



Texas Board of Criminal Justice

Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.

Patrick L. O'Daniel
Chairman

April 3, 2023

Inquiry No.: 23-0000-299

Molly Petchenik
molly@texascivilrightsproject.org

Re: Gib Lewis Unit

Background

This correspondence is in response to concerns you directed to the Texas Board of Criminal Justice (TBCJ) Office of the Independent Ombudsman (IO). You reported staff are inappropriately utilizing holding cells at the Gib Lewis Unit, housing inmates in inhumane and unsanitary conditions for extended periods.

Action Taken

On February 17, 2023, five (5) IO staff traveled to the Gib Lewis Unit to inspect the Expansion Cell Block (ECB) to include the F Wing and G Wing inmate housing areas and the holding cells in the main hallway, to which you refer. IO staff also conducted in-person and telephonic interviews with staff and inmates as well as video footage reviews and documentary record reviews. You also provided American Correctional Association (ACA) standards which you believe were violated. Please know, the IO utilizes Texas Department of Criminal Justice (TDCJ) policy, not ACA standards, as guidance in its investigations. The following are our observations in response to concerns presented in your inquiry.

1. Prolonged Detention in Small Holding Cells violates TDCJ Policy.

After a thorough review of TDCJ policy, we cannot confirm staff violated policy in the use of the holding cells because a policy specifying length of time spent in one does not appear to exist.

- **The holding cells are too small to live in.**

Yes, the holding cells are too small to live in and lack a lavatory, sink, and a bed. After extensive review of TDCJ policy, there was no policy found which prohibits the temporary use of the holding cells. The decision is left to the duty warden or designee; however, a standard of reasonableness would indicate a holding cell should not be used for an extended period [e.g., more than twelve (12) hours].

- **People confined in the cells cannot access toilet facilities.**

The nearest lavatory was located approximately 40 feet away from the holding cells. Additionally, we obtained video footage from randomly selected dates when the holding cells were being used. Upon review, we were able to observe inmates assigned to the holding cells were escorted to the lavatory several times throughout the day. Support Service Inmates (SSI) were also observed cleaning and sanitizing the holding cells while inmates were utilizing the lavatory. Four (4) SSIs who were assigned as janitors in the area where the holding cells are located, and during the time they were in use, were interviewed separately. They reported the inmates assigned to the holding cells were escorted by staff to the lavatory. They reported they were required to clean the holding cells daily and did so when the inmates were escorted to the lavatory. None of the SSIs interviewed reported observing urine or feces in the holding cells. Three (3) out of the four (4) SSIs reported they did not witness inmates in the holding cells urinating in water bottles or collect any water bottles filled with urine. The same was true of paper bags with feces. The other SSI stated he provided "a couple of the inmates an empty water bottle" to urinate into, but he did not know of anyone who defecated into a paper sack, nor did he collect a paper sack with feces. All four (4) SSIs expressed the correctional officers who were assigned to monitor inmates on Constant Direct Observation (CDO) status were stationed near the holding cells. Telephonic interviews were also conducted with five (5) inmates who were housed in the holding cells. Each inmate confirmed he was escorted to the lavatory. Two (2) of the five (5) inmates stated they did utilize a water bottle to urinate into because staff was not readily available to provide an escort to the lavatory and the officer monitoring the CDO inmates was not authorized to do so as it would leave the other in the holding cells unattended.

- **Staff leave people in the cells for days on end.**

Based on our documentary review, the length of time an inmate stayed in one of the holding cells was between six (6) hours and seven (7) nights. Most of the inmates assigned to the holding cells were on CDO for mental health concerns. Pursuant to policy, CDO inmates are evaluated and assigned by a Qualified Mental Health Professional (QMHP) from the Mental Health Department; additionally, only the Mental Health Department determines the length of time an inmate spends on CDO status. A QMHP will assess all inmates on CDO at least once per day. CDO status, Inmate Protection Investigation (IPI) status, assignment to restrictive housing, and pre-hearing detention (PHD) inmates may not engage in routine out of cell activities for their own safety and the safety of others. Video footage was reviewed, and we observed officers escorting inmates in the holding cells to the lavatory. We also observed water being provided with meals. The nurse on duty during our unit visit was interviewed about medication delivery to the holding cells. She reported the proper procedure was to deliver the medication to inmates in the holding cells by use of a medication cart. She also stated she followed this procedure and was not aware of an instance when medications were not delivered to the holding cells. Due to privacy laws, IO staff are unable to review medical records.

