



ACLU

AMERICAN CIVIL LIBERTIES UNION  
of NEVADA



NOT FIT FOR HUMAN CONSUMPTION OR HABITATION:  
NEVADA'S PRISONS IN CRISIS



"It is said that no one truly knows a nation until one has been inside the jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones." -Nelson Mandela

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*"Prisoners are persons who most of us would rather not think about. Banished from everyday sight, they exist as a shadow that only dimly enters our awareness. They are members of a total institution that controls their daily existence in a way that few of us can imagine." Supreme Court Justice Brennan *O'Leary v Estate of Shabazz*, 482 U.S. 342, 354 (1987) (dissenting).*

## I. ACKNOWLEDGMENTS/ABOUT THE AUTHOR

The American Civil Liberties Union (ACLU) is the nation's premier guardian of liberty, working daily in courts, legislatures, and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution and the laws and treaties of the United States. The ACLU of Nevada (ACLU-NV) is an affiliate of the national organization, and works to protect the rights and liberties of all Nevadans, including prisoners.

Through a grant from the ACLU's Human Rights Program, as well as support from the ACLU-NV, Rebecca Paddock served as the ACLU-NV's Prisoner Rights Fellow in the fall of 2010 and spearheaded the effort to research and investigate conditions in Nevada's prisons that culminated in this paper. Rebecca is a recent graduate of the William S. Boyd School of Law at the University of Nevada, Las Vegas. She clerked for the U.S. District Court Judge Philip M. Pao and, after completing her work with the ACLU, Rebecca recently joined the County Public Defender's office.

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## II. Executive Summary

Nelson Mandela, former President of South Africa, once said, "It is said that no one truly knows a nation until one has been inside the jails. A nation should be judged not by how it treats its highest citizens, but its lowest ones." If that is the standard by which to measure ourselves, Nevada is failing miserably. With nearly all prison facilities running over capacity and insufficient funds to run them, Nevada's prisons are in crisis, as the following facts reveal:

- Operating prisons is extremely expensive and is a significant drain on Nevada's budget. In 2008, Nevada spent \$250 million on corrections. Of that, 83% was spent on prisons and jails. Money spent on corrections accounts for approximately 2.9% of the general fund.

- As of June 2008, all eight of Nevada's prisons were running over capacity.<sup>1</sup> And of those facilities, all but three were operating at emergency levels.<sup>2</sup> According to Howard Skolnik, former Director of Nevada Department of Corrections (NDOC), "The emergency threshold was that point at which [NDOC] can maintain a safe and secure environment."<sup>3</sup>

NDOC allocates only \$2.47 a day to feed an inmate; however, NDOC's budget does not even provide for that minimal amount. As a result, Skolnik stated that "[NDOC] cut clothing which was also substandard," reasoning "it was better to be ill-dressed than run out of food."<sup>4</sup>

- Nevada's prisons are literally falling apart. Skolnik noted the "extreme circumstances" and admitted that "there were infrastructure failures occurring frequently."<sup>5</sup> Additionally, even showers are in short supply. Skolnik reported that "inmates were under-rinsing and every-other-day showers."<sup>6</sup>

- As NDOC has faced cuts and furloughs in the last two years, many programs targeted at rehabilitation and reducing recidivism have been eliminated. At Ely State Prison (ESP), rooms full of computers sit empty because there is insufficient staff to allow inmates to leave their cells.

## Executive Summary, continued

As a result of overcrowding, understaffing, and underfunding, Nevada is not able to meet even the most basic human needs of the people we incarcerate. After our investigation, it became clear that NDOC is not meeting minimum basic standards of care, and is also now violating its own regulations. The dire problems raise questions of compliance with state law, the U.S. Constitution, and international human rights law. While Nevada is, of course, not required to provide inmates with a luxurious standard of living, the state has a legal and moral obligation to ensure that basic needs such as proper sanitation, nutrition, exercise, medical, dental, and mental health care are met. Not doing so violates basic standards of decency and human rights norms and in the long run, will only cost Nevada even more money it can't afford.

While the state of affairs is grave, the solution is fairly straightforward: Nevada must reduce its prison population in order to restore prisons humanity and safety. Legislation adopting basic standards of care and an independent oversight committee is necessary to ensure that NDOC stops violating regulations and the law. More fundamentally, Nevada must revisit its criminal statutes and look at alternatives to incarceration. Nevada's overly broad criminal statutes and hyper-criminalization over the past decade have contributed to Nevada's overcrowded prisons. **It's simple math: with Nevada's current budget problems, the crisis in Nevada's prisons is only going to get worse and we cannot afford to continue to incarcerate so many people.**

This report only touches the surface of what is a deep, systemic, and growing problem in Nevada's prisons. While further study is most certainly needed, this report serves to open the dialogue. As Nevada enters into a legislative session where budgetary problems are central, it is time to consider ways to fix the crisis in Nevada's prisons that could also save the state money. **The focus on passing law after law that creates new crimes and increases penalties without ever considering the efficacy or costs of those laws must be replaced with a rational approach to our criminal justice system.**

## What Nevada Can Do About the Prison Crisis

Most of the problems that prisons are facing are the result of overcrowding and underfunding. Unfortunately, these two factors are largely out of the Nevada Department of Corrections' control. Although prisons bear the brunt of over-incarceration and lack of resources, they can't do much about it.

The Legislature, however, can. The following recommendations will help ensure the safety of both officers and inmates within Nevada's prisons. For more information, go to Section VI of this booklet (page 40).

### -Expand Cost-Effective Community-Based Treatment Programs:

- ◆ Reserve prison space for only the most serious and violent offenders
- ◆ Offer more community-based treatment for those convicted of less serious, non-violent crimes
  - Provide treatment for mental illness
  - Make certain offenders and parole/probation violators participate in treatment instead of sending them to expensive, overcrowded prisons

### -Reclassify "B" Felonies:

- ◆ Change many relatively petty crimes that are classified as Category B felonies to lower-class offenses

### -Implement Prison Procedures that Comply with National Standards:

- ◆ Require NDOC to establish procedures for medical, dental, mental health, nutrition, and grievance policies that comply with national standards

### -Enact Legislation Against Shaming Pregnant Inmates:

- ◆ Protect the health of pregnant inmates and their babies

### -Provide for Meaningful, Independent Oversight of NDOC

- ◆ Create an Office of the Ombudsman to ensure that prison facilities are following the Department of Corrections' own regulations

**NEVADA DEPARTMENT OF CORRECTIONS FACILITIES AND CAPACITY JUNE 2009**

<b>INSTITUTION</b>	<b>TOTAL CELLS</b>	<b>OPERATING CAPACITY</b>	<b>%</b>	<b>EMERGENCY THRESHOLD</b>	<b>%</b>	<b>ACTUAL POP</b>	<b>%</b>
ELY STATE PRISON	784	1008	129%	1058	135%	1088	139%
LOVELOCK CORR. CENTER	880	1223	139%	1400	159%	1594	181%
NEVADA STATE PRISON	605	618	102%	738	122%	783	129%
WARM SPRINGS CORR. CENTER	294	329	136%	501	170%	458	156%
NORTHERN NV CORR. CENTER <sub>90</sub>	1212	1413	117%	1477	122%	1489	123%
SOUTHERN DESERT CORR. CENTER	1392	1731	124%	1938	139%	1871	134%
SOUTHERN NEVADA CORR. CENTER	356	0	0%	0	0%	0	0%
FLORENCE MCCLURE W'S CORR. CENTER	567	680	120%	794	140%	749	132%
HIGH DESERT STATE PRISON	1680	2282	136%	2588	154%	2845	169%
<b>SUBTOTAL FACILITIES</b>	<b>7770</b>	<b>9364</b>	<b>121%</b>	<b>10494</b>	<b>135%</b>	<b>10878</b>	<b>140%</b>

This chart lists each of Nevada's prisons, their capacity, and shows that each facility is overpopulated and being operated beyond the emergency threshold.

<http://www.doc.nv.gov/state/annualfy2009.pdf>



### III. INTRODUCTION

It is beyond dispute that prison conditions in Nevada are already in crisis with nearly all prison facilities running over capacity. As of December 1, 2010, the NDOC housed 12,473 persons in its facilities.<sup>8</sup> All prison facilities are operating over capacity and all but three are operating at emergency levels.<sup>10</sup>

There are many factors that contribute to Nevada's high prison population, including high recidivism rates, overly broad criminal statutes, and the 1995 Truth in Sentencing legislation that took away the discretion of the parole board to determine when individuals are rehabilitated and no longer a threat to society. Additionally, alternatives such as community-based programs, programs which could serve to keep offenders out of prison and parolees out of trouble, are woefully inadequate.

The ACLU-NV has received thousands of complaints from inmates regarding their conditions and treatment in Nevada's prisons: the national ACLU has received thousands more. Many of these complaints take shocking allegations. For example, two inmates at Southern Desert Correctional Center (SDCC) wrote that they were forced to stand in two inches of sewage for nine hours as a result of a back-up in the first floor drains. One of the inmates further stated that the inmates on his floor were fed in the sewage and that they were not allowed to shower for two days after the incident. An inmate at another facility, Florence McClure Women's Correctional Center (FMWCC), reported that, despite the fact that she had lumps in her breasts that had burst and were leaking fluid, she had been waiting over a month for a mammogram and ultrasound.



While prisoner complaints are not all necessarily to be taken at face value, Nevada state documents echo inmates' complaints and, like the inmates' stories, evidence NDOC's failure to meet basic, adequate standards of care. For example, **prisons are not even meeting basic standards of cleanliness and sanitation.** For example, in a 2008 audit of Southern Desert,<sup>20</sup> the Bureau of Health Care and Quality Compliance (BHQCC) confirmed a prisoner's complaint that prison officials served inmates food (tortilla chips and bread) after these items had been left in the food delivery area where crows were allowed to open the packages wrapped in plastic. The prisoner complaint similarly noted that because of the extensive droppings left by the crows, staff had to hose down and clean the area daily. Problems in kitchen and sanitation are not limited to this incident, and appear to be a by-product of a failure to train workers on sanitation. A BHQCC 2008 audit of High Desert State Prison (HDSJP)<sup>21</sup> and a BHQCC 2007 audit of Florence McClure<sup>22</sup> noted that prisons did not provide inmates working in culinary facilities with any training on food sanitation and infection control.

