# The Simple Bare Necessities: Why Iowa Should Enact Legislation Providing Incarcerated Individuals with Outdoor Recreation Time

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*ABSTRACT: The Eighth Amendment of the U.S. Constitution bars excessive bail, excessive fines, and cruel and unusual punishments. The U.S. Supreme Court has determined that the meaning of cruel and unusual punishment is not static, but instead evolves with society. This Note discusses the Cruel and Unusual Punishments Clause generally and its application to prison conditions. This Note will also discuss the current federal circuit split over whether a lack of outdoor recreation time in prison violates the Eighth Amendment, as well as laws on outdoor recreation time for incarcerated individuals. This Note argues that a lack of outdoor exercise and recreation time in prison violates the Eighth Amendment's prohibition against cruel and unusual punishment due to its impact on the well-being of incarcerated individuals. Finally, this Note proposes that Iowa should enact legislation explicitly providing outdoor recreation time for incarcerated individuals.*



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## INTRODUCTION

Long before the U.S. Constitution was created, the Magna Carta recognized a proscription against excessive punishments under English common law.[1] In 1791, the Framers recognized the importance of this protection and adopted the Eighth Amendment of the U.S. Constitution, which has since protected Americans from such excessive punishments.[2] Under the Eighth Amendment, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[3] The

1. *See* John D. Bessler, *A Century in the Making: The Glorious Revolution, the American Revolution, and the Origins of the U.S. Constitution's Eighth Amendment*, 27 WM. & MARY BILL RTS. J. 989, 1041 (2019).

2. *See id.* at 990.

3. U.S. CONST. amend. VIII.

importance of this clause is not debated, but the interpretation of what constitutes "cruel and unusual" has largely been the subject of debate as societal expectations of punishment have evolved since the Amendment's passing.[4]

This Note argues that Iowa should enact legislation guaranteeing incarcerated individuals outdoor recreation time, as such a deprivation violates the Cruel and Unusual Punishments Clause of the Eighth Amendment of the U.S. Constitution and Article I, Section 17, of the Iowa Constitution.[5] Part I of this Note addresses the history and the U.S. Supreme Court's interpretation of the Cruel and Unusual Punishments Clause.[6] Part II addresses the circuit split among federal courts as to whether or not there is an explicit right to outdoor recreation for incarcerated individuals.[7] Additionally, Part II discusses several aspects of the Eighth Amendment's application of the Cruel and Unusual Punishments Clause to the provision of outdoor recreation time. Part II also addresses existing state laws and regulations requiring outdoor recreation, the mental and physical consequences of a lack of outdoor time, and relevant Iowa-specific health and policy concerns of not providing sufficient outdoor recreation time.[8] Finally, Part III proposes a solution for Iowa legislators to resolve the unconstitutional nature of the current statutory scheme, which does not guarantee outdoor recreation time to incarcerated individuals.[9]

## I. CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AMENDMENT AND ITS APPLICATION TO OUTDOOR RECREATION

A constitutional requirement for outdoor recreation time in prison, which would be subjected to the bounds of the Eighth Amendment, has not yet been considered by the U.S. Supreme Court. The Supreme Court has held that the Eighth Amendment is applicable to the states by virtue of the Fourteenth Amendment's Due Process Clause.[10] Further, Iowa has enacted its own form of the Eighth Amendment under the Iowa Constitution, which parallels the language of the Eighth Amendment.[11]

First, this Part will provide the historical background of the Eighth Amendment and its adoption.[12] Second, this Part will describe the evolution of prison and jail conditions, including historical treatment of incarcerated

4. *See* John F. Stinneford, *The Original Meaning of "Unusual": The Eighth Amendment as a Bar to Cruel Innovation*, 102 NW. U. L. REV. 1739, 1742–43 (2008).

5. U.S. CONST. amend. VIII; IOWA CONST. art. I, § 17.

6. *See infra* Part I.

7. *See infra* Part II.

8. *See infra* Part II.

9. *See infra* Part III.

10. Robinson v. California, 370 U.S. 660, 666 (1962).

11. *See* IOWA CONST. art. I, § 17 ("Excessive bail shall not be required; excessive fines shall not be imposed, and cruel and unusual punishment shall not be inflicted.").

12. *See infra* Section I.A.

individuals.[13] Finally, this Part will discuss the Supreme Court's jurisprudence regarding cruel and unusual punishment under the Eighth Amendment.[14]

### *A. THE HISTORY OF THE EIGHTH AMENDMENT PROTECTION AGAINST CRUEL AND UNUSUAL PUNISHMENT*

At the time of the Eighth Amendment's ratification in 1791, the protection against cruel and unusual punishment was not a new concept.[15] The Magna Carta, constructed over five centuries prior to the enactment of the Eighth Amendment, is one of the earliest English common law documents establishing protections against excessive fines and disproportionate punishments.[16] The Magna Carta's protection against cruel and unusual punishments was primarily aimed at preventing governmental and judicial abuse of discretion, as was the case with its future successor, the English Bill of Rights.[17] The English Bill of Rights's prohibition on cruel and unusual punishment was established following the excessive sentencing of an Anglican cleric, Titus Oates, who was convicted of perjury after falsifying the existence of an assassination plot against King Charles II.[18] The judge subsequently sentenced Oates to what has been described as being "scourged to death."[19] Several years later, the English Bill of Rights of 1689 included a provision stating "[t]hat excessive Baile ought not to be required nor excessive Fines imposed nor cruell and unusuall Punishments inflicted."[20] If such a provision existed when Oates was sentenced, he likely would have received a lesser punishment. This development indicated a great improvement in the standards of human decency for people convicted of crimes.

The Framers of the U.S. Constitution were primarily concerned with legislative power and upholding the common law rights of citizens guaranteed under the English Bill of Rights.[21] Prior to the Eighth Amendment's enactment, five states already barred "cruel *or* unusual punishments," while two others

13. *See infra* Section I.B.

14. *See infra* Section I.C.

15. *See* Bessler, *supra* note 1, at 996–97.

16. *See id.* at 1041.

17. *See id.* at 1040–41.

18. *See* Stinneford, *supra* note 4, at 1760.

19. *Id.* at 1760–61 (quoting Harmelin v. Michigan, 501 U.S. 957, 970 (1991)). Merriam-Webster defines "scourge," in the verbal sense, as to "flog, whip[,]" or "to punish severely . . . as if by blows of a whip." *Scourge*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/scourge [https://perma.cc/LAX2-GB2N].

20. Bessler, *supra* note 1, at 1000–01.

21. *See* Stinneford, *supra* note 4, at 943–44; *see also* Furman v. Georgia, 408 U.S. 238, 263 (1972) (Brennan, J., concurring) ("We know that the Framers' concern was directed specifically at the exercise of legislative power. They included in the Bill of Rights a prohibition upon 'cruel and unusual punishments' precisely because the legislature would otherwise have had the unfettered power to prescribe punishments for crimes.").

solely prohibited cruel punishments.[22] Rather than adopting either of these standards, the Framers followed Virginia's constitution prohibiting "cruel *and* unusual punishments," largely replicating the language of the English Bill of Rights.[23] However, "the Framers may have intended" for the Cruel and Unusual Punishments Clause "to go beyond the scope of its English counterpart."[24] This prevented the legislature from having "unrestrained legislative power to prescribe punishments for crimes," which stemmed from concerns over the torturous methods Great Britain, France, Spain, and Germany frequently employed.[25] Regardless, by paralleling the language, the Framers illustrated their intent to ensure the Eighth Amendment provided, at a minimum, identical protections to its English roots, "including the right to be free from excessive punishments."[26]

Historically the Justices of the Supreme Court have tackled the Cruel and Unusual Punishments Clause from two different theoretical approaches: the evolving standards of decency approach and the originalist approach.[27] The evolving standards of decency doctrine, which has become the primary approach employed by the Supreme Court, prioritizes modern-day punishment as the basis for determining whether the action in question violates the Eighth Amendment.[28] The originalist approach, which is typically the theory behind the dissenting opinions in Eighth Amendment cases, concentrates on punishments that were considered cruel and unusual at the time the Eighth Amendment was enacted.[29] However, Justices embracing this approach, one of its largest advocates being the late Justice Antonin Scalia, have admitted that this originalist view may not be appropriate in all circumstances.[30] Justice Scalia had made known that he believed under the Constitution, certain forms of punishments that were common practice at the time of its founding, such as flogging, should be considered cruel and unusual today.[31]

The two competing theoretical approaches still have several similarities among them.[32] One such similarity is the insignificance and lack of consideration

22. Harmelin v. Michigan, 501 U.S. 957, 966 (1991) (emphasis added).

23. *Id.*

24. Solem v. Helm, 463 U.S. 277, 286 (1983).

25. *See Furman*, 408 U.S. at 260 (Brennan, J., concurring); *id.* at 320–21 (Marshall, J., concurring).

26. *Solem*, 463 U.S. at 286.

27. *See* Stinneford, *supra* note 4, at 1743.

28. *See id.* In fact, Justices in support of the evolving standards approach "have steadfastly refused even to consult the original intent of the Cruel and Unusual Punishments Clause." *Id.*

29. *See id.* at 1742–43.

30. *See id.* at 1743.

31. Antonin Scalia, *Originalism: The Lesser Evil*, 57 U. CIN. L. REV. 849, 864 (1989) ("I hasten to confess that in a crunch I may prove a faint-hearted originalist. I cannot imagine myself, any more than any other federal judge, upholding a statute that imposes the punishment of flogging.").

