

MAXIMUM SECURITY, MINIMAL APPRECIATION: THE
UNIQUE AND NECESSARY MISSION THAT OHIO’S
MAXIMUM-SECURITY PRISONS ACCOMPLISH AND
HOW TO IMPROVE DEPARTMENTAL SUCCESS

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* JD Candidate, University of Toledo College of Law (2022). This note is dedicated to the past, current, and future staff of Southern Ohio Correctional Facility. May the world recognize the vast risk associated with walking through A-Building each and every day and the sacrifices we made to do our jobs. Merci au merveilleux ami qui a facilité cela depuis le début, and those that believed this backwards hillbilly could make it. To the naysayers, here we are.

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INTRODUCTION

Imagine you are a correctional officer employed by a state prison, walking into work on a seemingly normal day. You have worked in the state prison for nearly a decade and are considered an experienced officer. As the morning continues, and you make your way through the various metal detectors and security protocols that ensure that contraband does not make its way into the facility by “dirty” staff, you greet your fellow co-workers and move towards the block that you routinely work. After your initial morning count to ensure that all inmates in your block are present and unharmed, you hear across your radio that the nurse is en route to your block. On this particular morning, two inmates, Inmate A and Inmate B, have requested medical services. Since the block you work is full of the highest security level inmates your institution confines, you must strip search, restrain, and escort both Inmate A and Inmate B to a nurses’ station. Three sets of gates separate you, the nurse, and both Inmate A and Inmate B from the nearest responder in the event of an emergency.

As Inmate A steps into the nurses’ station, you follow behind, because your duty is to maintain security protocols and ensure that the inmate does not physically assault the nurse. As is standard procedure, Inmate B is to stand outside the door of the nurses’ station while the nurse speaks with Inmate A. The door to

the nurses' station is required to be closed, but unlocked, while Inmate A is being examined. While being treated by the nurse, Inmate A becomes verbally aggressive, requiring you to intervene. As you begin to intervene, Inmate B, having removed his restraints, bursts through the door wielding a makeshift knife. Before you can attempt to signal for help or defend yourself, Inmate B has stabbed you over thirty times. Inmate A assists by kicking you as you lay on the floor bleeding out from your wounds. The nurse, petrified but aware of the situation, begins screaming for assistance and activates her silent alarm, triggering an institution-wide alert. Assistance is not immediate; other correctional officers are engaged in their morning duties, spread thin, and are separated from you by a series of security gates. Eventually, assistance arrives. The nurse is unharmed, and both Inmates A and B are relatively uninjured. However, you are bleeding out and are barely clinging to life. You are immediately airlifted to the nearest trauma center. You survive, albeit barely.¹ Correctional officers and prison staff face these realities daily within Ohio's Maximum-Security Facilities ("MSFs").² Despite these daunting realities, hundreds of correctional officers and prison staff walk through the gates of MSFs every day to earn a living and provide for their families. Every day, the fear of a similar situation is ever-present in the back of their minds.³

Ohio's MSFs are uniquely poised to control, maintain, and rehabilitate the state's worst offenders.⁴ With widespread violence, discord, and rampant insolence, the state depends on MSFs to separate the worst offenders from general populations.⁵ As a result, Ohio's MSFs must balance the Ohio Department of Rehabilitation and Correction's ("ORDC") mission of reducing recidivism while maintaining order within their institutions.⁶

This Note explores whether Ohio's MSFs can simultaneously meet its mission of reducing recidivism within Ohio while also adequately protecting staff and inmates. This Note identifies and assesses the substantive rights of inmates classified as a maximum-security inmate (Level 4 and above) and whether these

1. Jona Ison, *Videos, Records Reveal How a 2018 Attack on a Lucasville CO Unfolded*, CHILlicothe GAZETTE (May 10, 2019, 10:13 PM), <https://www.chillicothegazette.com/story/news/2019/05/10/videos-records-reveal-how-2018-attack-lucasville-co-unfolded/1128917001/> (chronicling and providing video and photo demonstrations of the above scenario as it occurred within SOCF) [<https://perma.cc/gf5z-gfkw>].

2. See generally Joseph Micieli, *Stress and the Effects of Working in a High Security Prison* (2008), <https://www.ncjrs.gov/pdffiles1/224105.pdf> (outlining the stresses that correctional officers face in MSFs throughout the nation).

3. *Id.*

4. See *Wilkinson v. Austin*, 545 U.S. 209, 214 (2005) (stating that the Ohio State Penitentiary is "designed to 'separate the most predatory and dangerous prisoners from the rest of the . . . general [prison] population'" (quoting *Austin v. Wilkinson*, 189 F.Supp.2d 719 (N.D. Ohio 2002))).

5. OHIO DEP'T OF REHAB & CORR., 53-CLS-01 (2019), <https://www.drc.ohio.gov/Portals/0/Policies/DRC%20Policies/53-CLS-01%20%28Jan%202019%29.pdf> [<https://perma.cc/xl78-3eec>] [hereinafter ODRC INMATE CLASSIFICATION]; OHIO DEP'T OF REHAB. & CORR., 2021 ANNUAL REPORT 20 (2021), <https://drc.ohio.gov/Portals/0/ODRC%20Annual%20Report%202021.pdf> [<https://perma.cc/SX4N-F9MY>] [hereinafter ODRC ANNUAL REPORT] (As of July 2021, 2,319 Ohio Inmates are classified as Level 4 or above).

6. ODRC ANNUAL REPORT, *supra* note 5, at 3 (stating that ODRC's Mission Statement is to "[r]educ[e] recidivism among those we touch"); *Wilkinson*, 545 U.S. at 211 (finding that "Ohio's [ODRC's] first obligation must be to ensure the safety of guards and prison personnel . . .").

rights, coupled with the mission of ODRC, are truly harmonious. This Note argues that ODRC's MSFs are too comfortable, that ODRC has facilitated an attitude of complacency within its MSFs, and that ODRC has set its MSF inmates up for failure if, or when, they re-enter society. Ultimately, ODRC has subsidized complacency in allowing vast comforts be available to MSF inmates instead of properly incentivizing the following of departmental rules and regulations that are designed to set inmates up for success upon reentry into society.

To remedy this institutional failure, this Note argues that ODRC should actively incentivize inmates to reach lower-level security classifications, which would allow them to receive educational and vocational programming that better prepares them for re-entry into society, which ODRC would be well within constitutional bounds to do so.⁷ To properly incentivize inmates to reach lower-level security classifications, ODRC should remove the comforts and privileges currently available within MSFs in order to better prepare its MSF inmate population for success in society, thus reducing the recidivism rate within Ohio. Southern Ohio Correctional Facility ("SOCF"), a "top-flight, first-class" MSF in Lucasville, Ohio, will be used throughout this Note to showcase the varied successes and shortcomings of ODRC's MSFs.⁸

I. A BRIEF INTRODUCTION TO OHIO DEPARTMENT OF REHABILITATION AND CORRECTION

A. *Scope of Ohio Department of Rehabilitation and Correction*

ODRC maintains and operates all state correctional facilities while simultaneously bearing responsibility for the rehabilitation, control, and security of all persons convicted of a crime and sentenced to a correctional institution within Ohio.⁹ ODRC employs 11,630 individuals throughout twenty-eight institutions, with 6,238 correctional officers ("CO").¹⁰ As of July 2021, ODRC maintains custody of 42,963 inmates, 39,670 of whom are male.¹¹ However, of the 42,963 total inmates incarcerated by ODRC in July 2021, 2,319 are classified as Level 4 or greater, requiring housing in an MSF.¹² In Fiscal Year 2021 alone, ODRC spent \$1,810,072,312 towards its operations; approximately \$42,130 per inmate.¹³ In spending this amount, ODRC outlined eight different categories of expenditures within its budget: Security, Medical Services, Administration, Support Services, Facility Maintenance, Mental Health, Unit Management, and

7. See discussion *infra* Section III. A.

8. *Rhodes v. Chapman*, 452 U.S. 337, 341 (1981). SOCF rose to infamy on Easter Sunday, 1993 when a multiple-day riot ensued, resulting in the death of nine inmates and one correctional officer.

9. OHIO. REV. CODE ANN. § 5120.05 (West 2020).

10. ODRC ANNUAL REPORT, *supra* note 5, at 6-7; ODRC INSTITUTIONS, <https://drc.ohio.gov/institutions> [<https://perma.cc/zq8b-anxw>] (last visited Oct. 19, 2020) (listing the twenty-eight institutions).

11. ODRC ANNUAL REPORT, *supra* note 5, at 12.

12. *Id.* at 20.

13. *Id.* at 50.

Education Services in addition to “institutional operations” and “other expenditures.”¹⁴ Of these services, ODRC spent the most on Security (\$40.88 per inmate, per day), and the least on Education Services (\$2.11 per inmate, per day.)¹⁵ As shown by these figures alone, ODRC is a behemoth of a department, deeply entrenched within the state’s budget.¹⁶



ODRC defines its mission as to “[r]educ[e] recidivism among those we touch.”¹⁷ Recidivism, existing as a fundamental measure of success for any state’s department of correction, refers to an individual’s relapse into criminal activity after already receiving a formal sanction or incarceration.¹⁸ ODRC, in one of its own recidivism reports, defined recidivism as “a return to incarceration in an Ohio prison for conviction of a new criminal offense or technical violation of the conditions of post-release supervision.”¹⁹ In stressing the importance of reducing recidivism, former ODRC Director Gary Mohr stated that “[r]educing recidivism

14. *Id.* at 49-50.

15. *Id.*

16. See ODRC ANNUAL REPORT, *supra* note 5, at 45-53; Gregory Trout, *The Cost of Incarceration: Ohio Prisons*, 42 U. TOL. L. REV. 891, 893 (2011) (providing a snapshot of the operational costs ODRC faced as of 2010). While this number has changed over the last decade, and is discussed herein, this demonstrates that ODRC has been a behemoth of a department within Ohio for many years. For a pop-cultural explanation on the power of money, see *Wu-Tang Clan, C.R.E.A.M (Loud Records, 1994)* (here, Wu-Tang Clan makes the proposition that “Cash rules everything around me, C.R.E.A.M., get the money, dolla’ dolla’ bill, y’all”).

17. ODRC ANNUAL REPORT, *supra* note 5, at 3.

18. *Recidivism*, NAT’L INST. OF JUST., <https://nij.ojp.gov/topics/corrections/recidivism> [<https://perma/cc/436a-2tx3>] (last visited Oct. 19, 2020).

19. *Key Recidivism Information*, OHIO DEP’T OF REHAB. & CORR., <https://drc.ohio.gov/reports/recidivism> (click on “2018 Recidivism Update” under the heading Report Files; then click on the document download).

is the mission of this agency and at the core of everything we do . . . [we] better prepare offenders for a life after prison . . . [r]educing recidivism increases the safety of Ohio's communities."²⁰ With its mission so exclusively focused on reducing recidivism, in 2020, Ohio achieved a recidivism rate of 32.7%.²¹ To highlight the success of ODRC, in the same year the Delaware Department of Correction faced a recidivism rate of 63.5%,²² the highest of all states who report three-year recidivism rates, while Virginia boasted a recidivism rate of only 23.1%, the lowest reported of all states.²³

ODRC Director Annette Chambers-Smith,²⁴ appointed in February 2019, has outlined four "core values" that ODRC strives for: (1) "Take care of our staff; they will transform our offenders;" (2) "One team-one purpose;" (3) "Civility towards all;" and (4) "Hope is job one."²⁵ These lofty goals can be classified as "easier said than done." Prior to Director Chambers-Smith taking the helm, when asked about the new direction of ODRC and its recidivism reduction efforts, then-Director Mohr responded "[f]rankly, I believe [inmates] should have the chance to smile every now and then."²⁶

However, the 2,464 maximum-security inmates who have offended, assaulted, and digressed their way to an MSF classification must be accounted for within these core values. The system, thus far, has failed to properly incentivize these inmates, as evidenced by the continued need for MSFs and the issues addressed herein. This Note suggests that the current approach taken by ODRC empowers inmates to remain unruly, undermines the efforts of correctional staff, and has resulted in greater danger within Ohio's correctional facilities. Instead, ODRC should wield their authority to restrict the privileges and comforts generally offered to lower-level classification within its MSFs as a deterrent for the behavior that resulted in the initial MSF classification.