The problems with sanitation are not limited to kitchens and food preparation. The BHQCC also reported that High Desert and Florence McClure were not maintained in a clean and sanitary manner,<sup>24</sup> echoing prisoner reports that facilities are dirty and unsanitary. All of the prisoners interviewed for this report stated that prison officials do not provide inmates disinfectant to clean their cells and the common areas. At Florence McClure the inmates interviewed stated that black mold runs rampant in most showers.

State leaders have admitted to many of the problems found in official reports. At the April 14, 2008 Advisory Commission on the Administration of Justice (ACAJ) hearing, Howard Skolnik, the former Director of NDOC, stated that because of budget reductions, "the DOC had moved from a vision to just surviving."<sup>25</sup> At the September 22, 2008 hearing, the Chair of the ACAJ, Nevada Supreme Court Judge James W. Hardesty, noted that "every single prison, not the camps, operated a level above emergency threshold except for [Florence McClure]."<sup>26</sup>

These problems belie the common misconception that prisoners live in luxury. And, while it can be hard to understand why we should care about violations at prisons, the state has a legal and moral obligation at least to ensure that the prisoners' most basic needs are being met. The criminal justice responsibility of the government is not only to prosecute persons who are charged with committing crimes but also to provide for safe and humane incarceration for those found guilty. As Norman Carlson, former Director of the Federal Bureau of Prisons, stated, "imprisonment itself is punishment," and as such, prisoners must be treated in a safe, civilized, and humane way.<sup>27</sup>



Photo taken at Southern Desert Correctional Center by David Kaplan

Considering Nevada's current budget problems, with serious cuts in areas such as education at stake, the treatment of Nevada's prisoners is not Nevada's top priority. However, fixing the crisis in Nevada's prisons is a financial as well as a moral mandate. The bottom line is that incarcerating people in a manner that is safe and humane for prisoners, prison employees, and the community is not optional, and it is not cheap. Nor is the current method of incarceration effective in reducing recidivism and promoting public safety. With the average prisoner in Nevada costing approximately \$30,000 a year,<sup>16</sup> a failure to rehabilitate prisoners and return them to the community when possible and appropriate results in higher costs to taxpayers.

The state in essence has two choices: spend more money to meet legal standards or find ways to reduce the prison population. Simply ignoring violations – and failing to meet basic legal standards – not only is inhumane and a violation of the Eighth Amendment as well as human rights standards, but it costs the state more money. For example, the ACLU-NV, along with the ACLU's National Prison Project, have litigated problems in Nevada's prison system. Private attorneys have also taken on cases, sometimes resulting in large settlements or judgments. For example, the Nevada Board of Examiners recently approved a \$450,000 settlement with the family of a diabetic inmate who died from gangrene when Ely State Prison (ESP) officials cruelly refused to provide him with insulin. While litigation can be justified and necessary, it is costly for all sides. More importantly, it is targeted to specific inmates, or at most, one facility, and thus is an imperfect tool for systemic change.

The primary goals of this report are to suggest other solutions and to shed light on the current conditions faced by Nevada's prisoners. The first section of this report identifies basic human needs that are not being met in Nevada's prisons, and the resulting concerns that domestic laws and international human rights laws are being violated. The second section provides potential solutions to both reduce the overcrowded prison population and ensure that NDOC is meeting basic human standards of care for those individuals who are incarcerated. The final sections of the report delve into the details of why both courts and legislators should ensure Nevada is complying with international human rights standards.

## IV. METHODOLOGY

The ACLU-NV analyzed over a thousand complaints it has received from prisoners across the state. Using information about the concentration of complaints as well as information about the types of complaints received, the ACLU-NV focused on the facilities listed to the right. We also interviewed and corresponded with inmates at each of these facilities. We also met with family members and friends of people in prison.

In order to better assess conditions and to obtain a different perspective, the ACLU-NV also reviewed and analyzed a number of both primary documents and reports, including data and documentation from the USDA Food Safety and Inspection, the Vera Institute of Justice, and the Pew Research Center. The ACLU-NV additionally analyzed governmental audits of NDOC facilities, NDOC administrative regulations available on the internet, and fire marshal reports of NDOC.

### Prisons Visited and Prison Population<sup>11</sup>

High Desert State Prison,  
Indian Springs, Nevada  
Population 2,847

Florence McClure Women's  
Correctional Center,  
Las Vegas, Nevada  
Population 784

Ely State Prison,  
Ely, Nevada  
Population 1,064

Northern Nevada Correctional  
Center,  
Carson City, Nevada.  
Population 1,495

## Methodology continued

We also attempted to get NDOC's perspective on the problems facing Nevada's prisons. Pursuant to Nevada's Public Records Act, which provides citizens with access to government files (see NRS 239.001: "The purpose of this chapter is to foster democratic principles by providing members of the public with access to inspect and copy public books and records to the extent permitted by law"), the ACLU-NV issued a request for facility-specific documents to NDOC. The request was issued well before Ms. Paddock's fellowships began in the hopes that a full review could occur, and that a meeting with the then-director of NDOC, Howard Skolnik could be arranged to discuss those documents and this report. However, despite the fact that the ACLU-NV sent its request early and subsequently narrowed its request, it took over five months to receive any documents requested – and the documents were received after the formal end of Ms. Paddock's project, and after the request was passed between no less than three attorneys. To the extent possible, the additional documents received have been reviewed and incorporated into this report. It is worth noting that the fact that the ACLU-NV faced such obstacles raises grave questions about the transparency of NDOC and the ability of Nevada's taxpayers to exercise their legal right to review its government's public records. In contrast to NDOC, however, the Office of the State Fire Marshal promptly and professionally provided documents in response to a Public Records Act request.

Unfortunately, the Attorney General's Office also refused to cooperate with a request for a meeting with former Director Skolnik, despite the fact that Skolnik himself had previously requested a meeting with Ms. Paddock.

Similarly, we faced some scheduling difficulties at facilities we visited, and at least one inmate who met with us reported that he had been retaliated against by guards for meeting with us. While we have not been able to investigate the retaliation complaint, it raises additional serious concerns about NDOC's management and the lack of transparency regarding how Nevada's prisons are run.

## V. NEVADA'S PRISONS RAISE GRAVE CONCERNS ABOUT POSSIBLE VIOLATIONS OF DOMESTIC AND INTERNATIONAL LAW

The Eighth Amendment and human rights law standards provide a blueprint for how to run prisons in a safe and humane manner. There is evidence that these standards are not being met in Nevada. Not only does it appear Nevada's prisons may be violating domestic and international human rights minimum standards, but in some cases NDOC is even violating its own regulations.

The stories that inmates shared with us were both appalling and sad. This report focuses on some of the most basic needs of prisoners including sanitation, nutrition, exercise, and access to medical, dental, and mental health care. However, these findings are just the tip of the iceberg. While, on a certain level, some of these concerns may seem minor, they evidence a systemic problem within Nevada's prisons and, if not addressed now, will almost certainly lead to more serious problems and high costs in the years to come.



## DOMESTIC AND INTERNATIONAL LAW REQUIRE HUMANE TREATMENT

Failing to treat prisoners and run prisons adequately raises concerns that Nevada's prisons may be in violation of the Eighth Amendment to the United States Constitution, NDOC's own regulations, and international human rights standards. While prisoners are of course not entitled to a high standard of living, both domestic and international law require that inmates be provided basic human needs including adequate food, clothing, sanitation, shelter, and basic medical care.<sup>20</sup> Additionally, prisoners are entitled to a safe environment and to not be treated with cruelty.<sup>21</sup>

### The Eighth Amendment Prohibits Cruel and Unusual Punishment

The Eighth Amendment to the United States Constitution<sup>22</sup> prohibits the infliction of "cruel and unusual punishment."<sup>23</sup> In the prison context, to establish an Eighth Amendment violation, it is necessary to show two things. First, the prisoner plaintiff must objectively show that they have suffered a deprivation of a basic human need.<sup>24</sup> Basic human needs include adequate food, clothing, shelter, sanitation, and basic medical care.<sup>25</sup> The Eighth Amendment protects against conditions that pose an unreasonable risk of future harm, as well as those that are currently causing harm.<sup>26</sup> Ultimately, the objective element is contextual and requires the plaintiff prove that the conditions of confinement violate contemporary standards of decency.<sup>27</sup> Second, the prisoner plaintiff must prove a subjective element, and must show that prison officials exhibited "deliberate indifference" to the inmate's health or safety.<sup>28</sup> "Deliberate indifference" is a subjective standard which requires actual knowledge on the part of the defendant.<sup>29</sup> Knowledge can, however, be demonstrated by circumstantial evidence, and "a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious."<sup>30</sup> Additionally, prison officials can be expected to know of systemic conditions.

## International Human Rights Law Prohibits Torture and Cruel, Inhuman, or Degrading Treatment or Punishment

Human rights law establishes basic norms for the treatment of all human beings. Abiding by human rights treaties that the United States has ratified is important for several reasons. First, human rights treaty law<sup>20</sup> is considered the supreme law of the land, and as such, federal and state governments are both bound by these treaties. Additionally, fundamental guarantees enshrined in international laws and standards reflect the world's consensus on applicable minimum standards. Finally, the relationship between human rights law and domestic law is symbiotic; many of the enumerated international human rights coincide with those contained in federal and state law, as well as professional standards governing correctional facilities.

For critics who believe the United States need not comply with international human rights standards, let us not forget the United States' historic role in their development, including former first lady Eleanor Roosevelt's leadership in drafting the United Nations Universal Declaration of Human Rights (UDHR). Indeed, human rights are not some nebulous and foreign set of principles. Rather, they are based on deeply held American values of dignity and equality for all. As a world leader it is important for the United States to set an example and abide by human rights laws, as doing so is the very reason we are seen as a leader of democracy and freedom.

