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## MENTAL HEALTH IN PRISON: THE UNINTENDED BUT CATASTROPHIC EFFECTS OF DEINSTITUTIONALIZATION

*Felicia Mulholland\**

*“The degree of civilization in a society can be judged by entering its  
prisons.”<sup>1</sup>*

—Fyodor Dostoevsky

### ABSTRACT

Prisons and jails are not adequately equipped to manage the ever-growing population of mentally ill inmates. Despite deinstitutionalization efforts, prisons have steadily become the new psychiatric hospitals and unfortunately, because of the lack of treatment and the ability to properly supervise this population of inmates, these individuals are dying by their own hands at an alarming rate. This Note argues that the lack of proper care for mentally ill inmates is a violation of their constitutional right, despite their incarcerated status. The Department of Corrections and Community Supervision (DOCCS) should incorporate more concrete and universal rules and regulations for the care and treatment of these inmates to ensure that their constitutional rights are not being violated. Changes are necessary to protect their rights and more importantly, to keep them alive.

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\* Touro University Jacob D. Fuchsberg Law Center, J.D. 2023, New York Institute of Technology B.S. in Political Science, 2018. Many thanks to my faculty advisor, the Honorable Mark D. Cohen, Dean Myra Berman for all that she has done for me since day one, the friends I have made along the way that pushed me through even the toughest parts of law school, and the rest of the Law Review staff for their commitment to helping me improve my Note. Thank you to my parents, Steven and Tricia Mulholland, and my sister, Meaghan Mulholland, for always sticking by my side and for their continuous encouragement throughout my life. Finally, thank you to my fiancé, Andrew Sesto for his endless support throughout my entire law school journey, I could not have done this without you.

<sup>1</sup> *Davis v. Ayala*, 576 U.S. 257, 290 (2015) (Kennedy, J., concurring) (quoting THE YALE BOOK OF QUOTATIONS 210 (Fred A. Shapiro ed., 2006)).

## I. INTRODUCTION

Javier Velasco was a 37-year-old male incarcerated at the New York City Department of Corrections (NYC DOC) Anna M. Kross Center (AMKC) on Riker's Island Correctional Facility.<sup>2</sup> After a series of suicide attempts, Velasco hung himself on March 19, 2021.<sup>3</sup> On March 16, 2021, Velasco tied a bed sheet around his neck, attached it to the toilet door, climbed on top of the toilet and jumped off.<sup>4</sup> One of the correction officers ("CO") on duty heard the loud noise and was able to cut the sheet from Velasco's neck, thereby rendering his suicide attempt unsuccessful.<sup>5</sup> The CO noted in a later interview that Velasco had been upset that he cut him down from the handmade noose as he "just wanted to die."<sup>6</sup> Because of this suicide attempt and Velasco's consistent suicidal ideations, the NYC DOC Medical Review Board opined that Velasco's condition "warranted consideration of forensic hospitalization."<sup>7</sup> A brief suicide watch was implemented; the decision to end the watch was premature at best considering his prior suicide attempts.<sup>8</sup> Investigations by the Department of Corrections showed that the CO on duty failed to make adequate supervisory tours by not properly looking into cells during his rounds and not completing his fifteen-minute supervisory rounds once a suicide prevention aide completed his shift.<sup>9</sup> Even more troubling is that Velasco never received a follow-up psychiatric consultation, despite his determination to commit suicide.<sup>10</sup> Although many might attribute this scenario to a one-time circumstance, unfortunately this is not the case. All too often inmates are dying by suicide for many reasons, including inadequate supervisory inspections, improper or non-existent mental health treatment referrals, and inadequate treatment plans, among other reasons.<sup>11</sup>

<sup>2</sup> THOMAS J. LOUGHREN, FINAL REPORT OF THE NEW YORK STATE COMMISSION OF CORRECT.: IN THE MATTER OF THE DEATH OF JAVIER VELASCO, 2, (N.Y.S. COMM'N OF CORRECT., 2022), available at <https://scoc.ny.gov/pdfdocs/mrb/Velasco%20Javier%20-%20AMKC.pdf>.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.*

<sup>11</sup> COMMISSION OF CORRECTION, <https://scoc.ny.gov/mor.htm> (last visited Sept. 11, 2022) (See reports on Wilson Diaz-Guzman, Troy Conklin, Stephen Pawlowski,

From January 2015 to April 2020, there were seventy-five deaths by suicide in New York prisons.<sup>12</sup> Of those, eighteen suicides occurred in 2019 alone.<sup>13</sup>

There is no doubt that mental illness often results in criminality and, in some circumstances, violence.<sup>14</sup> Surveys report that approximately one-third of the nation's population suffer with some form of mental illness.<sup>15</sup> Although deinstitutionalization aimed to provide mentally ill individuals with community treatment plans, many of these individuals were instead confined to jails and prisons; yet, prior to the twenty-first century, they would have been civilly committed to a mental institute.<sup>16</sup>

Mental health services specifically available for incarcerated individuals would help prevent mental deterioration, suicide, and recidivism, which is higher for mentally ill inmates as opposed to non-mentally ill inmates.<sup>17</sup> In the case of Velasco, the Medical Review Board opined that there was a deficient population management and accountability system in the prison, which evidently led to his death.<sup>18</sup> The Medical Review Board also concluded that despite Velasco's significant history of past suicide attempts, these were not accounted for in his mental health assessment.<sup>19</sup> The New York Correction Law provides: "[t]he board of supervisors of each county, except New York, must appoint some reputable physician, duly authorized to practice medicine, as the physician to the jail of the county."<sup>20</sup> The Board required the New York City Council in Velasco's instance to review the fitness of the then designated provider for the county in which Velasco

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Loyd Edward Barnes, Milton McNicholas, David McPeck Jr., Patrick Allen Dennis, Antwoine Fort, Melanie Liverpool, Lawrence McCowen, Colin Enos Same, Richard Wright, Gilbert Judge, Jamel Lighthy, Samuel Spells, Giovanni Peccerillo).

<sup>12</sup> Keith Sanders, *Suicides in New York SHUs Surge to Epidemic Levels*, PRISON LEGAL NEWS (Dec. 2020), <https://www.prisonlegalnews.org/news/2020/dec/1/suicides-new-york-shus-surge-epidemic-levels/>.

<sup>13</sup> *Id.*

<sup>14</sup> Stephen Eide, *Crime and Mental Illness in New York City: Framing the Challenge for the New Mayor*, MANHATTAN INST. (Feb. 17, 2022), <https://www.manhattan-institute.org/eide-crime-and-mental-illness>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See Loughren, *supra* note 2, at 8.

<sup>19</sup> *Id.*

<sup>20</sup> N.Y. CORRECT. LAW § 501 (McKinney 2021).

died.<sup>21</sup> While this is a step in the right direction, a generally certified physician is not extensively trained in mental health services expressly in the prison setting.<sup>22</sup> Thus, the physician that is appointed to each of these units should have the competency, intelligence, and training to be capable enough to refer these inmates to a proper mental health care physician. Based on just these few reports of inmates under the care of the New York State Department of Corrections, it appears that this is not always the case, and if it is, there is not enough urgency to care for these inmates to prevent suicide.<sup>23</sup>

Despite the lack of appropriate physicians to treat inmates with mental illnesses in prisons, COs and other law-enforcement personnel are also not adequately trained and equipped with the tools and information necessary to notice that an inmate is mentally suffering. For example, another inmate, Wilson Diaz-Guzman, housed in the Otis Bantum Correctional Center, another New York City Department of Correction Facility, was found to have hung himself on January 1, 2021.<sup>24</sup> Despite a history of suicidal ideation and self-harm, the Medical Review Board concluded that the failure to adequately identify these concerns, along with the failure to appropriately authorize psychiatric referrals and treatment, led to his eventual death—something that could have been easily prevented.<sup>25</sup>

The inadequate medical care for mentally ill inmates is a constitutional issue that is applicable to all United States citizens. However, this Note analyzes New York's policies with respect to mental health conditions and available treatments for inmates. The Fourteenth Amendment extends the right to the states to establish rules and regulations pertaining to the care of inmates, including mental health care and treatment for these individuals.

The failure to provide adequate medical care for mentally ill inmates is a violation of (1) the Due Process Clause of the Fifth<sup>26</sup> and

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<sup>21</sup> See Loughren, *supra* note 2.

<sup>22</sup> Laurel Nowak, *Who Can Diagnose a Mental Illness?*, *Bridges to Recovery* (Dec. 13, 2018), <https://www.bridgestorecovery.com/blog/who-can-diagnose-mental-illness/>.

<sup>23</sup> COMMISSION OF CORRECTION, *supra* note 11.

<sup>24</sup> THOMAS J. LOUGHREN, FINAL REPORT OF THE NEW YORK STATE COMMISSION OF CORRECT.: IN THE MATTER OF THE DEATH OF WILSON DIAZ-GUZMAN, 2, (N.Y.S. COMM'N OF CORRECT., 2022), available at <https://scoc.ny.gov/pdfdocs/mrb/Diaz-Guzman%20Wilson%20-%20BCC.pdf>.

