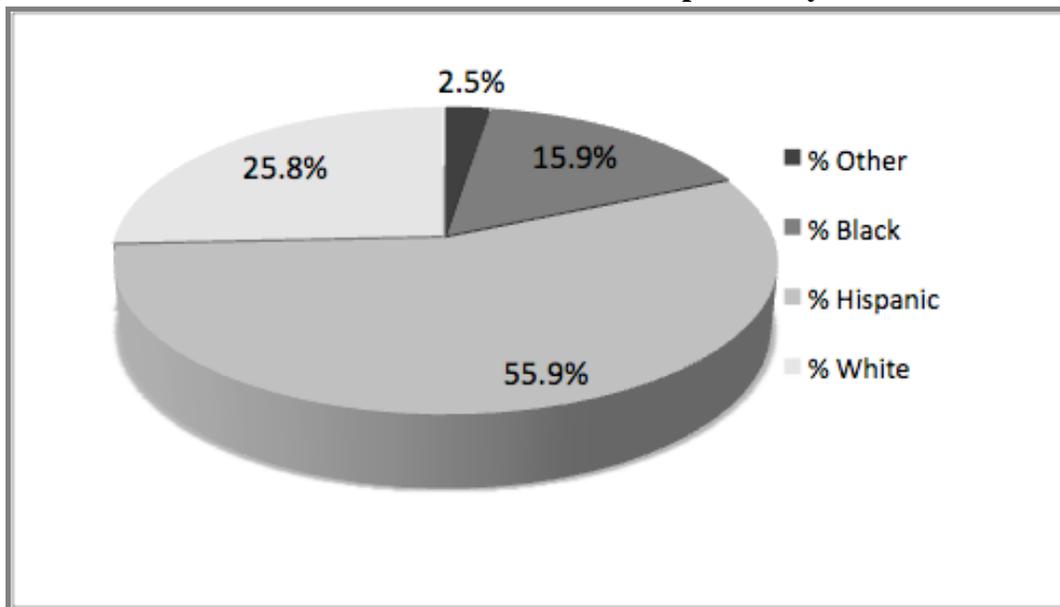
Racial Demographics of SHU Populations

While the racial demographics of those people paroled from CDCR who have served SHU terms may not precisely represent the racial demographics of all those prisoners detained in the SHU, there is likely a close fit between the two populations. First, as discussed in the

Overall Population section above, a substantial portion of the SHU population turns over every year (annual releases represent about two-thirds of the average daily population). Second, studies have found substantial similarities between prison populations and parole populations in California and in the United States (Petersilia 2003). Figure 3, below, provides the racial demographics of those prisoners paroled from CDCR in 2007 who had previously served time in the SHU. Figure 4 provides the racial demographics of the general California parole population.

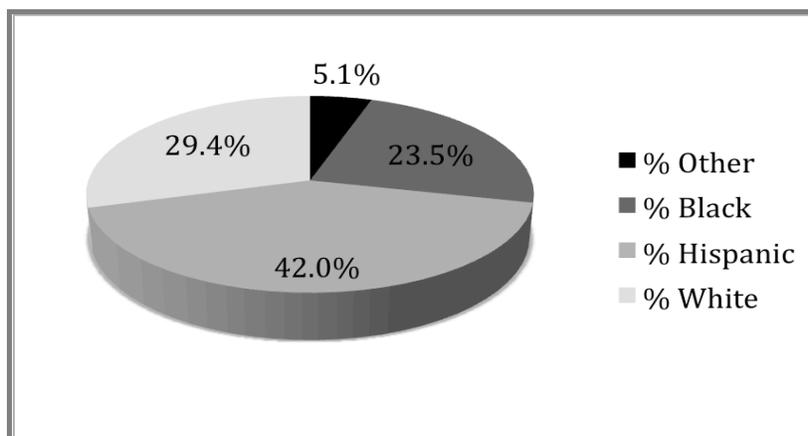
Figure 3³⁰

**Racial Demographics of Supermax Populations, 2007
(Based on Prisoners Paroled from CDCR who had previously served SHU terms)**



³⁰ Although in the U.S. Census “Hispanic” is an *ethnicity* category, identified separately from the race categories, the CDCR uses Hispanic as a *race* category to identify prisoners of Latino and Hispanic heritage. Note that the percentages shown in this chart represent the *average* of the racial demographics of prisoners released from the Corcoran SHU and of the racial demographics of prisoners released from the Pelican Bay SHU, rather than a raw calculation based on the total number of SHU releases from both institutions. As discussed below, the disproportionate impact of SHU terms on Hispanics is more extreme at Pelican Bay than at Corcoran, although Pelican Bay also releases fewer prisoners annually than Corcoran. Therefore, the average numbers presented here better capture the overall disproportionate impact of SHU terms on Hispanics. However, Table 1 below provides a more specific analysis of the numbers, disaggregated by both institution and year.

Figure 4
Racial Demographics of General Parole Population, 2007



In general, prisoners on parole who have spent time in the SHU are slightly less likely to be either white or African American than the average prisoners on parole. However, prisoners on parole who have spent time in the SHU are significantly more likely to be Hispanic than the average prisoners on parole; in 2007, almost 56 percent of the prisoners paroled after having spent time in the SHU were Hispanic, while only 42 percent of the general parole population was Hispanic. This is, perhaps, not surprising, given the already-discussed phenomenon of correctional officers “validating” gang members and assigning them to indefinite SHU terms; indeed, some of the largest and most feared gangs in California, like the Norteños and Sureños, are associated with Hispanic culture.

In sum, Figures 3 and 4 show that Hispanics are disproportionately more likely to have spent time in the California SHUs than other racial and ethnic categories of prisoners. Indeed, a chi square test, comparing ten years’ worth of California parole data with ten years’ worth of SHU release data confirms that the disproportionate impact seen on Hispanics in 2007 has been consistent and significant over the past ten years. Specifically, the chi square calculation compares the number of SHU releases in each of the CDCR’s four racial categories (Other,

Black, Hispanic, White) to the number of SHU releases that we would expect to see in each racial category, if the racial demographics of SHU releases were identical to the racial demographics of all prisoners on parole in California. Based on this calculation, the higher proportion of Hispanic prisoners released from the SHU in each year between 1997 and 2007 was found to be significant, or very unlikely to be due to chance, in every year but 2001.³¹ The racial demographics of people released specifically from the Pelican Bay SHU in each year are even more disproportionately Hispanic and even more consistently significant, when subjected to a chi-square test. In fact, in every year but 2006, the number of Hispanics released from the Pelican Bay SHU was significantly disproportionate to the overall parole population in that year (p-value < 0.001 in every year but 2001, when p-value < 0.01).