20. John Caniglia, *Recidivism Rate in Ohio Prison System Continues to Drop: State Report*, CLEVELAND.COM (March 6, 2014, 5:24 PM), https://www.cleveland.com/metro/2014/03/state_report_recidivism_rate_i.html [https://perma.cc/3dam-kg7a].

21. *Recidivism Report*, OHIO DEP'T OF REHAB. & CORR. 1 (2021), <https://drc.ohio.gov/Portals/0/2021%20Final%20Report.pdf> [https://perma.cc/2y93-6rbl].

22. *State Recidivism Comparison*, VA. DEP'T OF CORR. (Feb. 2020), <https://vadoc.virginia.gov/media/1485/vadoc-state-recidivism-comparison-report-2020-02.pdf> [https://perma.cc/ca26-vpse].

23. *Id.*

24. Prior to taking the helm of ODRC, Chambers-Smith served as the General Manager and Chief Operating Officer of JPAY, a for-profit company that provides inmates the ability to purchase music, send and receive photos, and access other electronic entertainment while incarcerated. See Annette Chambers-Smith, CORRECTIONAL NEWS (Feb. 6, 2020) <https://correctionalnews.com/2020/02/06/annette-chambers-smith/> [https://perma.cc/h452-19ev].

25. ODRC ANNUAL REPORT, *supra* note 5, at 3.

26. OHIO DEP'T OF REHAB. AND CORR., *How "Smiling" Impacted Ohio's Correction Approach*, DRCINSIDER (Jun 3, 2016) <https://medium.com/drc-insider/how-smiling-impacted-ohios-correction-approach-5f9e0093ef9e/> [https://perma.cc/8cr7-dufu].

B. *Overview of Ohio Department of Rehabilitation and Correction Tier System*

ODRC has implemented a 3-Tier Prison System for the classification²⁷ of all Ohio inmates.²⁸ ODRC attributes the 3-Tier System as an effective method to appropriately “classify[] inmates is a means of protecting the public, ensuring staff safety, and achieving ODRC’s rehabilitative goals.”²⁹ As stated in its Strategic Capital Master Plan, ODRC implemented its 3-Tier System as a “system of designation of housing options . . . into facilities focused on Control, General Population, and Reintegration. Within each tier are multiple privilege levels . . . [t]he tiered system was designed to reduce violence and critical incidents within the ODRC. . . .”³⁰ As described by ODRC’s Correctional Reception Center’s Handbook:

The 3-Tier system was designed to treat inmates differently. There are inmates who are not willing to accept responsibilities for their own personal growth and choose to disrupt the operations of Ohio’s facilities. The 3-Tier System was designed to effectively weed these inmates out of the general population prisons and place them into a secure and controlled environment.³¹

In the same vein, the 3-Tier System was designed to achieve ODRC’s mission of reducing recidivism by “encouraging a sense of hope in all who reside in Ohio’s facilities.”³² The Tier System, in sum, allows an inmate to “work his or way (sic) up or down these three tiers, based on individual behavior.”³³ “Not only does this system give offenders a sense of hope; it encourages pro-social behavior . . . by

27. *Classification*, OHIO DEP’T OF REHAB. & CORR., <https://www.drc.ohio.gov/policies/classification> [<https://perma.cc/H2RW-7PNG>] (last visited Oct. 19, 2021) (“The Ohio Department of Rehabilitation and Correction maintains a uniform and objective classification level system that places incarcerated individuals in the appropriate facility to ensure the safety and security of other incarcerated individuals and staff, the institution, and the community. Accurately classifying incarcerated individuals and placing them in institutions consistent with their security classification is a means of protecting the public, ensuring staff and incarcerated individual safety, and achieving the ODRC’s rehabilitative goals . . . It is the policy of the ODRC to maintain a classification level system that creates a process for the classification of individuals according to their security risk. This process will consider behavior and other objective factors as are available and relevant when assessing an individual’s institutional security needs.”).

28. ODRC INMATE CLASSIFICATION, *supra* note 5, at 1.

29. *Id.*

30. *ODRC Strategic Capital Master Plan*, OHIO DEP’T OF REHAB. & CORR., 4-14 (2015), https://www.drc.ohio.gov/Portals/0/CAM/Ohio%20DRC%20Master%20Plan_Final%20Report_updated.pdf?ver=2018-01-24-105454-747 [<https://perma.cc/2nz9-hhf4>].

31. *Inmate Handbook*, CORR. RECEPTION CTR., 43 (2014), <https://www.law.umich.edu/special/policyclearinghouse/Documents/Ohio%20Correctional%20RecCtr%20Inmate%20Handbook.pdf> [<https://perma.cc/e84p-hcf9>].

32. *Id.*

33. Gary C. Mohr, *Reforming a System: An Inside Perspective on How Ohio Achieved a Record-Low Recidivism Rate*, THE NAT’L REENTRY RES. CTR. (Mar. 12, 2012), <https://nationalreentryresourcecenter.org/resources/reforming-system-inside-perspective-how-ohio-achieved-record-low-recidivism-rate>.

offering incentives and privileges, such as a less restrictive environment[.]”³⁴ In theory, ODRC’s Tier System is designed to promote adherence to institutional rules and regulations and foster a sense of reward amongst inmates who earn lower classifications, while simultaneously allowing ODRC staff to separate troublesome inmates from their cooperative counterparts.

Despite the formulation and general acceptance of the Tier System throughout Ohio, ODRC faced a major hurdle in ensuring the system’s longevity. In *Wilkinson*, a class of current and former inmates of Ohio State Penitentiary (“OSP”) filed suit under 42 U.S.C. § 1983 alleging that ODRC’s method of classifying inmates directly into OSP violated the Fourteenth Amendment’s Due Process Clause.³⁵ The *Wilkinson* Court was tasked with determining whether the “Old Policy,” a predecessor to ODRC’s Tier System that allowed a haphazard assignment to OSP, violated the constitutional rights of ODRC inmates.³⁶ The Court concluded that Ohio inmates *do* have a protected interest in avoiding automatic classification to OSP.³⁷ However, in 2002, between the original filing and the time that the Supreme Court made its decision, ODRC modified its classification system to closely resemble the Tier System that exists today.³⁸ This alteration, as the Supreme Court found, “provided more guidance regarding the factors to be considered in placement decisions and afforded inmates more procedural protections against . . . placement at OSP.”³⁹ Further, the Court found that the birth of the modern Tier System “strikes a constitutionally permissible balance” between the protected interests of inmates and Ohio’s interest in rehabilitation and safety.⁴⁰ Though *Wilkinson* had the potential to shock ODRC and turn the world of MSFs upside down, the Court instead solidified that a system like ODRC’s Tier System is constitutionally valid.⁴¹

However, even if an inmate is classified as dangerous or disruptive and sent to an MSF, an inmate can earn the privilege of reclassification and transfer to a lower-security institution. As discussed in Section IV of this note, SOCF contains inmates classified as Level 4 and Extended Restrictive Housing (“ERH”). Within SOCF, an inmate must remain in a Level 4 status for twelve months before the inmate can be considered for transfer to a lower-level facility.⁴² Similarly, ERH

34. *Id.*

35. *See Wilkinson v. Austin*, 545 U.S. 209, 213 (2005). *See also* Adam Miller, Comment, *Supermax’s Kryptonite? Wilkinson v. Austin: The Due Process Challenge to Ohio’s Super-Maximum Security Prison*, 2 S. NEW ENG. ROUNDTABLE SYMP. L.J. 223, 238 (2007) (outlining that *Wilkinson* began as a result of a class of current and former OSP inmates filing suit under 42 U.S.C. § 1983).

36. *Wilkinson*, 545 U.S. at 215. *See generally* Miller, *supra* note 35, at 230 (outlining the lasting effect of *Wilkinson v. Austin* and the differentiation between the Old Policy and New Policy).

37. *See* Miller, *supra* note 35, at 239.

38. *See Wilkinson*, 545 U.S. at 215.

39. *Id.* at 215-16.

40. *Id.* at 230.

41. *Id.*

42. *Southern Ohio Correctional Facility Inmate Handbook*, DEP’T OF REHAB. & CORR., 3 (2013), <https://www.law.umich.edu/special/policyclearinghouse/Documents/Ohio%20Southern%20Ohio%20CF%20handbook.pdf> [<https://perma.cc/mpu2-dsdp>] [hereinafter SOCF HANDBOOK].

level inmates are considered for classification to Level 4 after only six months in ERH status.⁴³ Thus, an inmate classified into ERH status, the highest security classification housed at SOCF, can upon good behavior and adherence to institutional rules, be transferred to a lower-security institution where they will enjoy many more privileges, including educational/vocational programs, in only one and a half years.⁴⁴

II. WHY MAXIMUM-SECURITY FACILITIES ARE NECESSARY

A. *Maximum-Security Facilities Serve as a Deterrent*

An often-overlooked benefit of MSFs exists in their implicit effect of deterrence.⁴⁵ Simply put, the existence and utilization of MSFs deter prisoners from violating institutional rules out of fear of being transferred to a MSF and experiencing the unpleasant associated conditions.⁴⁶ Specifically, MSFs serve as a reminder to inmates that their behavior can result in a transfer from a lower-level institution with educational and vocational programs, along with vast creature comforts, to an MSF with reduced programming and significantly fewer creature comforts.⁴⁷

Though some scholarship indicates that this deterrence effect is low due to uncertainty that placement in an MSF will ever occur,⁴⁸ ODRC has implemented its classification system to abate this concern.⁴⁹ In assessing the deterrent effect of SOCF, for example, some inmates have gone as far as renouncing their American citizenship and cutting off and sending their finger(s) to the President of the United

43. *Id.*; see also ODRC INMATE CLASSIFICATION, *supra* note 5, at 2-11 (stating that individuals who are classified into an ERH status upon incarceration are eligible for consideration to a lower-level security status after six months. However, if an inmate is classified into an ERH status as a result of a serious disciplinary infraction, decision by a Managing Officer, or as a result of a Serious Misconduct Panel procedure, the timeline for review for consideration to a lower-security classification varies.).

44. E-Mail from Anonymous ToCI Correctional officer, Toledo Correctional Institution, to Jesse Scott, J.D. Candidate, University of Toledo College of Law (Jan. 04, 2021, 2:48 PM) (on file with author) (ODRC has recently changed its terminology regarding security levels, and institutional handbooks are still being updated to reflect the change. Before the change, ODRC consisted of Levels 1-3, 4A, 4AT, 4B, and 5. After the change, ODRC Levels include 1-4, ERH-T and ERH. As such, ODRC has eliminated levels 4A, 4AT, 4B, and 5 distinctions, and lumped what was previously 4B and 5 into what is now ERH, and 4AT into ERH-T.).

45. Roy D. King, *The Rise and Rise of Supermax: An American Solution in Search of a Problem*, PUNISHMENT & SOC'Y. 163-186, 174 (1999).

46. Chase Riveland, *Prison Management Trends, 1975-2025*, 26 CRIME & JUST., 163, 191 (1999); see also DANIEL P. MEARS, EVALUATING THE EFFECTIVENESS OF SUPERMAX PRISONS 6 (Urban Institute Justice Policy Center, 2006) (outlining that general population inmates “will recidivate less due to fear of being placed in supermax facilities.”).

47. *Id.*; see also LEENA KURKI & NORVAL MORRIS, THE PURPOSES, PRACTICES, & PROBLEMS OF SUPERMAX PRISONS, 28 CRIME AND JUST. 385, 391 (2001).

48. Daniel P. Mears, *An Assessment of Supermax Prisons Using an Evaluation Research Framework*, 88 THE PRISON J. 43, 50 (2008).

49. ODRC INMATE CLASSIFICATION, *supra* note 5, at 25.

States of America in an attempt to be transferred out of SOCF.⁵⁰ As mentioned above, lower-level institutions within ODRC are designed to be more comfortable and offer educational and vocational programming to inmates, so that they can be reintroduced to society less likely to reoffend. Conversely, MSFs are designed for control and security, when programming designed to facilitate successful reintegration into society is unable to be conducted or is unsafe.⁵¹ As such, it takes no stretch of imagination to find that the fear of having these benefits stripped away by being transferred to an MSF would incentivize rational inmates to follow institutional rules and regulations.

