

SOLITARY CONFINEMENT: WHAT THE UNITED STATES
CAN LEARN FROM ENGLAND AND NORWAY

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INTRODUCTION

An eighteen-year-old teenager, Adam Brulotte, was arrested in Maine for burglary and aggravated assault in 2012.¹ He was sent to

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¹ See generally Anjali Tsui, *Does Solitary Confinement Make Inmates More Likely to Reoffend?*, FRONTLINE (Apr. 18, 2017),

Maine State Prison, after which he served a two-year sentence for violating his probation.² While in prison, Adam incited a riot in his cell block.³ His punishment: four months in solitary confinement.⁴ Still a young man, Adam spent twenty-three hours per day in an eight square meter cell with no natural light, no auditory or visual stimulation, and little contact with other human beings.⁵ He developed mental health issues and was frequently punished further for cutting himself, flooding his cell with toilet water, and pushing feces under his door.⁶ Each disciplinary infraction was met with more time in solitary confinement.⁷ After finally getting out of prison, Adam tried to lead a normal life. However, his time spent in solitary confinement negatively impacted his mental health, “[i]t leaves a scar on you that you won’t forget and you can’t heal . . . you get flashbacks and anxiety.”⁸ Adam was rearrested soon after his release for driving without a license, an assault, and failing to pay court fines.⁹

This story, while tragic, is not a rare occurrence throughout the United States. In 2012, there were on average 89,199 people held in solitary confinement on any given day.¹⁰ Twenty-four states released 10,000 of these prisoners directly from solitary confinement into the public in the same year.¹¹ In total, the number of persons held in state or federal prisons in the United States at year’s end in 2020 was approximately 1.215 million.¹² From 2008 to 2013, the number of

<https://www.pbs.org/wgbh/frontline/article/does-solitary-confinement-make-inmates-more-likely-to-reoffend/> [<https://perma.cc/T3FZ-ANA3>].

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Tsui, *supra* note 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ Valerie Kiebalá & Sal Rodríguez, *Solitary Confinement in the United States*, SOLITARY WATCH (2018), <https://solitarywatch.org/wp-content/uploads/2019/05/Solitary-Confinement-FAQ-2018-final.pdf> [<https://perma.cc/D8TB-X39V>].

¹¹ *24 States Released 10,000 Inmates Directly From Solitary To The Street*, THE CRIME REP. (June 12, 2015), <https://thecrimereport.org/2015/06/12/2015-06-from-solitary-to-street/> [<https://perma.cc/9FXB-SXB5>] [hereinafter *The Crime Report*].

¹² E. ANN CARSON, PRISONERS IN 2020 – STATISTICAL TABLES, BUREAU OF JUST. STAT. (Dec. 2021) (Note, however, that this number may actually be comparatively lower than it would have been had the pandemic not been “largely responsible for the decline in prisoners under state and federal correctional authority [between 2019 and 2020].”).

inmates held in solitary confinement while in federal prison, compared to the total prison population, rose 17%, almost triple the 6% rise in federal incarceration rates during the same period.¹³ Although these may appear to be numbers, each one represents a story similar to Adam's.

There is no question that there is a correlation between time spent in solitary confinement and mental health issues.¹⁴ In fact, as far back as 1890 the Supreme Court recognized the deleterious effect of solitary confinement:

This matter of solitary confinement is not . . . a mere unimportant regulation as to the safe-keeping of the prisoner [E]xperience [with the penitentiary system of solitary confinement] demonstrated that there were serious objections to it. 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.¹⁵

For many inmates housed in solitary confinement, the isolation and utter lack of interaction with any other person can cause “either severe exacerbation or recurrence of preexisting illness, or the appearance of an acute mental illness in individuals who had previously been free of any such illness.”¹⁶

It is problematic enough that in the United States, 68% of former inmates are arrested within three years of leaving prison.¹⁷ Even more shocking, 83% are rearrested within nine years of their initial release.¹⁸ The recidivism rate grows even further when looking only at inmates who are released after spending time in solitary confinement.

¹³ David H. Cloud, Ernest Drucker, Angela Browne & Jim Parsons, *Public Health and Solitary Confinement in the United States*, 105(1) AM. J. PUB. HEALTH 18 (2015).

¹⁴ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 WASH. U. J.L. & POL'Y 325, 327 (2006).

¹⁵ *In re Medley*, 134 U.S. 160, 167-68 (1890).

¹⁶ Grassian, *supra* note 14, at 333.

¹⁷ MARIEL ALPER, MATTHEW R. DUROSE & JOSHUA MARKMAN, 2018 UPDATE ON PRISONER RECIDIVISM: A 9-YEAR FOLLOW-UP PERIOD (2005-2014), U.S. DEP'T OF JUST., BUREAU OF JUST. STAT. (May 2018).

¹⁸ *Id.* (This statistic was measured between 2005 and 2014.).

Recidivism is the rate at which prior inmates reoffend.¹⁹ One study shows that being placed in solitary confinement, for *any* amount of time, makes an inmate 1.67 times more likely to reoffend.²⁰

On the surface, one can quickly see how spending most, if not all, of a day in complete isolation does not have a rehabilitative effect. Not only does it typically lead to the creation or exacerbation of mental illness, it deprives the inmate of most of the programs that prisons run in order to rehabilitate its prisoners, such as education and employment opportunities.²¹ Without access to these programs, prisoners are released back into society without the time, resources, and support needed to adapt to their life outside of prison.²²

There are a number of other jurisdictions around the world that use solitary confinement similarly to how it is used in the United States. The two that this Note will focus on are England (for purposes of this Note, “England” will encompass England and Wales) and Norway. This Note will analyze and compare these two countries’ systems to that in the United States for a couple of reasons. The United States is generally seen as a country that houses many of its prisoners in solitary confinement; furthermore, the conditions of solitary confinement in the United States are generally perceived as harsh.²³ On the other hand, Norway is typically considered a country that is at the forefront of prison reform.²⁴ Its focus on rehabilitation and restorative justice has led it to have one of the lowest recidivism rates in the world at

¹⁹ *Recidivism*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/recidivism> [https://perma.cc/9A9T-YTHB] (last visited Sept. 25, 2022).

²⁰ Mimosa Luigi, Laura Dellazizzo, Charles-Édouard Giguère, Marie-Hélène Goulet, Stéphane Potvin & Alexandre Dumais, *Solitary Confinement of Inmates Associated With Relapse Into Any Recidivism Including Violent Crime: A Systematic Review and Meta-Analysis*, 23 TRAUMA, VIOLENCE & ABUSE 444, 446 (2020).

²¹ See *Practice Profile: Rehabilitation Programs for Adult Offenders*, NAT’L INST. JUST. (Feb. 11, 2020), <https://crimesolutions.ojp.gov/ratedpractices/101#pd> [https://perma.cc/5HQL-MEFK].

²² See Gordon B. Dahl & Magne Mogstad, *The Benefits of Rehabilitative Incarceration*, NAT’L BUREAU ECON. RSCH. (Mar. 2020), <https://www.nber.org/reporter/2020number1/benefits-rehabilitative-incarceration> [https://perma.cc/Q9J3-RFYL].

²³ Elizabeth Vasiliades, *Solitary Confinement and International Human Rights: Why the U.S. Prison System Fails Global Standards*, 21 AM. U. INT’L L. REV. 71, 72 (2005).

²⁴ Janelle Guthrie, *Looking to Norway for Inspiration on Reducing the Use of Solitary Confinement*, VERA INST. OF JUST. (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/SES9-CUAH].

20%.²⁵ Norway also “equips its prisoners with education-based knowledge and labor skills that . . . improves their personal lives” through the job-training programs it offers to its inmates.²⁶ Due to these programs, Norway has a much higher rate of employment for previously incarcerated individuals.²⁷ Lastly, there is a stark contrast in the conditions of these units compared to the United States.²⁸ For example, in Norway, medical staff are required to examine inmates periodically throughout their time in solitary confinement to confirm that they are “physically and mentally healthy enough to continue solitary confinement.”²⁹

By comparison, England employs a system somewhere between that of Norway and the United States. While England has the second highest incarceration rate in Western Europe, its incarceration rate lies between the United States and Norway (United States: 629 per 100,000; England: 131 per 100,000; Norway: 56 per 100,000) and it employs solitary confinement in much the same way as the United States.³⁰ However, England’s system differs from that in the United

²⁵ Liz Benecchi, *Recidivism Imprisons American Progress*, HARV. POL. REV. (Aug. 8, 2021), <https://harvardpolitics.com/recidivism-american-progress/> [<https://perma.cc/6WUC-7W7U>].

²⁶ Bolorzul Dorjsuren, *Norway’s Prison System Benefits Its Economy*, THE BORGEN PROJECT (Nov. 6, 2020), <https://borgenproject.org/norways-prison-system/> [<https://perma.cc/68PY-36JS>].

²⁷ *Id.*

²⁸ *See id.* (For example, Norway does not have specific requirements for how small the cell must be, rather they created open style cells that resemble dorm rooms.)

²⁹ JUAN E. MÉNDEZ, ALEXANDER PAPACHRISTOU, ERIC ORDWAY, AMY FETTIG & SHARON SHALEV, *SEEING INTO SOLITARY: A REVIEW OF THE LAWS AND POLICIES OF CERTAIN NATIONS REGARDING SOLITARY CONFINEMENT OF DETAINEES* 41 (2016), https://www.weil.com/-/media/files/pdfs/2016/un_special_report_solitary_confinement.pdf [<https://perma.cc/E85J-YTD6>] [hereinafter *SEEING INTO SOLITARY*].