Table 1 shows the percentage of Hispanics on parole in each year, the percentage of Hispanics released from the Pelican Bay and Corcoran SHU in each year, and the percentage of Hispanics released just from the Pelican Bay SHU in each year, along with the results of the chi square test for each demographic distribution.

³¹ Note, however, that in two additional years, 2002 and 2004, the overall percentage of SHU releases who were Hispanic was the same or less than the overall percentage of people on parole in California who were Hispanic. These percentages are still significant, however, because the overall racial demographics of SHU releases in those years still differed significantly (in terms of percentages of Whites, Others, and Blacks) from the overall racial demographics of people on parole in California.

Table 1
Results of Chi Square Test Comparing Racial Demographics of SHU Releases to Racial Demographics of California Parole Populations, 1997-2007

Year	% Hispanic on Parole	% Hispanic Supermax Releases	% Hispanic PBSP Releases
1997	42%	47%*	55%**
1998	42%	50%*	58%**
1999	42%	47%*	53%**
2000	42%	49%**	58%**
2001	41%	42%	52%*
2002	41%	38%** ³¹	52%**
2003	39%	41%*	53%**
2004	39%	39%** ³¹	57%**
2005	40%	43%**	62%**
2006	41%	46%**	54%
2007	42%	46%**	66%**

* p < .01

** p < .001

While the disproportionate impact of the SHU on Hispanics, documented in the disparate racial demographics shown in the pie graphs in Figures 3 and 4 and in the chi square test results shown in Table 1, might be logically related to the process of gang validation, it is also important for understanding just who is most likely to experience confinement in the SHU and why. Moreover, if the SHU is disproportionately targeting some minorities, this disproportionate impact deserves legal scrutiny, to determine whether the disparate impact of this extremely punitive confinement on Hispanics is truly justified by gang activity or other potential safety concerns.

Violence Trends

In addition to counting the number of people in the Pelican Bay and Corcoran SHUs, analyzing the lengths of their sentences, and looking at their racial demographics, examining the extent of violence in Corcoran and Pelican Bay, relative to the extent of violence in the rest of the California Department of Corrections and Rehabilitation, is one other important way to assess the impact of the SHUs. Prison violence can be measured in a variety of ways: by the number of assaults by prisoners on prison staff, by the number of assaults between prisoners, by

the number of homicides in prison, and by the number of suicides in prison. In general, homicide and suicide statistics are the most reliable, because there is less discretion in counting deaths in a given year than in counting assaults.³² On the other hand, assault statistics can depend on what prisoners and officers report as an assault, and what administrative regulations characterize as an assault. For instance, as discussed above, an act as minor as spitting can be considered an assault, and assaults on officers are treated differently from assaults on prisoners. Nonetheless, because so many more assaults are reported in a given year than homicides or suicides, assault trends over long periods of time can be revealing, especially when these trends are consistent.³³

In this section, I present two figures, which demonstrate various measures of levels of violence in Corcoran State Prison and Pelican Bay State Prison over the last ten-to-twenty years and two figures, which demonstrates various measures of levels of violence *throughout* the CDCR over the last thirty years. These measures are based on publicly reported inmate incidents in the CDCR, reported by institution (Inmate Incidents 1998-2006), as well as on unpublished data from CDCR historical records, which were requested specifically for this project. This means that incidents are reported for Pelican Bay and Corcoran as a whole, not just for the SHUs in these prisons.³⁴ Pelican Bay and Corcoran are two of the highest security institutions in the state of California; they have prisoners in both supermax conditions as well as in general population, high security conditions. Assuming that prisoners are assigned to security levels based on the risk they pose to each other and staff, one might expect higher levels of violence to

³² Note, however, that even homicide and suicide statistics are subject to discretion and dispute, depending on how a death is categorized, and where the death occurred. For instance, deaths that occur in hospitals external to the prison system might not be counted as in-prison deaths (Krupp 2010: 4).

³³ An average of 5,462 assaults on officers and prisoners, per year, have been reported in the CDCR over the past 20 years, but an average of only 11 homicides and 24 suicides, per year, have been reported over the past 20 years.

³⁴ Consistent with the theme of this paper – addressing the challenges of obtaining data about supermaxes – no unit-by-unit incident reports are maintained or archived by CDCR, so incidents specific to the SHUs within Pelican Bay and Corcoran cannot be counted.

exist in these higher security prisons. On the other hand, if the extremely restrictive conditions in the Pelican Bay and Corcoran SHUs are successfully isolating violent prisoners and controlling them sufficiently to prevent any potentially violent acts from taking place, then perhaps the levels of violence in these institutions should actually be lower. This second hypothesis is not supported by the data; the data reveal that Corcoran and Pelican Bay are responsible for significant portions of the violent incidents reported within the entire state prison system.³⁵