32. *See* Stinneford, *supra* note 4, at 1743.

the Justices have assigned to the word "unusual."[33] The term has largely been considered meaningless and of far less importance than the determination of "cruel." The focus on "cruel" has essentially resulted in a "Don't Be Cruel" standard when discussing the constitutionality of the punishment, which appears to be "more or less a matter of discerning public opinion."[34] Additionally, both the originalist approach and the evolving standards approach consider public opinion in their interpretation, just at differing times in American history: the late eighteenth century versus modern society.[35] Justices utilizing the evolving standards approach have essentially refused to consider the original intent of the Framers, rather than assigning heavy weight to it as originalists do.[36]

Regardless, the U.S. Supreme Court decisions on cruel and unusual punishment have acknowledged three separate functions of the clause.[37] One such function is placing limitations on the specific type of punishment imposed, which stems from the cases of *Estelle v. Gamble* and *Trop v. Dulles*.[38] Secondly, in *Weems v. United States*, the Court emphasized that it prevents punishments which are grossly inconsistent with the severity of the crime committed, often referred to as the "proportionality principle."[39] Lastly, the clause places limitations on what actions may "be made criminal and punished as such."[40] The Court has emphasized the importance of ensuring that the Cruel and Unusual Punishments Clause continues to function in these three ways, regardless of the approach that is taken.

### *B. THE EVOLUTION OF THE AMERICAN PRISON SYSTEM*

The U.S. prison system has evolved considerably since the beginning of colonial America.[41] In the earliest days of incarceration, jails resembled "[c]ellars, underground dungeons, and rusted cages" and were largely unsecured, often resulting in incarcerated individuals being kept in iron chains.[42] Jails were primarily utilized as a holding mechanism prior to trial as opposed to the punishment itself, which instead ordinarily consisted of severe physical abuse, public humiliation, and, in the most extreme cases, hanging.[43]

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33. *Id.*

34. *Id.*

35. *See id.* (The originalist approach concentrates on "public opinion in 1790," while the evolving standards approach hinges on "current public opinion").

36. *See id.*

37. Ingraham v. Wright, 430 U.S. 651, 667 (1977).

38. *Id.*

39. *See id.*; Stinneford, *supra* note 4, at 1758.

40. *Ingraham*, 430 U.S. at 667.

41. *See* Charles Neal, *Were Early American Prisons Similar to Today's?*, JSTOR DAILY (Jan. 19, 2022), https://daily.jstor.org/were-early-american-prisons-similar-to-todays [https://perma.cc/YBQ3-VM8V].

42. *See id.*

43. *See id.*

Society viewed these individuals as incorrigible, as characteristic traits were viewed as permanent at the time.[44]

Over time, the U.S. prison system evolved into "an economy of suspended rights" and a "deprivation of liberty," as opposed to unbearable corporal punishment.[45] However, incarcerated individuals were still beaten or tortured for misbehaving or conversing with another individual and compelled to do hard labor for extensive periods of time in silence.[46] Incarcerated individuals were committed to solitary confinement at all times until the early mid-nineteenth century after these conditions displayed "results so dire,"[47] with incarcerated individuals suffering from mental health problems ranging from hallucinations to paranoia.[48] Following this, the prison system began to rely on prison labor in an attempt to create an economically self-sustaining system.[49] During this time, the incarcerated individuals' cells were three feet by seven feet, had no windows, buckets were used in place of toilets, most had a complete absence of running water, and they were solely utilized for sleeping.[50]

It was not until the mid-twentieth century that prison conditions began to improve after prison riots and widespread public outcry over severe overcrowding,[51] yet prison conditions were still frequently "described as stenchy, noisy, and excessively cold in the winter and hot in the summer."[52] Additionally, many prison administrators continued to employ corporal punishment.[53] In the 1960s and 1970s, after an influx of lawsuits over prison conditions, federal courts began to recognize "the barbaric conditions in state penitentiaries" and became involved in regulating prison affairs.[54] The U.S. Supreme Court began reviewing several cases concerning the constitutionality of certain prison conditions, many of which concerned the physical well-being

44. *See id.*

45. *See* David Garland, *The Problem of the Body in Modern State Punishment*, 78 JOHNS HOPKINS U. PRESS 767, 767–68 (2011) (quoting MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 11 (Alan Sheridan trans., Vintage Books 2d ed. 1955) (1977)).

46. *See* Neal, *supra* note 41.

47. *Id.* (quoting Peter Scharff Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 CRIME & JUST. 441, 457 (2006)).

48. Smith, *supra* note 47, at 457–61.

49. Neal, *supra* note 41.

50. *Id.*

51. *See History*, CTR. FOR PRISON REFORM, https://centerforprisonreform.org/history [https://perma.cc/MSG6-LLEH]; Melvin Gutterman, *The Contours of Eighth Amendment Prison Jurisprudence: Conditions of Confinement*, 48 SMU L. REV. 373, 389 (1995).

52. Nicole B. Godfrey, *Institutional Indifference*, 98 OR. L. REV. 151, 163–64 (2020) (discussing the evolution of the U.S. prison systems on both the state and federal level and the establishment of the federal Bureau of Prisons) (quoting Edgardo Rotman, *The Failure of Reform: United States, 1865–1965*, *in* THE OXFORD HISTORY OF THE PRISON: THE PRACTICE OF PUNISHMENT IN WESTERN SOCIETY 169, 185 (Norval Morris & David J. Rothman eds., 1995)).

53. *See id.* at 164.

54. *See* Gutterman, *supra* note 51, at 374.

of incarcerated individuals.[55] They repeatedly acknowledged that a deprivation of life's necessities may be considered a violation of the Eighth Amendment under certain circumstances.[56]

Today, prisons are required to provide incarcerated individuals with adequate medical and mental health care sufficient to meet a basic standard of decency under the Eighth Amendment, meet basic sanitation standards, reduce overcrowding where there is a significant risk of severe injury, and provide life's basic necessities.[57] There is no legislation requiring all correctional facilities, both federal and state, to meet certain standards beyond those required by the U.S. Supreme Court's holdings. An example of a gap in this area of jurisprudence is that the Supreme Court has failed to discuss how the Eighth Amendment speaks to a requirement of outdoor recreational time. Regardless of the jurisprudence in this area, the Federal Bureau of Prisons ("BOP") has recently begun focusing their efforts on methods of prison reform.[58] These methods include identifying individual needs of each incarcerated individual, promoting education among federal prisons, expanding mental health treatment among incarcerated individuals, and providing substance abuse treatment, among other proposals.[59]

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55. *See id.* at 375–92 (acknowledging the more recent analytical framework of the basis for Eighth Amendment violations in prison and discussing cases such as *Rhodes v. Chapman*, *Helling v. McKinney*, and *Estelle v. Gamble*).

56. *Id.* at 375 ("In 1981, in *Rhodes v. Chapman*, the [U.S. Supreme] Court, in assessing the problems of overcrowding, had its first opportunity to consider the Eighth Amendment's application in a prison setting. The Court determined that conditions depriving inmates of the minimal civilized measure of life's necessities could be cruel punishment under contemporary standards of decency. . . . [T]he Court determined that overall conditions of prison confinement cannot rise to cruel punishment when there is no specific deprivation of a single human need." (footnote omitted)).

57. *See* Brown v. Plata, 563 U.S. 493, 508–09, 522, 545 (2011) (holding that overcrowding in a California prison caused the facility to "fall[] below the standard of decency that inheres in the Eighth Amendment" and finding that the "extensive and ongoing constitutional violation requires a remedy" which will "not be achieved without reducing overcrowding").

58. *See Prison Reform: Reducing Recidivism by Strengthening the Federal Bureau of Prisons*, U.S. DEP'T OF JUST. ARCHIVES (Mar. 6, 2017), https://www.justice.gov/archives/prison-reform [https://perma.cc/9S9S-M4YE].

59. *See id.* The complete list of ongoing reforms is as follows: "[f]rom day one, identifying an inmate's individualized 'criminogenic' needs," "[b]uilding a 'school district' within the federal prison system," "[l]aunching a tablet-based pilot program for inmate education," "[s]upporting the Second Chance Pell Pilot Program," "[e]ncouraging inmates to develop marketable job skills," "[d]eveloping standardized, evidence-based programs to reduce recidivism," "[p]rioritizing mental health treatment for inmates," "[e]nsuring inmates receive appropriate substance abuse treatment," "[h]elping inmates maintain family ties while incarcerated," "[e]nhancing programs for female inmates," "[r]educing the use of solitary confinement and other forms of restrictive housing," "[p]hasing out BOP's use of private prisons," "[r]eforming and strengthening federal halfway houses," "[h]elping inmates obtain government-issued ID prior to their release," as well as "[e]quipping inmates with information and resources as they return to the community." *Id.* The BOP is aiming to adopt methods which prioritize reducing recidivism, and it has hired consultants in various fields to suggest further improvements. *Id.*

### C. THE U.S. SUPREME COURT ON CRUEL AND UNUSUAL PUNISHMENT

Prior to the twentieth century, the U.S. Supreme Court equated the meaning of "cruel and unusual" to the historical standards at the time of the Eighth Amendment's enactment, adopting an originalist approach.[60] However, the Supreme Court has since veered away from an originalist interpretation of the Eighth Amendment.[61] *Weems v. United States* was the first case in which the Court found that the Cruel and Unusual Punishments Clause of the Eighth Amendment is progressive, rather than stagnant.[62] Paul Weems, while serving as a public official, was convicted of falsifying an official document and sentenced to fifteen years in prison, which he contended was considered cruel and unusual punishment.[63] The Court agreed, declaring the sentence as excessively cruel and undoubtedly unusual.[64] The Court proceeded to hold that the meaning of "cruel and unusual" under the Eighth Amendment evolves "as public opinion becomes enlightened by a humane justice."[65] Today, the Court continues to stray from historical comparisons and concentrates on society's evolving views of cruelty and decency.[66]

#### 1. The Meaning of "Cruel and Unusual Punishment"

Among other applications, the Cruel and Unusual Punishments Clause pertains to "the treatment a[n incarcerated individual] receives" as well as "the conditions under which he is confined."[67] When the government takes an individual into custody, where they rely solely on prison officials for most needs, it requires the state "to assume some responsibility for [the

60. *See* William H. Danne, Jr., Note, *Prison Conditions as Amounting to Cruel and Unusual Punishment*, 51 A.L.R.3d 111, § 3[a] (1973) ("Although the tendency in prior decisions was to regard punishments as cruel and unusual only if they were similar to those considered objectionable at the time the Bill of Rights was adopted, the Supreme Court unequivocally repudiated this 'historical' interpretation of the Eighth Amendment in *Weems v. United States*." (citation omitted)).

