

## A Proposal to Reform the Practice of Solitary Confinement

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*Solitary confinement is a desolate prison within the penitentiary itself. Extreme isolation in a cell barely equipped to house human life manipulates the psyche of the prisoner and works to achieve a dehumanizing experience in the name of the penological interest of the state. It is common for individuals in solitary confinement to endure decades alone in windowless cement rooms the width of a king-sized bed, listening to the echoing cries of other inmates. While some policymakers and correction officers argue that the practice of solitary confinement for extended periods maintains the safety of staff and the other prisoners, the harmful mental toll taken on the inmate is an inappropriate bargain against the protections demanded by the Eighth Amendment for law enforcement to take.*

The Eighth Amendment to the United States Constitution states: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”<sup>266</sup> The cruel and unusual component of the Eighth Amendment is shrouded in ambiguity, as what it means for a punishment to be cruel is anything but obvious. In order to establish a “cruel and unusual punishment” violation of the Eighth Amendment, the appellate must demonstrate: an “objectively, sufficiently serious act or omission resulting in the denial of necessities; a culpable state of mind on the part of prison officials amounting to deliberate indifference to his health and safety; and that he has exhausted the prisoner-grievance system and that he has petitioned for relief

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<sup>266</sup> U.S. Const. Amend. VII § 2.



under Article 138, UCMJ.”<sup>267</sup>

Studies delineating a link between the experience of social pain and an adverse impact on the mental well-being of incarcerated individuals have been perpetually replicated. The results confirm the detrimental consequences of living in isolation. The harm incurred by an inmate, derived because of prolonged isolation, manifests in emotional, cognitive, and psychosis-related symptoms.<sup>268</sup> Solitary confinement was designed to encourage inmates to feel proper repentance, but a shift in paradigm has led to a devastating, exacerbated psychological impact on mentally ill.<sup>269</sup> Social isolation, idleness, and lack of control over aspects of daily life—all phenomena maximized by the practice of solitary confinement—incite rapid, dramatic psychological deterioration in inmates with mental illness. This mental deterioration, including maladaptive social tendencies and socially inept behaviors, can also manifest as extreme acts of self-harm or suicide.<sup>270</sup> In one Indiana supermax facility, Wabash Valley Correctional Facility Secured Housing Unit, a prisoner with mental illness committed suicide by self-immolation, and another man choked himself to death with a washcloth.<sup>271</sup> A mentally ill adolescent incarcerated in a New York supermax facility told Washington Post reporter Ian Kysel she attempted to hang herself within the first 24 hours of

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<sup>267</sup> FIRST PRINCIPLES: CONSTITUTIONAL MATTERS: CRUEL AND UNUSUAL PUNISHMENT, <https://www.armfor.uscourts.gov/digest/IB4.htm>.

<sup>268</sup> Shalev, S. (2008). The health effects of solitary confinement. In Sourcebook on solitary confinement. Retrieved from <http://solitaryconfinement.org>

<sup>269</sup> ACLU (2014) *The Dangerous Overuse of Solitary Confinement in the United States, Briefing Paper - American Civil Liberties Union*. Available at: [https://www.aclu.org/sites/default/files/assets/stop\\_solitary\\_briefing\\_paper\\_updated\\_august\\_2014.pdf?source=post\\_page](https://www.aclu.org/sites/default/files/assets/stop_solitary_briefing_paper_updated_august_2014.pdf?source=post_page) at 6.

<sup>270</sup> *Id.*, at 8.

<sup>271</sup> Karin Grunden, Man found hanging in cell at Wabash Valley Correctional Facility, TERRE HAUTE TRIBUNE-STAR, Oct. 1, 2003.



solitary confinement.<sup>272</sup> These few instances, among the thousands of stories that exist, encapsulate the severe psychological trauma affecting mentally ill individuals in solitary confinement.

Extensive social neuroscience research on the impact of environmental and social deprivation on the brain exists as another avenue of challenging the constitutionality of solitary confinement.<sup>273</sup> The results of this research attest to the vital importance of social interaction and stimulating environment on brain function, as studies have revealed brain deterioration imparted by isolation in restrictive housing units within only a couple of days.<sup>274</sup> Despite overwhelming evidence of the social pain induced through solitary confinement, the Supreme Court refuses to recognize that this mental harm caused is sufficiently “cruel” to be considered a violation of the Eighth Amendment.<sup>275</sup> With these standards in place, the Court has been generally unwilling to recognize that the psychological harm incurred from extreme isolation is sufficient to constitute a violation of the Eighth Amendment.<sup>276</sup>

The Court’s neglect of the generalized demand for effective clinical support for mentally ill individuals suffering in isolation units stems from two fundamental discrepancies pertaining to basic human needs. The first is a tendency to dismiss social interaction as a basic human necessity, as

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<sup>272</sup> Ian Kysel, SOLITARY CONFINEMENT MAKES TEENAGERS DEPRESSED AND SUICIDAL. WE ... THE WASHINGTON POST (2015), <https://www.washingtonpost.com/posteverything/wp/2015/06/17/solitary-confinement-makes-teenagers-suicidal-we-need-to-ban-the-practice/>

<sup>273</sup> Federica Coppola, THE BRAIN IN SOLITUDE: AN (OTHER) EIGHTH AMENDMENT CHALLENGE TO SOLITARY CONFINEMENT JOURNAL OF LAW AND THE BIOSCIENCES (2019)

<sup>274</sup> *Id.*

<sup>275</sup> Claire A. Nolasco et al., *Construing the Legality of Solitary Confinement: Analysis of United States Federal Court Jurisprudence*, AM. J. CRIM. J. (2018). DOI: <https://doi.org/10.1007/s12103-018-9463-5>

<sup>276</sup> Coppola, *supra* note 273.



deprivation of human needs is interpreted in terms of concrete physical demands such as nutrition and sanitation.<sup>277</sup> This myopic interpretation disregards psychological health as a human need and highlights the immense underestimation of the adverse mental effects of isolation. The ethical dimension of cruelty in punishment remains important within the parameters of basic human needs, and underpins the argument that current solitary confinement conditions meet the “substantial risk of physical harm” stipulation of the objective prong of the conditions standard. The mental, physical, and physiological harms imposed by the conditions of solitary confinement are on par with physical risk involved in starvation and sleep deprivation.<sup>278</sup> Therefore, although the harm of socio-environmental deprivation may translate into mental deterioration, the damage to the confined individual’s psyche is ultimately due to physical harm to the brain similar to the damage done by starvation.<sup>279</sup>

As Aristotle notably wrote in *The Politics*, “a social instinct is implanted in all men by nature.”<sup>280</sup> Over two thousand years later, the disciplines of neuroscience and behavioral psychology have produced immense empirical data establishing that the human psyche is biologically rooted in the need to be connected.<sup>281</sup> This social connection is as critical to a truly *human* life as food and water is to survival, and mentally ill or cognitively impaired individuals in solitary confinement should be afforded this fundamental need. Eliminating all social and environmental stimulation of

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<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> Bennion, Elizabeth (2015) "Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Usual Punishment," *Indiana Law Journal*: Vol. 90: Iss. 2, Article 7.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6813937/#fn223>.

<sup>280</sup> Aristotle, *Politics* 5 (Benjamin Jowett trans., 1999)

<sup>281</sup> Coppola, *supra* note 273.



incarcerated individuals is to deprive them of a basic human need and to impose a substantial risk of neurological, physiological, and psychological deterioration. Complete isolation involved in current solitary confinement practices risks inflicting unnecessary suffering, characterized by debilitating, and potentially permanent consequences. A punishment that entails unwarranted and possibly permanent damage through deprivation of basic human necessities fails to meet contemporary standards of societal decency, and should not be institutionalized in practice. The Court has stated that the interpretation of the “cruel and unusual punishment” aspect of the Eighth Amendment changes in tandem with the knowledge of an evolving society, and a civilized society should not tolerate the infliction of unnecessary pain on another human being.<sup>282</sup>

The second reason for this neglect is the dualistic perception of harm endorsed in principle by U.S. law.<sup>283</sup> This entails the separation of physical harm from mental suffering, creating a hierarchy of pain in which mental suffering is subjective and less important than physical ailments. As a result of this distinction, social interaction falls outside of the spectrum of constitutionally protected human needs. This has led courts to dismiss cases of mental harm without evidence of physical distress.<sup>284</sup> This judicial deference and unwillingness of the Court to intervene in the methods of inmate discipline and introduce uniform regulations to mitigate psychological harm incurred from solitary confinement was exemplified in the case of *Scarver v. Litscher*.<sup>285</sup>

In this case, the Seventh Circuit acknowledged that the plaintiff, who was repeatedly banging his head against the walls of his cell, had endured substantial psychological distress

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<sup>282</sup> *Trop*, 856 U.S. 86, at 101.