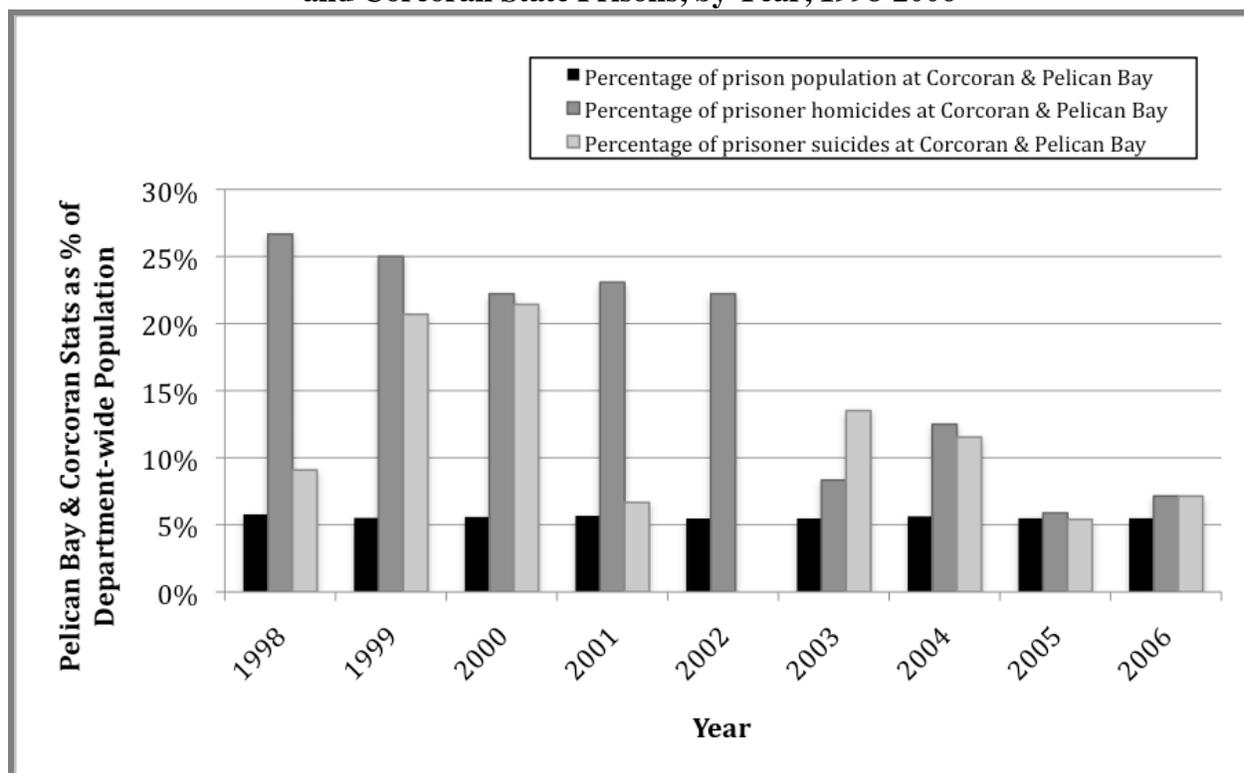
Nonetheless, even though high levels of violence might be expected, and cannot be explicitly attributed to the SHUs, these high violence levels do suggest one critical point: the supermaxes in California have failed to minimize violence in the highest security, most dangerous prisons in the state. The proportion of violence taking place in these facilities still far exceeds the proportion of prisoners contained therein. Perhaps levels of violence would be higher, if the SHUs did not exist. But, at best, the evidence is inconclusive that the SHUs reduce violence levels. At worst, they might exacerbate violence within the institutions in which they are located and within the CDCR as a whole.

Figures 5 and 6 below demonstrate various measures of violence within Pelican Bay and Corcoran, relative to the CDCR overall. Specifically, Figure 5 compares the proportion of the overall state prison population housed at Pelican Bay and Corcoran to the proportion of homicides and suicides that took place at those two institutions between 1998 and 2006. The comparison is striking: although Pelican Bay and Corcoran together (including both the supermax units and the high security, general population units) have consistently housed just over five percent of the state's overall prison population over the past ten years, the two

³⁵ Of course, the violence reported at these institutions may be taking place in either the SHUs or the general population units.

institutions have been responsible for up to 27 percent of the state's in-prison homicides and up to 21 percent of the state's in-prison suicides.

Figure 5
Proportion of California's In-Prison Suicides and Homicides Taking Place in Pelican Bay and Corcoran State Prisons, by Year, 1998-2006

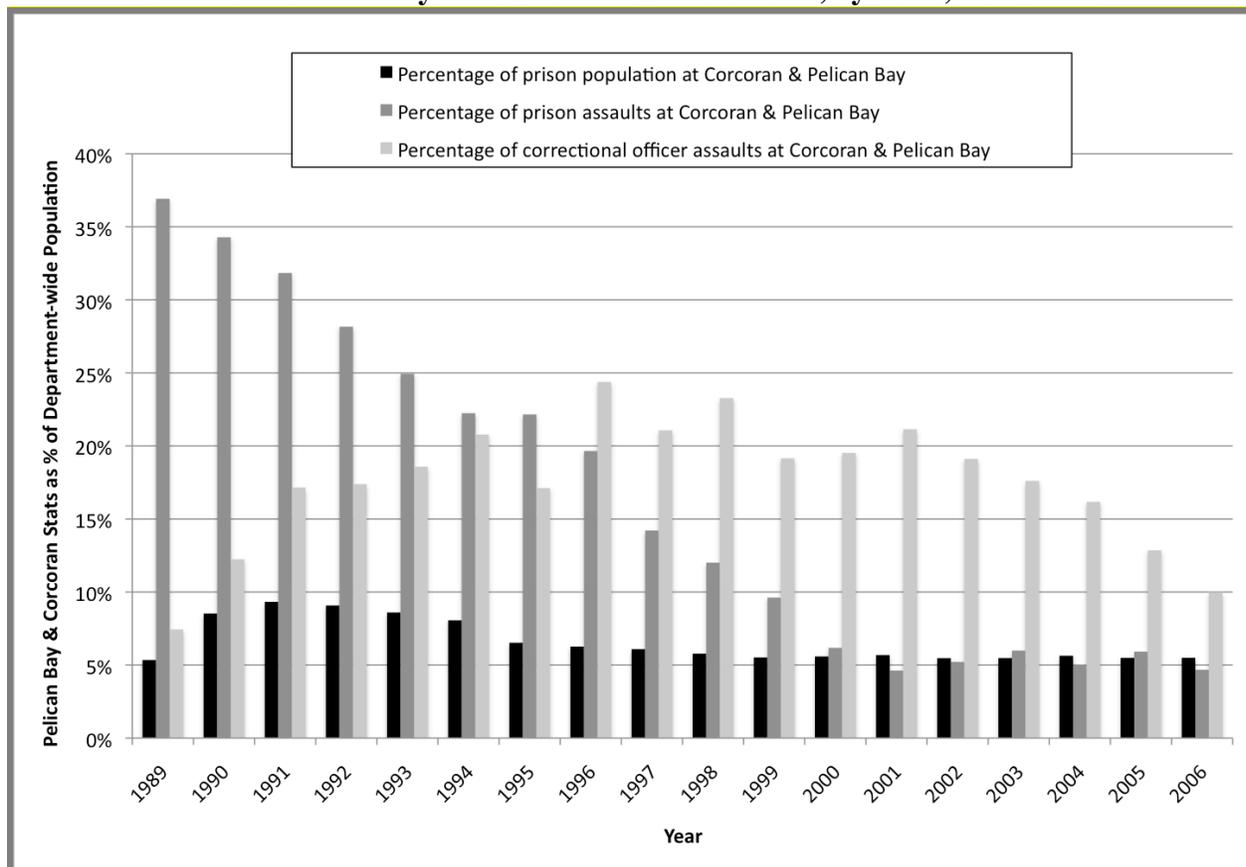


Two trends are apparent in Figure 5. First, the proportion of homicides taking place at Corcoran and Pelican Bay, relative to the homicides taking place throughout the California prison system, appears to be decreasing over this period, falling from a high of 27 percent of all homicides within the state prison system to a low of 7 percent. Second, however, the proportion of suicides taking place at Corcoran and Pelican Bay, relative to the suicides taking place throughout the California prison system, shows no consistent trend, but range from 0 to 21 percent of all suicides within the state prison system. In sum, both homicides and suicides in Corcoran and Pelican Bay have been noticeably higher than might be expected based on the two institutions' share of the state prison population alone. Again, these are institutions that might be

expected to have higher homicide and suicide levels; but these high levels suggest that the SHUs are not necessarily reducing violence either within the institutions where they are located or within the overall state prison system.