At the heart of international human rights law is the principle of respect for human dignity. This principle is explicitly invoked in the preamble of the UDHR,<sup>21</sup> the founding document of the human rights system. Inherent in the principle of respect for human dignity is the prohibition of torture and cruel, inhuman, or degrading treatment or punishment.

Because so much of international human rights law derives its value from the UDHR, language referencing these core principles is present in many major international and regional treaties, including two of the most widely accepted international human rights treaties, the International Covenant on Civil and Political Rights (ICCPR)<sup>22</sup> and the Convention against Torture (CAT).<sup>23</sup> Both of which have been ratified by the United States.<sup>24</sup> The ICCPR and the CAT provide the most explicit protections with respect to the treatment of prisoners and conditions of confinement, and as such, they are the best source of human rights law to rely on when addressing issues related to the basic needs of prisoners.

The CAT prohibits torture and inhuman treatment. Specifically, Article 1 of the CAT prohibits torture and Article 16 prohibits inhuman treatment, stating that "[e]ach State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."<sup>25</sup>



The ICCPR specifically addresses conditions of confinement, protects against cruel and unusual treatment, and requires that detainees be treated with humanity.<sup>43</sup> Article 7 of the ICCPR states “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”<sup>44</sup> Article 10(1) of the ICCPR states “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>45</sup> The Human Rights Committee (HRC), the treaty-based body that monitors the ICCPR, typically finds a violation of the ICCPR when a combination of cruel and unusual treatment and/or inhumane conditions are present.<sup>46</sup> Poor prison conditions may violate a person’s right to be treated with humanity.<sup>47</sup> Extremely poor prison conditions may also amount to cruel and unusual punishment and, because they may be dangerous to a person’s health or life, conditions may also constitute a severe violation of one of the basic human rights.<sup>48</sup>

The scope of the ICCPR and the CAT regarding the treatment of detainees can be determined not only by the opinions of the HRC, and the Committee Against Torture, the treaty-based body that monitors the CAT, but also by looking to a number of codes adopted by the United Nations.<sup>49</sup> Although many of the codes generally are considered non-binding or “soft law,” the Standard Minimum Rules for the Treatment of Prisoners (SMR) is one of the most widely accepted UN codes, and has been implicitly endorsed by the Human Rights Committee.<sup>43,44</sup> Many of the SMR’s overlap the express requirements of Article 10(1) of the ICCPR and are useful in identifying standards for humane treatment.<sup>45</sup> For example, the SMR’s outline standards for the treatment of prisoners with respect to hygiene, clothing and bedding, exercise, nutrition, medical and mental health care, and dental care.<sup>46</sup>

### **Nevada Statutes and Administrative Regulations Also Set Forth Requirements for the Operation of Nevada’s Prisons.**

Nevada statutes establish basic standards with respect to the treatment and care of prisoners.<sup>50</sup> Additionally, Nevada law requires the Director of NDOC to establish regulations, with the approval of the Board of Prison Commissioners, and to enforce all laws governing the administration of the Department and the custody, care and training of offenders.<sup>51</sup> Many administrative regulations set forth by the Director of NDOC also direct the Wardens of each facility to establish institutions specific operational procedures in order to carry out the requirements of the administrative regulation.

**“Poor prison conditions may violate a person’s right to be treated with humanity. Extremely poor prison conditions may also amount to cruel and unusual punishment and, because they may be dangerous to a person’s health or life, conditions may also constitute a severe violation of one of the basic human rights.”**

## PROBLEMS IN NEVADA

The issues discussed in this report reflect only a fraction of what are deep and serious problems within NDOC, and must be addressed now before the situation becomes worse.

After interviewing inmates and reviewing inmate complaints, governmental audits, legislative hearings, and NDOC operational procedures, evidence shows that Nevada is failing to meet domestic and international human rights standards. Although problems with Nevada's prisons run from the mundane to the dramatic, taken together they reflect a system that is so overburdened it cannot even meet basic standards of care. Moreover, as discussed above, violations of international human rights are typically found when a combination of conditions is present that, taken together, constitute inhumane treatment. The issues discussed in this report reflect only a fraction of what are deep and serious problems within NDOC, and must be addressed now before the situation becomes worse.

**NDOC is Not Maintaining Food Handling Areas in a Sanitary Manner.** In the most recent audits of the NDOC prison facilities, the Bureau of Health Care and Quality Compliance (BHQC) found many of the facilities were in violation of the health code for failure to provide training to the culinary staff.<sup>50</sup> Additionally, the BHQC determined that the prison dietician never conducted a site visit of the facilities' culinary department for an inspection of safe and sanitary food handling practices, in violation of the health code.<sup>51</sup> Although some of these audits were conducted a few years ago, the problem still persists. None of the inmates we interviewed who had worked in the culinary department received training on food preparation or sanitation. When we visited one inmate at Ely State Prison (ESP), he told us in his interview that there was no requirement that the people working in the culinary department wash their hands or keep themselves properly bathed.



None of the inmates we interviewed who had worked in the culinary department received training on food preparation or sanitation.

An inmate at Northern Nevada Correctional Center (NNCC) said he often sees rats in the kitchen and rat feces on the trays where the food is served.

Not surprisingly, in five of the facilities audited, the BHCQC also determined that the culinary department was not maintained in a clean and sanitary manner.<sup>55</sup> As discussed earlier, at Southern Desert Correctional Center (SDCC) the BHCQC confirmed an inmate's complaint that inmates were served food that had been left in the food delivery area where crows were allowed to open the packages and eat the food. Staff confirmed that they did not discard the food, and because of the droppings left by the crows, the staff had to hose down and clean the area daily.<sup>56</sup>

All the inmates we interviewed for this report reported unsanitary conditions in the culinary department. An inmate at Northern Nevada Correctional Center (NNCC) said he often sees rats in the kitchen and rat feces on the trays where the food is served. An inmate at HDSP said food is often undercooked, and they were serving chicken whose expiration date was eighteen months earlier. Even more disturbing, inmates at all the facilities said the label on the meat served says "not for human consumption." Correspondence with the USDA Food Safety and Inspection Service (FSIS) confirmed that, according to federal regulations, "inedible products shall be marked conspicuously with the words "Inedible—Not Intended for Human Food."<sup>57</sup> FSIS further stated "[w]e wish to emphasize that food bearing this label should never be consumed by humans and we take this matter very seriously."<sup>58</sup>

Inmates at all the facilities said the label on the meat served says not for human consumption.

Lack of proper sanitation and training on how to prepare food is not only a violation of the NDOC's own policy and Nevada health codes, it is potentially also a violation of the Eighth Amendment and international human rights standards as well. International and domestic law both require that every prisoner be provided with nutritionally adequate food that is properly prepared and served. NDOC's regulation requires that the culinary officer perform daily sanitation and safety inspections of the food service area, and that inmates be trained on proper sanitation and food handling. The Eighth Amendment requires that food is "prepared and served under conditions which do not present an immediate danger to the health and well being of the inmates who consume it."<sup>45</sup> While food that "occasionally contains foreign objects or sometimes is served cold, while unpleasant, does not amount to a constitutional deprivation,"<sup>46</sup> "[t]he constant presence of contaminants can rise to constitutional levels."<sup>48</sup> State health code violations are relevant in determining whether there are constitutional violations.

Serving food that is undercooked or prepared by individuals who have not been trained in proper sanitation potentially poses a risk of danger to the health of the inmates who consume the food. Moreover, serving meat that is copied with a label that says "not for human consumption" presents an immediate danger to the health and well-being of the inmates who consume it. Some of the most common foodborne illnesses such as E. coli and salmonella have serious and even fatal consequences. According to the Nevada Department of Health and Human Services, the five major risks contributing to foodborne illnesses include: (1) improper holding temperatures; (2) inadequate cooking, such as undercooking; (3) contaminated equipment; and (4) food from unsafe sources; and (5) poor personal hygiene.<sup>49</sup> The Center for Disease Control and Prevention estimates that foodborne diseases cause approximately 76 million illnesses, 325,000 hospitalizations, and 5,000 deaths in the United States each year.<sup>50</sup>



An inmate at ESF told us that one day when he was working in culinary another inmate was making salad and cut his thumb. Despite there being blood all over the salad, the head cook made the inmates serve the salad.

At SDCC, prison officials served inmates food after these items had been left in the food delivery area where crows were allowed to open the packages wrapped in plastic. Because of extensive droppings left by the crows, staff had to hose down and clean the area daily.

## **NDOC Does Not Provide Inmates with Proper Supplies to Keep the Common Areas, Cells, Showers, and Toilets Clean, and Does Not Ensure Medical Areas are Properly Sanitized.**

All inmates we interviewed reported that, despite the fact that they are responsible for cleaning their own cells and the common areas, the prison does not provide them with disinfectant to clean these areas. Inmates at High Desert State Prison (HDSP) and Florence McClure Women's Correctional Center (FMWCC) told us there is extensive black mold in the showers. An inmate at HDSP who is incontinent stated he has to wash himself in the morning in the sink in his cell. Prison officials at HDSP refuse to give him disinfectant to clean the sink or let him out of the cell in the morning so he can use the shower facilities to clean himself. He feels humiliated and the issue has resulted in major problems with the other inmate with whom he shares a cell.

