

**STILL CRUEL, STILL UNUSUAL: WHY CORRECTIONAL  
FACILITIES MUST MOVE BEYOND THE MANDELA RULES  
TO SOLVE THE ISSUES OF SOLITARY CONFINEMENT**

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## I. INTRODUCTION

Jermaine enjoyed people when he was a child.<sup>1</sup> He was energetic, and he loved to laugh.<sup>2</sup> In the letter he wrote to Silenced, a Michigan-based campaign that shares stories from prisoners who experienced solitary confinement, he recalls being a “people person” when he began his prison sentence.<sup>3</sup> Solitary confinement changed that.

Isolated from others, Jermaine spent his days lying in bed and waiting for his food trays.<sup>4</sup> Eventually, he covered the windows in his small cell.<sup>5</sup> In the darkness, he would use the earplugs he made when the other inmates started banging on their lockers.<sup>6</sup> He didn’t speak to anybody.<sup>7</sup> He lived in silence for years.<sup>8</sup> “[People] lay down & lose their minds,” he wrote in his letter. “They lay down all they worked on, dreamed of & hoped for. I did.”<sup>9</sup>

Jermaine’s story is not uncommon. Jails and prisons in the United States isolate more than 122,000 people in solitary confinement, a practice in which inmates are placed in tiny cells with severely limited access to everyday necessities and the outside world.<sup>10</sup> The use of solitary confinement varies across the country. Some states, like Washington, place major restrictions on who can be in solitary confinement and for how long.<sup>11</sup> Other states, like Florida, represent the opposite side of the spectrum and place both children and those with mental illness in solitary confinement.<sup>12</sup>

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1. Jermaine Elem, *Silenced: Voices from Inside*, SILENCED, <https://silenced.in/michigan/voices/jermaine-elem> [<https://perma.cc/MR9A-HMH8>] [hereinafter Jermaine].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. See Jermaine, *supra* note 1.

8. *Id.*

9. *Id.*

10. Jean Casella et al., *Solitary Watch & Unlock the Box Campaign, Calculating Torture: Analysis of Federal, State, and Local Data Showing More Than 122,000 People in Solitary Confinement in U.S. Prisons and Jails*, SOLITARY WATCH (May 2023), <https://solitarywatch.org/wp-content/uploads/2023/05/Calculating-Torture-Report-May-2023-R2.pdf> [<https://perma.cc/58ZC-TYN7>] [hereinafter *Calculating Torture*]; *Solitary Confinement in the United States: The Facts*, SOLITARY WATCH, <https://solitarywatch.org/facts/faq/> [<https://perma.cc/4AU9-ZRGR>].

11. *Restrictive Housing: Leading Prison Reform*, DEP’T OF CORR. WASH. STATE, <https://www.doc.wa.gov/corrections/incarceration/restrictive-housing.htm> [<https://perma.cc/V7GS-GXUL>].

12. Julie Ebenstein, *The Sad State of Solitary in Florida: Is There Hope for this Human Rights Violation?*, ACLU (Mar. 13, 2013), <https://www.aclu.org/news/smart-justice/sad-state-solitary-florida-there-hope-human-rights-violation> [<https://perma.cc/9DS2-45R9>].

Additionally, in some states and many parts of the world, correctional facilities follow some or all of the Mandela Rules. Published by the United Nations, the Rules consider solitary confinement to be a form of torture when it lasts for more than 15 days, and because of this, they provide a set of guidelines for how correctional facilities should use the practice.<sup>13</sup>

This Note considers the Mandela Rules' deficiencies and what policies and procedures should replace them, using examples from Michigan in an effort to focus the analysis. In Part II, the Note examines the history and current state of solitary confinement in the United States, giving consideration to the evolution of the Mandela Rules, the attempt to create a total ban, and how federal and state courts have evaluated the practice's constitutional implications.<sup>14</sup> Part III considers specific constitutional problems with the Mandela Rules.<sup>15</sup> It looks at issues concerning violence in prison, solitary's effects on the brain, society's modern attitude toward isolation, and more.<sup>16</sup> This Note concludes that solitary confinement should be considered a cruel and unusual punishment and proposes a two-part, human-rights focused framework to take its place.<sup>17</sup>

Part IV briefly recaps these ideas.<sup>18</sup> It emphasizes that while the Mandela Rules have been instrumental in creating more restrictions on solitary confinement conditions worldwide, they ultimately have cut progress short by still permitting correctional facilities to use the practice in some capacity.<sup>19</sup> In their place, there must be a move toward a total ban on solitary confinement.<sup>20</sup>

## II. BACKGROUND

### A. *The Characteristics of Solitary Confinement*

Solitary confinement goes by a variety of names, including: "isolation, restricted housing, administrative segregation, protective custody, special housing, and disciplinary segregation."<sup>21</sup> Solitary confinement can look

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13. See G.A. Res. 70/175, annex, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (Dec. 17, 2015) [hereinafter *Mandela Rules*].

14. See *infra* Section II.

15. See *infra* Section III.

16. *Id.*

17. *Id.*

18. See *infra* Section IV.

19. *Id.*

20. *Id.*

21. ALISON SHAMES ET AL., VERA INST. OF JUST., SOLITARY CONFINEMENT: COMMON MISCONCEPTIONS AND EMERGING SAFE ALTERNATIVES (2015), <https://www.vera.org/>

different depending on the correctional facility, but generally its characteristics include: confinement for 22 to 24 hours a day, severely limited contact with others, infrequent phone calls, rare family visits, and extremely limited access to programming.<sup>22</sup> The average solitary cell is six feet by nine feet—smaller than the typical apartment bathroom.<sup>23</sup>

In his letter to *Silenced*, a Michigan-based inmate named Dwayne noted how unbearable the living conditions in solitary were.<sup>24</sup> He said the hygiene products the correctional facility provided while in solitary confinement were substantially different from those provided to inmates in general population.<sup>25</sup> “The toothbrushes are [too] little, about 4 inches long, the toothpaste is like oatmeal, flour & water...I don’t know where they get the deodorant from, but if you use it for 3 days or more I assure you, your underarms will bleed, blister, burn & rash up.”<sup>26</sup> Dwayne also noted how the correctional facility did laundry infrequently and often served cold food.<sup>27</sup>

Correctional officers say they often use solitary confinement to manage prison populations.<sup>28</sup> Officers may send prisoners to solitary for committing violent acts against other inmates or prison officials.<sup>29</sup> One former 20-year corrections worker, who now serves as an associate administrator for state corrections and is on the board of the New Jersey Chapter of the American Correctional Association, wrote in a 2015 blog post that solitary served a crucial purpose because it allows officers to separate violent inmates.<sup>30</sup> In turn, the correctional facility requires those individuals to change their behavior to regain their prior living

downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report\_1.pdf [https://perma.cc/3Q28-N2TD].

22. *Solitary Confinement Facts*, AM. FRIENDS SERV. COMM., <https://afsc.org/solitary-confinement-facts> [https://perma.cc/QZS2-KSPC].

23. German Lopez, *You Could Fit 19 Solitary Confinement Cells in a Typical 1-Bedroom Apartment*, VOX (June 11, 2015, 12:20 PM), <https://www.vox.com/2015/6/11/8765977/solitary-confinement-cells-small> [https://perma.cc/AC5Y-JQWR].

24. Dwayne Taylor, *Silenced: Voices from Inside*, SILENCED, <https://silenced.in/michigan/voices/dwayne-taylor> [https://perma.cc/6V6J-2GE7][hereinafter Dwayne].

25. *Id.*

26. *Id.*

27. *Id.*

28. VERA INST. OF JUST., WHY ARE PEOPLE SENT TO SOLITARY CONFINEMENT? THE REASONS MIGHT SURPRISE YOU, (Fact Sheet, 2021), <https://www.vera.org/downloads/publications/why-are-people-sent-to-solitary-confinement.pdf> [https://perma.cc/LS9F-DQYD] [hereinafter *Why People Are Sent to Solitary*].

29. *See Id.*

30. Anthony Gangi, *The Role of Solitary Confinement, and Why It’s Necessary*, CORR. 1 (Sept. 8, 2015, 10:46 AM), <https://www.corrections1.com/treatment/articles/the-role-of-solitary-confinement-and-why-its-necessary-h9hyGSg5d2XP4LR2/> [https://perma.cc/U3KB-W569].

conditions.<sup>31</sup> “From the outside people may see this as barbaric, but this is a method that is used when all else fails...,” he wrote.<sup>32</sup> From his perspective, solitary confinement works and is important for maintaining safety and security in jails and prisons.<sup>33</sup>

Officers may also send inmates to solitary for low-level and non-violent misbehavior, for the incarcerated person’s own protection, because of custody or risk assessments, or because officers misinterpret the inmate’s mental health symptoms as acts of defiance.<sup>34</sup> Michigan inmates report that they served time in solitary confinement for, among other circumstances, yelling, cursing, peaceful protest, meditating too much, refusing meals, having too many toiletries, filing grievances, requesting protection, and filing Prison Rape Elimination Act complaints.<sup>35</sup>

While some countries and states have bans on segregating certain categories of incarcerated individuals, jails and prisons often still use solitary confinement for the system’s most vulnerable inmates.<sup>36</sup> Juveniles; individuals with physical and mental disabilities; pregnant women; and lesbian, gay, bisexual, transgender, queer, plus (LGBTQ+) individuals have all spent time in solitary.<sup>37</sup>

These incidents are not isolated occurrences.<sup>38</sup> A 2014 study found that 47 percent of juvenile detention centers use solitary confinement as a disciplinary tool.<sup>39</sup> Additionally, a Bureau of Justice Statistics report, also from 2014, found that prisons and jails hold over 5,000 youth in adult facilities.<sup>40</sup> Most of these adult facilities place youth in solitary for punishment purposes or to isolate them from adult inmates.<sup>41</sup> Furthermore, studies have estimated that more than half of inmates in solitary confinement have mental disorders compared to 5 percent of inmates in

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31. *Id.*

32. *Id.*

33. *Id.*

34. *Silenced: Voices from Solitary in Michigan*, SILENCED, <https://silenced.in/michigan/> [<https://perma.cc/JHC4-X6HK>] (detailing the different reasons inmates can be sent to solitary confinement under the section titled “You can be sent to the hole for”).

35. *Id.*

36. Amy Fetting, *How Do We Reach a National Tipping Point in the Campaign to Stop Solitary?*, 115 NW. UNIV. L. REV. 311, 316 (2020).

37. *Id.*

38. See Valerie Kiebal et al., *Solitary Confinement in the United States: The Facts*, SOLITARY WATCH, <https://solitarywatch.org/facts/faq/> (June 2023) [<https://perma.cc/X4WB-2EM2>].

39. *Id.*

40. *Id.*

41. *Id.*

general population.<sup>42</sup> And, finally, a February 2024 report on the treatment of incarcerated transgender individuals found that 22 percent of its 280 respondents were currently in solitary confinement or protective custody units.<sup>43</sup>

Accordingly, while the correctional officers' intention for solitary confinement may be to control the prison population, the practice—in its historic and modern form—ultimately targets the most vulnerable individuals in the criminal legal system.

## *B. The History of Solitary Confinement in the United States*

### *1. The Emergence and Rise of Solitary Confinement*

In the United States, the earliest form of solitary confinement emerged in the 1790s when the country first established its prisons.<sup>44</sup> Initially, authorities used it only in limited circumstances.<sup>45</sup> Generally, correctional officers utilized solitary confinement for short periods to streamline prison operations.<sup>46</sup> For example, prisons separated inmates to prevent the spread of illness as well as prevent “moral contamination”—the idea that more hardened criminals could influence less experienced offenders.<sup>47</sup> Inspired by the Quaker belief of repentance and reform,<sup>48</sup> officers thought that solitary could encourage incarcerated individuals to follow the facility's rules and that time in isolation could also give them the space they needed to reflect on their criminal actions.<sup>49</sup> Walnut Street Prison, in Philadelphia,

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42. Gurtel Gill et al., *Solitary Confinement in Prison Systems and Future Psychopathological Effects*, 25 PRIMARY CARE COMPANION FOR CNS DIS. (Nov. 30, 2023), <https://www.psychiatrist.com/pcc/solitary-confinement-prison-systems-future-psychopathological-effects/> [https://perma.cc/QAC5-4TPM].