Figure 6, below, compares the proportion of the overall state prison population housed at Pelican Bay and Corcoran to the proportion of prisoner-on-staff assaults and prisoner-on-prisoner assaults that took place at those two institutions between 1989 and 2006. Because data are publicly available for an eighteen-year period, long-term trends in violence at these two institutions are visible. Over the last eighteen years, prisoner-on-prisoner assaults at Corcoran and Pelican Bay have steadily decreased as a proportion of all prisoner-on-prisoner assaults within the California prison system, falling from 37 percent of all prisoner-on-prisoner assaults in the state to less than 5 percent of all such assaults. In fact, between 2000 and 2006, Corcoran and Pelican Bay had about exactly as many prisoner-on-prisoner assaults as their share of the overall prison population – in the range of 5 percent. The data call into question just how dangerous the prisoners at these two institutions are. After all, recall that approximately 80 percent of the prisoners in the Corcoran SHU, although allegedly some of the most dangerous in the state, are double-celled. (See Appendix A.) In other words, unlike the majority of SHU prisoners at Pelican Bay, who are single-celled, these double-celled Corcoran SHU prisoners theoretically have ample opportunity to injure each other, but they rarely do so. Either security in these institutions is particularly effective, or these prisoners are not as dangerous as alleged. Without more information about exactly where assaults are taking place, the most plausible explanation for these violence statistics is up for debate.

Figure 6
Proportion of California’s Prisoner-on-Prisoner and Prisoner-on-Staff Assaults Taking Place in Pelican Bay and Corcoran State Prisons, by Year, 1989-2006



While in recent years prisoner-on-prisoner assaults have remained relatively low at Corcoran and Pelican Bay, prisoner-on-staff assaults (labeled “correctional officer assaults” in Figure 6) at the two institutions have fluctuated between accounting for 10 and almost 25 percent of all prisoner-on-staff assaults in California. Either staff at Corcoran and Pelican Bay are more likely to report prisoner-on-staff assaults than prisoner-on-prisoner assaults, suggesting a perception that they feel at higher risk in these institutions, or they are actually more likely to be subject to assault and are therefore more at-risk in these institutions. Again, assault statistics are subject to greater discretion in how incidents are characterized and reported than death statistics. However, these statistics suggest that the Pelican Bay and Corcoran supermaxes are not

necessarily functioning either to make staff feel safer or to make staff actually safer than at other institutions.

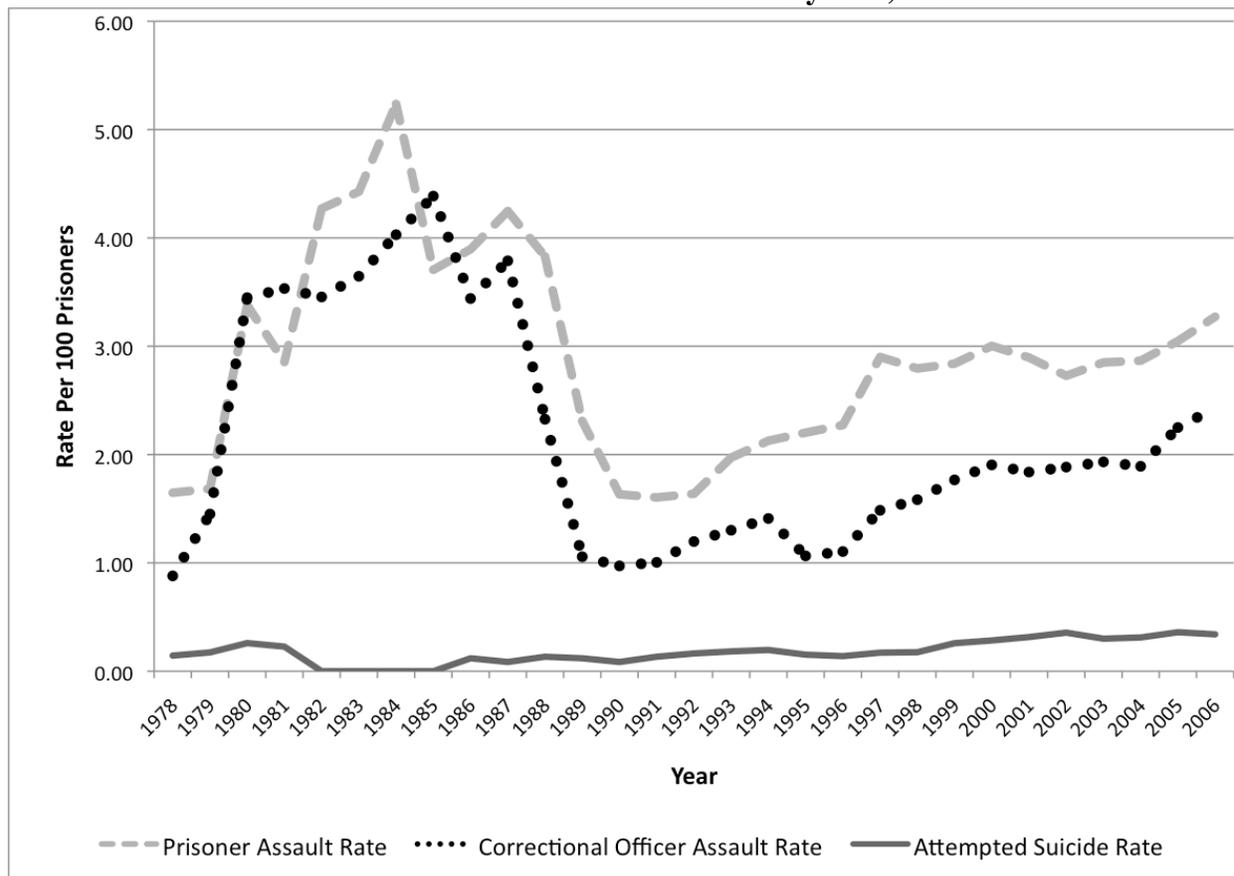
A comparison between the violence statistics from Pelican Bay and Corcoran to those from other high security institutions *without* supermax units in California, suggests the possibility that the supermax units might actually be aggravating problems with violence. For instance, between 1995, when High Desert State Prison opened as one of California's most secure non-supermax prisons, incarcerating the highest security categories of offenders, and 2006, the prison incarcerated approximately 3 percent of the state's overall prison population but was responsible for only slightly more than 3 percent of the state's prison violence.³⁶ Specifically, over these 10 years, High Desert State Prison experienced an average of 6 percent of the assaults between prisoners in the state, 3 percent of the assaults on staff in the state, and 3 percent of the prisoner suicides in the state. The only measure of violence by which High Desert even began to approach Corcoran and Pelican Bay was its share of the homicides in the prisons, which averaged 11 percent over the past 10 years. Pelican Bay and Corcoran, on the other hand, experienced average levels of violence two to six times greater than their share of the overall prison population, in terms of prisoner-on-prisoner assaults, prisoner-on-staff assaults, and prisoner suicides. These statistics all suggest that institutions with supermaxes might actually experience *higher* levels of violence than institutions without supermax. The only measure of violence by which High Desert State Prison was comparable to Pelican Bay and Corcoran was prisoner homicide. And this is the one measure that is the least subject to administrative

