

The Faulty Classification System of the NY DOCCS

Introduction

Should sex offenders whose crimes do not involve actual violence be housed with murderers? Of the roughly 53,000 New York State inmates about 10% are sex offenders. (DOCCS' 2015 "Under Custody Report") Many are, or have been, incarcerated in the State's highest-security prisons alongside those in for murder, gunpoint robbery, assault with a deadly weapon and other violent crimes.

When I first started my bid six years ago, I had no idea how I would survive, let alone function, in prison. (I use both terms "correctional facility" and "prison" as the reality lies somewhere in-between.) Going through reception - the initial phase in which inmates are assigned a security classification status - in Elmira is a nightmare that's difficult to put into words.

My first morning in Elmira I woke with a start at the 5 A.M. bell and wondered "what's happening?" Nothing special - that's just the morning wake-up call. A little after 6 A.M. our cells would jar open for chow. It wasn't optional; none of the meals were.

I was in B-block. Everyone in B-block would line up single file and march directly through A-block to the enormous, brightly lit mess hall where we ate our thrice-daily slop. I can still see the two yellow lines that we had to walk between. Follow the yellow brick road I would think grimly. Men stood at their bars on either side of us in a long line of cells. Row upon row rising eight levels. Hey, everyone. I'm the nervous-looking white guy without any tattoos. Guess what I'm here for.

Back in B-block, which was a smaller, quieter unit, I knew when a new crop of inmates arrived because I would hear the repeated roar of hundreds of men from A-block chanting "New Jacks." Sometimes the bars would start to rattle and a torrent of "Rape-o, Rape-o," would descend on some unfortunate soul if it got out that he was in for a "messed-up charge." I wasn't singled out that way, but neither did I pass through reception unscathed. Still, as the years have passed, and I've had the chance to talk with others about their reception experiences I realize I was lucky not to have anything broken.

Maximum-A Security Prison

"See, the way I used to explain fractions was imagine you're selling drugs and your weighing out so many grams." Wild Bill

pauses, "You in here for drugs?"

"No, but that's a good way of explaining it."

Wild Bill moved into the cell next to mine yesterday and when his T.V. isn't blaring he's telling stories. He's in for robbing a bank (I didn't know people still did that), or for dealing LSD, or maybe that was a previous bid when he was in the Feds. The following silence lasts a moment longer than it should. He knows. Yes - I'm in for a sex offense. That's always the first question on other people's minds. Really, the only question is whether they'll voice those thoughts. Wild Bill continues explaining the method he used for teaching fractions to other inmates while he was a teacher's aide.

I hear the cell three down from mine crack open. A gruff-looking man peers into my cell as he walks by. The man, affectionately known as Hacksaw, reminds me of an upright crocodile. I hear him snicker and ask someone "What's the guy with the pink sheets in for?" More snickering. There's no point arguing that my sheets are maroon because they all know that pink isn't an allowed color. Silence, as is often the case, is best.

Later, my cell opens for a shower. As I walk down the

gallery a man standing at his bars says he likes my sweatshirt. I keep walking. After my shower when I'm back in my cell I notice that it's unnaturally quiet. Hacksaw is regaling his neighbors with tales of his time in a Mexican prison. Listening to his gravelly voice I can almost see him hissing his words through a fixed (reptilian) smile. (This memory would return to me a few years later when I learned that "Hacksaw" was the alias of one of the two men who escaped from Clinton-Main in 2015.) Apparently, family members of the Mexican-held prisoners can live with them. Other parties the men are interested in spending time with are also allowed in. I'm not sure I believe this - but then, I've never been to a Mexican prison. Hacksaw continues by telling us how officers strapped a vest of electric shocks to his chest before he entered a courtroom. This was after he had been extradited.

I look at the window above me and through the weird translucent glass see that the sun is shining. The bottom level of D-block in Clinton-Main houses "keeplocks." A box within a box for those who don't follow the rules - keeplocks are confined to their cells 23 hours a day, seven days a week. (DOCCS has recently reached a settlement with the NYCLU over its use of solitary confinement, which includes more out-of-cell time.) A few of us, me included, are on "limited privileges" status. We haven't broken a rule, but we've refused to program

so we're stuck down here, too. Welcome to the Dungeon.

