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Should Federal Prisons Restrict the Use of Solitary Confinement? Examining Solitary Confinement in the United States – A Research Study

ROUMITA DEY¹

ABSTRACT

Over the last two decades, the use of solitary confinement (“Solitary Confinement”) in the United States correctional facilities has surged. Before 1990, super-maximum security (“supermax”) prisons were rare. Now, 44 states and the federal government have supermax units, where prisoners are held in extreme isolation, often for years or even decades. On any given day in this country, it’s estimated that over 80,000 prisoners are held in isolated confinement. This massive increase in the use of solitary has happened despite criticism from legal and medical professionals, who have deemed the practice unconstitutional and inhumane. And it has happened despite research suggesting that supermax prisons actually have a negative effect on public safety.

As a part of the growing movement for reform, recommendations are made to end solitary confinement, contending that this is to the benefit of prisoners and prisons, as well as the communities to which prisoners will return. Although the reform of solitary confinement is underway in many states in the USA, isolation remains in widespread use in many jails and prisons.

In the current Biden administration, the Congress has introduced a new Bill (“Bill”) that would amend title 18 of the US Code to restrict the use of solitary confinement for inmates in the federal custody. This Bill was introduced in the House of Representatives on April 01, 2021 and is currently awaiting votes by the full chamber on the Bill. Already, eighteen states, including Connecticut, have passed bills that limit or prohibit solitary confinement in the United States (“U.S.”/ “United States”). The purpose of this paper is to discuss the background of Solitary Confinement and its history, its negative effects on the society and the growing movement for reform in the United States and the Solitary Confinement Bill which is awaiting to become a law.

Keywords: *solitary confinement, criminal justice policy, prison conditions, administrative segregation, human rights, mental health, reform of solitary confinement.*

¹ Author is an Ex-Litigation Associate - ROYZZ & CO, India.

I. BACKGROUND

Solitary confinement has been an important component of the American prison system since the emergence of the penitentiaries in the early 1800s. The main criticism of Solitary Confinement has long been that it causes inhabitants undue psychological distress and by extension increases propensity toward criminal behavior. The use of Solitary Confinement raises constitutional and humanitarian concerns, with critics who charge the practice constitutes cruel and unusual punishment, which is inhumane, and violates the minimum standards of decency. However, Solitary Confinement is also a management tool in which correctional officials have come to rely upon for the effective management of prisons, and many would not waiver in the contention that SC is needed to ensure the safety and security of these institutions.

Solitary confinement is an indictment of the United States' criminal legal system, and its use is not an anomaly. Solitary is a microcosm of the ways U.S. prisons and jails are set up to dehumanize and traumatize people, without the slightest concern for their rehabilitation, their ability to reenter society, their well-being or the well-being of their families. The harms are particularly severe for people who are pregnant, people of color, individuals with disabilities — including mental illness or intellectual disabilities — young people, and incarcerated seniors, immigrants, and transgender people.

(A) The Voice Against The Solitary Confinement Has Been Raised To Abolish The Practice By Highlighting A Real Life Story In An Online Magazine Vox In April 17, 2019²:

Albert Woodfox was held in solitary confinement for more than 40 years in a Louisiana prison before being released in 2016, when he was 69 years old. In his book Solitary, published last month, Woodfox writes that every morning, "I woke up with the same thought: will this be the day? Will this be the day I lose my sanity and discipline? Will I start screaming and never stop?"

II. HISTORICAL PERSPECTIVE ON SOLITARY CONFINEMENT IN THE UNITED STATES

In the 1700s, religious groups, including the Quakers, thought that isolating people in their cells with a Bible would lead to repentance and rehabilitation. The Walnut Street Jail in

² Vox. 2021. *The case against solitary confinement*. [online] Available at: <<https://www.vox.com/future-perfect/2019/4/17/18305109/solitary-confinement-prison-criminal-justice-reform>> [Accessed 21 July 2021].

Philadelphia expanded to include solitary cells in 1790, and other prisons and jails adopted the approach over the subsequent years.

A few decades later, the Eastern State Penitentiary in Pennsylvania opened in 1829, the first prison built entirely to keep people in solitary confinement. When Charles Dickens visited the facility about a decade later and met with people who were held in isolation, he **wrote**, “I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body.”

In 1890, the Supreme Court heard a case in which a person had been held in isolation for a month while awaiting execution. The Court stated that this was “an additional punishment of the most important and painful character, and is therefore forbidden by this provision of the constitution of the United States,” adding that experience with solitary confinement over the previous decades had shown the devastating results on people.