³⁶ High Desert State Prison is an especially good non-supermax prison to use as a basis of comparison with Corcoran and Pelican Bay because its design and population resembles those of Corcoran and Pelican Bay, even though none of its prisoners are in long term segregation and isolation. Specifically, High Desert is a newer prison, built by the same designers as and to specifications similar to those of Pelican Bay and Corcoran. It holds prisoners classified at the highest non-supermax security level in CDCR, including prisoners who need some kind of protective custody (often because of gang affiliations) as well as "those who have proven to be management problems while in prison"; in other words, its mission and population sound on paper like the mission and population of Corcoran and Pelican Bay.

interpretation and the most tied to the purpose of the supermax – which is ultimately to protect prisoners and officers from dying. At this, it appears that Pelican Bay and Corcoran do no better than High Desert State Prison. (See Appendix B for a table comparing violence rates over ten years in High Desert State Prison with violence rates in Pelican Bay and Corcoran.)

Similarly, violence statistics from throughout CDCR also suggest that supermaxes have not functioned to isolate and reduce violence in the overall, statewide prison system. In Figures 7 and 8, I provide two graphs showing overall violence in CDCR, from the 1970s through 2006. Figure 7 shows the trends over time in the rate (per 100 prisoners) of prisoner-on-prisoner assaults (“Prisoner Assault Rate”), prisoner-on-staff assaults (“Correctional Officer Assault Rate”), and attempted suicides in CDCR.

Figure 7
Rates of Violence in the California Prison System, 1989-2006



Interestingly, Figure 7 shows that assault rates against prisoners and officers decreased dramatically in 1989, around the precise time that the first beds at Pelican Bay and Corcoran were filled with prisoners. However, this drop likely resulted not from an instantaneous effect of opening these two prisons, but from a change in how assaults were categorized, recorded, and tracked, because this assault-tracking process is both discretionary and subject to changes in administrative regulation. Indeed, since the brief period of decreasing assault rates in the late 1980s, assault rates in CDCR have steadily increased for almost twenty years, from a low of about 1 assault per 100 prisoners per year to a high of over 3 assaults per 100 prisoners per year.

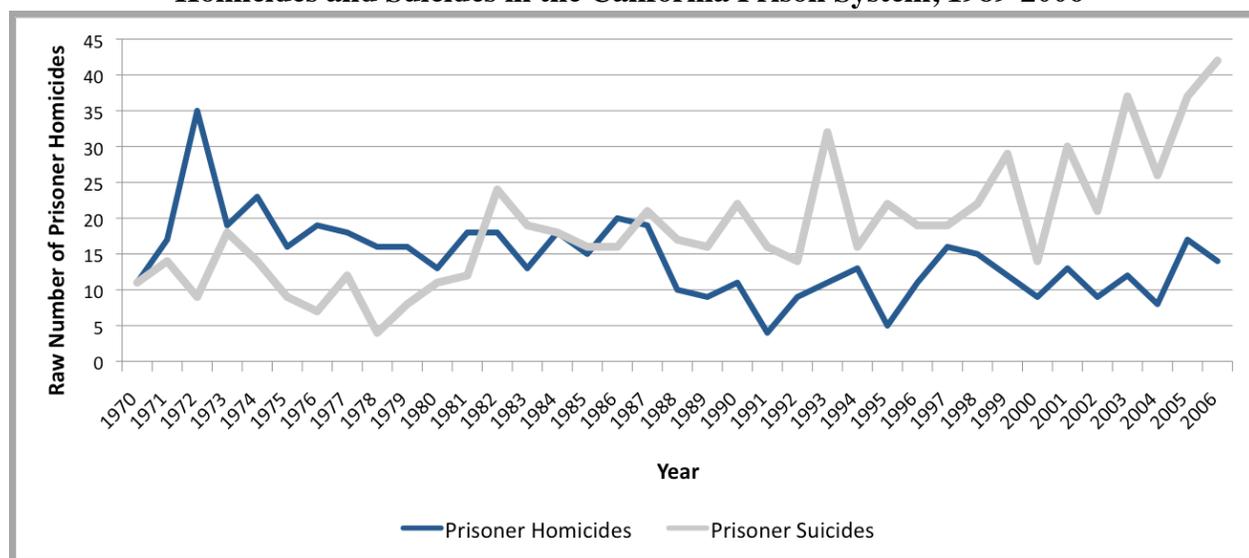
Figure 8 shows the raw numbers of annual homicides and suicides in CDCR.³⁷ Although the death numbers are much lower than the assault numbers, Figure 8 confirms the trends seen in Figure 7 of relatively steady, if not increasing, incidents of violence over time in the CDCR. For prisoner homicides, there were two years of unusual homicide rates: 1972, when 35 prisoners were murdered, and 1974, when 23 prisoners were murdered, which represented a peak period of unrest, punctured by riots and escape attempts, in California's prisons. Outside of these two spikes, CDCR has experienced between five and twenty homicides annually. Figure 8 shows a slight decrease in homicides in the late 1980s, around the time Corcoran and Pelican Bay opened, but the line climbs again up to annual homicide count in the teens in the late 1990s and early 2000s. Suicide counts, on the other hand, appear to have been on a steady incline in California prisons over the last 35 years.³⁸ Of course, these trends might have increased even more drastically if California did not have thousands of prisoners in supermax conditions.