<sup>25</sup> *Id.*

<sup>26</sup> U.S. CONST. amend. V.

Fourteenth Amendments;<sup>27</sup> (2) the Equal Protection Clause of the Fourteenth Amendment;<sup>28</sup> and (3) the Eighth Amendment, that such treatment may be considered “cruel and unusual punishment.”<sup>29</sup> The “regular”<sup>30</sup> care that these inmates are given may be discriminatory due to the nature of their disabilities and their inability to function under what is considered the routine standard of care in prisons. Regardless of the guidelines and safeguards that currently stand to protect mentally ill prisoners in the State of New York, this analysis will show how such care is lacking and where improvements can be made to ensure constitutional violations do not occur.

Section II of this Note discusses the origins of mental illness leading up to the mental health crises that currently plague the inmate population. Section III of this Note focuses on mental health in the prison system. Section IV discusses the inadequacies of mental health care for inmates in violation of their constitutional rights. Section V provides an overview of federal legislation that aims to protect discrimination against those suffering from disabilities. Section VI further discusses regulation over healthcare in the prison system, focusing on New York State’s prison system. Finally, Section VII proposes recommendations for the improvement of mental health care throughout New York’s correctional facilities.

## II. THE ORIGINS OF MENTAL ILLNESS

The first psychiatric hospital was created in 1773, but it was not until the mid-1800s that asylums became more prevalent throughout the United States.<sup>31</sup> These institutions quickly became full, and soon outgrew their capacity.<sup>32</sup> The process of deinstitutionalization

<sup>27</sup> U.S. CONST. amend. XIV.

<sup>28</sup> *Id.*

<sup>29</sup> U.S. CONST. amend. VIII.

<sup>30</sup> Upon arrival to a correctional facility in the State of New York, inmates are to be seen by a physician licensed to practice in the State of New York as soon as possible but no longer than fourteen days from arrival. N.Y. COMP. CODES R. & REGS. tit. 9, § 7075.4 (2019). Inmates are not given any medication or medical treatment unless prescribed by the facility physician. *Id.* Mental health treatment is not considered in these rules and regulations and fourteen days are far too long for someone suffering from a mental illness to not have access to treatment or medication.

<sup>31</sup> Alisa Roth, *The Truth About Deinstitutionalization*, THE ATLANTIC, (May 25, 2021), <https://www.theatlantic.com/health/archive/2021/05/truth-about-deinstitutionalization/618986/>.

<sup>32</sup> *Id.*

began in 1955 and included relocating patients out of psychiatric hospitals and closing many of these psychiatric facilities.<sup>33</sup> Deinstitutionalization began during the civil rights movement when state hospitals began incorporating these groups into mainstream society.<sup>34</sup> The three main objectives of deinstitutionalization were to save money, to utilize the new antipsychotic medicine, and to remove the notion that psychiatric hospitals were cruel and inhumane.<sup>35</sup> While the deinstitutionalization efforts of the 1950s were an attempt to engage these individuals in community treatment plans, these plans ultimately failed and left such persons with nowhere to go.<sup>36</sup> Instead, these patients ended up in jails, prisons, and on the streets, having to fend for themselves.<sup>37</sup> In fact, mentally ill individuals are more likely to come in contact with law enforcement than receive any form of psychiatric treatment.<sup>38</sup> When this deinstitutionalization era began, police officials were thrown into the trenches, and had to deal with non-mentally ill criminals along with individuals who were even more complicated to handle—the mentally ill.<sup>39</sup> Deinstitutionalization efforts were certainly a step in the right direction when it came to mental health treatments, but the effort was not executed properly, and has led directly to the mental health crisis that exists today.

In 1954, the Food and Drug Administration approved the use of an antipsychotic drug called chlorpromazine, which promoted the idea that the mentally ill would no longer need these psychiatric facilities, as there was now hope that they would be cured.<sup>40</sup> Just nine years later, President John F. Kennedy signed the Mental Retardation Facilities and Community Health Centers Construction Act, which, along with the creation of Medicaid just a year later, spearheaded the

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<sup>33</sup> Edward Lyon, *Imprisoning America's Mentally Ill*, PRISON LEGAL NEWS (Feb. 4, 2019), <https://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html>.

<sup>34</sup> Daniel Yohanna, *History of Medicine Deinstitutionalization of People with Mental Illness: Causes and Consequences*, 15 AM. MED. ASS'N J. OF ETHICS 886, 886 (2013).

<sup>35</sup> *Id.*

<sup>36</sup> Roth, *supra* note 31.

<sup>37</sup> *Id.*

<sup>38</sup> Sam McCann, *Locking Up People With Mental Health Conditions Doesn't Make Anyone Safer*, (Aug. 25, 2022), <https://www.vera.org/news/locking-up-people-with-mental-health-conditions-doesnt-make-anyone-safer>.

<sup>39</sup> TREATMENT ADVOCACY CTR., *OVERLOOKED IN THE UNDERCOUNTED: THE ROLE OF MENTAL ILLNESS IN FATAL LAW ENFORCEMENT ENCOUNTERS* (2015).

<sup>40</sup> Roth, *supra* note 31.

deinstitutionalization efforts.<sup>41</sup> This legislation would replace these custodial mental institutions with community mental health centers, and thus allowed patients to live and receive psychiatric care in the same community.<sup>42</sup> The ultimate goal of this program was to “unburden society of chronically dependent persons” and instead combine psychopharmacology and supportive housing to free mentally ill individuals from the confinement they were experiencing as the outcasts of society.<sup>43</sup> Meanwhile, Medicaid cut back on what was covered under the legislation which included cutting back on in-patient care in psychiatric hospitals.<sup>44</sup> In theory, the law, signed by Kennedy, seemed to be a great alternative to standard psychiatric facilities, separate and apart from housing for the mentally ill; however, very few community mental health centers were actually built.<sup>45</sup> The community treatment centers became places to treat those with less serious mental illnesses, leaving these centers unable to provide the expensive treatment plans that were needed to treat those with more serious mental illnesses who needed to live in the community and needed assistance to function in everyday life.<sup>46</sup>

Since deinstitutionalization began, jails and prisons have steadily become the replacement for psychiatric hospitals and institutions; the statistics are astonishing.<sup>47</sup> Recent data show that there are over two million people in the nation’s jails and prisons.<sup>48</sup> Of the total inmate population, it is estimated that 383,200 of those inmates suffer from a mental illness, yet the number of mentally ill individuals in state mental hospitals is only 38,000.<sup>49</sup>

Mental illness behind bars has become an increasing issue across the nation and mentally ill inmates remain in jail longer than

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Blake Erickson, *Deinstitutionalization Through Optimism: The Community Mental Health Act of 1963*, THE AMERICAN JOURNAL OF PSYCHIATRY (June 11, 2021), <https://ajp.psychiatryonline.org/doi/10.1176/appi.ajp-rj.2021.160404>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Erickson, *supra* note 43.

<sup>47</sup> E. Fuller Torrey, *Jails and Prisons—America’s New Mental Hospitals*, 85 AM. J. OF PUB. HEALTH 1611, 1611 (1995).

<sup>48</sup> Jenna Bao, *Prisons: The New Asylums*, HARV. POL. REV. (Mar. 9, 2020), <https://harvardpolitics.com/prisons-the-new-asylums/>.

<sup>49</sup> TREATMENT ADVOCACY CTR., SERIOUS MENTAL ILLNESS (SMI) PREVALENCE IN JAILS AND PRISONS, at 2 (2016), <https://www.treatmentadvocacycenter.org/evidence-and-research/learn-more-about/3695>.



those without a mental illness.<sup>50</sup> Their inability to follow prison rules and guidelines causes them to act out and leads to even more discipline.<sup>51</sup> For these individuals, jails and prisons are a never-ending cycle of torture; they are sentenced to a certain length of time but their illness causes them to act out, making their sentences even longer. These inmates are then disciplined to a greater extent for prison rule violations, yet they fail to receive any treatment to help with what caused these violations and they are back at square one. Since their thinking is so impaired compared to an individual in general population, behavioral management is often a struggle in the prison system and these individuals are often subject to even harsher conditions, and in many cases, solitary confinement.<sup>52</sup>

But why are these individuals incarcerated in the first place? Mentally ill individuals are often arrested for minor crimes like shoplifting and engaging in lewd behavior.<sup>53</sup> In some instances, local authorities have even admitted to putting these individuals in jail to provide them a place to stay until more suitable services become available.<sup>54</sup> The problem is, with the operation of psychiatric facilities at a steady decline, more suitable services are almost impossible to come by. Community mental health treatment centers were supposed to be implemented into society, but instead jails and prisons became more popular places for the treatment of the mentally ill. What is even more disturbing is that a significant number of these individuals do not even make it to jail—instead their lives are taken at the hands of the police.<sup>55</sup> The risk of being killed by the police is sixteen times greater for the mentally ill than for the general population.<sup>56</sup> Evidently, this boils down to the training, or lack thereof, that police officers are provided with in the area of mental illness and how to handle these types

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<sup>50</sup> *Id.* at 2.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Stephen Raphael & Michael A. Stoll, *Assessing the Contribution of the Deinstitutionalization of the Mentally Ill to Growth in the U.S. Incarceration Rate*, 42 J. LEGAL STUD. 187, 191 (2013).