43. KELSIE CHESTNUT & JENNIFER PEIRCE, VERA INST. OF JUST., ADVANCING TRANSGENDER JUSTICE: ILLUMINATING TRANS LIVES BEHIND AND BEYOND BARS 27 (2024), <https://www.vera.org/downloads/publications/advancing-transgender-justice.pdf> [https://perma.cc/ZL9Y-HJ2T].

44. Ashley T. Rubin & Keramet Reiter, *Continuity in the Face of Penal Innovation: Revisiting the History of American Solitary Confinement*, 43 LAW & SOC. INQUIRY 1604, 1607, 1612–13 (Fall 2018), [https://www.prisonlegalnews.org/media/publications/Continuity\\_in\\_the\\_Face\\_of\\_Penal\\_Innovation\\_-\\_Revisiting\\_the\\_History\\_of\\_American\\_Solitary\\_Confinement\\_2018.pdf](https://www.prisonlegalnews.org/media/publications/Continuity_in_the_Face_of_Penal_Innovation_-_Revisiting_the_History_of_American_Solitary_Confinement_2018.pdf) [https://perma.cc/FX9V-Z6E3].

45. *Id.*

46. *Id.*

47. *Id.* at 1613.

48. *History of Solitary Confinement in the US*, NAT'L RELIGIOUS CAMPAIGN AGAINST TORTURE, <https://www.nrcat.org/torture-in-us-prisons/learn-more-/history-> [https://perma.cc/DL4M-SNK6].

49. *Id.*

Pennsylvania, was the country's model prison at the time, and it operated 16 solitary confinement cells.<sup>50</sup>

As decades passed, and prison populations became increasingly rowdy—with instances of fires, escapes, and riots increasing—correctional officers looked to solitary more often to create and maintain order.<sup>51</sup> In the 1810s and 1820s, officials introduced additional rules and stricter forms of the practice.<sup>52</sup> An 1818 Pennsylvania statute permitted the use of solitary confinement for all prisoners.<sup>53</sup> Then, in 1821, the New York legislature passed an act also allowing for a strict form of solitary confinement.<sup>54</sup> These harsh restrictions proved problematic.<sup>55</sup> When Western State Penitentiary (Western) opened near Pittsburgh, Pennsylvania, the cells were small and poorly ventilated, which was unsuitable for long-term solitary confinement.<sup>56</sup> At New York's Auburn State Prison, prisoners experienced muscle atrophy from an inability to exercise in their tiny cells as well as devastating mental health consequences.<sup>57</sup> Reportedly, one inmate was so desperate to escape from the conditions that he jumped from his cell when the door opened and threw himself from the gallery onto the pavement, while another inmate hit his head against the wall “until he destroyed one of his eyes.”<sup>58</sup>

The conditions at Western and Auburn State gained the attention of activists and prison administrators.<sup>59</sup> By the mid-1820s, advocates called for reform and criticized solitary as cruel and inhumane.<sup>60</sup> While their demands did not end the practice, some states began to move in a new direction.<sup>61</sup> For example, Auburn State started to only allow solitary for a single night at a time to maintain order.<sup>62</sup> Other states, such as Pennsylvania, took another approach and looked to bring more discipline to its prison operations.<sup>63</sup>

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50. *Id.*

51. *Id.*

52. *Id.*

53. Rubin & Reiter, *supra* note 45, at 1614.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. Rubin & Reiter, *supra* note 45, at 1614.

60. *Id.* at 1615.

61. *Id.*

62. *Id.*

63. *Id.*

## 2. *The Eastern Era*

Eastern State Penitentiary (Eastern) opened in 1829 near Philadelphia and attempted to learn from Western's failures.<sup>64</sup> The facility embraced a more rehabilitative approach to solitary that became known as the "Pennsylvania System."<sup>65</sup> While the prison still mostly kept its inmates in isolation cells—which were larger and better ventilated than the cells at Western—prisoners could access a small yard at various times for their rehabilitation.<sup>66</sup> Eastern also required inmates to engage in craft or unskilled labor, and prison officials would meet with them weekly for mentoring, ministry, or instruction.<sup>67</sup>

The correctional facility incorporated a more severe form of solitary as well.<sup>68</sup> If an Eastern prisoner disobeyed the rules, the prison officials sent them to a "dark cell" until they apologized for their behavior.<sup>69</sup> These cells blocked out any sunlight.<sup>70</sup> Additionally, the prison only gave the inmates bread and water for sustenance and did not allow them to engage in activities.<sup>71</sup>

Similar to the 1820s, solitary confinement drew criticism once again, with Eastern at the center of the pushback.<sup>72</sup> Auburn State's one-night approach—known as the "Auburn System"—gained steam across the United States as penal reformers pushed for the country's prisons to adopt it.<sup>73</sup> By comparison, Eastern's longer term, more isolating Pennsylvania System appeared even more severe.<sup>74</sup> International visitors who toured Eastern remarked on the conditions, with author Charles Dickens noting in his own 1842 visit:

I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers; and in guessing at it myself, and in reasoning from what I have seen written upon their faces, and what to my certain knowledge they feel within, I am only the more convinced that there is a depth of terrible

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64. *Id.*

65. Rubin & Reiter, *supra* note 45, at 1615.

66. *Id.*

67. *Id.*

68. *Id.* at 1616.

69. *Id.*

70. *Id.*

71. Rubin & Reiter, *supra* note 45, at 1615.

72. *Id.* at 1617.

73. *Id.*

74. *Id.*



endurance in which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow creature. I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body...<sup>75</sup>

By the late 1870s, Eastern moved away from the Pennsylvania System because of overcrowding and started following the “Individual Treatment System.”<sup>76</sup> Through this system, Eastern still focused on preventing prisoner communication, mentorship, education, and religion, but did so without the use of solitary confinement.<sup>77</sup> Instead, it placed inmates in cells together and allowed them to work and spend time outside.<sup>78</sup>

### 3. Consideration by the Court

In the late 19th century and early 20th century, U.S. correctional facilities mostly moved away from long-term solitary confinement.<sup>79</sup> In fact, prisons only used it in rare circumstances to punish inmates who engaged in misconduct.<sup>80</sup> In *In re Medley* in 1890, the Supreme Court overturned a prisoner’s death sentence, noting that subjecting a prisoner to solitary confinement while he was on death row was cruel and unusual.<sup>81</sup> However, even in these periods where prisons hardly used solitary confinement and the practice was met with judicial restraint, the public and various facilities never truly allowed it to go away.<sup>82</sup> Just a year after *Medley*, the Supreme Court held that the use of solitary confinement was constitutional in *McElvaine v. Brush*,<sup>83</sup> a case with inmates who were also on death row. There, the Court noted that its decision did not conflict with the holding in *Medley*.<sup>84</sup> Instead, the Court found that it was simply “following the adjudication of the highest court of a state in the construction of its own statutes.”<sup>85</sup> In plain meaning, the Court left

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75. Mary Hawthorne, *Dept. of Amplification: Charles Dickens on Solitary Confinement*, NEW YORKER (Mar. 30, 2009), <https://www.newyorker.com/books/page-turner/dept-of-amplification-charles-dickens-on-solitary-confinement> [https://perma.cc/FG33-VKN4].

76. Rubin & Reiter, *supra* note 45, at 1617.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *In re Medley*, 134 U.S. 160 (1890).

82. Rubin & Reiter, *supra* note 45, at 1617.

83. *McElvaine v. Brush*, 142 U.S. 155 (1891).

84. *Id.*

85. *Id.* at 160.

criminal law to the states.<sup>86</sup> Around this same time, the infamous federal prison Alcatraz, located on a remote island in the San Francisco Bay, used “Spanish dungeons”—cells dug into the ground—to isolate prisoners.<sup>87</sup> Opponents criticized the practice, but it remained.<sup>88</sup>

In the late 1960s and early 1970s, inmate criminal justice reform advocates began shining a light on prisoners’ horrific living conditions.<sup>89</sup> At that time, over 30 state prison systems faced litigation challenging their prison practices—every major case criticized the use of solitary confinement.<sup>90</sup> However, while prison officials understood that they could not use solitary confinement to rehabilitate prisoners, they generally found the practice to be important for controlling the prison populations.<sup>91</sup>

Prison officials leaned on solitary options to separate prisoners after riots—which occurred more frequently in California, New York, and Illinois—and to remove gang leaders from the general prison population.<sup>92</sup> Despite these reasons, courts still found issue with solitary confinement, holding that prisoners needed time outside their cells, visiting opportunities, and due process protections.<sup>93</sup>

#### *4. New Models Take Hold*

As backlash against solitary continued in the 1970s and 1980s, prisons attempted to at least facially address criticism by implementing creative new models.<sup>94</sup> One of the emerging models was the military-based practice of using sensory deprivation to modify behavior.<sup>95</sup> Prisons that employed this technique placed inmates in solitary confinement and restricted reading materials, human contact, or anything else that could engage their senses.<sup>96</sup> As the inmates exhibited more appropriate behavior, officials slowly introduced more items and activities for them to interact with.<sup>97</sup> Prison officials defended this approach on the grounds that it was goal-oriented, rather than punitive, because it allowed the them to bring a disobedient inmate back into regular, group programming.<sup>98</sup>

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86. *Id.*

87. Rubin & Reiter, *supra* note 45, at 1620.

88. *Id.*

89. *Id.* at 1621.

90. *Id.*

91. *Id.*

92. *Id.* at 1623.

93. Rubin & Reiter, *supra* note 45, at 1623.

94. *Id.* at 1622.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

Next, various states created supermax facilities, which are prisons or sections of prisons designed specifically for solitary confinement.<sup>99</sup> The country's first supermax facility opened in 1986 at Arizona's Eyman Complex.<sup>100</sup> The prisoners' living conditions were bleak.<sup>101</sup> The cells had one concrete ledge for the bed and a small concrete desk or shelf space.<sup>102</sup> They contained no windows, and the steel doors had a small lockable opening for guards to slide food trays through or handcuff inmates.<sup>103</sup> Prisoners placed in these cells rarely got out—they were locked up for 22 to 23 hours a day and hardly had any contact with other humans.<sup>104</sup> On the rare occasion they did leave their cell—such as when they got one hour of exercise in an enclosed yard—a computer system opened their door, not a human being.<sup>105</sup>

A few years later, in 1989, California opened its own supermax unit called Pelican Bay.<sup>106</sup> The state described its supermax space as a Security Housing Unit, known colloquially as the SHU.<sup>107</sup> When justifying the use of solitary, Pelican Bay administrators said: "it's not Draconian, it's Spartan."<sup>108</sup> By 1999, a Department of Justice report found that more than 30 states ran supermax-style facilities.<sup>109</sup> By 2004, this number increased to 40 states with more than 25,000 U.S. prisoners serving time in solitary confinement both in supermax and non-supermax facilities.<sup>110</sup>

Twenty years later, in 2024, incarcerated folks and criminal justice reformers continue to advocate for change.<sup>111</sup> However, at this point, solitary confinement is a foundation of the prison experience.<sup>112</sup> The Court, while admonishing improper isolation practices to some extent, has

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99. *Supermax Prisons: An Overview*, HUM. RTS. WATCH, <https://www.hrw.org/reports/2000/supermax/Sprmx002.htm> [<https://perma.cc/6FTW-WVVL>].

100. Rubin & Reiter, *supra* note 45, at 1623.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. Rubin & Reiter, *supra* note 45, at 1624.

107. *Id.*

108. *Id.*

109. Laura Sullivan, *Timeline: Solitary Confinement in U.S. Prisons*, NPR (July 26, 2006), <https://www.npr.org/templates/story/story.php?storyId=5579901> [<https://perma.cc/T2C8-P3YQ>].

110. *Id.*

111. See Senator Edward J. Markey, *Organizations Endorsing the End Solitary Confinement Act*, [https://www.markey.senate.gov/imo/media/doc/organizations\\_endorsing\\_end\\_solitary\\_confinement\\_act.pdf](https://www.markey.senate.gov/imo/media/doc/organizations_endorsing_end_solitary_confinement_act.pdf) [<https://perma.cc/ZNH8-NRSV>] [hereinafter *Organizations*].