61. *See* Trop v. Dulles, 356 U.S. 86, 100–01 (1958) ("The Court recognized in [*Weems v. United States*] that the words of the Amendment are not precise, and that their scope is not static." (footnote omitted)).

62. *See* Weems v. United States, 217 U.S. 349, 368–69, 378 (1910).

63. *Id.* at 357–59.

64. *See Trop*, 356 U.S. at 100 (discussing *Weems*, 217 U.S. at 381).

65. *See Weems*, 217 U.S. at 378 ("[I]t may be well doubted if the right exist 'to establish the whipping post and the pillory in those States where they were never recognized as instruments of punishment, or in those States whose constitutions, revised since public opinion had banished them, have forbidden cruel and unusual punishments.' The clause of the Constitution in the opinion of the learned commentators may be therefore progressive, and is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice." (quoting THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 329 (Little, Brown & Co. 2d ed., 1871))).

66. *See* William W. Berry III, *The Evolving Standards, as Applied*, 74 FLA. L. REV. 775, 784–86 (2022).

67. Helling v. McKinney, 509 U.S. 25, 31 (1993).

incarcerated individual's] safety and general well-being."[68] In *Ingraham v. Wright*, the Court recognized that the three purposes of the prohibition against cruel and unusual punishments in the Eighth Amendment are to limit the type of punishment inflicted, prevent punishment which is "grossly disproportionate to the severity of the crime," and impose limitations on acts which are punishable by law.[69]

Although its initial construction was aimed at protecting against barbaric and torturous forms of punishment,[70] the Eighth Amendment's application has expanded beyond solely physically barbaric punishments.[71] Instead, its application broadens with "the evolving standards of decency that mark the progress of a maturing society,"[72] as the public "becomes [more] enlightened by a humane justice."[73] The Supreme Court has emphasized that the Cruel and Unusual Punishments Clause "was designed to protect those convicted of crimes"[74] and is primarily "directed at the method or kind of punishment imposed for the violation of criminal statutes."[75] It is also established that "[c]onfinement in a prison . . . is a form of punishment subject to scrutiny under Eighth Amendment standards."[76] Through its application of the Eighth Amendment, the Supreme Court has determined that prison conditions shall not consist of "the wanton and unnecessary infliction of pain," such as pain serving no penological purpose.[77] On the other hand, the Eighth Amendment does not require prison conditions to be comfortable, but conditions which fail to provide "the minimal civilized measure of life's necessities" may result in a constitutional violation.[78] Such necessities include, but are not limited to,

68. *Id.* at 32 (quoting DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 200 (1989)).

69. Ingraham v. Wright, 430 U.S. 651, 667 (1977) ("[Our] decisions recognize that the Cruel and Unusual Punishments Clause circumscribes the criminal process in three ways: First, it limits the kinds of punishment that can be imposed on those convicted of crimes; second, it proscribes punishment grossly disproportionate to the severity of the crime; and third, it imposes substantive limits on what can be made criminal and punished as such." (citations omitted)).

70. Estelle v. Gamble, 429 U.S. 97, 102 (1976).

71. Gregg v. Georgia, 428 U.S. 153, 171 (1976).

72. Trop v. Dulles, 356 U.S. 86, 101 (1958).

73. *Gregg*, 428 U.S. at 171 (quoting Weems v. United States, 217 U.S. 349, 378 (1910)).

74. *Ingraham*, 430 U.S. at 664.

75. *Id.* at 667 (quoting Powell v. Texas, 392 U.S. 514, 531–32 (1968) (plurality opinion)).

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

77. Rhodes v. Chapman, 452 U.S. 337, 347 (1981) ("These principles apply when the conditions of confinement compose the punishment at issue. Conditions must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment. In *Estelle v. Gamble*, we held that the denial of medical care is cruel and unusual because, in the worst case, it can result in physical torture, and, even in less serious cases, it can result in pain without any penological purpose." (citation omitted)).

78. Wilson v. Seiter, 501 U.S. 294, 298 (1991) (quoting *Rhodes*, 452 U.S. at 347); *see also Rhodes*, 425 U.S. at 347 ("But conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional. To the extent that such conditions are

"food, clothing, shelter, medical care, and reasonable safety."[79] Courts continue to assess potential violations of the Cruel and Unusual Punishments Clause by applying contemporary values to the forms of punishment employed.[80]

### 2. The Test for Unconstitutional Prison Conditions Under the Eighth Amendment

To succeed on an Eighth Amendment violation claim revolving around prison conditions, the U.S. Supreme Court has established a two-prong test consisting of an objective element and a subjective element.[81] The objective element concentrates on the impact of the conditions on the incarcerated individual.[82] Such inquiry examines statistical and scientific evidence indicating "the seriousness of the potential harm" that the conditions are likely to produce and requires the court to determine if the risk of that harm is one which "society considers . . . to be so grave that it violates contemporary standards of decency."[83] If the risk is one society so chooses to tolerate, the claim falls short of an Eighth Amendment violation.[84] In *Hutto v. Finney*, healthy incarcerated individuals were housed, for an indeterminate period of time, in overcrowded cells alongside incarcerated individuals afflicted by highly infectious diseases.[85] Although the harm was neither immediate, i.e., the healthy incarcerated individuals would not immediately contract any disease, nor absolute, as it is possible that they may not become infected, the Court found that these were "conditions for which the Eighth Amendment required a remedy."[86] Thus, the consequences of the prison conditions in question need not be immediate or definite to meet the objective prong, and may instead indicate a substantial likelihood of "caus[ing] serious illness and needless suffering" in the near or distant future.[87] Additionally, the conditions need not ultimately impact all incarcerated individuals experiencing those

restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.").

79. DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 200 (1989).

80. Gregg v. Georgia, 428 U.S. 153, 173 (1976).

81. Helling v. McKinney, 509 U.S. 25, 35 (1993) ("We also affirm the remand to the District Court to provide an opportunity for McKinney to prove his allegations, which will require him to prove both the subjective and objective elements necessary to prove an Eighth Amendment violation.").

82. *Id.*

83. *Id.* at 36.

84. *See id.*

85. Hutto v. Finney, 437 U.S. 678, 682–83 (1978); *Helling*, 509 U.S. at 33. As far as the specific illnesses the incarcerated individuals were suffering from, the *Hutto* Court only provides "hepatitis and venereal disease" as two examples. *Hutto*, 437 U.S. at 682.

86. *Helling*, 509 U.S. at 33 (discussing *Hutto*, 437 U.S. at 682).

87. *Id.* ("We have great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate's current health problems but may ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year.").

conditions, as long as the likelihood of harm is present.[88] As the Court has repeatedly emphasized, prisons must satisfy an incarcerated individual's "basic human needs, one of which is 'reasonable safety.'"[89] Where a prison fails to provide such reasonably safe conditions, their actions will constitute cruel and unusual punishment, fulfilling the objective prong, and the analysis then turns to the subjective prong.[90]

Under the subjective prong, courts must apply "[c]ontemporary standards of decency" to determine whether prison conditions are sufficiently serious to violate the meaning of cruel and unusual punishment.[91] Regardless of the nature of the conditions under scrutiny, they are subjected to "the 'deliberate indifference' standard" outlined in *Estelle v. Gamble*.[92] There, the Court held that a mere inadvertent failure to ensure incarcerated individuals receive adequate medical treatment, without any deliberate indifference to an incarcerated individual's serious medical needs, falls short of an Eighth Amendment violation.[93] The deliberate indifference analysis turns to "the prison officials' state of mind,"[94] which includes the state of mind of the state's department of corrections,[95] the Director of the Bureau of Prisons, prison wardens, among other prison officials.[96]

In *Farmer v. Brennan*, the Court expanded on the meaning of "deliberate indifference," stating that it requires an indication "that the official was subjectively aware of the risk."[97] Prison officials "must provide humane conditions of confinement . . . and must 'take reasonable measures to guarantee the safety of the in[carcerated individuals].'"[98] The deliberate indifference standard requires "something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result," but something beyond simple negligence.[99] As with the objective element, the subjective element also considers future harm to incarcerated individuals, requiring no indication of current symptoms stemming from prison conditions.[100] Simply put, an Eighth Amendment claim based on unconstitutional prison conditions turns on the

88. *Id.* ("[T]he Eighth Amendment required a remedy, even though it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed.").

89. *Id.* (quoting DeShaney v. Winnebago Cnty. Dep't of Soc. Servs., 489 U.S. 189, 200 (1989)).

90. *Id.* (citing Youngberg v. Romeo, 457 U.S. 307, 315–16 (1982)).

91. *Id.* at 32 (citing Estelle v. Gamble, 429 U.S. 97, 103–04 (1976)).

92. *Id.* (quoting Wilson v. Seiter, 501 U.S. 294, 303 (1991)).

93. *See Estelle*, 429 U.S. at 104.

94. *Helling*, 509 U.S. at 32 (citing *Wilson*, 501 U.S. at 303).

95. *See* Hutto v. Finney, 437 U.S. 678, 683 (1978) (scrutinizing the Arkansas Department of Correction prison officials).

96. *See* Farmer v. Brennan, 511 U.S. 825, 832 (1994).

97. *Id.* at 829.

98. *Id.* at 832 (quoting Hudson v. Palmer, 468 U.S. 517, 526–27 (1984)).

99. *Id.* at 835.

100. Helling v. McKinney, 509 U.S. 25, 33 (1993).

decency of the conditions, the impact they may have on the incarcerated individual, and whether prison officials were deliberately indifferent to the risk of harm incarcerated individuals faced.