<sup>54</sup> *Id.*

<sup>55</sup> TREATMENT ADVOCACY CTR., *OVERLOOKED IN THE UNDERCOUNTED: THE ROLE OF MENTAL ILLNESS IN FATAL LAW ENFORCEMENT ENCOUNTERS* (2015).

<sup>56</sup> *Id.* at 1.

of situations, despite the increasing number of mentally ill individuals in today's society.<sup>57</sup>

### III. MENTAL ILLNESS IN PRISONS TODAY

Consider the facts: forty-three percent of people in state prisons have been diagnosed with a mental disorder;<sup>58</sup> twenty-five percent experience serious psychological distress;<sup>59</sup> and twenty-seven percent of individuals incarcerated three or more times have reported having a moderate or serious mental illness.<sup>60</sup> Yet, sixty-six percent of inmates in these prisons report that they were not given any mental health treatment while incarcerated.<sup>61</sup> At New York City's Rikers Island alone, eleven out of every one-hundred inmates have a serious mental illness and interestingly enough, there are more mentally ill individuals at Rikers Island than there are in all of New York's psychiatric facilities combined.<sup>62</sup>

A recent study<sup>63</sup> on punishment of those diagnosed with a serious mental illness who are incarcerated in New York State prisons

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<sup>57</sup> Edward Lyon, *Imprisoning America's Mentally Ill*, PRISON LEGAL NEWS (Feb. 4, 2019), <https://www.pbs.org/wgbh/pages/frontline/shows/asylums/special/excerpt.html>.

<sup>58</sup> Prison Policy Initiative, *Policies and Practices Surrounding Mental Health*, PRISONPOLICY.ORG, [https://www.prisonpolicy.org/research/mental\\_health/](https://www.prisonpolicy.org/research/mental_health/) (last visited Jan. 13, 2023).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Behavioral Health Services*, CASES.ORG, <https://www.cases.org/behavioral-health/> (last visited Jan. 13, 2023). New York State's Mental Hygiene law defines a serious mental illness as

[i]ndividuals who meet criteria established by the commissioner of mental health, which shall include persons who are in psychiatric crisis, or persons who have a designated diagnosis of mental illness under the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and whose severity and duration of mental illness results in substantial functional disability. Persons with serious mental illness shall include children and adolescents with serious emotional disturbances.

*See* N.Y. MENTAL HYG. LAW § 1.03 (McKinney 2018).

<sup>63</sup> PUNISHMENT OF PEOPLE WITH SERIOUS MENTAL ILLNESS IN NEW YORK STATE PRISONS 3 (2022) (This study documented how the Residential Mental Health Treatment Units (RMHTUs), while in theory were implemented to better serve those incarcerated that suffer from mental illness, were making those with mental health

showed that of the nearly four hundred people disciplined in the Residential Mental Health Treatment Units at all facilities under the Department of Correction and Community Supervision's care, ninety-nine percent were sentenced to segregated confinement and eighty-five percent were given at least six months or more of time in segregated confinement.<sup>64</sup>

In 2018, Casey Holloway, an inmate at the Anna M. Kross Center on Rikers Island, was strangled by Artemio Rosa, another inmate who "had a history of mental illness and violent behavior,"<sup>65</sup> which included assaults on a nurse, doctor, correction officer, and another inmate within the month prior to the deadly attack on Holloway.<sup>66</sup> Despite this, Rosa was kept in an inferior mental observation unit, which was not equipped to provide the level of care needed for Rosa's mental illness.<sup>67</sup> Holloway's family argued that this was part of the reason why Holloway was killed<sup>68</sup> and instead Rosa should have been placed in a Program to Accelerate Clinical Effectiveness ("PACE"), which offers daily counseling and multiple programs.<sup>69</sup> Holloway's death likely could have been prevented if Rosa was provided more appropriate health care for his mental illness.<sup>70</sup> Rosa needed more intensive care that could not be given in the inferior mental observation unit in which he was placed.

The story of Isa Abdul-Karim, another inmate at Rikers, is also troubling. While at the correctional facility, Abdul-Karim, a diagnosed

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conditions suffer even more. Instead of providing a more therapeutic environment for these individuals, those who are diverted to RMHTUs are receiving longer sentences of solitary confinement and are often punished for conduct caused by their mental health illness.)

<sup>64</sup> *Id.*

<sup>65</sup> Reuven Blau, *Rikers Guards' Bad Decisions Lead to Death, Suit Alleges*, THE CITY (Sept. 9, 2019, 4:00 AM), <https://www.thecity.nyc/justice/2019/9/9/21210820/rikers-guards-bad-decisions-led-to-man-s-death-suit-alleges>.

<sup>66</sup> Gabrielle Fonrouge & Stephanie Pagonis, *Psycho charged with murdering fellow inmate has history of terrorizing others*, N.Y. POST (July 19, 2018, 9:45 pm), <https://nypost.com/2018/07/19/psycho-charged-with-murdering-fellow-inmate-has-history-of-terrorizing-others/>.

<sup>67</sup> Blau, *supra* note 65.

<sup>68</sup> *Id.*

<sup>69</sup> Reuven Blau, *Family of Slain Rikers Inmate Nets \$1.65M in Suit Assailing 'Broken System'*, THE CITY (Feb. 2, 2021, 7:35 PM), <https://www.thecity.nyc/2021/2/2/22263392/rikers-inmate-slain-lawsuit-settled-nyc-jails>.

<sup>70</sup> *Id.*

schizophrenic, complained about an officer's harassment.<sup>71</sup> Due to this complaint, he was placed in a single cell which intensified the voices he was hearing.<sup>72</sup> Despite his diagnosed illness, an attempt at suicide, and verbal notions of wanting to end his life, Abdul-Karim was kept in a cell with no bed or toilet and would spend days there at a time.<sup>73</sup> Although this ultimately did not cause his death, it is a clear example of the lack of care and appropriate treatment given to inmates with a diagnosed mental illness.

Another unfortunate example of the issues inmates with mental illnesses face while incarcerated is the story of Dashawn Carter, a twenty-five year-old inmate at Rikers Island who committed suicide in May of 2022.<sup>74</sup> Carter missed nearly 100 medical appointments because officers failed to bring him to the clinic and also struggled to access the mental health medication that he needed.<sup>75</sup> Instead of placing Carter in a more appropriate unit, he was placed in the general population.<sup>76</sup> More troubling, just two days prior to his death, Carter had a psychiatric hospital stay, yet the facility placed him in general population with no extra supervision.<sup>77</sup>

#### IV. THE AMENDMENTS OF THE UNITED STATES CONSTITUTION ARE ALL-ENCOMPASSING

##### A. The Due Process Clause<sup>78</sup>

The Due Process Clause of the Fourteenth Amendment states that “no State shall deprive any person of life, liberty or property without due process of law.”<sup>79</sup> Due process, like equal protection, has stumped many scholars in their attempt to narrow down a solid

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<sup>71</sup> Bliss Broyard & Lisa Riordan Seville, *Rikers: The Obituaries*, NY MAG: INTELLIGENCER (Dec. 27, 2021), <https://nymag.com/intelligencer/article/rikers-in-mates-died-2021.html>.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Sam McCann, *Locking Up People With Mental Health Conditions Doesn't Make Anyone Safer*, VERA INST. OF JUST. (Aug. 25, 2022), <https://www.vera.org/news/locking-up-people-with-mental-health-conditions-doesnt-make-anyone-safer>.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> U.S. CONST. amend. XIV.

<sup>79</sup> *Id.*

interpretation of this protection. During the *Lochner* Era,<sup>80</sup> a period from 1905 through the mid-1930s, the Supreme Court continuously struck down economic regulations under substantive due process.<sup>81</sup> However, in *Nebbia v. People of New York*,<sup>82</sup> the Court held that “[t]he guaranty of due process . . . demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be obtained.”<sup>83</sup> Ultimately, the *Nebbia* Court concluded that a state’s economic regulation can only be a violation of the Due Process Clause if it is irrational, arbitrary, or discriminatory on its face, thus ending the *Lochner* Era and the continuous denial of economic development.<sup>84</sup>

Based on the plain language of the Constitution, a state may not deprive any person of life without due process of the laws.<sup>85</sup> Courts have consistently held that the “right to life is fundamental and is protected against unreasonable or unlawful takings by the procedural due process safeguards of the fifth and fourteenth amendments.”<sup>86</sup> As the Constitution stands, a state may not deprive any person of these fundamental rights without due process of law and in many instances, this also includes the rights of prisoners under the State’s care.<sup>87</sup> To deny persons their rights under the Constitution would be an absolute abuse of power, hence a constitutional provision that allows the federal government to act should the states fail to guarantee these rights.<sup>88</sup>

Courts have previously held that an individual who was convicted of a crime relinquished his liberty and his personal rights that the law guarantees him.<sup>89</sup> Despite this initial approach to the constitutional rights of some of the most heinous individuals of society, the

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<sup>80</sup> During the *Lochner* Era, the Supreme Court struck down economic regulations. Samuel Bagnestos, *Lochner Lives On*, ECON. POL’Y INST. (Oct. 7, 2020), <https://www.epi.org/unequalpower/publications/lochner-undermines-constitution-law-workplace-protections/> Instead, Justices took it upon themselves to regulate the conditions of workers. *Id.*

<sup>81</sup> William R. Musgrove, *Substantive Due Process: A History of Liberty in the Due Process Clause*, 2 U. ST. THOMAS J.L. 125, 129 (2008).