B. *Maximum Security Facilities Separate Problematic Inmates from Non-Problematic Inmates*

MSFs, inherent with a design to maximize deterrence, also serve to separate dangerous, violent, and unruly inmates from other inmates who seek to peacefully serve their sentence or better themselves while incarcerated.⁵² In the late nineties, a study conducted by the Human Rights Watch at an Indiana supermax facility found that MSFs seek to segregate dangerous inmates to simultaneously protect staff and allow inmates in lower-level institutions to serve their time with less fear of assault.⁵³

Within Ohio, ODRC designates a Level 4 status for individuals with established histories and/or disruptive prison behavior “involved in lead[ing] others to commit, violent, disruptive, predatory . . . action and pose a threat to the security of the institution.”⁵⁴ Outside of ODRC, general scholarship has indicated seven types of inmates who are appropriate for being housed within an MSF, including inmates who: (1) assault staff repeatedly or cause injury, (2) assault other inmates repeatedly or cause injury, (3) instigate other inmates to be violent, (4) are gang leaders, (5) are an escape risk, (6) are drug dealers while in prison, or (7) are chronic rule violators.⁵⁵ Other types of inmates who have been flagged for possible MSF institutionalization include: gang members, high-profile inmates, inmates at risk of being attacked, inmates who are incarcerated for a serious offense, inmates who are sexual predators within the system, terrorists, or inmates who make or

50. STAUGHTON LYND, *LUCASVILLE: THE UNTOLD STORY OF A PRISON UPRISING* 214 (Temple University Press, 2004).

51. Miller, *supra* note 35, at 228.

52. *Wilkinson v. Austin*, 545 U.S. 209, 213 (2005).

53. HUMAN RIGHTS WATCH, *COLD STORAGE-SUPER MAXIMUM CONFINEMENT IN INDIANA* 10 (1997).

54. ODRC INMATE CLASSIFICATION, *supra* note 5, at 24.

55. Mears, *supra* note 48, at 52; *see also* Daniel P. Mears, *A Critical Look at Supermax Prisons*, 30 *CORRECTIONS COMPENDIUM* 6-7, 45-49 (2005) (providing that wardens of supermax facilities throughout the country characterized particular types of inmates that should be placed in maximum-security facilities.).

possesses deadly weapons.⁵⁶ With such an array of type of inmate within the prison system, it is only logical for separation to occur.⁵⁷

In separating inmates within MSFs, ODRC has utilized solitary conditions as a method of control against the type of prisoners mentioned above, using three distinguished mechanisms.⁵⁸ First, and most obvious to the outside observer, is physical isolation, where MSFs have utilized technological advances to facilitate minimal interaction between staff and prisoners, combined with remote surveillance of inmate populations.⁵⁹ Secondly, MSFs implement an element of psychological control, through physical control and deprivations of conditions associated with law-abiding citizens, to force inmate populations into compliance.⁶⁰ Finally, MSFs utilize the deference given to prison administrators by courts to protect inmates and staff from the dangerous, unpredictable inmate populations to further isolation practices.⁶¹

The 3-Tier Prison System that ODRC has implemented is structured to leverage the principles of separation and control.⁶² In viewing the criteria for classification within a Level 1 institution within ODRC, inmates are to “be granted the highest amount of privilege and autonomy . . . [and] expected to be rule compliant and pro-social”⁶³ Conversely, classification within a Level 4 institution is reserved for inmates who have established histories of violent or disruptive behavior, riotous actions, or pose a threat to the security of the institution.⁶⁴ The institutional value of separating and segregating Level 1 inmates from Level 4 and above inmates is highlighted from a statement given by a federal inmate within a Federal Supermax Facility:

True I killed a guard . . . Not all dogs put their tail between their legs when their masters beat them . . . [s]ome eventually bite back . . . So how many more bodies will

56. Daniel P. Mears, *A Critical Look at Supermax Prisons*, 30 CORR. COMPENDIUM 45, 45-46 (2005).

57. *Wolff v. McDonnell*, 418 U.S. 539, 563 (1974) (holding that “there is a great range of personality and character” among inmates and will require to be treated differently within the prison system).

58. Jules Lobel, *Mass Solitary and Mass Incarcerations: Explaining the Dramatic Rise in Prolonged Solitary in America’s Prisons*, 115 NW. UNIV. L. REV. 159, 182 (2020).

59. Craig Haney, “*Infamous Punishment*”: *The Psychological Consequences of Isolation*, NAT’L PRISON PROJECT J. 3, 3 (1993). *See generally*, Lobel, *supra* note 58, at 182-84 (outlining that supermax facilities have utilized three main mechanisms as a form of control against rambunctious inmate populations).

60. Lobel, *supra* note 58, at 182.

61. KERMET REITER, 23/7: PELICAN BAY PRISON AND THE RISE OF LONG-TERM SOLITARY CONFINEMENT (2016) (discussing that courts began to grant deference to prison administrators in controlling the separation practices within their respective institutions); Judith Resnik et al., *Punishment in Prison: Constitution the “Normal” and the “Atypical” in Solitary and Other Forms of Confinement*, 115 NW. UNIV. L. REV. 45, 55 (2020) (noting that prison administrators have been given a great deal of discretion in determining prison disciplinary actions).

62. ODRC INMATE CLASSIFICATION, *supra* note 5, at 1.

63. *Id.* at 4.

64. *Id.* at 4-5.

fall and how many more individual [restrictive housing units] like mine, before [prison administrators] face up to the jobs they get payed [sic] well for?⁶⁵

With this mentality, seemingly closed to recognizing one's own rule violation and disregard for organizational systems and failure to follow basic canons of right and wrong, it becomes clear that it is in the best interest of ODRC, staff, and Ohio to separate inmates who show no desire to rehabilitate themselves from those who are receptive of ODRC's mission.

C. *Maximum Security Facilities Create an Environment that Fosters the Safety and Security of Both Staff and Inmates*

It is no surprise that MSFs are designed to promote the safety of staff, the institution, and other inmates.⁶⁶ The Supreme Court has explicitly found that Ohio's "first obligation must be to ensure the safety of guards and prison personnel . . . and the prisoners themselves."⁶⁷ The Ohio court in *Taylor v. Ohio Department of Rehabilitation & Correction* was tasked with assessing the value of social services within SOCF compared to institutional security following an event where a teacher (Taylor), providing education services to inmates within SOCF, was beheaded by a three-ring binder in the library.⁶⁸ It found that "[s]ecurity should be the number one concern of the legislature, [SOCF], and all others interested in protecting the lives of the individuals who work in that institution, as well as the inmates themselves."⁶⁹ In coming to this conclusion, the *Taylor* court recognized that SOCF is an MSF charged with housing the worst male criminals in the state.⁷⁰ This justification of MSFs is not organic to ODRC. Instead, the extreme rise of violence in American prisons throughout the 1980s and 1990s, perpetuated by prison gangs, prompted Departments of Corrections to create MSFs in order to control the most dangerous and volatile inmates.⁷¹ In 1997, the National Institute of Corrections reported that an overwhelming majority of its jurisdictions indicated that the development of MSFs was a direct result of the need to better manage and confine "violent and seriously disruptive inmates."⁷²

65. AM. FRIENDS SERV. COMM., THE LESSONS OF MARION: THE FAILURE OF A MAXIMUM SECURITY PRISON: A HISTORY AND ANALYSIS, WITH VOICES OF PRISONERS 24-25; *see also* *Fugate v. Erdos*, No. 1:19-CV-30, 2021 WL 221995 (S.D. Ohio Jan. 22, 2021) (outlining a situation arising out of SOCF involving an inmate who planned and succeeded to escape his restraints while being transferred to a rules infraction board hearing and assaulting the CO present simply because he was upset).

66. *Wilkinson v. Austin*, 545 U.S. 209, 227 (2005).

67. *Id.*

68. *Taylor v. Ohio Dep't of Rehab. & Corr.*, 662 N.E.2d 1156, 1158 (Ct. Cl. 1994).

69. *Id.* (In *Taylor*, an inmate at SOCF forced a teacher, Beverly Jo Taylor, into the staff restroom and slashed her throat with the metal spine of a 3-ring binder).

70. *Id.* at 1160.

71. *See* Lobel, *supra* note 58, at 169 (outlining the historical background and popular justification for the rise in maximum security facilities throughout the nation).

72. NAT'L INST. OF CORR., SUPERMAX HOUSING: A SURVEY OF CURRENT PRACTICES 3 (1997).

At the time of Taylor's slaying, the *Taylor* Court found that the security of SOCF's classroom was inadequate.⁷³ Of primary concern regarding the security shortfall that led to the murder of Taylor was that only *one* correctional officer, located at a poorly stationed desk, was charged with overseeing between eighty to one hundred inmates freely roaming the library.⁷⁴ Had ODRC and SOCF implemented more stringent and thorough security measures in regard to vocational services, perhaps she would still be alive today; however, because a lapse of judgement and disregard to the known security risk, that is not the case.⁷⁵ What is known is this: inadequately supervised inmates, especially those at an MSF, can result in deadly consequences.⁷⁶

An uncontroverted reality is that some inmates assault other inmates, and some inmates kill other inmates.⁷⁷ Upon the conclusion of 2019, ODRC reported 1,961 instances of inmate-on-inmate assaults, and 913 instances of inmate-on-staff assaults.⁷⁸ While ODRC has not offered statistics as to what the security level of the institution of which these assaults took place, it is logical to connect that the vast majority of these assaults, both inmate-on-inmate and inmate-on-staff occurred at non-MSF facilities.⁷⁹ In *State v. Newton*, an ODRC inmate, Newton, at a Level 3 institution, requested transfer into a protective custody cell, where he knew he would have a cellmate.⁸⁰ Once the transfer was granted, Newton attacked his cellmate, Inmate Brewer.⁸¹ As staff responded to a disturbance call from Newton's cell, Newton was described as being painted with blood from eating a portion of Brewer's body as part of a ritual.⁸² As staff attempted to resuscitate Brewer, Newton was reported as saying "Let him die, I killed him . . . Fuck that bitch [Brewer]. You might as well not even work on him. He is already dead . . . Stop, let the fucker die . . . [T]here is nothing like the taste of fresh blood in the morning."⁸³ Unlike SOCF and OSP, the institution Newton was confined in allowed for the double celling – the practice of two or inmates sharing a single cell. As such, Newton had access to another inmate.⁸⁴ Had Newton been placed in an MSF, such as SOCF, where single celling is standard procedure, Brewer may still be alive.

73. *Taylor*, 662 N.E.2d at 1160.

74. *Id.*

75. *Id.* at 1161-62.

76. Since the strengthening of security measures at SOCF's library to the time of this Note, no further life has been lost within SOCF's library.

77. ODRC ANNUAL REPORT, *supra* note 5, at 25.

78. *Id.*

79. Though some of these assaults have occurred in MSFs, inmates who are confined in institutions with greater security measures are less likely to assault other inmates and staff as the opportunity to do so is lessened.

80. *State v. Newton*, 840 N.E.2d 593, 599 (2006).

81. *Id.*

82. *Id.*

83. *Id.* at 599-600.

84. *Id.* at 599.

III. INTERSECTION OF THE CONSTITUTION, SUPREME COURT RULINGS, AND OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS

A. *The Supreme Court Has Given Broad Deference to Prison Administrators in Choosing How to Operate their Respective Institutions, and Has Intentionally Limited Prison Liability Regarding Celling Practices and Imposing Disciplinary Measures*

The Supreme Court has given significant deference to prison administrators in how to operate their respective institutions.⁸⁵ Consistently, the Supreme Court has held “[p]rison officials must be free to take appropriate action to ensure the safety of inmates and corrections personnel and to prevent escape or unauthorized entry.”⁸⁶ Reaching a single standard after decades of litigation, to balance the constitutional protections still afforded to inmates and the interests of rehabilitation and corrections, the Court stated that “when a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to a legitimate penological interest.”⁸⁷ In cementing this standard, the Court noted four factors for consideration in determining the legitimacy of a prison’s regulation.