Mr. P calls over and asks me if I would like a cup of coffee. Mr. P has been keeplocked in the same cell for over a decade. He jokes that there's a coffin next to his max-out date on his time computation sheet. Why the Department of Corrections would require a man who must be in his 70s - one who is serving life without parole - to program is beyond me. (Programming is a general term that just means doing what you're assigned, i.e., treatment, work, vocational training.) Without saying as much, it seems clear to everyone who knows him, officers included, that Mr. P has decided to end his days in that cell.

The "us" versus "them" mindset is nearly ubiquitous in prison. Especially in a max-A. Every once in a while though, you let it go. I'll never forget how the officers addressed Mr. P. (I think his first name was Perry.) The genuine sympathy in their voices was more of a shock to my system than even, say, the day Wild Bill flipped out and started screaming that I was a Rape-o and he couldn't be next to me. (He wasn't happy with me because I refused some of his homemade wine.) The idea of justice is a meaningless abstraction when you saw Mr. P alone in his cage waiting to die.

I thank Mr. P for the coffee and ask him how he's doing. He tells me about his trip to Paris he just took. He's been watching the History Channel again. A month later I transfer to a max-B.

An Outdated Model

After I transferred from Clinton-Main, a max-A, to Clinton-Annex, a max-B, in 2012, I became curious about the security classification system. (While Clinton-Main and Clinton-Annex are close to each other and officially connected in certain ways - both were locked down after the 2015 escape - they are separate facilities.) According to DOCCS Directive No. 4020: "The 'Security Classification Guidelines,' promulgated in the 'Classification and Movement Manual,' are used to evaluate each inmate's record, producing an appropriate security classification level."

The "Classification and Movement Manual," which contains the "Security Classification Guidelines," is not freely available to inmates so I sent a Freedom of Information Law (FOIL) request to the DOCCS administration in Albany requesting it. After sending payment to cover the copying cost, I received a packet of papers that looked like so many printouts from a software program. I'm not sure whether the information sent was intended to confuse

matters, but it definitely didn't clarify them. The pages contained tables, matrixes, functions, etc. The only thing missing was the quadratic equation. So much for trying to understand the rationale.

The public may know the DOC (or, as of 2011, DOCCS) as the Department of Corrections, but I think of the correctional system as the Department of Confusion. Or, by its complete title: the Department of Confusion and Constant Surveillance. No one knows what's going on - but everyone's watching! In terms of the security classification system, I've gleaned more from conversations with other inmates and from what I've observed than I have from any written policy by DOCCS.

The Security Classification Guidelines boil down to this: Inmates may be upwardly (higher security) classified based on any number of factors; however, they may only be downwardly (lower security) classified when they fall below certain time cutoffs. In other words, inmates in maximum-A security prisons typically have many years to serve before their earliest possible release dates. (If they have one.) Inmates may, however, be placed in a max-A with any amount of time to serve based on other factors. (E.g. static factors such as past criminal behavior, escape attempts, etc.; or dynamic factors such as institutional history) The reverse is not true: inmates

in a max-B or medium-security facility **must** have less than X amount of years to serve (roughly 15 for a max-B and 6 for a medium, though the numbers are subject to change), even if the other factors are scored perfectly.

What's the point of the classification system? I have to assume the idea behind it is to supervise the inmate population as effectively as possible. Those who require more supervision, i.e., more officers in a more controlled environment, are placed in high-security facilities. Those inmates who don't need as much supervision are placed in less secure facilities. That may be the idea, but there are more than a few exceptions to it in practice.