<sup>283</sup> *Coppola*, *supra* note 273.

<sup>284</sup> *Id.*

<sup>285</sup> *Scarver*, 434 F.3d 972, at 976.



as a result of placement in solitary confinement. However, in 2006, the Supreme Court remained hesitant to interfere with correctional management in prisons and deferred to the prison administration to defend a legitimate penological interest in enforcing solitary confinement.<sup>286</sup> Often, judicial analysis of whether a punishment is cruel and unusual lacks scrutiny of the conditions of supermax facilities.<sup>287</sup> Supermax prisons do not have a single definition, but their essence is complete social isolation, deprivation of all environmental stimulation, and enforced idleness.<sup>288</sup> These qualities of an impoverished social environment are enforced only upon the individuals held in solitary confinement within one of these facilities. The Supreme Court defined the foundation of the penological evaluation of solitary confinement conditions as the “effect upon the imprisoned”<sup>289</sup> and that “deference to the findings of state prison officials in the context of the Eighth Amendment would reduce that provision to a nullity in precisely the context where it is most necessary.”<sup>290</sup> This tendency of courts to show deference to state prison officials risks the penological interests of prison administrations superseding the well-being of incarcerated individuals. The Supreme Court has stated that constitutional protections relating to the conditions of confinement derive from the acknowledgment that inmates retain the dignity inherent in all humans.<sup>291</sup> Additionally, the Court has established that only “extreme deprivation” adequately supports a condition of confinement claim, and this requirement is met when the socio-environmental deprivation

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<sup>286</sup> Coppola, *supra* note 273.

<sup>287</sup> *Id.*

<sup>288</sup> David C Fathi, THE NEW ASYLUM: SUPERMAX AS WAREHOUSE FOR THE MENTALLY ILL PRISON LEGAL NEWS (2007), <https://www.prisonlegalnews.org/news/2007/jul/15/the-new-asylum-supermax-as-warehouse-for-the-mentally-ill/>

<sup>289</sup> *Rhodes*, 452 U.S. 337, at 364.

<sup>290</sup> *Johnson v. California*, 543 U.S. 499, 511

<sup>291</sup> *Brown v. Plata*, 563 U.S. 493, 510 (2011)



of solitary confinement denies “the minimal civilized measure of life’s necessities.”<sup>292</sup> Therefore, the punishment of extreme isolation deprives a human of basic human needs. It involves the infliction of unnecessary pain, and is therefore incompatible with the concept of human dignity as it exists in civilized society today.

Inmates who endure substantial mental harm within prison conditions are further burdened by the subjective prong of proving that prison officers were indifferent to their suffering.<sup>293</sup> This subjective prong of the conditions standard refers to the prison official’s culpable state of mind and the requirement of proof that substantial risk to an inmate’s health and safety was disregarded.<sup>294</sup> The decision of *Farmer* established the parameters of the prison official’s culpability, as the Court held that deliberate indifference is equivalent to subjective recklessness.<sup>295</sup> While this test of deliberate indifference remains individualized to each solitary confinement case, the Court in *Farmer* also recognized that some risks of harm are objective such that “a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.”<sup>296</sup> The challenge of proving prison official’s knowledge of the incurred mental harm became instrumental in cases regarding solitary confinement conditions, and establishing this deliberate indifference may rely on circumstantial evidence that the risk was known and ignored.

Proving the deliberate indifference of prison officials constitutes an obstacle to challenging objectively harmful conditions of supermax facilities, particularly in cases

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<sup>292</sup> *Rhodes*, 452 U.S. 337, at 347

<sup>293</sup> *Coppola*, *supra* note 273.

<sup>294</sup> *Id.*

<sup>295</sup> *Farmer*, 511 U.S. 825, at 839

<sup>296</sup> *Id.*, at 842



involving mentally ill incarcerated individuals.<sup>297</sup> Due to the lack of mental health training for prison officials, prison administrations may avoid liability by claiming to have no knowledge of the symptoms or risks of mental illness.<sup>298</sup> This creates the perverse incentive for prison staff; subpar knowledge of mental illness facilitates an avoidance of Constitutional responsibility as this condition stands. In light of the questionability of the subjective prong condition in solitary confinement litigation, the court should consider if the condition of extreme social isolation itself is sufficient to warrant a presumption of intentional disregard of prison administrations.

The personal testimonies of incarcerated individuals confined in restrictive cells paired with the research of the psychological harm imposed by prolonged social isolation demonstrates the need for reevaluation of what qualifies as an essential condition of human life. The Court should place more emphasis on social interactions among incarcerated individuals and the prison staff, and introduce regulations for solitary confinement which comport with constitutionally afforded protections for mentally ill inmates. Recent state reforms provide new insight into the impact of reforming solitary confinement and show a consensus that recognizes the need for change.<sup>299</sup>

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<sup>297</sup> Coppola, *supra* note 273.

<sup>298</sup> Lori Marschke, *Proving Deliberate Indifference: Next to Impossible for Mentally Ill Inmates*, VALP. U. L. REV. 487 (2004)

<sup>299</sup> Jessica Sandoval, J. (2023, March). *How solitary confinement contributes to the mental health crisis*. National Alliance on Mental Illness. <https://www.nami.org/Blogs/NAMI-Blog/March-2023/How-Solitary-Confinement-Contributes-to-the-Mental-Health-Crisis#:~:text=Among%20many%20other%20mental%20health,of%20an%20acute%20mental%20illness>.





## I. Arguments Against Unlimited Use of Solitary Confinement

Through testimonial accounts, hundreds of inmates in solitary confinement have attested to the devastating cognitive effects of isolation, such as perceptual distortions and hallucinations, increased anxiety and depression, fantasies of revenge on society, and other aspects of mental pain.<sup>300</sup> The effects of isolation also manifest in decreased cognitive function, as a decline in brain activity was found in inmates incarcerated in solitary confinement for only seven days.<sup>301</sup> When the only social stimulation available is sporadic conversations with guards and officers, sentiments of humiliation and meaninglessness compound to damage the mental well-being and neurological health of the prisoner.

Technological advancements such as video surveillance and virtual platforms of communication have eliminated even that fleeting human contact, facilitating a method of further isolation that was unforeseen in the earlier stages of prison development.<sup>302</sup> For example, in decades past, individuals in solitary confinement were able to regularly see and interact with human guards as they made their rounds. As technology developed and was integrated into the surveillance mechanisms of supermax prisons, even fleeting social contact is revoked for inmates in solitary confinement. In a 2007 study conducted by the Red Cross, the clinical impacts of isolation in solitary confinement were compared to those of physical torture, revealing similarities in negative psychological and

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<sup>300</sup> Coppola, *supra* note 273.

<sup>301</sup> Paul Gendreau, N.L. Freedman, G.J.S. Wilde & G.D. Scott, Changes in EEG Alpha Frequency and Evoked Response Latency During Solitary Confinement, 79 J. of Abnormal Psychol. 54, 57–58 (1972)

<sup>302</sup> David C Fathi, THE NEW ASYLUM: SUPERMAX AS WAREHOUSE FOR THE MENTALLY ILL PRISON LEGAL NEWS (2007), <https://www.prisonlegalnews.org/news/2007/jul/15/the-new-asylum-supermax-as-warehouse-for-the-mentally-ill/>



physiological reactions.<sup>303</sup>

The socio-environmentally deprived conditions of isolation cells bear a devastating toll on the psychological well-being of those they confine. Hardened by psychological and physical abuse by prison administrations maximizing control of an individual, inmates have expressed suicidal ideation merely for the chance of an escape.<sup>304</sup> Correctional officers frequently misuse physical restraints and chemical agents as disciplinary measures, and the isolated nature of solitary confinement units render detection of staff abuse much more difficult.<sup>305</sup> The apathetic attitude of prison administrations to this mistreatment facilitates its practice, and the negative psychological effects of social deprivation are further intensified with this abuse. As stated by a California State prison psychologist in 2002, “It’s a standard psychiatric concept, if you put people in isolation, they will go insane. . . . Most people in isolation will fall apart.”<sup>306</sup>

The claim that solitary confinement cells harbor only the “worst of the worst,” most threatening criminals who were convicted of heinous crimes or assaulted other inmates while incarcerated does not realistically reflect the practice of solitary confinement. Mentally ill individuals are disproportionately represented in restrictive housing facilities, and prison officials across the U.S. fill solitary confinement cells with inmates who pose any difficulty to management, whether that be a violation of minor prison rules or launching a lawsuit against the prison

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<sup>303</sup> Dr. Hernán Reyes, *The Worst Scars Are in the Mind: Psychological Torture*, 89 *Int’l Rev. Red Cross* 591, 607 (2007)

<sup>304</sup> Calloway, K. (2023, February 27). *I spent 16 months in solitary confinement and now I’m fighting to end it: ACLU*. American Civil Liberties Union.  
<https://www.aclu.org/news/prisoners-rights/i-spent-16-months-solitary-confinement-and-now-im>

<sup>305</sup> Reyes, *supra* note 303.