First, the prison must proffer a “valid, rational connection” between the questioned regulation and a legitimate interest in justifying the regulation.⁸⁸ Second, a court must determine whether an alternative measure of exercising the right claimed by inmates that the questioned regulation imposes upon remains available to the inmates.⁸⁹ Of particular interest in this second factor, the Supreme Court emphasized that lower courts should be cognizant of the “measure of judicial deference owed to corrections officials . . . in gauging the validity of the regulation.”⁹⁰ Third, a court must analyze the impact accommodation of the claimed constitutional right will have of the corrections staff, other inmates, and allocation of prison resources.⁹¹ Here, the Court emphasized that all courts “should be particularly deferential to the informed discretion of corrections officials.”⁹² The fourth and final factor encourages courts to assess whether a reasonable alternative to the questioned regulation exists.⁹³ Though a required factor, the Court noted that this fourth factor is simply an inquiry to whether an alternative to the questioned regulation exists in a *de minimis* cost to penological interests.⁹⁴ By establishing the “valid penological interest” test, the Supreme Court has essentially

85. This note does not address all issues of substantive Due Process issues in their entirety. Instead, this note focuses on issues most prevalent in MSFs, such as disciplinary issues, isolation celling, and liability of prison administrators.

86. *Bell v. Wolfish*, 441 U.S. 520, 547 (1979).

87. *Turner v. Safley*, 482 U.S. 78, 89 (1987).

88. *Id.* (quoting *Block v. Rutherford*, 468 U.S. 576, 586 (1984)).

89. *Id.* at 90.

90. *Id.* (quoting *Pell v. Procunier*, 417 U.S. 817, 827 (1974)).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at 91.

deferred “to the informed discretion of corrections officials”⁹⁵ to determine what regulations should be imposed to ensure the safety of inmates and corrections personnel and to “preserve[] internal order and discipline.”⁹⁶ Seemingly, the Supreme Court has intentionally granted prison administrators deference, while specifically outlining constitutional bounds within which administrators must operate.⁹⁷

Lower Courts, legislatures, and departments of corrections are not without guidance on what the Supreme Court has deemed as constitutional floors on the treatment of inmates. The Supreme Court, in recognizing the terror that prisons confine, has found:

*As a consequence of their own actions, prisoners may be deprived of rights that are fundamental to liberty. Yet the law and the Constitution demand recognition of certain other rights. Prisoners retain the essence of human dignity inherent in all person. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment.*⁹⁸

Rights of inmates are discerned from the broad spectrum of constitutional law;⁹⁹ of those, Eighth Amendment limitations on celling practices, conditions, and prison discipline are most particularly relevant to the scope of this Note and are discussed in the following sections.

The Eighth Amendment to the United States Constitution ensures that inmates are not subjected to cruel or unusual punishment.¹⁰⁰ Through years of development in constitutional interpretation, the Supreme Court has answered many questions of what level of comfort inmates are entitled to in MSFs under the Eighth Amendment.

On Easter Sunday, April 11, 1993, SOCF became infamous as the battleground that resulted in the longest prison riot in United States history.¹⁰¹

95. *Id.* at 90-91.

96. *Bell v. Wolfish*, 441 U.S. 520, 521 (1979).

97. In *Beard v. Banks*, 548 U.S. 521, 531 (2006), the Court assessed whether a regulation, concerning inmates placed in disciplinary isolation, satisfied the test outlined in *Turner*. The prison regulation in question provided that the policies were designed to motivate better behavior from “particularly difficult prisoners” by providing incentive to behave through restricting property available to inmates. Particularly, the prison prohibited newspapers and magazines. As a justification, the prison regulation cited that “less property these high maintenance, high supervision, obdurate troublemakers have, the easier it is for . . . correctional officer[s] to detect concealed contraband [and] to provide security.” *Id.* Further, the prison justified its policies as the prisoners might use the restricted property as weapons, or that inmates could employ excess items “as tools to catapult feces at the guards without the necessity of soiling one’s own hands or use as tinder for cell fires.” *Id.* In assessing these policies in relation to the *Turner* test, the *Beard* Court found that while the second, third, and fourth factors of the *Turner* Test were not explicitly met, the “real task is not balancing these factors, but rather determining whether the [prison] shows more than a simply logical relation.” *Id.* at 533.

98. *Brown v. Plata*, 563 U.S. 439, 510 (2011) (emphasis added).

99. 73 Ohio Jur. 3d *Penal Institutions* § 145.

100. U.S. CONST. amend. VIII.

101. *AP Was There: The 1993 Uprising at Lucasville, Ohio, Prison*, AP NEWS (Apr. 10, 2018), <https://apnews.com/article/d59df1b907b34bdeaabf8f95eadc8552> [<https://perma.cc/mgm8-dp4a>]

Many scholars and inmates credit the practice of double celling throughout SOCF as the tinder that ignited the riot.¹⁰² Just twelve years prior to the SOCF riot, the Supreme Court in *Rhodes v. Chapman*, found that double celling, in a cell that measured approximately sixty-three square feet, was not a violation of the Eighth Amendment.¹⁰³ Though the Court acknowledged that the Eighth Amendment prohibits punishments that “involve the unnecessary and wanton infliction of pain,”¹⁰⁴ the Court simultaneously stressed that the Constitution does not require prisons to be comfortable, and that these type of considerations should be assessed by the appropriate legislative body and the respective prison administration, not the Courts.¹⁰⁵ A decade after *Rhodes*, the Court once again emphasized that prisons are not required to be remotely comfortable, and that the Eighth Amendment is only invoked when inmates are deprived of “the minimal civilized measure of life’s necessities.”¹⁰⁶ As such, the Supreme Court has continued to uphold the notion, amidst changing social dynamics favoring prison reform,¹⁰⁷ that prisons are not a social experiment and are constitutionally permissible to be unpleasant and that, absent a flagrant violation, courts should refrain from interfering with prison management.

Isolation cells, sometimes called solitary, are the opposite of double celling, which entails housing inmates in individual cells for twenty-two to twenty-four hours a day, separated from contact with other prisoners and staff.¹⁰⁸ The Supreme Court, as early as 1890, recognized that isolation cells are a method of additional punishment once incarcerated.¹⁰⁹ Courts have routinely found that placement in an

(noting that as a result of the SOCF Riot, nine inmates and one correctional officer was killed). Other scholarship has viewed the SOCF Riots differently. For example, Staughton Lynd, an attorney who represented some rioters of the SOCF Riot, compared the SOCF Riots to a fundamental piece of American pride in stating “I have viewed [the SOCF Riots] as a comparison to the American Revolution.” STAUGHTON, *supra* note 50, at 13. Mr. Lynd has also produced scholarship belittling both Lucasville and the population of southern Ohio. See Staughton Lynd, *The Saran Wrap of Complicity: Finding Guilt After an Ohio Prison Rebellion*, 51 U. TOL. L. REV. 197, 201 (2020) (claiming “Lucasville is merely a crossroads, hardly even a small town, located in Scioto County near the Ohio River. Its culture is that of the South. The manner of speaking and general outlook of the guards very much resemble that of their Kentucky counterparts on the other side of the river.”) For reference, the author of this Note, is a native Scioto-Countian.

102. LYND, *supra* note 50, at 21.

103. *Rhodes v. Chapman*, 452 U.S. 337, 344 (1981).

104. *Id.* at 344 (quoting *Gregg v. Georgia* 428 U.S. 153, 173 (1976)).

105. *Id.* at 349.

106. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (quoting *Rhodes*, 452 U.S. at 349).

107. Marie Gottschalk, *Bring It On: The Future of Penal Reform, the Carceral State, and American Politics*, 12 OHIO ST. J. CRIM. L. 559, 588 (2015) (noting that national surveys suggest “considerable decreases since the early-to-mid 1990s in key indicators of public punitiveness, including public fear of crime . . . support for the death penalty, and designation of crime as a top priority.”).

108. FAQ: *Solitary Confinement in the United States*, SOLITARY WATCH, <https://solitarywatch.org/facts/faq/> [<https://perma.cc/mt2r-q471>] (last visited Oct. 19, 2021).

109. See *In re Medley*, 134 U.S. 160, 170 (1890) (finding that solitary confinement, in the meaning of a Colorado statute, “remains of the essential character of the that mode of prison life as it originally was prescribed and carried out, to mark them as examples of the just punishment of the worst crimes of the human race.”).

isolation cell is not sufficient to give rise to an Eighth Amendment claim.¹¹⁰ In furthering the justification of prison administrators to utilize isolation cells, the Sixth Circuit has found that placement in isolation cells is a “routine discomfort that is part of the penalty that criminal offenders pay for their offenses against society.”¹¹¹

However, in 2020, the Supreme Court noted a limitation in which cell conditions may become problematic.¹¹² In *Taylor v. Riojas*, the Supreme Court was tasked with determining whether placing an inmate into a solitary confinement cell “covered, nearly floor to ceiling, in ‘massive amounts’ of feces: all over the floor, the ceiling, the windows, the walls, and even ‘packed inside the water faucet’” gives rise to an Eighth Amendment claim.¹¹³ In assessing the poor cell conditions, the Supreme Court combined the fact that the inmate was unable to dispose of bodily waste because of a clogged drain and was forced to defecate on the cell floor, naked, with the fact that the cell lacked a bunk and the inmate was not issued clothing, and found an Eighth Amendment claim for cruel and unusual punishment existed.¹¹⁴ As such, it becomes illuminative that the Supreme Court has no issue with prison administrators placing inmates in solitary cells with unpleasant conditions, but will draw the line at placing inmates in solitary confinement cells covered in feces, with non-working plumbing, while naked.¹¹⁵ The Sixth Circuit, covering Ohio and ODRC, has set clear limits on cell conditions.¹¹⁶

Though the Court has defined the constitutionality of practices involving double celling and isolation cells, the question arises as to how courts, and prison

110. *See Harden-Bey v. Rutter*, 524 F.3d 789, 795 (6th Cir. 2008) (holding that placement into an isolation cell is a routine discomfort associated with the penalty that “‘offenders pay for their offenses against society’” and is therefore insufficient to support an Eighth Amendment Claim) (quoting *Murray v. Unknown Evert*, 84 F. App’x. 533, 556 (6th Cir. 2003)); *Wilkerson v. Goodwin*, 774 F.3d 845, 853 (5th Cir. 2014) (finding that, “absent extraordinary circumstances[,]” placement in isolation that is merely “incident to the ordinary life as a prisoner” does not give rise to a Constitutional claim because isolation “does not constitute a deprivation of a constitutionally cognizable liberty interest.” (quoting *Pichardo v. Kinker*, 73 F.3d 612, 612-13 (5th Cir. 1996)). *See also* *Luken v. Scott*, 71 F.3d 192, 193 (5th Cir. 1995) (holding that “administrative segregation, without more, simply does not constitute a deprivation of a [constitutional interest].”).

111. *Harden-Bey*, 524 F.3d at 795 (quoting *Murray*, 84 F. App’x at 556).

112. *Taylor v. Riojas*, 141 S. Ct. 52, 53 (2020).

113. *Id.* (quoting *Taylor v. Stevens*, 946 F.3d 211, 218 (5th Cir. 2019), *cert. granted, judgment vacated sub nom.* *Taylor v. Riojas*, 141 S. Ct. 52 (2020)).

114. *Id.*

115. *Id.* at 52. *But see* *Richmond v. Settles*, 450 F. App’x. 448, 456 (6th Cir. 2011) (finding that a brief deprivation of hygiene items such as toilet paper, soap, toothpaste, toothbrush, running water, or the ability to shower for six days did not give rise to an Eighth Amendment claim.). For an interesting glimpse into the thoughts of Supreme Court Justices’ thoughts on solitary confinement, *see* *Davis v. Ayala* 576 U.S. 257, 287-90 (2015). In his concurrence, Justice Kennedy notes that solitary confinement is a growing issue that may be harmful for the inmate. Justice Thomas wrote a concurrence simply to articulate that the conditions the inmate in question would be subjected to are far better than what his murder victims will ever see.