³⁰ *See* PRISON REFORM TRUST, *PRISON: THE FACTS* 8 (2019), http://www.prison-reformtrust.org.uk/wp-content/uploads/old_files/Documents/Bromley%20Briefings/Prison%20the%20facts%20Summer%202019.pdf [<https://perma.cc/5D5D-K742>]; *United Kingdom: England & Wales*, WORLD PRISON BRIEF, <https://www.prisonstudies.org/country/united-kingdom-england-wales> [<https://perma.cc/XUV2-J37H>] (last visited Sept. 25, 2022); *Norway*, WORLD PRISON BRIEF, <https://www.prisonstudies.org/country/norway> [<https://perma.cc/A8P3-GZUP>] (last visited Sept. 25, 2022); *United States of America*, WORLD PRISON BRIEF, <https://www.prisonstudies.org/country/united-states-america> [<https://perma.cc/9V3A-VFEE>] (last visited Sept. 25, 2022); *SEEING INTO SOLITARY*, *supra* note 29, at 22 (This means that solitary confinement can be imposed on an inmate for administrative, punitive, and protective. However, while in both England and the United States solitary confinement can be imposed for similar

States in important ways.³¹ England is committed to improving the quality of staff-prisoner relationships,³² it has a robust system of prison oversight,³³ and it provides prisoners with mental health issues the support they need while housed in solitary confinement.³⁴

No system of solitary confinement is perfect however, there are still aspects of the systems employed in England and Norway that, if adopted, can improve the United States system of solitary confinement. In the United States, there is a clear disconnect between the punishment of solitary confinement that is being meted out on inmates and their rehabilitation.³⁵ This is due, in no small part, to the degrading conditions, lack of access to rehabilitative opportunities and programming, adverse mental health effects fostered by time spent in solitary confinement, and the lack of adequate support for inmates.³⁶ The increasing prevalence of solitary confinement in the United States, coupled with the negative impact it has on inmates, indicates that reform is needed. This Note will argue that the United States can and should reform its system of solitary confinement by adopting important aspects of the solitary confinement systems in both England and Norway, such as their robust domestic oversight and their focus on rehabilitation. By doing so, the United States can try to curb the negative effects of solitary confinement.

In Part I, this Note will introduce solitary confinement in the United States, its history, and what it looks like today. Part II of this Note will focus on the effects that solitary confinement has on prisoners in the United States. Parts III and IV examine solitary confinement in England and Norway and how these systems differ in important ways from the United States. Finally, Part V concludes by stating that

reasons, the rules around actually putting an inmate in solitary confinement for those reasons can be very different.)

³¹ PRISON REFORM TRUST, *supra* note 30, at 3 (Forty-eight percent of adults are reconvicted of another offense within one year of release in England and Wales.).

³² SEEING INTO SOLITARY, *supra* note 29, at 13.

³³ See Elisa Mosler, *Solitary Confinement in Great Britain: Still Harsh, But Rare*, SOLITARY WATCH (Jan. 19, 2012), <https://solitarywatch.org/2012/01/19/solitary-confinement-in-great-britain-still-harsh-but-rare/> [<https://perma.cc/F9EH-KUEN>].

³⁴ SEEING INTO SOLITARY, *supra* note 29, at 24 (“In England, inmates can be placed into protective solitary confinement in order to identify risks and develop risk management strategies and to diagnose and provide support for prisoners with mental health needs and to arrange for the delivery of suitable treatments. Moving prisoners into solitary cells allow prison staff to deliver individually tailored regimes to such detainees.”).

³⁵ Luigi, Dellazizzo, Giguère, Goulet, Potvin & Dumais, *supra* note 20.

³⁶ See Grassian, *supra* note 14, at 346; Benecchi, *supra* note 25.

the United States should adopt aspects of the solitary confinement systems in England and Norway in order to help combat its negative effects.

I. WHAT IS SOLITARY CONFINEMENT?

A. *The History of Solitary Confinement in the United States*

The use of solitary confinement in the United States can be traced back to the beginning of the penitentiary system in the nineteenth century.³⁷ The first American penitentiaries were implemented by the Quakers as a way for criminals to reflect on their crimes and repent for them.³⁸ The first prisons constructed by the Quakers housed prisoners in individual rooms to advance their goals of reflection and repentance.³⁹ By the time Gustave de Beaumont and Alexis de Tocqueville visited the Eastern State Penitentiary in Philadelphia in the early nineteenth century, solitary confinement was a dominant method of imprisonment.⁴⁰ While there, de Tocqueville remarked on the state of the inmates being held in the solitary confinement units:

The unfortunates, on whom this experiment was made, fell into a state of depression, so manifest, that their keepers were struck with it; their lives seemed in danger, if they remained longer in this situation; five of them, had already succumbed during a single year; their moral state was not less alarming; one of them had become insane; another, in a fit of despair,

³⁷ Vasiliades, *supra* note 23, at 73.

³⁸ Andrew Leon Hanna, *Solitary Confinement in America*, 21 U. PA. J. CONST. L. ONLINE 1, 7 (2019).

³⁹ Nan D. Miller, *International Protection of the Rights of Prisoners: Is Solitary Confinement in the United States a Violation of International Standards?*, 26 CAL. W. INT'L L.J. 139, 155 (1995). Quakers are a people who belong to a historically Protestant Christian set of denominations who were a relatively prominent religious group in the United States in the 18th and 19th Centuries. The Quakers believed that people engaged in crime because they had "fallen away from God" and needed time alone (in solitary confinement) to reconnect with God and reflect on their sins.

⁴⁰ Sarah Childress, *Craig Haney: Solitary Confinement is a "Tried-and-True" Torture Device*, FRONTLINE (Apr. 22, 2014), <https://www.pbs.org/wgbh/frontline/article/craig-haney-solitary-confinement-is-a-tried-and-true-torture-device/> [<https://perma.cc/2H3S-YW78>]. Alexis de Tocqueville was a French aristocrat, diplomat, political scientist, political philosopher, and historian. He is best known for his works *Democracy in America* and *The Old Regime and the Revolution*. In both, he analyzed the living standards and social conditions of individuals as well as their relationship to the market and state in Western societies. Gustave de Beaumont was a French magistrate, prison reformer, and de Tocqueville's travel companion during his visits to the United States.

had embraced the opportunity, when the keeper brought him something, to precipitate himself from his cell, running the almost certain chance of a mortal fall.⁴¹

However, this set-up was abandoned after the Quakers observed the severe effects that prolonged solitude had on the inmates.⁴² A few decades after de Beaumont and de Tocqueville's inspection of the solitary confinement units in Philadelphia, fewer and fewer prisons in the United States were using such methods. By the end of the nineteenth century, most prisons reserved the placement of an inmate into solitary confinement only for disciplinary infractions.⁴³ Even the Supreme Court found that solitary confinement was a "terror and peculiar mark of infamy"⁴⁴ and was "too severe" to be widely used.⁴⁵

After almost a century of limited solitary confinement in American prisons, the 1970s brought an explosion in the use of solitary confinement.⁴⁶ Two trends account for this: the exponential growth in the prison population and the move away from the penal philosophy of rehabilitation and towards an emphasis on punishment.⁴⁷ The rate of incarceration in the United States remained steady for the fifty-year period between 1925 and 1975.⁴⁸ However, beginning in 1975, the prison population exploded and quintupled from 1975 to 2000. Most state prison systems doubled in size and then doubled again during this time period, without a similar increase in resources to help accommodate the influx of prisoners.⁴⁹ Furthermore, this was coupled with a general abandonment of the penal system's previous commitment to rehabilitation.⁵⁰ Prisons now operated under a new philosophy: prison was meant to punish the offender and nothing else.⁵¹ This new penal philosophy stemmed initially from the influx of prisoners, which, in

41 GUSTAVE DE BEAUMONT, ALEXIS DE TOCQUEVILLE & FRANCIS LIEBER, ON THE PENITENTIARY SYSTEM IN THE UNITED STATES AND ITS APPLICATION IN FRANCE 5 (Philadelphia, Carey, Lea & Blanchard eds., 1833).

42 *Id.*

43 Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 CRIME & DELINQ. 124, 125 (2003).

44 *In re Medley*, 134 U.S. 160, 170 (1890).

45 *Id.* at 168.

46 Haney, *supra* note 43, at 127.

47 *Id.* at 127-28.

48 *Id.*

49 *Id.*

50 *Id.* (Prisons in the US had previously provided "educational, vocational, and therapeutic programming in the name of rehabilitation[.]").