By the early 1900s, the practice had largely been abandoned, in part because it was seen as unethical and ineffective, and in part because it was much costlier.

But that was not to be the last word on solitary confinement. Nearly a century later, in the 1980s and '90s, the US prison system again took up the practice in full force.

This shift is commonly traced to October 22, 1983, at a federal prison in Marion, Illinois, when four guards were injured and two were killed by people housed in the prison. Administrators at the facility responded with a long-term “lockdown,” in which everyone at Marion was held in their cells for 23 hours per day. The model used at Marion soon spread to other facilities across the country.

The federal and state prison systems began to construct supermax prisons, in which a unit of the facility (or the entire facility) is designed to hold hundreds of people in solitary confinement. Pelican Bay State Prison in California was the first newly constructed supermax prison to open, in 1989. Within 15 years, federal and state supermax prisons had opened in 44 states.

(A) A brief chronology of events evidencing the origin of Solitary Confinement till 21st century

- **1829** - Started by the Quakers in the Eastern State Penitentiary, with the belief that isolation with only the bible could cause people to repent.
- **1890** - Supreme Court Justice's, Samuel Freeman Miller observes the semi-conscious, and exceedingly violent behavior most prisoners exhibit but does nothing to help end it.

- **1934** - Federal government opens Alcatraz in San Francisco Bay to house nations worst criminals. Few inmates are kept in "D Block", the prisons solitary confinement hallway. One cell in particular is "The Hole", concrete and bare with a hole in the floor. There is no light, food and water is shoved through the door and inmates are kept naked. Felons spend a few days in the hole, but years in D Block.

- **1983** - Two correctional officers are murdered at Marion prison, two separate incidents on the same day. The warden at the time puts the prison on what he calls "permanent lockdown." Marion is the first prison to adopt the 23-hour-a-day cell isolation, with no communal yard time for inmates. Inmates are no longer allowed to work, have educational opportunities or eat in the cafeteria.

- **1989** - Pelican Bay is built, solely to house inmates in isolation. Also the first accounts of Supermax prisons come up around this time. There is no yard, cafeteria, classrooms or shops. Convicts spend 22 1/2 hours a day in an 8-by-10-foot cell. The other 1 1/2 hours are spent in a small exercise pen.

- **1990** - The building boom of Supermax, or control units, begins.
1994 - The U.S. Bureau of Prisons builds ADX Florence, the federal government's first and only Supermax facility.

- **1995** - A federal judge finds conditions at Pelican Bay in California are inhumane, however he rules that there is no constitutional basis for the courts to shut down the unit or to alter it. He says the court must rely on the States to handle their own prisoners the best they can.

- **1999** - A report by the Department of Justice finds that more than 30 states are using a Supermax-type facility with 23-hours-a-day lockdown and long-term isolation.

- **2005** - Daniel P. Mears, an associate professor at Florida State University, conducts a nationwide study and finds there are now 40 states operating Supermax or control-unit prisons, which collectively hold more than 25,000 U.S. prisoners.

- **2007** - *Disability Advocates v. New York Office of Mental Health*. Removes seriously mentally ill prisoners from solitary units; requires that they be provided increased opportunities for out-of-cell time, and improves mental health screening and programming.

- **2010** - The American Civil Liberties Union (ACLU) convenes national experts—corrections officials, prisoners' rights lawyers and advocates, academics, mental health experts—to map out a strategy to end solitary confinement.

- **2012** - The American Academy of Child and Adolescent Psychiatry (AACAP) published an official policy statement concluding that, due to their "developmental

vulnerability," adolescents are in particular danger of adverse reactions to prolonged isolation and solitary confinement.

- **2013** - Oklahoma bans solitary confinement of juveniles. The actual law pertaining to the youth remains vague and no actual system for what prisons plan to do is confirmed.

- **2014** - National Academy of Sciences recommends solitary reform. The report makes recommendations designed to minimize the extent of the damaging effects of solitary confinement, including reducing the overall use of prison isolation and recognizing that "it is not an appropriate setting for seriously mentally ill inmates."

- **2015** - President Barack Obama denounces the practice of solitary confinement in the United States. "Do we really think it makes sense to lock so many people alone in tiny cells for 23 hours a day, sometimes for months or even years at a time? That is not going to make us safer. That's not going to make us stronger. And if those individuals are ultimately released, how are they ever going to adapt? It's not smart."

