

December 13, 2017

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RE: Regulations to Enhance Oversight of Solitary Confinement in All Local Jails

Showing Up For Racial Justice - New York City (SURJ NYC) is a local chapter of a nationwide grassroots organization committed to moving white people into action for racial justice while supporting organizations led by people of color. Given the racial disparities endemic in the carceral system, one of our highest priorities is ensuring that incarcerated persons are kept safe and are treated with dignity and respect, while also working toward reducing the number of people confined in jails and prisons.

On behalf of SURJ NYC, we respectfully submit that the Governor's proposed regulations do not go far enough to protect people in jail and prison from the harmful and lasting effects of solitary confinement. The regulations are also missing key changes that would create alternatives to restrictive housing. Governor Cuomo and New York State Legislators should work towards implementing more humane and rehabilitative methods, like non-restrictive housing alternatives, step-up and step-down programs, and increased oversight of retention determinations. We commend the Governor's effort to place regulations on solitary confinement and hope he advances with the shared vision for improved treatment of people in jail and prison.

General Comments

- The proposed regulations do not actually guarantee meaningful out-of-cell time for people in restrictive housing. Instead, the policy allows for the continuous review of the decision to confine a person in a Special Housing Unit. Thus, **people can be legally held for months or years in solitary confinement**, including young people and pregnant women, if the chief administrative officer determines it necessary.
- The proposed regulations do not explain what qualifies as a threat to "safety, security, or good order" or provide guidelines for determining when restrictions can be deemed "necessary." They therefore provide broad discretion to jail administrators to define what these terms mean for their facilities, enabling them to keep any person they choose in solitary confinement for 24 hours a day, creating a risk of arbitrary and inconsistent application, and ultimately rendering the regulations toothless.
- In 2012, Governor Cuomo proposed legislation to protect people with disabilities from abuse and neglect and to create the Justice Center for the Protection of People with Special Needs; his **efforts to protect vulnerable populations should extend to those people living inside jails and prisons**. These proposed regulations allow for vulnerable

people to experience the harmful effects of solitary confinement by legalizing 24-hour solitary confinement and allowing any time out of cell to be in another solitary space. There is an inequitable application of the Governor's advocacy evident in these regulations.

Major Concerns

- According to the Human Rights Watch, over 40% of prison suicide between 2014-2015 took place in solitary confinement. If the Governor and NY Legislators wish to ameliorate "public reports of misuse and abuse of solitary confinement," **the proposed regulations must include prisons.**
- Rather than **codifying the opportunity** for chief administrative officers to deny incarcerated persons essential services, the right to exercise religion, and basic hygiene products, the **proposed regulations should restrict the bases for using solitary confinement**, and further, ban even one day of solitary for young people, old people, and individuals with mental and physical disabilities.
- The proposed regulations allow for the chief administrative officer to both determine the necessity for solitary confinement and review those determinations every seven days. Decision and supervision by the same actor is dangerous; the outlined policy leaves much room for **wrongful confinement, passivity, and siloed decision making** that can cost lives.

Proposed Changes

- The proposed regulations should both **narrow the criteria for entry to restricted housing** and develop ways to divert prisoners from restricted housing, when it is necessary to remove them from the general population.
- The Governor and NY Legislators should **place a maximum limit of 15 consecutive days in solitary** or 20 days total in any 60-day period, following the Mandela Rules, adopted by the United Nations General Assembly.
- The Governor and NY Legislators should **pass the HALT Solitary Confinement Act** to enshrine policies into law that bring New York in line with other states and international standards.
- Any assessment to determine if a person should be placed in restricted housing or if they are part of a special population must be conducted **prior to placement** and with oversight by an administrator other than the administrator who wrote the original report.

As demonstrated above, the proposed regulations threaten the successful rehabilitation of people in jails in New York State and present opportunity for abuses to continue. We ask Governor Cuomo and NY Legislators to please consider our comments and make essential changes to the proposed regulations for solitary confinement.

Sincerely,

The SURJ NYC Anti-Mass Incarceration Leadership Team