51 *Id.*

turn, created numerous other problems.⁵² More prisoners meant more tension and violence between inmates. This, combined with the new-found penal philosophy, meant that prison administrators typically turned to harsher punishment for even minor infractions of prison rules as a deterrent.⁵³

All of these factors birthed the modern American “supermax” prison system in the 1980s.⁵⁴ In the two decades following, over forty-four states established supermax prisons.⁵⁵ Supermax prisons are characterized by their housing of the “worst of the worst” in “permanent lockdown mode, with inmates placed in single-cell confinement and having few if any privileges.”⁵⁶ Supermax prisons were a completely different institution than the maximum security prisons that had already been established in the United States. As Chase Riveland, former Secretary of the Washington State Department of Corrections, noted in 1999 when writing for the National Institute of Corrections regarding supermax facilities: “seldom have those prisons operated on a total lockdown basis as normal routine. Even prisons designated as maximum security have generally allowed movement, inmate interaction, congregate programs, and work opportunities.”⁵⁷ Supermax prisons and the solitary confinement model remain an integral part of the American penal system that has remained practically unchanged over the last few decades.⁵⁸

B. *What Solitary Confinement in the United States Looks Like Today*

Solitary confinement regimes go by many different names depending on where you are in the United States. In California, long-term solitary confinement is known as Security Housing Units

⁵² Haney, *supra* note 43, at 128.

⁵³ *Id.*

⁵⁴ *Id.* at 127-28.

⁵⁵ Daniel P. Mears & William D. Bales, *Supermax Incarceration and Recidivism*, 47 CRIMINOLOGY 1131, 1132 (2009).

⁵⁶ *Id.*

⁵⁷ CHASE RIVELAND, SUPERMAX PRISONS: OVERVIEW AND GENERAL CONSIDERATIONS 5 (U.S. Dep’t of Just.: Nat’l Inst. of Corr. ed., 1999), https://www.prisonpolicy.org/scans/NIC_014937.pdf [<https://perma.cc/7MXE-G4BH>].

⁵⁸ Jesenia M. Pizzaro & Vanja M. K. Stenius, *Supermax Prisons: Their Rise, Current Practices, and Effect on Inmates*, 84 THE PRISON J. 248, 251 (2004).

(“SHUs”).⁵⁹ In New York, they are called Special Housing Units.⁶⁰ In the federal prison system, one type of solitary confinement is known as Special Management Units, while another is called Communications Management Units.⁶¹ Ultimately, they are all referring to the same thing: a small cell where the prisoner is separated from the general prison population and is without meaningful human contact for twenty-two to twenty-four hours per day.⁶² In the federal prison system, inmates held in solitary spend two days per week in complete isolation and twenty-three hours per day, five days per week in isolation, with one hour per day of “exercise” in a small, fenced-in pen.⁶³

The typical solitary cell is sixty to eighty square feet with a narrow bed, sink, toilet, and, if the prisoner is lucky, a small slit for a window and a metal desk.⁶⁴ SHUs in California are devoid of natural light and are painted entirely white.⁶⁵ Most solitary confinement cells are sealed with a large steel door, equipped with a narrow slot on the bottom through which the inmate’s food is passed.⁶⁶ Bright unnatural light is typically left on throughout the day and night, making it difficult to sleep and adding to the inmate’s disorientation.⁶⁷ The more modern solitary units are equipped with a wide array of electronic monitoring equipment to further reduce face-to-face interaction with the inmate.⁶⁸ Before an inmate is taken from their cell to either the showers or to their exercise cage, the inmate’s hands, feet, and waist are shackled so the individual can do little more than shuffle through the prison’s halls.⁶⁹ Most inmates suffer through these conditions for years without reprieve. In the federal system, as well as in more than

⁵⁹ Angelica Scott, *Security Housing Units*, PRISON WORLD WORDS: A LEXICON (Oct. 30, 2018), <https://prisonworldwords.wordpress.com/2018/10/30/security-housing-units/> [<https://perma.cc/2G4W-CMH4>].

⁶⁰ See generally Rosa Goldensohn and Reuven Blau, *Cuomo’s Solitary Confinement ‘Overhaul’ Delayed Another Year*, THE CITY (Sept. 8, 2020, 8:27 PM) <https://www.thecity.nyc/justice/2020/9/8/21428284/cuomo-solitary-confinement-prison-new-york-state> [<https://perma.cc/FC8U-T7LJ>].

⁶¹ THE CRIME REPORT, *supra* note 11.

⁶² *Id.*

⁶³ ACLU BRIEFING PAPER: THE DANGEROUS OVERUSE OF SOLITARY CONFINEMENT IN THE UNITED STATES 3 (2014).

⁶⁴ Cloud, Drucker, Browne & Parsons, *supra* note 13.

⁶⁵ SEEING INTO SOLITARY, *supra* note 29, at 43 n.67.

⁶⁶ Cloud, Drucker, Browne & Parsons, *supra* note 13.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

nineteen different states, inmates can be held in solitary confinement indefinitely.⁷⁰

There are three main reasons why a prisoner is placed into solitary confinement: punitive, administrative, and protective.⁷¹ The use of solitary confinement as a disciplinary tool is one of, or the only, reason a prisoner is placed there.⁷² In many jurisdictions in the United States, solitary confinement is used as a punishment when inmates violate prison regulations.⁷³ In a minority of jurisdictions, such as in Colorado, punishment is the *only* reason a prisoner can be placed into solitary confinement.⁷⁴ On the other hand, in Texas, a prisoner cannot be placed into solitary confinement for disciplinary reasons.⁷⁵

Administrative reasons for placing a prisoner in solitary confinement typically have to do with limited beds and/or cells to house prisoners regularly, such as in Pennsylvania, or when a prisoner comes to prison for the first time, such as in Florida.⁷⁶ Administrative solitary confinement can be the longest-lasting of the three reasons due to the fact that it is typically imposed by the prison administrators themselves, and the length of the prisoner's stay in solitary is determined solely by the correctional staff.⁷⁷

The final reason that a prisoner is typically placed into solitary confinement is for protective purposes. This refers to a prisoner whom the correctional staff believes is in need of protection from the general prison population, and is placed in protective isolation until the staff feels it is no longer needed.⁷⁸ For example, juveniles who are tried as adults are typically placed in protective solitary confinement when they arrive at prison to protect them from the adults in the general prison population.⁷⁹ In California, inmates may be moved into solitary confinement if they are a relative or associate of a prison staff member for their protection. In Pennsylvania, inmates who have been identified as being sexually abused or are at risk for sexual victimization

⁷⁰ *Id.*

⁷¹ SEEING INTO SOLITARY, *supra* note 29, at 22.

⁷² *Id.*

⁷³ *Id.* at 23.

⁷⁴ *Id.* at 22.

⁷⁵ *Id.* at 22 n.11.

⁷⁶ *Id.* at 26.

⁷⁷ Maureen L. O'Keefe, *Administrative Segregation from Within*, 88 THE PRISON J. 123, 126 (2008).

⁷⁸ SEEING INTO SOLITARY, *supra* note 29, at 24.

⁷⁹ Shira E. Gordon, *Solitary Confinement, Public Safety, and Recidivism*, 47 U. MICH. J.L. REFORM 495, 496 (2014).

may be placed in solitary confinement as a means of protection.⁸⁰ These examples are illustrative of various reasons why an inmate may be placed into protective solitary confinement and are just a few among many.

C. *The United States Penal System's Oversight of Solitary Confinement*

The United States remains an “anomaly on the world stage” when it comes to prison oversight.⁸¹ Most of the Western World recognizes that in order to protect human rights and the dignity of inmates, there needs to be transparent and routine monitoring of prison conditions.⁸² For example, most countries that are members of the European Union have created a government entity that is designated as a “National Preventive Mechanism,” designed to inspect all detention facilities and publicly report on their findings.⁸³ In fact, countries that have adopted the United Nations Optional Protocol for the Convention Against Torture (such as England and Norway)⁸⁴ are *required* to have a National Preventive Mechanism (“NPM”) in place to “monitor conditions and the treatment of people held in all detention facilities.”⁸⁵ For example, England is often lauded as having the “gold standard”⁸⁶ for correctional oversight. A large reason for this is that it employs a three-tiered system of oversight that works hard to not only react to specific prisoner complaints and prison malfeasance but also to anticipate future harms and work to prevent them from occurring.⁸⁷ This oversight body is maintained and administered by Her Majesty’s Inspectorate of Prisons (“HMIP”).⁸⁸ Unfortunately, most states in the United States do not have entities such as these. The few states that have created oversight

⁸⁰ SEEING INTO SOLITARY, *supra* note 29, at 24.

⁸¹ Michele Deitch, *Independent Oversight is Essential for a Safe and Healthy Prison System*, BRENNAN CTR. FOR JUST. (Nov. 3, 2021), <https://www.brennan-center.org/our-work/analysis-opinion/independent-oversight-essential-safe-and-healthy-prison-system> [<https://perma.cc/V2FG-ZDDL>].

⁸² *Id.*

⁸³ *Id.*

⁸⁴ G.A. Res. 57/199, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3 (Dec. 18, 2002).