116. *See* *Braswell v. Corr. Corp. of Am.*, 419 F. App’x. 622, 627 (6th Cir. 2011) (finding a violation when an inmate spent nine months in a dirty, unsanitary cell where mold grew in the toilet and the cell was littered with food trays). *But see* *Dellis v. Corr. Corp. of Am.*, 257 F.3d 508, 511 (6th Cir. 2001) (finding that a flooded cell and inoperable toilet was only a temporary inconvenience that did not violate the Eighth Amendment).

administrators, should assess other disciplinary measures within prisons. The Court has routinely upheld, unsurprisingly, that the Eighth Amendment requires that prison administrators provide confined inmates with humane conditions, including adequate food, shelter, clothing, medical care, and reasonable safety.¹¹⁷ To clarify the boundary between what is a permissibly “restrictive and even harsh”¹¹⁸ prison environment, and the protections afforded by the Eighth Amendment, the Supreme Court has developed a two-prong test.¹¹⁹

First, the alleged deprivation must be “objectively sufficiently serious[.]”¹²⁰ and have resulted from a prison official’s act or omission in providing “minimal...life necessities.”¹²¹ Secondly, a prison may only be liable for an Eighth Amendment violation if the prison imposes “only the unnecessary and wanton infliction of pain”¹²² Further attached to the second prong is whether the prison possessed a “sufficiently culpable state of mind,”¹²³ and if so, whether that state of mind is one of “deliberate indifference”¹²⁴ to inmate health or safety.¹²⁵ Though the Supreme Court in *Riojas* did not employ this test to find an Eighth Amendment violation, it takes no stretch of the imagination to see how forcing an inmate to sleep in a fecal-ridden floor, naked, for days meets these requirements.¹²⁶

Through *Farmer*, the Court further specified what satisfies the second prong requirements for an Eighth Amendment violation. As for “deliberate indifference,” *Farmer* further reaffirmed *Estelle v. Gamble*,¹²⁷ that a “deliberate indifference” requires something more than an ordinary lack of due care for a prisoner’s safety or interests, or, something more than mere negligence.¹²⁸ Recognizing that *Estelle* leaves a spectrum with negligence on one end and purpose and knowledge on the other,¹²⁹ the *Farmer* Court found recklessness to be equal to deliberate

117. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994).

118. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

119. See Nicole B. Godfrey, *Institutional Indifference*, 98 OR. L. REV. 151, 186 (2020) (“The current Eighth Amendment test requires a prisoner prove both an objective and subjective element. First, the prisoner must show he is subject to an objectively serious prisoner condition. Second, in order for a defendant to be held liable under the Eighth Amendment, the prisoner must demonstrate that the defendant is deliberately indifferent to that serious prison condition. To prove this element, a prisoner must make two showings. First, he must show that the defendant knew that the prison condition at issue posed a substantial risk of serious harm to the prisoner (the knowledge component). Then, after demonstrating knowledge, the prisoner must show that the defendant disregarded the risk by failing to take reasonable measures to abate it (the disregard component).”).

120. *Farmer*, 511 U.S. at 834 (citing *Wilson v. Seiter*, 501 U.S. 294, at 298 (1991)).

121. *Id.* (citing *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)).

122. *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) (citing *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)).

123. *Id.*

124. *Id.*

125. *Farmer*, 511 U.S. at 834.

126. In *Taylor v. Riojas*, 141 S. Ct. 52 (2020), the primary question for the Supreme Court focused on whether the correctional officers involved would receive qualified immunity.

127. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

128. *Farmer*, 511 U.S. at 835 (citing *Whitley v. Albers*, 475 U.S. 312, 319 (1986)).

129. *Id.*

indifference.¹³⁰ However, as the *Farmer* Court recognized, recklessness is defined differently in civil law and criminal law.¹³¹ In weighing these interests, the Court held that the criminal law definition of recklessness, i.e., deliberate indifference, is met when a prison official knows of and “disregards an excessive risk to inmate health or safety.”¹³² Further, deliberate indifference arises when a prison official is aware of *both* facts from which the prison official should equate to being a substantial risk of serious harm exists *and* the prison official actually draws this inference from the facts.¹³³

Spurred by frequent litigation filed by inmates throughout the nation, the Court in *Sandin v. Conner* cemented doctrine to guide courts in the application of Due Process issues regarding prison regulations.¹³⁴ Prior to *Sandin*, courts wrestled with determining whether prison administrative handbooks codified expectations of confinement, which if not followed, would present grounds for a Due Process violation.¹³⁵ As a result of not having a hard standard for the interaction of prison regulations and Due Process protections of prison conditions and procedures, existing case law encouraged inmates to scrupulously search prison regulations for mandatory language on which to set a basis for perceived entitlements of state-conferred privileges.¹³⁶ In recognizing this, the *Sandin* court noted that while recognizing state-created Due Process concerns make sense when defining rights and remedies for the general public, it is counterintuitive when applied to prison regulations that simply guide correctional staff on operations of prisons.¹³⁷

To settle the concerns addressed in *Sandin* and problematic prior precedent, the *Sandin* Court held that though States can create a liberty interest protected by the Due Process Clause, these interests are limited to a freedom from restraint that imposes “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.”¹³⁸ In applying this new standard, the Court found that the inmate Plaintiff in *Sandin*, in being placed in a segregation cell as a result of a disciplinary infraction, did not give rise to an atypical, significant hardship on the inmate when compared to ordinary prison life, and that he was not entitled to procedural Due Process claims based on the wording of the respective prison

130. *Id.* at 836.

131. *Id.* at 837.

132. *Id.*

133. *Id.*

134. *Sandin v. Conner*, 515 U.S. 472 (1995).

135. *Id.* at 480-81 (finding that prior to the holding of this case, the Supreme Court “wrestled with the language of intricate, often rather routine prison guidelines to determine whether mandatory language and substantive predicates created an enforceable expectation that the State would produce a particular outcome with respect to the prisoner’s conditions of confinement.”).

136. *Id.* at 481.

137. *Id.* at 482 (finding that prison regulations are not designed to confer rights on inmates). In *Sandin*, the Supreme Court found that its previous guiding case, *Hewitt v. Helms*, 456 U.S. 460 (1983), created two negative implications. First, *Hewitt* disincentivized States from codifying prison management procedures in the interest of even treatment. *Id.* Secondly, *Hewitt* has led to a disturbing increase of federal courts becoming involved in the day-to-day management of prisons, resulting in a waste of judicial resources with little benefit to inmates or prison administrators. *Id.*

138. *Sandin*, 515 U.S. at 484.

regulations.¹³⁹ In reaching its holding, compared against the factual circumstances of *Sandin*, the Supreme Court has further clarified that inmates are not protected from disciplinary action that does not reach the atypical standard of prison life, and that in codifying prison regulations, states do not implicitly create disciplinary limitations or open itself to Due Process liability.¹⁴⁰

What does this mean for Ohio's MSFs when nearly every inmate interaction *could* result in danger to staff and other inmates? Does *Farmer* stand for entirely restricting all inmates within MSF to isolation cells? Does it require that prison administrators tiptoe around inmate feelings? Does it require prison administrators to refrain from imposing punishments befitting an MSF inmate? It does not seem so. Instead, *Farmer* and subsequent doctrine stands for limiting the liability of prison administrators when an inmate brings forth an Eighth Amendment claim.¹⁴¹ Using a *Farmer* analysis, a prison administrator would only be found liable for an Eighth Amendment claim alleging inhumane conditions of confinement if the prison administrator is explicitly aware of a substantial risk of serious harm.¹⁴² Further, *Sandin* cements that prison regulations, in the form of internal procedures, inmate handbooks, and decisions made by prison administrators, only give rise to Due Process concerns when the action imposes an atypical *and* significant hardship on inmates in relation to ordinary prison life.¹⁴³ Although it can be debated whether solitary confinement and other disciplinary actions constitute "serious harm" within the meaning of *Farmer*, or what amounts to an atypical and significant hardship when compared to prison life, a brutal truth stands regardless: most MSF inmates are unruly and violent and continue to be so until their freedom of movement and access to other inmates and staff are eliminated. As such, the Supreme Court has recognized this uncomfortable truth and has given deference to prison administrators in determining disciplinary measures and prison procedures.

139. *Id.* at 486.

140. See *Harbin-Bey v. Rutter*, 420 F.3d 571, 577 (6th Cir. 2005) (holding that "an increase in security classification . . . does not constitute an 'atypical and significant' hardship . . ."); *Rimmer-Bey v. Brown*, 62 F.3d 789, 791 (6th Cir. 1995) (refusing an inmate's allegation that prison officials "violated his procedural due process rights by placing him in administrative segregation without a formal reclassification hearing"). *But see Powell v. Washington*, 720 F. App'x 222, 226 (6th Cir. 2017) (holding that confining an inmate in administrative segregation for six months does not constitute an atypical and significant hardship, but being placed in a cell, deprived of adequate lighting, for thirty-five days is sufficiently extreme enough to give rise to an Eighth Amendment claim).

141. *Farmer v. Brennan*, 511 U.S. 825, 825 (1994).

142. *Id.*

143. *Sandin*, 515 U.S. at 472.

IV. OPERATIONS OF AN OHIO MAXIMUM-SECURITY FACILITY

A. *Correctional Officers Within Ohio Department of Rehabilitation and Corrections and Use of Force*

ODRC requires that CO applicants possess a high school diploma or GED and hold a valid driver's license.¹⁴⁴ Further, ODRC requires COs to develop skills in detention practices for adult felons, the criminally insane, security operations, unarmed self-defense, riot control, familiarization with firearms, and basic computer operations upon completion of a 365-day probationary period.¹⁴⁵ Before beginning work in their respective institutions, COs are required to attend the Corrections Training Academy ("CTA"), located in Orient, Ohio, to undergo 160 hours of training in areas such as firearms, CPR, inmate transportation practices, and the use of restraints.¹⁴⁶

Scholarship has found that COs derive five pillars of power within prisons: legitimate power, coercive power, reward power, expert power, and referent power.¹⁴⁷ Legitimate power refers to the inherent power that COs retain just by the structural relationship between the position of authority as a CO and the position as an inmate.¹⁴⁸ Coercive power refers to the ability of COs to impose sanctions upon inmates to "coerce" an inmate to follow institutional rules and regulations.¹⁴⁹ Reward power, the opposite of coercive power, encompasses a CO's ability to grant favorable functions to inmates, such as a work assignment, access to recreation, commissary privileges, and overlooking minor rule infractions.¹⁵⁰ Expert power stems from an inmates perception that a CO is knowledgeable in his craft, and therefore follows instruction based upon this belief.¹⁵¹ Referent power refers to a leadership style that garners the respect and admiration of inmates that results in an inmate population following rules and regulations based on admiration.¹⁵² Despite these bases of power and the theory held in academia that inmates will submit to these powers, the histories of MSFs stand in direct opposition to this theory.¹⁵³

144. *Job Description and Qualifications for Correctional officers*, OHIO DEP'T OF REHAB. & CORR., https://dasstateoh.taleo.net/careersection/oh_ext/jobdetail.fil?job=210004ET&tz=GMT-04%3A00&tzname=America%2FNew_York (last visited Oct. 7, 2021) [<https://perma.cc/DRC4-KYF6>].

145. *Id.*

146. *Corrections Training Academy*, OHIO DEP'T OF REHAB. & CORR., <https://drc.ohio.gov/cta> (last visited Oct. 7, 2021) [<https://perma.cc/5zw4-pbq6>].

147. JOYCELYN POLLOCK, *PRISONS TODAY AND TOMORROW 200-201* (Texas State University-San Marcos eds., 2nd ed. 2006).

148. *Id.*

149. *Id.* at 201.

150. *Id.*

151. *Id.*

152. *Id.*

153. This is inferred from the existence of MSFs within ODRC as ODRC reserves the use of MSFs for inmates who fail to adhere to institutional rules, pose a threat the security, harm staff or inmates, and cannot be controlled in lower security institutions.

ODRC does not alter its occupational duties or methods to accomplish the respective duties of COs based upon the security level of institution. A CO that works within an MSF, dealing with the worst offenders, must adhere to the same rules and regulations as a CO who works at a minimum-security institution.¹⁵⁴ This raises suspicion as to whether this is a wise policy for ODRC to follow. After all, ODRC recognizes that minimum-security inmates are vastly different from maximum-security inmates.¹⁵⁵

As discussed above, *Farmer* stands for guiding prison administrators when they may stand liable, and subsequent doctrine offers specifics on the limits on conditions of confinement and treatment. However, often unique to MSFs is rampant violence and the necessary force that COs must apply to gain control of unruly, violent inmates.¹⁵⁶ When violence and disruption occurs within a prison setting, the Court has recognized that COs must assess the need to maintain order and discipline with the risk of injury to inmates.¹⁵⁷ Additionally, the Court recognizes that in instances in which violence and disorder occur within prisons, COs and prison officials are forced to act quickly and decisively without the luxury of planning and assessment of courses of action.¹⁵⁸ In reaching this realization, the Court has found that prison administrators “should be accorded wide-ranging deference in the adoption and execution of policies . . . that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.”¹⁵⁹ Obviously, this is limited by the Eighth Amendment’s prohibition on cruel and unusual punishment, similar to *Farmer*. To balance the interest between the sanctity of the Eighth Amendment and prison administrator’s deference, the Court has held that when force is implemented, liability arises only if the force was utilized in a bad-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.¹⁶⁰ To assist prison administrators in developing their use-of-force policies, the Court has determined a set factors to determine the validity of force used.¹⁶¹

The United States District Court for the Southern District of Ohio, the court in which many federal suits arising from SOCF arrive, has held “the good faith use of physical force in pursuit of valid penological or institutional goals will rarely, if ever, violate the Eighth Amendment.”¹⁶² As such, ODRC is not severely restricted

154. MEARS, *supra* note 48, at 5.

155. SOCF HANDBOOK, *supra* note 42, at 3-4; *see also* ODRC INMATE CLASSIFICATION, *supra* note 5 (describing the different inmate security classifications).