<sup>306</sup> Human Rights Watch, *Ill-Equipped: U.S. Prisons And Offenders With Mental Illness* 149 n. 513 (2003).



administration.<sup>307</sup> If prison administration guidelines upheld this exclusivity and supermax facilities were restricted to only the most predatory, solitary confinement cells would stand virtually empty.<sup>308</sup> Nationwide data documenting the use of solitary confinement in prisons in the U.S. estimates that as of July 2021, 48,000 individuals are confined in their cells for at least twenty two hours a day for a minimum of fifteen days.<sup>309</sup> While this statistic has decreased from the 100,000 individuals housed in solitary confinement in 2014, the population of inmates confined in restricted housing among the two million individuals in state and federal prisons is massively unbalanced.<sup>310</sup>

A 2003 report based on data from state prisons throughout the U.S. by Human Rights Watch found one-third to one-half of inmates in solitary confinement cells to be mentally ill.<sup>311</sup> Cognitively impaired and mentally ill individuals who struggle to comprehend and abide by strict prison regulations without treatment garner reputations as troublesome inmates, and are cast aside in solitary confinement cells.<sup>312</sup> This facilitates a destructive cycle in which mentally ill inmates are misinterpreted as willfully defiant by under-trained prison staff and are subjected to prolonged periods of disciplinary

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<sup>307</sup> ACLU *supra* note 269, at 9.

<sup>308</sup> Fathi, *supra* note 302.

<sup>309</sup> Correctional Leaders Association, NATIONWIDE REPORT FINDS REDUCTION IN REPORTED USE OF SOLITARY CONFINEMENT YALE LAW SCHOOL (2022), <https://law.yale.edu/yls-today/news/nationwide-report-finds-reduction-reported-use-solitary-confinement#:~:text=Time%2DIn%2DCell%3A%20A,for%2015%20days%20or%20more>.

<sup>310</sup> Wendy Sawyer & Peter Wagner, MASS INCARCERATION: THE WHOLE PIE 2023 PRISON POLICY INITIATIVE (2023), <https://www.prisonpolicy.org/reports/pie2023.html> (last visited Dec 9, 2023).

<sup>311</sup> Zoltan Lucas, LOCKING DOWN THE MENTALLY ILL THE CRIME REPORT (2010), <https://thecrimereport.org/2010/02/18/locking-down-the-mentally-ill/>

<sup>312</sup> Fathi, *supra* note 302.



segregation in solitary confinement cells.<sup>313</sup> This “willful defiance” perceived by the prison administration is unfounded, as the psychological damage inflicted by the conditions of solitary confinement alongside pre-existing mental illness compromises the cognitive and affective abilities of the inmates.<sup>314</sup> These cognitive and affective capacities are what contribute to logical reasoning and decision-making, and solitary confinement promotes the further atrophy of inmate ability to comprehend and respond to the emotions of others. The maladaptive psychological processes and anti-social behavior patterns identified as risks of confinement in isolation units will continue to comprise the individual's social functioning, and the rehabilitation process intended in solitary confinement is rendered ineffective.

Inmates with poor mental health are more susceptible to conflict within the prison community and demonstrate increased rates of misconduct and assault. This increases the existing threat to inmates and law enforcement within the prison walls, as complete social isolation of mentally ill inmates only exacerbates symptoms of psychiatric distress.<sup>315</sup> Along with compromised security, rampant mental illness among inmates demands more from already scarce resources, increasing the limited budgets of correctional facilities to offset the pressure put on correctional officers in deprived prisons.<sup>316</sup> The alternative solution to prison security maintenance relies on mitigation of the most oppressive features of supermax facilities. This step toward reform has been found to be effective. For example, a state prison in Washington

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<sup>313</sup> Lucas, *supra* note 311.

<sup>314</sup> William Heirstein Et Al., *Responsible Brains: Neuroscience, Law, and Human Culpability* 222–24 (2018).

<sup>315</sup> Lucas, *supra* note 311.

<sup>316</sup> Kim KiDeuk, Becker-Cohen Miriam, Serakos Maria. 2015. *The Processing and Treatment of Mentally Ill Persons in the Criminal Justice System*. Washington, DC: Urban Institute.



experienced a dramatic decrease in violence and the use of punitive force following increased staff interaction with inmates and introduction of communal activities.<sup>317</sup>

The overproduction and overuse of supermax facilities, or prisons containing solitary confinement housing units, has also led to fiscal consequences for the entire federal prison institution.<sup>318</sup> Supermax facilities are three times more expensive to build and operate compared to maximum-security prisons. This fiscal strain was evident in a 2009 study revealing that criminal correction spending exceeded budget growth in all areas of federal and state spending except for Medicaid.<sup>319</sup> When mentally ill inmates are held in an overcrowded prison system that is simultaneously seeking to occupy expensive solitary confinement cells, these individuals are often transferred to isolation housing.<sup>320</sup>

The argument that placing certain inmates in solitary confinement protects other prisoners and officers from danger is cast into grave doubt by the fact that their complete seclusion from other inmates further impairs mental and social capabilities, increasing their risk of misconduct.<sup>321</sup> Isolation exacerbates inmates' existing mental illnesses and increases the threat posed to the rest of the prison community.<sup>322</sup> Only five percent of inmates housed in solitary confinement remain there permanently, and thus facilitating effective reentry into the

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<sup>317</sup> Rhodes, at 192–193.

<sup>318</sup> Fellner Jamie. 2006. "A Conundrum for Corrections, a Tragedy for Prisoners: Prisons as Facilities for the Mentally Ill." *Washington University Journal of Law & Policy* 22:135–44

<sup>319</sup> Solomon Moore, Study Shows High Cost of Criminal Corrections, N.Y. TIMES, Mar. 3, 2009, at A13.

<sup>320</sup> *Id.*

<sup>321</sup> ACLU *supra* note 269, at 9.

<sup>322</sup> Edgemon, T. G., & Clay-Warner, J. (2019). Inmate Mental Health and the Pains of Imprisonment. *Society and Mental Health*, 9(1), 33–50. <https://doi.org/10.1177/2156869318785424>



greater prison population is essential.<sup>323</sup> The American Psychological Association reports that forty-five percent of federal prisoners experience mental health issues. Furthermore, with over two million people incarcerated in the United States, a tremendous number of mentally ill inmates suffer in an environment devoid of psychological treatment.<sup>324</sup>

The extreme security measures maintained in supermax units render adequate therapy sessions and mental health assessments unavailable. Intensified security measures entail being fed through a slot in a door, denial of physical or social contact, and a lack of access to medical services afforded to inmates within the greater prison population.<sup>325</sup> The only available therapy for individuals in solitary confinement cells consists of conversations through a steel door, surrounded by other prisoners and officers.<sup>326</sup> The inability to receive intimate and personal therapy in solitary confinement makes the available treatment largely ineffective. The withholding of effective therapy to inmates with mental illness in supermax facilities, coupled with the devastating impact of social isolation lays bare the substantial argument that solitary confinement of mentally ill inmates violates the Eighth Amendment.<sup>327</sup> Those that argue this suggest that ensured

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<sup>323</sup> Timothy Hughes & Doris James Wilson, Reentry Trends in the United States, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2004), available at <http://www.bjs.gov/content/pub/pdf/reentry.pdf> (reporting that 95% of all state prisoners will eventually be released).

<sup>324</sup> Taylor, E. (n.d.). *Mental Health and Reentry: How Court Services Offender Agency Meets the Challenge of Mental Health Community Supervision*. [https://cops.usdoj.gov/html/dispatch/05-2022/mental\\_health\\_reentry.html#:~:text=Approximately%20half%20the%20people%20in,path%20for%20prisoners%20returning%20home](https://cops.usdoj.gov/html/dispatch/05-2022/mental_health_reentry.html#:~:text=Approximately%20half%20the%20people%20in,path%20for%20prisoners%20returning%20home).