⁸⁵ Michele Deitch, *But Who Oversees the Overseers?: The Status of Prison and Jail Oversight in the United States*, 47 AM. J. CRIM. L. 207, 224 (2020).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *What We Do*, HM INSPECTORATE OF PRISONS, <https://www.justiceinspectors.gov.uk/hmiprisons/about-hmi-prisons/> [<https://perma.cc/35EC-KY98>] (July 18, 2022).

bodies struggle to give them power akin to their European counterparts, such as regular and unannounced visitation rights and the power to proactively solve problems.⁸⁹

This proactive-reactive distinction between the U.S. prison oversight bodies and their European counterparts is an important one. It can be explained somewhat by the legal history of prison oversight. Over the past forty-plus years in the United States, the federal court system has served as the front line for external correctional oversight for prisons and jails.⁹⁰ American courts have long served as the “bulwark against unlawful conditions of confinement.”⁹¹ However, this system of court management makes the oversight inherently reactive. The courts themselves do not continuously monitor prison conditions, speak to prisoners about complaints they may have, and recommend changes designed to prevent future harm (as HMIP does in England). Instead, they are only called into action when a case is brought before them, i.e. when an infraction has already occurred. While these same courts can appoint “special masters or monitors to ensure compliance with reform efforts,” these appointments only come after prisoners are harmed.⁹² This may serve to prevent some future harm of the sort that had already occurred, but the United States system is still reacting to new harms instead of being proactive. Furthermore, even if court-ordered reforms are put in place, such court-ordered supervision is “only temporary, which creates the potential for conditions to backslide to their previous unconstitutional state once the court ends its jurisdiction in the case.”⁹³ In contrast, as is discussed in further detail in Part III (C) below, oversight bodies in England can enter prison within its jurisdiction at any time, regardless of whether the prison was aware of its pending visit, and can subsequently raise concerns and recommendations designed to prevent harm before it occurs.⁹⁴ These recommendations are almost always, 95% of the time, followed.⁹⁵

Lastly, one of the “greatest obstacle[s]”⁹⁶ to reliance on courts for prison oversight in the United States is the Prison Litigation Reform

⁸⁹ *Id.* at 226.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Deitch, *supra* note 85, at 227.

⁹⁴ See *About Our Inspections*, HM INSPECTORATE OF PRISONS, <https://www.justiceinspectorates.gov.uk/hmiprisons/about-our-inspections/> [<https://perma.cc/5JTX-SMM2>] (July 18, 2022).

⁹⁵ Owers, *infra* note 179, at 8.

⁹⁶ Deitch, *supra* note 85, at 227.

Act (“PLRA”),⁹⁷ which was passed in 1996 in order to “decrease the number of ‘frivolous’ lawsuits brought by incarcerated persons against correctional administrators.”⁹⁸ The PLRA introduced provisions that not only reduced the number of prisoners’ rights cases that were brought before the courts,⁹⁹ it also lowered the chance of getting a successful outcome for the plaintiff and limited the oversight that can take place thereafter.¹⁰⁰ Some of the specific provisions of the PLRA that are most criticized are as follows: (1) plaintiffs must exhaust all administrative remedies before filing a lawsuit in court;¹⁰¹ (2) plaintiffs must pay court filing fees in full (even if they are deemed indigent);¹⁰² (3) incarcerated people cannot receive compensation for mental or emotional injuries sustained while they are incarcerated unless they also demonstrate physical injuries;¹⁰³ and (4) courts may bar an incarcerated person from filing future lawsuits or appeals after a determination that he or she has previously filed three “frivolous” claims.¹⁰⁴ The result of the PLRA has caused the number of people incarcerated to swell and the number of cases that courts hear to dip drastically.¹⁰⁵ This legislation is especially worrisome for people housed in solitary confinement, as they are generally the most vulnerable inmates and face the most degrading conditions.¹⁰⁶

In sum, the current predominant oversight system in the United States remains behind that employed by most European countries, especially England. Adopting a system more closely aligned with the

⁹⁷ Prison Litigation Reform Act, 28 U.S.C. § 1915(g).

⁹⁸ Andrea Fenster & Margo Schlanger, *Slamming the Courthouse Door: 25 Years of Evidence for Repealing the Prison Litigation Reform Act*, PRISON POL’Y INITIATIVE (Apr. 26, 2021), https://www.prisonpolicy.org/reports/PLRA_25.html [<https://perma.cc/LDT4-AJP5>].

⁹⁹ Margo Schlanger & Giovanna Shay, *Preserving the Rule of Law in America’s Jails and Prisons: The Case for Amending the Prison Litigation Reform Act*, 11 U. PA. J. CONST. L. 139, 141-42 (2008) (lawsuits filed per 1,000 prisoners dropped by 60% in the decade after the PLRA was enacted).

¹⁰⁰ *Id.*

¹⁰¹ Lynn S. Branham, *Toothless in Truth? The Ethereal Rational Basis Test and the Prison Litigation Reform Act’s Disparate Restrictions on Attorneys’ Fees*, 89 CALIF. L. REV. 999, 1003 (2001).

¹⁰² *Id.*

¹⁰³ Schlanger & Shay, *supra* note 99, at 143.

¹⁰⁴ Giovanna Shay & Joanna Kalb, *More Stories of Jurisdiction-Stripping and Executive Power: Interpreting the Prison Litigation Reform Act (PLRA)*, 29 CARDOZO L. REV. 291, 301 (2007).

¹⁰⁵ Schlanger & Shay, *supra* note 99, at 141-42.

¹⁰⁶ See Michele Deitch, *Special Populations and the Importance of Prison Oversight*, 37 AM. J. CRIM. L. 291, 296-302 (2010).

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transparency and proactive thinking showcased by HMIP will go a long way in improving the conditions of solitary confinement for inmates in the United States, as well as preventing future problems for them.

II. THE EFFECTS OF SOLITARY CONFINEMENT ON INMATES IN THE UNITED STATES

A. *Adverse Mental Health Effects on Inmates Housed in Solitary Confinement*

Solitary confinement exacerbates the issues previously discussed in Part I(A), especially with respect to mental health.¹⁰⁷ In fact, studies suggest that solitary confinement leads to a unique and intense form of “acute dissociative, confusional psychoses” that are “a rare phenomenon in psychiatry.”¹⁰⁸ Inmates who spend time in solitary confinement usually do not have access to any mental health treatment such as therapists or doctors, even if the prison that they are being housed in does have such professionals on staff.¹⁰⁹ This is troubling because a disproportionate number of inmates who are housed in solitary confinement have been diagnosed with a mental illness, and spending any length of time in solitary confinement only serves to either exacerbate preexisting mental conditions or create new mental health issues.¹¹⁰ One of the largest factors that lead to an inmate being placed into solitary confinement is not adhering to prison rules, no matter how innocuous the rules may seem.¹¹¹ Some of the more innocuous reasons an inmate could be placed into solitary confinement include: talking back, smoking, failing to report to work or school, refusing to return a food tray, or possessing an excess quantity of postage

¹⁰⁷ Grassian *supra* note 14, at 337

¹⁰⁸ *Id.*

¹⁰⁹ Haney, *supra* note 43, at 126.

¹¹⁰ *Id.* For other research that suggests various mental health problems specifically associated with time spent in solitary confinement, *see generally* Childress, *supra* note 40 (perceptual distortions and hallucinations); Richard Korn, *The Effects of Confinement in the High Security Unit at Lexington*, 15 SOC. JUST. 8 (1988) (detailing feelings of claustrophobia, chronic rage, depression, hallucinations, and apathy, among others, in the women housed at Lexington’s high security unit).

¹¹¹ *See* SEEING INTO SOLITARY, *supra* note 29 (stating that almost every jurisdiction reviewed in the UN Special Report, discipline was one of or the only purpose of placing inmates into solitary confinement. In fact, in Colorado, it is the only reason a prisoner can be placed into solitary confinement).

stamps.¹¹² Inmates with mental illness are much more likely to be placed into solitary confinement because, as a consequence of their particular mental illness it is difficult for them to conform to prison rules.¹¹³

In a 2007 article by the Red Cross, a psychiatrist compared the psychological harms of solitary confinement to physical torture, stating that “being 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.”¹¹⁴ Indeed, research into the mental effects of solitary confinement on inmates has produced specific “psychiatric syndrome[s]” that have become associated with time spent in solitary confinement.¹¹⁵ These psychiatric syndromes include hyperresponsivity to external stimuli; perceptual distortions, illusions, and hallucinations; panic attacks; difficulties with thinking, concentrating, and memory; intrusive obsessional thoughts; overt paranoia; and problems with impulse control.¹¹⁶ These issues are not experienced by every inmate, nor does every inmate who experiences mental illnesses suffer from every one of these issues, but all of these issues are caused and exacerbated by time spent in solitary confinement and can lead to continuous problems long after the inmate is released.¹¹⁷ Furthermore, these issues directly affect the inmates’ abilities to be productive members of society once they are released, both back into the general prison population and the population outside of prison.¹¹⁸ These adverse effects will make it more difficult to get a job once released, and if the inmate does manage to get a job, it will make it much more difficult to maintain any sort of consistent employment. Without employment, former inmates are much more likely to be rearrested and reconvicted, typically due to either a turn back to crime or a violation of their parole, thus starting the vicious cycle over again.¹¹⁹

In his study on the psychological effects of solitary confinement on inmates in “supermax” facilities, Craig Haney identified five

¹¹² David Lovell, Kristin Cloyes, David Allen & Lorna Rhodes, *Who Lives in Super-Maximum Custody? A Washington State Study*, 64 FED. PROBATION 33 (2000).

¹¹³ *Id.*

¹¹⁴ Hernán Reyes, *The Worst Scars are in the Mind: Psychological Torture*, 89 INT'L REV. OF THE RED CROSS 591, 607 (2007).

¹¹⁵ Grassian, *supra* note 14, at 335.

¹¹⁶ *Id.* at 335-36.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 354.