- **People remain unsafe while held in the cells.**

The holding cells do not consist of mesh. Instead, they contain solid walls with a solid door, a small mesh window between cells, and a food slot in the door making it unlikely anyone was able to throw a substance into or out of the holding cell. SSIs were observed cleaning and sanitizing the holding cells while the inmates who occupied them were showering or utilizing the lavatory. The allegation security staff engaged in a Behavioral Intervention Plan (BIP) incident was not validated. When a BIP incident occurs, policy requires documentation, video, and photographs, and statements collected. The former CDO status inmates interviewed stated they did not feel unsafe while being held in the holding cells. Moreover, during our review of video footage, we did not observe any actions which would lead us to believe inmates were unsafe while in the holding cells.

As of early February of 2023, the holding cells are no longer utilized, and the unit administration has moved all temporary housing status inmates to G-Wing in the ECB. This area is an air-conditioned (A/C) environment which was previously used to house G5 inmates. However, due to the increasing number of G2 & G3 inmates who require A/C, the G5 inmates were relocated, and the housing area was modified for G2 & G3 housing, to include benches, television, and access to commissary. All cells in this area have adequate space, a bed, toilet, and sink. Unit administration has also reported there is no plan to utilize the holding cells again.

- **Staff place people in the holding cells for arbitrary reasons.**

Documentation revealed most inmates were placed in the holding cells for CDO while others were placed for IPIs and PHD. The Gib Lewis Unit experienced an increase of inmates with mental health issues from 500 to over 700. This, in turn, resulted in an increase in the numbers of CDO inmates and a decision to use the holding cells. We found no evidence the holding cells were used arbitrarily.

- **Prisoners lack avenues to challenge the unacceptable use of holding cells.**

A review of grievance records from July 1, 2022, through February 17, 2023, revealed a total of three (3) grievances regarding holding cells. Two (2) of the three (3) grievances are pending completion of an investigation by the grievance department and the one (1) grievance which completed both steps of the grievance process received a response. We can confirm the inmate grievance process has been utilized in this regard.

2. Gib Lewis's Prolonged Use of Holding Cells Violates State, Federal, and International Laws and Norms.

A thorough review of TDCJ policy was completed. Due to there being no specific policy concerning the length of time an inmate can spend in the holding cell, we believe there was no violation of policy. Please know the IO is not an office which employs attorneys and is not a suited to provide a response on allegations state, federal, and international laws and

norms have been violated. As previously stated, this office utilizes established policy and procedures as a basis for its investigations.

Conclusion

The IO evaluates complaints objectively and bases its findings upon the preponderance of evidence. This means the evidence must show it is more likely than not the agency erred before we can make a critical finding and propose a recommendation. After a thorough review of TDCJ policy, we cannot substantiate the allegation staff violated policy in the use of holding cells because a policy specifying length of time spent in one does not appear to exist. However, based on a standard of reasonableness, we can substantiate there were inmates who were held in the holding cells for an unreasonable period as the holding cells lack sufficient space, a bed, toilet, and sink for running water. As of early February of 2023, the holding cells are no longer utilized. We verified this through an interview with Senior Warden Sergio Perez and video review of the holding cells after the time their use was reported to have discontinued. The unit administration has moved all temporary housing to G-Wing which contains regular cells equipped with a lavatory, sink with running water, and a bed.

Recommendation

- TDCJ develop and institute a policy governing the use of holding cells.
- The holding cells remain vacant until a policy has been implemented.
- TDCJ provide an area differential for the Gib Lewis unit to address the understaffing which hinders its optimal performance.

The Office of the Independent Ombudsman (IO) does not make binding decisions, mandate policies, or formally adjudicate issues involving the TDCJ. Subsequent action on our recommendation(s), if any, will be made by TDCJ or unit officials, and not by the IO.

Sincerely,



Brian Patrick, Director
TBCJ, Office of the Independent Ombudsman

Cc: File