<sup>82</sup> 291 U.S. 502, 523-28 (1934).

<sup>83</sup> Musgrove, *supra* note 81, at 130 (quoting *Nebbia v. People of New York*, 291 U.S. 502, 523-28 (1934)).

<sup>84</sup> *Id.*

<sup>85</sup> U.S. CONST. amend. XIV.

<sup>86</sup> *Landrum v. Moats*, 576 F.2d 1320, 1325 (8th Cir. 1978).

<sup>87</sup> *Turner v. Safley*, 482 U.S. 78, 84 (1987).

<sup>88</sup> Musgrove, *supra* note 81.

<sup>89</sup> *Ruffin v. Commonwealth*, 62 Va. 790, 795-96 (1871).

courts have construed the Constitution differently throughout the years. Instead, the courts now hold that despite an inmate's status as a prisoner under the care and control of the state, these inmates do not relinquish their rights under the Constitution.<sup>90</sup> The Supreme Court held that courts are there to enforce the constitutional rights of all persons, including prisoners.<sup>91</sup> For example, racial segregation is unconstitutional outside of prisons and as such, is unconstitutional within prisons as well.<sup>92</sup> Federal courts are tasked with preventing prison regulations from interfering with a prisoner's constitutional right, holding that regulations are only valid when they reasonably serve some penological purpose.<sup>93</sup> While the term reasonable has been interpreted in various different ways, the Supreme Court has found reasonable to include a valid, rational connection between the regulation and government interest.<sup>94</sup> Finding alternative means to exercising that right and the absence of ready alternatives leaves the court to consider whether the regulation actually serves a reasonable penological purpose.<sup>95</sup> If an inmate can demonstrate that a reasonable alternative exists and is within the prisoner's rights, it is the court's duty to find that such regulation does not satisfy the reasonable standard that they have established.<sup>96</sup>

### 1. *Violations under the Due Process Clause*

The courts have held that prisoners do not shed their constitutional rights at the prison gate, meaning they should not be deprived of life, liberty, or property under the Fourteenth Amendment.<sup>97</sup> Denying prisoners appropriate and adequate mental health care is causing prisoners to harm themselves and, in serious instances, take their own lives. Despite their status as an inmate, prisons are failing to provide these inmates with the level of care they need, thereby denying them their right to fight for their life.<sup>98</sup> Suicide rates are astounding; in 2022 alone Rikers Island saw eighteen suicides, the largest number of

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<sup>90</sup> *Turner*, 482 U.S. at 84.

<sup>91</sup> *Cruz v. Beto*, 405 U.S. 319, 321 (1972).

<sup>92</sup> *Id.*

<sup>93</sup> *Turner*, 482 U.S. at 78.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> U.S. CONST. amend. XIV.

<sup>98</sup> *Id.*

suicides since 2013 when the jail population was double what it is now.<sup>99</sup> The Constitution guarantees that fair procedures will be used to ensure their protections are safeguarded.<sup>100</sup> Mentally ill inmates should not be so easily placed in solitary confinement and should be given opportunities for treatment to avoid self-harm or worse, suicide. Although inmates with mental illness are not necessarily given the death penalty by the courts, the lack of adequate treatment and care by prison staff is nearly the same thing as a death sentence.

### B. The Equal Protection Clause<sup>101</sup>

The Fourteenth Amendment of the United States Constitution provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.”<sup>102</sup> The Supreme Court determined that “[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.”<sup>103</sup> The Equal Protection Clause comes with protections and privileges that are afforded to us as persons of the United States.<sup>104</sup> When the Constitution was written, the framers included the protections to apply to all persons rather than just all men.<sup>105</sup> From the outset the continued enslavement of African Americans directly undermined the notion that all persons were created equal. In the *Slaughter-House Cases*,<sup>106</sup> the Court emphasized that “[l]ife is the gift of God, and the right to preserve it is the most sacred of the rights of man.”<sup>107</sup> For one to be given life is to be given equal protections of the law,

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<sup>99</sup> Patricia Warth, *Unjust Punishment: The Impact of Incarceration on Mental Health*, NYSBA (Dec. 5, 2022), <https://nysba.org/unjust-punishment-the-impact-of-incarceration-on-mental-health/>.

<sup>100</sup> *Turner*, 482 U.S. at 78.

<sup>101</sup> U.S. CONST. amend. XIV.

<sup>102</sup> U.S. CONST. amend. XIV, § 1.

<sup>103</sup> *Sunday Lake Iron Co. v. Wakefield Twp.*, 247 U.S. 350, 352 (1918).

<sup>104</sup> *Turner*, 482 U.S. at 78.

<sup>105</sup> David H. Gans, *Perfecting the Declaration: The Text and History of the Equal Protection Clause of the Fourteenth Amendment* 1 CONST. ACCOUNTABILITY CTR., [https://www.theconstitution.org/wp-content/uploads/2017/12/Perfecting\\_the\\_Declaration.pdf](https://www.theconstitution.org/wp-content/uploads/2017/12/Perfecting_the_Declaration.pdf).

<sup>106</sup> 83 U.S. 36 (1872).

<sup>107</sup> *Id.* at 58.

regardless of race, gender, ethnicity, among others, which should include one's mental status as well.

In *Plessy v. Ferguson*,<sup>108</sup> the Court held that the intention of the framers when drafting the Fourteenth Amendment was to allow for the equality of all persons.<sup>109</sup> However, their intention, the *Plessy* Court opined, could not have been for two people of different colors to be totally and completely integrated.<sup>110</sup> In fact, according to the *Plessy* Court, laws may even require their separation and as such, the law as it stood, did not necessarily imply that one race was superior to the other.<sup>111</sup> In 1954, the Court in the case of *Brown v. Board of Education of Topeka*<sup>112</sup> overturned its ruling in *Plessy*, despite its acceptance for more than half a century.<sup>113</sup> There, the Court held that “[t]he most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among ‘all persons naturalized in the United States.’”<sup>114</sup>

Yet, regardless of this prominent case in the history of the Fourteenth Amendment, the plain meaning of the Equal Protection Clause was still up for debate in the legal world. In a series of congressional debates, Senator Oliver Morton<sup>115</sup> analyzed what “the equal protection

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<sup>108</sup> 163 U.S. 537 (1954).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 544.

<sup>111</sup> *Id.* (arguing that it is within a state's police power to permit and even require the separation of races in places where they are liable to be brought into contact).

<sup>112</sup> *Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483 (1954).

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 489.

<sup>115</sup> Oliver Hazard Perry Morton, 1823-1877, former Governor of Indiana (1861-1867), former United States Senator of Indiana (1867-1877). See Indiana Historical Bureau, *Indiana Governor Oliver Perry Morton (1823-1877)*, IN.GOV, <https://www.in.gov/history/about-indiana-history-and-trivia/governors-traits/list-of-governors/indiana-governor-oliver-perry-morton-1823-1877/> (last visited Jan. 13, 2023). Morton was originally a Democrat but later became one of the organizers of the Republican party. *Id.* He was described as a “forceful and passionate partisan of unquestioned intellectual and executive ability” and a “highly controversial figure throughout his political career.” *Id.* A historical moment in his time as Governor occurred during the Civil War, when Lincoln called for troops, but the legislature failed to provide funding for the war effort. Morton instead raised money himself to equip and pay the soldiers. See *Gov. Oliver Perry Morton*, NAT'L GOVERNORS ASSN., <https://www.nga.org/governor/oliver-perry-morton/> (last visited Jan. 13, 2023).



of the laws” really meant.<sup>116</sup> He contended that the word “protection” meant more than its standard interpretation—instead it shall be construed as equal benefit of the law.<sup>117</sup> In one of his later debates, Senator Morton emphasized that:

[t]he whole body of the law is for protection in some form—the definition and protection of the rights of person and property; and when the fourteenth amendment declares that every person shall be entitled to the equal protection of the laws, it means to the equal benefit of the laws of the land. It forbids all discriminations of every character of any class of persons, being citizens of the United States.<sup>118</sup>

It is without a doubt that the underlying intention of the Equal Protection Clause when it was first written was to protect African Americans from discrimination due to the color of their skin. However, narrowing down a definitive interpretation of the Fourteenth Amendment has proven to be somewhat challenging for scholars across the country, as the language of the Equal Protection Clause is rather broad. Senator Allen G. Thurman,<sup>119</sup> simply put, saw the law as all encompassing—the state may not deny laws to one if it does not deny the laws to another, whether that person be innocent or criminal, sane or insane.<sup>120</sup>

### 1. *Violations under the Equal Protection Clause*

To deny inmates adequate mental health care is to deny them their constitutional right under the Equal Protection Clause. As the *Slaughter-House* Court determined, life is the gift of God and preserving it is the most sacred gift.<sup>121</sup> Yet we continuously see news reports of inmates taking their own lives because their mental illness is not

<sup>116</sup> Christopher R. Green, *The Original Sense of the (Equal) Protection Clause: Pre-Enactment History*, 19 GEO. MASON 1, 10 (2008).