³⁷ Because there are only, at most, a few dozen homicides and suicides in the Department every year, these numbers are shown as raw numbers, rather than rate calculations.

³⁸ Note that deaths of correctional officers are not noted here, because over the last 35 years, only 16 correctional officers have died in the line of duty, and 11 of these died in the early 1970s during the period of extreme unrest in California prisons mentioned above. By comparison, over the past 35 years, 532 prisoners have been murdered, and an additional 694 have committed suicide.

However, these trends also indicate that supermax units have not led to marked decreases in violence over time.

Figure 8
Homicides and Suicides in the California Prison System, 1989-2006



Summary: Are California's Supermaxes Functioning as Intended?

In brief, California's supermaxes are not functioning as intended. The state's supermaxes have been continuously expanding in terms of the sheer number of people detained in conditions of extreme sensory deprivation, since they were first opened in 1988 and 1989. By 2001, CDCR was operating two additional supermax units, detaining hundreds of additional prisoners, at the California Correctional Institution. And, over the past twenty years, California has increasingly resorted to double-celling at least some prisoners in supermax conditions, although the cells were originally designed to house only one person. Indeed, Pelican Bay, the institution explicitly designed to be California's supermax, is the one prison that seems to function at least partially as intended, in terms of primarily single-celling its prisoners. Corcoran, and the additional supermax cells added to the California Correctional Institution, tend to double-cell prisoners, indicating in part that these supermaxes were after-thought institutions that remain overcrowded today. The fact that each of the state's supermaxes operates differently – detaining prisoners

under different conditions for different periods of time – suggests just how inconsistent supermax practices are.

Even more strikingly, prisoners are spending long periods of time in supermaxes – an average of more than two years in Pelican Bay State Prison, and up to seventeen or eighteen years. These long sentences suggest that “getting out” – whether by paroling, snitching, or dying – of supermaxes can be hard, if not impossible.

Finally, despite assertions by correctional administrators that supermaxes are necessary and helpful in controlling violence, there is no evidence that violence in the California Department of Corrections and Rehabilitation has decreased over the last twenty years. In fact, all measures of violence within CDCR suggest that it has increased. Moreover, even though Corcoran and Pelican Bay together make up less than five percent of the overall state prison population, they appear to be responsible for significant portions of this violence – up to one-quarter of all violence in the department, in some years, as measured by both assault statistics and death statistics.³⁹

One explanation why supermaxes in California are not functioning as intended is the role of discretion in correctional administration. As the discussion of how prisoners are assigned to definite and indefinite supermax terms suggests, correctional administrators have broad discretion in assigning prisoners to supermax terms. Even though the high-level correctional officials who originally designed and built Pelican Bay and Corcoran hoped that the Secure Housing Units would provide a small, fixed number of supermax beds, forcing correctional administrators to limit how many people were assigned to these institutions as well as the lengths

³⁹ These California violence statistics directly contradict the findings of Briggs, Sundt and Castellano (2003; 2008) that supermaxes might contribute to increased staff safety, although the California violence statistics resonate with findings in Mississippi suggesting that supermaxes might actually aggravate problems with violence in supermaxes (Kupers, Dronet, Winter 2009).

of the assignments, the original designers had no control over how their buildings would ultimately be used within CDCR.

Tomorrow: What Do We Know about People Released from California's Supermaxes?

In this section, I review what data are available on how many people parole from supermaxes annually. I also evaluate a few very rough estimates of the frequency with which people serve multiple terms in a supermax as well as the recidivism rates of supermax parolees.

Supermax Departures

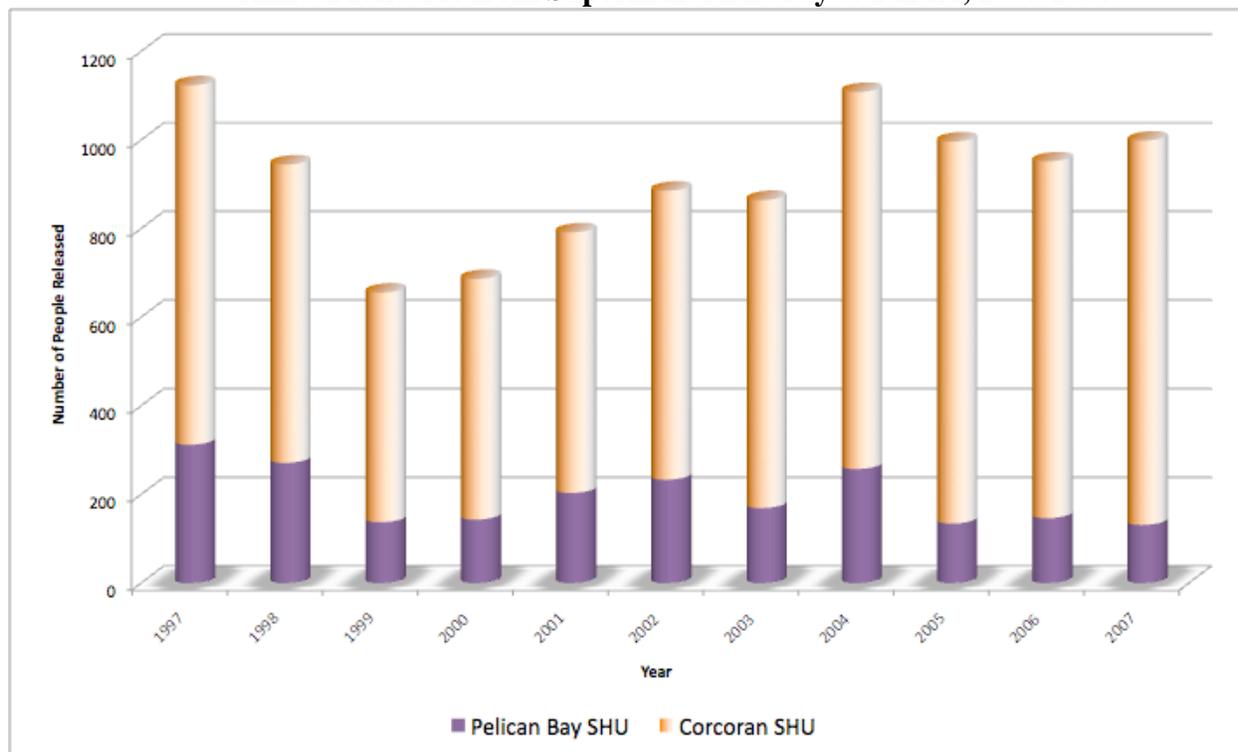
First, the most basic question, in terms of parole and community re-entry: how many people leave supermaxes annually? Is there significant turn-over in the population? The data reveal that the CDCR releases hundreds of people annually, directly from supermaxes, into their communities, under parole supervision.⁴⁰ Specifically, in the years analyzed (1997 - 2007), the average combined supermax population at Pelican Bay and Corcoran has been 2366 prisoners. On average, 909 prisoners are released annually from the supermaxes directly to parole; 909 prisoners accounts for roughly 38 percent of the overall annual supermax population in California. The fewest people that have ever been released directly from the supermax in one year was in 1999, when 655 people were released or 27 percent of the overall supermax population. The most people ever released from the supermaxes in one year was 1,123 in 1997, or 47 percent of the overall supermax population.