112. Rubin & Reiter, *supra* note 45, at 1625.

held that solitary confinement—even when used indefinitely—is constitutional.<sup>113</sup>

### *C. Modern Solitary Confinement*

#### *1. Solitary by the Numbers*

Researchers have difficulty tracking solitary confinement statistics because of correctional facilities' historical lack of reporting transparency and disagreements about what forms of isolation constitute solitary.<sup>114</sup> However, in 2019, the United States Bureau of Justice Statistics Census of State and Federal Adult Correctional Facilities estimated that prisons placed 122,840 people in solitary confinement in the United States.<sup>115</sup> At the time, the prison population was 2.03 million people.<sup>116</sup> Taken together, these statistics indicate that 6.04 percent of the incarcerated population was in restrictive housing.<sup>117</sup> State prisons housed 56.8 percent of the individuals in solitary confinement, making up the majority.<sup>118</sup> Comparatively, federal and state prisons kept roughly the same percentage of its total prison population—between 6 and 7 percent—in solitary.<sup>119</sup>

In 2019, the Michigan prison population amounted to 38,370 inmates, over 1,600 of whom lived in restrictive housing units, representing 4.2 percent of the state's total prison population.<sup>120</sup> Of all the people in solitary confinement in Michigan, 65 percent were Black.<sup>121</sup> These statistics do not reflect the number of federal prisoners serving time in Michigan-based federal facilities.<sup>122</sup> Nationally, Nevada, with 25.7 percent of its prison population in solitary confinement, and Arkansas, with 13.5 percent, were on the high-end of the solitary confinement spectrum.<sup>123</sup> Virginia with 1.7 percent of its prison population in solitary confinement, and Colorado with 1.4 percent of its population, were on the lower end.<sup>124</sup>

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113. *Id.*

114. *Calculating Torture*, *supra* note 10, at 6.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Calculating Torture*, *supra* note 10, at 6.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

It is very expensive to house that many people in solitary confinement.<sup>125</sup> A 2007 study estimated that it costs \$75,000 annually to house an inmate in a supermax-style cell.<sup>126</sup> Comparatively, it is \$25,000 to house an inmate in general population.<sup>127</sup>

Solitary confinement expenses can be attributed, in part, to the cost of constructing and maintaining isolation cell operations.<sup>128</sup> According to one report, it costs two to three times more to construct a supermax facility compared to a maximum-security prison.<sup>129</sup> Solitary confinement wings tend to rely on a lot of expensive technology—for example, cell doors may open through computer programs.<sup>130</sup> Additional staffing needs also contribute to solitary confinement's high cost.<sup>131</sup> While inmates in solitary confinement do not get out of their cells much, when they do, they must often be escorted by two or more officers.<sup>132</sup> Furthermore, while inmates in general population can take part in chores like cooking and cleaning, those in solitary cannot.<sup>133</sup> Jails and prisons must hire staff to do that work, too.<sup>134</sup>

Considering a state perspective, during the 2017-18 fiscal year, Michigan allocated \$1.95 billion to its Department of Corrections.<sup>135</sup> Of that funding, 61 percent was spent on prison operations.<sup>136</sup> Only 12 percent was spent on prisoner health care, 3 percent was spent on prisoner mental health care, and 4 percent was spent on reentry programs, which includes education and job training for prisoners while they are incarcerated.<sup>137</sup>

125. Sal Rodriguez, *The High Cost of Solitary Confinement*, SOLITARY WATCH (2011), <https://solitarywatch.org/wp-content/uploads/2011/06/fact-sheet-the-high-cost-of-solitary-confinement.pdf> [<https://perma.cc/EU4V-C3KV>].

126. *Id.*

127. *Id.*

128. *Paying the Price for Solitary Confinement*, PRISON LEGAL NEWS (2015), <https://www.prisonlegalnews.org/media/publications/Paying%20the%20Price%20for%20Solitary%20Confinement,%20ACLU%20Factsheet,%202015.pdf> [<https://perma.cc/E77R-L67G>] [hereinafter *Paying the Price*].

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Paying the Price*, *supra* note 128.

135. Kristen Jordan Shamus, *Michigan Spending One-Fifth of Its General Fund Budget on Prisoners*, DET. FREE PRESS (Dec. 19, 2018), <https://www.freep.com/story/news/local/michigan/2018/12/19/prison-michigan-corrections-jail/2230794002/> [<https://perma.cc/D3L6-PQGR>].

136. Robin R. Risko, *Budget Brief: Corrections*, HOUSE FISCAL AGENCY 13 (Jan. 2018), [https://www.house.mi.gov/hfa/PDF/Briefings/Corrections\\_BudgetBriefing\\_fy17-18.pdf](https://www.house.mi.gov/hfa/PDF/Briefings/Corrections_BudgetBriefing_fy17-18.pdf) [<https://perma.cc/BVF8-K2JH>].

137. *Id.*

With a substantial amount of people serving time in isolation and a large amount of funding going toward the operation and maintenance of the practice, these numbers make it evident that the practice of solitary confinement is strong today.

## 2. *The Effect of Solitary Confinement*

Modern studies shows that solitary confinement can lead to both physical and mental health issues.<sup>138</sup> While in solitary, inmates may experience an array of physical ailments, including: chronic headaches, digestive problems, dizziness, excessive sweating, eyesight deterioration, fatigue, genitourinary problems, heart palpitations, hypersensitivity to light and noise, loss of appetite, muscle and joint pain, sleep problems, trembling hands, and weight loss.<sup>139</sup> These physiological symptoms can appear even after a short amount of time in solitary confinement, and symptoms can worsen the more times an inmate is sent back to solitary.<sup>140</sup>

Additionally, solitary stays can exacerbate an inmate's pre-existing mental health conditions or contribute to the development of new disorders.<sup>141</sup> Prisoners commonly experience anger, depression, stress, anxiety, problems with memory, hallucinations, violent outbursts, paranoia, and psychosis.<sup>142</sup> Compared to the general inmate population, inmates in solitary confinement are more likely to experience suicide and self-harm—exemplified by cutting and banging their head against the wall.<sup>143</sup>

The psychological symptoms and harm do not stop once an inmate leaves solitary confinement.<sup>144</sup> After isolation, individuals can experience maladjustment disorders and aggression issues.<sup>145</sup> Difficulty readjusting to social contact can lead to more violent conduct and hostility.<sup>146</sup>

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138. *The Body*, SILENCED, <https://silenced.in/michigan/> [<https://perma.cc/JHC4-X6HK>].

139. *Id.*

140. Mary Murphy Corcoran, *Effects of Solitary Confinement on the Well Being of Prison Inmates*, APPLIED PSYCH. OPUS (2025), [https://wp.nyu.edu/steinhardt-appsych\\_opus/effects-of-solitary-confinement-on-the-well-being-of-prison-inmates/#:~:text=A%20lack%20of%20appetite%20and,lethargy%20\(Shalev%2C%202008\)](https://wp.nyu.edu/steinhardt-appsych_opus/effects-of-solitary-confinement-on-the-well-being-of-prison-inmates/#:~:text=A%20lack%20of%20appetite%20and,lethargy%20(Shalev%2C%202008)) [<https://perma.cc/JPL4-MP5V>].

141. *Id.*

142. *The Mind*, SILENCED, <https://silenced.in/michigan/> [<https://perma.cc/JHC4-X6HK>].

143. Corcoran, *supra* note 140.

144. *Id.*

145. *Id.*

146. *Id.*

An individual's placement in solitary confinement also has a ripple effect in the broader community.<sup>147</sup> According to a Michigan-based campaign Open MI Door report, most people who have family members in prison believe their incarcerated loved ones receive degrading and humiliating treatment.<sup>148</sup> Many are not informed when the prison places their loved one in solitary or generally about their confinement condition.<sup>149</sup> As a result, some family members of prisoners in solitary confinement report that they themselves develop mental and physical health issues because of the stress.<sup>150</sup> One family member who spoke to Open MI Door said, "I have very high anxiety, extreme depression, loss of faith, my whole life has been affected daily, I am either numb or cry all the time."<sup>151</sup> Another said of their incarcerated family member, "[a]nytime he is even a couple hours past his normal calling time I start to have panic attacks wondering if he has gotten hurt again."<sup>152</sup>

When Mentwell wrote to Silenced, he described his family trying to visit during Easter weekend in 1995.<sup>153</sup> After traveling many miles to see him, they were turned away because he was in solitary confinement.<sup>154</sup> "One of the administration official[s] even stated that [my family] should have made some kind of arrangement before hand, so I wouldn't have placed myself in the hole," Mentwell wrote.<sup>155</sup> "So, I begin to blame myself for that type of embarrassment to my love[d] ones."<sup>156</sup>

These effects of isolation are among the factors that fuel the modern anti-solitary confinement movement, including the creation of the Mandela Rules and the call for a total ban.<sup>157</sup>

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147. *Solitary: The Family Experience*, OPEN MI DOOR 20, <https://files.constantcontact.com/e07385aa501/1def96ba-8e4f-46be-aac5-0c08e70ef9fb.pdf> [<https://perma.cc/B92E-9GMG>] [hereafter *Family Experience*].

148. *Id.* at 11.

149. *Id.* at 16.

150. *Id.* at 17.

151. *Id.*

152. *Id.*

153. Mentwell Spivey, *Voices from Inside*, SILENCED, <https://silenced.in/michigan/voices/mentwell-spivey> [<https://perma.cc/PM7S-EAPF>] [hereinafter Mentwell].

154. *Id.*

155. *Id.*

156. *Id.*

157. See *infra* Part II.D.1; see *infra* Part II.D.2.

*D. Steps Toward Reform**1. The Mandela Rules*

International resistance to solitary confinement began during the earlier waves of resistance in the United States.<sup>158</sup> The United Nations (U.N.) adopted the Standard Minimum Rules for the Treatment of Prisoners in Geneva in 1955 in response to the backlash against Draconian wartime camp practices—including solitary confinement.<sup>159</sup> Influenced by various international human rights treaties, the Standard Minimum Rules required that prisoners have access to basic amenities and prohibited blackout cells, corporal punishment, and non-medically necessary food restriction.<sup>160</sup>

In 2015, the U.N. Office of the High Commissioner for Human Rights updated the Standard Minimum Rules and renamed them the Nelson Mandela Rules to honor the late President of South Africa, known for his prison reform and human rights work.<sup>161</sup> Mandela served 27 years in prison and was subjected to a brutal form of solitary confinement during the first 18 years of his sentence.<sup>162</sup> His small cell did not contain a bed or plumbing.<sup>163</sup> He was only allowed to have an in-person visitor once a year for 30 minutes at a time, and he could only write and receive a single letter once every six months.<sup>164</sup> In his 1994 autobiography, he wrote, “I found solitary confinement the most forbidding aspect of prison life. There is no end and no beginning; there is only one’s mind, which can begin to play tricks. Was that a dream or did it really happen? One begins to question everything.”<sup>165</sup>

Along with receiving a new name, decades of social science research and changes in prison operations, human rights laws, U.N. compliance mechanisms, and politics informed the direction of the revised Rules.<sup>166</sup>

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158. Jennifer Peirce, *Making the Mandela Rules: Evidence, Expertise, and Politics in the Development of Soft Law International Prison Standards*, 43 *QUEEN’S L.J.* 263 (Spring 2018).

159. *The Nelson Mandela Rules – Infographic*, U.N. OFFICE ON DRUGS & CRIME, [https://www.un.org/en/events/mandeladay/assets/pdf/16-00403\\_Mandela\\_rules\\_infographic.pdf](https://www.un.org/en/events/mandeladay/assets/pdf/16-00403_Mandela_rules_infographic.pdf) [<https://perma.cc/K769-8DB7>].

160. Peirce, *supra* note 158, at 170.

161. Mandela Rules, *supra* note 14.

162. History.com Editors, *Nelson Mandela writes from prison*, HISTORY (Feb. 9, 2010), <https://www.history.com/this-day-in-history/mandela-writes-from-prison> [<https://perma.cc/N688-WR2D>].

163. *Id.*

164. *Id.*

165. Jean Casella & James Ridgeway, *Mandela in Solitary*, SOLITARY WATCH (Dec. 7, 2023), <https://solitarywatch.org/2013/12/07/mandela-solitary/> [<https://perma.cc/8ZJG-CLRQ>].