¹¹⁹ Haney, *supra* note 43, at 138-40.

different social pathologies caused by time spent in solitary confinement that explain the adverse psychological effects mentioned previously.¹²⁰ First, the “unprecedented totality of control” in solitary confinement forces inmates to become exclusively dependent on the prison for all aspects of their lives.¹²¹ This causes inmates to be unable to control their impulses or exercise independent organization of their lives.¹²² Second, inmates develop severe apathy and depression regarding their daily activities, making it extremely difficult to motivate themselves to perform activities such as physical exercise.¹²³ Third, inmates tend to garner a “sense of unreality” caused by a loss of their “sense of self” which is due to the lack of any meaningful human contact.¹²⁴ Fourth, the severe isolation that solitary confinement forces upon the inmates can cause them to reject social contact once they have the opportunity to do so.¹²⁵ After so much time alone, inmates are unsure of how to act in a social setting and become “disoriented and even frightened” in social settings.¹²⁶ Lastly, the absence of any “real opportunity for happiness or joy” while housed in solitary confinement results in an ongoing pattern of uncontrollable anger and “sudden outbursts of rage.”¹²⁷ All of this, coupled with the lack of any meaningful rehabilitative programs for the inmates housed or recently housed in solitary confinement, leads to a vicious cycle in which the prisoner becomes more socially distant, unable to cope with any social interaction, and prone to violent outbursts that typically lead to the inmate going back into solitary confinement for disciplinary purposes.¹²⁸ Prisoners who manifest these issues, such as disobeying orders from prison guards and officials, self-mutilation, or sudden outbursts of anger and rage, are typically met with more disciplinary

¹²⁰ *Id.*

¹²¹ *Id.* at 138.

¹²² *Id.*

¹²³ *Id.* at 139.

¹²⁴ *Id.*

¹²⁵ Haney, *supra* note 43, at 140. See also Tiana Herring, *The Research is Clear: Solitary Confinement Causes Long-lasting Harm*, PRISON POL’Y INITIATIVE (Dec. 8, 2020), https://www.prisonpolicy.org/blog/2020/12/08/solitary_symposium/ [<https://perma.cc/8344-4U7M>] (which also describes the plight of Robert King who spent “a combined 62 years in solitary confinement . . . Mr. King noted that after a while, he lost his interest in communicating and experienced an emotional numbness that led to a loss of basic skills . . . including his sense of direction.”).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Terry A. Kupers, *What to Do with the Survivors? Coping with the Long-Term Effects of Isolated Confinement*, 35 CRIM. JUST. & BEHAV. 1005, 1012 (2008).

sanctions rather than the treatment they need.¹²⁹ In fact, even suicidal behavior such as cutting is typically treated as a behavioral problem rather than a mental health problem, and inmates who cut themselves are usually reprimanded with placement back into solitary confinement.¹³⁰

Suicide is one of the most prevalent issues that face inmates held in solitary confinement.¹³¹ In a 2014 study of inmates held in solitary confinement in New York prisons, the American Journal of Public Health found that these inmates were seven times more likely to harm themselves than those in the general prison population.¹³² Furthermore, rates of self-inflicted harm and suicide were even higher for inmates with mental health conditions and juveniles.¹³³ In fact, more than 60% of juvenile suicide that occurs in prisons in the United States occur in solitary confinement units.¹³⁴ In California prisons in 2004, more than 70% of suicides that occurred were inmates that were housed in solitary confinement, even though the prisoners housed in these units made up less than 10% of the total prison population in that state.¹³⁵

In all, these myriad psychological problems that are caused or exacerbated by solitary confinement make it much more difficult for inmates to successfully reenter society due to their newfound or newly heightened inability to exercise self-control and self-initiative.¹³⁶ These mental scars produced by their time spent in solitary confinement become so embedded in their psyche that they may “become too ingrained to relinquish.”¹³⁷ The built-up paranoia and social anxiety negatively manifest once the inmate is released back into society, which typically leads to a much greater chance of being rearrested and

¹²⁹ *Id.* at 1010.

¹³⁰ See CAROLINE ISAACS & MATTHEW LOWEN, BURIED ALIVE: SOLITARY CONFINEMENT IN ARIZONA’S PRISONS AND JAILS 44 (2007).

¹³¹ Andrea Fenster, *New Data: Solitary Confinement Increases Risk of Premature Death After Release*, PRISON POL’Y INITIATIVE (Oct. 13, 2020), https://www.prison-policy.org/blog/2020/10/13/solitary_mortality_risk/ [https://perma.cc/4NBM-M9TZ].

¹³² Cloud, Drucker, Browne & Parsons, *supra* note 13.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Expert Rep. of Professor Craig Haney n. 119 (Aug. 15, 2008) (filed in *Coleman v. Schwarzenegger*, No. Civ. S 90-0520, 2008 WL 8697735 (E.D. Cal. 2008)).

¹³⁶ Haney, *supra* note 43, at 138-40.

¹³⁷ *Id.* at 141.

re-institutionalized in their first few months after being released, which is when their risk of reoffending is at its highest point.¹³⁸

III. THE USE OF SOLITARY CONFINEMENT IN ENGLAND

A. Overview

This part will discuss the penal system in England, specifically its use of solitary confinement and how it differs from the system employed in the United States.

England has a similarly diverse population to that in the United States as well as similar income disparity.¹³⁹ As stated in the introduction, England also has the highest incarceration rate in Western Europe due, in part, to it having some of the highest incarceration rates for “petty and persistent” crimes.¹⁴⁰ Furthermore, the total prison population in England is around 85,000 people in more than 130 prisons.¹⁴¹ Due to this dense prison population, it encounters many of the same issues that prisons in the United States face, such as overcrowding, suicide, and inmate violence.¹⁴² As of 2018, suicide is the second leading cause of death in English prisons, and 20% of all suicides therein were committed in solitary confinement.¹⁴³

On the other hand, England’s penal system succeeds in important areas where the American system fails. Besides the obvious deprivations of liberty inherent in prison, “prisoners [in England] retain their human rights whilst incarcerated.”¹⁴⁴ English prisons focus more on

¹³⁸ Lovell, Cloyes, Allen & Rhodes, *supra* note 112, at 33.

¹³⁹ *Id.*

¹⁴⁰ PRISON REFORM TRUST, *supra* note 30. See also Holly Newing, *England and Wales has Highest Imprisonment Rates in Western Europe*, THE JUST. GAP (June 25, 2019, 7:36 AM), <https://www.thejusticegap.com/england-and-wales-has-highest-imprisonment-rates-in-western-europe/#:~:text=The%20report%20found%20that%20in,nearly%20triple%20that%20of%20Finland> [<https://perma.cc/TE9D-XMNZ>] (“[N]early 59,000 people were sent to prison to serve a sentence in 2018, the majority having committed non-violent offences and less than half (46%) were sentenced to serve six months or less.”).

¹⁴¹ Jean Casella, *Off the Block: Can British Prisons Offer Solutions to America’s Solitary Confinement Crisis?*, SOLITARY WATCH (Oct. 21, 2015), <https://solitary-watch.org/2015/10/21/off-the-block/> [<https://perma.cc/4DVD-NPQJ>].

¹⁴² *Id.*

¹⁴³ See Mosler, *supra* note 33. See also MINISTRY OF JUST., *Safety in Custody Quarterly: Update to September 2018* (Jan. 31, 2019), <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-september-2018>

¹⁴⁴ Sharon Shalev, *A Sourcebook on Solitary Confinement*, MANNHEIM CTR. FOR CRIMINOLOGY 3 (Oct. 2008),

rehabilitation than their American counterparts, there are better relationships between the inmates and guards, and there is a better oversight system.¹⁴⁵ All of these differences make English prisons, comparatively, “less harsh . . . and less deadly.”¹⁴⁶ At any given time in England, approximately five-hundred prisoners are held in solitary confinement, only twenty-four of which were held there for longer than six months.¹⁴⁷ Moreover, this number was seen by the Independent Monitoring Board (“IMB”)¹⁴⁸ in England as being “unacceptably high.”¹⁴⁹ As stated earlier, England is generally seen as having tough criminal laws and one of the highest incarceration rates in Western Europe.¹⁵⁰ While England still uses solitary confinement, its focus on rehabilitation and its robust system of oversight helps the system succeed where the American system fails.

B. *Structure and Procedure of the Solitary Confinement System in England*

Prisoners in England are typically placed into solitary confinement units for disciplinary reasons such as attacks on other prisoners and guards.¹⁵¹ This type of solitary confinement is called cellular confinement, and it looks very similar to the widely used solitary confinement units in the United States.¹⁵² A prisoner in cellular confinement is placed alone in a small cell without any significant human contact.¹⁵³ However, one important difference between this type of individual isolation in England compared to the United States is that in England adults may only be held in isolation for twenty-one days and young adults (including adults under eighteen such as those tried as adults) may only be held in isolation for ten days.¹⁵⁴ This is contrasted

https://www.researchgate.net/publication/45428618_A_Sourcebook_on_Solitary_Confinement [<https://perma.cc/R9KU-Y2R9>].

¹⁴⁵ Casella, *supra* note 141.

¹⁴⁶ Mosler, *supra* note 33.

¹⁴⁷ *Id.*

¹⁴⁸ INDEPENDENT MONITORING BOARD HMB WHITEMOOR, ANNUAL REPORT JUNE 2014-MAY 2015 (2015) (the IMB is an independent Board appointed by the Justice Secretary from members of the community in which the prison is tasked with prison oversight and reporting).

¹⁴⁹ Casella, *supra* note 141.