In the most recent audits of NDOC facilities, the BHCQC found four facilities in violation of the Nevada health code for failure to ensure that the infirmary was maintained in a manner that prevented the transmission of infectious and communicable diseases.<sup>60</sup> Additionally, the BHCQC found that five of the facilities audited were in violation of the Nevada health code for failure to provide the documentation necessary to determine if the sterilization process met with the standards developed by the Occupational Safety and Health Administration and/or the facility operational policy and procedure.<sup>61</sup> In four of the facilities, the BHCQC determined that employees were not trained on the process of sterilization, and the sterilization equipment was not properly maintained.<sup>62</sup> For example, at HDSP, staff reported that they did not wait until the results of the biological test came back before using the dental instruments on other inmates.<sup>63</sup>



It appears that NDOC is violating its own regulations and possibly Eighth Amendment and human rights law with respect to sanitation. The Eighth Amendment requires that prisons provide "reasonably adequate ventilation, sanitation, bedding, hygienic materials, and utilities."<sup>47</sup> Similarly, international human rights law requires that "[a]ll parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times," and that "[t]he sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner."<sup>48</sup> Additionally, NDOC's regulations require department staff conduct weekly sanitation inspections of all institutional areas and to prepare weekly, monthly, and yearly inspection reports.<sup>49</sup>

Failure to either have prison staff disinfect common areas or provide disinfectant to inmates so that they may properly sanitize their own cells and the common areas poses an unreasonable risk to the health of the inmates. Additionally, failure to properly sanitize medical equipment and medical areas, and failure to train employees on how to properly sterilize equipment is a danger to the health and life of the inmates. According to the Nevada State Health Department, "[f]ailure to properly disinfect or sterilize equipment carries not only the risk associated with breach of host barriers but also the risk for person-to-person transmission of **disease** and potential contamination with environmental, often hard-to-manage, serious pathogens."<sup>50</sup> Moreover, ensuring areas are properly disinfected and medical equipment is properly sanitized is a relatively low-cost way to avoid a potentially high cost risk, not only to the health of the inmate, but also to the pocketbook of the taxpayer who will be responsible for paying for any medical care resulting from an inmate's exposure to inadequate sanitation or **sterilization**.

An inmate at FMECC told us they are not given disinfectant, sponges, or even rags to clean their cells.

An inmate at FMECC told us the showers are so dirty that inmates often get staph infections from them.

An inmate at HOSP who is incontinent told us for months medical staff would prescribe him only one diaper a day. One diaper a day wasn't enough, and as a result, he would soil his bed at night. Because inmates are allowed to get their sheets laundered only twice a week, the inmate had to wash his sheets in his cell every morning and hang them up in his cell to dry. However, hanging up sheets not allowed at HOSP, so when he did so, correctional officers would ransack his cell, yell at him, and rip down his clothing line.

## The Dental Care Provided to Inmates is Severely Inadequate.

In the most recent audits of the NDOC facilities, the BHOCC found that three facilities failed to ensure that inmates received dental care when violated of the health code.<sup>73</sup> According to an audit of SDOC, an inmate who had been diagnosed with advanced periodontal disease in 2006 had been waiting two years to be fitted for partial dentures.<sup>74</sup> At an audit of FFWDOC, the facility failed to provide documentation necessary to determine whether the dental staff was currently licensed in Nevada.<sup>75</sup>

Interviews with inmates confirmed that dental care in many facilities is inadequate. At both HDSP and NBCC, inmates told us that the facility did not provide any preventive care and that it instead only pulled teeth. At NBCC, an inmate stated he has been in serious pain due to tooth and gum infection, and the prison has denied him antibiotics or pain medication to treat it. An inmate we talked to at ESP has been waiting four months to get his teeth cleaned, and has had them cleaned only once in the last five years. At FFWDOC inmates told us they have waited up to two years to get their teeth cleaned, and the dental hygienist cleans only one quarter of the inmate's mouth at each appointment. Another inmate at FFWDOC told us the prison does not provide dentures for women who need them, forcing inmates to "gum down" their food. The consequences of failure to provide adequate dental care are compounded when coupled with inadequate state-issued toothbrushes. According to several inmates we talked to, the allowed state-issued toothbrushes are either fingertip toothbrushes, or low quality toothbrushes with bristles that bend and break rendering them practically useless.

Failure to provide adequate dental care raises serious Eighth Amendment and international human rights concerns. Both domestic and international law require that prisoners have access to dental care. Federal courts, including the Ninth Circuit, have deemed dental care to be "one of the most important medical needs of inmates."<sup>76</sup> The Ninth Circuit has also found that delays in dental care can violate the Eighth Amendment, particularly if the prisoner is suffering pain in the interim.<sup>77</sup> Courts have stated that dental care which consists only of pulling teeth that can be saved is constitutionally inadequate.<sup>78</sup> Additionally, failure to provide dentures when necessary can constitute an Eighth Amendment violation. NDOC's regulation requires that facilities provide timely dental service, and that dental prostheses be provided when necessary.

Preventive dental care such as proper daily brushing with an adequate tooth brush, and regular professional teeth cleaning prevents gingivitis, an early reversible form of gum disease, and helps to reduce and prevent tooth decay.<sup>79</sup> Additionally, poor oral hygiene can lead to a variety of dental and medical problems such as bone loss, heart disease and strokes. Moreover, pulling teeth, which includes its own risks of infection, can largely be avoided when preventive care is adequate. Finally, failing to provide dentures can make it difficult for an inmate to get adequate nutrition, which carries with it its own obvious health concerns. These are risks that not only may constitute cruel and unusual punishment, but they can be costly to taxpayers in the long term – and in the short term, if emergency medical care is needed.

Imagine waiting months to see the dentist for a tooth ache only to be told that due to staffing shortages they cannot give you a filling or save a tooth and the only service provided is extraction. A person's smile is what defines them and it is depressing to think you have no choice but to have missing teeth due to the lack of available services.



## The Medical Care Provided to Inmates is Severely Inadequate.

In the most recent IHQOC audits three prison facilities, including NMCC, NDOC's medical facility, did not have adequate emergency medical equipment in violation of health codes.<sup>80</sup> At NMCC, the IHQOC determined that one unit was not equipped with a "man down" emergency kit, nor did the unit have a suction or automated external defibrillator in the event of an emergency.<sup>81</sup> Failure to have adequate emergency medical equipment presents a risk not just to inmates, but to all persons working at or visiting the prison.

The operational procedures at HDSP also provide obstacles for inmates who need access to medical personnel. According to several inmates, if an inmate needs to see a doctor he must file a "kite" requesting an appointment. After the kite is received, the inmate will receive a response saying he has been scheduled for an appointment. However, the response will not inform him when the appointment is, and if he is not in his cell when the appointment is scheduled, he misses it and has to begin the process all over again. Moreover, inmates are charged for their medical appointments, and according to NDOC's regulation, if a medical appointment is missed, the inmate will still incur charges.<sup>82</sup>

For example, one inmate told us he often missed appointments because he was at work when they came to his cell for his doctor's appointment. Another inmate stated that he has been waiting since June to get treatment for his Hepatitis C, and has had to rely on the grievance procedure to get any medical attention. Additionally, an inmate stated that the consequence of this ineffective procedure was that he would use the "man down" emergency button when he believed his medical concern became an emergency and he could wait no longer. An operational procedure that, in essence, encourages inmates to wait until their medical issue becomes an emergency, not only raises concerns of delay in access to medical care but it also is an inefficient and costly way to operate.

Additionally, NDOC facilities face problems with delays in providing inmates with necessary prescription medicine. In a 2006 audit, the Legislative Counsel Bureau concluded that the central pharmacy dispensing time was too slow and that the process for dispensing temporary medications was inefficient.<sup>83</sup> The Bureau determined that the average turnaround time for prescriptions ranged from 8-13 days.<sup>84</sup> However, based on discussions with nursing staff, half of the institutions experienced delays of four weeks or longer.<sup>85</sup> The Bureau concluded this was too slow and that turnaround time should be only one week.<sup>86</sup> In a subsequent state Prison Board of Commissioners meeting former Director Skolnik stated the problems with the pharmacy had been corrected.<sup>87</sup> However, in conducting interviews with inmates, it seems this problem still persists. An inmate at HDSP told us that he has a hernia that causes severe acid reflux and it took HDSP four weeks to get his prescription for antacid filled. Inmates at PM/MCC also stated they faced four week wait times to get their prescriptions filled. An inmate at HDSP wrote to the ACLU saying he has severe asthma and has been waiting five months to get a refill on the inhalant for his nebulizer, making it hard to breathe.

Medical personnel or prison officials who are "deliberately indifferent" to the prisoner's "serious medical needs" are in violation of the Eighth Amendment.<sup>67</sup> "Prison officials are deliberately indifferent to a prisoner's serious medical needs when they deny, delay, or intentionally interfere with medical treatment."<sup>68</sup> Additionally, "[t]he Eighth Amendment requires that prison officials provide a system of ready access to adequate medical care," including providing "an adequate system for responding to emergencies."<sup>69</sup> Similarly, international standards suggest medical staff "daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed."<sup>70</sup>

Lack of adequate medical equipment poses a serious risk to the inmates' health and safety and could result in an Eighth Amendment violation in the event of a medical emergency. Similarly, failure to provide inmates with adequate access to medical personnel, and failure to provide necessary medicine in a timely manner raise concerns that NDOC is violating human rights laws.

An inmate at HDSF noticed a rash on the back of his thighs and legs. He tried for three months to get medical attention, filing numerous medical requests and grievances. During that period, the rash had turned into a staph infection. The sores on his legs and thighs had begun to bleed and ooze puss. Yet, he still was not provided with medical attention. Finally, as a last resort, the inmate told prison officials he swallowed a razor at which point the inmate was finally given medical attention for his staph infection.

## Inmates Are Not Provided Adequate Exercise

There is evidence that many facilities in Nevada may be in violation of Eighth Amendment and human rights standards with respect to providing inmates adequate opportunities to exercise. Former Director Scolnik confirmed that at ESP the vast majority of inmates are basically on 24-hour lockdown.<sup>88</sup> One inmate at ESP stated that he had not been out of his cell for exercise in over a month. At PNVCC, inmates in administrative segregation are given thirty minutes in the segregation yard once a week. At HDSP, the only opportunity to exercise for those inmates who work in the prisons during the day is at night, and night time yard only is provided twice a week.

Exercise is one of the basic human necessities protected by the Eighth Amendment. Prisoners are constitutionally entitled to out-of-cell exercise<sup>89</sup> and most courts have held that five hours a week is the constitutional minimum.<sup>90</sup> Similarly, international human rights law suggests a bare minimum of one hour of exercise per day.<sup>91</sup> Additionally, where prisoners are confined to continuous and long-term segregation, the Ninth Circuit Court of Appeals has found that prisoners are entitled to outdoor exercise.<sup>92</sup>

Director Scolnik, in addressing Governor Dillios's concerns about the security of the inmates, stated: "Imagine being in a 12-square foot room with another individual, with the bathroom is your bedroom, being allowed out only five hours a week with a shower every three days and gives the fact that 2,500 of the Department's inmates are diagnosed with some level of being mentally ill, there will be people killing their cellmates. There will be more incidents and more violence."