166. Peirce, *supra* note 158, at 293.



Rules 44 and 45 directly relate to solitary confinement practices.<sup>167</sup> Rule 44 states that “solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.”<sup>168</sup> Rule 45 elaborates on how solitary confinement may be used.<sup>169</sup> Under part one of Rule 45, “solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner’s sentence.”<sup>170</sup> Part two states that “the imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.”<sup>171</sup>

While the Rules are not laws—they are not binding and individual countries and states can decide if and how to follow them—they do, however, carry weight and influence prison practices across the world.<sup>172</sup> In the United States, 21 states have introduced a total of 82 bills to enforce the Mandela Rules’ 15-day limit on solitary confinement.<sup>173</sup>

In 2016, then-President Barack Obama announced a federal ban on solitary confinement for juvenile offenders—aligning with portions of the Rules.<sup>174</sup> The ban also stated that first-time adult offenders could only spend a maximum of 60 days in solitary confinement at a time.<sup>175</sup> In 2018, the national Unlock the Box campaign formed with a focus of implementing the Rules’ sections on solitary confinement across the U.S.<sup>176</sup> As of 2023, Connecticut, Nevada, New Jersey, and New York passed legislation following the Rules.<sup>177</sup> For example, in 2021, Connecticut Governor Ned Lamont signed Executive Order 21-21 in 2021, which outlined the Mandela Rules and expectations for how the state

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167. Mandela Rules, *supra* note 14, at 14.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Unlock the Box Campaign Legislation Data Tracker*, <https://public.tableau.com/app/profile/unlock.the.box/viz/UnlocktheBoxCampaignLegislationDataTracker/UTBLegislationDataTracker> [https://perma.cc/ZQ5U-U4WA] [hereinafter *Legislation Data Tracker*].

173. *Id.*

174. Tanya Somanader, *President Obama: “Why We Must Rethink Solitary Confinement,”* WHITE HOUSE BLOG (Jan. 26, 2016), <https://obamawhitehouse.archives.gov/blog/2016/01/26/president-obama-why-we-must-rethink-solitary-confinement> [https://perma.cc/5K87-CDSQ]; Mandela Rules, *supra* note 14, at 14.

175. *Id.*

176. Fettig, *supra* note 37, at 320.

177. *Id.*

would follow them.<sup>178</sup> One rule required that the state's Department of Corrections make policy changes to limit the use of isolated confinement on vulnerable populations.<sup>179</sup> Another stated that individuals who are placed in isolated confinement shall have meaningful out-of-cell time for two hours a day.<sup>180</sup>

The Mandela Rules set the tone for how international correctional facilities approach solitary confinement.<sup>181</sup> They also provide a substantial step toward ending the practice altogether with a total ban.<sup>182</sup>

## 2. *The Total Ban*

While the Rules created a strong baseline for anti-solitary confinement advocates, throughout the early aughts, there was a growing political and social movement to go beyond the Rules and work toward a total or near-total solitary confinement ban.<sup>183</sup> In the U.S., the American Friends Service Committee launched an anti-supermax campaign called Stopmax.<sup>184</sup> Additionally, in 2011, the American Civil Liberties Union (ACLU) launched the Stop Solitary campaign.<sup>185</sup> Then, in 2018, Congress passed the bipartisan First Step Act.<sup>186</sup> This Act, which intended to address issues with mass incarceration, eliminated the practice of placing young people—other than individuals who pose an immediate, physical risk—in solitary confinement in federal prisons.<sup>187</sup>

A few years later, in the 2020 presidential election, then-President Joe Biden ran on a campaign promise to end solitary confinement.<sup>188</sup> In May 2022, solitary confinement was still in effect, but the Biden Administration

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178. Ned Lamont, Executive Order No. 21-1, <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-21-1.pdf>.

179. *Id.*

180. *Id.*

181. See Mandela Rules, *supra* note 14 at 14.

182. See Erik Ortiz, *Bill to Ban Solitary Confinement in Federal Prisons Introduced in House*, NBC NEWS (July 27, 2023), <https://www.nbcnews.com/politics/politics-news/bill-ban-solitary-confinement-federal-prisons-introduced-house-lawmake-rcna96016> [https://perma.cc/6QSP-Y77F].

183. See Fetting, *supra* note 37, at 319.

184. *Id.*

185. *Id.*

186. Hernandez D. Stroud, *Reforming Solitary Confinement Without the High Court*, BRENNAN CENTER (Feb. 21, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/reforming-solitary-confinement-without-high-court> [https://perma.cc/5SZK-YQLL].

187. *Id.*

188. Jean Casella, *New Executive Order Includes Solitary Confinement Reforms, but Falls Short of Biden's Campaign Promise*, SOLITARY WATCH (May 25, 2022), <https://solitarywatch.org/2022/05/25/new-executive-order-includes-solitary-confinement-reforms-but-falls-short-of-bidens-campaign-promise/> [https://perma.cc/2XQ3-3XCY].

announced a new executive order to ensure that prolonged segregation would not apply to incarcerated individuals.<sup>189</sup> However, the order did not contain any language indicating a total ban of the practice.<sup>190</sup>

Nonetheless, advocates have still pushed for a total ban.<sup>191</sup> Recent legislation proposing a near-total ban is the federal 2023 End Solitary Confinement Act.<sup>192</sup> Under this Act, prisons can only place inmates in solitary to de-escalate an emergency.<sup>193</sup> Even in those emergency situations, prisoners cannot be in solitary for more than four hours and receive a visit from staff at least once an hour.<sup>194</sup> Furthermore, incarcerated individuals are permitted 14 hours of “out time,” which includes seven hours of programming in topics including mental health, substance abuse, and violence prevention.<sup>195</sup>

The bill—introduced by Rep. Cori Bush (D-MO) and supported by Reps. Rashida Talib (D-MI), Sydney Kamlager-Dove (D-CA), Bonnie Watson Coleman (D-NJ), Adriano Espaillat (D-NY), and Jamaal Bowman (D-NY)—would apply to inmates in federal custody.<sup>196</sup> It would also limit federal funds to states that do not impose a similar ban.<sup>197</sup> After announcing the legislation in the summer of 2023, Rep. Kamlager-Dove told NBC News that enacting the bill would allow prisoners to socialize, which they need in order to “live and thrive and survive.”<sup>198</sup> It would help avoid issues with officers placing individuals in solitary confinement for small technical violations “to punish or remind [them] who’s boss.”<sup>199</sup>

More than 150 organizations—some of which are part of the Federal Anti-Solitary Confinement Taskforce (FAST)—backed the End Solitary Confinement Act.<sup>200</sup> Among the groups were the ACLU, the #HALTsolitary Campaign, Center for Constitutional Rights, Islamic

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189. *Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety*, THE WHITE HOUSE (May 25, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/> [https://perma.cc/HWX2-Q3MN].

190. *Id.*

191. Ortiz, *supra* note 183.

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. Jessica Schulberg, *House Democrats Introduce Bill Aimed At Ending Solitary Confinement, A Form of Torture*, HUFFPOST (July 27, 2023), [https://www.huffpost.com/entry/house-democrats-introduce-bill-to-end-solitary-confinement\\_n\\_64c2deebe4b024f8ebc7de57](https://www.huffpost.com/entry/house-democrats-introduce-bill-to-end-solitary-confinement_n_64c2deebe4b024f8ebc7de57) [https://perma.cc/6TUL-AYKK].

197. *Id.*

198. Ortiz, *supra* note 182.

199. *Id.*

200. *Organizations*, *supra* note 111, at 1–4.

Circle of North America (ICNA) Council for Social Justice, Michigan Children's Law Center, National Alliance on Mental Illness, and the Neighborhood Defender Service.<sup>201</sup> Rameez Abid, Director of Operations for the ICNA Council for Social Justice, said that solitary confinement is "a cruel and inhumane practice" that causes lasting harm.<sup>202</sup> "The End Solitary Confinement Act represents an important step towards reforming our criminal justice system and ensuring that incarcerated individuals are treated with dignity and respect," Abid said.<sup>203</sup>

Despite this enormous support, as of 2024, there appears to be no substantial movement in favor of progressing the federal legislation. However, on a state level, eight U.S. states have introduced bills to fully end solitary confinement.<sup>204</sup> As of 2023, Washington is the only state to completely ban solitary confinement for disciplinary purposes.<sup>205</sup> The push toward the total ban began in 2021 when Washington began extensive research on solitary confinement in the state.<sup>206</sup> This research revealed that between 2019 and 2020, out of the 2,500 incidents where Washington prisons moved incarcerated individuals to segregation, 57 percent of the moves were for nonviolent infractions.<sup>207</sup> In response to the findings, the Washington Department of Corrections Deputy Secretary Sean Murphy said his office was committed to addressing "violent behavior when necessary" but not using segregation for punishment.<sup>208</sup>

In addition to Washington state, Allegheny County, Pennsylvania, residents voted to ban solitary confinement.<sup>209</sup> Chicago, Illinois, is also in

201. *Id.*

202. *Id.* at 6.

203. *Id.*

204. *Legislation Data Tracker*, *supra* note 172.

205. Jacque Coe, *PRESS RELEASE: Washington State Department of Corrections Ends Disciplinary Segregation*, DEP'T OF CORR. WASH. STATE (Sept. 30, 2021), <https://www.doc.wa.gov/news/2021/09302021p.htm#:~:text=PRESS%20RELEASE%3A%20Washington%20State%20Department%20of%20Corrections%20Ends%20Disciplinary%20Segregation,-Released%20September%2030&text=Clarification%3A%20On%20September%2030%2C%202021,use%20of%20all%20%27solitary%20confinement> [https://perma.cc/5V5Z-DFNG].

206. Mike Carter, *Washington DOC Ends Use of Solitary Confinement as Punishment After Study Shows It Doesn't Work*, SEATTLE TIMES (Sep. 30, 2021), <https://www.seattletimes.com/seattle-news/washington-doc-ends-use-of-solitary-confinement-as-punishment-after-study-shows-it-doesnt-work/> [https://perma.cc/62S5-J5ZN].

207. *Id.*

208. *Id.*

209. Tom Davidson, *Pittsburgh, Allegheny County Voters Approve Solitary Confinement Restrictions*, CORRECTIONS 1 (May 19, 2021) <https://www.corrections1.com/law-and-legislation/articles/pittsburgh-allegheny-county-voters-approve-solitary-confinement-restrictions-p7RAD1nmFMP4ZysK/> [https://perma.cc/46C4-GJRG].

the process of attempting to administratively end the practice,<sup>210</sup> and New York City is pursuing both administrative and legislative efforts to end solitary confinement.<sup>211</sup>

Other states are still a work in progress. For example, while Michigan has neither implemented the Mandela Rules or a total ban, the state has passed bills to improve solitary confinement conditions.<sup>212</sup> Among that legislation is a bill to protect vulnerable people including youth, pregnant women, mentally ill individuals, prisoners with disabilities, people with medical conditions, LGBTQ+ folks, and the elderly.<sup>213</sup> Another bill requires correctional facilities to engage in reporting and oversight that details their solitary confinement practices.<sup>214</sup>

This movement in legislation, both federal and state, shows a genuine interest among lawmakers to right the wrongs of solitary confinement. The courts, meanwhile, have been slower to move.

### 3. Constitutional Considerations

As demonstrated by the efforts to limit or ban the practice, solitary confinement raises concerns about the scope and depth of punishment it inflicts upon inmates. The Eighth Amendment to the United States Constitution states, “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”<sup>215</sup> Solitary confinement constitutional analysis is often through the lens of the Cruel and Unusual Punishments Clause—it is this clause that is among the most relevant in the effort to end solitary confinement.

In the 1958 case *Trop v. Dulles*,<sup>216</sup> the U.S. Supreme Court held that the “basic concept underlying the Eighth Amendment is nothing less than the dignity of man.” The Court explained that while the state can punish its citizens, the Eighth Amendment assures that the state’s power is exercised within “the limits of civilized standards.”<sup>217</sup>

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210. Valerie Kiebala, *Sheriff Tom Dart Says Cook County Jail is the First to End Solitary Confinement. Here’s What It Looks Like from the Inside.*, CHICAGO REPORTER (Dec. 17, 2019), <https://www.chicagoreporter.com/sheriff-tom-dart-says-cook-county-jail-is-the-first-to-end-solitary-confinement-heres-what-it-looks-like-from-the-inside/> [<https://perma.cc/9CBE-FN3U>].