¹⁵⁰ PRISON REFORM TRUST, *supra* note 30.

¹⁵¹ Mosler, *supra* note 33.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

by the possibly indefinite time in which American prisoners can be held in isolation.¹⁵⁵ Short stints in solitary confinement are very common in England; in some prisons, inmates are allowed to rejoin the general prison population after only a few hours in isolation.¹⁵⁶ Furthermore, in England, a supervisory body is required to authorize solitary confinement beyond a certain period of time, which is typically seventy-two hours.¹⁵⁷ The English system also requires periodic status reviews by a supervisory body.¹⁵⁸

The second type of solitary confinement in England is called Close Supervision Centers (“CSCs”).¹⁵⁹ These CSCs are segregation units that are occupied by groups of ten or fewer. Similar to the individual solitary confinement cells, CSCs are used to house “disruptive” inmates to “address their anti-social behavior in a controlled environment” and to “stabilize behaviour and prepare them for a return to the mainstream with minimum disruption.”¹⁶⁰ This type of isolation is the more common of the two, with up to thirty prisoners in CSCs at any one time.¹⁶¹ Inmates housed in CSCs are still held in single sub-cells within the centers for most of the time they are there, but at certain designated times they are allowed to associate with others in their “group” and exercise for one hour per day outside with the other CSC inmates.¹⁶²

While conditions in solitary confinement vary greatly between different prisons in England, all inmates held in isolation are visited by a staff member, nurse, and chaplain every day.¹⁶³ Inmates in solitary confinement are allowed unlimited visits from friends and family (much like those in the general prison population) and have access to an in-cell television.¹⁶⁴ When placed in solitary confinement, inmates are given a written explanation as to why they have been placed there as well as information regarding the process.¹⁶⁵ Inmates who are to be

¹⁵⁵ SEEING INTO SOLITARY, *supra* note 29, at 40 (“[A]lthough there is a diverse legal regime among the states and between the states and federal system regarding solitary confinement as a disciplinary sanction, overall, many of these laws are written such that prisoners could be held in solitary confinement indefinitely.”).

¹⁵⁶ Mosler, *supra* note 33.

¹⁵⁷ SEEING INTO SOLITARY, *supra* note 29, at 42.

¹⁵⁸ *Id.*

¹⁵⁹ Mosler, *supra* note 33.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Shalev, *supra* note 144, at 3.

¹⁶³ Mosler, *supra* note 33.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

placed in CSCs are notified months in advance by prison administration.¹⁶⁶

C. *Why the English System Is Different from That in the United States*

There are a variety of reasons for the differences between the English and American systems of solitary confinement. One such difference lies in the adoption and adherence to applicable international law. Article 3 of the European Convention on Human Rights (“ECHR”) states that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”¹⁶⁷ The European Court on Human Rights has previously stated that “[c]omplete sensory isolation, coupled with total social isolation . . . constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason.”¹⁶⁸ However, while the European Union strives to adhere to these sentiments, the system is not perfect, and it has been described as being more “reactive rather than pro-active” in its recognition and handling of Article 3 violations.¹⁶⁹

England has a relatively robust domestic system of prison oversight. Oversight in English prisons is multi-tiered and was created in 1980 to inspect prisons, separate from the government, in order to combat potential human rights violations.¹⁷⁰ At the top lies Her Majesty’s Chief Inspector of Prisons (“HMCIP”), in the middle is the Prisons and Probation Ombudsman (“PPO”), and at the bottom is an Independent Monitoring Board (“IMB”).¹⁷¹ The HMCIP “provide[s] independent scrutiny of the conditions for and treatment of prisoners and other detainees, and report on [their] findings,” for every prison in the nation.¹⁷² This work “forms part of the UK’s obligations under the Optional Protocol to the United Nations Convention against Torture (OPCAT) . . . [which] requires member states to regularly and

¹⁶⁶ *Id.*

¹⁶⁷ Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Nov. 4, 1950, E.T.S. No. 5; 213 U.N.T.S. 221.

¹⁶⁸ David Fathi, *Supermax Prisons: Cruel, Inhuman, and Degrading*, ACLU (July 9, 2010), <https://www.aclu.org/news/national-security/supermax-prisons-cruel-inhuman-and-degrading> [<https://perma.cc/JS4R-FLD7>].

¹⁶⁹ Mosler, *supra* note 33.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *What We Do*, HM INSPECTORATE OF PRISONS, <https://www.justiceinspectors.gov.uk/hmiprison/about-hmi-prisons/> [<https://perma.cc/QP9J-ER2C>] (July 18, 2022).

independently inspect places of detention.”¹⁷³ In England, Wales, and Scotland, the HMCIP representative may enter any prison at any time, during which time they have access to all prisoners to interview and all prison records, which they use to judge the prison based on criteria set forth in the relevant international human rights standards.¹⁷⁴ HMCIP inspectors are aided in their investigations by healthcare specialists, substance inspectors, and education experts to help assess the overall “health” of the prison.¹⁷⁵ This health inquiry assesses whether prisoners are safe, treated with human dignity and respect, engaging in “meaningful” activity, and being “prepared for resettlement.”¹⁷⁶ Two inspections take place every five years and are usually unannounced.¹⁷⁷ Lastly, when a prison receives a report from the HMCIP, they must complete an “action plan” based on the representative’s recommendations to remedy any problems found.¹⁷⁸ While these recommendations are not legally binding on the prison officials, they are followed and remedied 95% of the time.¹⁷⁹ Inspectors typically return, unannounced, within 1.5-2.5 years to the prison for which they made recommendations, and find “satisfactory” adoptions of their recommendations 70% of the time.¹⁸⁰ The HMCIP also issue “thematic reviews” of systematic issues throughout the entire prison system.¹⁸¹ These reviews have been issues on topics such as the treatment of women and children, suicide, mental health issues, and resettlement.¹⁸² While these reviews, by their very nature, take time to have an effect, “recent marked improvements in prison healthcare, the management of suicide and self-harm, resettlement, and the treatment of children in prison can, at least in part, be attributed to the Inspectorate’s ground-breaking work.”¹⁸³

Another level of oversight in the English prison system is the PPO.¹⁸⁴ The PPO is concerned with any deaths that takes place within

¹⁷³ *Id.*

¹⁷⁴ Mosler, *supra* note 33.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Anne Owers, *Prison Inspection and the Protection of Prisoners’ Rights*, 30 *PACE L. REV.* 1535, 1542 (2010).

¹⁸⁰ *Id.* at 1542-43.

¹⁸¹ *Id.* at 1543.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Mosler, *supra* note 33.

prisons and with investigating prisoners' complaints.¹⁸⁵ The PPO will investigate a complaint made by an inmate and make a recommendation consistent with its findings.¹⁸⁶ While the PPO does not have the authority to enforce its recommendation, its recommendation(s) are enforced in a majority of cases.¹⁸⁷ The PPO also plays an important role in investigating all deaths in prisons, whether they be of natural causes, homicide, or suicide.¹⁸⁸ These investigations bring the English system in line with Article 2 of the ECHR (the Right to Life).¹⁸⁹ When investigating a death, the PPO's office will publish a report on the incident and issue recommendations that the prison will be "extremely ill-advised not to implement, in light of the consequences, considering that those deaths will also be judicially investigated by a coroner's court, which will take into account whether lessons from past deaths have been learnt and implemented."¹⁹⁰ This creates a checks-and-balances accountability between the PPO and other supervisory bodies, to ensure, at least in theory, that prisoners' complaints and deaths do not go unnoticed and/or lead to impactful change.

Lastly, all prisons in England have IMBs consisting of local citizen volunteers who are appointed by the Justice Secretary to monitor a particular prison.¹⁹¹ These volunteers have a statutory right to enter the prison that they are assigned to, and once inside, are free to receive and assess complaints and requests from prisoners.¹⁹² The IMBs regularly visit all parts of a prison, including the segregation units.¹⁹³ Additionally, IMBs meet with the prison Governor (i.e. the warden) and publish reports of their activities and assessment of the prison.¹⁹⁴

¹⁸⁵ *Id.*

¹⁸⁶ Owers, *supra* note 179, at 1537.

¹⁸⁷ Mosler, *supra* note 33 ("The PPO investigated all 12 of the segregation complaints, all of which were relatively minor and generally questioned the reasons for being placed in short-term isolation. Because it deals solely with individual issues and complaints, the Ombudsman does have a limited impact, though its transparent methods and reports give a valuable snapshot of what the most pressing issues within prisons are."). The reports are released to the public as well as to the relevant governmental bodies and prison administration who make the relevant changes.

¹⁸⁸ *Id.*

¹⁸⁹ Convention for the Protection of Human Rights and Fundamental Freedoms art. 3, Nov. 4, 1950, E.T.S. No. 5; 213 U.N.T.S. 221.

¹⁹⁰ Owers, *supra* note 179, at 1537.

¹⁹¹ *Id.*

¹⁹² Prison Act 1952, 15 & 16 Geo. 6 & 1 Eliz. 2 c. 52, § 6(3) (Gr. Brit.) ("[A]ny member of a . . . board of visitors may at any time enter the prison and shall have free access to every part of it and to every prisoner.").

¹⁹³ Owers, *supra* note 179, at 1537.

