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Compulsory commitment of inmates into the restrictive housing in U.S. prisons – roles, goals and future dynamics

Abstract: Compulsory commitment of inmates into restrictive housing, or so called solitary confinement, administrative segregation, supermax, gives rise to many controversial issues that scientific research in the United States deals with. Subject to discussion are especially the constitutional controversies and the influence of such a treatment on the offender's wellbeing as a human that tends to maintain social contact and that is vulnerable to possible negative impact of such strict conditions. Among scholars and practitioners there are opponents and also supporters of this solution, although internationally there is a conclusion (see the Nelson Mandela Rules) that restrictive housing should be banned, in particular when it is imposed on inmates for an indeterminate period or a prolonged period of time. Nowadays, the prevalent opinion is that other policies and practices should be worked out and implemented in order to replace restrictive housing, and at the same time that tools will have to be able to assist in achieving the main goals: security and order in the prison as well as rehabilitation and deterrent impact on inmates.

Key words: inmate, U.S. correctional system, prison, restrictive housing, correctional regulations and policies.

Introduction

It can be estimated, with considerable caution, that there are currently more than 11 million people worldwide in penitentiary isolation (in various penitentiary

facilities, detention centers for illegal immigrants or minors, forensic psychiatric facilities and psychiatric hospitals) (Walmsley 2018), about 20% of which is in the United States. This country has the highest prison population in the world, accompanied by the highest rate of prisonization in the world, which in 2017 amounted to 440. Admittedly, there was a decrease in the latter indicator compared to 2016, when it amounted to 450, and compared to 2007, when it was at the level of 505 people (Bronson, Carson 2019). Although the upward trend in the number of inmates has been halted in the United States, and it is slightly declining, the problems associated with the execution of custodial sentences and the isolation of offenders are a matter of considerable interest in American literature. One of the main concerns in this area is to keep convicts, detainees or prisoners under strict separation from the rest of the prison population and with very limited contact with prison officers or other facility staff and the outside world. These conditions are referred to collectively as restrictive housing of inmates, and are introduced, among other things, in penitentiary facilities known as supermax (super maximum security prisons), guaranteeing exceptional security and insulation measures, which are distinguished from maximum security prisons.

The aim of this article is to deepen the knowledge on the conditions of stay in strict isolation of convicts serving prison sentences within the North American penitentiary system (which consists of the federal system and various state systems) and to initiate a discussion on this subject also in Poland. It should already be pointed out here that the conditions for detaining a convicted person from the general prison population may also be implemented for convicted prisoners in Polish prisons in the form of placing them in a disciplinary cell for up to 28 days (Art. 143 § 1 item 8 of the Executive Penal Code), placing the offender in a so-called closed-type prison facility, intended for convicts, or in a special residential cell of such a prison (Art. 88a and 88b of the Executive Penal Code) for an indefinite period of time, placing the convict under special protection in seclusion from the prison population for a fixed period of time, in principle not longer than 6 months, with the possibility, however, of extending this measure (Article 88d of the Executive Penal Code) and placing them in a security cell (Article 28 of the Act of May 24 on Direct Coercive Measures and Firearms¹).

Definitional difficulties

However, there is a lack of consensus on what falls within the meaning of the term and the relationship between restrictive housing and supermax institutions. Very often these terms are used as synonyms. Furthermore, expressions that have

¹ Act of May 24, 2013 on Direct Coercive Measures and Firearms, Journal of Laws 2019, item 2418, consolidated text.

also entered the canon of legal language, such as solitary confinement, isolation and administrative segregation (Mears et al. 2019, p. 2) are also considered to be synonymous. In addition, the impression of chaos is compounded by a review of the legal regulations of state and federal penitentiary facilities, which define the places of strict isolation of inmates as: secure housing unit, special housing unit, restricted housing unit, disciplinary unit, maxi-maxi, special management units, intensive management unit (Labrecque 2016, p. 49), in federal law as Penitentiary Administrative Maximums (ADX for short – Mears et al. 2019, p. 3). “Supermax” usually means a prison facility or a separate place within a prison facility, which is called a “prison within a prison”, with conditions that are stricter than those of maximum security prisons. This type of penitentiary facility is intended primarily for convicts placed in restrictive housing conditions for a significantly long time. The term “restrictive housing” has basically been used for about a decade, increasingly replacing such terms as “solitary confinement” or “isolation”. The latter have become pejorative in nature, as inhumane means, similar to inhuman treatment or even torture. However, it is also used inconsistently in official documents drawn up, among others, by the United States Bureau of Justice Statistics for short: BJS) or the National Institute of Corrections.