In addition to potential constitutional and human rights violations, there are serious security risks associated with failing to provide inmates adequate opportunities for exercise. At a Board of State Prison Commissioners meeting former Director Skolnik, in addressing Governor Gibbons' concern about the security of the inmates, stated: "... imagine being in a 12-square-foot room with another individual, with the bathroom in your bedroom, being allowed out only five hours a week with a shower every three days and given the fact that 2,500 of the Department's inmates are diagnosed with some level of being mentally ill, these will be people killing their cellmates. There will be more incidents and more violence."<sup>45</sup>

## Mental Health Care for Inmates is Severely Inadequate

Stories from inmates raise serious concerns about the mental health care in Nevada's prisons. An inmate at ESP told us that he was put in segregation, which also houses the psychiatric patients. While in segregation, the prisoner was unable to sleep for days because of the constant screaming and banging on the walls by the psychiatric patients. An inmate at NDOC said his mental health problems make it very difficult for him to deal with noise and the psychiatric unit is filled with inmates screaming and banging things day and night. Another inmate at NDOC told us the mental health patients are not provided with any programming except for "yard time" with the general population.

Directly related to concerns of mental health care is the misuse of segregation. In every prison we visited, inmates expressed serious concerns about the prison facilities' regular use of long-term segregation, and its effect on the inmates' mental health. Inmates we spoke with said either they or others they knew were in segregation for months and even years. One inmate said he was in segregation for over a year while he was waiting to be transferred to another facility. Another inmate we met with said his cousin has been in segregation for two years at ESP and is not scheduled to get out until 2024. When in segregation, inmates are typically locked in their cells practically 24 hours a day, and have restricted access to exercise, visitation, and phone calls, among other things. While separating dangerous or vulnerable individuals from the general prison population is necessary to run a prison safely, depriving individuals for long periods of time from any meaningful human contact, and subjecting those individuals to extreme sensory overload or deprivation, can cause lasting mental harm.<sup>46</sup> For those individuals who already suffer mental health issues, long-term segregation can have devastating effects.

International human rights law requires all inmates have access to a psychiatrist and psychiatric services. The Eighth Amendment principles for mental health care are the same as those for medical care. Additionally, many courts have held that mental health treatment must entail more than segregation and close supervision of the inmate patients. With respect to exposing otherwise healthy inmates to mentally ill inmates, courts have found that subjecting inmates to constant screaming and feces-smearing of mentally ill prisoners may constitute an Eighth Amendment violation because it "contributes to the problems of uncleanness and sleep deprivation, and by extension mental health problems, for other inmates."<sup>47</sup>

To ensure NDOC is meeting domestic and human rights standards, it must commit to providing better care to those with mental illnesses. Additionally, NDOC must refrain from engaging in practices, such as the misuse of segregation, that can cause lasting mental deterioration.



High Desert State Prison Gym

An inmate at FMWCC told us that while in segregation, you have twenty minutes a day to shower and make phone calls, and only thirty minutes once a week to exercise. Otherwise, you are on 24 hour lockdown.

An inmate at ESP was put in segregation for 18 months because, according to prison officials, they couldn't keep him safe. While in segregation at ESP, he never had access to the phone to make a phone call. He was subsequently transferred to HDSP because he had court. The prison officials put him in segregation because he was considered a "transfer." He has been in segregation for 17 months at HDSP, and has only been able to get out for exercise 2-3 times.

## The Inmates at NDOC Are Not Provided with Proper Nutrition

Prisoners at NDOC facilities are currently being fed on a \$2.18 per diem, per inmate, food allotment, which is not sufficient according to former Director Skolnik and the NDOC canteen department.<sup>154</sup> As FMWOC, the inmates we spoke with told us they are not given enough fruits and vegetables and there are not even any healthy food options at the canteen for them to purchase. Additionally, inmates at several facilities complained that the meat served was expired and the label said "not for human consumption." NDOC's regulation requires facilities provide nutritious, well-balanced meals that are prepared according to federal and state safety and health regulations.<sup>155</sup>

Although the Eighth Amendment and human rights standards do not specifically require that prisoners be provided with a nutritionally balanced meal that includes appropriate servings of fruits and vegetables, there are nonetheless compelling reasons to do so. Failing to provide inmates with healthy food choices can contribute to and increase the risk of obesity, heart disease, stroke, cancer, diabetes, and various other chronic conditions.<sup>156</sup> These risks are compounded when inmates are not provided adequate opportunities to exercise.

It is in the best interests of everyone to ensure that inmates are provided with nutritionally balanced meals. Many inmates are serving long sentences and the prisons (more accurately, taxpayers) will be responsible for their medical care in the future. Moreover, as discussed above, serving expired food and food not for human consumption poses serious health risks, as well as concerns of Eighth Amendment and human rights violations.





"There are days when our lunch consists of four slices of bread, four slices of cheese, a piece of rotting celery (about an inch long) and nothing else."

## It Appears That Pregnant Inmates Are Being Shackled

In a recent report by the Rebecca Project for Human Rights in conjunction with the National Women's Law Center, Nevada received a failing grade in its care of pregnant inmates.<sup>104</sup> One reason for the failing grade was Nevada's lack of a written policy explicitly prohibiting the use of restraints on pregnant inmates during transportation to the hospital, in labor and delivery, and post-delivery.<sup>105</sup> Although in a recent Advisory Commission on the Administration of Justice (ACAJ) hearing, former Director Skolnic stated that NDOC has eliminated any restraints on pregnant inmates unless there is good cause,<sup>106</sup> several inmates at NDOC informed us that they knew of pregnant women who were shackled.

Additionally, the ACLU-NV recently received a complaint from an inmate who is nine months pregnant and has been forced to wear shackles around her waist, arms, and legs to all her OB/GYN medical appointments, including when the physician examines her. In her letter, she told us the chains around her stomach are very uncomfortable and she is concerned that they are causing harm to her unborn child. She is scheduled to have a C-section due to complications during her pregnancy, and is incredibly afraid about the safety of her unborn child. The inmate further stated that she does not know why it is necessary to shackle her as she is not a flight risk. She was convicted for cashing a fraudulent check and is not a violent inmate.

Shackling a pregnant woman during labor and delivery may violate the Eighth Amendment because the danger of shackling can constitute deliberate indifference to a prisoner's serious medical needs.<sup>107</sup> Additionally, the United Nations Human Rights Committee and the Committee against Torture have held that shackling women during pregnancy violates the ICCPR and CAT.<sup>108</sup>

When pregnant women are being transported to the hospital, and during and after childbirth, they pose little, if any, risk of escaping. Thus it hard to imagine when there would ever be good cause to shackle. Moreover, shackling pregnant women when they are being transported to the hospital, during labor and delivery, and post-delivery poses serious health risks both to the mother and the child. This fact is recognized by national health and corrections organizations such as the U.S. Marshall Service,<sup>109</sup> the American Medical Association,<sup>110</sup> and the American Public Health Association.<sup>111</sup> Despite the unwritten NDOC policy prohibiting shackling except when necessary, it appears NDOC is shackling women even when it is unnecessary. Without a written policy or law explicitly prohibiting shackling under any circumstances, NDOC may continue to potentially violate both domestic and international human rights law, raising the safety of the mother and child.

## It Appears That NDOC Is Not Providing Adequate Accommodation for Disabled Inmates.

Although we were not able to investigate disability issues in depth, we believe that it is important to include information about the complaints from inmates, as they raise a potentially critical issue. At NNOC, the NDOC's medical facility, a paraplegic inmate wrote to the ACLU-NV complaining that there were not enough shower seats to accommodate all the disabled inmates at the facility. As a result, this inmate was forced to shower in his wheelchair. When we met with this inmate at NNOC, he also stated that often the beds in the dormitories were too close together and it was nearly impossible for inmates in wheelchairs to get to their beds. Additionally, he stated that many of the medical staff offices did not have ramps into them. As a result, inmates in wheelchairs were forced to stay in the hall when meeting with the medical staff, so that all the other inmates waiting could hear the disabled inmates' specific medical or mental health concerns.

Another inmate we interviewed at NNOC told us that facility policy requires inmates to work in culinary for ninety days before they can work in other areas, such as the library, doing secretarial work, or educational programming. The inmate was disabled and walked with a cane, and therefore could not work in culinary, which required heavy lifting. As a result, not only was he unable to use his skills or his college degree to help others he also was not able to earn good time credits for working. An inmate wrote us reporting a similar problem at one of the NDOC camps.

"The degree of civilization in a society can be judged by entering its prisons."

-Fyodor Dostoyevsky

Additionally, inmates interviewed at HDSP and FMWOC told us that many cells did not have ladders to the top bunk. Consequently, unless you had a cellmate who was willing to help you up, it was extremely difficult to get to the top bunk. One inmate at FMWOC said she fell trying to get to her top bunk and bruised her rib. One inmate's mother told us that her son had suffered two strokes and was in constant pain. Despite requesting a bottom bunk at HDSP, he was forced to be on a top bunk.

Failing to accommodate disabled inmates can constitute cruel and inhuman treatment and raises questions about compliance with the Eighth Amendment, the American Disabilities Act (ADA), and international human rights law. Moreover, as a practical matter, installing ladders so that inmates can access the top bunks safely is a relatively low-cost way to prevent potentially serious and costly accidents if inmates fall and hurt themselves.

The mother of an inmate at HDSP told us her son has suffered two strokes and is in constant pain. Despite his severe medical disabilities, when he got to HDSP, they put him on a top bunk. In his cell, there is no ladder to get to the top bunk. The inmate filed numerous requests to be transferred to a bottom bunk. The inmate waited over two months before the prison finally assigned him to a bottom bunk.