<sup>117</sup> *Id.* at 10 n.41 (citing CONG. GLOBE, 42d Cong., 2d Sess. 846-47 (1872)).

<sup>118</sup> *Id.*

<sup>119</sup> Allen Granberry Thurman, 1813-1895, former United States Senator of Ohio (1869-1881), former President pro tempore of the United States Senate (1879-1880). See Ohio History Connection, *Allen G. Thurman*, OHIO HISTORY CENTRAL [https://ohiohistorycentral.org/w/Allen\\_G\\_Thurman](https://ohiohistorycentral.org/w/Allen_G_Thurman) (last visited Jan. 13, 2023). Thurman assisted in creating the Compromise of 1877, which settled the intense presidential election of 1876. *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Slaughter-House Cases*, 83 U.S. 36, 58 (1872).

being treated properly or is being exacerbated by the use of solitary confinement.<sup>122</sup> Unlike physical impairments, mental illnesses need a different standard of care that is not being provided to the inmates that suffer from them. Prisons are not ensuring that mentally ill inmates are given the opportunities to best survive in prison. Too many times are inmates being left to suffer without the medication or therapeutic treatment they need, forcing them to take their own lives because their mental illness has taken over them. Prisons are using forms of punishment as if these inmates were of the same mental stability as the general population, while denying them the care they so deserve to treat their mental illness and to give them an equal chance to survive while incarcerated.

### C. Protection from Cruel and Unusual Punishment under the Eighth Amendment<sup>123</sup>

The Eighth Amendment to the United States Constitution prohibits the infliction of cruel and unusual punishment.<sup>124</sup> Although it is true that many judicial interpreters now construe the meaning of the Eighth Amendment's cruel and unusual punishment provision differently from when it was first written, Justice Kennedy has asserted that "[t]he standard itself remains the same."<sup>125</sup> What has changed is merely how we apply it.<sup>126</sup> For example, as Justice Scalia has observed, whipping and branding were not cruel and unusual punishments in 1791.<sup>127</sup> As such, Scalia contended that under the Eighth Amendment, these forms of punishment would have been allowed, but now, these forms of punishment would be considered torturous and barbarous in nature.<sup>128</sup>

We have established as a society a minimum standard of decency in most things—some of which have become components of the

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<sup>122</sup> *Id.*

<sup>123</sup> U.S. CONST. amend. VIII.

<sup>124</sup> *Id.*

<sup>125</sup> Scott W. Howe, *Slavery as Punishment: Original Public Meaning, Cruel and Unusual Punishment, and the Neglected Clause in the Thirteenth Amendment*, 51 ARIZ. L. REV. 983, 987 (2009) (citing Antonin Scalia, *The Lesser Evil*, 57 U. CIN. L. REV. 849, 861 (1989)).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 984

<sup>128</sup> *Id.*

law.<sup>129</sup> The Superior Court of Pennsylvania has established a persuasive concept of the Eighth Amendment, stating that it is “nothing less than the dignity of man” and further, “[w]hile the State has the power to punish, the Amendment stands to assure that this power be exercised within the limits of civilized standards.”<sup>130</sup> Under this constitutional amendment, some cases have established what constitutes cruel and unusual punishment in the prison system, which may include, among others, unnecessarily harsh conditions, excessive force, and deliberate indifference to an inmate’s injuries or illness, dangerous conditions, or excessive force against an inmate.<sup>131</sup> Regardless of whether someone is alleged to have committed a crime or is convicted of a crime, they are still individuals subject to the protections of the United States Constitution—meaning they are entitled to the prohibition of the infliction of cruel and unusual punishment while incarcerated.<sup>132</sup> Ultimately, the cruel and unusual punishment clause was created with those incarcerated in mind and the intention of limiting the power of those in charge of these individuals.<sup>133</sup> Without such provisions, prison guards would significantly abuse their level of power over inmates under their watch.

### *1. Abuse of Power or Just Abuse?*

Undisputedly, prisoners rely on prison officials to receive medical care, whether it be for a broken leg, the flu, or anything in between. In fact, the Supreme Court found in the case of *Estelle v. Gamble*<sup>134</sup> that it is the government’s obligation to provide appropriate medical care for those incarcerated in their custody.<sup>135</sup> To not provide adequate medical care would constitute a violation of a prisoner’s Eighth Amendment right against cruel and unusual punishment as such lack of care may amount to the unnecessary and wanton infliction of pain.<sup>136</sup> Further, the Supreme Court also found there to be a certain

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<sup>129</sup> *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (holding that “we [the Court] have held repugnant to the Eighth Amendment punishments which are incompatible with ‘the evolving standards of decency that mark the progress of a maturing society’”) (citing *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

<sup>130</sup> *Com v. Hilliar*, 943 A.2d 984, 996 (Pa. Super. Ct. 2008).

<sup>131</sup> *Thompson v. Commonwealth of Virginia*, 878 F.3d 89, 97-98 (4th Cir. 2017).

<sup>132</sup> *Estelle*, 429 U.S. at 106.

<sup>133</sup> *Whitley v. Albers*, 475 U.S. 312, 318 (1986).

<sup>134</sup> *Estelle*, 429 U.S. at 97.

<sup>135</sup> *Id.* at 103.

<sup>136</sup> *Id.* at 104.

level of decency required when determining punishment in relation to the crime committed.<sup>137</sup> Chief Justice Warren in *Trop v. Dulles*<sup>138</sup> argued that even though it is within a state's power to punish for wrongdoings, such punishments under the Eighth Amendment must "be exercised within the limits of civilized standards."<sup>139</sup>

When the Eighth Amendment provision prohibiting cruel and unusual punishment was first drafted, it was to prevent torturous and barbarous methods of punishment on prisoners.<sup>140</sup> However, the Court has since found that the Eighth Amendment protects against punishments that although not amounting to barbarism, may still amount to the standards of cruel and unusual.<sup>141</sup> Justice Blackmun held in *Jackson v. Bishop*<sup>142</sup> that "[t]he Amendment embodies 'broad and idealistic concepts of dignity, civilized standards, humanity, and decency.'"<sup>143</sup> With this idea in mind, the Court held that infliction of unnecessary suffering did not conform within the standards of decency that society has deemed the norm.<sup>144</sup> Denial of a certain standard of medical care has been deemed unnecessary suffering, and as such, is inconsistent with the minimal standards of decency that the Eighth Amendment provides to inmates.<sup>145</sup> Regardless of whether the denial of medical care comes from a prison guard who ignores the pleas of the inmate or the prison doctor who fails to give the inmate the medication that is needed, denial of medical care may be considered unconstitutional.<sup>146</sup>

However, it is important to note that denying adequate medical care does not necessarily invoke a constitutional right just because the individual is a prisoner—the Supreme Court has thus held that a prisoner must "allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs."<sup>147</sup> To be deliberately

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<sup>137</sup> *Trop*, 356 U.S. at 100.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Estelle*, 429 U.S. at 102.

<sup>141</sup> *Id.*; see also *Gregg v. Georgia*, 428 U.S. 153, 171 (1976); *Trop*, 356 U.S. at 100-01; *Weems v. United States*, 217 U.S. 349, 373 (1910).

<sup>142</sup> 404 F.2d 571 (8th Cir. 1968).

<sup>143</sup> *Estelle*, 429 U.S. at 102 (quoting *Jackson*, 404 F.2d at 579).