On the basis of the views presented in the American literature on the subject, it should be considered that “restrictive housing” means placing the convict in a single cell (exceptionally two-person cell) for at least 22–23 hours per day, with one hour of outdoor recreation, with the convict being deprived of their normal life (without any obstacles or physical barriers, e.g. bars, acrylic glass panes, handcuffs, etc.), significant social contact with other inmates or employees of the penitentiary facility and a significant limitation (or even lack of) social, educational, cultural and learning and other impacts, for a period exceeding 30 consecutive days. As this definition shows, the basic features of “restrictive housing” are limitation, deprivation and isolation (Haney 2018, p. 287).

The importance of this social problem can be seen in circumstances such as the discussion about the nature of the American military prison Guantanamo Bay (in Cuba), and in particular the rigor of the prisoners held in Camp 6 of this facility. The highest US military authorities officially denied that the Guantánamo prison is a supermax type facility (Amnesty International Report, 2007).

And there is the fact that in the United States, public opinion is, in principle, constantly alarmed in mass media about the conditions of supermax prisons. The own analysis of these reports leads to the conclusion that they most often concern those supermax prisons, which in the United States were established the earliest, i.e. United States Penitentiary Administrative Maximum Facility Florence (in short: ADX Florence United States Penitentiary (Colorado), SHU Pelican Bay State Prison (California) and Red Onion State Prison (Virginia). At least a few documentaries illustrating the conditions of imprisonment in extraordinarily strict prisons have already been made, among them the HBO document from 2017 concerning the

prison located in the south-eastern part of Virginia, the Red Onion Prison (the prison has been operating since 1998), entitled *Solitary: Inside Red Onion Prison*.

The origins and evolution of the strict separation of convicts serving prison sentences in North American prisons

Maintaining convicts in strict isolation, i.e. with very limited contact with prison officers, other employees of the facility and in conditions of separation from fellow prisoners, has a long history in the United States, dating back to the early 19th century, i.e., the use of the cell system, the so-called Pennsylvania model, under which prisoners worked in a residential cell in isolation from the rest of the prison population. To maintain full separation, specific physical barriers were created to prevent interaction between convicts. At that time, there was a conviction that doing work, staying in solitary confinement in conditions of strict control of behavior are conditions conducive to moral improvement of the offenders. In nineteenth century practice in the United States, a different model ultimately prevailed, i.e. the Auburn model, which required the separation of the convicts during night time, while allowing them to work together during the day, provided that absolute silence was maintained – a violation of the ban on silence was subject to severe disciplinary penalties (Mears et al. 2019, pp. 3–4).

A prototype for the supermax penitentiary facilities was the world-famous federal prison (formerly used for military purposes) – Alcatraz (the Alcatraz Federal Penitentiary, also known as The Rock) located in the San Francisco Bay on Pelican Island. It functioned until 1963, but prisoners were not kept there in strict isolation because they could gather in the courtyard, during meals and while doing work to support the facility (Odier 1982, pp. 113–117). It was closed because of the excessive cost of living and the conviction that the most dangerous offenders should not be separated from the general prison population, but should be distributed evenly in closed penitentiary facilities. That is why the prisoners were transferred to several federal prisons (Odier 1982). The idea of keeping the offenders who pose a particular threat to security and order inside the prison in strict isolation from other prisoners was reinstated in the United States in the early 1980s, based on the conviction that such a measure will improve the level of security in overcrowded prisons. Since the mid-1970s, there was a sharp increase in the number of inmates serving prison sentences or being temporarily arrested. After a dozen or so years, Alcatraz was replaced by another penitentiary facility, the purpose of which was to isolate the most dangerous offenders – the United States Penitentiary Marion in Illinois. In this prison, a number of acts of violence (usually involving the use of a knife) by inmates against both prison staff and fellow prisoners took place between July and late October 1983. As part of these