### 3. The Supreme Court Has Not Applied the Eighth Amendment to Incarcerated Individuals' Right to Outdoor Exercise

In 2018, the Court denied certiorari in two merged cases that invited the Court to consider whether the Eighth Amendment requires prisons to provide incarcerated individuals with outdoor exercise, specifically where these individuals are subjected to solitary confinement.[101] It is important to note that the Court denied certiorari on the basis of missing facts and unmade arguments (i.e., a procedural default).[102] Thus, the question remains unanswered but appears to be open to consideration by the Court in the future. In the denial of certiorari, Justice Sotomayor, who agreed with the denial, included a statement expressing her concerns over the severity of the issue presented.[103] She emphasized that courts since the late nineteenth century have been concerned with mental anguish among incarcerated individuals.[104] Sotomayor stated, "what is clear . . . is that to deprive a[n incarcerated individual] of any outdoor exercise for an extended period of time in the absence of an especially strong basis for doing so is deeply troubling—and has been recognized as such for many years."[105] Other Justices did not weigh in on where they stand with this issue, but it seems plausible that it could come before the Court again.

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101. Apodaca v. Raemisch, 139 S. Ct. 5, 5 (2018) (mem.); Petition for a Writ of Certiorari at i, *Apodaca*, 139 S. Ct. 5 (No. 17-1284), 2018 WL 1315085, at *i. In November 2023, the Court denied a petition for a writ of certiorari in a case involving a similar issue: "[w]hether punitively depriving a prisoner in solitary confinement of virtually all exercise for three years notwithstanding the absence of a security justification violates the Eighth Amendment." Johnson v. Prentice, 144 S. Ct. 11, 11–13 (2023) (Jackson, J., dissenting) (mem.); Petition for Writ of Certiorari at i, *Johnson*, 144 S. Ct. 11 (No. 22-693), 2023 WL 676385, at *i. Unlike *Apodaca*, three Justices dissented from the denial, primarily due to the lower court's failure to apply the deliberate indifference standard. *Johnson*, 144 S. Ct. at 11–12 (Jackson, J., dissenting) (Justice Sotomayor and Justice Kagan joined in Justice Jackson's dissent). However, the dissent also echoed Justice Sotomayor's concerns in *Apodaca*, highlighting "the dire impacts that . . . yard restrictions ha[ve] on" both "physical and mental health." *Id.* at 15.

102. *Apodaca*, 139 S. Ct. at 6 (Sotomayor, J., respecting the denial of certiorari).

103. *Id.* ("Although I agree with the Court's decision not to grant certiorari in these cases because of arguments unmade and facts underdeveloped below, I write because the issue raises deeply troubling concern.").

104. *Id.* ("As far back as 1890, this Court expressed concerns about the mental anguish caused by solitary confinement. These petitions address one aspect of what a prisoner subjected to solitary confinement may experience: the denial of even a moment in daylight for months or years." (footnote omitted)).

105. *Id.* at 8.

## II. IS OUTDOOR RECREATION TIME IN PRISON REQUIRED UNDER THE CRUEL AND UNUSUAL PUNISHMENTS CLAUSE?

Outdoor recreation time in prison varies greatly from one facility to another. First, this Part will discuss the current circuit split on whether the Eighth Amendment requires correctional facilities to provide incarcerated individuals with outdoor recreation time. Following the circuit split discussion, this Part will highlight existing legislation on outdoor recreation time for incarcerated individuals. Lastly, this Part will examine the mental and physical health problems that stem from a lack of outdoor exercise generally.

### *A. FEDERAL CIRCUIT COURTS ON THE EIGHTH AMENDMENT AND OUTDOOR EXERCISE IN PRISON*

Although the U.S. Supreme Court has yet to address whether the Eighth Amendment provides incarcerated individuals the constitutional right to outdoor exercise, several circuit courts and state courts have ruled on the issue.[106] While circuit courts have yet to reach a general consensus on the particular amount of outdoor exercise requisite under the Eighth Amendment, the majority of circuits have concluded that some outdoor exercise, absent penological justifications, *may* be required.[107] However, none have found a per se right to outdoor exercise in prison. Two circuit courts, the First Circuit and the Eighth Circuit, have yet to delve into the issue of outdoor recreation in prisons under the Eighth Amendment in any capacity.

The Ninth Circuit serves as the principal reference point for the Eighth Amendment's application to outdoor exercise in prison, as other circuits frequently reference Ninth Circuit case law in their rulings on the subject. Although the Ninth Circuit has yet to *require* correctional facilities to provide outdoor exercise, the circuit has held "that 'the long-term denial of *outside* exercise is unconstitutional.'"[108] The Ninth Circuit has also determined "exercise is 'one of the basic human necessities protected by the Eighth Amendment.'"[109] Additionally, the circuit has noted that "[t]here is substantial agreement among" the lower courts that outdoor exercise is crucial to an incarcerated individual's overall well-being.[110] In *Spain v. Procunier*, where an incarcerated individual was deprived of fresh air for several years, aside from regular court appearances and for medical necessities, the Ninth Circuit

106. 1 MICHAEL B. MUSHLIN, RIGHTS OF PRISONERS § 3:58 (5th ed. 2023).

107. *Id.*

108. Norbert v. City & County of San Francisco, 10 F.4th 918, 929 (9th Cir. 2021) (quoting LeMaire v. Maass, 12 F.3d 1444, 1458 (9th Cir. 1993)).

109. *Id.* at 928–29 (quoting May v. Baldwin, 109 F.3d 557, 565 (9th Cir. 1997)).

110. *See* Spain v. Procunier, 600 F.2d 189, 199 (9th Cir. 1979) ("There is substantial agreement among the cases in this area that some form of regular outdoor exercise is extremely important to the psychological and physical well-being of the inmates.").

found the circumstances violated the Eighth Amendment.[111] The Ninth Circuit also emphasized that the deciding court shall consider scientific research when determining whether prison conditions violate the Eighth Amendment in order "to insure [sic] good physical and mental health."[112]

Other circuit courts have also addressed whether outdoor exercise may violate the Eighth Amendment, whether directly or indirectly.[113] In *Apodaca v. Raemisch*, the Tenth Circuit recently found that current case law within the circuit falls short of establishing a per se right to outdoor exercise, as a narrow reading would indicate no such right, whereas an expansive interpretation would determine the opposite.[114] In *Lowe v. Raemisch*, an incarcerated individual brought suit in the Tenth Circuit alleging he was deprived of outdoor recreation for over two years.[115] The Tenth Circuit held that the allegation was not a violation of the Eighth Amendment based on prior circuit decisions.[116] However, in *Apodaca*, published on the same day, the court emphasized that for nearly thirty years, the Tenth Circuit had repeatedly acknowledged "that some form of regular outdoor exercise is extremely important to the psychological and physical well-being of inmates."[117] In furtherance of this consideration, the Tenth Circuit has found that "[t]he denial of outdoor exercise could violate the Eighth Amendment 'under certain circumstances,'"[118] but the court has yet to define such circumstances.[119]

In addition to the Ninth and Tenth Circuits, the Fifth Circuit has also addressed the availability of outdoor exercise in prisons under the Eighth Amendment. In *Miller v. Carson*, the Fifth Circuit was presented with the

111. *See id.* at 200 ("In light of all of the conditions existing in the [prison], it was cruel and unusual punishment for a prisoner to be confined for a period of years without opportunity to go outside except for occasional court appearances, attorney interviews, and hospital appointments.").

112. *Id.* ("[W]hen confronting the question whether penal confinement in all its dimensions is consistent with the constitutional rule, the court's judgment must be informed by current and enlightened scientific opinion as to the conditions necessary to insure good physical and mental health for prisoners. We think the district court gave proper recognition to this principle in its order requiring outdoor exercise for these plaintiffs.").

113. In *Bailey v. Shillinger*, the Tenth Circuit acknowledged that the Fifth, Ninth, and Seventh Circuits have reviewed cases concerning exercise deprivation in prisons. Bailey v. Shillinger, 828 F.2d 651, 653 (10th Cir. 1987) (per curiam) (citing Ruiz v. Estelle, 679 F.2d 1115, 1152 (5th Cir. 1982); *Spain*, 600 F.2d at 199; Caldwell v. Miller, 790 F.2d 589, 600 (7th Cir. 1986)).

114. Apodaca v. Raemisch, 864 F.3d 1071, 1074 (10th Cir. 2017) (discussing Perkins v. Kan. Dep't of Corr., 165 F.3d 803, 810 n.8 (10th Cir. 1999)).

115. Lowe v. Raemisch, 864 F.3d 1205, 1206–07 (10th Cir. 2017).

116. *Id.* at 1208 ("The alleged deprivation of outdoor exercise for two years and one month did not violate a clearly established constitutional right.").

117. *Apodaca*, 864 F.3d at 1077 (quoting *Bailey*, 828 F.2d at 653).

118. *Lowe*, 864 F.3d at 1208 (quoting *Bailey*, 828 F.2d at 653). In the same decision, the Tenth Circuit also stated "[w]e have acknowledged the absence of any 'doubt that total denial of exercise for an extended period of time would constitute cruel and unusual punishment prohibited by the Eighth Amendment.'" *Id.* at 1208 (quoting Housley v. Dodson, 41 F.3d 597, 599 (10th Cir. 1994)).