# High Desert State Prison

- ↑ Visitor And Staff Parking
- ➡ All Other Services

## VI. STRATEGIES AND SOLUTIONS HOW CAN WE SOLVE THE PRISON CRISIS?

### Nevada Must Reduce its Prison Population.

Most of the problems with NDOC are a result of prison overcrowding and underfunding, both of which are largely out of NDOC's control. While legislation enacted in 2007 has led to some decreases,<sup>700</sup> prisons still are overcrowded. The increased prison population is largely due to overly broad criminal laws and the inadequate community-based alternatives, and much more needs to be done to control prison populations. As of June 2009, all but four prisons were running over their emergency thresholds.<sup>701</sup> In a recent state Board of Prison Commissioners meeting, former NDOC Director Skolnik stated that Nevada has the lowest staff-to-inmate ratio in the United States.<sup>702</sup> The consequence of understaffing is that in facilities like Ely, there simply are not enough officers available to provide inmates with their basic needs, like exercise. Understaffed prisons also pose a risk to the safety of the inmates and the officers that serve at prisons.

The reality is that Nevada cannot afford to continue to incarcerate such a large number of people. In 2008, Nevada spent \$253 million on corrections.<sup>12</sup> Spending on corrections in Nevada is outpacing the state's spending on education and human services.<sup>13</sup> And current state budgetary issues only make the need to look at alternatives to incarceration more critical. This need is recognized by people on both sides of the aisle. For example, Newt Gingrich recently put out a call in *The Washington Post* for his Republican brethren to pave the way to reduced prison populations and costs and join their "Right on Crime" campaign.<sup>14</sup> He argued that "[o]ur prisons might be worth the current cost if the recidivism rate were not so high, but . . . half of the prisoners released this year are expected to be back in prison within three years. If our prison policies are failing half of the time, and we know that there are more humane, effective alternatives, it is time to fundamentally re-think how we treat and rehabilitate our prisoners."<sup>15</sup>

Spending on corrections in Nevada is outpacing the state's spending on education and human services.

"Our prisons might be worth the current cost if the recidivism rate were not so high, but . . . half of the prisoners released this year are expected to be back in prison within three years. If our prison policies are failing half of the time, and we know that there are more humane, effective alternatives, it is time to fundamentally rethink how we treat and rehabilitate our prisoners."

-Newt Gingrich

## Nevada Should Expand Community-Based Treatment and Implement an Intermediate Sanctions Program

One way to reduce the prison population is to reserve prison space for only the most serious and violent offenders, and to implement alternative community-based punishments for those convicted of less serious, non-violent crimes. A major factor driving the increase in the prison population in Nevada is severely inadequate community-based treatment options for substance abuse and mental illness.<sup>118</sup> The majority of people incarcerated or under community supervision in Nevada has substance abuse problems and a significant percentage of those people also suffer from mental illnesses.<sup>119</sup> As of March 26, 2007, 29% of male and female NDOC inmates were reported to have mental illnesses.<sup>120</sup> This is almost twice the national average.<sup>121</sup>

Unfortunately, there are simply not enough community-based programs available for those who are required to participate in treatment as a condition of their release. For example, in a 2008 Nevada Advisory Commission on the Administration of Justice (NACAJ) hearing, Senator Steven Horsford said Nevada ranked 50th in the country in funding for substance abuse treatment.<sup>122</sup> Clark County Public Defender Phil Kohn added that Clark County only has 200 substance abuse treatment beds available for the city's over 2 million people.<sup>123</sup> In Nevada, 70% of people on probation or parole referred to community-based substance abuse programs wait an average of one month before starting an outpatient treatment program, during which time they are especially likely to relapse, violate conditions of release, and return to prison.<sup>124</sup> This significantly contributes to the fact that almost half of the people sentenced to probation in Nevada are subsequently incarcerated for violating conditions of their supervision or for committing new crimes.<sup>125</sup>

Community-based alternatives to incarceration are cost-effective in the short term. A 2009 Pew Report surveyed 33 states and determined that on average it costs states \$79 per inmate per day—or almost \$30,000 per year versus \$3.42 and \$7.47 a day for probationers and parolees—or about \$1,250 and \$3,750 respectively.<sup>126</sup> For every dollar Nevada spent on imprisoned inmates in 2008, it spent only 11 cents on probationers and parolees.<sup>127</sup>

In addition to short-term savings, community-based alternatives to incarceration have long-term cost benefits. A growing body of research has shown that for those individuals convicted of less serious, non-violent crimes, incarceration has its limits, both in terms of its cost-effectiveness and its impact on crime.<sup>126</sup> While it certainly pays to remove the most serious offenders from the streets, according to a 2009 Pew Report, "many states appear to have reached a 'tipping point' where additional incarceration will have little if any effect on crime."<sup>127</sup> On the other hand, community-based alternatives, when properly implemented and funded, have resulted in improvements in the prevention of crime and the reduction of recidivism.<sup>128</sup>

While it certainly pays to remove the most serious offenders from the streets, according to a 2009 Pew Report, many states appear to have reached a tipping point where additional incarceration will have little if any effect on crime.



To address the lack of community-based alternatives in Nevada and reduce the prison population, legislation should be adopted that authorizes NDOC to establish an intermediate sanctions program. The Nevada SAGE Commission's 2003 Report explained that this recommendation, initially proposed in the 2003 legislative session, would be used as an alternative sentence for offenders, probation and selected parole violators who were determined to be substance abusers.<sup>149</sup> Upon successful completion of court-ordered treatment, courts could set aside the conviction of an offender or return a probation or parole violator to probation or parole. The sanction program would be modeled after Hawaii's Opportunity Probation with Enforcement (HOPE) program. According to the report, the savings and revenue estimates of this program could amount to \$280 million in five years.<sup>150</sup>

## The HOPE Program: A Possible Model For Nevada

Launched in 2004, Hawaii's Opportunity Probation with Enforcement (HOPE) program aims to reduce crime and drug use among criminal offenders. HOPE is based on the idea that the most effective way to reduce drug use and crime among drug-using offenders is to lay out clear expectations for drug-free behavior, and then to back up those expectations with tight monitoring linked to swift and certain, but relatively mild, punishments. HOPE identifies probationers who are likely to violate their conditions of community supervision; notifies them that detected violations will have consequences; conducts frequent and random drug tests; responds to detected violations with swift, certain, and short terms of incarceration; and mandates drug treatment upon request or for those probationers who do not abstain from drug use while on the testing and sanctions regimen.

By 2009, more than 1,500 probationers were enrolled in HOPE. In a one-year randomized controlled trial, HOPE probationers were 55% less likely to be arrested for a new crime, 72% less likely to use drugs, 61% less likely to skip appointments with their supervisory officer, and 53% less likely to have their probation revoked. As a result, they also served or were sentenced to, on average, 48% fewer days of incarceration than the control group.

## Nevada Should Reclassify Category B Felonies.

Nevada's hyper-criminalization of non-violent offenses and overly broad criminal laws have overburdened an already strained prison system. According to Phil Kohn, the Clark County Public Defender, there are several areas that contribute to prisons overcrowding in Nevada: overly-inclusive Category B felonies, tough drug statutes, and the 1995 truth in sentencing legislation. The problems with these overly-inclusive laws are compounded when considered in combination with the truth in sentencing legislation, which in effect took all discretion away from the parole board to determine whether an individual was rehabilitated and ready to re-enter society.<sup>193</sup> The truth in sentencing legislation also eliminated the release valve for non-violent offenders, a tool used to deal with the problems of prison overcrowding.

One solution is to reclassify Category B felonies, otherwise known as the catch-all category. Nevada's model includes five felony categories from A to E with A being the most severe and carrying a life sentence, and E being the least severe and carrying a one to four year sentence.<sup>194</sup> A Category B felony carries a minimum term of imprisonment of not less than one year and a maximum term of imprisonment of not more than twenty years.<sup>195</sup> In other states, the model tends to be a pyramid with the catch-all category being at the bottom of the pyramid, and carrying a lesser sentence compared to the other felony categories. This makes sense, according to Kohn, because you want to catch more people at the bottom.

However, in Nevada the catch-all category of felony offenses is the second most severe felony category. With over two hundred felonies thrown in Category B, many of the crimes do not match the hefty Category B sentencing structure. For example, in Nevada, crimes such as common law burglary are charged as Category B felonies. Thus, if someone steals four dollars worth of candy at the grocery store and does not have the money to pay for it, or if someone steals sunglasses out of a car, that person faces a felony burglary charge rather than lesser gross misdemeanor charge of petty theft.<sup>196</sup> This is true even where the individual is a first time offender.

Moreover, the ABSO legislation which provided offenders the ability to get out of prison sooner if they behaved, thus attempting to reduce the overcrowded prison population, does not apply to those individuals charged with a Category B felony. This is especially problematic, according to Kohn, as the majority of the prison population is incarcerated for a Category B felony.

Our overly punitive laws cost hundreds of thousands of dollars a year by unnecessarily putting and keeping hundreds of individuals in prison. Many of these individuals and society at large would be better served by alternative community-based punishments, at a savings to taxpayers. For example, individuals caught stealing often suffer from mental illness and/or substance abuse problems, and need treatment, not incarceration. In 2010, an Advisory Commission on the Administration of Justice (ACAJ) subcommittee was formed to address the reclassification of crimes; however, as of today progress has stalled. If Nevada is going to solve its prison overcrowding problem, it must take a serious look at its current model and consider reclassifying the over-inclusive catch-all felony category.



## Nevada Must Improve Conditions for Those Who Are Incarcerated.

For those individuals who are incarcerated by this state, NDOC must provide them with constitutionally adequate care. Lack of funding is not a legitimate reason for failing to provide inmates with basic human needs. The following recommendations are aimed at improving prison conditions for those individuals who are incarcerated, and ensuring NDOC is complying with domestic and international human rights law, as well as its own regulations.