- **2016** - President Obama Announces Major Reforms to Solitary Practice at Federal Bureau of Prisons Following Report and Recommendations by Dept. of Justice.

- **2018 to 2021** – A growing reform movement to abolish the Solitary Confinement in the U.S. Among the 50 states, New York Senate has already passed the Humane Alternatives to Long-Term Solitary Confinement Act (HALT) on March 18, 2021, thereby limiting the use of segregated confinement for all incarcerated persons to 15 days, implements alternative rehabilitative measures, including the creation of Residential Rehabilitation Units (RRU), expands the definition of segregated confinement, and eliminates the use of segregated confinement for vulnerable incarcerated populations. Governor Andrew Cuomo signed this Solitary Confinement Bill that will end the use of long-term solitary confinement in New York prisons and jails, a far-reaching move that advocates say will fundamentally change life behind bars.

III. SOLITARY CONFINEMENT AND THE LAW

(A) The Eighth Amendment of the United States Constitution

The Eighth Amendment of the Constitution prohibits cruel and unusual punishment. The Supreme Court has held that this standard can be applied to prison conditions, including solitary confinement. However, with one exception, no court has found that solitary confinement violates the Eighth Amendment. To show an Eighth Amendment violation, a two-part test must be met: 1) the action or condition must be objectively serious, and 2) prison officials must be—deliberately indifferent¹¹ to the harm caused by the action or condition. This analysis was

applied in the leading case of *Madrid v. Gomez*, a class action suit brought by prisoners in California's Pelican Bay State Prison alleging a range of Eighth Amendment violations including excessive force, inadequate physical and mental health care and inhumane conditions in the prison's Secure Housing Unit. Regarding the first prong of the Eighth Amendment test, the court found that —[t]he Eighth Amendment simply does not guarantee that inmates will not suffer some psychological effects from incarceration or segregation.

The *Gomez* court ruled that the degree of psychological trauma inflicted on the average prisoner is not enough by itself to create an Eighth Amendment violation. However, for prisoners with pre-existing mental health conditions and those with an unreasonably high risk of suffering mental illness, being subjected to solitary confinement conditions may be serious enough to constitute cruel and unusual punishment in violation of the Eighth Amendment, according to the court. Regarding the second prong of the Eighth Amendment analysis, the *Gomez* court found the deliberate indifference requirement was met, as prison officials were aware of the mental health risks of placing prisoners in solitary, yet did it regardless.

The *Gomez* court, along with most courts that have addressed the issue of solitary confinement, dealt only with short-term stays in solitary. However, according to the Supreme Court, the length of confinement cannot be ignored in determining whether a particular restriction constitutes cruel and unusual punishment. No court has specifically addressed claims of prisoners who have been confined to solitary on a virtually permanent basis, and this may be an area ripe for future litigation.

(B) The Fourteenth Amendment and Due Process

The Due Process clause of the Fourteenth Amendment holds that no state may deprive any person of life, liberty or property, without due process of law. Due process generally requires a hearing before an impartial decisionmaker during which evidence can be presented and an individual can defend his or her interests, even if in a very informal manner. To make a due process challenge, a plaintiff must first show that his or her right to life, liberty or property is threatened. When applied in the prison context, the courts have consistently stated that prisoners retain only the most limited liberty interests and courts are exceedingly deferential to the decisions of prison administrators. In *Wilkinson v. Austin*, the Supreme Court examined the procedures used in assigning prisoners to Ohio's supermax facility, the Ohio State Penitentiary. The Court determined that prisoners do have a protected liberty interest in avoiding placement in a supermax facility. However, in coming to its decision, the court distinguished between the indefiniteness of supermax placement as opposed to the temporary

nature of disciplinary segregation.

IV. NEGATIVE EFFECTS OF SOLITARY CONFINEMENT

(A) Solitary confinement harms mental health

People placed in solitary confinement are at a greater risk of developing mental illnesses due to their isolation, and the practice can worsen the mental health of those individuals already battling these issues. In a recent lawsuit against the Alabama Department of Corrections (“**ADOC**”), the court noted in a June 2017 ruling that “long-term isolation resulting from segregation, or solitary confinement, has crippling consequences for mental health” and acknowledged that in solitary, “even mentally healthy prisoners can develop mental illness such as depression, psychosis and anxiety.” Many incarcerated people who are subjected to isolation, which can extend for years, have serious mental illness. The conditions of solitary confinement can exacerbate their symptoms or provoke recurrence of their illnesses, yet, perversely, people in solitary are denied adequate access to mental health services because prison rules defining and governing the practice greatly restrict the mental health services people held in solitary confinement may receive.