events, a dozen or so people suffered damage to their health, and several, including two Prison Service officers, lost their lives. A detailed description of the events was included in the report from December 1984, submitted to the Commission for Justice chaired by P.W. Rodino Jr., appointed by the House of Representatives. As a result, a state of emergency was declared in this penitentiary facility and all prisoners were placed there in strict isolation. In this way, the Marion prison became the first “super prison” in the United States (Labrecque 2016, p. 56). Many subsequent states began to imitate this solution and decided to build penitentiary facilities similar to Marion (the first two by the late 1980s were established in the state of Arizona, then California), recognizing that this way of serving punishment as an essential tool for preventing and stopping the violence that was omnipresent in overcrowded North American prisons (Sundt et al. 2008, p. 94). At the beginning of the 21st century, supermax prisons were already present in 44 states and were subject to a special strict regime of about 25,000 inmates per year, which was an average of about 4–5% of those sentenced to imprisonment for a crime. However, this data does not include convicted offenders, those found to be insane, juvenile offenders and those in detention centers for illegal immigrants (Association of State Correctional Administrators, the Arthur Liman Public Interest Program and Yale Law School, 2016, p. 1). According to research from 2015, about 18% of the prisoners participating in it admitted that within a year from the date of participation in the research they were in restrictive housing, with about 10% of them serving a prison sentence of at least 30 days (Beck 2015, p. 4). It should be noted at this point that these figures vary significantly from state to state, there are state systems where only 1 per cent of the convicted prisoners are placed in restrictive housing conditions, but there are also systems where this percentage is as high as 28 per cent of the total prison population (Beck 2015, pp. 1–2). In addition, the terminological differences already highlighted at the beginning, the dynamically changing state penitentiary policies, the rulings of the North American courts, errors in recording and statistical analysis of the data collected, and methodological uncertainties in the available research must lead to the conclusion that there is currently a lack of reliable and authoritative data on the number of inmates held in restrictive housing (Mears et al., p. 5).

Types of restrictive housing and characteristics of the convicts placed in these conditions

A strict separation of the offender from the prison population, the staff of the penitentiary facility and the outside world can be applied for a fixed or indefinite period of time. The first ones to end up in the supermax facilities are offenders who have been violent in the past while in prison (against fellow prisoners or prison staff), have persistently evaded the legal rules governing order within the

prison facility (they have been disciplined) or have been identified as posing a serious threat to security and order within the prison. In particular, the latter premise of detention, due to its discretionary character, raises serious doubts in the literature (Gendreau, Labrecque 2016, p. 358).

Supporters of maintaining a certain number of prisoners in extraordinary isolation maintain that this has a positive effect on the external and internal security of the facility and on the maintenance of order, indicating to prisoners what behavior is approved and what will be met with an acute response from the prison administration (Mears et al. 2013, pp. 587–615). Undoubtedly there is a problem with maintaining internal order and respect for legal standards in North American penitentiary facilities. According to the Bureau of Justice Statistics of the U.S., in 2014 the number of disciplinary violations per 1000 convicts was 949 per year (Annual Survey of Jails 2014 ICPSR-36274-v1., 2015). The violence committed by detainees can be divided into 3 basic categories: self-aggressive acts, acts of aggression directed against other inmates, and collective acts of aggression, such as riots. The threat to internal order and security is also posed by the involvement of organized crime (gangs) in North American penitentiary units (Skarbek 2014).

Others point out that such conditions of punishment cause mental disorders in the inmates and weakens the authority of the prison administration (Shalev 2011, pp. 9–10). The offenders who are violent or who pose a particular challenge to the prison administration because of the difficulties in adapting to the standards in force in penitentiary units are placed there. This approach is proving to be the easiest from the point of view of the prison administration, which is struggling with financial and human resources shortages (Shalev 2011).

Strict isolation of the convict in the form of restricted housing is used in many penitentiary facilities in the United States, not only in extremely strict prisons. Until 2016, the strict isolation of inmates was considered by prison directors as a primary tool for managing the risks in the penitentiary facility.