### Nevada Should Implement Legislation That Complies With National Standards.

Legislation requiring NDOC to establish procedures for medical, dental, mental health, nutrition, and grievance policies that comply with National Commission on Correctional Healthcare (NCCCHC) standards is necessary for several reasons. Currently, certain areas of Nevada's current statutory and regulatory laws are insufficient to ensure NDOC is meeting minimum standards of care. Additionally, NDOC facilities are not licensed by regulating agencies like the Bureau of Health Care and Quality Compliance (BHCQC); thus the BHCQC has no authority to ensure health code violations are corrected.

NCCCHC is a well-known organization that both sets model standards and accredits facilities. While accreditation can be costly and may not be feasible at this point, linking NDOC standards to external guidelines is a critical method of ensuring that Nevada's correctional facilities have constitutional levels of care, and are informed by national expertise and science. The ACLU-NV recently reached a settlement with Ely State Prison that required NDOC to establish certain procedures guided by the NCCCHC. However, as discussed in this report, issues of inadequate care are not unique to Ely. In essence, this legislation will help ensure the improvements made at ESP are implemented system-wide.



## Nevada Should Enact Anti-Shackling Legislation To Protect Pregnant Inmates and Their Babies.

Legislation prohibiting the shackling of pregnant women is necessary to ensure that NDOC is not engaging in this practice, and to ensure that pregnant inmates are aware of their legal rights. Shackling pregnant prisoners endangers the health and safety of both the mother and the fetus, and is a violation of domestic and international law. Further, shackling pregnant prisoners is almost never justified by the need for safety and security for medical staff, the public, or correctional officers. None of the ten jurisdictions that have outlawed the practice have reported any escapes or threats to medical or correctional staff from pregnant prisoners as a result.

## Nevada Should Provide for External Oversight of NDOC.

NDOC needs meaningful independent oversight. Problems have persisted for too long, and are too pervasive. More importantly, many problems with care in Nevada's prisons are not a problem of lack of internal regulations; rather they reflect a failure to even comply with NDOC's own regulations. The ACLU-NV is not the only organization that has called for checks and balances. The Vera Institute of Justice recently released its report on NDOC's audit and accountability procedures.<sup>134</sup> The report identified the Board of State Prison Commissioners, a body created by the state constitution, as providing the benefits closest to external oversight. However, the report noted that the Board has many limitations. The Board has no authority to ensure NDOC administrative regulations are being followed at a facility level.<sup>135</sup> Additionally, while the Board allows public participation, there rarely is follow-up on public complaints or claims made during the meetings.<sup>136</sup> Thus, the Board is not adequate.

Although "corrections leaders work hard to oversee their own institutions and hold themselves accountable . . . their vital efforts are not sufficient and cannot substitute for external forms of oversight."<sup>137</sup> This is according to the Vera Institute of Justice. Effective independent oversight and other accountability mechanisms are necessary to prevent abuse and promote humane, healthy, and safe prison conditions. Through objective observations of an entity, potential problems that prison officials may have overlooked can be detected and corrected before they become serious.<sup>138</sup> Additionally, factual findings of an objective oversight entity can help to substantiate the need for more NDOC funding.<sup>139</sup> Finally, the findings of a monitoring entity about what is happening in NDOC's prisons can lead to better-informed decisions about Nevada's sentencing and correctional policies.<sup>140</sup>

"Although corrections leaders work hard to oversee their own institutions and hold themselves accountable . . . their vital efforts are not sufficient and cannot substitute for external forms of oversight."

The Vera Institute Report makes several suggestions for more effective external oversight. One recommendation is to create an office of Ombudsman that is tasked with preventing litigation by talking with prisoners who have completed the grievance process and serving as a point of outreach for inmates' families.<sup>142</sup> Additionally, this monitor could be responsible for ensuring NDOC complies with its own medical and mental health care policies. This neutral actor would be responsible for providing reports and data to the legislature, NDOC, and committees such as ACAJ. Although the Vera Institute acknowledges this would cost money, the benefits are substantial.<sup>143</sup> An independent oversight committee would provide cost-savings in the long run by preventing litigation, reduce emergency medical costs, promote public confidence in the NDOC process, and improve responsiveness to issues within NDOC.<sup>144</sup>



## VII THE NEVADA LEGISLATURE CAN AND SHOULD CONSIDER INTERNATIONAL LAW IN IMPLEMENTING LEGISLATION

Nevada has a legal and moral obligation to comply with international human rights treaties the United States has ratified. In addition, there is a "states' rights" argument for following international human rights law.<sup>140</sup> The predominant view is that the federal government "has a virtual monopoly in foreign affairs" and its public international law such as treaties and customary international law, thus precluding the local and state government from implementing international human rights laws. This view is supported by the United States Constitution's assignment of international law making powers to the federal government and the Supreme Court precedent acknowledging the underlying need for the nation to speak with "one voice" when it comes to foreign affairs.<sup>141</sup>

However, the power struggle between the states and the federal government is often misunderstood or misinterpreted. States arguably have considerably more power than is typically recognized or implemented. In fact, historically, states have played a central role on various international law issues including taxation of foreign state property, treatment of aliens with respect to real property, and internationally uniform **wills**.<sup>142</sup>

There are compelling reasons that states should interpret and adopt international norms into law. First, although the nationalist conception is that the country should speak with “one voice,” thus leaving international law to the federal government, historically, the “federal government has not only failed to enforce ‘one voice’ with respect to many international law matters, but it has often explicitly disclaimed an ability to do so.”<sup>186</sup> Second, the United States often points to deference to states’ rights as an explanation for why it cannot meet human rights obligations.<sup>187</sup> And in fact, arguably, because of the anti-commandeering doctrine, the federal government is unable to impose those obligations on state legislatures through federal directives.<sup>188</sup> Thus, by enabling state and local legislative bodies to incorporate human rights norms into its jurisprudence, states such as Nevada are able to bring human rights lawmaking closer to those people whose rights are being affected.<sup>189</sup>

The argument that state and local governments have the power to implement international treaties and customary norms on their own is bolstered by the fact that many states have already done so successfully. For example, despite the fact that the United States has yet to ratify the Convention on the Elimination of Discrimination Against Women (CEDAW), the City of San Francisco incorporated CEDAW directly into local law in 1995, making it legally binding in the city.<sup>190</sup> In February 2009, Chicago became the 10th city in the United States to declare its support for the Convention on the Rights of the Child (CRC) when its Board of Supervisors passed a resolution pledging to “work to advance policies and practices that are in harmony with the principles of the [CRC] in all city agencies and organizations.”<sup>191</sup>

In 2008 in Helena, Montana, the Health Board of Lewis and Clark County adopted a resolution that recognizes the human right to health and health care.<sup>192</sup> The resolution created a task force to recommend how best to implement universal health care in the county, using human rights principles.<sup>193</sup> Similarly, in 2008, the governor of Connecticut signed into law a bill establishing a comprehensive Commission on Health and Equity, which declares that “equal enjoyment of the highest attainable standard of health is a human right and a priority of the State . . . .”<sup>194</sup>

For the last three years, Eugene, Oregon’s Human Rights Commission has led an effort to integrate international human rights standards and principles in all city departments.<sup>195</sup> The initiative started by inviting Women’s Institute for Leadership Development (WILD) to lead a workshop which the city’s Human Rights Commission agreed to sponsor, on local implementation of human rights.<sup>196</sup> Eugene’s City Council subsequently approved a city-wide Diversity & Equity Strategic Plan that took effect in 2009.<sup>197</sup> Additionally, in Seattle, Washington, human rights officials are using human rights principles to take a fresh look at housing and racial equity across the city, and public health policy throughout the larger country.<sup>198</sup>

## VIII. THE LEGAL RELEVANCE OF INTERNATIONAL HUMAN RIGHTS LAW

When the United States ratifies treaties, as in the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT) discussed above, it generally includes a declaration that the respective covenants be non-self-executing.<sup>181</sup> Generally, a non-self-executing treaty requires implementing legislation by Congress in order for it to be effective as domestic law.<sup>182</sup> However, even where international treaties have not been enacted domestically through implementing legislation, the Supreme Court of the United States has found that international laws are relevant to the “evolving standards of decency” inquiry with respect to what is considered “cruel and unusual punishment” pursuant to the Eighth Amendment to the United States Constitution.<sup>183</sup>

Access to healthcare in prison and conditions of confinement are Eighth Amendment issues and thus subject to the evolving standards of decency analysis. As of January 2011, the ICCPR<sup>184</sup> with 111 parties, and the CAT<sup>185</sup> with 102 parties, out of approximately 192 member states of the United Nations General Assembly, are two of the most widely accepted and ratified international covenants. Thus, the minimum standards delineated in the ICCPR and the CAT are arguably customary law and should be considered in an evolving standards of decency analysis pursuant to the Eighth Amendment.

In light of Nevada's current budget crisis, right now is an opportune time to address Nevada's overcrowded prison population. Incarcerating such a huge number of individuals is costing the state hundreds of millions of dollars a year, and potentially will cost more if NDOC continues to fail to meet basic human standards of care for those incarcerated. Nevada has a legal obligation to comply with domestic law and its own regulations, as well as human rights treaty law. Moreover, Nevada has a moral obligation to ensure inmates are treated humanely, and provided with basic human needs. Failing to meet minimum standards of care such as proper sanitation, adequate exercise, and basic nutrition, medical, dental and mental health care, is dangerous, inhumane, and illegal. Recommendations such as reclassifying Category B felonies and implementing an intermediate sanction program can provide real solutions for reducing Nevada's prison population. Additionally, implementing legislation that complies with national standards, and creating an independent oversight office will ensure that NDOC is meeting its legal obligation by providing basic human standards of care for those individuals incarcerated. Although this report only touches the surface of what is a serious and complex problem, it is the intent of this report to begin the dialogue and shed light on the current conditions of what is an often forgotten population.



"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."  
"Eighth Amendment to the U.S. Constitution"



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10. *Id.*; NEVADA DEPARTMENT OF CORRECTIONS FISCAL YEAR 2009 STATISTICAL ABSTRACT (2009), available at <http://www.doc.nv.gov/stats/annual/fy2009.pdf>.
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14 See generally: *Helling v. McKinney*, 589 U.S. 25, 31-32 (1993); International Covenant on Civil and Political Rights, G.A. 2200 A (XXI), (Dec. 16, 1966); Standard Minimum Rules for the Treatment of Prisoners (1957).