¹⁹⁴ *Id.*

The extensive and sophisticated oversight bodies in England and Wales are in part due to their adherence to various international instruments that they are party to.¹⁹⁵ In 2003, the U.K. was one of the first states to ratify the Optional Protocol to the UN Convention against Torture or Inhuman and Degrading Treatment or Punishment (“OPCAT”).¹⁹⁶ This Protocol was created to effectively protect prisoners held in any form of detention by requiring states’ parties to have a “national preventive mechanism” (“NPM”).¹⁹⁷ Under Article 19 of OPCAT, these NPMs must be given the power ad right to “regularly examine the treatment of the persons deprived of their liberty in places of detention . . . [t]o make recommendation to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty . . . [and] to submit proposals and observations concerning existing or draft legislation.”¹⁹⁸ Under Article 20 of OPCAT, in order to enable the NPMs to fulfill these duties, states parties must grant them:

access to all information concerning the number of persons deprived of their liberty in places of detention . . . as well as the number of places and their location . . . access to all information referring to the treatment of those persons . . . access to all places of detention . . . the opportunity to have private interviews with the persons deprived of their liberty without witnesses . . . the liberty to choose the places they want to visit and the persons they want to interview.¹⁹⁹

The HMCIP is the coordinating body for U.K.’s NPM, which was created in 2009.²⁰⁰ This added level of oversight, through the ratification and implementation of OPCAT and the NPMs, is extremely important as it ensures consistent and regulated inspection of all levels of detention facilities in the U.K.²⁰¹ Furthermore, it underlies the U.K.’s committed focus on prevention, rather than mere observation and chronicling of torture and mistreatment in prisons.²⁰²

¹⁹⁵ *Id.* at 1539.

¹⁹⁶ *Id.*

¹⁹⁷ G.A. Res. 57/199, Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3 (Dec. 18, 2002).

¹⁹⁸ *Id.* at art. 19.

¹⁹⁹ *Id.*

²⁰⁰ Owers, *supra* note 179, at 1539. While the focus of the paper is on England, this portion discusses the whole of the U.K. here because the HMCIP is the coordinating body for all of the U.K.

²⁰¹ *See generally id.*

²⁰² *Id.*

However, there are still many issues in the English prison systems and, although there is “no doubt that the system has evolved positively,” certain conditions are still inappropriate.²⁰³ Dame Anne Owers, HMCIP from 2001 to 2010 and current head of the Independent Police Complaints Commission (“IPCC”), led a “thematic review” of all segregation units in 2006.²⁰⁴ In it, she stated that recreation activities were inadequate and opportunities for treatment of mental health issues were limited.²⁰⁵ “Many of those prisoners are deteriorating further while held in lengthy solitary confinement. At the very least, they need individual, multi-disciplinary and properly-resourced care plans.”²⁰⁶ Out of the thirty-eight recommendations in Owers’ report, sixteen were adopted.²⁰⁷ Furthermore, some U.K. scholars believe that there is a distinct difference between what the “Governor of the prison thinks has been implemented” and “how things operate on the ground.”²⁰⁸ In her last Annual Report as HMCIP, Owers stated that although many segregation units had been changed into “care and separation,” “reorientation,” or “intensive supervision” units, “they continued to operate as traditional segregation units, with the emphasis on separation rather than care.”²⁰⁹ There was still an overuse of segregation in these prisons, and staff assigned to the segregation units were ill-equipped to handle the most problematic prisoners.²¹⁰ Moreover, some segregation units were not clean, did not have access to phones, and were kept in a poor condition.²¹¹ “Communal corridors were ingrained with dirt, despite attempts to keep them clean, walls were damaged, and there was no natural light. Cells were dirty and poorly maintained with graffiti on many walls. In-cell toilets needed deep cleaning.”²¹²

In all, while the checks-and-balances system that the U.K. utilizes to monitor and improve its prisons is relatively effective, as it is more sophisticated and able than the equivalent in the United States, more

²⁰³ *Id.*

²⁰⁴ Mosler, *supra* note 33.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ ANNE OWERS, HM CHIEF INSPECTOR OF PRISONS FOR ENGLAND AND WALES: ANNUAL REPORT 2008-09, at 67 (2010).

²¹⁰ *Id.*

²¹¹ *Id.* at 22.

²¹² *Id.* at 24.

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work still needs to be done to ensure that prisons adopt and adhere to the recommendations made by the oversight groups.

IV. THE USE OF SOLITARY CONFINEMENT IN NORWAY

A. *Overview*

Norway is seen around the world as being one of the leaders in progressive incarceration.²¹³ Its system is centered on the idea that punishment should only be found in court and that prisons are for the rehabilitation of prisoners so that they can more effectively be reintegrated back into society and stay out of prison once released.²¹⁴ In this way, the Norwegian system is one that the United States should aspire to. Norway's correctional system closely resembled that of the United States as little as twenty years ago: overcrowded and violent, where isolation and solitary confinement were commonplace.²¹⁵ After frequent prison riots and an increase in prison violence, Norwegian leadership began to reform the system, implementing a "compassionate, [inmate]-centered approach with access to resources that could help them learn prosocial behavior."²¹⁶ In all, the current system uses "health care, a paying job, education, or short, earned 'prison leaves' to visit with family" to rehabilitate prisoners for the "sake of community well-being."²¹⁷

The results of this approach speak for themselves: Norway has one of the lowest incarceration rates in the world with a per-capita rate of seventy-two prisoners per 100,000 (as of 2013).²¹⁸ After two years post-release, recidivism rates stand at around 20%.²¹⁹ However, not everything about the Norwegian system has been met with high praise from the international community. For example, its use of pretrial isolation has been widely criticized.²²⁰ In 2012, around 30% of persons held in custody in Norway were pre-trial detainees, and over 12% (in 2011) of detainees were subject to "complete solitary confinement,

²¹³ Guthrie, *supra* note 24.

²¹⁴ *Id.*

²¹⁵ Cyrus Ahalt & Brie Williams, *Reforming Solitary-Confinement Policy—Heeding a Presidential Call to Action*, 374 NEW ENG. J. MED. 1704, 1705 (2016).

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Sharon Shalev, *Solitary Confinement: The View from Europe*, 4 CAN. J. HUM. RTS. 143, 151 (2015).

²¹⁹ *Id.*

²²⁰ *Id.* at 150.

meaning no newspapers, TV, correspondence and, importantly, no family visits.”²²¹ This pre-trial confinement must be approved by a judge every two weeks and can last several months.²²² This type of isolation and detention is problematic. Norway adheres to the same principle of “innocent until proven guilty” that the United States does, so incarcerating an individual awaiting trial in something as mentally degrading as solitary confinement is contrary to this sentiment. Moreover, the “uncertain and indeterminate nature of pre-trial detention has been shown to worsen the adverse health effects of solitary confinement potentially also affecting detainees’ ability to defend themselves in court as well.”²²³ This connection between isolation and adverse health effects on the pre-trial detainee is not difficult to cognize.²²⁴ As we have seen previously, the United States Supreme Court has recognized the adverse health effects imposed by time spent in solitary confinement, consistent with the plethora of medical journals and other empirical studies documenting these negative effects.²²⁵ There has been statutory recognition of the adverse effects of solitary confinement in Norway. Norway’s *Regulations to the Execution of Sentences Act* states that “[p]ersons remanded in custody and other persons who are excluded from company shall be given priority as regards taking part in activities and associating with the staff in order to reduce the detrimental effects of isolation.”²²⁶

While Norway’s system of solitary confinement is not perfect, its philosophy around incarceration and its attitude towards its prisoners is still something that the United States should aspire to. One of the cornerstones of the philosophy that is at the center of the Norwegian prison system is the “principle of normality.”²²⁷ This principle has “at least two aspects:” (1) inmates are still citizens and therefore should be afforded their rights as one even when their right to freedom has

²²¹ *Id.* at 151.

²²² *Id.*

²²³ *Id.*

²²⁴ See generally Elisa L. Toman, Joshua C. Cochran & John K. Cochran, *Jailhouse Blues? The Adverse Effects of Pretrial Detention for Prison Social Order*, 45 CRIM. JUST. AND BEHAV. 3, 316 (2018).

²²⁵ See *In re Medley*, 134 U.S. 160 (1890); Grassian, *supra* note 14; Cloud, Drucker, Browne & Parsons, *supra* note 13.

²²⁶ Ministry of Justice and the Police, *Regulations to the Execution of Sentences Act* § 1-2 (2002) (Nor.).