Analyzing the statements available in the literature (Labrecque 2016, p. 51), it can be assumed that the concept of restrictive housing is defined collectively by such institutions as:

- 1) placing an inmate in a single-person cell for disciplinary/punitive segregation for disciplinary offence, at that moment for a limited period of time, usually (although this depends on state regulation) for up to 30 days (after one disciplinary offence, this type of punishment may be combined with another one);
- 2) as a measure of public order, consisting of separating (and thus incapacitating) a convicted person who presents significant difficulties in adjusting their behavior to the standards in force or who presents a significant threat to security and order within the facility (administrative segregation), at that moment for a fixed or indefinite period of time; with the possibility of participating or excluding participation in group activities of convicts. In rare cases, inmates shall remain in these conditions until the end of their sentence;

- 3) as a protective segregation measure, normally applied to convicted sex offenders, convicts who have been employed in the past as prison or police officers, convicts who cooperate with the judicial authorities, convicts who show an inclination to self-destruction; the duration of the measure should not exceed 90 consecutive days, but may be extended for a further limited period;
- 4) as a temporary measure for purposes other than those mentioned above (temporary segregation), e.g. for the duration of the preparatory phase, for the duration of the investigation of the disciplinary offence, or when the convict is awaiting transport to another prison or even when there is a shortage of space in the cells, and the need arises for a convict to be placed in a free cell for the execution of the disciplinary sentence.

Despite the various types of strict isolation (as shown above), these divisions are not always adhered to in both the literature on the subject and in legal acts concerning state penitentiary systems (not to mention journalistic texts). This is all the more the reason for the use of the term restrictive housing in the last decade to describe, for example, the disciplinary penalty of placement in an isolation cell and the isolation implemented against the convict as a measure of order.

Factors that increase the likelihood of using restrictive housing are the age of the convict (particularly between 18 and 30 years of age), degree of education (the lower the higher the risk), sexual orientation (homosexuality increases the likelihood), previous conviction history, in particular prison recidivism, violent crime (other than a sex crime) – see table below.

Table 1. Criminological characteristics of convicts (including history of convictions) in prisons or jails in the United States*, for whom conditions of imprisonment in strict isolation of restrictive housing were implemented in 2011–2012 on the basis of Beck 2015, p. 5

Crime for which the offender is currently serving a sentence:	% of offenders in prison	% of offenders in jail
Violent sex crime	15.5	20.5
Violent crime (other than a sex crime)	24.6	27.7
Crime against property	19.1	18.0
Drug crime	14.4	15.6
Other	15.2	13.3
Length of imprisonment verdict:		
Under one year	8.8	–
From 1 to 5 years	15.9	–
From 5 to 10 years	18.7	–
From 10 to 20 years	21.7	–
Over 20 years	19.5	–
Life imprisonment	20.8	–

Crime for which the offender is currently serving a sentence:	% of offenders in prison	% of offenders in jail
Period for which provisional detention was applied:		
Under 30 days	–	6.2
1 to 6 months	–	10.2
6 to 12 months	–	16.9
Over 1 year	–	22.9
Number of previously applied security measure in the form of provisional detention		
1 time	12.8	12.6
2–3 times	17.3	14.8
4–10 times	19.6	18.4
11 times or more	23.9	21.7
Period of imprisonment previously served:		
No such period	13.5	13.5
Under 30 days	17.3	15.0
1 to 6 months	17.4	16.0
6 to 12 months	18.6	18.3
From 1 to 5 years	20.6	20.5
Over 5 years	20.9	21.5
Time spent in penitentiary isolation before the date of participation in the research		
under 30 days	8.5	8.0
1 to 6 months	13.5	16.8
From 6 months to 12 months	23.0	31.5
From 1 to 5 years	21.5	35.2
From 5 to 10 years	19.3	0.0
Over 10 years	15.6	0.0

* In the U.S. penitentiary system, jails are intended not only for people who are under arrest or waiting to be transferred to prison, but also for those who are (usually) sentenced to less than one year in prison for misconduct.

The overarching aim of strict separation of some offenders, as usually indicated, is also to stabilize the environment (interactions) between the remaining inmates, which improves their social rehabilitation process and increases the effectiveness of educational, vocational and therapeutic programmes (Mears 2006, p. 5). The strict isolation of some convicts is intended to prevent collective incidents in prisons and to hamper the functioning of organized crime groups within them (Mears 2006, p. 5).

