have a history of poor compliance with treatment. If it adopted Mr. J.'s arguments, the court stated that:

> . . . we would condemn him to a never-ending yo-yo of uncontrolled paranoid schizophrenia, followed by involuntary confinement for inpatient treatment until his symptoms are controlled and his inpatient commitment order is lifted, followed by another bout of uncontrolled paranoid schizophrenia, and on and on *ad mortem*. Nothing in law or logic instructs us to ignore this reality, so we will not" (*J.W.J.*, p 794–5).

With the definition of rehabilitative potential as it stands currently, Mr. J. is able to live in society and be treated in the least restrictive setting (i.e., outpatient treatment). Wisconsin's statute for recommitment does not require a recent act or threat of harm to self or others for a finding of dangerousness because a history of medication noncompliance and subsequent decompensation satisfies the dangerousness prong.

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# Eighth Amendment Claims in Prison Suicide Litigation

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## Eighth Amendment Claims Alleging Unconstitutional Conditions of Solitary Confinement Are Not Barred in Prison Suicide Litigation

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*In Palakovic v. Wetzel*, 854 F.3d 209 (3rd Cir. 2017), the Third Circuit Court of Appeals vacated and remanded the District Court for the Western District of Pennsylvania's decision to dismiss Eighth Amendment claims against prison officials and mental health care staff, brought by the parents of an inmate who committed suicide while in solitary confinement.

### *Facts of the Case*

In April 2011, Brandon Palakovic, began serving a 16–48-month sentence for burglary at the State Correctional Institution at Camp Hill (SCI Camp Hill), Pennsylvania. During a mental health screening, Mr. Palakovic informed SCI Camp Hill mental health staff that he had previously attempted suicide and he reported active suicidal thoughts, including plans on how to kill himself. Diagnosed with an impulse control disorder, alcohol dependence, and antisocial personality disorder, he was placed on the mental health roster, identified as a "suicide behavior risk," and assigned the lowest possible stability rating offered by the Pennsylvania Department of Corrections (DOC).

In June 2011, Mr. Palakovic was transferred to SCI Cresson. While there, he continued to show signs of depression, including suicidal thoughts. Over his 13-month incarceration at SCI Cresson, a comprehensive suicide risk assessment was not completed. Despite requesting individual therapy and reporting a poor response to his prescribed antidepressant, he did not receive individual therapy or medication management appointments. He served multiple "30-day stints" in solitary confinement at the Restricted Housing Unit (RHU), which consisted of 23 hours of isolation per day in a 100-square-foot cell, one hour of outdoor exercise in a cage, no phone calls, and minimal outside visibility.

During Mr. Palakovic's incarceration, the United States Department of Justice (DOJ) launched an investigation into allegations of Eighth Amendment violations at SCI Cresson. The alleged violations included that SCI Cresson provided prisoners with inadequate mental health care, failed to protect them from harm, and placed them in isolation for prolonged periods. On June 16, 2012, before the completion of the DOJ investigation, Mr. Palakovic committed suicide while in solitary confinement.

On July 16, 2014, Mr. Palakovic's parents filed a five-count civil rights complaint in the U.S. District Court for the Western District of Pennsylvania naming several staff at SCI Cresson. The Palakovics presented Eighth Amendment claims alleging that all named defendants were deliberately indifferent to the inhumane conditions their son suffered in solitary confinement and to his serious need for mental health care.

On June 26, 2015, the district court granted the defense's motion to dismiss the claim. The district court reasoned because the case involved a prisoner suicide, the Third Circuit Court of Appeal's "vulnerability to suicide" legal framework applied. This legal

framework required the Palakovics to show that their son had a vulnerability to suicide that created a strong likelihood that he would harm himself; the defendants knew, or should have known, of this vulnerability; and the defendants were deliberately indifferent to this vulnerability. The district court concluded that the Palakovics' complaint was factually insufficient to support the three prongs of this framework and dismissed their complaint with leave to amend. In August 2015, the Palakovics filed an amended complaint, including four vulnerabilities to suicide claims and an Eighth Amendment "failure to train" claim against supervisory officials at SCI Cresson.

On February 22, 2016, the district court granted the defense's motion to dismiss the amended complaint citing factual insufficiency. The Palakovics declined the option to file a second amended complaint, and instead chose to appeal. The Third Circuit Court of Appeals unanimously vacated all the district court's dismissal orders and remanded the matter to the district court for further proceeding.

*Ruling and Reasoning*

The Third Circuit held that the district court erred by applying a vulnerability to suicide legal framework to the Palakovics' original complaint because this framework is only applicable in cases that seek to hold prison officials responsible for "failing to prevent a prison suicide." By contrast, the Palakovics' initial Eighth Amendment claim sought to hold prison officials accountable for injuries Mr. Palakovic endured while alive and in solitary confinement.

In a unanimous opinion, Chief Judge Smith referenced the Third Circuit's recent decision in *Williams v. Secretary of the Pennsylvania Department of Corrections*, 848 F.3d 549 (3d Cir. 2017) to highlight the growing body of legal and scientific evidence that inmates placed in solitary confinement are at heightened risk for psychological damage, self-mutilation, and suicide. Given these known dangers of solitary confinement, combined with the factual allegations specified in the original complaint, the Third Circuit concluded that the Palakovics' claim of deliberate indifference to the inhumane conditions should have been allowed to proceed to discovery.