<sup>325</sup> Sandoval, *supra* note 299.

<sup>326</sup> ACLU *supra* note 269, at 9.

<sup>327</sup> *Id.*



psychological decline of mentally ill prisoners paired with a lack of treatment renders the practice of total social isolation cruel and unusual as understood in the context of the Eighth Amendment. As aforementioned, to establish a “cruel and unusual punishment” violation of the Eighth Amendment, the appellate must demonstrate: an “objectively, sufficiently serious act or omission resulting in the denial of necessities; a culpable state of mind on the part of prison officials amounting to deliberate indifference to his health and safety; and that he has exhausted the prisoner-grievance system and that he has petitioned for relief under Article 138, UCMJ.”<sup>328</sup> The human neurobiological demand for social interaction is complemented by environmental stimulation, both contributing to proper brain function and behavior. Thus, the social and environmental stimulation deprived in solitary confinement is to deprive incarcerated individuals with the conditions necessary for physiological brain function, and thus the very nature of themselves. In acknowledging the vital importance of human interaction and environmental stimulation is an implication that forcing inmates into six by eight feet cells in complete isolation is sufficient *per se* to deprive them of basic human needs.<sup>329</sup> Courts have endorsed the view that solitary confinement conditions are legitimate as long as they guarantee the same basic necessities afforded to the general prison population.<sup>330</sup> However, this notion of equivalence disregards the fact that extreme socio-environmental isolation is the condition that renders the difference between solitary confinement and confinement in the general prison. Extreme isolation deprives inmates in solitary confinement of a biological based need that is provided to the general prison population, and social interaction should be regarded as a basic need rather than a

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<sup>328</sup> FIRST PRINCIPLES: CONSTITUTIONAL MATTERS: CRUEL AND UNUSUAL PUNISHMENT, <https://www.armfor.uscourts.gov/digest/IB4.htm>

<sup>329</sup> Coppola, *supra* note 263.

<sup>330</sup> *Hutto* 437 U.S. 678, at 686.



mere privilege.

With the vast amount of evidence attesting to the harmful psychological effects of solitary confinement, the detriment to larger policy goals of prisons has become a pertinent topic of conversation. As a result, a reevaluation of the legitimacy of current solitary confinement practices is now in progress.<sup>331</sup> Federal courts have called into question whether the placement of mentally ill inmates in restrictive housing constitutes cruel and unusual punishment.<sup>332</sup> The U.S. Senate held its first congressional meeting to discuss the use of isolation measures in prisons in June 2012 and discussion is ongoing.<sup>333</sup> Several other influential organizations, such as the American Civil Liberties Union, American Bar Association, and National Alliance of Mental Illness, also vouch in opposition to the use of solitary confinement.<sup>334</sup> Since 2021, state-level efforts to regulate use of solitary confinement have increased with two hundred fifty-eight pieces of proposed legislation filed across forty-one states, the majority seeking to wholly eliminate some of the aforementioned components of the practice.<sup>335</sup>

Alongside state reform efforts and discussion of the depravity of solitary confinement conditions within federal courts, nationwide polling data demonstrates widespread bipartisan support for restrictions on the practice of complete isolation in prisons.<sup>336</sup> This evidence of limited political resistance minimizes deterrence for legislation, and functions as the foundation for constructive reform. Legislators and advocates for the regulation of solitary confinement practices are poised for genuine improvement, but some prison

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<sup>331</sup> Sandoval, *supra* note 299.

<sup>332</sup> *Id.*

<sup>333</sup> Bennion, *supra* note 279.

<sup>334</sup> *Id.*

<sup>335</sup> Sandoval, *supra* note 299.

<sup>336</sup> *Id.*





administrations and a widespread judicial hesitancy to interfere with prison security deter change. Corrections officers and policy makers who consider solitary confinement an effective strategy to promote order in the prison system maintain that the potential benefits of solitary confinement to the individual inmate, other inmates, and prison staff counterbalances the adverse effects linked with stays in isolation.<sup>337</sup> This stance of penological interest is implicitly supported by the Court's exercise of judicial deference to solitary confinement management and condition regulations which prison officials deploy.<sup>338</sup> Despite the lack of established criteria to assess the penological interest of a prison in solitary confinement litigation, Courts often have "deferred to prison officials when they claim that a particular condition or treatment is necessary."<sup>339</sup> This notion posits that prison administrations and officials, who lack required mental health training, have a more accurate sense of which individuals are in need of additional psychological treatment.<sup>340</sup> Maintaining this skewed perspective on the expertise of prison officials creates a considerable barrier in solitary confinement litigation cases where conditions of isolation pose a risk of substantial harm which should trigger Eighth Amendment protections.

If an inmate without psychological illness is isolated in confinement, the harm to their psyche resulting from a solitary holding cell is enough to induce mental impairment.<sup>341</sup> Recent studies delineate the lasting detrimental effects of solitary confinement on the mental status of the individual, corroborating the notion that solitary confinement leads to the

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<sup>337</sup> Coppola, *supra* note 263.

<sup>338</sup> *Id.*

<sup>339</sup> *Rhodes*, 452 U.S. 337, at 364.

<sup>340</sup> Lea Johnston, *Conditions of Confinement at Sentencing: The Case of Seriously Disordered Offenders*, 63 CATH. U. L. REV. 625, 626 (2014)

<sup>341</sup> Taylor, *supra* note 314.



development of acute mental disorders.<sup>342</sup> These mental disorders often manifest among incarcerated individuals as difficulties with impulse control, feelings of hostility and mania, and severe anxiety and depression.<sup>343</sup> Individuals without documentation of previous mental illness are found to become symptomatic with ranging severity after just brief stays in solitary confinement, and the negative psychological impact of isolation affects post-release outcomes of inmates.<sup>344</sup> The persisting detriment inflicted by extended time in isolation can be fatal. Research identifies a correlation between time spent incarcerated in restrictive housing and an increased risk of death within the first year following release.<sup>345</sup> Individuals previously incarcerated within solitary confinement units are overall twenty-four percent more likely to die within the first year after release, including seventy-eight percent greater risk of suicide within that demographic.<sup>346</sup> The psychological and physical destitution induced through confinement in supermax sections of prisons not only fuels a disproportionately high rate of mental illness and self-harming tendencies compared to the general prison population, but also manifests in other symptoms, including social isolation, loss of identity, and sensory hypersensitivity.<sup>347</sup> Mental illness originating from an

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<sup>342</sup> Sandoval, *supra* note 299.

<sup>343</sup> Mary Corcoran, Effects Of Solitary Confinement On The Well Being Of Prison Inmates APPLIED PSYCHOLOGY OPUS, [https://wp.nyu.edu/steinhardt-appsych\\_opus/effects-of-solitary-confinement-on-the-well-being-of-prison-inmates/](https://wp.nyu.edu/steinhardt-appsych_opus/effects-of-solitary-confinement-on-the-well-being-of-prison-inmates/)

<sup>344</sup> Dean, J., & June 16, 2020. (2020, June 16). *Short stays in solitary can increase recidivism, unemployment*. Cornell Chronicle. <https://news.cornell.edu/stories/2020/06/short-stays-solitary-can-increase-recidivism-unemployment>.

<sup>345</sup> Corcoran, *supra* note 343.

<sup>346</sup> *Id.*

<sup>347</sup> Reiter K, Ventura J, Lovell D, Augustine D, Barragan M, Blair T, Chesnut K, Dashtgard P, Gonzalez G, Pifer N, Strong J. Psychological Distress in Solitary Confinement: Symptoms, Severity, and Prevalence in the United States, 2017-2018. *Am J Public Health*. 2020



inmate's experience in solitary confinement further prevents them from a successful reentry into society, ultimately posing an even greater impact on the larger population.<sup>348</sup>

Amongst the chilling accounts of solitary confinement published, Kiana Calloway details his devastating experience of entering "Camp J."<sup>349</sup> Camp J is a Louisiana prison noted for its severe lockdown units, and Calloway was confronted with this stark image of what the rest of his life would be like when he entered the prison at only seventeen years of age in 2019.<sup>350</sup> Entering Louisiana State Penitentiary, Calloway was sentenced to solitary confinement for twenty-three hours a day for sixteen months. Struggling to retain his humanity under the torturous "23 and 1" regime, he languished in an environment constructed to maximize control over the individual and minimize the sense of self. Amidst the twenty-three hours a day spent within the perpetually lit cell, Calloway describes a single hour where a phone call or shower was permitted.<sup>351</sup> Deprived of educational or vocational programs, inmates are reduced to sitting in their cells listening to the anguished cries of neighboring prisoners who are also suffering the effects of long-term solitary confinement.<sup>352</sup> Testifying on the consequences of prolonged isolation, Calloway states, "It's been 22 years since my time in solitary and 8 years since my release from prison, but I still have flashbacks and nightmares. Even when I'm with someone else, I find myself secluded in

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Jan;110(S1):S56-S62. doi: 10.2105/AJPH.2019.305375. PMID: 31967876; PMCID: PMC6987940.