The central issue, psychiatrists say, is the lack of external stimulation through contact with other people, and the lack of audio or visual stimulation. Some people can generate their own ideas and can channel those thoughts into positive activities. But others may become obsessed with negative actions, including self-mutilation. People in solitary confinement may suffer from restlessness, hallucinations, and incoherence of thought and speech. Others may develop post-traumatic stress disorder, according to mental health experts. Even more chilling is the increased rate of suicide by individuals kept in solitary confinement.

A national study of 401 jail suicides in 1986 found that two-thirds of all jail suicides were attempted by someone being held in solitary confinement. Mental health experts also note that individuals placed in solitary confinement are often sent there because they do not follow rules – but they may be unable to do so because of their illnesses. A vicious cycle emerges in which individuals who are unable to conform to behavioral expectations due to their mental illnesses are placed in solitary confinement, which contributes to a further deterioration of their mental state, which causes them to be relegated to solitary confinement for an even longer period of time. But even those individuals who enter solitary confinement as otherwise mentally healthy are at greater risk of developing issues such as anxiety, panic, rage, loss of control, paranoia, hallucinations, self-mutilation, sleep disturbances, lethargy, constant headaches and “a complete break down or disintegration of the identity of the isolated individual.” In the

Alabama prison case, the judge noted “ADOC’s segregation practices perpetuate a vicious cycle of isolation, inadequate treatment and decompensation.”

Psychiatrists and psychologists use the term “decompensation” to describe the inability of a person with mental illness to maintain normal or appropriate psychological defenses when faced with stress, which can result in depression, anxiety or delusions. Mental health is already a crisis in state prisons. According to a 2017 report, while half of people in state prisons had either current “serious psychological distress” or a history of mental health problems, only about one-third of them currently receive mental health treatment.

In Florida last year, approximately 18,000 people in the prison system had a diagnosed mental illness that requires mental health treatment. Solitary confinement serves to compound the mental health crisis in the prison system. Whatever the label used by Florida prisons, any form of solitary confinement significantly increases the risk of exacerbating mental illness for those already afflicted. It also puts those without mental health issues at risk of developing them.

(B) How does solitary confinement affect people?

Solitary confinement is widely recognized as painful and difficult to endure. “*It’s an awful thing, solitary,*” U.S. Senator John McCain wrote of his time in isolation as a prisoner of war in Vietnam. “*It crushes your spirit and weakens your resistance more effectively than any other form of mistreatment.*” Senator McCain’s experience is reflected in the consensus among researchers that the psychological harms of solitary confinement are great.

Indeed, in a 2007 publication, a Red Cross psychiatrist compared the practice to physical torture, noting that “[b]eing confined for prolonged periods of time alone in a cell has been said to be the most difficult torment of all to withstand— a comment made, moreover, by hardened prisoners used to rigorous conditions and abuse.” As a California prison psychiatrist put it: “*It’s a standard psychiatric concept, if you put people in isolation, they will go insane. . . . Most people in isolation will fall apart.*” International human-rights bodies have condemned the prolonged use of solitary confinement. The Inter-American Commission on Human Rights has urged member states to “adopt strong, concrete measures to eliminate the use of prolonged or indefinite isolation under all circumstances;” the United Nations Special Rapporteur on Torture called for a global ban on solitary confinement in excess of 15 days as well as on the segregation of juveniles and of those with mental disabilities; and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment found that solitary confinement conditions can amount to “inhuman and degrading treatment.”

(C) Special Harms of Solitary Confinement for Specific Populations of Women

Girls under the age of 18 are also often subjected to solitary confinement. Experts agree that solitary confinement is particularly damaging for children and young adults due to their lower resilience and heightened vulnerability. The Federal Government agrees—the First Step Act prohibits solitary confinement for juveniles in federal detention for more than three hours, and the Department of Justice (“**DOJ**”) stated flatly that “[j]uveniles should not be placed in restrictive housing.” Even more alarming, solitary confinement is correlated with suicidality in youth; 50 percent of youth who died by suicide while detained did so while in solitary confinement and 62 percent had been in solitary confinement at some point during their incarceration. In recognition of the grave danger that solitary confinement poses to youth, United Nations standards have prohibited its use since 1990.