The administrators who oversee the classification system recognize that the length of an inmate's sentence, or the remainder thereof, may not indicate his institutional security risk. (I use he/his rather than the plural they/their because, given the subject matter - violence, sex offenders, max-A prisons - I felt it would be more appropriate.) But they recognize the fact only in a negative sense. As I mentioned, an inmate who is near his release may be placed in a max-A because his history indicates that he needs to be watched closely. Unfortunately, the flip side of that coin - inmates with long sentences who pose little to no security risk - is not

recognized. For all the promulgating that's going on, do DOCCS employees truly evaluate the security risk of inmates on a case-by-case basis?

DOCCS administrators are either blind to the fact that the nonviolent nature of certain sex offenses tends to counterbalance the institutional risk associated with violent crimes and long prison terms; or they simply choose to ignore this consideration in their classification decisions. That I might have 10, 8, or 6 years left to serve makes no difference in my ability to function and abide by the rules in a confined setting. How the particular facility is run does.

The use of time cutoffs (i.e., the classification rule that provides that inmates can only be in less secure facilities when they have less than certain amounts of time) not only leads to inmates being misclassified but it can also needlessly disrupt the course of an inmate's bid. (It may seem like prison is prison, but for someone on the inside the differences from facility-to-facility matter.) The basic idea of time cutoffs probably helps to streamline the classification process, but it's a crudely conceived-of tool. The notion that the more time meted out by a judge to a criminal defendant the more likely he is someone who possesses the typical cluster of dangerous characteristics such as violence, impulsivity, resistance to

authority, etc., is an outdated stereotype. By continuing to rely on it, DOCCS officials are (deliberately) overlooking the significance of a recent social shift in criminal justice policy.

This shift in policy - a tougher line on sex offenses - has meant that any number of sex offenders who would not have been sent to max-As in the past now are. My bet is that from the late 1990s onward the highest-security prisons in New York State, and presumably the most expensive ones, have housed a significantly higher percentage of sex offenders than at any point in the past where the maximum v. medium distinction based on length of sentence has existed.

I know of at least one case where this is true. My own. If my crime had been prosecuted under the laws of 20 years ago, I would have never ended up anywhere near a max-A prison. Two changes to the New York State penal law - one in 2000 under the Sexual Assault Reform Act and another in 2006 - elevated my offense from what would have been a D-felony in the '90s to an A-II felony that carries a maximum sentence of 25 years-to-life. That's what you get for murder.

Why does society's more punitive stance toward sex offenses automatically - because of time cutoffs - translate into someone

like me being classified as a high-security risk? Why was I placed in a max-A prison to start my bid? I'm not violent. I don't have a problem obeying authority figures. The prison **itself** I was sent to is not supposed to be part of my punishment. Is it?

I know the emotions run high on these issues, so I would like to qualify my position. Two points I'm **not** implying in this essay are: 1) The criminal laws for sex offenses today are too harsh, and 2) That a crime that does not involve actual violence is somehow better or less deserving of punishment than one that does. What I **am** saying is that from a **correctional perspective** the presence or absence of actual violence in an inmate's crime is at least as critical a factor as the length of his sentence.

Maximum-B Security Prison

Perhaps the best way of thinking about a maximum-B security prison in New York State is as a hybrid between a traditional maximum-security prison and the freer more campus-like environment of a medium. Two of the three max-B prisons in NY - Eastern and Coxsackie are closer to maximums than mediums because inmates in those facilities are mainly housed in cells. The third max-B, Clinton-Annex, is the other way - most inmates

live in cubes in open dorms, which is similar to how medium-security facilities operate.

Clinton-Annex, the facility where I spent close to five years, is different from Clinton-Main, or any other max-A prison, in other respects as well. No one there has life without parole. I never had to go through a metal detector to see a nurse or get a package. Summer didn't signal another episode of black-on-black gang violence in the yard with the inevitable lockdown afterward. If I had started my bid in Clinton-Annex, I would have never known how miserable the conditions of prison can be.