<sup>348</sup> Taylor, *supra* note 324.

<sup>349</sup> Calloway, K. (2023, February 27). *I spent 16 months in solitary confinement and now I'm fighting to end it: ACLU*. American Civil Liberties Union.

<https://www.aclu.org/news/prisoners-rights/i-spent-16-months-solitary-confinement-and-now-im>

<sup>350</sup> *Id.*

<sup>351</sup> *Id.*

<sup>352</sup> *Id.*



my own mind. I call it being psychologically incarcerated.”<sup>353</sup>

Calloway, who maintains his innocence, was initially convicted on two counts of first degree murder by a non-unanimous jury, receiving two life sentences without the possibility of parole and was immediately confined in a supermax facility. However, Calloway received an additional trial once it was revealed that the initial judge prohibited him from calling certain witnesses and neglected to require the prosecution to turn over two witness statements. His sentence was reduced to thirty four years in the general prison population.<sup>354</sup> Kiana Calloway is now an advocate for the Voice of the Experience (VOTE) organization, a foundation created in New Orleans by formerly incarcerated individuals, that strives for the reformation of the Louisiana Department of Corrections disciplinary procedures in prison.<sup>355</sup> The complete prohibition of access to education in the name of discipline is another manifestation of the ineffective policies surrounding solitary confinement in U.S. prisons.

Alongside the development of psychological and physical conditions from complete isolation, the increase in suicide rates and self-harm of inmates in solitary confinement has been repeatedly acknowledged and verified. Dr. Stuart Grassian, a practicing psychologist on the faculty of Harvard Medical School for over twenty five years, encapsulates the devastating psychiatric effects of solitary confinement by citing

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<sup>353</sup> *Id.*

<sup>354</sup> Hutchinson, P. (2023, November 28). *Louisiana considers education access for the incarcerated - including those on Death row*. News From The States.

<https://www.newsfromthestates.com/article/louisiana-considers-education-access-incarcerated-including-those-death-row#:~:text=One%20task%20force%20member%2C%20Kiana,count%20of%20feticide%20in%201997>.

<sup>355</sup> Frances Madson et al., *LOUISIANA HUNGER STRIKERS - ALREADY IN SOLITARY - ARE BEING BRUTALLY PUNISHED TRUTHOUT* (2021), <https://truthout.org/articles/louisiana-hunger-strikers-already-in-solitary-are-being-brutally-punished/> (last visited Nov 28, 2023).



testimony from an individual confined in California's Pelican Bay state prison.<sup>356</sup> By 2011, Pelican Bay had showcased widespread, unregulated utilization of isolation in segregated units for over a decade, affecting approximately forty-five percent of inmates.<sup>357</sup> The incarcerated individual described in Dr. Grassian's testimony, lacking previously documented psychiatric disorders, emerged from restrictive housing afflicted with severe mental illness arising from the trauma he endured.

Dr. Grassian states that the individual became "overtly psychotic and suicidal."<sup>358</sup> At one point, the inmate resorted to writing a suicide note in his own blood and confessed to the doctor, "I'm tired of people talking in my head. I was mentally clear before . . . sometimes I get so confused, I don't even know what's going on."<sup>359</sup> Through research and personal contact with many formerly and currently incarcerated individuals, Dr. Grassian established a specific psychiatric disorder called Security Housing Unit (SHU) Syndrome, giving a name to the distress arising from periods in solitary confinement.<sup>360</sup> The practice of prolonged solitary confinement manifests as a psychological detriment to those it confines, having the power not only to aggravate pre-existing mental illnesses but to create them.

In 2017, The Department of Justice guidelines recognized that extreme isolation causes mentally ill inmates' already fragile psychiatric conditions to decline, which led to the launch of reform bills that advocated for limiting the use of

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<sup>356</sup> ACLU, *supra* note 269.

<sup>357</sup> Tiana Herring, THE RESEARCH IS CLEAR: SOLITARY CONFINEMENT CAUSES LONG-LASTING HARM PRISON POLICY INITIATIVE (2020), [https://www.prisonpolicy.org/blog/2020/12/08/solitary\\_symposium/](https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/) (last visited Nov 28, 2023).

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

<sup>360</sup> Sandoval, *supra* note 299.



solitary confinement in American prisons.<sup>361</sup> Fueled by the recognition of the substantial risk of psychological harm imposed by solitary confinement practices, a profusion of bills were introduced between 2018 and 2023.<sup>362</sup> These bills aimed to create reporting and oversight mechanisms to increase transparency of the inner workings of incarceration and regulate solitary confinement through legislation. However, only 29 states enacted these bills.<sup>363</sup> While ideas for reform circulate to regulate the practice, solitary confinement, as a form of security maintenance, in lieu of mental health treatment must be eliminated. Although maintaining order and safety within the prison and psychological treatment for mentally ill inmates are not mutually exclusive, the current practice of punitive isolation without access to psychological therapy does not achieve the goal of security. Moreover, restricting the use of solitary confinement is linked to a decline in prison misconduct.<sup>364</sup> Corroborating this phenomenon, a reduction in the number of inmates in solitary confinement has resulted in a decline in prison violence in Michigan.<sup>365</sup> When all isolation cells rates of violence in Mississippi prisons plummeted by seventy percent when all isolation cells were removed.<sup>366</sup>

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<sup>361</sup> *Report and recommendations concerning the use of restrictive housing*. The United States Department of Justice. (2017, March 13). <https://www.justice.gov/archives/dag/report-and-recommendations-concerning-use-restrictive-housing>

<sup>362</sup> Sandoval, *supra* note 299.

<sup>363</sup> Banning Torture: Legislative Trends and Policy Solutions for Restricting and Ending Solitary Confinement Throughout the United States, Unlock the Box Campaign, January 2023.

<sup>364</sup> ACLU, *supra* note 269.

<sup>365</sup> Jeff Gerritt, Pilot Program in UP Tests Alternatives to Traditional Prison Segregation, DETROIT FREE PRESS, January 1, 2012, available at [www.freep.com/fdcp/?unique=1326226266727](http://www.freep.com/fdcp/?unique=1326226266727).

<sup>366</sup> Terry A. Kupers et al., Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating



Theories supporting the use of solitary confinement emphasizes its capacity to deter future crime among inmates, however, empirical evidence in supermax prisons does not comport with this notion. When comparing the recidivism rates of inmates released from solitary confinement versus the normal prison population, there is an increased risk of recommitting a violent crime among those confined in isolation.<sup>367</sup> This increased risk of recidivism is largely rooted in the adverse psychological symptoms imposed by confinement in isolation cells, and present risk factors for socially dysfunctional behaviors.<sup>368</sup> Alongside its failure to decrease risk of recidivism, solitary confinement oppresses rehabilitation by removing the possibility of positive relationships with other perpetrators and the rest of society. This self-reform based on relational processes is stunted, and inmates in solitary confinement are unable to reintegrate into society as law-abiding and self-sufficient individuals.

With the devastating impacts of complete isolation units on psychological well-being being so well-documented, every federal court has been confronted with the question of whether or not placing individuals with mental illness in solitary confinement is cruel and unusual punishment in violation of the Eighth Amendment.<sup>369</sup> Despite the formal position statement released by the American Psychiatric Association stating that inmates afflicted with mental illness should never be confined in restrictive housing units without access to additional clinical support, the practice continues.<sup>370</sup> Courts endorse the notion that solitary confinement is not cruel and unusual punishment as long as its provisions of nutrition

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Alternative Mental Health Programs, 36 CRIM. JUST. & BEHAV. 1037, 1041 (2009).

<sup>367</sup> Coppola, *supra* note 273.

<sup>368</sup> *Id.*

<sup>369</sup> ACLU, *supra* note 269, at 12.