156. *See* discussion *infra* Section IV. C.

157. Hudson v. McMillian, 503 U.S. 1, 6 (1992).

158. *Id.*

159. Whitley v. Albers, 475 U.S. 312, 321-22 (1986) (citing Bell v. Wolfish, 441 U.S. 520, 547 (1979)).

160. Hudson, 503 U.S. at 7 (citing Whitley, 475 U.S. at 320-21).

161. In Whitley, 475 U.S. at 321, the Supreme Court found that factors to be assessed include the injury suffered as a result of the force used, whether force was required, the severity of the force used when compared to the need of the force, the apparent threat that prompted the force used, and any mitigating efforts used to prevent force from being used.

162. McDougald v. Clagg, No. 1:18-CV-93, 2020 WL 2557039, at *3 (S.D. Ohio May 20, 2020) (quoting Parrish v. Johnson, 800 F.2d 600, 604 (6th Cir. 1986)).

by the legislature or the courts in its use of force policies, and has guidance from its respective jurisdiction in how to craft its use-of-force policies. Instead, it appears that ODRC, through its internal policies, is hyper-restricting CO and prison administrators' ability to gain compliance and manage their institutions with deadly consequences. Both District Courts and the Sixth Circuit, hearing Eighth Amendment claims arising out of SOCF, have routinely found for COs when inmates allege use-of-force violations.¹⁶³

B. *Inmate Privileges and Comforts Within an Ohio Maximum-Security Facility*

I spent sixteen hours on a constant watch. Eight hours prior to starting this shift, I had just completed my shift on the same constant watch. For sixteen hours my duty was to stare at an inmate to ensure that he did not harm himself. For sixteen hours, the inmate masturbated while staring at me. For the entire shift the inmate belittled me, insulted me, and called me a [homosexual] for doing my job. The rest of the inmates in the block, unaware that the inmate was masturbating, joined in belittling me and calling me a [homosexual]. The inmate on constant-watch wasn't suicidal. He just wanted to make life difficult. He knew that an Officer would be frozen to work a double shift if he said he was suicidal and we were understaffed. He was on constant watch for over sixty-five days.¹⁶⁴

SOCF houses inmates ranging from three security classifications: ERH¹⁶⁵ is the most restrictive, Level 4 is the least restrictive, and ERH-T is a transition classification between the ERH and Level 4 classifications.¹⁶⁶ ERH level inmates are entitled to religious and legal services, one hour of recreation five days a week,

163. *Clagg*, 2020 WL 2557039, at *3 (finding *pro se* inmate did not have a case against prison administrators when pepper spray was utilized against him for smearing feces on the wall of his cell and banging his head against the wall in a self-harming manner). In *McDougald v. Stone*, No. 18-3294, 2019 WL 1502513 (6th Cir. Jan. 8, 2019), the Sixth Circuit applied the Use-of-Force doctrine to an instance arising out of SOCF involving the same Inmate McDougald. Here, Inmate McDougald was ordered to give a blood sample after being accused of both "throwing a bodily substance on another person's face and spitting on a correctional officer's face." *Id.* at *3. Once ordered to give the blood sample, Inmate McDougald refused, and correctional officers grabbed him in a "painful . . . manner" and medical staff "forced [a needle] in [his] arm causing [him] severe pain" which resulted in a bruise. *Id.* at *1. In finding that Inmate McDougald's excessive force claim must fail, the Sixth Circuit assessed the objective component of the force (if the injury was sufficiently serious), and the subjective component (if the prison official applied force maliciously or sadistically for the very purpose of causing harm). *Id.* at *3. In its analysis, the Sixth Circuit also considered the type and excessiveness of the force used, and the extent of the inflicted injury. *Id.* Ultimately, the Sixth Circuit found that the COs involved, in light of Inmate McDougald's noncompliance with orders, used necessary force to ensure compliance with the blood draw, and that no bad-faith intent existed amongst COs in gaining compliance. *Id.*

164. Letter from anonymous S. Ohio Corr. Facility Corr. Officer to author (Feb. 3, 2021) (on file with author) [hereinafter ANONYMOUS CO LETTER].

165. ODRC INMATE CLASSIFICATION, *supra* note 5, at 2 (defining ERH as "the most restrictive security level in the ODRC reserved for inmates who constitute the greatest threat to the safety and security of the community, staff, others, and/or the secure operations of a correctional facility.").

166. *Id.* at 3 (outlining that ERH-T is a transitional classification from ERH to Level 4); *see also* SOCF HANDBOOK *supra* note 42, at 3-4.

one phone call on the weekend, televisions placed on the cell range for viewing pleasure, limited non-contact visits, and a \$70 commissary spending limit for each shopping period.¹⁶⁷ ERH level inmates are fed in their cells, but receive the same meals that Level 4 inmates receive.¹⁶⁸ Conversely, Level 4 inmates are permitted to spend \$90 at commissary each shopping period,¹⁶⁹ have the opportunity to attend the institutional library seven days a week,¹⁷⁰ and are permitted to attend a recreation period seven days a week where games such as basketball, volleyball, table tennis, and flag football are facilitated by staff.¹⁷¹ Further, Level 4 inmates leave their cells multiple times a day to travel to the inmate dining room to eat their meals, in addition to recreation and library periods.¹⁷² Additionally, Level 4 inmates are permitted to attend contact visitations Wednesday through Saturday,¹⁷³ and are also permitted to have a single television, a CD player, a radio, and a tablet with Wi-Fi capabilities to call outside of the institution and purchase music.¹⁷⁴

As consistently found by the Supreme Court and lower courts, inmates are not entitled to comfort or privileges while incarcerated, and certainly not in instances in which an inmate resides within an MSF.¹⁷⁵ Further, the Supreme Court has explicitly held that the only privileges inmates are entitled to are adequate food, shelter, clothing, medical care, and reasonable safety.¹⁷⁶ Attending recreation multiple days a week to play games, large commissary spending limits, televisions, the ability to call home and listen to music extends far beyond the required adequate food, shelter, clothing, medical care, and reasonable safety.¹⁷⁷ However,

167. SOCF HANDBOOK, *supra* note 42, at 3.

168. *Id.* at 3, 18.

169. *Id.* at 9.

170. *Id.* at 21.

171. *Id.* at 34.

172. *Id.* at 18.

173. *Id.* at 40.

174. *Id.* at 31; *see also* E-mail from anonymous Toledo Corr. Inst. Corr. Officer to author (Jan. 4, 2021, 02:48 CST) (stating that ERH inmates now receive access to tablets and Wi-Fi within their cells, a privilege previously given to Level 4 or lesser inmates, and that Level 4 inmates receive significantly more out-of-cell time than required) (on file with author). Tablets are not outlined in this version of the SOCF rulebook but have since been authorized and incorporated into recent editions of the SOCF rulebook that is not readily available to the public.

175. *Rhodes v. Chapman*, 452 U.S. 337, 347, 349 (1981).

176. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). In *Ivey v. Wilson*, 832 F.2d 950, 954 (6th Cir. 1987), the Sixth Circuit found that the Constitution does not protect an inmate from uncomfortable or unpleasant prison experiences. In *Vick v. Core Civic*, 329 F. Supp. 3d 426, 451 (M.D. Tenn. 2018), the United States District Court for the Middle District of Tennessee found that a prison requiring an inmate to be fed within his cell, and not the communal chow hall, does not give rise to an “atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” (quoting *Sandin v. Conner*, 515 U.S. 472, 484 (1995)). Further, *Vick*, 328 F. Supp. 3d at 451 found that inmates have no constitutional entitlement to access to television or access to commissary privileges while incarcerated.

177. In *Rodgers v. Jabe*, 43 F.3d 1082, 1087-88 (6th Cir. 1995), the Sixth Circuit considered constitutional minimums regarding recreation times. The Sixth Circuit found that one hour of recreation time, five days per week, does not violate the Constitution. *Id.* at 1087. However, it would be unconstitutional to limit an inmate’s recreation time to one hour per week, five days a week, every thirty days as a punitive measure. *Id.* at 1088; *see also* *Delaney v. DeTalla*, 123 F. Supp. 2d 429, 435-

and arguably most troubling, while incarcerated in an MSF, inmates receive creature comforts, such as table tennis and routine phone calls to loved ones, that many law-abiding Americans are not guaranteed. While potentially effective in occupying the time of MSF inmates, these creature comforts are exactly that: comforts being provided to Ohio's worst offenders while incarcerated in an institution designed to encourage inmates to follow rules and regulations to be reassigned to a lower-level institution.

With such comfort permitted and privileges provided, it appears that MSF inmates do not have proper incentive to abide by ODRC rules and regulations to ultimately be transferred to a lower-level institution to receive educational and vocational training for a successful transition back into society. While many of ODRCs inmates likely do wish to serve their time, learn, grow, and become productive members of society, these are not the type of inmates who traditionally reside within MSFs. Thus, ODRC has built a system that creates complacency and comfort within MSFs, further incentivizing the State's worst offenders not to change their behavior patterns, but instead has lulled them into complacent comfort.

It started out as a normal day. We had an inmate in a slammer cell because he had thrown shit on an Officer the day prior. After about two hours on shift, during a routine round, I walked by his cell and it smelled terrible. I looked closer and he was covered in shit. His cell walls were covered in shit. His sink, bed, blankets, mattress, ceiling, light fixtures, everything, covered in shit. He grinned at me and said "I'm not coming out of here. You're gonna have to come in and get me." He knew we couldn't leave him in there like that. He knew what he was doing.¹⁷⁸

C. *One Year's Worth of Incidents of Violence Within an Ohio Maximum-Security Facility*

In 2016,¹⁷⁹ the Correctional Institution Inspection Committee ("CIIC"), the agency charged with ensuring compliance of correctional institutions, issued a report on SOCF.¹⁸⁰ Within this report, CIIC determined that throughout Fiscal Year (FY) 2015, 257 incidents of inmate-on-inmate assaults occurred within SOCF, an increase of 3.6% from FY 2014.¹⁸¹ Additionally, CIIC found that during FY 2015, 152 inmate-on-staff assaults occurred, an increase of 3.4% from FY 2014.¹⁸² Further, CIIC found that the rate of inmate disciplinary convictions for

37 (N.D. Ill. 2000), *aff'd & remanded*, 256 F.3d 679 (7th Cir. 2001) (holding that denying an inmate out-of-cell recreation for a period extending six months, absent a security risk, qualified as a constitutional violation).

178. ANONYMOUS CO LETTER, *supra* note 164.

179. 2016 is the most recent year that CIIC has issued a report on SOCF.

180. CORRECTIONAL INSTITUTION INSPECTION COMMITTEE REPORT ON THE INSPECTION AND EVALUATION OF SOUTHERN OHIO CORRECTIONAL FACILITY (2016) [hereinafter CIIC SOCF REPORT], <http://ciic.state.oh.us/docs/Southern%20Ohio%20Correctional%20Facility%202016.pdf> [<https://perma.cc/fa3h-jgjs>].

181. *Id.* at 30.