Figure 9 shows a year-by-year breakdown of these releases over the last ten years. The darkly-shaded, bottoms of the bars represent releases from the Pelican Bay SHU, and the lightly-

⁴⁰ The data analyzed in this section describe prisoners who were released directly from a SHU at Pelican Bay or Corcoran onto parole. Some prisoners captured in the data spent 90 days or fewer in the general population at the institution where they served their SHU term.

shaded, tops of the bars represent releases from the Corcoran SHU; clearly many more prisoners are released directly from Corcoran than directly from Pelican Bay.

Figure 9
Annual Releases from Supermaxes Directly to Parole, 1997-2007



The data suggest that hundreds of prisoners every month are paroling directly from the SHU, or from a high security prison within a few weeks of being released from the SHU. These prisoners have spent an average of one to two years, and up to seventeen or eighteen years, in near-complete solitary confinement, or, possibly, with contact with only one other cellmate. The fact that they are released from these conditions directly onto parole raises questions about re-entry and what it is like for someone to re-adjust to a world with natural light, grass, and constant human contact. In the following section, I address what little is known about the recidivism of supermax parolees – both in terms of returns to prison from the street, and returns to the supermax from within prison.

Supermax Cycling

In this section, I first analyze how frequently prisoners serve more than one term in the SHU at Pelican Bay or Corcoran, and then I present the limited data that are available about how often prisoners who are paroled to the streets from the SHU return to prison. This data reveal that a prisoner who goes to the SHU once is extremely likely to return to the SHU again and might also be more likely to return to prison once he is paroled. Again, these data are yet another indication that SHUs may not be functioning to deter either misbehavior or violence in prison; despite the harsh conditions of the supermaxes, prisoners seem to cycle in and out of these units repeatedly.

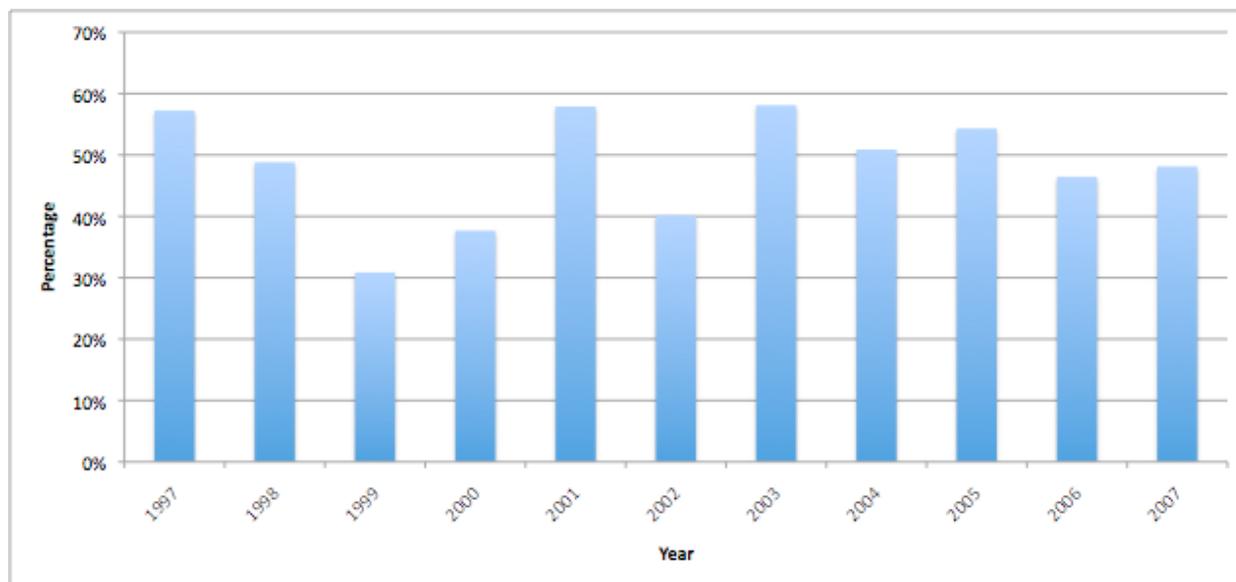
A prisoner might serve multiple SHU terms in one of two ways: either he breaks a rule in the SHU and so is assigned to a subsequent, consecutive term, or he is released from the SHU, returns to the general population of prison, commits another violation, and returns to the SHU. In order to provide some sense of how often prisoners serve multiple SHU terms, or cycle in and out of the SHU, Figure 10 shows the percentage of the SHU population, in any given year, that has served multiple terms in the SHU.⁴¹ (See Appendix C for more specific data, by institution.)

No data exist regarding the recidivism statistics for prisoners paroled directly from the Corcoran or Pelican Bay SHUs, or for prisoners who are paroled from elsewhere in the Department of Corrections, but who have previously served a term in the SHU. When I requested this information from CDCR, they gave me one aggregate number: the number of prisoners who had been paroled directly from the Pelican Bay or Corcoran SHU between January 1997 and December 2007, and who had been returned to prison for violating parole by March of 2008. In total, 6,195 prisoners, over ten years, were in this category of recidivating after having

⁴¹ More specifically, this percentage was calculated by dividing the number of people paroled in any given year, who had served *more than one* term in the SHU during their prison sentence, by the number of people housed in the SHU during that year. This provides a rough estimate of what percentage of the SHU population in any given year has served more than term in the SHU.

been paroled directly from the SHU. This amounts to 62 percent of the total number of prisoners paroled directly from the SHU over this period. Over this same ten-year period, the average recidivism rate for all prisoners paroled from the CDCR was 46 percent. Such data are too aggregated to provide any rigorous sense of how supermax parolees fare on parole; the data simply suggest that supermax parolees might face greater challenges than the average prisoner and might have a higher likelihood of recidivating, but more data, disaggregated by year, by criminal history, by age, and by length of stay in the supermax, are necessary to provide a truly rigorous analysis.