<sup>370</sup> *Id.*



and shelter do not differ from those provided to the general prison population.<sup>371</sup> Implicit in that precedent is the failure to recognize that extreme social isolation is the fundamental difference in condition between solitary confinement and the general prison population. Housing an inmate in supermax deprives inmates of a fundamental need that normal confinement facilitates, and social interaction should be acknowledged as a human necessity, not a mere privilege.<sup>372</sup>

The proposed policy restrictions on isolated confinement do not prevent the devastating consequences of the inmates' experience in restrictive housing cells on psychological health. Continued access to psychiatric treatment in conjunction with therapy and programs supporting rehabilitation should be demanded of federal and state institutions alike. Yet, repeated court mandates have not led to an established and protected right to psychological treatment for mentally ill inmates in solitary confinement.<sup>373</sup> Inmates are sentenced to live in insufferable confines with no treatment nor codified rights. The rights afforded to inmates in the general prison population include contact with other inmates, participation in programming and communal activities, and visitations.<sup>374</sup> Solitary confinement strips inmates of those opportunities and the benefits of social interaction.

Access to therapy and psychiatric treatment in prison is incredibly stunted, as three in five inmates do not receive

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<sup>371</sup> *Hutto* 437 U.S. 678, at 686.

<sup>372</sup> Coppola, *supra* note 273.

<sup>373</sup> NAMI. (2023). *Mental health treatment while incarcerated*. National Alliance on Mental Illness.  
<https://www.nami.org/Advocacy/Policy-Priorities/Improving-Health/Mental-Health-Treatment-While-Incarcerated>.

<sup>374</sup> Andreea Matei, SOLITARY CONFINEMENT IN US PRISONS URBAN INSTITUTE (2022),  
<https://www.urban.org/sites/default/files/2022-08/Solitary%20Confinement%20in%20the%20US.pdf>.





appropriate mental health treatment while incarcerated.<sup>375</sup> Along with the deficit of effective mental health services, treatment regimens must grind to a halt for prisoners with previously diagnosed mental illness, as fifty percent of inmates who were medicated for mental illness upon admission did not continue to receive medication during their sentence in prison.<sup>376</sup> To circumvent the challenges faced by mentally ill incarcerated individuals and enhance the medical services provided to those in solitary confinement, consistent psychological screening and regular access to mental health professionals must be implemented in prisons. While isolation unit conditions vary depending on state legislature, systematic policies of confinement—including isolation behind a steel door for twenty-two to twenty-four hours a day, physical discipline including hog-tying and restraint chairs, severely limited contact with other humans, and inadequate rehabilitative and educational programming—are universal in the United States.<sup>377</sup>

As they serve their sentences, inmates experience immense anxiety surrounding social conduct after being deprived of interaction. If they are released from solitary confinement into larger society, many former inmates exhibit maladjustment disorders and difficulty acclimating to social contact after release from isolation units compared to inmates released from maximum security prisons.<sup>378</sup> In 2006, the Commission on Safety and Abuse in America's Prisons expressed concern for the practice of releasing inmates from isolation settings directly into the community due to the diminished social skills incurred from stays in solitary

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<sup>375</sup> NAMI, *supra* note 373.

<sup>376</sup> *Id.*

<sup>377</sup> Madeodev. (2023). *Solitary confinement facts*. American Friends Service Committee. <https://afsc.org/solitary-confinement-facts>.

<sup>378</sup> Corcoran, *supra* note 343.



confinement.<sup>379</sup> Considering ninety five percent of inmates in solitary confinement will be released, the successful reintegration into society of previously incarcerated individuals should be the pinnacle of a correctional administration's mission.<sup>380</sup>

The practice of prolonged incarceration excluding the use of solitary confinement for "higher risk" inmates is already highly damaging due to the internalized prisonization effect. The unregulated, unlimited use of solitary confinement in federal prisons perpetuates and intensifies the cycle of "catch and release." This refers to the fundamental concept of recidivism among individuals released from prison, relating to a relapse into criminal behavior.<sup>381</sup> Drawn from linked prison records in the U.S. from 2006 to 2013, the recidivism rate for inmates released from solitary confinement increased by fifteen percent beyond the recidivism rate of fifty percent for general population inmates.<sup>382</sup> This correlation between release from isolation and increased risk of recidivism is documented in research conducted in state penitentiaries.

Preliminary research in California shows that recidivism rates are twenty percent higher for those released from solitary confinement as opposed to the general prison population.<sup>383</sup> In Colorado two-thirds of inmates released from restrictive housing units return to prison within three years of release.<sup>384</sup> Additional research comparing the behavioral trajectories of inmates who were not placed in solitary

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<sup>379</sup> Commission On Safety and Abuse In America's Prisons, *Confronting Confinement* 55 (2006), available at [http://www.vera.org/download?file=2845/Confronting\\_Confinement.pdf](http://www.vera.org/download?file=2845/Confronting_Confinement.pdf)

<sup>380</sup> Hughes, *supra* note 323.

<sup>381</sup> NIJ. (n.d.). *Recidivism*. National Institute of Justice. <https://nij.ojp.gov/topics/corrections/recidivism#:~:text=Recidivism%20is%20one%20of%20the,intervention%20for%20a%20previous%20crime>.

<sup>382</sup> Dean, *supra* note 344.

<sup>383</sup> ACLU, *supra* note 269, at 12.

<sup>384</sup> *Id.*



confinement with the inmates housed in isolation units confirms that the risk of conviction of another crime within three years of release is increased by fifteen percent.<sup>385</sup> One potential factor driving recidivism is the psychological trauma incurred from prolonged periods of solitary confinement, and when individuals are labeled as “problem inmates” by correctional officers due to mental health issues, the cycle of detriment continues.<sup>386</sup>

While research demonstrating the psychological damage from confinement in supermax units has become more widespread over the last two decades, the United States has a prolonged and dismal record of psychological harm resulting from use of isolation units.<sup>387</sup> In 1959, the American Correctional Association’s *Manual of Correctional Standards* dictated that use of solitary confinement for mentally ill individuals should not exceed fifteen days and should only be utilized as a last resort, stressing that inmates must be provided with individual or group therapy to preserve mental well-being.<sup>388</sup> Despite previous efforts being made to regulate the practice of solitary confinement in the U.S., its widespread use was reignited in the 1980s, and the research demonstrating these effects is too often cast aside in U.S. prisons.<sup>389</sup>

It is important to note that the resurrection of isolation units in prisons was also spurred by the widespread dissolution of mental hospitals in the 1960s. This forged an era of “transinstitutionalization” where mentally ill individuals are transferred from psychiatric hospitals to prisons.<sup>390</sup> The

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<sup>385</sup> Dean, *supra* note 344.

<sup>386</sup> *Id.*

<sup>387</sup> Bennion, *supra* note 279.

<sup>388</sup> Craig Haney, Mental Health Issues in Long-Term Solitary and “Supermax” Confinement, 49 *Crime & Delinq.* 126, 126 (2003).

<sup>389</sup> Herring, T. (2020, December). *The research is clear: Solitary confinement causes long-lasting harm*. Prison Policy Initiative. [https://www.prisonpolicy.org/blog/2020/12/08/solitary\\_symposium/](https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/)

<sup>390</sup> Bennion, *supra* note 279.



intention was to house mentally ill persons in less-restrictive environments with treatment provided in group settings. However, once the mental hospitals closed, funding for support services and community housing failed to materialize.<sup>391</sup> As a result, America's largest inpatient facilities became not hospitals, but jails.<sup>392</sup> This concept manifests in the concentration of mentally ill individuals in prison that is observed in current society, as individuals diagnosed with psychological illness are three times more likely to be incarcerated than hospitalized for treatment.<sup>393</sup> The U.S. has been grappling with the facilitation of positive change among inmates for decades, and it remains critical that the psychological health of incarcerated individuals is preserved to create a rehabilitative environment.

## II. Arguments For the Unlimited Use of Solitary Confinement

Advocates for unlimited use of solitary confinement claim that the isolating conditions imposed on a single prisoner preserve the safety of correctional officers and other inmates.<sup>394</sup> It is argued that segregation cells deter misconduct and properly punish inmates who are unwilling to abide by the prison's rules, promoting generalized orderly conduct.<sup>395</sup> The fundamental justifications for the use of solitary confinement rely on the deluded notion that only the "worst of the worst" are placed in social isolation cells, working to create a safer general prison environment.<sup>396</sup> The reality is wholly different,

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<sup>391</sup> Fathi, *supra* note 302.