15 *Id.*

16 The Eighth Amendment is made applicable to the states by the Fourteenth Amendment.

17 United States Constitution VIII Amendment.

18 *Helling v. McKinney*, 589 U.S. 25, 31-32 (1993).

19 *Id.* at 32.

20 *Id.* at 33.

21 *Id.* at 36.

22 *Wilson v. Greer*, 500 U.S. 294, 300 (1990); *Thomas v. Pender*, 611 F.2d 1044, 1150 (9th Cir. 2010).

23 *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

24 *Id.* at 840.

25 *Brade v. Wilson*, 207 F. Supp. 2d 808, 813 (S.D. Ill. 2002).

26 U.S. Constitution, Art. VI, Clause 2.

27 Universal Declaration on Human Rights, G.A. 217 A(III), (Dec. 10, 1948).

28 The United Nations adopted the ICCPR on March 20, 1976. As of December 6, 2010, there are 72 signatories and 162 parties to the Covenant. International Covenant on Civil and Political Rights, G.A. 2200 A (XXI), (Dec. 16, 1966).

29 The United Nations adopted the CAT on December 18, 1984. As of December 6, 2010, there are 77 signatories and 147 parties to the Covenant. Convention Against Torture, G.A. 39/46 (XXX), (Dec. 9, 1975).

30 The United States signed the Covenant on October 5, 1977 and ratified the Covenant on June 8, 1992. International Covenant on Civil and Political Rights, G.A. 2200 A (XXI), (Dec. 16, 1966). The United States ratified the Convention Against Torture on October 21, 1994. International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. 39/46 (XXX), (Dec. 10, 1984).

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34 *Id.*

4) For example, in *Brown v. Jewels*, Communication 775/1997, an inmate claimed he was denied medical treatment, adequate nutrition and clean drinking water among other things. The Human Rights Committee found the State had violated both Article 7 and Article 10(1) of the ICCPR. Additionally, in *Morisset v. Congo*, No. 25/1978, the inmate claimed he was detained in overcrowded cells with 5cm to 10cm of water on the floor, kept in lockers all day, and subjected to insufficient sanitary conditions, hard labor, and poor food. The Human Rights Committee found the State had violated Article 10(1) and Article 7 of the ICCPR.

42 Making Standards Work in Prisons: An International Handbook on Good Prison Practice 69 (2001), available at <http://www.pam.kc.forn.gov/files/kuiman-2001-making-standards-work-on.pdf>.

43 *Id.*

44 SARAH JOSEPH, JENNY SCHUTZ & MELISSA CASTAN, THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY 278, 283 (2d ed. Oxford Univ. Press 2004).

45 Some of these United Nations Codes include the Standard Minimum Rules for the Treatment of Prisoners (1957), the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975), and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988).

46 JOSEPH, SCHUTZ & CASTAN, *supra* note 44, at 283.

47 The HRC indicated that the norms found in the Standard Minimum Rules for the Treatment of Prisoners, 1957 “are incorporated into the article 10 guarantee.” Consequently, most agree the Standard Minimum Rules “have been elevated to norms of international treaty law in article 10(1) of the Covenant.” See JOSEPH, SCHUTZ & CASTAN, *supra* note 44, at 283.  
48 *Id.*

49 See Standard Minimum Rules of 1957.

50 See Nev. Rev. Stat. §§ 209.

51 Nev. Rev. Stat. § 209.131.

52 BUREAU OF HEALTH CARE AND QUALITY COMPLIANCE AUDIT OF NEVADA STATE PRISON (2007), [http://health.nv.gov/Deficiencies/2007/06/2007-06-26\\_sad\\_nevadastateprison\\_state.pdf](http://health.nv.gov/Deficiencies/2007/06/2007-06-26_sad_nevadastateprison_state.pdf), WARM SPRINGS CORRECTIONAL CENTER (2007), [http://health.nv.gov/Deficiencies/2007/06/2007-06-26\\_sad\\_warmspringscorrectionalcenter\\_state.pdf](http://health.nv.gov/Deficiencies/2007/06/2007-06-26_sad_warmspringscorrectionalcenter_state.pdf), NORTHERN NEVADA CORRECTIONAL CENTER (2007), [http://health.nv.gov/Deficiencies/2007/06/2007-06-27\\_sad\\_northnevadacorrectionalcenter\\_state.pdf](http://health.nv.gov/Deficiencies/2007/06/2007-06-27_sad_northnevadacorrectionalcenter_state.pdf), LOVELOCK CORRECTIONAL CENTER (2007), [http://health.nv.gov/Deficiencies/2009/08/2009-08-28\\_sad\\_lovelockcorrectionalcenter.pdf](http://health.nv.gov/Deficiencies/2009/08/2009-08-28_sad_lovelockcorrectionalcenter.pdf), SOUTHERN DESERT CORRECTIONAL CENTER (2007), <http://health.nv.gov/Deficiencies/2008/08/southdesertcr-08-12-08.pdf>, SOUTHERN NEVADA WOMEN'S CORRECTIONAL CENTER (2007), [http://health.nv.gov/Deficiencies/2007/10/2007-10-23\\_sad\\_southnevadawomenscorrectionalcenter\\_state.pdf](http://health.nv.gov/Deficiencies/2007/10/2007-10-23_sad_southnevadawomenscorrectionalcenter_state.pdf), AND HIGH DESERT STATE PRISON (2008), <http://health.nv.gov/Deficiencies/2008/08/08/highdesertstateprison-08-12-08.pdf>.

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- 4) BUREAU OF HEALTH CARE AND QUALITY COMPLIANCE AUDIT OF WARM SPRINGS CORRECTIONAL CENTER (2007), [http://health.nv.gov/Deficiencies/2007/06/2007-06-26\\_sod\\_warm Springscorrectionalcenter\\_state.pdf](http://health.nv.gov/Deficiencies/2007/06/2007-06-26_sod_warm Springscorrectionalcenter_state.pdf), NORTHERN NEVADA CORRECTIONAL CENTER (2007), [http://health.nv.gov/Deficiencies/2007/06/2007-06-27\\_sod\\_northernnevadacorrectionalcenter\\_state.pdf](http://health.nv.gov/Deficiencies/2007/06/2007-06-27_sod_northernnevadacorrectionalcenter_state.pdf), SOUTHERN NEVADA WOMEN'S CORRECTIONAL CENTER (2007), [http://health.nv.gov/Deficiencies/2007/10/2007-10-21\\_sod\\_southnevadasawomenscorrectionalcenter\\_state.pdf](http://health.nv.gov/Deficiencies/2007/10/2007-10-21_sod_southnevadasawomenscorrectionalcenter_state.pdf), HIGH DESERT STATE PRISON (2008), <http://health.nv.gov/Deficiencies/2008/08/highdesertstateprison-08-12-08.pdf>, SOUTHERN DESERT CORRECTIONAL CENTER (2007), <http://health.nv.gov/Deficiencies/2008/08/southdesert-08-12-08.pdf>.
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- 7) Email from Malinda West, Supervisor of Constituent Affairs of the USDA/Food Safety and Inspection Service (Jan. 19, 2001, 10:41 EST) (on file with author).
- 8) *Ramos v. Lanes*, 639 F.2d 556, 571 (10th Cir. 1980).
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<sup>78</sup> BHCQC Audit, NSCC/2007, SNWCC/2007, SDCC/2008.

<sup>79</sup> BHCQC Audit, SDCC/2008.

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<sup>81</sup> *Ham v. Dental Dep.*, 865 F.2d 198, 200 (9th Cir. 1993).

<sup>82</sup> *Id.*

<sup>83</sup> *Cf.*, e.g., *McGrew v. Malik*, 612 F.3d 636, 641 (7th Cir. 2010) (stating that a medical professional's choice of an "easier or less efficacious treatment" like extraction over filling a cavity, without the exercise of professional judgment, "may reflect deliberate differences").

<sup>84</sup> ADA Oral Health Topics: Cleaning Your Teeth and Gums, <http://www.ada.org/4872.aspx?source=tab=1>.

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<sup>88</sup> LEGISLATIVE COUNSEL BUREAU AUDIT: INMATE MEDICAL SERVICES 19 (2006), available at <https://www.leg.state.nv.us/Division/Audit/FallDocuments/Departments/Corrections/inmateMedicalServices.pdf>.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Minutes of the Board of Prison Commissioners Meeting #1 (Oct. 14, 2008) (statement of Skelink, Director, Dept. of Corrections), available at <http://www.doc.nv.gov/board/2008-10-14/Prison%20Board%20Minutes.pdf>.

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<sup>94</sup> *Ham v. Dental Dep.*, 865 F.2d 732, 744 (9th Cir. 2002) (internal quotes omitted).

<sup>95</sup> *Wright v. Ray*, 882 F.2d 1237, 1253 (9th Cir. 1992), abrogated on other grounds by *Soule v. Cowan*, 519 U.S. 472 (1995).

<sup>96</sup> Standard Minimum Rules for the Treatment of Prisoners 1977 Rule 25(1).

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<sup>100</sup> Standard Minimum Rules for the Treatment of Prisoners 1977 Rule 21(1).

<sup>101</sup> *Kovacs v. Rael*, 83 F.3d 1083, 1089-90 (9th Cir. 1998).

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51 David Sloss, *The Domestication of International Human Rights: Non-Soft-Corecing Declarations and Human Rights Treaties*, 24 *Yale J. Int'l L.* 129, 131 (1999).

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[T]he prohibition against ‘cruel and unusual punishments,’ like other expansive language in the Constitution, must be interpreted according to its text by considering history, tradition and precedent, and with due regard for its purpose and function in the constitutional design. To implement this framework, we have established the propriety and affirmed the necessity of referring to the ‘evolving standards of decency that mark the progress of a maturing society’ to determine which punishments are so disproportionate as to be cruel and unusual.

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