Conditions for serving a restrictive housing sentence

Under restrictive housing conditions, the inmate is strictly separated from the general prison population and under control, and has significantly limited access to penitentiary impact programmes. They may also be completely deprived of them. They are placed in a single cell. Only in the case of overcrowding is it allowed to accommodate the offender in a two-person cell. The area of a residential cell ranges from 4.2 m² to 12 m², depending on the prison and state regulations (Shalev 2011, p. 3); with an average for U.S. prisons of 6.5 to 7.5 m² per prisoner (Foster 2016, p. 94). The entrance door to the cell is made of steel and has a narrow glass section through which the situation in the cell shall be monitored and through which contact is made between the prison officer, other staff member or doctor, psychologist in the facility and the inmate. The convict may hear noises coming from cells located next to their cell (usually there is unbearable noise in the ward), but it is not possible to see the other prisoners. It happens that convicts develop their own channels of communication between themselves, e.g. by means of ventilation ducts or by transmitting agreed sound signals. The cell's window (if the cell has windows) is equipped with special shielding (so-called drapes), which make it impossible for convicts to observe the surroundings around the building in which the cells are located; alternatively, the window view shows the wall of another building. A cell can be artificially illuminated, especially since light from outside of it has difficult or impossible access inside. Usually the artificial lighting is switched on for 24 hours without any break. The intensity of light and its color are generally outside the convict's influence. However, in the case of convicted women placed in strict isolation, 60% of states have declared that they retain the ability to control the intensity of artificial lighting in a residential cell (Foster 2016, p. 95). Leaving a residential cell is only for one or two hours per day, for one hour of outdoor physical activity (to a walking area, usually concrete, without any equipment; Shalev 2011, p. 3) or going to a bathhouse if the cell is not equipped with a shower (on average three times a week), or for visits. Every time they leave the cell and return to it, the convict is subjected to a search of their belongings and examination of their body, sometimes they are obliged to remove all elements of their clothes. They can only move around the prison assisted by two or more members of the prison staff. The cell has a hygiene and sanitary corner, a table and a metal bed (Foster 2016, p. 94). All other activities of everyday life, including eating, take place inside the cell (food is delivered through a specially made secure doorway to the cell). Handcuffs are put on every time the inmate leaves the cell, and in some states, handcuffs are also put on their legs (Labrecque 2016, p. 53). For first-time convicts in restrictive housing conditions, contact with their loved ones is usually prohibited. Other

inmates may have such visits, but they are rare and meetings are always held in such a way as to prevent direct contact with the visitor (Labrecque 2016, p. 53). The length of time an inmate has been detained in the above described rigor varies considerably. As a rule, it should be applied for a time measured in days (e.g. as a disciplinary penalty) and for a limited period, not exceeding 31 days. However, in the light of data provided by Yale University, among others, it turns out that about 1/3 of the convicts serve between 1 and 3 months of their prison sentence this way and 11% of the convicts stay in restrictive housing conditions for more than 3 years (Association of State Correctional Administrators, the Arthur Liman Public Interest Program and Yale Law School 2016, p. 2). Thus, the time of application of this rigor may vary greatly, although it is argued in the literature on the subject that the greatest controversy concerns its application for more than a year. This measure concerns the vast majority of men, and is rarely applied to convicted women, as studies show that only about 1% of them have experienced being placed in a single-person cell in strict isolation (Foster 2016, p. 88).

Under the influence of many court rulings on the constitutionality of restrictive housing, research findings and public pressure, legal solutions have been adopted in some states to prohibit the use of restrictive housing for an excessively long period of time for pregnant women, convicts under 18 years of age (Kaba et al. 2015, pp. 1911–1916)² and convicts with diagnosed psychotic disorders. However, in some states, this method of punishment continues to apply to offenders with a diagnosed mental illness. The handling of the latter category of prisoners then includes medical – psychiatric – consultation through the glass placed in the doorway to the living cell, which takes place at a frequency of once a day to one meeting per week (depending on the content of the current regulation governing order within the facility and the degree of isolation of the convict from the general population of prisoners and the officers and staff of the facility; psychiatric consultation outside the cell at a frequency of several times a week to one or two times a quarter; provision of appropriate medical supplies, including psychotropic drugs; access to books and newspapers; participation in group therapeutic activities (in which case, however, prisoners are either handcuffed or placed in special boxes the size of telephone booths) or in group non-therapeutic but cultural and educational group activities, such as watching films (Kapoor, Trestman 2016, pp. 209–210).