211. *A Blueprint for Ending Solitary Confinement by the Federal Government*, FEDERAL ANTI-SOLITARY TASKFORCE 5 (June 2021), <https://www.unlocktheboxcampaign.org/s/blueprint-ending-solitary-confinement-federal-government.pdf> [<https://perma.cc/3TGQ-BMYS>].

212. *Legislation Data Tracker*, *supra* note 172.

213. *Id.*

214. *Id.*

215. U.S. Const. amend. VIII.

216. *Trop v. Dulles*, 356 U.S. 86, 100 (1958).

217. *Id.*

Then, in the 1994 case *Farmer v. Brennan*,<sup>218</sup> the Supreme Court introduced a two-prong test to analyze Eighth Amendment issues. In that case, Brennan, a transgender woman who was beaten and raped when a men's prison placed her in the general population, alleged that correctional officers acted with deliberate indifference toward her safety.<sup>219</sup> The Court held that, to show that this indifference amounted to cruel and unusual punishment, Brennan needed to show that (1) the injury was objectively "sufficiently serious" and (2) the prison official subjectively had a "sufficiently culpable state of mind," meaning the official was "aware of and disregarded an excessive risk to the inmate's health and safety."<sup>220</sup> In regard to the first part of this test, the Court further elaborated in the 2008 case *Baze v. Rees* on how somebody could show that they suffered a sufficiently serious injury.<sup>221</sup> There, the Supreme Court explained that subjecting an individual to a risk of future harm can qualify as cruel and unusual.<sup>222</sup> The risk must be "sure or very likely to cause serious illness and needless suffering," and give rise to "sufficiently imminent dangers."<sup>223</sup>

Additionally, the evolving standards of decency—another approach for analyzing Eighth Amendment violations—considers what forms of punishment are appropriate as society's notions of fairness, equality, and justice evolve.<sup>224</sup> To analyze evolving standards of decency, courts consider objective factors that exemplify an evolution in community standards before deciding whether the issue in question is reasonable.<sup>225</sup>

To revisit, *In re Medley* is one of the most significant solitary confinement cases in the Supreme Court's history because it is one of the few instances in which the Court found that the defendant's experience with solitary confinement was unconstitutional under the Eighth Amendment.<sup>226</sup> Justice Samuel F. Miller noted how torturous solitary confinement can be, writing:

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

219. *Id.* at 829.

220. Christine Rebman, *The Eighth Amendment and Solitary Confinement: The Gap in Protection from Psychological Consequences*, 49 DEPAUL L. R. 567, 594 (Winter 1999).

221. *Baze v. Rees*, 553 U.S. 35 (2008).

222. *Id.* at 49.

223. *Id.* at 50.

224. Bryan A. Stevenson, *The Eighth Amendment: A Contemporary Perspective*, CONST. CENTER, <https://constitutioncenter.org/the-constitution/amendments/amendment-viii/clauses/103> [<https://perma.cc/BA8R-Q7TW>].

225. *Death Penalty*, CORNELL L. SCH., [https://www.law.cornell.edu/wex/death\\_penalty](https://www.law.cornell.edu/wex/death_penalty) [<https://perma.cc/FD87-BVC5>].

226. *In re Medley*, 134 U.S. 160, 168 (1890).

A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.<sup>227</sup>

However, the Court did find that solitary confinement as a general practice was still constitutional.<sup>228</sup>

In the 1978 case of *Hutto v. Finney*,<sup>229</sup> the Supreme Court found that punitive isolation “is not necessarily unconstitutional, but it may be, depending on the duration of the confinement and the conditions.” Several years later, in the 1981 case *Rhodes v. Chapman*,<sup>230</sup> the Supreme Court established that a singular condition or combination of conditions “may deprive inmates of the minimal civilized measure of life’s necessities” and “such conditions could be cruel and unusual under the contemporary standard of decency.”

Despite Eighth Amendment jurisprudence and historical activism against solitary confinement, the Supreme Court has never specifically found solitary confinement to be unconstitutional.<sup>231</sup> In 2016, the U.S. Department of Justice’s National Institute of Justice office released a report on administrative segregation in U.S. prisons.<sup>232</sup> The report stated the Court regularly declined to review solitary confinement cases.<sup>233</sup> However, because Justice Kennedy had expressed concern about the practice, the report indicated that there was still a possibility of the Supreme Court addressing issues concerning solitary confinement in the coming years.<sup>234</sup>

Following Justice Kennedy’s retirement, however, in 2022 the Supreme Court declined to review *Hope v. Harris*,<sup>235</sup> a case many observers believed would give the Court its chance to directly address constitutional concerns with solitary confinement. The petitioner, Dennis

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227. *Id.*

228. *Id.*

229. *Hutto v. Finney*, 437 U.S. 678, 685 (1978).

230. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

231. Natasha A. Frost & Carlos E. Monteiro, *Administrative Segregation in U.S. Prisons Executive Summary*, NAT’L INST. OF JUST., 2 (Mar. 2016), <https://www.ojp.gov/pdffiles1/nij/249750.pdf> [<https://perma.cc/UC3X-7F87>].

232. *Id.*

233. *Id.*

234. *Id.*

235. *Hope v. Harris*, 861 F. App’x 571 (5th Cir. 2021).

Wayne Hope, served 27 years in solitary confinement and argued that his confinement violated the Eighth Amendment's Cruel and Unusual Punishments Clause and the Fourteenth Amendment's Due Process Clause.<sup>236</sup>

In declining to hear Hope's case, the Court left anti-solitary confinement activists, politicians, and lawmakers at a standstill. If the Court refuses to address the issue of solitary confinement's constitutionality, the power to end the practice could lie with the states.

Some states afford more protections to their citizens—including inmates—under their own state Constitutions. This is the case in Michigan. There, the state Constitution reads that "...cruel *or* unusual punishment shall not be inflicted..." (emphasis added).<sup>237</sup> In the 1985 case of *People v. Walker*,<sup>238</sup> the Michigan Court of Appeals explained that a three-prong analysis is used to determine whether a punishment is cruel or unusual. The first prong focuses on proportionality.<sup>239</sup> The second considers the evolving standards of decency.<sup>240</sup> Then the third looks at the prospect for rehabilitation.<sup>241</sup> In 1988, the Michigan Court of Appeals elaborated on the first prong in *People v. Johnson*.<sup>242</sup> It stated that the punishment "must be so disproportionate to the offense as to shock the moral sense of the public to be cruel or unusual by reason of disparity."<sup>243</sup>

Again, as of 2024, there is still no clear Supreme Court guidance on how states should approach the constitutionality of solitary confinement.<sup>244</sup> Therefore, as the law continues to evolve and activists, politicians, social groups, and inmates and their families continue to push for change, it is important for each individual state to consider how the Rules fall short under a cruel and unusual punishment—or, perhaps, a cruel *or* unusual punishment—analysis.

### III. ANALYSIS

Solitary confinement raises constitutional concerns, and the Rules fail to completely address these issues. Therefore, a new option for protecting inmates' rights is needed. A two-step, human-rights approach—which

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236. *Id.*

237. Mich. Const. Art. I, § 16.

238. *People v. Walker*, 146 Mich. App. 371, 380 N.W.2d 108 (1985).

239. *Id.* at 374.

240. *Id.* at 375.

241. *Id.*

242. *People v. Johnson*, 167 Mich. App. 548, 552, 423 N.W.2d 52, 53 (1988).

243. *Id.* (quoting *People v. Lorentzen*, 387 Mich. 167, 176, 194 N.W.2d 827, 831 (1972)).

244. See Frost & Monteiro, *supra* note 231.



uses the budget currently going toward solitary confinement and puts it toward remodeling correctional facilities and offering more robust programming—can provide a solution.

*A. Where the Mandela Rules Fail*

*1. The Rules Do Not Solve the Prison Violence Issue*

Correctional facilities have a reputation for being dangerous.<sup>245</sup> As of 2016, 19 percent of all male inmates in the United States say another inmate has physically assaulted them.<sup>246</sup> Additionally, 3 to 9 percent of male inmates say they have been sexually assaulted while incarcerated.<sup>247</sup> Because the Mandela Rules allow for some use of solitary confinement in correctional facilities, they seemingly provide a means for prison officials to curb this violence.<sup>248</sup> However, it is a misconception that isolating inmates from one another in this fashion does much, if anything, to solve the violence.<sup>249</sup>

In 2014, Craig Haney, a professor of psychology at the University of California, Santa Cruz, shared his research where he interviewed more than 500 inmates about their solitary confinement experience.<sup>250</sup> Through his expansive study, he found no evidence that the practice actually solves the issue of violence.<sup>251</sup> Additionally, just years prior in 2012, Illinois Senator Dick Durbin held the first congressional hearing on solitary confinement in front of the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Human Rights.<sup>252</sup> In asserting that the practice was a human rights issue, he offered evidence from the Commission on Safety and Abuse in America's Prisons that solitary

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245. Dave Gilson, *What We Know About Violence in America's Prisons*, MOTHER JONES (July/Aug. 2016) <https://www.motherjones.com/politics/2016/06/attacks-and-assaults-behind-bars-cca-private-prisons/> [<https://perma.cc/58KW-RC8T>].

246. *Id.*

247. *Id.*

248. Mandela Rules, *supra* note 14, at 14.

249. See Kate Allen, *Researchers Study Effects of Prolonged Isolation Among Prisoners*, TORONTO STAR (Feb. 14, 2014), [https://www.thestar.com/news/world/researchers-study-effects-of-prolonged-isolation-among-prisoners/article\\_fa9e78c5-a7a6-599a-bdd9-004b3cef0018.html](https://www.thestar.com/news/world/researchers-study-effects-of-prolonged-isolation-among-prisoners/article_fa9e78c5-a7a6-599a-bdd9-004b3cef0018.html) [<https://perma.cc/N3U5-QFU3>].

250. Allen, *supra* note 249.

251. *Id.*

252. *Durbin Chairs First-Ever Congressional Hearing on Solitary Confinement*, DICK DURBIN U.S. SENATOR ILL. (June 19, 2012), <https://www.durbin.senate.gov/newsroom/press-releases/durbin-chairs-first-ever-congressional-hearing-on-solitary-confinement> [<https://perma.cc/6TFS-YV8D>].

confinement actually *increases* acts of violence.<sup>253</sup> Sen. Durbin said that “these issues lead to the obvious conclusion,” which is that lawmakers need to reevaluate the need for solitary confinement.<sup>254</sup>

Other research backs Professor Hanney’s and Senator Durbin’s assertions. In prisons and jails, the destabilization of inmates’ routines—like through placement in solitary confinement—can lead to more disorder.<sup>255</sup> In fact, while restrictive security measures may initially limit violence, it may not have the same effect in the long run.<sup>256</sup> This is supported by one study that found, in the prison population it observed, that close to one-third of all the reported incidents of self-directed violence and property damage occurred in segregation settings.<sup>257</sup>

This proves to be a problem under *Walker*.<sup>258</sup> Again, the third prong of the *Walker* analysis focuses on the prospect for rehabilitation.<sup>259</sup> If placing inmates in solitary exacerbates the violence within the prison and jail walls, the prison environment does not support rehabilitation for individuals both in and outside of solitary confinement. Additionally, when considering the evolving standards of decency benchmark seen in both *Walker* and federal cases, there seems to be an issue with how solitary confinement can be an appropriate solution for violence if it, in fact, creates more violence.<sup>260</sup> This objectively works against society’s notions of justice.

Although the Rules severely limit the extent to which correctional facilities can rely on solitary confinement, they still allow prisons to use it as a disciplinary option.<sup>261</sup> So long as it is an option, it is unlikely that prison and jail facilities will invest in practices to solve violent behavior that more appropriately align with constitutional standards.

## 2. *The Rules Leave Too Much Discretion to Corrections Officers*

Discretion is a hallmark of the criminal legal system.<sup>262</sup> Prosecutors have discretion to decide what charges to bring forth and which to

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253. *Id.*

254. *Id.*

255. Jia Prater, *The End of Solitary Confinement and What Comes Next*, N.Y. MAGAZINE (Dec. 22, 2023), <https://nymag.com/intelligencer/2023/12/the-end-of-solitary-confinement-and-what-comes-next.html> [<https://perma.cc/EF9Y-9K92>].