<sup>392</sup> Nation's Jails Struggle with Mentally Ill Prisoners, NPR (Sept. 4, 2011), <http://www.npr.org/2011/09/04/140167676/nations-jails-struggle-with-mentally-ill-prisoners>.

<sup>393</sup> Fathi, *supra* note 302.

<sup>394</sup> ACLU, *supra* note 269, at 10.

<sup>395</sup> *Id.*

<sup>396</sup> *Id.*



as incarcerated individuals cast into solitary confinement are generally placed there for one of three reasons beyond the presence of a genuine security threat. Isolation cells are utilized to control individuals perceived as a current or potential threat to the prison community, to shield certain inmates from threats and violence from other inmates, or to discipline dissent for prison rules.<sup>397</sup> Within the realm of the perceived threat, the majority of inmates housed in supermax facilities indefinitely are allegedly involved in gang activity.<sup>398</sup> Despite remaining free of disciplinary write-ups during their sentence and a lack of discrete evidence confirming affiliation with organized crime, inmates suspected of gang membership are confined in restrictive housing without a timeframe for release back into the greater prison population.<sup>399</sup>

Alongside inmates suspected of gang affiliation and those who commit minor infractions, mentally ill inmates are disproportionately represented in restrictive housing. Conforming to a heavily regimented prison environment is made even more difficult by the symptoms of severe mental illness, and thus minor infractions are more frequently committed by this group of inmates.<sup>400</sup> Correctional officers often treat this ‘disordered behavior as disorderly behavior’, and place mentally ill inmates in solitary confinement

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<sup>397</sup> Hope Metcalf, Jamelia Morgan, Samuel Olikier-Friedland, Judith Resnik, Julia Spiegel, Haran Tae, Alyssa Work & Brian Holbrook, *Administrative Segregation, Degrees Of Isolation, and Incarceration: A National Overview Of State And Federal Correlation Policies 2* (2013), <https://www.aclu.org/files/assets/Administrative%20Segregation,%20Degrees%20of%20Isolation,%20and%20Incarceration.pdf>.

<sup>398</sup> Bennion, *supra* note 279.

<sup>399</sup> Thomas L. Hafemeister & Jeff George, *The Ninth Circle of Hell: An Eighth Amendment Analysis of Imposing Prolonged Supermax Solitary Confinement on Inmates with a Mental Illness*, 90 DENV. U. L. REV. 1, 10 (2012).

<sup>400</sup> Bennion, *supra* note 279.



indefinitely, ultimately exacerbating the disordered behavior.<sup>401</sup> Due to the poorly defined policies regarding which inmates may be placed in solitary confinement, restrictive housing units become densely populated with inmates who committed small transgressions or petty annoyances.<sup>402</sup> Imposing complete isolation on an inmate is entirely left to the discretion of individual prison administrations, and without definitive guidelines restricting the length of confinement in restrictive housing units, inmates may be left to suffer in solitary confinement indefinitely. These low-risk inmates may pose minor management difficulties for the corrections officers, but do not demand complete sensory deprivation and social isolation.

Evaluating whether solitary confinement units deprive inmates of a basic human need entails weighing the gravity of the harm caused to an individual against the penological demands of the prison, such as security and inmate management.<sup>403</sup> Inherent in this comparison of the risk of harm and security needs, is the indifference of the prison guards to the psychological interests of the inmates.<sup>404</sup> This functions only to perpetuate the intransient trade-off between the mental well-being of the individuals incarcerated in solitary confinement and maintaining discipline within the prison. Neglecting the overwhelming research confirming the damages caused by solitary confinement leads to the use of supermax housing as the predominant solution for any conflict arising in the prison environment, including aforementioned alleged gang affiliation and minor infractions.<sup>405</sup> There is an

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<sup>401</sup> *Id.*

<sup>402</sup> Atul Gawande, Hellhole, *New Yorker*, Mar. 30, 2009, pg. 36, 39.

<sup>403</sup> Coppola, *supra* note 273.

<sup>404</sup> *Id.*

<sup>405</sup> Ring, K. A., & Gill, M. (n.d.). *Mental Health Policies and practices surrounding mental health*. Prison Policy Initiative. [https://www.prisonpolicy.org/research/mental\\_health/](https://www.prisonpolicy.org/research/mental_health/)



imbalance between the traumatic and permanent implications of social isolation and the penological interests that solitary confinement is intended to serve. This emerging imbalance is derived from the fact that socio-environmental deprivation presents an excessive risk of severe brain deterioration and psychological consequences; this extremely unbalanced cost fails to be justified by any penological interest.<sup>406</sup> The evidence of excessive risk of psychological damage reinforces existing evidence that neither short nor prolonged sentences in solitary confinement reduces infractions or prison incidents as intended.<sup>407</sup> In fact, prisons that have restricted the use of solitary confinement have noted a decrease in inmate violence, and thus limited use of isolation cells does not undermine capacity of prison administrations to maintain prison safety.<sup>408</sup>

The reality remains that solitary confinement cells are consistently overused, causing a disproportionate isolation of mentally ill or cognitively-impaired prisoners struggling to navigate in prison settings.<sup>409</sup> Once placed in solitary confinement and excluded from the greater prison population, the prisoner must endure the detrimental effects of social isolation which increases the likelihood of psychological harm. The infliction of social deprivation on inmates through extended periods of solitary confinement is counterproductive to the release of a convict back into the greater prison community, and the release of a rehabilitated individual into

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<sup>406</sup> National Committee on Correctional Health Care, *Position Statement: Solitary Confinement (Isolation)*, 22(3) J. Correct. Health Care 257, 258 (2016).

<sup>407</sup> Joseph Lucas & Matthew Jones, *An Analysis of the Deterrent Effects of Disciplinary Segregation on Institutional Rule Violation Rates*, CRIM. J. POL. REV. 1 (2017).

<sup>408</sup> ASCA-Liman, *Working to Limit Restrictive Housing: Efforts in Four Jurisdictions to Make Changes* (Oct. 2018), [https://law.yale.edu/sites/default/files/documents/pdf/Liman/asca\\_liman\\_2018\\_workingtolimit.pdf](https://law.yale.edu/sites/default/files/documents/pdf/Liman/asca_liman_2018_workingtolimit.pdf).

<sup>409</sup> Ring, *supra* note 405.



greater society. Mental illness originating from an inmate's experience in solitary confinement further prevents them from a successful reentry into society, posing an even greater impact on the larger population.<sup>410</sup> The pervasive use of the practice of solitary confinement results in the release of thousands of mentally ill inmates from incarceration with diminished social capacities and life skills, and a greater likelihood to reoffend.<sup>411</sup>

Unlimited use of solitary confinement may also be preferred when alternative disciplinary options are ineffective in controlling high-risk inmates.<sup>412</sup> Supporters of the use of solitary confinement argue that other methods of discipline, including education programs and cognitive-behavioral therapy, are only applicable treatments to a minute portion of the prison population. However, with over fifty percent of the population in federal and state prisons suffering from mental illness, the need for more comprehensive psychological treatment is impertinent.<sup>413</sup> According to a prison report published by the Prison Policy Initiative organization, in 2017 and revised in 2023, sixty-six percent of mentally ill inmates do not receive, nor are they offered, psychological treatment while incarcerated.<sup>414</sup> In addition to the lack of psychological treatment, contact visits, rehabilitative therapy, work, and all other recreational activities that are afforded to the general prison population are prohibited for inmates in solitary confinement.<sup>415</sup>

The disproportionate incarceration of individuals with

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<sup>410</sup> Taylor, *supra* note 324.

<sup>411</sup> ACLU, *supra* note 269.

<sup>412</sup> *Id.*

<sup>413</sup> *Id.*

<sup>414</sup> Ring, *supra* note 405.

<sup>415</sup> Madrid v. Gomez, 889 F. Supp. 1146, 1229 (N.D. Cal. 1995); Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcomm. on the Constitution, Civil Rights & Human Rights of the S. Comm. on the Judiciary, 112th Cong. 20–21 (2012).





mental health issues paired with the lack of accessible treatment in prisons illuminates the U.S.'s deficit in attention to the psychological needs of inmates, and the glaring need for reform. The implementation of more opportunities for mental health treatment and the improvement of staff training would enhance communication regarding high-needs prisoners and replace solitary confinement to maintain prison security. The proliferation of supermax facilities as a more fiscally conservative alternative to high-quality therapy is a paradox. Supermax facilities are far more expensive to construct and maintain, and holding a prisoner in solitary confinement housing costs more than three times as much as incarceration in a maximum security prison per day.<sup>416</sup> The majority of the additional expenses of supermax prisons are rooted in higher staffing costs, as cleaning and food services are typically performed by inmates for no compensation in maximum security prisons.<sup>417</sup> Through reallocation of funds, community-based activities and increased group therapy programs within the prison can be arranged to maintain a safer prison environment without excessive additional cost.