<sup>144</sup> *Id.* at 103.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 106.

indifferent to a prisoner's medical needs is to provide or deny care that is below the evolving standards of decency in today's society.<sup>148</sup>

For prisoners to prove that prison guards or other personnel were deliberately indifferent to their serious medical needs, they must prove both an objective and subjective prong.<sup>149</sup> First, a prisoner must establish that their medical needs were sufficiently serious. Second, they must demonstrate that officials knew of the seriousness of the condition and ignored the excessive risk to the health or safety of the prisoner.<sup>150</sup> While the Constitution has safeguards in place to ensure that prisoners are not denied their rights regardless of their incarceration status, it is not interpreted to require prisons to provide state of the art medical care; instead the care must be acceptable to modern medicine.<sup>151</sup> Courts have defined serious medical need as "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity of a doctor's attention."<sup>152</sup> The Second Circuit has thus established a number of factors to consider when deciding if a medical need is serious: whether a reasonable doctor or patient would recognize the medical need as worthy of treatment, whether the medical need substantially affects one's daily activities, and whether "chronic and substantial pain exist."<sup>153</sup> Yet, under the Prison Litigation Reform Act—an act that has made it even more difficult for inmates to succeed in federal civil rights lawsuits<sup>154</sup>—a medical need is only considered serious when it involves a physical injury, and as per the general holding of the Second Circuit, the denial of care must create urgency, meaning death, permanent injury, or extreme pain.<sup>155</sup>

Prisoners must also prove that prison officials both knew about their serious medical need and disregarded it.<sup>156</sup> To prove this requires

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<sup>148</sup> *Id.*

<sup>149</sup> COLUMBIA HUMAN RIGHTS LAW REVIEW, *A Jailhouse Lawyer's Manual*, 12 COLUM. HUM. RTS. L. REV. 783, 785 (2020).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 785-86 (see also *Brown v. Johnson*, 387 F.3d 1344, 1350-52 (11th Cir. 2004); *Carnell v. Grimm*, 872 F. Supp 746, 755 (D. Haw. 1994)).

<sup>153</sup> *Id.* at 786.

<sup>154</sup> Andrea Fenster & Margo Schlanger, *Slamming the Courthouse Door: 25 years of evidence for repealing the Prison Litigation Reform Act*, Prison Policy Initiative (Apr. 26, 2021), [https://www.prisonpolicy.org/reports/PLRA\\_25.html](https://www.prisonpolicy.org/reports/PLRA_25.html).

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 788.

a two-fold analysis: first, did the prison officials know about the serious medical need; and second, if they knew about the serious medical need, did they genuinely believe their health was being threatened?<sup>157</sup> This may seem like a reasonable standard for one with a physical illness, but proving a mental illness under this standard is often more complicated. Looking back at the case of Javier Velasco, who made it known that he wanted to commit suicide not just by his words but by his actions, it is easy to conclude that Velasco's constitutional rights were being violated.<sup>158</sup> In this instance, the report noted that the CO on duty the night of Velasco's death failed to perform adequate supervisory checks to inmates housed in suicide watch units.<sup>159</sup> Considering that just three days prior Velasco attempted to commit suicide and was clearly distraught by the fact that he was unsuccessful on his first attempt, it was crucial that the CO follow the standard set forth in the New York Code, yet he failed to do so.<sup>160</sup>

## V. FEDERAL LAW

### A. Federal Statutes

The Americans with Disabilities Act<sup>161</sup> was enacted to prevent discrimination against individuals when it comes to adequate health care.<sup>162</sup>

#### 1. *Americans with Disabilities Act (ADA)*

Title II of the Americans with Disabilities Act states that “no qualified individual with a disability, shall, by reason of such disability, be excluded from participation in or be denied the benefits of the

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<sup>157</sup> *Id.*

<sup>158</sup> THOMAS J. LOUGHREN, *Final Report of the New York State Commission of Correction: In the Matter of the Death of Javier Velasco*, 2, (N.Y.S. COMM'N OF CORRECT., 2022), available at <https://scoc.ny.gov/pdfdocs/mrb/Velasco%20Javier%20%20AMKC.pdf>.

<sup>159</sup> *Id.*

<sup>160</sup> 9 NYCRR § 7003.3(c). This code addresses the security and supervision of inmates under New York State care. Specifically, section 7003.3(c) provides that general supervision shall be maintained when all prisoners are in their individual housing units. In this instance, the Medical Review Board found that the guard failed to adequately supervise the inmates under his care.

<sup>161</sup> Americans with Disabilities Act of 1990, 42 U.S.C.A. §§ 12101-12213 (1990).

<sup>162</sup> *Id.*

services, programs, or activities of a public entity.”<sup>163</sup> In *Estate of Crandall v. Godinez*,<sup>164</sup> the District Court held that a prison may violate the ADA if it fails to provide inmates in its care with access to medication that is prescribed by a physician.<sup>165</sup> Not only did Dashawn Carter miss over 100 clinic appointments, the medication he needed for his mental illness was also impossible to access, which is arguably a violation of the ADA.<sup>166</sup> While training of law enforcement is not a requirement of the ADA, several commenters have also suggested that training be provided to law enforcement personnel to aid them in recognizing the differences between criminal activity and mental illness.<sup>167</sup>

The purpose of the ADA was to prevent discrimination against those with disabilities, whether physical or mental, in all areas of society.<sup>168</sup> However, the ADA was not created to protect those with medical impairments generally.<sup>169</sup> Instead, it was created to protect those who were discriminated against because of their medical impairment.<sup>170</sup> For example, considering employment policies, the Supreme Court established that the objective of Congress was not only to achieve equal employment opportunities, but also to preclude policies that inherently favor one group of persons over another.<sup>171</sup> At that time, policies such as the ADA were in place, but it was still apparent that African Americans were continuously being discriminated against even though the plain language of these policies did not appear to be generally discriminatory. To help eliminate this discrimination, the creation of the ADA was applicable for not only employment policies but for societal applications as well.

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<sup>163</sup> 42 U.S.C. § 12132.

<sup>164</sup> *Estate of Crandall v. Godinez*, No. 14-cv-1401, 2015 WL 1539017, at \*20 (C.D. Ill. R. Mar. 31, 2015).

<sup>165</sup> *Id.*

<sup>166</sup> Sam McCann, *Locking Up People With Mental Health Conditions Doesn't Make Anyone Safer*, VERA INST. OF JUST. (Aug. 25, 2022), <https://www.vera.org/news/locking-up-people-with-mental-health-conditions-doesn't-make-anyone-safer>.

<sup>167</sup> 28 CFR Part 35 § 35.130.

<sup>168</sup> *Id.*

<sup>169</sup> Americans with Disabilities Act of 1990, 42 U.S.C.A. §§ 12101-12213 (1990).

<sup>170</sup> *Christian v. St. Anthony Med. Ctr., Inc.*, 117 F.3d 1051, 1053 (7th Cir. 1997).

<sup>171</sup> *Id.* at 429.

## B. Federal Case Law

### 1. *The Right to Adequate Psychiatric Care*

Federal circuit courts have established that the right to adequate medical care for incarcerated people is inclusive of psychiatric care as well.<sup>172</sup> For example, in *Bowring v. Godwin*,<sup>173</sup> the Fourth Circuit established a three-part test to determine whether an incarcerated person with a mental illness is entitled to mental health treatment: first, inmates must prove that symptoms of serious disease or injury are present; second, they must prove that such disease can be cured or substantially improved; and third, that the likelihood of harm is substantial if not treated.<sup>174</sup> The Sixth Circuit found that it is a constitutional duty to provide mental health care and that such care is a clear intention of the Eighth Amendment.<sup>175</sup> In *Fitzke v. Shappell*,<sup>176</sup> the court held that failure to provide treatment violates the due process clause, arguing that the “failure or refusal to treat ‘could well result in the deprivation of life itself.’”<sup>177</sup> Further, the Second Circuit believes that mental health care is an integral part of medical care and falls within the premise of what *Estelle* established.<sup>178</sup>

## VI. STATE LAW

### A. New York’s Mental Hygiene Law<sup>179</sup>

New York State’s Mental Hygiene Law was enacted in 1964, and has been deemed the most crucial act regarding the admission, transfer, and retention of psychiatric patients.<sup>180</sup> Individuals have been and continue to be involuntarily hospitalized if they pose a risk of harm

<sup>172</sup> See *Bowring v. Godwin*, 551 F.2d 44, 47 (4th Cir. 1977); *Langley v. Coughlin*, 888 F.2d 252, 254 (2d Cir. 1989).

<sup>173</sup> *Bowring v. Godwin*, 551 F.2d 44, 47 (4th Cir. 1977).

<sup>174</sup> COLUMBIA HUMAN RIGHTS LAW REVIEW, *A Jailhouse Lawyer’s Manual*, 12 COLUM. HUM. RTS. L. REV. 984, 989 (2020).

<sup>175</sup> *Id.* at 989 n.34.

<sup>176</sup> *Fitzke v. Shappell*, 468 F.2d 1072 (6th Cir. 1972).

<sup>177</sup> *Id.* at 1076 (quoting *Stiltner v. Rhay*, 371 F.2d 420, 421 (9th Cir. 1967)).

<sup>178</sup> *Id.*; see also *Langley v. Coughlin*, 888 F.2d 252, 254 (2d Cir. 1989).

<sup>179</sup> N.Y. MENTAL HYG. LAW (McKinney 2018).