The Third Circuit further found that the Palakovics' claim that prison officials violated their son's constitutional rights by providing inadequate mental health care, and their amended claims involving vulnerability to suicide and failure to train were all sufficiently pleaded to warrant discovery. The court referenced several of the Palakovics' factual allegations to support their holdings:

> Mr. Palakovic was repeatedly subjected to solitary confinement despite prison policy warning that exposing mentally ill inmates to solitary confinement can increase their suicide risk.
>
> Mr. Palakovic's history of depression, suicide attempts and suicidal ideation with a plan made him vulnerable to suicide and created a "strong likelihood" he would engage in self-harm.
>
> The defendants knew, or should have known, his vulnerability to suicide; because mental health staff had given him the lowest possible stability rating offered in the Pennsylvania DOC, he was identified by the prison as a "suicide behavior risk," and his history of suicide attempts were documented in the record.
>
> Despite Mr. Palakovic's receiving some mental health treatment, the cited defendants were deliberately indifferent to his vulnerability to suicide and serious need for mental health care, by allegedly refusing his reasonable requests for counseling and medication monitoring, while instead choosing to place him in solitary confinement.
>
> Prison supervisors allegedly failed to train and provide proper policies to help officials better assess and manage inmates with mental illness, and suicidal ideation.

*Discussion*

In *Palakovic*, the Third Circuit clarified the proper interpretation of vulnerability to suicide legal framework and reviewed the legal principles used to assess Eighth Amendment claims in cases involving solitary confinement and suicide. More broadly, this decision reflects the growing body of legal, scientific, and professional support for curbing the centuries old practice of using solitary confinement in correctional settings.

In the 1790s, solitary confinement was first used in the United States at the Walnut Street Prison in Pennsylvania. Eighteenth century reformers advocating for solitary confinement believed subjecting prisoners to long periods of isolation would allow them time to reflect on their sins and encourage penitence. Critics of this system were concerned about

the potential detrimental effects of prolonged isolation (Reiter K: The most restrictive alternative: a litigation history of solitary confinement in U.S. prisons, 1960–2006. *Stud L Pol & Soc* 57:69–123, 2012).

In the case of *In re Medley*, 134 U.S. 160 (1890), the U.S. Supreme Court found a Colorado statute specifying solitary confinement before execution to be unconstitutional under an *ex post facto* prohibition. The Court discussed the effects of solitary confinement on prisoners, "A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide" (*Medley*, p 168). After *Medley*, the generalized use of solitary confinement fell out of favor.

Over the past 30 years, with the growth of correctional populations and the development of supermax prisons, the use of solitary confinement has again increased. Research has illuminated the untoward effects of solitary confinement, particularly on mentally ill inmates, leading professional organizations (National Commission on Correctional Health Care, the American Psychiatric Association, and others) to create guidelines curbing such practices (Metzner J, Fellner J: Solitary confinement and mental illness in U.S. prisons: a challenge for medical ethics. *J Am Acad Psychiatry Law* 38;104–08, 2010). Litigation challenging the constitutionality of solitary confinement in prisons often has resulted in significant reforms.

*In Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995), a class action lawsuit brought by prisoners of Pelican Bay in part contesting unconstitutional conditions of solitary confinement, resulted in a ban on placing mentally ill inmates in isolation at the prison. The Palakovics' lawsuit helped to initiate similar changes in Pennsylvania.

Since Mr. Palakovic's death, SCI Cresson has closed. The Pennsylvania DOC now houses inmates with severe mental illness in specialized treatment units and has banned the use of solitary confinement for this population. Inmates with mental illness are allowed more time out of their cells, and new training programs have been developed to make prison staff more proficient in managing people with mental illness (Ray P: Court reinstates lawsuit over inmate's suicide. *Altoona Mirror*. April 19, 2017. Available at: http://www.altoonamirror.com/news/local-news/2017/04/court-reinstates-lawsuit-over-inmates-suicide/. Accessed December 24, 2017). The *Palakovic* case represents another example of how litigation is sparking solitary confinement reform in prisons nationwide.

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# Judicial Telepresence in Involuntary Commitment Hearings

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## Patients Have a Right to the Physical Presence of Judicial Officer at Involuntary Commitment Hearings

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In *Doe v. State*, 217 So.3d 1020 (Fla. 2017), the Supreme Court of Florida quashed the decision of the Second District Court of Appeal that permitted judicial telepresence at involuntary commitment hearings. The court held that individuals subject to commitment hearings have a right to have a judicial officer physically present at the hearings.

### *Facts of the Case*

This case arose as a result of an email from Florida's Twentieth Judicial Circuit that read, "Per Judge Swett he will be doing Baker Acts beginning this Friday via Polycom. Thank you" (*Doe*, p 1023). The email announced a new policy. Baker Act hearings would be conducted remotely from the courthouse via videoconferencing, whereas the patients, witnesses, and attorneys would continue to be physically present at the psychiatric facility.

Proceedings used to involuntarily commit individuals with mental illness under Florida law are called Baker Act hearings. The Baker Act requires an evidentiary hearing to be conducted in a physical setting not likely to be injurious to the patient's condition (Fla. Stat. § 394.467 (2016)).