256. Frank J. Porporino, *Managing Violent Individuals in Correctional Settings*, 1 J. OF INTERPERSONAL VIOLENCE 2 (June 1986).

257. *Id.*

258. *People v. Walker*, 146 Mich. App. 371, 380 N.W.2d 108 (1985).

259. *Id.* at 375.

260. *Walker*, 146 Mich. App. 371; Stevenson, *supra* note 225.

261. *Mandela Rules*, *supra* note 13.

262. JOSHUA DRESSLER ET AL., *CRIMINAL PROCEDURE: PROSECUTING CRIME*, 68 (2023).

abandon.<sup>263</sup> Judges have discretion in how they manage their courtroom.<sup>264</sup> In prisons, correctional officers also have discretion to punish inmates, including when to move an inmate to solitary confinement, what the scope of that confinement is, and how long they are held. The Mandela Rules, through its vague language, allow for this continued discretion, and this discretion is shrouded in bias and detrimental to inmates.<sup>265</sup>

The Rules' vagueness shows up in several instances.<sup>266</sup> Rule 45(1) states that "solitary confinement shall be used only in exceptional cases as a last resort," but the Rules do not include a definition for "exceptional cases" and "last resort."<sup>267</sup> Additionally, that same Rule also states that prisons should use solitary for "as short a time as possible," again lacking clarity on what that truly means.<sup>268</sup> What is considered "short?" Is it 15 minutes while guards break up a fight between inmates? Or can correctional officers place a prisoner in solitary for 20 days while the officers wait for a cell in general population to open? Finally, the term "meaningful human contact" in Rule 44 is a new, evolving concept in corrections law.<sup>269</sup> Is meaningful contact the ability to write a letter once a month to a loved one? Is it a 15-minute phone call every two weeks? Or is it an in-person visit? There is no standard that all correctional facilities can follow for guidance.

The Rules' language and lack of clarity causes interpretational issues. As a result, for facilities that follow the Rules, each correctional officer can determine how to interpret and implement them. When these choices arise, implicit bias plays an impactful role.<sup>270</sup>

A study by Susan McNeeley, a senior research analyst with the Minnesota Department of Corrections, demonstrates the harm of this implicit bias.<sup>271</sup> In 2021, she analyzed 500 incidents between 2016 and 2018 at a Minnesota correctional facility.<sup>272</sup> McNeeley found that corrections officers were 7.7 percent more likely to use physical force on

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263. *Id.*

264. *Id.*

265. Mandela Rules, *supra* note 14.

266. *Id.*

267. *Id.* at 14.

268. *Id.*

269. United Nations, *Incorporating the Nelson Mandela Rules into National Prison Legislation*, U.N. OFFICE OF DRUGS & CRIME, 52 (Apr. 2022), [https://www.unodc.org/documents/justice-and-prison-reform/21-08355\\_Incorporating\\_the\\_Nelson\\_Mandela\\_Rules\\_into\\_National\\_Prison\\_Legislation.pdf](https://www.unodc.org/documents/justice-and-prison-reform/21-08355_Incorporating_the_Nelson_Mandela_Rules_into_National_Prison_Legislation.pdf) [<https://perma.cc/939E-J3WF>].

270. See Susan McNeeley, *Situational Risk Factors for Inmate-on-Staff Assault*, MINN. DEP'T OF CORRECTIONS (Feb. 2020), [https://mn.gov/doc/assets/StaffAssaultStudy-FullReport\\_tcm1089-421776.pdf](https://mn.gov/doc/assets/StaffAssaultStudy-FullReport_tcm1089-421776.pdf) [<https://perma.cc/RF6T-NGR9>].

271. McNeeley, *supra* note 270.

272. *Id.*

Black inmates.<sup>273</sup> For inmates experiencing mental health issues, officers were also more likely to hold them in prison restraints, extract them from their cells, and use physical force.<sup>274</sup>

McNeely found the “symbolic assailants theory” to be relevant to how correctional officers make their decisions.<sup>275</sup> The theory explains that law enforcement officers recognize certain individuals—primarily young, Black males—as being dangerous.<sup>276</sup> The “focal concerns perspective” theory is also useful in understanding discretion.<sup>277</sup> The focal concerns perspective theory contends that corrections officers are often faced with split second decisions in high-stress situations.<sup>278</sup> As a result, their decisions are often made with limited information.<sup>279</sup> Therefore, a corrections officer instinctively supplements the lack of information with they already believes to be true, which is influenced by stereotypes of race and crime.<sup>280</sup>

The Mandela Rules, in their effort to give correctional officials discretion through their vagueness, allow these dangerous trends to continue.<sup>281</sup> This raises concerns under the two-part *Brennan* test.<sup>282</sup> Under the first part, the injury is sufficiently serious because, as explained throughout this Analysis section, solitary confinement is an undoubtedly harsh punishment that affects an inmate’s body and mind.<sup>283</sup> The second part of the *Brennan* test speaks to awareness, meaning the corrections officer need to be aware of their implicit bias and disregard it for there to be a constitutional issue.<sup>284</sup> Of course, implicit bias, by its very nature of being implicit, can be difficult to notice. However, with all the tools available today for individuals to learn about their own implicit bias and address that implicit bias, it is now more reasonable to expect corrections officers to be aware of the choices they’re making and why.<sup>285</sup>

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273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.*

277. McNeeley, *supra* note 270.

278. *Id.*

279. *Id.*

280. *Id.*

281. Mandela Rules, *supra* note 14.

282. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

283. See *infra* Section III.A.4.

284. *Brennan*, 511 U.S. at 834.

285. See *Department of Justice Announces New Department-Wide Implicit Bias Training for Personnel*, U.S. DEP’T OF J. (June 27, 2016), <https://www.justice.gov/opa/pr/departement-justice-announces-new-department-wide-implicit-bias-training-personnel> [<https://perma.cc/5WYB-JBNP>] (explaining how federal correctional officers receive implicit bias training).

Additionally, the statistics of how discretion is employed in correctional settings, specifically when it comes to who is placed in solitary confinement, could shock the moral sense of the public under *Johnson*.<sup>286</sup> Therefore, this discretion issue is ripe with constitutional concerns.

### 3. *The Rules Do Not Account for the Reality of Prison Operations*

Mandela Rules 45(1) and 45(2) specifically protect individuals who are juveniles or have a mental disability.<sup>287</sup> However, this direction does not account for the way in which prisons truly operate.

When the government charges juveniles as adults, prisons often hold these youthful offenders in adult correctional facilities.<sup>288</sup> As previously discussed, as a means of protection, the facilities then place these youth in solitary confinement to guard them from adults in the general population.<sup>289</sup> In 2002, a U.S. Department of Justice investigation found that juveniles exhibit symptoms of paranoia, anxiety, and depression after just a short time in isolation.<sup>290</sup> Kalief Browder experienced this.<sup>291</sup> He was only 16 years old when he was arrested for a petty robbery.<sup>292</sup> While awaiting trial and maintaining his innocence, Browder spent three years on Rikers Island, New York City's largest jail.<sup>293</sup> He spent roughly two of those years in solitary confinement and attempted to take his own life twice.<sup>294</sup> In 2013, Browder was released from Rikers after being found not guilty.<sup>295</sup> In 2015, he took his own life.<sup>296</sup>

The Rules' attempt to protect those with mental illness from the cruelty of solitary confinement is also short sighted.<sup>297</sup> For a prison to not place an inmate in solitary for mental health reasons, they would need to

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286. *People v. Johnson*, 167 Mich. App. 548, 552, 423 N.W.2d 52, 53 (1988).

287. Mandela Rules, *supra* note 14.

288. Robert L. Listenbee Jr. et al., *Report of the Attorney General's National Task Force on Children Exposed to Violence*, U.S. DEP'T OF JUST. 190 (Dec. 12, 2012), <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf> [<https://perma.cc/7T7Y-35T2>].

289. *Id.*

290. *Id.*

291. Jennifer Gonnerman, *Kalief Browder, 1993–2015*, NEW YORKER (June 7, 2015), <https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015?intcid=mod-most-popular> [<https://perma.cc/3LQK-SSHA>].

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

297. Mandela Rules, *supra* note 14.

have a mental illness that the corrections officers are aware of.<sup>298</sup> However, many individuals do not have proper diagnoses, or their mental illness may first emerge while they are incarcerated and officers may not properly recognize it.<sup>299</sup> Roummel's story, which he shared in his letter to *Silenced*, illustrates this.<sup>300</sup> He wrote that, one night shortly after midnight, he got up from his bunk and "in an almost euphoric state," walked out of his cell and tried to open the doors and leave.<sup>301</sup> When the corrections officers asked him where he was going, he replied, "Home, because it's time."<sup>302</sup> Roummel refused to return to his cell and was sent to solitary confinement.<sup>303</sup> Eventually, when he was released from solitary, a relative suggested that he may be bipolar.<sup>304</sup> When Roummel spoke to one of the psychologists at the prison, they told him the incident was related to stress.<sup>305</sup> But Roummel continued to have issues—seemingly, to him, with his mental health—and officers continued to put him in solitary.<sup>306</sup> Eventually, he was diagnosed with Psychotic Disorder and prescribed a lineup of strong medications.<sup>307</sup> Yet, guards continued to send him to solitary as he exhibited more issues while adjusting to his medicines.<sup>308</sup> This is just one instance of the roundabout way mentally ill individuals can end up in solitary confinement.

When considering the intersection of youth and mental illness, Chris Dankovich from Michigan is a prime example.<sup>309</sup> In 2005, a 15-year-old Dankovich stabbed his mother over 100 times during what he believed to be a mission from God.<sup>310</sup> Despite his young age and his offense involving what obviously could be seen as mental illness, Dankovich was placed in solitary confinement.<sup>311</sup> He was sentenced as an adult because of the

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298. *Why People Are Sent to Solitary*, *supra* note 29.

299. *Id.*

300. Roummel Ingram, *SILENCED*, <https://silenced.in/michigan/voices/roummel-ingram> [<https://perma.cc/2EGA-L3TP>] [hereinafter Roummel].

301. *Id.*

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.*

306. Roummel, *supra* note 300.

307. *Id.*

308. *Id.*

309. Hank Winchester, *Father Reveals What's Healing his Son Behind Bars*, *CLICK ON DET.* (June 5, 2014), <https://www.clickondetroit.com/news/2014/06/06/father-reveals-whats-healing-his-son-behind-bars/> [<https://perma.cc/ZU6Z-P7TV>].

310. *Id.*

311. Chris Dankovich, *A Juvenile in Prison Longs for the Stars*, *PRISON WRITERS*, <https://prisonwriters.com/a-juvenile-in-prison-longs-for-the-night-stars/> [<https://perma.cc/L3JL-M2UP>].

seriousness of his crime, and therefore, placed in an adult facility, too.<sup>312</sup> However, he was too young to be placed with “adult” offenders, so he was “thrown in the only place they had room...the psychological solitary confinement wing.”<sup>313</sup>

Reflecting on the experience as an adult, Dankovich wrote an article for The Marshall Project in 2016 stating:

Now I was in the “Pole,” which someone had explained to me was the “Psychological Hole.” It was a place for protecting me, physically, from myself. As I sat there—sometimes reflecting, sometimes just staring at the wall, sometimes napping—I began to wonder whether it got its name because it was where they put people who were crazy, or whether it’s because this was the place they put people to make them crazy. Was there even a distinction?

... When you are alone, truly alone, with no distractions, the only thing you can hear are the whispers of demons. Not real voices, but thoughts that infect your mind, your sense of self, your sense of what is real. What you hear is determined by whether you listen. There is only so much a mind can put up with, particularly when faced with unlimited nothingness.<sup>314</sup>

The Rules intend to shield youth and the mentally ill from solitary confinement’s harsh consequences as Dankovich describes.<sup>315</sup> However, their inability to account for reality means that prisons still subject vulnerable individuals to the harsh treatment of isolation.