119. *Id.* at 1208–09.

question of whether pretrial incarcerated individuals specifically must be allotted outdoor exercise time and recreation.[120] Without specifying the necessity of outdoor exercise, the Fifth Circuit held that both pretrial and convicted incarcerated individuals "must be allowed reasonable recreational facilities."[121] Since this holding, the Fifth Circuit stated in *McBride v. Bremer* that "jail officials must provide inmates with some outdoor recreation and access to outdoor light."[122] The Fifth Circuit, however, has repeatedly been presented with the issue of outdoor exercise and seemingly not found this statement binding.[123] Acknowledging that neither the U.S. Supreme Court nor the Fifth Circuit itself has explicitly determined incarcerated individuals possess the "right to outdoor exercise," the Fifth Circuit held in *Maze v. Hargett* that a complete deprivation of outdoor exercise may meet the threshold for a violation of the Eighth Amendment.[124] As recently as 2016, the Fifth Circuit reiterated this concern in *Ruiz v. LeBlanc*, expressing that although "restrictions on exercise are not inherently unconstitutional, the denial of outdoor exercise opportunities may constitute an Eighth Amendment violation."[125]

The Seventh Circuit has also, in a limited capacity, reviewed the constitutionality of a deprivation of outdoor recreation in correctional institutions under the Eighth Amendment.[126] In *Winger v. Pierce*, the Seventh Circuit ultimately remanded the case back to the U.S. District Court for the Central District of Illinois, but held that if a general lack of exercise is synonymous with a lack of yard privileges, "then it is difficult to see how even nine months' deprivation could be deemed consistent with the [E]ighth [A]mendment."[127] The Seventh Circuit established in *Rasho v. Walker* that, considering restrictions on outdoor exercise are frequently employed as a punishment in prison, "some deprivation of outdoor exercise [is likely]

120. Miller v. Carson, 563 F.2d 741, 749 (5th Cir. 1977) ("In an earlier case we reserved the question whether the Constitution and 42 U.S.C. § 1983 require that pretrial detainees be allowed opportunities for outdoor exercise and recreation. In the case now before us, we face that question . . . ." (citation omitted)).

121. *Id.* at 749–50 (internal quotation marks omitted).

122. McBride v. Bremer, No. 92-5522, 1993 WL 129786, at *2 (5th Cir. Apr. 16, 1993) (per curiam).

123. *See* Maze v. Hargett, No. 98-60335, 1999 WL 1093469, at *3 (5th Cir. Oct. 27, 1999) (per curiam); Ruiz v. LeBlanc, 643 F. App'x 358, 362 (5th Cir. 2016) (per curiam). It is unclear why the court has not relied on the *McBride* Court's statement, but it may be due in part to a new composition of judges. *See McBride*, 1993 WL 129786, at *1; *Maze*, 1999 WL 1093469, at *1; *Ruiz*, 643 F. App'x at 359.

124. *Maze*, 1999 WL 1093469, at *3 ("[T]his court has recognized that the absence of outdoor exercise opportunities may constitute an Eighth Amendment violation.").

125. *Ruiz*, 643 F. App'x at 362.

126. *See* Winger v. Pierce, 325 F. App'x 435, 436 (7th Cir. 2009); Rasho v. Walker, 393 F. App'x 401, 403 (7th Cir. 2010).

127. *Winger*, 325 F. App'x at 436 (discussing Pearson v. Ramos, 237 F.3d 881, 884 (7th Cir. 2001)).

'inevitable.'"[128] However, the court followed this by stating that it was providing "prison authorities [with guidelines] as to when a denial of outdoor exercise will rise to a constitutional violation," signaling that the court believes there is a threshold point at which such deprivation becomes unconstitutional.[129] The guidance provided "that 'a denial of yard privileges for no more than [ninety] days at a stretch is not cruel and unusual punishment'" where there is a legitimate penological basis for the deprivation.[130]

Although the Second and Third Circuits have discussed outdoor exercise to some degree, no cases are entirely on point. The Second Circuit determined that when outdoor recreation space is provided, "the lack of 'indoor' exercise and the 'occasional day without exercise'" falls short of a constitutional violation when such "outdoor recreation space [is] provided[,] *and opportunity for its daily use [is] assured*."[131] This dicta indicated that the Second Circuit highly values outdoor exercise for incarcerated individuals, seemingly suggesting that a deprivation thereof will cause constitutional concern.[132] In the Third Circuit case of *Peterkin v. Jeffes*, incarcerated individuals on death row argued that being held in their cells for nearly twenty-two hours per day constituted cruel and unusual punishment when considering the conditions of their confinement.[133] However, regarding outdoor exercise specifically, incarcerated individuals were provided with two hours in an exercise yard every day, and, upon a prison official's approval, were permitted to have a fellow incarcerated individual accompany them.[134] The basis for the incarcerated individuals' argument centered around the totality of the circumstances where the plaintiffs contended that the two hours allotted for exercise was insufficient when considering the twenty-two hours they were

128. *Rasho*, 393 F. App'x at 403 (quoting Delaney v. DeTella, 256 F.3d 679, 683–84 (7th Cir. 2001)) ("Prisons often use yard restrictions as sanctions for disciplinary charges, and we noted in *Delaney* that some deprivation of outdoor exercise may be 'inevitable' in the prison context.").

129. *Id.*

130. *Id.* (quoting *Pearson*, 237 F.3d at 884).

131. McCray v. Lee, 963 F.3d 110, 118 (2d Cir. 2020) (alterations in original) (quoting Anderson v. Coughlin, 757 F.2d 33, 36 (2d Cir. 1985)). The *Anderson* Court further states that an "absence of additional exercise space indoors" does not violate the Eighth Amendment protection against cruel and unusual punishment. *Id.* (emphasis omitted).

132. *See id.*

133. Peterkin v. Jeffes, 855 F.2d 1021, 1025 (3d Cir. 1988) ("Specifically, appellants contend that . . . confining death row prisoners to their cells for approximately twenty-two hours a day constitutes cruel and unusual punishment, in view of (1) the size and condition of the cells; (2) the restricted activities and services, including medical, psychological, religious, and legal services, which occupy the prisoners and sustain their mental health; and (3) the Commonwealth's exercise policy, which the prisoners contend deprives them of meaningful exercise for three reasons: the lack of any indoor exercise facilities for death sentenced prisoners; the practice of placing prisoners in individual, enclosed outdoor exercise yards; and the Commonwealth's ban on group exercise by capital inmates.").

134. *Id.* at 1031.

otherwise confined to their cells.[135] The court provided some weight to scientific research on outdoor exercise, comparing the prison's standards with the American Correctional Association's ("ACA") recommended time outdoors.[136] Ultimately, the court held that the exercise opportunities did not constitute cruel and unusual punishment, but acknowledged that "[t]here is no question that meaningful recreation 'is extremely important to the psychological and physical well-being of the inmates.'"[137] The issue over whether depriving an incarcerated individual of outdoor recreation time violates the Eighth Amendment is prevalent across the United States, as demonstrated by the wide array of circuit courts addressing the issue.

### *B. LAWS AND REGULATIONS ON OUTDOOR EXERCISE AND RECREATION IN PRISON*

There has been no discussion of federal legislation providing outdoor recreation time to incarcerated individuals.[138] However, there has been some indication that Congress is concerned about the mental health of incarcerated individuals.[139] In contrast, an abundance of states have enacted laws requiring correctional facilities to provide incarcerated individuals with outdoor recreation time. This Section will discuss federal and state laws and regulations both related to and explicitly guaranteeing outdoor exercise.

#### 1. Federal Legislation on Outdoor Recreation in Prison

Congress has not enacted a statute guaranteeing incarcerated individuals the right to outdoor exercise under the Eighth Amendment. Although Congress has not passed a statute guaranteeing outdoor exercise, separate bills limiting the conditions and usage of solitary confinement have been introduced in both the House and the Senate.[140] A House Representative, Bonnie M. Watson Coleman from New Jersey's 12th District, introduced the "Restricting the Use of Solitary Confinement Act" in 2021, but no movement has occurred since its introduction.[141] The bill restricts the use of solitary

135. *Id.* at 1025, 1031.

136. *Id.* at 1031–32 ("The district court found that the amount of time allotted for outdoor exercise exceeds the ACA standard of one hour daily, and approximates the nationwide average of three hours of daily outdoor exercise for death-sentenced inmates. . . . Under these circumstances, we conclude that while the lack of indoor facilities might be less than ideal—indoor recreational facilities are recommended by the ACA—limiting capital inmates to two hours a day of outdoor exercise does not constitute a violation of their [E]ighth [A]mendment rights.").

137. *Id.* at 1031 (quoting Spain v. Procunier, 600 F.2d 189, 199 (9th Cir. 1979)).

138. *See infra* Section II.B.1.

139. *See infra* Section II.B.1.

140. *See* Restricting the Use of Solitary Confinement Act, H.R. 176, 117th Cong. (2021); Solitary Confinement Reform Act, S. 5038, 117th Cong. (2022).

141. *See* H.R. 176. During the first session of the 117th Congress, Bonnie M. Watson Coleman, a representative from New Jersey's 12th District, introduced the bill, and it "was referred to the Committee on the Judiciary." *Id.* The bill aimed "to impose conditions on the use of solitary confinement in Federal prisons, and for other purposes." *Id.* There is pending

confinement to situations in which an incarcerated individual poses "a substantial risk of immediate serious harm to another . . . and a less restrictive intervention would be insufficient to reduce this risk."[142] The bill heavily emphasizes the need for frequent mental health examinations by psychiatrists, and excludes vulnerable populations from solitary confinement entirely, such as those already suffering or highly susceptible to developing mental health problems.[143]

In the Senate, several Democratic representatives introduced the "Solitary Confinement Reform Act" in September of 2022, which also has yet to see any movement.[144] The Senate bill echoes the same concerns exemplified by the House bill: the seriousness of mental health problems.[145] Although the Senate bill does not provide for specific circumstances under which solitary confinement is permitted, a "multidisciplinary staff committee" must first review "the initial placement of the inmate in solitary confinement" and the committee must be composed of a "licensed mental health professional; . . . [a] medical professional; and . . . a member of the leadership of the facility."[146] Additionally, incarcerated individuals held in solitary confinement must receive a minimum of four hours outside of the cell each day "unless the inmate poses a substantial and immediate threat" to others.[147]

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legislation proposing an absolute ban on "solitary confinement and other forms of restrictive housing," with very limited short-term exceptions. End Solitary Confinement Act, H.R. 4972, 118th Cong. (2023).