Solitary confinement can wreak special havoc on older adults. Because many prisoners in solitary confinement lack consistent access to sunlight, they are at risk of vitamin D deficiency and, therefore, of falls and dangerous fractures. Experts recommend that prisoners with dementia be placed in environments with significant sensory stimuli, accessible toilets and showers, and dedicated caregivers and case managers. Lack of sensory stimulation can worsen confusion and memory loss among the elderly; hearing and visual problems can exacerbate feelings of isolation, which can also worsen heart disease. The lack of access to medical care and environmental stimuli in solitary confinement is therefore directly at odds with appropriate elder care, especially for those individuals with dementia.

(E) Use of Solitary Confinement During Pandemic Detrimental To Prisoners and Not Slowing Spread of COVID-19

It has been reported in Prison Legal News that prisons have been locking prisoners in cells for up to 22 hours a day, and in some cases 24 hours a day, as the virus has swept through the prison system like a tornado. Some people say this method is helping spread the virus among those in jails and prisons, according to a February 19, 2021, article in *Mother Jones*.

It is well known that no one likes to be confined in one space for too long. Even more so in prison. Many prisoners who have COVID-19 symptoms have not reported their issues or sought medical help as they know doing so would result in being locked into a solitary confinement cell. Rather than telling prison staff of their conditions, they brave the storm—but at the same time infect other prisoners.

David Maglio, the first prisoner to test positive for COVID-19 at the Wyatt Detention Facility in Rhode Island, was isolated after testing positive. He said, “*I felt like I was locked in a closet and I had to bang on the door to get any attention. People looked at me like I was a zombie.*”

David Maglio is one of many prisoners who were left banging on doors in prisons all over the country.

More than 15 consecutive days in solitary confinement is defined under international law as torture under the United Nation's Nelson Mandela Rules. This is because the cells used for solitary are intentionally designed to cause sensory and social deprivation. Although they may be the only space available in many prisons to medically isolate infected people, solitary confinement units also are used as an extreme method of punishment.

Brie Williams, a founder and director of Amend, a prison reform group at University of California, San Francisco, weighed in on the solitary confinement/COVID-19 epidemic as well. She commented that separating prisoners is a public health measure to prevent the spread of the virus in prisons and jails but that using solitary confinement to do it will only make things worse.

Lauren Brinkley-Rubinstein, an assistant professor of social medicine at the University of North Carolina at Chapel Hill, noted in her research on the subject that prisoners who had spent time in solitary were more likely to die in the year after release, and from suicide in particular.

Placing jails and prisons on lockdown status does not seem to have helped stop the spread of the virus. Most of the old prisons have minimal ventilation and limited access to protective equipment. The winter seemed to make things even worse, as COVID-19 is believed to spread faster under cold and dry conditions. Many prisons keep windows closed to prevent cold, which reduces ventilation and increases transmission. *"As Covid continues to spread like wildfire across the country, we'll see that amplified in prisons and jails"* said Brinkley-Rubenstein.

In a paper published in January 2021, Stanford engineers and Yale researchers modeled rates of COVID-19 transmission in a large urban jail. They found that COVID-19 spreads faster in U.S. jails and prisons than it did in super-spreader cases like the Diamond Princess cruise ship, which infected around 700 people early in the pandemic.

All of this tells us that solitary confinement is doing little to help with the spread of the virus, and is destroying the mental health of those that are locked in cells for far too long. Advocates and scholars think there is a solution to solitary confinement use. Brinkley-Rubenstein for example suggests, *"We ought to transform those spaces into medical spaces rather than spaces of punishment."*

Another option is to release the prisoners who are in high-risk categories—and that should not be used arbitrarily. This would help decrease the spread of the virus, create more space for social distancing and cut down on the prisoner death rates.

Robin Blades, a freelance journalist and clinical researcher at the University of California, San Francisco, agrees with many others in concluding that solitary confinement only makes things worse.

V. CASE STUDY OF PRISONERS AND THEIR EXPERIENCE WITH SOLITARY CONFINEMENT

(A) Story of Anthony Gay who spent 22 years in solitary confinement

From the article published in an online magazine “*The Hill*”, on May 13, 2021 – It has been reported that after spending 22 years in solitary confinement for an arrest over a stolen hat and dollar bill, Anthony Gay is advocating for legislation to end the psychologically traumatic practice.

Gay said he was “tortured for decades” at an Illinois prison where he was held in isolation for close to 24 hours a day in a small cell and denied mental health care, leading him to self-harm and attempted suicide.