People come and go in the correctional setting, and for me anyway, the faces mostly look alike. Still, sometimes I've ended up living with other people for several years. I knew two individuals who, like me, were in for sex offenses and who started their bids in max-As before transferring to Clinton-Annex. One started in Auburn (the oldest prison in New York State), the other in Attica. Both were assaulted by officers in those two prisons. The guy who was in Auburn also had his nose broken during reception in Elmira when an officer opened his cell to let another inmate in. (Another one to watch out for when you're trapped in a cell is the old bucket-of-water surprise.) Once they transferred to Clinton-Annex neither of

these two inmates had an ounce of trouble. In fact, the irony is that they were (are) model inmates. I know this because I lived with them for two and a half years in a privileged dorm where everyone had their own room.

Honor Blocks & Honor Jails

To me, the question of whether or not sex offenders, as a group, should be housed separately from the rest of the inmate population is an open one. Strictly speaking, it may not be necessary. I wouldn't have thought so at the beginning of my bid, but my view has changed. As someone who has committed a sex offense, the security of a facility has less to do with its technical classification (max-A, max-B, medium), per se, than it does the makeup of its inmate population and the prevailing security culture among facility staff.

One consequence of the 2015 escape was to end honor block in Clinton-Main. Other facilities may have followed suit. I heard people say that, officially, there was no longer an "honor block" in Clinton-Annex, either. Shrug. The name didn't matter. What mattered was having a living unit set aside for well-behaved inmates.

Honor blocks can be mutually beneficial to both inmates and

security staff. A microwave, an oven, washers and dryers are some of the perks honor block inmates in Clinton-Annex enjoy. Not to mention the individual rooms each with a toilet and sink. For security staff, honor block is an effective carrot. The list of inmates waiting for a room is long. Additionally, staff are better able to use their resources.

For example, drugs are a problem in DOCCS facilities. I'll look at a bulletin board and see warnings of hospitalizations and overdoses. It's a sad situation that places a strain on everyone within a correctional facility. Within the last year or two, I've noticed a difference when receiving packages. Even perfectly legitimate items are inspected much more closely. Some items we were once allowed are now prohibited. (Tea bags :<)

To try to tame the drug epidemic, security staff at Clinton-Annex would sometimes randomly drug test entire dorms of 40 or more men. Aside from the time and energy involved, I would guess there's also the expense of analyzing the urine samples in a lab to consider. Perhaps such measures are necessary when security staff are faced with the chronic problem of smuggling, but the cost it carries is undeniable.

As another example, when I first moved to Clinton-Annex, I

was in the largest dorm, which houses 60 men. I remember a fight where a guy threw an **ironing board** at another inmate. (Lift off!) Another time, in a different dorm, an inmate (the same guy, actually!) broke a broom handle over someone's head. In still another incident, I watched an irate individual (a different one this time) thump someone over the head with a frying pan. During my stay in honor block, I never saw any household items used as weapons. Whenever there was a "red dot" - code for inmate-on-inmate violence - the only time we saw officers was when they had to take a shortcut through our dorm to get to the fight. They didn't stop there.

If those in charge of individual facilities, those who actually know how they run, recognize the benefits of having honor blocks, why doesn't the central administration in Albany extend the concept to entire facilities? (Again, DOCCS recognizes the negative side of the equation: there are facilities dedicated to housing inmates serving long-term periods of solitary confinement for serious disciplinary infractions.) If honor blocks work, why wouldn't honor **jails**?

Sex offenders in medium-security facilities may not be subject to the worst sorts of violence that occur in max-As, but that doesn't mean they're safe. I met inmates in Clinton-Annex who, despite only having a few years left to serve, were in a

max-B because of "adjustment difficulties" they had while bouncing around different mediums. Yes, if you're singled out and targeted you're going to have a hard time adjusting to your environment.

When I think about the Department's classification system, I feel like administrators treat inmates as numbers, not as individuals. I'm the property of DOCCS. The only reason I haven't been moved to a medium yet is because when officials look at my tag they see that I weigh too much. The amount of time I have to serve makes me too dangerous for a medium. A heavier object will crush the lighter ones. I guess what the folks in Albany don't get is that while a hundred-pound crystal vase may be heavier than a mallet, they're not handled separately to protect the mallet.