²²⁷ *Full Rights Citizens: The Principle of Normality in Norwegian Prisons*, JUST. TRENDS (July 24, 2018) [hereinafter *Full Rights Citizens*], <https://justice-trends.press/full-rights-citizens-the-principle-of-normality-in-norwegian-prisons/> [https://perma.cc/DX4N-7N87].

been impinged by the justice system; and (2) life while incarcerated should be “as similar as possible to life without a sentence.”²²⁸ Taken together, these two aspects of the principle of normality help create a more rehabilitative and, as the name suggests, a “normal” atmosphere in Norwegian prisons.²²⁹ Inmates, even those in solitary confinement, are still given the right to vote; the right to organize; and access to such public services as healthcare, school, and education.²³⁰ Furthermore, life for inmates when in prison reflects what their lives are like on the outside; the prisons strive to provide inmates with familiar routines and environments while incarcerated to better prepare them for life once released.²³¹ According to Marianne Vollan, the Director General of the Directorate of the Norwegian Correctional Service, the normalization principle has two functions: (1) to keep prisons and the treatment of prisoners humane and (2) to help solve prison officials’ “complex task . . . not only to enforce remand orders and sentences but also to do it in a way that can prevent recidivism.”²³² In Norway’s eyes, the conditions that inmates are kept in should be neither punitive nor onerous, as this will not lead to successful reintegration of inmates back into society once they are released which, to them, is the overarching goal of their penal system.²³³

Norwegian prisons work towards this principle in a variety of ways. The prisons are physically designed in a way to promote normalcy and reduce disorientation, in contrast to their American counterparts. They organize their prisons around the “promotion of safety, well-being, and personal development.”²³⁴ Inmates live in private rooms with doors and private bathrooms.²³⁵ Small groups of inmates share a common area that includes a fully equipped kitchen.²³⁶ For inmates housed in solitary confinement, their cells must include a bunk, a plastic mattress, a blanket, a light, a toilet, and a drinking fountain, as well as an interphone or intercom with a music function, a

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ Ram Subramanian, *How Some European Prisons Are Based on Dignity Instead of Dehumanization*, BRENNAN CTR. FOR JUST. (Nov. 29, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/how-some-european-prisons-are-based-dignity-instead-dehumanization> [<https://perma.cc/Z44H-9FD9>].

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

window, and a clock.²³⁷ If the inmate is kept in custody based on the decision of the court, they are moved into an ordinary cell, which is equipped with more comfortable furniture.²³⁸ Beyond the physical aspects of their incarceration, inmates are encouraged to remain as autonomous as possible in their day-to-day life within the prison. They “cook their own meals and are provided with an array of vocational training and educational programs, as well as various treatment options,” and they are also afforded many opportunities to maintain contact with friends and family.²³⁹ This normalization principle extends even further, encompassing the correctional officers and administrative staff of the prison.²⁴⁰ Wardens are, in many cases, trained lawyers, social workers, and mental health professionals. Corrections officers are “encouraged to develop strong social relationships with the people they supervise,” much like in England, which fosters a respectful, supportive, communicative, and caring environment for inmates.²⁴¹

Lastly, discipline is rarely meted out to inmates, but when it is, prison officials make sure that the punishment corresponds with the infraction.²⁴² These punishments usually take the form of reprimands, brief restrictions on money, property, movement, or leisure activities; or delays in scheduled home leave.²⁴³ Punitive solitary confinement is exceedingly rare and, when used, is restricted to twenty-four hours.²⁴⁴ Furthermore, solitary confinement for administrative purposes is also tightly limited in duration.²⁴⁵ Administrative solitary confinement is limited to six days—contrasted with the indefinite duration of administrative solitary confinement in the United States.²⁴⁶ If this type of solitary confinement is to last longer than fourteen days, the decision to extend must be made by regional prison authorities; if it is to last longer than forty-two days (which is extremely rare), the *national*

²³⁷ *Id.*

²³⁸ SEEING INTO SOLITARY, *supra* note 29, at 42.

²³⁹ Subramanian, *supra* note 233.

²⁴⁰ *Id.* (Prison staff “many of them trained lawyers, social workers, and mental health professionals — and corrections officers are encouraged to develop strong social relationships with the people they supervise, which helps create a respectful, supportive, communicative, and caring environment.”).

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ SEEING INTO SOLITARY, *supra* note 29, at 40.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

prison authorities must be notified and must be kept updated every fourteen days thereafter.²⁴⁷

This approach to incarceration generally and solitary confinement specifically starkly contrasts with the system employed in the United States. Prisons in the United States are centered around goals of “custody and order” and achieve this by employing “dehumanizing rituals of induction, initiation, hierarchy, degradation and routine.”²⁴⁸ American prisons utilize these techniques to assert authority and control over inmates’ bodies and lives.²⁴⁹ Solitary confinement is used much more frequently than in Norwegian prisons, often for such minor infractions as “talking back, being out of place, or failure to obey an order.”²⁵⁰

Many people who argue that the Norwegian values, while ideal, would be too difficult to implement in the American penal system point to the differences between Norway and the United States, such as differences in politics and law, penal philosophy and punishment culture, types and rates of crime, and system scale and correctional resources. Moreover, America is much more diverse both culturally, racially, and economically than Norway.²⁵¹ However, these differences “obscure some important similarities” between the two countries.²⁵² As stated previously, not so long ago, Norway was suffering from many of the same problems faced by American prisons such as overcrowding, overrepresentation of people with mental illness, and prison violence.²⁵³ However, Norway made a “deliberate choice to do things differently,”²⁵⁴ by reforming its penal system generally as well as its system of solitary confinement.²⁵⁵ While it might be difficult to truly study the effects that a philosophical shift has on prisoners, one

²⁴⁷ *Id.* at 41 (emphasis added).

²⁴⁸ Subramanian, *supra* note 233. Shon Hopwood, *How Atrocious Prisons Conditions Make Us All Less Safe*, BRENNAN CTR. FOR JUST. (Aug. 9, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/how-atrocious-prisons-conditions-make-us-all-less-safe> [<https://perma.cc/B6MG-L76L>].

²⁴⁹ Subramanian, *supra* note 233.

²⁵⁰ *Id.*

²⁵¹ Jan R. Strømnes, Powerpoint presentation titled Nordic Correctional Policies, Values, Methods and Practice – What Are They – and Can and Should They Be Transferred to the US?, <https://waynenorthey.com/wp-content/uploads/2019/02/Halden-prison-ACA-Winter-Conference-New-Orleans-januar-2019-pdf-version.pdf> [<https://perma.cc/LE3J-YAJT>] (last visited Sept. 13, 2022).

²⁵² Subramanian, *supra* note 233.

²⁵³ Ahalt & Williams, *supra* note 215.

²⁵⁴ Strømnes, *supra* note 251.

²⁵⁵ *Id.*

can look at overall outcomes to see change. Aggression and physical violence between inmates are rare in Norwegian prisons as are aggression between inmates and prison staff. Recidivism is much lower (standing around 20% in Norway) than in the United States.²⁵⁶ The Norwegian way of putting human rights and dignity first, coupled with its normalization of life in prison, leads to inmates who are ready to rejoin society and be “safer neighbours.”²⁵⁷

V. CONCLUSION

Solitary confinement by its very nature is a harsh and degrading form of incarceration. American inmates exist in a disorienting, harsh, dystopian social world designed to control, isolate, disempower, and erode one’s sense of autonomous self. This inevitably leads to the creation or exacerbation of mental illness as well as making it more difficult for inmates to adjust back to normal life once released. However, certain changes can be made. The United States can adopt change from both England and Norway, such as the philosophy behind the implementation of solitary confinement, the goals it is used to work towards, the physical forms it takes, and the way in which it is overseen and corrected when it needs to be. The American solitary confinement system is defined by punitive excess. This can be curbed and slowly but surely reversed by making human dignity a priority, overseeing prisons that utilize it, and making the appropriate changes.

It would be irresponsible not to point to some of the changes that are being made within the United States in recent years towards solitary confinement. In 2008, the American Bar Association called on every jurisdiction to statutorily establish an independent government body to conduct routine, preventive inspections of prisons, jails, and other detention facilities, and to produce public reports about conditions inside these institutions.²⁵⁸ Since 2010, approximately six statewide prison oversight bodies, three statewide jail oversight bodies, and nine local jail oversight bodies have been created or strengthened.²⁵⁹ President Barack Obama wrote an op-ed piece in the

²⁵⁶ *Id.*

²⁵⁷ *Full Rights Citizens*, *supra* note 227.

²⁵⁸ LYNN BRANHAM & STEPHEN J. SALTZBURG, AMERICAN BAR ASSOCIATION RECOMMENDATION 104B TO THE HOUSE OF DELEGATES I (2008), https://www.americanbar.org/content/dam/aba/directories/policy/annual-2008/2008_am_104b.pdf [https://perma.cc/MT5Q-RQ6F].

²⁵⁹ Deitch, *supra* note 85.

Washington Post denouncing the practice of solitary confinement.²⁶⁰ Simultaneously, the Attorney General released a national review of solitary confinement practices and alternatives that was adopted by the President and which set forth over fifty guiding principles for solitary reform such as a ban on youth solitary, diversion of those with serious mental illness, reform to protective custody, prohibitions on the use of solitary confinement for low-level disciplinary infractions, and shortened mandatory lengths of stay in solitary confinement units.²⁶¹

However, these changes, while important and promising, are not enough. The United States is still facing a crisis regarding persons housed in solitary confinement. People like Adam Brulotte are still being released after spending (sometimes significant) time in solitary confinement under extremely harsh and inhumane conditions only to find themselves unable to shake off the shackles that time spent in solitary placed on them. My first recommendation is that the United States should adopt England's system of prison oversight. My second recommendation is that the United States should adopt the rehabilitative philosophy of Norway's prison system. While adopting the robust prison oversight system from England and the rehabilitative approach to prisons employed in Norway will not be easy or straightforward, it can lead to a better and more efficacious system of solitary confinement in the United States, and any change can literally mean life or death for inmates housed in solitary like Adam.

²⁶⁰ See Barack Obama, *Why We Must Rethink Solitary Confinement*, WASH. POST (Jan. 25, 2016), https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html [<https://perma.cc/5FAB-TWRH>].

²⁶¹ U.S. DEP'T OF JUST., REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING (2016).