Since being released in 2018, Gay has shared his experiences, advocating for reform and is now campaigning for a bill in his name going through the Illinois legislature to prohibit the practice. “I know what it’s like to be tortured and I know that many people are still being tortured,” Gay told ABC News. “And I feel guilty because I got out and they didn’t. But if we can inform more people, and more people become aware that strength is in numbers, [we can] compel them to do something about it. It’s wrong...despicable and horrible, and it needs to stop.”

(B) ‘Tantamount to torture’: Complaint alleges inhumane conditions, overuse of solitary confinement at Pine Prairie immigrant detention center

On June 23, 2021, it has been reported on an online magazine “*The Lens*” on their Criminal Justice section that a wide-ranging complaint submitted by over a dozen civil rights groups to the U.S. Department of Homeland Security alleges that the Pine Prairie Immigration and Customs Enforcement Processing Facility in Pine Prairie, Louisiana has been using solitary confinement and punitive segregation not only for disciplinary infractions at the facility, but also as a way to isolate detainees during the COVID-19 pandemic, a response to other mental and medical health emergencies, and as retaliation for detainee protests and complaints.

According to the report, detainees with no disciplinary infractions — including those with COVID-19 symptoms — were kept in solitary confinement in conditions that were “virtually identical” to those in disciplinary segregation for 22 to 24 hours per day for weeks at a time, in

some cases without access to medical care. “This pattern of implementing punitive solitary confinement is abusive, unlawful, and tantamount to torture,” the report reads.

The complaint, which was signed by civil rights groups including the ACLU of Louisiana, the Southern Poverty Law Center, Robert F. Kennedy Human Rights, and Immigration Services and Legal Advocacy (ISLA), also alleges that the facility has been denying detainees access to clean water and food, sanitary supplies, and that there is a lack of access to COVID-19 vaccine.

According to ICE’s own COVID-19 Pandemic Response Requirements, when detainees need to be isolated due to potential infection or exposure to the virus, they are required to be placed in housing that is “operationally distinct” from “any form of punitive housing.”

But at Pine Prairie, the complaint alleges that people who contracted COVID-19 were frequently placed in solitary confinement, where they were denied access to any recreational materials or activities. In addition, despite having COVID-19, they received sparse medical attention.

“We had several clients who had things like asthma or kidney issues who were being placed in solitary while they had COVID-19 — actively experiencing shortness of breath, blurry vision, migraine headaches,” said Sarah Decker with RFK Human Rights, in an interview with The Lens. “They’re locked in these cells where, you know, there’s a little food slot. And that’s the medical visit that they receive every day. Nobody’s checking their pulse or their oxygen levels.”

(C) Where Cold, Quiet, And Emptiness Come Together - By Cesar Villa

Cesar Villa wrote this essay in 2013 while in his twelfth year of solitary confinement in the Pelican Bay Security Housing Unit (“SHU”). Like thousands of others in California prisons, Villa had been placed in solitary indefinitely after being “validated” as a gang member on questionable evidence. A longer version of this piece, which traces the gradual breakdown of the mind and spirit in isolation, appears in the book of 2016 “Hell Is a Very Small Place”:

“Nothing can really prepare you for entering the SHU. It’s a world unto itself where cold, quiet and emptiness come together, seeping into your bones, then eventually the mind. The first week I told myself: It isn’t that bad, I could do this. The second week, I stood outside in my underwear shivering as I was pelted with hail and rain. By the third week, I found myself squatting in a corner of the yard, filing fingernails down over coarse concrete walls. My sense of human decency dissipating with each day. At the end of the first year, my feet and hands began to split open from the cold. I bled over my clothes, my food, between my sheets. Band-

aids were not allowed, even confiscated when found. My sense of normalcy began to wane after just 3 years of confinement. Now I was asking myself, can I do this? Not sure about anything anymore. Though I didn't realize it at the time—looking back now—the unraveling must've begun then. My psyche had changed—I would never be the same. The ability to hold a single good thought left me, as easily as if it was a simple shift of wind sifting over tired, battered bones.”