142. H.R. 176 § 4015(a)(1)(B).

143. *Id.* § 4015(a)(3), (7) ("An inmate shall not be placed in solitary confinement before receiving a personal and comprehensive medical and mental health examination conducted by a clinician. . . . A clinician shall evaluate each inmate placed in solitary confinement on a daily basis, in a confidential setting outside of the cell whenever possible, to determine whether the inmate is a vulnerable person."). The bill defines a "vulnerable person," in part, as including "any inmate who—(A) is 25 years of age or younger; (B) is 65 years of age or older; [or] (C) has a disability based on mental illness, a history of psychiatric hospitalization, or has recently exhibited conduct . . . indicating the need for further observation or evaluation to determine the presence of mental illness." *Id.* § 4015(b)(3)(A)–(C).

144. Solitary Confinement Reform Act, S. 5038, 117th Cong. (2022).

145. *See id.* § 4052(c)(2)–(3) ("An inmate diagnosed with a serious mental illness after an evaluation [by a psychiatrist or other licensed mental health professional] (A) shall not be placed in solitary confinement . . . and (B) may be diverted to a mental health treatment program within the Bureau of Prisons that provides an appropriate level of care to address the inmate's mental health needs . . . . After each [fourteen]-calendar day period an inmate is held in continuous placement in solitary confinement—(A) a licensed mental health professional shall conduct a comprehensive, face-to-face, out-of-cell mental health evaluation of the inmate in a confidential setting . . . .").

146. *Id.* §§ 4052 (a)(8)(A)–(B), (b)(4)(A)(iv).

147. *Id.* § 4052(b)(1) ("[S]olitary confinement . . . shall be limited to situations in which such confinement—(A) is limited to the briefest term and the least restrictive conditions practicable, including not less than [four] hours of out-of-cell time every day, unless the inmate poses a substantial and immediate threat; (B) is consistent with the rationale for placement and with the progress achieved by the inmate; (C) allows the inmate to participate in meaningful programming opportunities and privileges as consistent with those available in the general

Although Congress has yet to introduce a bill guaranteeing outdoor exercise to incarcerated individuals, senators and representatives have expressed concern over harsh conditions of confinement. Both bills indicate that Congress is aware of the possibility of a mental illness developing when incarcerated individuals are held inside a cell for an extensive period of time, as "mental illness," "mental health," and "mental health professional" appear frequently throughout these bills.[148] Additionally, the Code of Federal Regulations acknowledges the need for recreation generally, although it does not explicitly guarantee outdoor recreation to incarcerated individuals who are being held long term.[149] It provides, in relevant part, that prison officials "shall provide the pretrial inmate with . . . [o]ne hour daily of outside recreation, weather permitting; *or* . . . [t]wo hours daily of indoor recreation."[150] Considering Congress has expressed concern over harsh prison conditions, primarily the impact they have on mental health, a bill requiring outdoor recreation in prisons could be a solution to many of the issues prisons are facing.

2. State Laws and Regulations on Outdoor Recreation Time in Prison

Although no federal requirement of outdoor recreation in prison exists, several states have enacted laws or regulations requiring prisons, jails, or both, to provide incarcerated individuals with some form of outdoor exercise or outdoor recreation time.[151] Several states with laws or regulations requiring outdoor recreation time for incarcerated individuals have provided a minimum threshold of outdoor recreation. Pennsylvania, Georgia, and New York all require at least seven hours of outdoor recreation every week, with each providing various specifications. For example, in 2009, Pennsylvania enacted legislation on the physical welfare of incarcerated individuals requiring prisons to provide these individuals with outdoor exercise where weather permitted such activities.[152] The statute states:

> A chief administrator . . . whether the inmate has been tried or not, shall provide the inmate with at least two hours of daily physical exercise in the open, weather permitting, and, upon such days on which the weather is inclement, with two hours of daily physical exercise inside of the correctional institution.[153]

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population as practicable, either individually or in a classroom setting; [and] (D) allows the inmate to have as much meaningful interaction with others, such as other inmates, visitors, clergy, or licensed mental health professionals, as practicable . . . .").

148. *See supra* notes 142–47 and accompanying text.

149. 28 C.F.R. § 551.115 (2022).

150. *Id.* § 551.115(b) (emphasis added).

151. *See* 61 PA. CONS. STAT. § 5901(a) (2022); 6 VA. ADMIN. CODE § 15-45-1950 (2022); 501 KY. ADMIN. REGS. 3:130 § 5 (2022); GA. COMP. R. & REGS. 125-4-6-.01 (2022).

152. 61 PA. CONS. STAT. § 5901(a).

153. *Id.* § 5901(a)(1).

It continues by stating that even "[i]nmates in segregation or disciplinary status shall receive a minimum of at least one hour of daily exercise five days per week."[154] Additionally, it provides an exception for individuals who are physically unable to participate in "the required physical exercise."[155] Considering it also includes a provision stating "[t]he physical exercise must be safe and practical," there appears to be an additional exception for unsafe circumstances, such as prison riots or where concerns over incarcerated individuals' safety is in question.[156]

Georgia and New York also require a minimum of seven hours of outdoor recreation per week but provide fewer specificities.[157] Georgia has provided a minimum standardized recreation and exercise time for incarcerated individuals for almost twenty years.[158] Regulations currently require correctional institutions to implement a recreational program which "shall include as wide a range of both outdoor and indoor activities" where availability of resources exists.[159] For individuals who are unrestricted, facilities must arrange for "[a] minimum of seven (7) hours per week . . . for outdoor exercise," weather permitting.[160] Georgia regulations also grant those individuals incarcerated in maximum security prisons at least "seven (7) hours of physical exercise or recreational activities per week," and individuals on restriction with no less than five hours.[161] Georgia regulations do not specify whether this exercise must be indoors or outdoors.[162] New York regulations require that *all* exercise time must be outside, as long as inclement weather does not persist.[163] Incarcerated individuals are entitled to exercise periods "at least [one and a half] hours during each of five days per week; or . . . at least one hour seven days a week."[164]

Several states have adopted similar laws or regulations also specifying a minimum amount of time for outdoor exercise, which varies greatly from state to state.[165] Under Kentucky administrative law, prisons are compelled to arrange for a minimum of "one (1) hour of outdoor recreation two (2) times

154. *Id.* § 5901(a)(3).

155. *Id.* § 5901(c). There appears to be no statutory alternative for those physically incapable of exercising; however, such discussion extends beyond the scope of this Note.

156. *Id.* § 5901(a)(2).

157. *See* GA. COMP. R. & REGS. 125-4-6-.01(5)–(6) (2022); N.Y. COMP. CODES R. & REGS. tit. 9, § 7028.2(a)–(c) (2022).

158. GA. COMP. R. & REGS. 125-4-6-.01(5)–(6).

159. *Id.* § 125-4-6-.01(4).

160. *Id.* § 125-4-6-.01(5).

161. *Id.* § 125-4-6.01(6).

162. *Id.* § 125-4-6-.01.

163. N.Y. COMP. CODES R. & REGS. tit. 9, § 7028.2(a) (2022).

164. *Id.* § 7028.2(b).

165. *See* 6 VA. ADMIN. CODE §§ 15-45-1950, 1960 (2022); 501 KY. ADMIN. REGS. 3:130 § 5 (2022); N.Y. COMP. CODES R. & REGS. tit. 9, § 7028.2; 03-201-001 ME. CODE R. § II.M.6 (LexisNexis 2021).

per week if weather permits."[166] On the other hand, some states have implemented laws or regulations requiring outdoor recreational time but have not yet established a specific amount of time for these activities. New Jersey administrative law does not explicitly provide for a set number of hours outdoors, but it does require, "[w]eather permitting, recreation activities should be scheduled for out-of-doors."[167] In Maine's administrative code, the pertinent regulation requires that, in county jails, "[w]hen weather permits, exercise shall be provided outdoors in a secure recreation area"; however, there is no specific provision providing this protection to incarcerated individuals.[168] Virginia administrative law requires prisons, including private prisons, to construct a written policy that "shall provide for a recreational program that includes leisure time activities and outdoor exercise."[169] In addition, individuals that are neither working outdoors nor in isolation "shall have the opportunity for at least one hour of exercise three separate days per week in an out-of-door area."[170] As is the case with most similar laws and regulations, there is a provided exception to the outdoor requirement when inclement weather persists.[171]

### *C. MENTAL AND PHYSICAL HEALTH CONCERNS DUE TO A DEPRIVATION OF OUTDOOR RECREATION TIME*

The World Health Organization ("WHO") has long established that physical activity greatly improves both physical and mental health.[172] Over the last decade, exhaustive research has been conducted on the relationship between mental health and physical activity as a whole, as well as physical activity specifically transpiring outdoors.[173] Research has repeatedly concluded that physical activity outdoors has a greater impact on mental well-being than exercise indoors.[174] In fact, research has indicated physical activity

166. 501 KY. ADMIN. REGS. 3:130 § 5.

167. N.J. ADMIN. CODE § 10A:31-26.4(f) (2023).

168. 03-201-001 ME. CODE R. § II.M.6.

169. 6 VA. ADMIN. CODE § 15-45-1950.

170. *Id.* § 15-45-1960.

171. *Id.*

172. *See Physical Activity*, WORLD HEALTH ORG. (Oct. 5, 2022), https://www.who.int/news-room/fact-sheets/detail/physical-activity [https://perma.cc/D4FB-7WD8] ("Physical activity has significant health benefits for hearts, bodies and minds, . . . contributes to preventing and managing noncommunicable diseases such as cardiovascular diseases, cancer and diabetes, . . . [and] reduces symptoms of depression and anxiety . . . .").

173. *See* Kirsten M.M. Beyer, Aniko Szabo & Ann. B. Nattinger, *Time Spent Outdoors, Depressive Symptoms, and Variation by Race and Ethnicity*, 51 AM. J. PREVENTATIVE MED. 281, 281 (2016).