This troubling truth is a violation of the *Brennan* factors.<sup>316</sup> Under the first prong of that test, the injury—which, here, is subjecting vulnerable people to particularly harsh, prison conditions—fits the criteria for being sufficiently serious.<sup>317</sup> The second prong, while more difficult to prove because of its subjectiveness, could potentially be shown in some instances.<sup>318</sup> For example, if it is understood in a corrections facility that youth are particularly vulnerable to the conditions of solitary confinement then an officer would need to completely disregard this truth if they

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312. *Id.*

313. *Id.*

314. Chris Dankovich, *The Unlimited Nothingness of Solitary Confinement*, MARSHALL PROJECT (May 19, 2016), <https://www.themarshallproject.org/2016/05/19/the-unlimited-nothingness-of-solitary-confinement> [<https://perma.cc/YMB9-L57K>].

315. Mandela Rules, *supra* note 14.

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

317. *Id.* at 834.

318. *Id.*

decided to place a 15-year-old in an isolation cell, whatever the reason may be. The same could be said for an officer who noticed an inmate acting in a strange way and their first instinct was to place them in solitary rather than have them evaluated by a mental health professional.

In considering Michigan's state constitution, the reality that Dankovich describes also raises serious concerns under *Walker's* "prospect for rehabilitation" factor.<sup>319</sup> If an individual who is already susceptible to hardships while incarcerated due to their age or mental health status is still finding themselves in solitary confinement, their long-term well-being is reasonably affected. As such, the Rules do not do enough here to protect vulnerable inmates.

#### *4. The Rules' Time Limit on Solitary Confinement is Still Too Long*

While limiting the time a person can stay in solitary confinement is progress compared to historical extremes, the Mandela Rules' 15-day limit is still 15 days too long.<sup>320</sup>

Research shows the long-lasting effects from even a short solitary confinement stint.<sup>321</sup> The brain is particularly vulnerable to isolation effects.<sup>322</sup> In 2014, Dr. Huda Akil, co-director of the Molecular and Behavioral Neuroscience Institute at the University of Michigan, spoke on this issue.<sup>323</sup> She explained how the solitary confinement elements—including lack of social interaction, sunlight, visual stimulation, and human touch—can dramatically change the brain.<sup>324</sup> These drastic changes are not reserved solely for individuals who experience solitary confinement over decades, it can happen within a matter of days.<sup>325</sup>

Dr. Akil has found that the hippocampus—the part of the brain responsible for emotional reactivity, controlling the body's response to stress, and encoding memories—is particularly affected by isolation.<sup>326</sup> According to Dr. Akil, when an individual undergoes severe and sustained stress, the hippocampus loses its neuroplasticity.<sup>327</sup> The hippocampus "physically shrinks" and the "the rate of birth of new cells diminishes or

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319. *People v. Walker*, 146 Mich. App. 371, 375, 380 N.W.2d 108 (1985).

320. *Mandela Rules*, *supra* note 14.

321. *See Allen*, *supra* note 249.

322. *Id.*

323. *Id.*

324. *Id.*

325. *Id.*

326. Jules Lobel & Huda Akil, *Law & Neuroscience: The Case of Solitary Confinement*, 147 DAEDALUS 61–70 (2018).

327. *Id.* at 169.



ceases.<sup>328</sup> As a result, the brain struggles with memory, spatial organization, mood stabilization, and other important emotional regulation functions.<sup>329</sup> This suggests that the “key features of solitary confinement” can by themselves change the brain, regardless if the person is in isolation for a brief or extended period.<sup>330</sup>

In the extreme cases, inmates have died after spending less than the 15 days in solitary confinement.<sup>331</sup> In 2014, a mentally ill Georgia inmate, who was jailed for a misdemeanor disorderly conduct charge, died after being in solitary confinement for less than nine days.<sup>332</sup> Horrifyingly, his exact time of death is unknown because staff ignored him for a substantial period.<sup>333</sup> Correctional officers moved him to solitary after the prison placed him on suicide watch.<sup>334</sup> This inmate’s solitary confinement cell did not have its own water source, and he died when blood clots formed in his lungs due to dehydration.<sup>335</sup> His attorney claimed he was without water for three days.<sup>336</sup>

Solitary confinement’s deadly effects also can emerge once a prison releases an individual from custody.<sup>337</sup> A 2020 study found that individuals who were formerly incarcerated in Danish prisons and spent time in solitary confinement had a higher mortality rate five years after they were released than those who did not spend time in solitary confinement.<sup>338</sup> The most common causes of death included suicide, accidents, and violence—those who experience the effects of solitary confinement after release may find themselves in more precarious situations due to changes in how their brain processes the world.<sup>339</sup> As such, the researchers concluded that those who spend time in solitary

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328. *Id.*

329. *Id.*

330. *Id.* at 170.

331. See Asia Simone Burns, ‘Sarge, I Think he’s Gone’: Video Shows Last Hours Before Rockdale Jail Inmate Died in Cell, ATLANTA J. CONST. (Sept. 18, 2019), <https://www.ajc.com/news/breaking-news/sarge-think-gone-video-shows-last-hours-before-rockdale-jail-inmate-died-cell/ge6CuNYFWH40t9dkks3zFI/> [<https://perma.cc/3VJE-C4DP>].

332. *Id.*

333. *Id.*

334. *Id.*

335. *Id.*

336. *Id.*

337. Christopher Wildeman & Lars H. Andersen, *Solitary Confinement Placement and Post-Release Mortality Risk Among Formerly Incarcerated Individuals: A Population Based Study*, 5 THE LANCET PUBLIC HEALTH 107–12 (2020), [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(19\)30271-3/fulltext#seccestitle70](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(19)30271-3/fulltext#seccestitle70) [<https://perma.cc/YM6P-Y2RP>].

338. *Id.* at 108.

339. *Id.*

confinement, even for a short amount of time, are particularly vulnerable.<sup>340</sup>

On its face, the Mandela Rules' limit of 15 days in solitary confinement may seem better than the weeks, months, and years that some people have spent in segregation. However, like the issue of subjecting vulnerable people to solitary confinement, the 15-day limit also severely implicates the third *Walker* factor.<sup>341</sup> As research shows, even a short stay in solitary carries a huge risk to the individual.<sup>342</sup> It shrinks the brain and impedes cognitive functioning, affecting the brain not only while the inmate is in solitary confinement but long after.<sup>343</sup> If an inmate is expected to be "rehabilitated" at some point, this would deeply impact their success at doing so.

Understanding the brain science behind isolation also raises concerns under *Walker*'s first prong: proportionality.<sup>344</sup> If solitary confinement were simply akin to a "time out," and gave inmates a brief sanctuary to cool down, reflect, and regroup, then it would be difficult to argue that placement in solitary confinement is an disproportionate punishment. Yet, because science shows that the practice so severely affects an inmate's mental wellness, it is not reasonable to find it proportionate as a punishment for behavioral issues, big or small.

For the federal *Brennan* test, it is more of a burden to show that an officer would be aware of neuroscience to the point that they could have a sufficiently culpable state of mind.<sup>345</sup> However, it is not unfathomable to think that correctional officers should receive training about how various practices impact inmates, staff, and the overall goals of their facilities. This should include solitary confinement and its effect on the brain.

### 5. *The Rules Do Not Align with Federal or Social Progress*

In 2024, the movement to end solitary confinement is progressing slowly but surely.<sup>346</sup> If Michigan, or other states, only adopted the Mandela Rules, instead of a total ban, it would fall short of the limited federal progress and the much more impactful social movement taking place.

The Rules do not align with what federal lawmakers proposed in the activist-backed End Solitary Confinement Act.<sup>347</sup> If Congress passed the

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340. *Id.* at 107.

341. *People v. Walker*, 146 Mich. App. 371, 375, 380 N.W.2d 108 (1985).

342. Lobel & Akil, *supra* note 326.

343. *Id.* at 70.

344. *Walker*, 146 Mich. App. at 373, 380 N.W.2d at 109.

345. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

346. *See infra* Section II.D.2.

347. Ortiz, *supra* note 183.

legislation, the federal government would withhold funding to states that do not also pass legislation similar to the national ban against solitary confinement.<sup>348</sup> If Michigan only followed the Rules, the state would not meet the requirements of this Act and would therefore lose crucial funding.<sup>349</sup>

As opposed to the Mandela Rules, a total ban appears to align with the goals of advocates against solitary confinement. Unlock the Box is a national advocacy campaign dedicated to both ending solitary confinement in the U.S. and bringing all states into compliance with the Mandela Rules.<sup>350</sup> The campaign partnered with organizations across the U.S. to spark conversation about alternatives to solitary confinement, push for policy changes, and mobilize advocates.<sup>351</sup> On a state level, Open MI Door is Unlock the Box's Michigan-based partner.<sup>352</sup> It shares the same goals as Unlock the Box but focuses on solitary confinement specifically in Michigan prisons and jails.<sup>353</sup> The campaign is responsible for the Silenced website, which, again, shares stories from inmates who experienced solitary confinement.<sup>354</sup>

This social progress is a sign of society's disdain toward solitary confinement, and it speaks to the evolving standards of decency factor both the Supreme Court and Michigan courts consider.<sup>355</sup> Thus, to stay current with the social norms, states must go beyond the Rules.

#### 6. *The Rules Do Not Account for Post-Pandemic Life*

As lawmakers last updated the Rules in 2015, the Rules do not currently consider post-pandemic attitudes toward isolation.<sup>356</sup> When applying the evolving standards of decency analysis in 2024, lawmakers and legal professionals must consider that, in a post-pandemic world, the public has a deeper understanding of how even brief isolation can be detrimental to an individual's physical health, mental health, overall well-being, and quality of life.<sup>357</sup>

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348. Schulberg, *supra* note 197.

349. *Id.*

350. *About*, UNLOCK THE BOX, <https://unlocktheboxcampaign.org/about/> [<https://perma.cc/8DDT-GT2F>].

351. *Id.*

352. *About*, OPEN MI DOOR, <https://openmidoor.org/> [<https://perma.cc/5QMR-UJZB>].

353. *Id.*

354. *Silenced Voices from Solitary Confinement in Michigan*, SILENCED, <https://silenced.in/michigan/> [<https://perma.cc/JHC4-X6HK>].

355. *People v. Walker*, 146 Mich. App. 371, 375, 380 N.W.2d 108 (1985); Stevenson, *supra* note 225.

356. Mandela Rules, *supra* note 13, at 5.

357. *Walker*, 146 Mich. App. at 375, 380 N.W.2d at 108; Stevenson, *supra* note 225.

In 2023, the U.S. Surgeon General's Advisory on the Healing Effects of Social Connection and Community released a report finding that the pandemic exacerbated feelings of isolation for many individuals that remain high post-pandemic.<sup>358</sup> Specifically, as of 2021, one in four individuals felt less close to their family compared to the beginning of the pandemic.<sup>359</sup> Loneliness and isolation topped the list of widespread major health issues in the United States.<sup>360</sup>

Furthermore, the report also found that social connection is now a basic human need while highlighting three vital components: structure, function, and quality.<sup>361</sup> Structure refers to the variety of relationships an individual has and the frequency of a person's interactions within those relationships.<sup>362</sup> Function is to what degree each relationship serves a person's needs—such as emotional support and mentorship.<sup>363</sup> And quality speaks to the positive and negative aspects of a person's relationships and the interactions within those relationships.<sup>364</sup>

Additionally, the U.S. Surgeon General's report also stated that while the pandemic was disruptive, it allowed society to deeply reflect on its collective attitude toward social connection.<sup>365</sup> The difference is stark when comparing progress in societal conversation around isolation and loneliness to the life of inmates who stay in solitary confinement. Feelings of loneliness are rampant among prisoners, but especially for those who experience solitary confinement due to their limited interaction with others.<sup>366</sup> Furthermore, the report found that social connection is vital and requires genuine and substantial human connection.<sup>367</sup> Prisoners living in solitary confinement cannot meet these quality-of-life standards.

Evidently, in 2024, people understand what it means to feel lonely.<sup>368</sup> They do not need studies to understand how determinantal isolation during the pandemic was to their mental health, physical well-being, relationships, and sense of self. Yet, the studies corroborate these feelings and provide an indisputable benchmark for an evolving standards of

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358. U.S. Dep't of Health & Hum. Servs., *Our Epidemic of Loneliness and Isolation: The U.S. Surgeon General's Advisory on the Healing Effects of Social Connection and Community* (2023), <https://www.hhs.gov/sites/default/files/surgeon-general-social-connection-advisory.pdf> [<https://perma.cc/RNH3-DEX3>] [hereinafter *Epidemic of Loneliness*].

359. *Id.* at 22.