<sup>180</sup> SUP. CT. OF THE STATE OF N.Y., HIST. OF THE MENTAL HYGIENE LEGAL SERV., [https://nycourts.gov/courts/ad2/pdf/mhlsart10/MHLS\\_history.pdf](https://nycourts.gov/courts/ad2/pdf/mhlsart10/MHLS_history.pdf).



to themselves or others.<sup>181</sup> However, professionals have argued that even those who are involuntarily hospitalized are still protected by the Constitution, as they are citizens first and mental patients second.<sup>182</sup> To successfully treat and accommodate those with mental illnesses, New York created the Mental Health Information Service, which became the Mental Hygiene Legal Service in 1986.<sup>183</sup>

To fully understand mental health and the impairments it may cause, the Legislature needed to first establish what a mental disability and a mental illness is.<sup>184</sup> According to New York's Mental Hygiene Law, a mental disability is a "mental illness, intellectual disability, developmental disability, or an addictive disorder as defined in this section."<sup>185</sup> Further, a mental illness is "an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking, or judgment to such an extent that the person afflicted requires care, treatment and rehabilitation."<sup>186</sup> The drafters of this law even took the definition a step further and defined persons with serious mental illness as

[i]ndividuals who meet criteria established by the commissioner of mental health, which shall include persons who are in psychiatric crisis, or persons who have a designated diagnosis of mental illness under the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and whose severity and duration of mental illness results in substantial functional disability. Persons with serious mental illness shall include children and adolescents with serious emotional disturbances.<sup>187</sup>

Since its enactment in 1964, numerous provisions have been added to continue improving services available to mentally ill individuals.<sup>188</sup> For instance, in 1968, the Legislature extended the services given by the Mental Health Information Service to children hospitalized in

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<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 2.

<sup>184</sup> N.Y. MENTAL HYG. LAW § 1.03 (McKinney 2018).

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> Torrey, *supra* note 47.

mental health facilities<sup>189</sup> and in 1999, Kendra's Law was passed.<sup>190</sup> Kendra's Law provided for court-ordered Assisted Outpatient Treatment (AOT) to ensure that those with mental illnesses who have a history of violence and hospitalizations are given the appropriate treatment and care from appropriate community services.<sup>191</sup> This law, along with others pertaining to the Mental Hygiene Law, have been continuously under review.

### **B. Department of Corrections and Community Supervision**

The New York State Department of Corrections and Community Supervision has established a standard of medical, dental, and mental health services for those in its care.<sup>192</sup> This department is responsible for the confinement and rehabilitation of more than 30,000 inmates and the supervision of over 20,000 parolees.<sup>193</sup> Pertaining specifically to mental health services, its regulations are as follows:

[u]pon reception into the DOCCS system and throughout incarceration as necessary, incarcerated individuals can be referred and assessed by [Office of Mental Health] staff to determine the amount of mental health services required and are then assigned to facilities where that level of service is available. Although not on site at every facility, each facility has a procedure in place for incarcerated individuals to request and receive such services. Services include crisis intervention, individual short and long term counseling, group counseling, and special programs and services for those who are eligible.<sup>194</sup>

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<sup>189</sup> Roth, *supra* note 31, at 3.

<sup>190</sup> *Id.* at 8.

<sup>191</sup> *Assisted Outpatient Treatment*, OFF. OF MENTAL HEALTH, N.Y. STATE, <https://my.omh.ny.gov/analytics/saw.dll?dashboard>.

<sup>192</sup> Department of Corrections and Community Supervision, *Medical Services*, N.Y. STATE, <https://doccs.ny.gov/medical-services> (last visited Jan. 13, 2023).

<sup>193</sup> Department of Corrections and Community Supervision, *About Us*, N.Y. STATE, <https://doccs.ny.gov/about-us> (last visited Jan. 13, 2023).

<sup>194</sup> See Department of Corrections and Community Supervision, *supra* note 192.

Further, the New York DOCCS under the New York Administrative Code created a provision for those incarcerated who have mental illness and are subject to segregated confinement.<sup>195</sup> The New York Code provides guidance for those who are placed in segregated confinement, emphasizing timely assessments and an increased level of mental health services.<sup>196</sup>

New York's Correction Law requires a certain level of oversight to programs inside prisons.<sup>197</sup> For example, the law addresses the level of attention expected from corrections officers and other individuals in order to maintain the care and well-being of those who have mental illnesses under the state's correctional care, along with other provisions to help guide correctional facilities throughout the state of New York.<sup>198</sup> This law also provides guidelines for inmates subject to inmate confinement as per the New York Code on Inmate Confinement.<sup>199</sup> Although there are regulations in place that allow prisoners with mental illnesses increased out-of-cell time should they be subject to inmate confinement, it is still apparent that such confinement is allowed for prisoners with mental illness.<sup>200</sup>

### C. State Commission of Correction

The Official Compilation of Codes, Rules and Regulations of the State of New York provides that “[t]he county legislature, board of supervisors or similar county governing unit shall appoint a properly registered physician for the local correctional facility.”<sup>201</sup> While it is appropriate to assign a registered physician to each correctional facility, a physician and a psychiatrist do not serve the same purpose and thus the lack of mental health care specifically is lacking. Further, upon admittance to the correctional facility, each inmate is to be examined by the physician as soon as possible but not later than fourteen

<sup>195</sup> N.Y. COMP. CODES R. & REGS. tit. 7, § 319.2 (2020).

<sup>196</sup> *Id.*

<sup>197</sup> N.Y. CORRECT. LAW §§ 400-405 (McKinney).

<sup>198</sup> *Id.*

<sup>199</sup> N.Y. COMP. CODES R. & REGS. tit. 9, § 7075.4 (2019) (Section 7075.4 discusses the requirements of confining an inmate. For example, absent any exigent circumstances, an inmate cannot be confined to any room not designated for specific confinement. This section also provides that a segregated individual shall be allowed seven hours per day outside of their sleeping area.).

<sup>200</sup> *Id.*

<sup>201</sup> 9 CRR-NY 7010.2.

days after admission.<sup>202</sup> Fourteen days is far too long to be examined. Forty-one percent of suicides occur within the first week of an inmate's admission to jail<sup>203</sup>—to wait fourteen days to be examined may be too late.

The general policy of the State Commission of Correction requires “the chief administrative officer of each local correctional facility . . . to develop and implement written policies and procedures” pertaining to health services given to inmates throughout the correctional facilities in New York.<sup>204</sup> Ultimately, the care and treatment that these individuals receive lie in the hands of each individual chief administrative officer, instead of by strict uniform rules and regulations created by the state that should be followed.<sup>205</sup> While the rules and regulations require a “properly registered physician” to be appointed to each local correctional facility, the extent of care these physicians have lies on general health care.<sup>206</sup>

To say these rules and regulations are vague and ambiguous would be an understatement. Nowhere in New York's Official Compilation of Codes, Rules and Regulations is mental health care specifically addressed. Instead, “health services” are addressed generally and even standard health care is inadequately referenced in this context.<sup>207</sup> Each correctional facility is left to create its own set of policies and procedures that are “consistent with this part” yet nowhere does the compilation address the level of care that these policies and procedures must adhere to.

#### D. New York Prisons Today

To deter the use of solitary confinement for inmates who suffer from mental illnesses, DOCCS implemented Residential Mental Health Treatment Units (“RMHTU”) after the enactment of the 2008

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<sup>202</sup> *Id.*

<sup>203</sup> *Most Suicides in Jail Occur Within the First Week*, PRISON POL'Y INITIATIVE (2016), available at [https://www.prisonpolicy.org/graphs/jail\\_suicides\\_by\\_days\\_2015.html](https://www.prisonpolicy.org/graphs/jail_suicides_by_days_2015.html).

<sup>204</sup> 9 CRR-NY 7010.1.

<sup>205</sup> N.Y. COMP. CODES R. & REGS., *supra* note 199.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

SHU Exclusion law.<sup>208</sup> This law mandated that any inmate diagnosed with a serious mental illness who would be placed in solitary confinement for more than thirty days should instead be sent to a RMHTU.<sup>209</sup> While in theory diverting these individuals to RMHTUs was an excellent alternative to keeping these individuals in a single cell for twenty-three of the twenty-four hours in a day, the ultimate goal was not realized and evidently was ineffective. Instead of therapeutically assisting these inmates, the residents of these units were often subjected to extensive periods of solitary confinement for behaviors caused by their mental illness.<sup>210</sup>

In the Supreme Court case of *Davis v. Ayala*,<sup>211</sup> Justice Anthony Kennedy remarked powerfully on the impact of solitary confinement on an inmate on death row.<sup>212</sup> Ayala had been held in prison for twenty-five years, the majority of which he spent in solitary confinement, meaning he was confined in a small cell for twenty-three of the twenty-four hours in a day.<sup>213</sup> Kennedy, clearly appalled by the nation's willingness to use solitary confinement so routinely, raised the question of constitutionality of prolonged solitary confinement as a possible violation of the Eighth Amendment.<sup>214</sup> He noted that "solitary confinement is most harmful to young people and the mentally ill, who often end up in prison."<sup>215</sup> Despite extensive research on how solitary confinement affects not just prisoners, but mentally ill prisoners, New York has continued to use solitary confinement as a form of punishment.<sup>216</sup>

The first use of solitary confinement occurred in the early nineteenth century when the Philadelphia Quakers implemented this program in an attempt to prevent inmate recidivism and force prisoners to

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<sup>208</sup> PUNISHMENT OF PEOPLE WITH SERIOUS MENTAL ILLNESS IN NEW YORK STATE PRISONS 1 (2022), available at <https://drive.google.com/file/d/16yzZ-LJ8-JwVBvG3ptPlfu6kUfJw01CL/view>.