174. *See* J. Thompson Coon et al., *Does Participating in Physical Activity in Outdoor Natural Environments Have a Greater Effect on Physical and Mental Wellbeing than Physical Activity Indoors? A Systematic Review*, 45 ENV'T SCI. & TECH. 1761, 1763, 1767 (2011) ("Six of the studies showed that compared with walking indoors, walking outdoors had a positive effect on some aspect of mood. For example, measures of revitalization, self-esteem, positive engagement, and subjective vitality were all greater following outdoor walking as were feelings of energy, pleasure, and delight, and

outdoors "may bring *additional* positive effects on" mental health that are not promoted by identical or similar activity indoors.[175] One study in 2016, which concentrated on the relationship between depression and outdoor time in American adults, concluded that time outdoors was heavily related to decreased depression symptoms.[176] Although the study examined a wide variety of lengths of time spent outdoors, the study displayed that mental well-being improved after even just thirty minutes outside.[177] Furthermore, several studies have concluded that regular outdoor physical exercise may "produce greater mental health benefits than physical activity elsewhere."[178] This research demonstrates the importance of promoting physical recreation and exercise outdoors as opposed to solely indoor recreation.

In fiscal year 2016, the BOP spent over eighty million dollars on mental health treatment for incarcerated individuals and reentry resources for formerly incarcerated individuals.[179] Incarcerated individuals experience considerably higher self-inflicted death rates, mental health concerns, and substance misuse than the general public.[180] A survey among incarcerated individuals in the United Kingdom concluded that these individuals find that the prison environment negatively impacts their mental health.[181] These effects are long lasting even outside of incarceration. Mental illnesses result in a difficult readjustment period upon release of previously incarcerated individuals and indicates "a significant public health and public safety challenge."[182]

In the United States, very limited research has been conducted concentrating on the impact of outdoor recreation deprivation on incarcerated individuals. Due to ethical and methodological barriers, no controlled

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there were decreases in feelings of frustration, worry, confusion, depression, tension, and tiredness." (footnotes omitted)).

175. *Id.* at 1767 (emphasis added).

176. Beyer et al., *supra* note 173, at 284.

177. *See id.* at 284–85.

178. *See* Richard Mitchell, *Is Physical Activity in Natural Environments Better for Mental Health than Physical Activity in Other Environments?*, SOC. SCI. & MED., Aug. 2013, at 130, 130.

179. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-182, FEDERAL PRISONS: INFORMATION ON INMATES WITH SERIOUS MENTAL ILLNESS AND STRATEGIES TO REDUCE RECIDIVISM, U.S. GOV'T ACCOUNTABILITY OFF. 19 (2018), https://www.gao.gov/products/gao-18-182 [https://perma.cc/9Z6G-RFVU].

180. *See* Jane Senior, *Mental Health in Prisons*, TRENDS UROLOGY & MEN'S HEALTH, Jan.–Feb. 2015, at 9, 9 ("Rates of mental illness and suicide are significantly higher in prisoners than in the general population.").

181. A. Goomany & T. Dickinson, *The Influence of Prison Climate on the Mental Health of Adult Prisoners: A Literature Review*, 22 J. PSYCHIATRIC & MENTAL HEALTH NURSING 413, 421 (2015).

182. *See* Marisa Elena Domino et al., *Do Timely Mental Health Services Reduce Re-Incarceration Among Prison Releasees with Severe Mental Illness?*, 54 HEALTH SERVS. RSCH. 592, 592–93 (2019) ("Upon release from prison, people with serious mental illness face greater challenges with reentry into the community than the general population; many do not receive needed mental health care and do not receive adequate transition planning. Together, growing prevalence and poor reentry outcomes underscore a significant public health and public safety challenge." (endnote omitted)).

experimentation has occurred.[183] Alternatively, large scale community samples have proven difficult to collect, likely due to communication and correspondence difficulties stemming from incarceration.[184] However, small-scale surveys of incarcerated individuals indicate that outdoor recreation deprivation does negatively impact psychological well-being.[185] Some individuals have gone so far as to explicitly say activity restrictions during incarceration "endangers [their] mental health" and that limited outdoor recreation time "driv[es] [them] crazy."[186]

Overall, incarcerated individuals "have long been recognised [sic] as a high-risk group for suicide within governmental suicide prevention strategies."[187] In 2019 alone, almost seven hundred incarcerated individuals in the United States died by self-inflicted death.[188] From 2001 to 2019, approximately 4,500 incarcerated individuals died by self-inflicted death in state and federal prisons combined, and during that time, the self-inflicted death rates increased by a horrific eighty-three percent.[189] Despite the seemingly large influx of finances, the mental health resources currently employed are clearly insufficient. Incarcerated individuals are in dire need of treatment and operations that improve mental well-being in both a healing and preventative capacity.

## III. IOWA SHOULD ENACT LEGISLATION GUARANTEEING OUTDOOR EXERCISE TO INCARCERATED INDIVIDUALS

Iowa should enact legislation providing outdoor exercise to incarcerated individuals, as such a deprivation will ultimately lead to unconstitutional

183. Nathaniel P. Morris & Jacob M. Izenberg, *Mental Health and Legal Implications of Access to the Outdoors During Incarceration*, 51 J. AM. ACAD. PSYCHIATRY & L. 103, 106 (2023).

184. *See id.* Incarcerated individuals are provided with limited access to phones, and many states do not permit incoming calls. *See, e.g.*, *How Do I Talk to an Offender on the Phone?*, IOWA DEP'T CORR., https://doc.iowa.gov/friends-and-family-resources/how-do-i-offender-telephone-system [https://perma.cc/7EQF-ZXX6] (explicitly stating that "[n]o incoming calls are allowed"); *How to Contact an Inmate*, CAL. DEP'T CORR. & REHAB., https://www.cdcr.ca.gov/family-resources/how-to-contact-an-inmate [https://perma.cc/N3UB-YJV3] ("It is up to the incarcerated person to initiate the call.").

185. *See* Morris & Izenberg, *supra* note 183, at 4. Several of these surveys were taken during the COVID-19 pandemic when concerns over the health of incarcerated individuals increased. *Id.*

186. *Id.* (quoting JOHN HOWARD ASS'N, JHA COVID-19 PRISON SURVEY COMMENT REPORT: PERCEPTIONS AND EXPERIENCES FROM PEOPLE INSIDE PRISON DURING THE PANDEMIC 2, 7 (2020), https://static1.squarespace.com/static/5beab48285ede1f7e8102102/t/5f9b3e44d3553d44af1ea255/1604009540162/JHA&hx002B;COVID-19&hx002B;Prison&hx002B;Survey&hx002B;Comment&hx002B;Report&hx002B;Yard&hx002B;and&hx002B;Out-of-cell&hx002B;Time&hx002B;Section.pdf [https://perma.cc/GDL5-NK9L]).

187. *See* Senior, *supra* note 180, at 9.

188. *See* Press Release, Off. of Just. Programs, U.S. Dep't of Just., Nearly a Fifth of State and Federal Prisons and a Tenth of Local Jails Had at Least One Suicide in 2019 (Oct. 7, 2021), https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/pressreleases/2021/nearly-fifth-state-and-federal-prisons-had-least-one-suicide-2019 [https://perma.cc/8JDT-QK2Q] ("A total of 340 persons in state and federal prisons and 355 persons in local jails died by suicide in 2019 . . . .").

189. *Id.*

practices, pursuant to the Eighth Amendment. The U.S. Supreme Court has already expressed concerns over the severe consequences that months or years spent indoors may bring about and the eventual constitutional violations that may arise.[190] Considering the abundance of other states who have enacted legislation providing incarcerated individuals with outdoor recreation time, state legislators across the country not only clearly view this as an area of concern, but an area of concern which requires action from the legislature. The fact that several states have enacted such legislation also indicates the feasibility of requiring outdoor recreation time. Thus, Iowa should follow suit and introduce legislation guaranteeing outdoor recreation time to incarcerated individuals.

### *A. IOWA SPECIFIC CONCERNS OVER A LACK OF OUTDOOR EXERCISE PROTECTIONS FOR INCARCERATED INDIVIDUALS*

Iowa currently lacks any laws or regulations requiring the Iowa Department of Corrections ("IDOC") to provide incarcerated individuals with any outdoor recreation time.[191] Under the Iowa Administrative Code, Iowa correctional facilities are only required to provide incarcerated individuals held for over a week with "[a] minimum of two one-hour exercise sessions" per week.[192] "An exercise area" must be outside of the incarcerated individual's cell and "must provide opportunity for adequate exercise,"[193] but it "may be indoor or outdoor."[194] The Code further states that outdoor recreation "may be suspended during inclement weather"[195] but, again, does not *require* correctional facilities to provide outdoor exercise.

As is common across the United States, the IDOC's correctional facilities suffer from overcrowding: the prison population across Iowa is currently 8,520, while the prison system's capacity is only 6,990.[196] Consequently, the

190. *See* Apodaca v. Raemisch, 139 S. Ct. 5, 6 (2018) (Sotomayor, J., respecting the denial of certiorari); *see also* Trop v. Dulles, 356 U.S. 86, 101 (1958) (finding that physical torture is not required for a punishment to become a constitutional violation).

191. *See generally* IOWA ADMIN. CODE r. 201–50 (2022) (providing all requirements for jail facilities under the Iowa Department of Corrections).

192. *Id.* r. 201–50.18(1)(a) ("A minimum of two one-hour exercise sessions shall be offered during each full calendar week. Playing board games or cards or reading is recreation and is not considered exercise.").

193. *Id.* r. 201–50.18(1)(c).

194. *Id.* r. 201–50.8(5)(a), (b) ("Exercise areas may be indoor or outdoor exercise areas and shall contain 15 square feet per prisoner for the maximum number of prisoners expected to use the space at one time, but not less than 500 square feet of unencumbered space. . . . Exercise areas shall have a minimum ceiling height of 18 feet. Exercise areas shall provide opportunity for adequate exercise . . . .").