182. *Id.*

assault, for both inmate-on-inmate and inmate-on-staff, at SOCF was “significantly more than the [O]DRC average.”¹⁸³

In its 2016 report, CIIC also assessed the incidents in which COs at SOCF used force against inmates. During Calendar Year (CY) 2014, SOCF reported 443 incidents in which force was used.¹⁸⁴ Unsurprisingly, SOCF’s rate in which force was used was “significantly more than the [O]DRC average.”¹⁸⁵ Of the 443 incidents that force was used within SOCF in CY 2014, chemical agents, such as pepper spray, were used 293 times,¹⁸⁶ meaning that 150 instances in which force was used involved hand-to-hand contact or the employment of a PR-24, a security baton issued to COs within SOCF.¹⁸⁷

These statistics raise the questions as to why so many assaults and uses of force arise in a maximum-security setting and how to reduce instances of violence to ensure the safety of both SOCF inmates and staff. As outlined throughout this Note, SOCF inmates are granted comfort and privileges beyond the “minimal civilized measure of life’s necessities.”¹⁸⁸ SOCF inmates are out of their cells, attending recreation, and comingling in groups beyond what has been determined as the constitutional minimum. In allowing this, ODRC has permitted institutions such as SOCF to exist as a tinderbox of violence and danger. It is easy to assume that inmates are predictable, after all, MSFs are rigid and strict for this purpose, and that COs have an easy position within prisons: keep count of inmates, enforce the rules, and follow the direction of supervisors. However, it is not that simple. When theory fails and reality ensues, Murphy’s Law becomes the controlling precedent.¹⁸⁹

D. *Examples of Things Going Wrong*

Casey Pigge, an inmate currently incarcerated at OSP in Youngstown, Ohio, has a long track record within ODRC.¹⁹⁰ After being convicted for the murder of a woman in Chillicothe, Ohio in 2009, Pigge was not finished killing.¹⁹¹ After conviction and sentencing, he killed while incarcerated at Lebanon Correctional Institution in February of 2016 by smashing his cellmate’s skull with a cinder

183. *Id.*

184. *Id.* at 32.

185. *Id.*

186. *Id.*

187. This number is derived by subtracting the number of instances that chemical agents were used from the total number of reported uses of force.

188. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

189. Murphy’s Law stands for the proposition that if anything can go wrong, it will.

190. Offender Details of Casey L. Pigge, OHIO DEP’T OF REHAB. & CORR., <https://appgateway.drc.ohio.gov/OffenderSearch/Search/Details/A617546> (last visited Oct. 20, 2021) [<https://perma.cc/ad7l-lxym>].

191. Jona Ison, *Top 10 for 2018: Casey Pigge Continues Violent Prison Assaults*, CHILLICOTHE GAZETTE (Dec. 28, 2018, 1:49 PM), <https://www.chillicothegazette.com/story/news/2018/12/28/top-10-2018-casey-pigge-continues-violent-prison-assaults/2420857002/> [<https://perma.cc/p2dx-6zab>] (outlining Pigge’s inability to follow social constructs, despite receiving the strictest punishments ODRC is willing to impose).

block.¹⁹² Upon murdering behind bars, Pigge was transferred to a more restrictive facility.¹⁹³ However, in what was shaping up to be his typical disruptive fashion, Pigge killed *again* while on the prison transport bus.¹⁹⁴ The hypothetical presented in the introduction of this note is not a hypothetical at all; instead, it is a truthful account of further destruction that Pigge contributed to while incarcerated at SOCF.¹⁹⁵ Pigge has demonstrated that ODRC's MSFs are lacking proper security practices and, arguably, has not completely disincentivized destructive behavior within its institutions.

Similar to the story of Casey Pigge is the history of ODRC inmate Greg Reinke.¹⁹⁶ Reinke is no stranger to bloodshed while incarcerated at SOCF. In June of 2017, he and four other inmates were handcuffed to tables within an ERH block pursuant to an ODRC effort to contribute to ERH inmates' recreational interests.¹⁹⁷ Reinke managed to remove his handcuffs, brandish a shank, and subsequently stab the four inmates multiple times while they were still handcuffed to their respective table.¹⁹⁸ At the time of the stabbing, internal prison reports state that Reinke said he "just felt like killing someone."¹⁹⁹ This incident, particularly because of the released video footage, sparked a number of theories and concerns regarding SOCF.²⁰⁰ Notable are the accusations that COs within SOCF delayed their response and orchestrated the attack on the four inmates.²⁰¹ However, these allegations have been refuted by both the related CO Union and Scioto County Prosecutor, Shane Tieman.²⁰² As a result of the incident, Shamieke Pugh, one of the inmates stabbed, filed a federal suit seeking relief and naming the Warden of SOCF, Ron Erdos, as a defendant.²⁰³ In this suit, the District Court of the Southern

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. Ivy Potter, *Inmate Sentenced to 86 Years for SOCF Stabbings*, PORTSMOUTH DAILY TIMES (Apr. 1, 2019), <https://www.portsmouth-dailytimes.com/news/36900/inmate-sentenced-to-86-years-for-socf-stabbings> [<https://perma.cc/ns5n-f2st>].

197. *Id.*

198. Ivy Potter, *Inmate Sentenced to 86 Years for SOCF Stabbings*, PORTSMOUTH DAILY TIMES (Apr. 1, 2019), <https://www.portsmouth-dailytimes.com/news/36900/inmate-sentenced-to-86-years-for-socf-stabbings>; John Deike, *Graphic Video: Lucasville, OH Inmates Repeatedly Stabbed in Vicious Prison Attack*, 19 NEWS (Jan. 28, 2019, 8:18 PM), <https://www.cleveland19.com/2019/01/29/graphic-lucasville-oh-inmates-repeatedly-stabbed-vicious-prison-attack-video/> [<https://perma.cc/5nlf-j59w>] (within this article is an embedded video that shows Reinke removing his hand restraints and assaulting four inmates still cuffed to their respective table).

199. Scott Grammer, *Four Ohio Prisoners Shackled to Table Stabbed by Fellow Prisoner*, PRISON LEGAL NEWS (Dec. 9, 2019), <https://www.prisonlegalnews.org/news/2019/dec/9/four-ohio-prisoner-s-shackled-table-stabbed-fellow-prisoner/> [<https://perma.cc/rl6a-jmya>].

200. *Id.*

201. *Id.*

202. *Id.*

203. *Pugh v. Erdos*, No. 1:19-CV-245, 2020 WL 2395566 (S.D. Ohio May 12, 2020). In *Pugh*, the court found that Warden Erdos was not liable for a separate reason, but had he not, simply having awareness that Inmate Reinke had stabbed other inmates while incarcerated, met the *Farmer* standard for imputing liability. No. 1:19-CV-245, 2020 WL 2395566, at 6 (2020).

District of Ohio noted that Warden Erdos could not be liable but did grant Plaintiffs leave to amend their complaint.²⁰⁴

As portrayed in the introduction to this Note, Reinke was the second inmate involved in the stabbing of an SOCF CO that resulted in over thirty-two stab wounds.²⁰⁵ As such, Reinke has since been moved to Ohio State Penitentiary, and he began a hunger strike in April of 2019.²⁰⁶ Reinke claims he began a hunger strike due to being denied recreation and having to reside in a cell without creature comforts.²⁰⁷ ODRC has denied that Reinke is being mistreated and acknowledged that he is being held at a high-security facility with fewer comforts than a lower-security facility because of his assaultive behavior at SOCF.²⁰⁸

V. DETERRING FURTHER VIOLENCE AND UNNECESSARY DISRUPTION
WITHIN OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS
MAXIMUM-SECURITY FACILITIES

How does ODRC motivate the most depraved inmates to behave and follow institutional rules? After all, the exact purpose of having MSFs, such as SOCF, is to deter inmates from violence and rule breaking within ODRC's lower-level institutions. The answer is rooted in the creature comforts and privileges that MSF inmates receive within facilities such as SOCF. The following sections will address the comforts and privileges received by Ohio's maximum-security inmates, and include opinions of correctional staff and administrators regarding the intersection of reducing violence, recidivism and the comforts and privileges retained by ODRC's MSF inmates. By demonstrating these findings and opinions, it becomes clear that SOCF inmates receive more than they are entitled to, and as a result, ODRC has created a culture that promotes manipulation and complacency. As such, some of those closest to SOCF opine that by removing the addressed creature comforts and privileges from MSFs, inmates will be incentivized to adhere to the rules, resulting in reclassification to a lower-security institution where creature comforts and privileges are appropriate, while receiving the necessary educational and vocational programming to bolster successful reintegration into society, ultimately reducing recidivism within Ohio.

204. *Id.*

205. Ivy Potter, *Inmate Sentenced to 86 Years for SOCF Stabbings*, PORTSMOUTH DAILY TIMES (Apr. 1, 2019), <https://www.portsmouth-dailytimes.com/news/36900/inmate-sentenced-to-86-years-for-socf-stabbings>.

206. AP, *Southern Ohio Correctional Facility Inmate Who Stabbed 4 Prisoners Goes on Hunger Strike*, THE ENQUIRER: NEWS, (Apr. 16, 2019, 5:22 PM), <https://www.cincinnati.com/story/news/2019/04/16/greg-reinke-hunger-strike-lucasville-inmate-alleges-mistreatment/3489739002/> [<https://perma.cc/jnh7-seyx>].

207. *Id.*

208. *Id.*

A. *Modern Theories of MSF Reform are Inadequate and Do Not Account for the Potential of Violent Tendencies of Inmates*

In 1983, the House of Representatives Subcommittee on Courts, Civil Liberties and the Administration of Justice held oversight hearings regarding the lockdown conditions at Marion.²⁰⁹ The subcommittee commissioned two individuals, David Ward and Allen Breed, believed to have expertise in corrections, to make recommendations for the future of MSFs.²¹⁰ According to Ward and Breed, the way forward for corrections in the United States involved rejecting lockdown as a permanent correctional practice.²¹¹ Instead, Ward and Breed advocated that a correct model would utilize the surveillance practices accustomed to a MSF, but separated into small units to include “40-50 inmates, all in individual cells, contain dining and laundry facilities, counselling offices, indoor game rooms, a wire enclosed outdoor recreation yard and a work area.”²¹² In making this recommendation, Ward and Breed sought to provide inmates the opportunity to congregate within the unit while shedding the distinct features of a MSF: social isolation, minimal stimulation, and lack of physical contact.²¹³

Though venerable, the recommendations produced by Ward and Breed are not practical. Most MSF inmates are violent and unpredictable. Should inmates like Pigge and Reinke have the ability to freely roam about a unit of 40-50 inmates, understanding that they have already killed and assaulted within ODRC’s existing MSFs, ODRC would be opening other inmates and staff up to further assault while seemingly rewarding unacceptable behavior. This distinctly contradicts the purpose of ODRC’s Tier System and would undercut the entirety of progress ODRC has made in its recidivism reduction efforts.

209. *Marion Penitentiary—1985: Oversight Hearing Before the Subcomm. On Cts., Civ. Liberties, & the Admin. of Just. of the H. Comm. on the Judiciary*, 99th Cong. 1 (1985) (opening statement of Rep. Robert Kastenmeier, Chairman, Subcomm. on Cts., Civ. Liberties, & the Admin. of Just.).

210. *Marion Penitentiary—1985: Oversight Hearing Before the Subcomm. On Cts., Civ. Liberties, & the Admin. of Just. of the H. Comm. on the Judiciary*, 99th Cong. 1 (1985) (opening statement of Rep. Robert Kastenmeier, Chairman, Subcomm. on Cts., Civ. Liberties, & the Admin. of Just.); Lobel, *supra* note 58, at 202 (outlining the outcome of the Subcommittee’s decision to consult Ward and Breed to make recommendations regarding Marion and the future of MSFs within the United States).

211. DAVID A. WARD & ALLEN F. BREED, *THE UNITED STATES PENITENTIARY, MARION, ILLINOIS: A REPORT TO THE COMMITTEE ON THE JUDICIARY, U.S. HOUSE OF REPRESENTATIVES* (1984), reprinted in *Marion Penitentiary—1985: Oversight Hearing Before the Subcomm. On Cts., Civ. Liberties, & the Admin. of Just. of the H. Comm. on the Judiciary*, 99th Cong. 1 (1985).

212. *Id.*

213. *Id.*; see also Lobel, *supra* note 58, at 203.