<sup>209</sup> *Id.*

<sup>210</sup> See Warth, *supra* note 99.

<sup>211</sup> *Davis v. Ayala*, 576 U.S. 257 (2015).

<sup>212</sup> The Editorial Board, *Justice Kennedy on Solitary Confinement*, N.Y. TIMES (June 19, 2015), <https://www.nytimes.com/2015/06/20/opinion/justice-kennedy-on-solitary-confinement.html>.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> Sanders, *supra* note 12.

reflect on their behaviors.<sup>217</sup> Mentally ill inmates are disproportionately assigned to restrictive housing due to their behaviors that derive from their illness.<sup>218</sup> Regardless of the clear indication of how cruel and unusual solitary confinement is for mentally ill prisoners, these practices are still being implemented today.<sup>219</sup> Incarceration is already a stressful environment to adjust to, but mentally ill prisoners have a significantly more difficult time adjusting to prison conditions.<sup>220</sup> Often, these individuals are the subjects of victimization from other inmates due to their illness, and more often than not, do not receive the appropriate treatment for their mental illness.<sup>221</sup> Despite recognition of these conditions, prisons are still lacking appropriate mental health care.

Patricia Warth, the director of the New York State Office of Indigent Legal Services (“ILS”), very recently addressed the mental health issues and the lack of treatment that inmates face in her article *Unjust Punishment: The Impact of Incarceration on Mental Health*.<sup>222</sup> Warth said it best: “[s]adly, a defining feature of our nation is its legacy of punishing rather than humanely caring for people with mental illness.”<sup>223</sup> The problem lies directly in the level of punishment that mentally ill inmates receive rather than the treatment that they need. Jack Beck,<sup>224</sup> who has more than thirty years of experience investigating prison conditions, states that the primary concern of prisons is the custody and control of inmates in their care.<sup>225</sup> Not only do correctional staff often fail to identify the troubling behaviors of those suffering from mental illness, when they do identify these behaviors, instead of making efforts to therapeutically handle them, they exercise the same

<sup>217</sup> Jeffery Smith McLeod, *Anxiety, Despair, and the Maddening Isolation of Solitary Confinement: Invoking the First Amendment’s Protection Against State Action that Invades the Sphere of the Intellect and Spirit*, 70 U. PITT. L. REV. 647, 649 (2009).

<sup>218</sup> Molly Remch et al., *Impact of a Prison Therapeutic Diversion Unit on Mental and Behavioral Health Outcomes*, 61 AM. J. OF PREVENTIVE MED. 619 (2021), available at [https://www.ajpmonline.org/article/S0749-3797\(21\)00354-8/fulltext](https://www.ajpmonline.org/article/S0749-3797(21)00354-8/fulltext).

<sup>219</sup> *Why are People Sent to Solitary Confinement? The Reasons Might Surprise You*, VERA INST. OF JUST. (Mar. 2021), <https://www.vera.org/publications/why-are-people-sent-to-solitary-confinement>.

<sup>220</sup> Hannah T. S. Long, *The “Inequitability” of Incarceration*, 31 COLUM. J.L. & SOC. PROBS. 321, 342 (1998).

<sup>221</sup> *Id.*

<sup>222</sup> Warth, *supra* note 99.

<sup>223</sup> *Id.*

<sup>224</sup> *See id.*

<sup>225</sup> *Id.*

level of control as they would if these inmates were not suffering from a mental illness.<sup>226</sup> It is evident that correctional staff are there to exercise control and superiority over inmates, completely dismissing the inmates who have mental illnesses and act out because of such.<sup>227</sup> Mentally ill inmates are expected to adhere to and follow the same rules and regulations as everyone else in prison, but unfortunately the correctional officers fail to realize that their illness prevents them from doing so.<sup>228</sup>

Two former inmates, Sharon White-Harrigan and Tyrell Muhammad discuss their experiences in New York's prisons and further support the notion that these facilities are not adequately equipped nor trained to handle and care for mentally ill inmates.<sup>229</sup> White-Harrigan's accounts from prison allude to the fact that correctional staff were not properly trained to handle mentally ill inmates.<sup>230</sup> Instead, staff would often use derogatory remarks and insults towards inmates "typically in a random manner and with no apparent reason other than a bald assertion of control."<sup>231</sup> Muhammad agrees with White-Harrigan, noting that prisons have failed to utilize more effective treatment plans including trauma-informed care.<sup>232</sup> Rather than treat the mentally ill appropriately and effectively, prison guards continuously subject these inmates to harsh punishments, further exacerbating their mental illnesses and behavioral outbursts.<sup>233</sup> Worse yet, when mentally ill inmates are actually treated, the treatment is limited to medication with no therapy and often the medication regime they are given is not well-monitored or managed, thereby rendering the only form of treatment they are being given ineffective.<sup>234</sup>

## VII. ANALYSIS AND RECOMMENDATIONS

It is without a doubt that mental health care is lacking not only in prisons, but outside of prisons as well. Specifically in the prison system, the inadequate care and treatment that these inmates receive,

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<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

or rather do not receive, is a clear violation of their constitutional rights. Being an inmate does not mean shedding constitutional rights at the prison gate. Regardless of their status as a prisoner subject to the rules and regulations of the prison system, they should be considered a citizen first and a prisoner second. Yet, inmates who are incarcerated for even the smallest of crimes are being stripped of their constitutional rights and are dying by their own hands.

From 2001 to 2019, nationwide suicide rates have increased by eighty-five percent in state prisons, sixty-one percent in federal prisons, and thirteen percent in local jails.<sup>235</sup> In 2019, three hundred and fifty-five inmates died by suicide.<sup>236</sup> Over the twenty-year period, six thousand, two hundred local jail inmates died by suicide.<sup>237</sup> There is no doubt that jails and prisons are not therapeutic environments and are not equipped to treat and handle mentally ill inmates in this way.<sup>238</sup> Failure to adequately treat inmates with mental illnesses could lead to the deprivation of life, as seen in the several cases of suicide attempts throughout New York jails and prisons.<sup>239</sup> This is a direct violation of the Due Process Clause of the Fourteenth Amendment, which provides that no state shall “deprive any person of life, liberty, or property, without due process of law . . . .”<sup>240</sup> Inmates should not be discriminated against because of their status as an inmate. The framers of the Constitution intended for inmates, despite their status in the criminal justice system, to be protected by the provisions of the constitution, including the Equal Protection Clause, Due Process Clause, and the Eighth Amendment’s protection against cruel and unusual punishment.<sup>241</sup> These protections include adequate treatment as it correlates to their life and the protection of it.

Despite the deinstitutionalization efforts beginning in 1955, it does not appear that mental health services have gotten any better. There needs to be an improvement in mental health care in prisons. To begin, inmates should not miss prison appointments, and should not be denied medicine prescribed by a physician. Funds should be allocated

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<sup>235</sup> E. Ann Carson, Ph.D., *Suicide in Local Jails and State and Federal Prisons, 2000-2019 – Statistical Tables*, U.S. DEP’T OF JUST., 1, 1 (2021), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/sljsfp0019st.pdf>.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> Roth, *supra* note 31.

<sup>239</sup> U.S. CONST. amend. XIV.

<sup>240</sup> U.S. CONST. amend. XIV.

<sup>241</sup> U.S. CONST. amends. V, VIII, XIV.



to improve mental health services instead of spending more money putting these inmates in solitary confinement, let alone jail in the first place. Correction staff, from those at the very top to guards in the trenches, should be adequately trained to identify behaviors caused by an inmate's mental illness. Mental health professionals should be available at each correctional facility to attend to those in need. There is no doubt that criminals should be punished for the crimes they committed. However, we must be more cognizant of crimes that are committed due to mental illnesses, including crimes and facility rule violations that occur on the inside.

After careful consideration and analysis on the subject, it would be beneficial to enforce stricter rules and regulations that all prisons in New York State should adhere to. Instead of vague rules and regulations that allow each chief administrative officer to create their own set of policies and procedures pertaining to health services for inmates, New York DOCCS should create and implement a strict set of guidelines that apply to every correctional facility in the State of New York and are more informed about inmates who suffer from mental illnesses.

#### VIII. CONCLUSION

The lack of adequate mental health care in the prisons of New York is a plain violation of an inmate's constitutional rights under the Fourteenth Amendment's Due Process and Equal Protection Clauses as well as the Eighth Amendment's protection from cruel and unusual punishment. Prisoners, although prisoners, are still citizens of the United States and are afforded the protection of this country's constitution. As Fyodor Dostoevsky put it, "[t]he degree of civilization in a society can be judged by entering its prisons,"<sup>242</sup> and it is crucial that we start implementing policies and procedures immediately to protect the mentally ill population.

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<sup>242</sup> *Davis v. Ayala*, 576 U.S. 257, 289 (2015) (Kennedy, J., concurring) (quoting *THE YALE BOOK OF QUOTATIONS* 210 (Fred A. Shapiro ed., 2006)).