Honor jails would be a reward to well-behaved inmates, but they might also make the difference how (if) certain inmates function in the correctional environment. ("Jail" is the vernacular used to refer to a correctional facility. I don't know why. I guess the terms "prison" or "correctional facility" don't have the same ring to them as "jail" does.)

From a cost-cutting administrator's perspective, honor jails would run more efficiently than general confinement facilities.

There would be less smuggling of drugs via visitors and packages, less fighting, less stealing - just less disciplinary problems overall. Paper-based prison bureaucracy is an unwieldy beast. Filing cabinets among filing cabinets are filled with (unnecessary) paperwork. With fewer misbehavior tickets issued there would be fewer appeals and fewer (frivolous) lawsuits. If you give people, even criminals, something to lose it may, at least for some, influence their behavior. What's the downside of trying honor jails? It's not like I'm asking that they be equipped with Wi-Fi or something. It would just be nice to not have to worry about violence or theft.

Conclusion

As an inmate, my lot is to do not to question. The sheer number of rules that I'm subject to can be disheartening. I could have written this essay about any number of inconsistencies or absurdities within the Department of Corrections (Confusion). I could have written about what it's like to live with people who gossip and watch T.V. all day. Ultimately, I chose the issue of safety because I believe it's one that we should all care about.

I don't know what rehabilitation means exactly, or what it involves, but I do know that it's not likely to occur in a max-

A prison, or in any facility where an inmate's primary concern is his safety. It's undoubtedly true that the New York State correctional (prison) system is safer today than in the past. That doesn't mean, however, that all correctional facilities are equally safe. It also doesn't mean that the fear that naturally goes with entering the prison system is the same for everyone wearing green.

Whatever rehabilitation involves, it's incumbent on DOCCS to provide inmates with opportunities for growth in basically safe environments. To do so, administrators need to acknowledge the reality that sex offenders represent a distinct class of inmates. The number of white-collar criminals, for example, in all the max-A prisons in New York State is probably not large. But - as there are roughly 5,300 sex offenders confined in the state correctional system, they (we) can not, as a group, be dismissed as easily.

As a practical, no-fuss change, administrators in Albany should stop sending sex offenders whose crimes do not involve violence, and who have not otherwise shown violent tendencies, to max-As **solely** because they are serving lengthy prison sentences. Two or three plain-looking white guys among 50 black, Hispanic, or 275 lb. tattooed, bulldozer-like white guys, stand out like a sore thumb. It's a hideous scenario that will **always** attract

the attention of unscrupulous actors, be they officers or inmates.

More comprehensively, administrators should re-evaluate their reliance on time cutoffs as a classification tool. An inmate may function very well in a particular facility only to be (arbitrarily) uprooted because his classification status drops. At the very least, forcing inmates into unwanted transfers is a disruption without any clear benefits. Time left to serve is certainly a factor to consider in the classification process, but making it an overriding one, as it is now, is a mistake.

Finally, the already-recognized concept of honor blocks should be extended to honor jails. A world of difference exists between motivating behavior through the threat of punishment versus the possibility of reward. Good time is presumed, and even with most disciplinary violations inmates can expect to receive it. (As long as the infractions aren't repeated or serious in nature.) Good time isn't an incentive to program any more than is necessary. Honor jails would raise the bar. Inmates who demonstrate consistent compliance with the rules and program meaningfully should be housed apart from those who don't. One of the factors cited as an obstacle to rehabilitation is exposure to "criminogenic" influences. Prison

doesn't have to be a (totally) negative experience. But if you're surrounded by apathy and hostility, what else can it be?

Are sex offenders safe in New York State prisons? How well can they be expected to function given the undeniable stigmatization attached to their type of crime? Does it matter, I can hear someone ask. Well, here's what a former prisoner by the name of Dostoyevsky said: "The degree of civilization in a society can be judged by entering its prisons." Are we civilized? I would say the answer to that question depends on which particular prison you enter.