Figure 10
**Percentage of Total Annual SHU Population (Corcoran & Pelican Bay)
 Serving Multiple SHU Terms**



Take Two: Are California's Supermaxes Functioning as Intended?

Just as with the data about who is inside supermaxes, the data about who is released from supermaxes suggest that California's supermaxes are not functioning as they were originally intended to function. First, hundreds of people annually are released directly from supermaxes onto parole, having spent at most 90 days outside of a supermax cell before being released.

Second, hundreds more people every year are cycling in and out of the supermaxes; more than half of the supermax population in any given year has served two or more terms of confinement in the supermax.

The correctional administrators who designed and built California's supermaxes in the 1980s envisioned a functional, deterrent punishment: people would spend a fixed term in intensive solitary confinement, and then they would return to the general prison population, and, hopefully, avoid the supermax in the future. In practice, the same people appear to be cycling again and again through the supermax.

Conclusion

Understanding more about how supermaxes function and whether they are effective is critical to evaluating the success of one of the most popular trends in punishment in the twenty-first century: long-term solitary confinement in conditions of near-complete sensory deprivation. This paper reveals as much about what is *not* known about these institutions as what is known, and suggests many further avenues of study. Better data about who is in supermaxes, why, and for how long are needed. Rigorous data about the effect of supermaxes on violence within institutions and departments of corrections are needed. And studies of the experiences of supermax releasees on parole – and their likelihood of returning to prison – are also needed.

Despite all these unanswered questions, this paper does provide some answers. Primarily, it reveals that supermaxes are not functioning as their designers intended them to function. Prisoners are spending longer periods of time in supermax cells than the designers ever intended. Moreover, prisoners do not appear to be deterred from misbehavior by the existence of supermax cells; neither violence rates nor prisoner homicides and suicides have decreased in the

CDCR in the twenty years since supermaxes opened. Furthermore, well over half of supermax prisoners in any given year appear to be spending multiple terms in the supermaxes, suggesting that the prisons are neither general deterrents to violence nor specific deterrents to individuals.

The data in this paper also reveal two potentially problematic facts: SHU prisoners appear to be disproportionately Hispanic, relative to the general prison and parole populations in California, and SHU prisoners are frequently released directly from the SHU onto parole. These facts raise questions about whether the SHU functions in a discriminatory way; whether the SHU adequately prepares prisoners to survive on the streets, given the number of people who are released annually from long-term solitary confinement onto parole; and whether the SHU makes our communities safer.

Appendix A

California Supermax Cell Population, by Prison, as of February 2010

Prison	Design Capacity (DC)	Population	Double-Celled Prisoners (Pop. - DC * 2)	Single-Celled Prisoners	Percent of Prisoners Double-Celled
Pelican Bay State Prison	1,056	1,118	124	994	11%
Corcoran State Prison	872	1,439	1134	305	79%
California Correctional Institution (Tehachapi)	378	764	382*	0	100%
Valley State Prison for Women	44	63	38	25	60%
TOTAL	2,350	3,384	1,678	1,706	50%

*Overflow SHU population exists at Tehachapi and must be housed elsewhere.

Appendix B

Rates of Violence within High Security Prisons with Supermax Wings (Pelican Bay & Corcoran) versus Rates of Violence in a High Security Prison without a Supermax Wing (High Desert), 1996 – 2006

Year	Prison	% of State Population	% of State Prisoner Assaults	% of State Correctional Officer Assaults	% of Prison Suicides	% of Prison Homicides
1996	High Desert	3%	7%	2%	-	18%
	Pelican Bay	3%	6%	19%	-	9%
	Corcoran	4%	13%	6%	-	0%
1997	High Desert	3%	8%	3%	-	13%
	Pelican Bay	3%	7%	14%	-	38%
	Corcoran	3%	7%	7%	-	0%
1998	High Desert	3%	6%	2%	9%	20%
	Pelican Bay	2%	6%	15%	5%	20%
	Corcoran	3%	7%	9%	5%	7%
1999	High Desert	3%	7%	4%	3%	8%
	Pelican Bay	2%	5%	11%	7%	8%
	Corcoran	3%	5%	8%	14%	17%
2000	High Desert	3%	5%	4%	0%	11%
	Pelican Bay	2%	3%	12%	7%	11%
	Corcoran	3%	3%	8%	14%	11%
2001	High Desert	3%	6%	4%	0%	8%
	Pelican Bay	2%	1%	13%	3%	0%
	Corcoran	3%	3%	8%	3%	23%
2002	High Desert	3%	5%	4%	0%	22%
	Pelican Bay	2%	2%	12%	0%	0%
	Corcoran	3%	3%	7%	0%	22%
2003	High Desert	3%	5%	3%	0%	8%
	Pelican Bay	2%	3%	10%	3%	8%
	Corcoran	3%	3%	8%	11%	0%
2004	High Desert	3%	4%	4%	0%	0%
	Pelican Bay	2%	2%	10%	8%	13%
	Corcoran	3%	3%	6%	4%	0%
2005	High Desert	3%	5%	3%	3%	12%
	Pelican Bay	2%	2%	7%	5%	6%
	Corcoran	3%	4%	6%	0%	0%
2006	High Desert	3%	6%	3%	5%	0%
	Pelican Bay	2%	2%	5%	0%	7%
	Corcoran	3%	3%	5%	7%	0%
AVG	High Desert	3%	6%	3%	3%	11%
	Pelican Bay	2%	4%	11%	4%	11%
	Corcoran	3%	5%	7%	6%	7%

Appendix C

People Released from the SHU, with Record of Two or More SHU Terms, 1997-2007

Year	Pelican Bay Releasees w/ Multiple SHU Terms	Corcoran Releasees w/Multiple SHU Terms	Total SHU Releasees w/Multiple SHU Terms
1997	569	785	1354
1998	379	776	1155
1999	249	489	738
2000	298	583	881
2001	154	1233	1387
2002	78	869	947
2003	125	1259	1384
2004	133	1086	1219
2005	103	1163	1266
2006	97	988	1085
2007	87	1052	1139

This table documents the number of people released from the Pelican Bay and Corcoran SHUs (either back to prison or onto parole), in a given year, who had previously served at least one term in the SHU. These data suggest that there is a significant amount of “SHU recidivism”: almost half of the annual SHU population has served at least two SHU terms.

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