The available research does not indicate that serving a sentence of extraordinary rigor will reduce the likelihood of recidivism in the offender under rigor. On the contrary, it is assumed that serving part of the prison sentence in restrictive housing conditions increases the risk of recidivism, in particular violent acts (Steiner, Calli 2016, p. 178). However, there is a lack of empirical research which

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² Convicts under 18 years of age, placed in restrictive housing conditions, are much more likely to commit suicide than other categories of inmates.

would clearly determine the effects of restrictive housing on convicts subject to this regime and on the functioning of the penitentiary facility (in terms of its order and safety).

Conclusions

Currently, there is widespread condemnation in the world of the use of such penal measures, which consist in the strict isolation of the convict from the rest of the prison population, with limited contact with prison officers or other employees of penitentiary facilities, and in depriving the offender of the opportunity to participate in social rehabilitation activities. According to rule 44–43 of the so-called Mandela Rules, it is explicitly recommended that the state legal systems should prohibit the use of solutions consisting in placing convicts in close isolation (it means staying in a living cell for at least 22 hours per day without significant human contact), for an indefinite or excessively long period of time. The latter means placing the convict in the abovementioned conditions for at least 15 consecutive days.

The placement of convicts in strict isolation is the basic means of managing the risk in US prisons, which is due, for example, to the small number of prison officers employed in penitentiary facilities in the country and the high costs associated with the functioning of penitentiary facilities (Shalev 2009, pp. 33–41). Nevertheless, restrictive housing raises serious doubts concerning, among other things, constitutionality, and is considered to be one of the major problems of the North American penitentiary system (Labrecque, Smith 2013; Gordon 2014). Any analysis of the problem and the presentation of accurate, up-to-date statistical data showing its scale is hampered by the fact that there are a significant number of state regulations in this area (concerning this institution placed in the internal prison orders) and the heterogeneous terminology for determining a state of strict isolation. To this end, it should be stressed that the available empirical research usually treats this phenomenon as homogeneous, without taking into account the fact that strict isolation can serve very different purposes: to ensure the order and security of the facility, the smooth running of the prison, punishment for disciplinary offences, protection of the convict from being harmed by fellow prisoners, etc. Any comparison does not take account of the fact that restrictive housing conditions may vary considerably depending on the condition of the convict under such strict conditions of detention and the length of time it takes for the convict taking part in the research to establish a relationship with it. The whole thing is complicated by the fact that the official statistics are recorded on two levels: federal and for each state, these statistics are not then compiled together, but function separately.

This creates difficulties in determining the extent to which these conditions affect inmates and in particular their mental state. However, it has undoubtedly

been proved that this way of implementing an isolation sentence should be excluded when a psychotic disorder is diagnosed (Grassian 1983; Grassian 2006; Smith 2006; Arrigo, Bullock 2008; Reiter et al. 2020). In such cases, the American Psychiatric Association recommends the prison administration to transfer the prisoner to psychiatric hospitals or other specialist forensic psychiatric centers. Despite the doubts raised as to the effectiveness of the analyzed rigor, as well as its possible negative effects on the people maintained in it, there is no shortage of supporters of the existing model, especially among prison officers, which consists in placing inmates who pose a threat to security and order in a penitentiary unit, or who are characterized by serious difficulties in adapting to prison living conditions in isolation. It is interesting to note that the state prison administration often denies that there are supermax prisons in their area of jurisdiction, or only confirms the use of penalties involving placing the convict in a disciplinary cell (when, de facto, convicts who are subject to a order and administration segregation may also be in them).

In the United States, various types of initiatives are currently being taken, including social initiatives to limit the execution of prison sentences in restrictive housing conditions. Alternative ways of improving security and order in prisons and other detention facilities are being sought, as well as instruments to evaluate the convicts for being placed in restrictive housing so as to exclude those inmates who should not be subjected to this regime, in particular those with psychotic disorders.

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