(D) The War Of All Against All - By Thomas Bartlett Whitaker

Bartlett Whitaker has been held in solitary confinement for more than 12 years. He describes the impact of living in isolation while awaiting execution. The title of his piece comes from the description that 17th-Century English philosopher Thomas Hobbes gave to human existence in a state of nature. The founder of a blog for prison writing and winner of several awards for his own writing from prison, Whitaker also contributed a (different) essay to “*Hell Is a Very Small Place*”:

“It's not always easy to see how this place creeps up on you...It twists you up in contradictions. I have to stalk myself almost constantly, to make sure that I don't say or do anything dishonorable. I was messed up when I came here, and in many ways I have far more self-control. But at the same time, I feel frayed, like I've been living in the face of this sandstorm for 11 years, and it's worn my soul down to a pathetic little nub. They don't really kill you when they give you a date. You are pretty much already dead by that point...This place ruins people. Some it makes insane. Some, like me, it forces to go so deep that they aren't ever able to crawl back out again. Some people get so hard that discipline simply can't ever imprint on them again...The irony is that they built these places to house a theoretical super-predator that didn't really exist at the time, and ended up actually building that very individual...[The men on death row] have seen through that to the truth, that it's just one group applying power over another, and this just makes them laugh. Once you truly see the world as bellum omnium contra omnes [the war of all against all] you don't ever really come back from that.”

(E) A report from the United Nations Human Rights office at Geneva -

On February 28, 2020, from the office of the Commissioner, United Nations Human Rights, it has been reported that in the United States, there is a prolonged solitary confinement amounts to psychological torture. A UN human rights expert has voiced alarm at the excessive use of solitary confinement by correctional facilities in the United States.

“For years, my mandate has raised concerns about the worldwide overuse of solitary confinement which is subject to widespread arbitrariness”, said Nils Melzer, UN Special

Rapporteur on torture. "My predecessor, Prof. Juan Mendez, has compellingly shown the extent to which such practices could amount to torture."

Nils Melzer, UN Special Rapporteur further stated that "Most recently, the practices of the Connecticut Department of Corrections ("**the DOC**") have been brought to my attention."

"The DOC appears to routinely resort to repressive measures, such as prolonged or indefinite isolation, excessive use of in-cell restraints and needlessly intrusive strip searches," the expert said. "There seems to be a State-sanctioned policy aimed at purposefully inflicting severe pain or suffering, physical or mental, which may well amount to torture."

These de-humanizing conditions of detention, sometimes euphemistically referred to as "segregation," "secure housing," the "hole" or "lockdown," are routinely used by US correctional facilities, particularly against inmates designated as "high risk" due to previous gang affiliations, behavior abnormalities or mental conditions.

"These practices trigger and exacerbate psychological suffering, in particular in inmates who may have experienced previous trauma or have mental health conditions or psychosocial disabilities," Melzer noted.

The severe and often irreparable psychological and physical consequences of solitary confinement and social exclusion are well documented and can range from progressively severe forms of anxiety, stress, and depression to cognitive impairment and suicidal tendencies.

"This deliberate infliction of severe mental pain or suffering may well amount to psychological torture," the Special Rapporteur said.

Inflicting solitary confinement on those with mental or physical disabilities is prohibited under international law. Even if permitted by domestic law, prolonged or indefinite solitary confinement cannot be regarded as a "lawful sanction" under the Mandela Rules.

The Mandela Rules, updated in 2015, are a revised minimum standard of UN rules that defines solitary confinement as "the confinement of prisoners for 22 hours or more a day without meaningful human contact." Solitary Confinement may only be imposed in exceptional circumstances, and "prolonged" Solitary Confinement of more than 15 consecutive days is regarded as a form of torture.

"The Mandela Rules reinforce human rights principles, including the recognition of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment and effective guidance to national prison administrations for persons deprived of their liberty," Melzer said.

VI. GROWING MOVEMENT FOR REFORM OF SOLITARY CONFINEMENT IN THE UNITED STATES

(A) Restricting the Use of Solitary Confinement Act

On January 04, 2021, on the first session of 117th Congress³ at the House of Representatives, Mrs. Watson Coleman introduced a Bill which was referred to the Committee on the Judiciary. This Bill would amend title 18 of the US Code to restrict the use of solitary confinement for incarcerated individuals unless there is reasonable cause to believe that substantial and immediate serious harm to another exists. Every correctional facility must establish standards compliant with this law. Solitary Confinement would only be used for disciplinary reasons. An individual placed in Solitary Confinement would have mental/medical examinations before, right to a hearing within 72 hours of placement with counsel, and daily evaluations by a clinician. Those with medical conditions would be placed in a medical facility instead of Solitary Confinement. Individuals are not allowed to be in Solitary Confinement for longer than 15 consecutive days or more than 20 days during a 60 day period. This Bill would require administrators to review placement every 15 days and require access to basic necessities such as food and water. Lastly, it has been mentioned that upon the enactment of this Bill into Law, this Act may be cited as the “Restricting the Use of Solitary Confinement Act”.