### **III. Proposal To Eliminate the Unlimited Use of Solitary Confinement in Federal Prisons:**

In this section, I will introduce five achievable reforms designed to mitigate the harm induced by solitary confinement without wholly eliminating the practice. As stated by Justice Sotomayor in *Apodaka*, “a punishment need not leave physical scars to be cruel and unusual.”<sup>418</sup> While discontinuation of the use of supermax facilities to house mentally ill incarcerated individuals is necessary to uphold the Eighth Amendment,

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<sup>416</sup> American Correctional Association, 2004 Directory (65th Ed. 2004), at 286, 288, 568, 570.

<sup>417</sup> Fathi, *supra* note 302.

<sup>418</sup> *Apodaka*, 586 U.S.



implementing the following reforms will alleviate some of the scars imposed by current practices of solitary confinement.

1. Prioritize mental health training for correctional officers to place greater emphasis on the psychological treatment of high-risk inmates; high-risk would entail those with pre-established mental illness or cognitive impairments. Contact visits, rehabilitative therapy, work, and all other recreational activities that are afforded to the general prison population are prohibited for inmates in solitary confinement. This would ensure that correctional officers have the skills and knowledge necessary to effectively and compassionately manage situations with non-compliant inmates without resorting to solitary confinement. In 2001, Appelbaum and colleagues published an article regarding the state of mental health training for correctional officers.<sup>419</sup> The article identified the discrepancy between professional cultures of security staff and mental health staff as a prominent issue within prison administrations. The article noted how many members of security and mental health staff actually collaborate effectively and share a common goal of humane treatment of inmates, and the capacity of mental health training sessions to hone these skills. Introducing collaborative training sessions focused on mental illness would function to create a multidisciplinary staff equipped with more skills to conduct a safe prison environment, and prevent inmate abuse. In the *Estelle* and *Wilson*<sup>420</sup> cases, the Supreme Court determined that claims of violation of the Eighth Amendment arising from solitary confinement conditions requires the subjective aspect of “deliberate indifference” of corrections officers to the risk to

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<sup>419</sup> Kenneth L. Appelbaum, James M. Hickey & Ira Packer, *The role of correctional officers in multidisciplinary mental health care in prisons*, 52 PSYCHIATRIC SERVICES 1343–1347 (2001).

<sup>420</sup> *Estelle*, 429 U.S. 97; *Wilson*, 501 U.S. 294, at 300



inmate health.<sup>421</sup> Through implementation of trauma-response training and established methods of accommodating mentally ill incarcerated individuals, the possibility of ignorant indifference to inmates' psychological suffering would be eliminated. This would facilitate litigation of solitary confinement conditions to appropriately deliver justice to those individuals who have suffered.

2. Establish solitary confinement for mentally ill individuals as a violation of the Eighth Amendment. This entails the need for the Court to uphold that the degree of mental injury endured as a result of prolonged isolation significantly exceeds the psychological pain compatible with Eighth Amendment standards.<sup>422</sup> The justification for this reform is predicated on the research indicating the increased vulnerability to detrimental effects of social isolation in people with pre-existing mental illness.<sup>423</sup> Once this discrepancy is acknowledged, comprehensive evaluation of the practice of solitary confinement can occur, and Congress may pass a statute that would effectively end solitary confinement in the future. Within the criteria to establish a punishment as "cruel and unusual" is a demonstration of an "objectively, sufficiently serious act or omission resulting in the denial of necessities..."<sup>424</sup> and the mental, physical, and physiological harms imposed by the conditions of solitary confinement are on par with physical risk involved in starvation and sleep deprivation. Given the biologically-based human need for social interaction and the irreversible neurological and psychological damage incurred from confinement in isolation units, the complete isolation imposed by solitary confinement

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<sup>421</sup> Coppola, *supra* note 273.

<sup>422</sup> *Id.*

<sup>423</sup> *Id.*

<sup>424</sup> FIRST PRINCIPLES: CONSTITUTIONAL MATTERS: CRUEL AND UNUSUAL PUNISHMENT, <https://www.armfor.uscourts.gov/digest/IB4.htm>



constitutes a deprivation of necessities.

3. Reconfigure the layout of isolation cells to align with defined environmental standards. The Constitution does not mandate comfortable cells.<sup>425</sup> However, empirical studies have confirmed that environmental surroundings influence psychological well-being and behavior, and severely under-furnished cells function to magnify the effects of social deprivation.<sup>426</sup> Research surrounding suicides in prisons have noted that prison characteristics constitute almost half of the variation of distress among inmates who had attempted suicide, highlighting the substantial impact of prison-level factors on compromised mental health.<sup>427</sup> Affording small personal amenities to incarcerated individuals, such as proper bedding and natural lighting, contributes to more generalized well-being of inmates and overall reduced prison misconduct.<sup>428</sup>

4. Develop alternative disciplinary measures that address the psychological root of an inmate's poor conduct. This could include providing more intensive therapy and vocational training outside of the cell in a consistent routine. Access to skills training and preparation for future employment would provide a constructive purpose for inmates to direct the intellectual and creative energies that are suppressed by confinement in Supermax housing. Access to social activities for inmates, and access to reading material, in-cell programming, and telephone calls can be maintained even if inmates remained segregated from the rest of the prison population. This routine should be maintained for as long as it

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<sup>425</sup> Eg *Rhodes*, 452 U.S. 337, at 349.

<sup>426</sup> Coppola, *supra* note 273.

<sup>427</sup> Liebling Alison. 2006. "The Role of the Prison Environment in Prison Suicide and Prisoner Distress." Pp. 16–28 in *Preventing Suicide and Other Self-harm in Prison*, edited by Dear G. London: Palgrave Macmillan.

<sup>428</sup> *Id.*



is deemed necessary through evaluation by a psychologist. Research of brain plasticity has indicated that social engagement induces positive alterations in the neural circuits underlying socio-affective skills such as empathy, cognitive functions, and social behavior that persist throughout the individual's lifespan.<sup>429</sup> Facilitating positive social interaction through group therapy and interactive training courses allows for inmates to experience environmental stimulation and develop normal sociable tendencies.<sup>430</sup> Acknowledging the bidirectional link between cognitive function and social environment in the development of alternative disciplinary measures is key in protecting brain health among inmates and functional reentry into society.<sup>431</sup>

5. Increase the accessibility to enriching activities and group therapy sessions within the general prison population to generate a sense of community and trust between inmates and officers. Research indicates that the frequency of prison violence in America is more closely correlated to the manner in which inmates are treated by prison staff than the presence of a minute number of "high-risk" inmates.<sup>432</sup> By cultivating an environment of respect as opposed to a skewed hierarchy of power, a safer general prison population can be attained. The current vehicle for achieving respect in maximum security facilities is through repression, and this would be rectified by demonstrating that mentally ill inmates would form bonds of respect through constructive avenues. The availability of work

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<sup>429</sup> Riitta Hari et al., *Centrality of Social Interaction in Human Brain Function*, 88 NEURON 181 (2015); Sophie Valk et al., *Structural Plasticity of the Social Brain: Differential Change After Socio-Affective and Cognitive Mental Training*, 3 SCI. ADVANCES e1700489 (2017).

<sup>430</sup> Coppola, *supra* note 273.

<sup>431</sup> *Id.*

<sup>432</sup> Leena Kurki & Norval Morris, *The Purposes, Practices, and Problems of Supermax Prisons*, 28 CRIME AND JUST. 385, 389 (2001).



and recreational activities have an immense impact on inmates' mental health, as activity deprivation is linked to depression and aggressive behavior.<sup>433</sup> Establishing these aspects of functional life within prison walls would decrease hostility between inmates and officers, as well as among inmates themselves. The implementation of this proposal eliminates the need for solitary confinement of mentally ill inmates while establishing a balance between maintaining order and safety within the prison and accommodating the psychological demands of the inmates.

Current progress towards the limitation and uniform regulation of the use of solitary confinement has proven to be inconsistent, therefore, ongoing dialogue and collaboration with all advocates for and against the unlimited use of solitary confinement must be maintained.

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<sup>433</sup> Tartaro Christina, Lester David. 2009. *Suicide and Self-harm in Prisons and Jails*. Lanham, MA: Lexington Books.