360. *Id.* at 9.

361. *Id.* at 11.

362. *Id.*

363. *Id.*

364. *Epidemic of Loneliness*, *supra* note 357, at 11.

365. *Id.*

366. *See The Mind*, *supra* note 141.

367. *Epidemic of Loneliness*, *supra* note 357.

368. *Id.*

decency analysis. Because society recognizes how torturous it is to go without genuine human interaction, it would find that the extreme isolation seen in solitary confinement objectively contradicts community standards.<sup>369</sup>

### *B. What Is Possible: Moving Toward a Human-Rights Solution*

As demonstrated above, the Mandela Rules' guidelines on solitary confinement have a limited ability to address concerns with solitary confinement. Under the Rules, a plethora of issues exist, including concerns pertaining to vulnerable individuals as well as psychological and physiological problems.<sup>370</sup> Therefore, an alternative to the Rules must be pursued. A two-step process—which first requires states to remodel their general method of incarceration off other countries, and second, embrace more human-rights focused frameworks—can provide a solution to solitary confinement's clear constitutional issues.

#### *1. Correctional Centers in Other Countries Provide a Blueprint*

Other countries demonstrate that a near-total solitary confinement ban is possible and effective.<sup>371</sup> Norwegian and German prison systems demonstrate that, foundationally, a key piece in establishing a new approach to solitary confinement is changing the way we think about how correctional facilities should look.<sup>372</sup> To conform with the Cruel and/or Unusual Punishments Clause, proposed legislation in various states should implement a near-total ban, or outright ban, of solitary confinement.<sup>373</sup> They can take guidance from Norway and Germany, which have practically banned the practice.<sup>374</sup>

Norway's correctional facilities focus on "creating better neighborhoods."<sup>375</sup> While they still occasionally use isolation rooms, a

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369. *People v. Walker*, 146 Mich. App. 371, 375, 380 N.W.2d 108 (1985); Stevenson, *supra* note 225.

370. *See supra* Sections III.A.3–4.

371. *See* Janelle Guthrie, *Looking to Norway for Inspiration on Reducing the Use of Solitary Confinement*, VERA (Mar. 11, 2020), <https://www.vera.org/news/addressing-the-overuse-of-segregation-in-u-s-prisons-and-jails/looking-to-norway-for-inspiration-on-reducing-the-use-of-solitary-confinement> [<https://perma.cc/D3EH-5AGS>]; *see also* Maurice Chammah, *German Prisons Are Kinder, Gentler, and Safer Than the Ones in America*, VICE (July 9, 2015), <https://www.vice.com/en/article/exqbgm/german-prisons-are-kinder-gentler-and-safer-than-the-ones-in-america-617> [<https://perma.cc/D9MN-MH6N>].

372. *Id.*

373. U.S. Const. amend. VIII.

374. *See* Guthrie, *supra* note 371; *see* Chammah, *supra* note 371.

375. Guthrie, *supra* note 371.

form of solitary confinement, the prisons primarily focus on treating incarcerated individuals with dignity.<sup>376</sup> Outside of its isolation practices, Norway prisons are different than their U.S. counterparts.<sup>377</sup> There are no bars on windows and inmates have access to the normal perks and tools of daily life such as televisions, computers, and sharp objects for cooking.<sup>378</sup> The prison also encourages socialization between inmates and prison guards.<sup>379</sup>

Similar to Norwegian prisons, German correctional facilities feature rooms that are more like dorms than cells.<sup>380</sup> Unlike U.S. prisons where stainless-steel toilet bowls are bolted to the walls, German cells have ceramic toilets and sinks.<sup>381</sup> Rooms are equipped with knives and forks for eating as well as individual phones.<sup>382</sup>

Reportedly, Germans “appear to view people who commit crimes as medical patients” and “there is little stigma after prisoners finish their sentences.”<sup>383</sup> In line with this way of thinking, German prisoners wear their regular clothes, cook their own meals, and are paid more for their work than prisoners in the U.S.<sup>384</sup> Notably, German prisons do use solitary confinement, but they can only do so sparingly, and placement in solitary cannot exceed eight hours at a time.<sup>385</sup>

The most important aspect of the Norwegian and German prisons is that there is little to no violence within the facilities.<sup>386</sup> These centers show that treating inmates like human beings, rather than out-of-control prisoners, instills dignity in the corrections process.<sup>387</sup> It shows that through dignified and fair treatment, correctional officers do not need to rely on solitary confinement to reach their goals of keeping an orderly facility.<sup>388</sup>

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376. *Id.*

377. Anonymous, *What Can We Learn from the Norwegian Prison System*, BERKELEY POL. REV. (Oct. 25, 2022), <https://bpr.berkeley.edu/2022/10/25/what-can-we-learn-from-the-norwegian-prison-system/> [https://perma.cc/VV7E-XH2C].

378. *Id.*

379. Jessica Benko, *The Radical Humaneness of Norway's Halden Prison*, N.Y. TIMES MAG. (Mar. 26, 2015), <https://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html> [https://perma.cc/55M6-QU9Z].

380. Chammah, *supra* note 371.

381. *Id.*

382. *Id.*

383. *Id.*

384. *Id.*

385. *Id.*

386. See Guthrie, *supra* note 371; see Chammah, *supra* note 371.

387. *Id.*

388. *Id.*

With this compassionate attitude toward prisoner and jail operations, the next part of the two-prong plan involves bringing in more supplemental programming to fix the problems solitary confinement supporters believe the practice addresses, such as violence.

## 2. Impactful Programming is Necessary

If states, such as Michigan, moved toward a model of incarceration that more closely mirrors Norway's and Germany's, the next step in abandoning solitary confinement will be to embrace programming that puts inmates' well-being first.<sup>389</sup> This involves taking the best pieces of programs and therapies that already exist to more effectively allow correctional officers to manage the inmate population and potential violence issues. Presumably, if states were not allocating funds to solitary confinement, they could redirect those resources toward these new initiatives.

New York City's Clinical Alternatives to Punitive Segregation (CAPS) is an example of one of these programs that more directly center prisoners well-being in its mission.<sup>390</sup> CAPS units, which house 30 inmate patients, are intended for prisoners with severe mental illness who would otherwise have been placed in punitive segregation.<sup>391</sup> In CAPS, inmates have access to a variety of therapeutic activities, including individual therapy, group therapy, art therapy, medication counseling, and community meetings.<sup>392</sup> CAPS reportedly requires a \$1.5 million investment per year to account for the specialized staffing needed to run the units.<sup>393</sup> However, the psychological return on this investment appears to be high.<sup>394</sup> CAPS inmates have substantially lower rates of self-harm and injury than those in restrictive housing units.<sup>395</sup>

The United Kingdom also has special units providing therapeutic programming to inmates called "care and separation units."<sup>396</sup> Officers

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389. *Id.*

390. City of New York Correction Department, *Clinical Alternatives to Incarceration/Restrictive Housing Unit (RHU)*, <https://www.nyc.gov/site/doc/media/caps-rhu.page> [<https://perma.cc/JJ7N-EZU9>].

391. *Id.*

392. Sarah Glowa-Kollisch et al., *From Punishment to Treatment: The "Clinical Alternative to Punitive Segregation" (CAPS) Program in New York City Jails*, 13 INT'L J. ENV'T RSCH. PUB. HEALTH 182–92 (Feb 2016).

393. *Id.*

394. *Id.*

395. *Id.*

396. Jean Casella, *Off the Block: Can British Prisons Offer Solutions to America's Solitary Confinement Crisis?*, SOLITARY WATCH (Oct. 21, 2015), <https://solitarywatch.org/2015/10/21/off-the-block/> [<https://perma.cc/98XE-JZMC>].

may place inmates in these special units to “preserve the good order and discipline of the prison.”<sup>397</sup> Unlike current solitary confinement practices, placement in these units is short lived.<sup>398</sup> After an inmate spends 72 hours in a care and separation unit, upper level government officials must approve their continued placement.<sup>399</sup> While it has not been perfect in practice, these added steps are intended to ensure that people who spend more than 72 hours in the units are properly accounted for.<sup>400</sup>

While CAPS is intended for a very specific segment of New York City’s inmate population—the severely mentally ill—prisons could conceivably duplicate the program for all inmates.<sup>401</sup> Likewise, the U.K. program could be replicated and be utilized in extreme instances where the correctional facility needs to maintain order as well as day-to-day operations.

Generally, following practices like those in New York and the U.K. would mean that prisons would not need to use solitary confinement at all. However, if there were to be any exceptions, they would be well-defined and extremely narrow. For example, in New Jersey, the Isolated Confinement Restriction Act allows inmates to enroll in voluntarily placement into solitary confinement.<sup>402</sup> This voluntary placement could, potentially, be useful for those who feel overstimulated by the prison or jail environment or, otherwise, would find value in alone time.

To avoid abuse, New Jersey heavily regulates voluntary placement.<sup>403</sup> Voluntary placement is only possible if the inmate requests it.<sup>404</sup> This requirement helps prevent correctional officers from coercing inmates into requesting segregation without their full consent. Additionally, under the Isolated Confinement Restriction Act, the correctional facility must first attempt to place the inmate in a less restrictive form of segregation.<sup>405</sup> For example, if an inmate wants to be placed in solitary for their own safety, an alternative could be transferring them to the general population at another facility.<sup>406</sup> Furthermore, because voluntary solitary confinement is

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397. *Id.*

398. *Id.*

399. *Id.*

400. *Id.*

401. See Glowa-Kollisch et al., *supra* note 392.

402. Veronica Chimmel, *Making the Case for Abolition: Why Legislation Restricting Solitary Confinement is Not Enough*, 45 SETON HALL LEGIS. J. 181, 189 (2021) <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1179&context=shlj> [<https://perma.cc/UJ8L-3BPE>].

403. *Id.* at 189–90.

404. *Id.* at 190.

405. *Id.* at 189.

406. *Id.*



on the inmate's terms, if a facility wants to remove them from isolation, they must give the inmate a fair opportunity to contest their removal.<sup>407</sup>

Other very rare circumstances where it may make sense for prisons to use a form of solitary confinement include when a communicable disease, such as COVID, is spreading through the correctional facility and the prisons need to isolate inmates—albeit, for a very short period of time—to tame the outbreak and institute proper medical protocols. Similarly, for extreme instances of violence where lockdown is necessary, it may make sense for prisons to enact solitary confinement for a brief period—perhaps a matter of hours—to regain peace.

With these pieces in place, prisons and jails would look markedly different from their current makeup, and programs would more appropriately address the needs of each prisoner and each facility as a whole. Consequently, correctional facilities would exceed the requirements of the Mandela Rules and effectively ban solitary confinement. This would, in turn, more adequately protect the constitutional rights of inmates.

#### IV. CONCLUSION

Solitary confinement should be considered a cruel and unusual punishment, or, at the very least, cruel or unusual. While the Supreme Court has yet to hold that solitary confinement is unconstitutional, the data on prison violence, the studies of solitary's effects on the brain and the body, and the stories from those subjected to solitary confinement show that the courts should find the practice to be an Eighth Amendment violation.<sup>408</sup> Daniel's letter to Silenced exemplifies this.<sup>409</sup> He said:

Some people may choose not to believe what a convicted felon has to say, they may choose not to care about their fellow humanity or they may choose to pretend that human beings are not being treated worse than animals in solitary confinement/segregation housing units throughout the [Michigan Department of Corrections] and the United States Prison Systems.... Human beings with and without mental health issue[ ]s

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407. *Id.* at 190.

408. See *supra* Sections III.A.1, III.A.4; see also SILENCED, *supra* note 353.

409. Daniel Henry, SILENCED, <https://silenced.in/michigan/voices/daniel-henry> [https://perma.cc/6A9Y-4NWG].

have and are being subjected to one of the cruelest forms of physical and mental torture...<sup>410</sup>

Despite being a step toward progress, the Mandela Rules do not change Daniel's characterization of the practice, or the descriptions shared by other inmates who have written to Silenced. Even with the Rules' restrictions, solitary confinement is still cruel, and it is still unusual. Because the Supreme Court has been reluctant to address the problem of solitary confinement, states, like Michigan, must follow the lead of social justice movements and implement their own changes through new legislation, correctional models, and programs. This is why alternative models—such as the two-prong, human-rights focused proposal—must exist.

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410. *Id.*