

PUBLIC SAFETY

Indiana will pay inmate \$100K for each year he spent in solitary, lawyers say

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In his own words, Jay Vermillion described his temporary home at the Westville Correctional Facility, inside a unit that housed the “worst of the worst.”

Vermillion spent 23-24 hours a day in a cold “concrete tomb with a solid steel door.” There was no direct contact or interaction with others. No telephone use, work or recreation. Just the smell of mace fumes, the ransacking of cells and “humiliating strip searches,” Vermillion said.

“All of the out-of-control and unmanageable worst-of-the-worst are housed in ‘cold storage’ to induce dormancy,” he stated in a federal complaint.

Vermillion, who’s serving a decadeslong sentence for murder and other offenses, said he didn’t belong there. But starting in 2009, Vermillion remained in the unit for more than four years, he said. All while being denied a clear explanation for why he was there and a chance to explain why he believed he shouldn’t be — a right afforded to him and every inmate under the law, attorney Maggie Filler, of the Chicago-based MacArthur Justice Center, told IndyStar.

Indiana law says the maximum allowable term in solitary is 30 days, after which the department must review the offender to determine whether the inmate should stay segregated. Rather than hold these required reviews, Filler said, the DOC simply tacked on more days to Vermillion’s term.

Vermillion said he served back-to-back disciplinary terms in solitary: 1,513 days to be exact.

Now, after suing the Department of Correction, the state, namely taxpayers, will pay Vermillion roughly \$100,000 for each year he spent in isolation, according to Filler. As Vermillion’s case was heading to trial in Indianapolis federal court, his attorneys reached a

settlement last month with the state for \$425,000, according to a copy of the settlement provided to IndyStar.

The case, Filler said, illustrates the need to protect the rights of prisoners—a population that may not always garner sympathy, but are still linked to society, even behind bars.

“Most people who enter prison are one day going to get out,” Filler, one of Vermillion’s lawyers, said. “And they’re going to be living in free society. So it’s incumbent upon us to make sure that the prison experience is more rehabilitative than it is just purely destructive.”

But even if one is not inclined toward sympathy for prison inmates, there is another reason to be concerned about the state's actions: It came at a significant cost to taxpayers.

Indiana Department of Correction spokesman Dave Bursten told IndyStar that the agency agreed to resolve the case to avoid the "uncertainties" of litigation and the expenses that would be incurred.

"We continue to deny any fault, wrongdoing or liability with respect to this litigation," Bursten said in the statement.

Why the DOC was sued

Vermillion was convicted in 1997 of shooting and killing his former girlfriend in 1995, court documents show. He’s currently detained at the Pendleton Correctional Facility and won’t be released until around 2036.

In July 2009, he was serving time at Indiana State Prison when three men known to Vermillion escaped from the prison and were later apprehended, according to Vermillion’s complaint. Vermillion said prison officials questioned him, believing he was involved in the escape. Vermillion said he shut down the interview after invoking his constitutional right against self-incrimination.

He was later taken to the Westville Control Unit's super-max facility, where he spent the next 50 months.

Prison officials had charged Vermillion with trafficking, but his attorneys say he was denied his constitutional right of due process.

“What should have happened at that point,” Filler said, “is there should have been a hearing.” She added that he was also supposed to receive the opportunity to make his case as to why he

believed solitary was not appropriate for him and why he was able to function in regular conditions, as he had been doing for many years prior to solitary, she said.

When asked for an explanation, Filler says the prison kept it simple.

“Essentially, they said the reason (Vermillion’s sentence) was extended was because another correctional official said so,” she said. “So that's not much in the way of rationale.”

Vermillion received this explanation on a piece of paper, Filler said, but the law requires much more. Because solitary confinement can be so damaging to inmates, Filler said, Indiana prisons must conduct reviews of their solitary terms at the end of the 30-day period.

“At every review, he would just get the same piece of paper over and over again,” Filler said. “No indication as to what he needed to do to get out. No consideration of how his behavior has been up to that point.”

Restrictive Housing

Filler told IndyStar that Vermillion’s settlement is one of the largest she’s aware of for a person who is still serving a prison sentence. She compared it to the federal case of Aaron Irby-Israel, an Indiana inmate who said he spent more than 20 years in solitary and won \$314,000 after a bench trial earlier this year.

Had his case gone to a jury, Vermillion, 59, could have possibly gotten more than \$425,000, according to Jeff Cardella, a criminal defense attorney in Indianapolis. But with a murder conviction, he would have also been rolling the dice.

“Some clients are more sympathetic than others,” Cardella said. “And somebody who is in prison generally falls at the lower end of the sympathy spectrum. It's not technically something jurors should be considering. But jurors are human. And it's something they do consciously or unconsciously consider.”

Cardella said \$425,000 is not an unreasonable number, given how damaging solitary can be on individuals. The punishment, which has become more controversial over time, can cause severe depression, distortions and hallucinations, nightmares and lower levels of brain function, according to the Vera Institute of Justice.

DOC spokesman Dave Bursten told IndyStar that the department does not house offenders in solitary confinement. The DOC does put offenders in "restricted housing assignment classification."

"Any offender placed into restrictive housing is provided a review each 30 days to determine if such housing classification remains appropriate," Bursten said. "Additionally, each offender receives an annual classification review to determine appropriate housing assignment."

But prisoner advocates say the use of terms such as "restricted housing" is largely semantics.

"The issue of whether it's solitary confinement or some other thing is hotly disputed between corrections agencies and advocates in the human rights community," Filler said. "We'd say that his conditions of confinement had all the hallmarks of solitary confinement."

Corrections agencies like IDOC, Filler said, would "probably dispute that it was what you and I would think of when we hear the term solitary confinement."

The National Institute of Correction defines restrictive housing, which is also called administrative segregation, as the practice of housing inmates separately from other inmates at a prison, typically by isolating them in high security cells, and restricting their "movement, behavior and privileges."

Although some people still call the punitive isolation of prisoners solitary confinement, those in the field of corrections prefer to call it something else, such as "Special Housing Units" or "Intensive Management Units," according to a report from the Criminal Justice Institute.

Cardella said he believes such a punishment should be reserved for cases in which the inmate poses a serious danger to other inmates and prison employees, not used as discipline for bad behavior.

"We want as a society to have punishment for crime," Cardella said, "and we want to be protected from people who are potentially dangerous. But at the same time, we don't want the punishment to be sadistic or unnecessarily harsh, merely for the point of harming another individual, even if that individual has done something."

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