B. *Accounting for Statistical Differences Between Southern Ohio Correctional Facility and Ohio State Penitentiary*

ODRC currently maintains three institutions dedicated for Level 4 or greater inmates: SOCF, OSP, and Toledo Correctional Institution (“TOCI”).²¹⁴ Although the three institutions house the most troublesome of Ohio’s inmates, statistical data gathered by CIIC indicates that SOCF is inherently more violent than OSP.²¹⁵ Throughout CY 2015,²¹⁶ OSP reported 8 incidents of inmate-on-inmate assaults and 55 incidents of inmate-on-staff assaults.²¹⁷ Conversely, in the same reporting period, SOCF hosted 257 inmate-on-inmate assaults and 152 inmate-on-staff assaults.²¹⁸ Though housing inmates of similar security classification and danger, SOCF saw nearly 500% more incidents of assault than OSP in the same time period. These glaring statistical differences can easily be explained: the majority of OSP’s inmate population are Level ERH, whereas the majority of SOCF’s inmate population are level 4.²¹⁹ Between Level 4 and ERH exists a vast difference in privileges and comforts.

For example, in Level 4, such as some of SOCF’s population, inmates can expect to receive a \$90 commissary spending limit,²²⁰ one ten-minute phone call

214. Darin Furderer, *Correctional Institution Inspection Committee Report on the Inspection and Evaluation of Southern Ohio Correctional Facility*, CORR. INST. INSPECTION COMM. 32 (2016), <https://www.ciic.state.oh.us/assets/reports/318.pdf> [hereinafter SOCF 2016 REPORT]; ODRC INMATE CLASSIFICATION, *supra* note 5, at 3. Some institutions temporarily house or have designated holding cells for inmates of higher security classification than what that particular institution is accustomed to.

215. *Id.* at 31.

216. At the time of this writing, CIIC has only published comparable data for 2015 as the most recent year.

217. Darin Furderer, *Correctional Institution Inspection Committee Report on the Inspection and Evaluation of Ohio State Penitentiary*, CORR. INST. INSPECTION COMM. 13 (2017), <https://www.ciic.state.oh.us/assets/reports/286.pdf>. [hereinafter OSP 2017 REPORT].

218. *Id.* But see Danika Jo Anderson, Note, *Solitary Confinement As Illegitimately Proscribed and Disproportional Punishment: Another Angle from Which to Attack the Inhuman Practice*, 35 NOTRE DAME J. L. ETHICS & PUB. POL’Y 301, 323 (2021) (Claiming that solitary confinement does not rehabilitate or reform inmates, does not decrease violence in prisons, and does not deter inmates from committing further violence or crimes and suggesting that placement into solitary confinement should require additional process and should not be a preventative measure readily available to prison administrators). The statistical difference between OSP and SOCF stands in direct opposition to the claim made in the article; solitary confinement accomplishes exactly what the author claims it does not.

219. See ODRC ANNUAL REPORT, *supra* note 5, at 20 (noting that ODRC holds 1,558 level 4 inmates and 906 level E inmates as of July 2020); see SOCF 2016 REPORT, *supra* note 214 (stating that in of January 2016, SOCF housed 1,228 inmates); see OSP 2017 REPORT, *supra* note 217 (stating that in April of 2017, OSP held 568 inmates). Exact numbers for the classification of each inmate at OSP and SOCF are not available at the time of this Note. However, according to ODRC and the CIIC reports cited within this Note, OSP is designated to contain ERH inmates, whereas SOCF predominantly confines Level 4A with a lesser amount of ERH and ERH-T inmates. Following this trend, the majority of ODRC’s 4A inmates are housed at SOCF, whereas OSP’s population is predominantly made up of ERH inmates.

220. SOCF HANDBOOK *supra* note 42, at 9.

per day,²²¹ an unlimited number of visits from family members during set visiting hours,²²² and one hour of recreation seven days per week.²²³ Conversely, for ERH inmates, such as those found at OSP, inmates can expect a \$50 commissary spending limit,²²⁴ one fifteen-minute phone call monthly,²²⁵ two, two and a half hour no-contact visits monthly,²²⁶ and one hour of recreation five days per week.²²⁷

As demonstrated in the preceding paragraph, the majority of SOCF inmates receive significantly more privileges and creature comforts than the majority of inmates within OSP. For OSP inmates, this means less time out of their cells, less interaction with other inmates, and less opportunity for disaster to strike. Though an outsider may believe that OSP's inmates would harbor disdain for the reduced out-of-cell time and seclusion, many OSP inmates have stated to the contrary. According to responses received by CIIC from an open-ended survey given to OSP inmates, the following were responses of OSP inmates when asked, "What is one positive aspect of this prison?":²²⁸

[1] You can stay to yourself for the most part. [2] You can get a lot of books and time to focus on learning stuff to better yourself. [3] I get to sit back in my cell and get my mind right. [4] Allows you to make your own choices before they make them for you. [5] The prison is locked down 23 and 1 so you are forced to use your mind. [6] It's less people, and I've grown into a good person by educating myself and I love the single cells. [7] Easy to focus on positive things . . . [no] . . . drama.²²⁹

Conversely, when the same question through the same forum was asked to SOCF inmates, many responded with simply "Nothing" or "None."²³⁰ As seen from the responses of OSP inmates, many inmates in a more restrictive status appreciate the reduced distraction, reduction of potential for strife that is inherent with the lack of interaction and mobility within a restrictive environment, and the ability to better oneself while incarcerated. As such, reducing the number of privileges and creature comforts available to SOCF inmates would encourage and assist inmates to have and maintain good behavior so that they can earn a re-classification to a lower-security institution, allowing them to receive recidivism-reducing educational and vocational programming and privileges.

221. SOCF HANDBOOK *supra* note 42, at 7.

222. SOCF HANDBOOK, *supra* note 42, at 41.

223. The SOCF Inmate Handbook simply states that recreation schedules are posted in the respective block of each 4A unit; however, this author has personal knowledge that SOCF 4A inmates receive one hour of recreational time seven days per week.

224. *Ohio State Penitentiary Inmate Handbook*, UNIV. OF MICH. L. SCH.: POL'Y CLEARINGHOUSE 52 (2014), <https://www.law.umich.edu/special/policyclearinghouse/Documents/Ohio%20State%20Pen%20Inmate%20Hanbook.pdf> [hereinafter OSP HANDBOOK] [<https://perma.cc/j8lh-ncge>].

225. OSP HANDBOOK, *supra* note 221, at 52.

226. OSP HANDBOOK, *supra* note 221, at 52.

227. OSP HANDBOOK, *supra* note 221, at 52.

228. OSP 2017 REPORT, *supra* note 217.

229. *Id.*

230. SOCF 2016 REPORT, *supra* note 214, at 94.

C. *A Clinician's Perspective on Reform in a Maximum-Security Facility*

Law and the social sciences are no stranger to one another, as each lends to the other in the functioning of a well-assessed system.²³¹ Leading literature in the intersection of law and psychology suggests that the current constitutional doctrine regarding MSFs fails to recognize the extent of psychological trauma that is inflicted by solitary confinement and placement in MSFs.²³² Though this is the narrative that is popular within academic circles, it is not the only narrative, and more importantly, it is not a narrative that has been fostered by immersion into an Ohio MSF.²³³

Within the workings of a human mind exist six developmental domains: physical, emotional, psychological, social, intellectual, and moral.²³⁴ Though collectively contained within the biological mandate of humanity, these six domains do not all develop equally.²³⁵ Within any individual, especially an MSF inmate, any one of these six domains can be underdeveloped or can “fail to pass through certain critical development gates that” set the course one’s life ultimately follows.²³⁶ Often in the case of an inmate who has reached their way to a MSF, there has been a pervasive inability to adopt the basic rules of society.²³⁷ Instead, MSF inmates incorporate a view of self and others that fails to care or fails to perceive the impact of behavior that violates social norms, rules, and laws produced by their criminal behavior.²³⁸ In sum, in the absence of a moral code law-abiding citizens understand, “an amoral code predominates the persistent behavioral patterns commonly displayed” by inmates within a MSF.²³⁹

This amoral code, or absence of morality, stands directly in opposition to the goal of ODRC in that the reduction of recidivism cannot occur.²⁴⁰ For these types of inmates, predominantly found in MSFs, exists an “invincible personality that will not be altered in their antisocial view.”²⁴¹ As such, these inmates will continue on a path that stands in opposition to ODRC and the benefit of society.²⁴² However,

231. A hallmark of Civil Rights adjudication, *Brown v. Bd. of Ed.*, 347 U.S. 483 (1954), utilized emerging data in the social sciences in its reflection on the damaging effects of racial segregation.

232. Craig Haney & Mona Lynch, *Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement*, 23 N.Y.U. REV. L. & SOC. CHANGE 477, 481 (1997).

233. Stephen G. Virginia, the Psychologist Supervisor and Clinical Director of Southern Ohio Correctional Facility provided the professional opinion and first-hand experience that serves as the basis as follows *infra* Section V. C.

234. Letter from Stephen G. Virginia, Psychologist Supervisor, Clinical Director, S. Ohio Corr. Fac., to author (Jan. 6, 2021) (on file with author) [hereinafter *Stephen G. Virginia Letter*].

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.*

242. *Id.*

not all MSF inmates possess this antisocial view resistant to efforts of rehabilitation and instead simply require development within the moral domain.²⁴³

In the view of SOCF's Clinical Director, several things are needed to facilitate development of the moral domain:

[E]ducation in what constitutes a healthy, mature adult humanity; immediate consequences for violations of those established norms . . . and reward for moral prosocial behavior. In other words, a tripartite model of moral education, i.e., immediate consequences for violations of the moral good and psychological processing in search of the faulty thinking and/or feeling that resulted in the [inmate's] behavior choice(s).²⁴⁴

However, SOCF's Clinical Director notes that for this model of "moral formation/reformation" to function, both a punitive side and an aspect of reward must exist.²⁴⁵ For ODRC, the "reward" exists in the lowering of security level thereby awarding greater privileges and access to educational and vocational resources.²⁴⁶ The punitive side, conversely, manifests in an immediate disciplinary action in response to a violation by an inmate.²⁴⁷ Connecting both consequence and reward, a practice long supported by psychological research, will result in the reduction of recidivism within ODRC, especially that within a maximum-security setting.²⁴⁸

As discussed in previous sections, ODRC MSF inmates are lulled into complacency and relative ease through the receipt of creature comforts and privileges extending far beyond those required by the Constitution, legislature, and the courts. As a result, the model described by SOCF's Clinical Director cannot be achieved. Though the 3-Tier System and its security classifications seek to serve as a system of consequence and reward, there is not a compelling consequence in being placed into a facility with large commissary spending limits, ping-pong tournaments, significant out-of-cell time, personal televisions, and being provided with a state-issued WiFi-enabled tablet capable of downloading music and calling friends and family at any time.

CONCLUSION

The answer is not easy, nor is it easy to implement. However, ODRC, charged with rehabilitating Ohio's offenders and reducing the recidivism of our shared community, is approaching a crucial decision point. ODRC must decide whether to continue placating its MSF population through vast creature comforts and privileges, or utilize its authority and constitutional bounds to make its MSFs undesirable confinements. In doing so, it is assessed that Ohio's MSF population,

243. *Id.*

244. *Stephen G. Virginia Letter, supra* note 234.

245. *Id.*

246. *Id.*

247. *Id.*

248. *Id.* Dr. Virginia notes that the scope of his brief reflection does not address all relevant issues regarding MSFs and recidivism and should not be construed to reflect so.

with its comforts and privileges reduced to constitutional minimums, will be properly motivated to adhere to departmental rules and regulations.

By ODRC's Tier System design, upon proper behavior, inmates will be reclassified to lower-security institutions, where comforts and privileges shall be permitted. Even more importantly, inmates will be provided with greater educational and vocational programming. It is not the televisions, recreational activities, or commissary allowances that will prepare Ohio's inmate population for reintegration into society. Successful reintegration is achieved through proper programming, treatment, and skill-building not suitable for implementation in an MSF environment based on the behavior and comportment of the inmates. Like all states, Ohio will always be home to inmates who consistently chose violence, rule-breaking, and outright refusal to adhere to societal standards. For these obstinate MSF inmates, it is not only counterintuitive, but insulting, to the law-abiding Ohioan to allow these types of inmates to exist in such comfort within MSFs. Without ODRC utilizing its vast deference in restricting the freedoms, comforts, and privileges currently given to MSF inmates, the system will continue to fail its employees, inmates, and society at large.²⁴⁹

249. This author contacted ODRC in October 2020 and June 2021 requesting a comment from Director Chambers-Smith or Assistant Director Stu Hudson regarding the nature of this Note and did not receive a response.