195. *See id.* r. 201–50.18(1)(d). Additionally, "[a]ppropriate clothing shall be provided for exercise during winter months." *Id.*

196. IOWA DEP'T CORR., *Iowa Correctional System Population*, IOWA DATA, https://data.iowa.gov/Correctional-System/Iowa-Prison-System-Capacity-Rate/nic8-6yku [https://perma.cc/538A-TKEC] (recorded on Oct. 26, 2023). The prison population and capacity are updated daily by the state. *Id.*

total correctional institution capacity rate has reached 121.9 percent.[197] Overcrowding exacerbates mental health issues[198] and has been recognized by the U.S. Supreme Court as constitutional cause for concern.[199] In Iowa, the prison population has increased over the past few years, likely because over ninety-five percent of incarcerated individuals under the IDOC are serving sentences exceeding five years.[200] As of April 2016, approximately thirty percent of incarcerated individuals under the IDOC's supervision suffer from "a serious mental illness, and another [eighteen percent] have some other chronic mental health diagnosis."[201] Unfortunately, IDOC's data indicates that incarcerated individuals suffering from a mental illness, encompassing almost fifty percent of the prison population, are more likely to recidivate.[202] Unsurprisingly, it follows that the three-year recidivism rate is approximately thirty-seven percent and has decreased by less than three percent since 2020.[203] From 2001 to 2019, approximately thirty-seven incarcerated individuals died from self-inflicted injuries, and an additional 266 died from physical illnesses.[204] The IDOC clearly suffers from the same fatal flaws of overcrowding and untreated mental health problems, among other concerns, exhibited in correctional facilities across the country.

### *B. Enacting an Iowa Statute Guaranteeing Incarcerated Individuals with Outdoor Recreation Time*

To address the aforementioned mental and physical health concerns, Iowa's proposed statute should replicate that of Pennsylvania's statute on the

197. *Id.*

198. COMM. ON CAUSES AND CONSEQUENCES OF HIGH RATES OF INCARCERATION ET AL., HEALTH AND INCARCERATION: A WORKSHOP SUMMARY 8 (Amy Smith ed., 2013) (noting that overcrowding has been linked to "suicide or psychiatric commitment" for decades). Specifically, overcrowding generates an environment which limits individual adjustment, further reduces autonomy, and increases stress. Timothy G. Edgemon & Jody Clay-Warner, *Inmate Mental Health and the Pains of Imprisonment*, 9 SOC'Y & MENTAL HEALTH 33, 35 (2019). Consequently, this leads to mental health problems and an increased likelihood of self-inflicted death. *Id.* at 35–36.

199. *See supra* Section II.C.

200. *See Quarterly Quick Facts*, IOWA DEP'T OF CORR. (Sept. 30, 2022), https://doc.iowa.gov/data/quick-facts [https://perma.cc/8VBE-LGAK].

201. *Mental Health Information Sharing Program*, IOWA DEP'T OF CORR. (Apr. 2016), https://doc.iowa.gov/data/research-reports/mental-health-information-sharing-program-april-2016 [https://perma.cc/HE2X-RXKK].

202. *See id.* ("Iowa data also shows that offenders with mental health diagnosis are more likely to return to prison.").

203. *See FY22 Recidivism*, IOWA DEP'T OF CORR. (Oct. 2022), https://doc.iowa.gov/data/prison-recidivism-fy2022 [https://perma.cc/K7W7-X4E9]. The IDOC defines recidivism as "[t]he act of an individual leaving prison (parole/special sentence, work release, or discharge) who is then reincarcerated within three-years for any reason." *Id.*

204. *See* E. ANN CARSON, OFF. OF JUST. PROGRAMS, U.S. DEP'T OF JUST., MORTALITY IN STATE AND FEDERAL PRISONS, 2001–2019—STATISTICAL TABLES 24 tbl.16 (Dec. 2021), https://bjs.ojp.gov/content/pub/pdf/msfp0119st.pdf [https://perma.cc/5P56-GQV6]. Here, self-inflicted injuries encompass both suicide (thirty-four) and substance abuse deaths (three). *See id.*

physical welfare of incarcerated individuals, which requires a minimum of two hours of outdoor recreation daily when weather permits.[205] It should also apply to all incarcerated individuals, including both pretrial detainees and those who have been sentenced. Additionally, individuals subjected to disciplinary segregation should still receive no less than one hour of outdoor recreation five days a week. Pennsylvania's statute has been in place for over a decade, indicating the continued feasibility of these necessary measures for incarcerated individuals' welfare.[206] Iowa should also preserve subrule 50.22(15) of the Iowa Code, which requires correctional facilities to record all recreational time in order to ensure all institutions comply with these standards.[207]

Alternatively, the Iowa Legislature may consider implementing legislation paralleling Georgia's protections for incarcerated individuals held in maximum security institutions. In other words, correctional institutions would be required to provide a minimum of five hours of outdoor exercise every week.[208] If the Iowa Legislature pursued this language instead, it should specify that each hour should occur on a different day. This would ensure that the outdoor recreation time is arranged across several days as opposed to encompassing one or two days of the week.

The Iowa Legislature's standards for correctional facilities suggests that it already recognizes the importance of integrating exposure to the outdoors in these facilities. The physical requirements for facilities state, in relevant part, that a correctional "facility shall be designed to admit natural light and to give access to outside viewing by" incarcerated individuals if possible.[209] These standards apply to facilities that are newly constructed or remodeled after 2001.[210] This indicates the developing view that Iowa legislators believe incarcerated individuals should have some form of "access" to the outdoors, yet they only provide for viewing access.[211] Additional protections for physical access are necessary to accomplish a more complete integration of the outdoors in the IDOC's facilities.

Although there may be concerns over budgeting, the practicality of these requirements is indicated by similar statutes existing in various states. Enacting this legislation would inevitably require Iowa correctional facilities to hire more correctional officers, as there would be concerns over both

205. 61 PA. CONS. STAT. § 5901(a)(1).

206. *See id.* (coming into effect on October 13, 2009, and remaining in effect since).

207. *See* IOWA ADMIN. CODE r. 201–50.22(15) (2022); *see also id.* r. 201–50.18(1) (giving the required standards of exercise time).

208. *See* GA. COMP. R. & REGS. 125-4-6.01(6)(b) (2022).

209. IOWA ADMIN. CODE r. 201–50.7(6); *id.* r. 201–50.8(6). For a comprehensive list of the physical requirements for correctional facilities, see IOWA ADMIN. CODE r. 201–50.7 and IOWA ADMIN. CODE r. 201–50.8.

210. *Id.* r. 201–50.7 (2022); *id.* r. 201–50.8.

211. *See id.* r. 201–50.7(6); *id.* r. 201–50.8(6).

incarcerated individuals' and staff safety.[212] However, increasing budgeting in one area to provide for these requirements would be balanced out by decreases in other areas. Considering outdoor physical activity greatly improves mental health,[213] providing incarcerated individuals with outdoor exercise would likely decrease future costs spent on mental health treatment. The outdoor physical recreation time would serve as a preventative measure for the roughly fifty percent of incarcerated individuals in the IDOC not yet suffering from mental illnesses.[214]

It would also assist in improving the health of those already struggling from both chronic and serious mental health issues.[215] With a strong link between mental illness and recidivism,[216] this could also lead to a decrease in recidivism rates. Ultimately, the long-term benefits of implementing such legislation outweigh the financial burdens implicated by these standards. Regardless of cost, financial burdens do not justify constitutional violations.

Although additional outdoor recreation time would be ideal, adopting legislation requiring a minimum of one hour of outdoor physical activity every day would provide incarcerated individuals with basic constitutional protections under the Eighth Amendment. This would avoid any implications of cruel and unusual punishment regarding outdoor physical exercise, as it would comply with the evolving standards of human decency. Other states have been implementing similar laws and regulations for several years,[217] indicating long-term stability. Iowa should follow suit and implement legislation providing for mandatory outdoor recreation time for incarcerated individuals.

## CONCLUSION

Although the U.S. Supreme Court has not yet accepted a case addressing the Eighth Amendment's implication for outdoor physical recreation for incarcerated individuals, it has undoubtedly expressed concerns over long term deprivations of exposure to the outdoors.[218] In order to avoid constitutional

212. While the need to hire more correction officers is vital, I am not naive about the current shortage of correctional officers. *See Report Finds System Overcrowding, Staff Shortages at Iowa Prison Facilities*, KCRG (Dec. 20, 2021, 4:54 PM), https://www.kcrg.com/2021/12/20/report-finds-system-overcrowding-staff-shortages-iowa-prison-facilities [https://perma.cc/M97P-6MRT]. The state would need to find a way to increase correctional officers' salaries and retain them, but this is outside the scope of this Note.

213. *See supra* Section II.C (discussing the relationship between outdoor exercise and mental health).

214. *See Mental Health Information Sharing Program*, *supra* note 201.

215. *See supra* Section II.C; *Mental Health Information Sharing Program*, *supra* note 201.

216. *See Mental Health Information Sharing Program*, *supra* note 201.

217. *See* GA. COMP. R. & REGS. 125-4-6-.01 (2022); 61 PA. CONS. STAT. § 5901(a)(1); N.Y. COMP. CODES R. & REGS. tit. 9, § 7028.2(a) (2022).

218. *See* Apodaca v. Raemisch, 139 S. Ct. 5, 8 (2018) (Sotomayor, J., respecting the denial of certiorari) ("I write to note, however, that what is clear all the same is that to deprive a prisoner of any outdoor exercise for an extended period of time in the absence of an especially strong basis for doing so is deeply troubling—and has been recognized as such for many years.").

violations, criminal punishments must comply with the evolving standards of human decency,[219] which the Iowa Legislature has failed to ensure.

To ensure incarcerated individuals are provided with outdoor physical recreation and exercise as required by the Eighth Amendment, the Iowa Legislature must act. The proposed legislation should provide incarcerated individuals with a minimum of one hour of outdoor recreational activity every day, weather permitting. If circumstances make this scheme unfeasible, correctional institutions should at a bare minimum provide incarcerated individuals with one hour of outdoor recreation five days a week. Such a statute will assist in decreasing the prevalence of mental health concerns in the Iowa correctional system and uphold the constitutional protection against cruel and unusual punishment. Fresh air is a bare necessity in life, thus the Eighth Amendment encompasses the right to outdoor recreation for all incarcerated individuals.

219. *See* Trop v. Dulles, 356 U.S. 86, 101 (1958).