(B) Status of the Bill

Introduced in House - 01/04/2021

Referred to the House Committee on the Judiciary. - 01/04/2021

Referred to the Subcommittee on Crime, Terrorism, and Homeland Security. - 03/04/2021

Current status – Awaiting Voting by the full chamber on the bill.

Other states of the United States who took action on limiting the Solitary Confinement so far

(A) New York Senate moves to limit Solitary Confinement

State Assembly members voted to pass the Humane Alternatives to Long-Term Solitary Confinement Act (“HALT”) to limit the time an incarcerated person can spend in a segregated confinement in a state prison. On April 01, 2021, Governor Andrew M. Cuomo signed the HALT Solitary Confinement Act into law, reforming the practice of segregated confinement in New York State correctional facilities. This legislation limits the amount of time an incarcerated person can spend in segregated confinement to 15 days, clearly defines and reduces the number of disciplinary infractions eligible for segregated confinement, and

³ <https://www.congress.gov/bill/117th-congress/house-bill/176/text?r=3&cs=1>

exempts certain vulnerable populations, including the young, elderly, pregnant women, people with disabilities, and individuals with a serious mental illness. This legislation also establishes Residential Rehabilitation Units to provide incarcerated individuals with therapeutic and trauma-informed programming in a congregate setting. The expanded program model enacted by the HALT legislation will better address an individual's underlying criminogenic needs and provide greater rehabilitative impacts to change behavior, leading to positive outcomes for individuals transitioning back to the general population.

(B) Historic Connecticut Bill Limiting Use of Solitary Confinement Awaits Governor's Signature

The Connecticut legislature recently passed historic legislation that, if signed by Gov. Ned Lamont, would greatly decrease the time inmates can be held in solitary confinement, which goes by many names, including "administrative segregation." The United Nations special rapporteur on torture condemned Connecticut's practices as "a state-sanctioned policy aimed at purposefully inflicting severe pain or suffering that may well amount to torture."

The UN defines solitary confinement as torture after 15 days, but this proposed legislation mandates that, except in certain cases, all incarcerated people must be allowed to leave their cell at least 6.5 hours daily. Although both New York and New Jersey have recently passed laws limiting the use of solitary, the Connecticut bill known as The PROTECT Act — which stands for Promoting Responsible Oversight and Treatment, and Ensuring Correctional Transparency would implement new limitations on solitary confinement and increase support for Department of Correction staff, among other policies.

VII. CONCLUSION

The United States uses Solitary Confinement to an extent unequalled in any other democratic country. But this has not always been so. The current overuse of Solitary Confinement is a relatively recent development that all too frequently reflects political concerns rather than legitimate public safety needs. Based on decades of empirical research, we know that the human cost of increased physiological and psychological suffering caused by Solitary Confinement, coupled with the enormous monetary cost, far outweighs any purported benefits. Now, to build a fair, effective and humane criminal justice system, the legislators must work to limit its use overall and to ensure that mentally ill persons and youth are not subject to its deprivations.

The widespread use of Solitary Confinement in America's prisons undermines the nation's public health and safety and is a particularly traumatic element of mass incarceration. Legal

scholars and human rights advocates now recognize prolonged segregation as a form of torture, making it the most significant Eighth Amendment violation in US prisons. Although some states have dramatically reduced the number of people kept in segregation and achieved a reduction in violence, among other positive outcomes, other states continue to place large numbers of prisoners in solitary confinement and are resistant to change. Momentum is growing nationally to reduce solitary confinement in jails and prisons, motivated by the realization that it is overused, causes severe and lasting mental health consequences for prisoners and staff, costs much more than other modes of incarceration, and makes the prisons and the communities less safe. To bring about significant and lasting change, the legislators must acknowledge that disciplinary and administrative segregation are not simply an unintended consequence of overstretched correctional budgets and overcrowding. The United States' overuse of isolation has become a cornerstone of the nation's penal philosophy-----a choice to widely apply the harshest form of punishment across large segments of the incarcerated population. Widespread and lengthy solitary confinement has been universally denounced by international human rights and social justice organizations and restricted or abandoned by most developed democracies. Public health professionals have an ethical obligation to take the lead in insisting that governments replace reliance on this punitive correctional policy with modern models based on rehabilitation and restorative justice. It can be concluded that a "*big change is possible*". With the current growing reform movement from the past prisoners and the State's senators, governors and legislators across the nation, the Solitary Confinement practice will eventually get reformed in all 50 states in the United States.
