



## PUBLIC COMMENTS ON PROPOSED SOLITARY CONFINEMENT REGULATIONS

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### BY EMAIL

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**Re: Proposed Rule Making I.D. No. CMC-44-17-00012-P  
"Inmate Confinement and Deprivation"**

The Urban Justice Center Mental Health Project strongly supports regulation and oversight of the use of solitary confinement in local and state correctional facilities. Solitary confinement is detrimental to the health and well-being of those subjected to it. Moreover, the manner in which New York jails and prisons routinely use solitary confinement – in excess of 15 days and on people with mental and physical disabilities and juveniles – constitutes torture. The State Commission of Correction (SCOC) needs to adopt regulations that profoundly curtail the use of solitary confinement. The proposed regulations, however, do not establish meaningful restrictions on its use or promote alternative ways of addressing problematic behavior. We encourage the SCOC to adopt regulations that do the following:

- Limit the amount of time that a person can spend in solitary confinement;
- Limit the circumstances in which a person can be placed in solitary confinement;
- Exclude vulnerable populations from solitary confinement;
- Provide alternatives to solitary confinement which allow for meaningful human contact and engagement;
- Enhance procedural protections provided before placement in solitary confinement;
- Require staff training;
- Require robust public reporting on the use of solitary confinement; and
- Apply all protections to prisons as well as jails.

The Urban Justice Center Mental Health Project has advocated for people with mental health issues involved in the criminal legal system for almost 20 years. We are deeply familiar with the difficulties people with mental health issues have within correctional facilities and in accessing essential mental health services, housing, and benefits upon

release. We represent the *Brad H. Class*, all incarcerated individuals who receive mental health treatment while in New York City jails. As Class Counsel, we conduct each week approximately 35 to 40 interviews of incarcerated individuals who have mental health issues. We are extremely concerned that the jail environment, especially placement in solitary confinement, harms these individuals not only while they are incarcerated but after their release. We have been involved in efforts to restrict the use of solitary confinement in New York State prisons and in New York City jails for the last 15 years.

We are deeply troubled that the proposed regulations contain no specific prohibition on placing people with mental health issues in solitary confinement. This population is at greater risk of being placed in solitary and is more vulnerable to its harms than the general jail population. Treatment interventions – not isolation – are the most effective way to ensure safety for people with mental illness and correction staff. We implore the SCOC to revise its regulations to address the specific needs of this population.

#### *Criminalization of Mental Illness*

Jails and prisons do not promote mental health recovery and stability, yet a staggering number of people with mental health issues are confined there. In NYC jails, about 38% of the jail population requires mental health treatment, and in NYS prisons, about 20% are on the Office of Mental Health (OMH) caseload. Despite the decrease in the overall prison population, the number of people with mental illness continues to grow. Incarceration can exacerbate symptoms of mental illness. Correction staff frequently perceive symptoms of mental illness as willful violations of facility rules and punish them accordingly. People whose mental health needs are not appropriately addressed can easily end up in solitary confinement.

#### *Dangers of Solitary Confinement for People with Mental Illness*

Solitary confinement inflicts severe psychological harm. Nationally half of prison suicides occur among the 3% to 8% of those in solitary confinement.<sup>1</sup> A comprehensive study of 244,699 NYC jail incarcerations over three years found that individuals punished with solitary confinement were almost seven times more likely to attempt to hurt or kill themselves than other incarcerated people.<sup>2</sup> Only 7.3% of jail admissions included any solitary confinement sentence, yet “53.3% of acts of self-harm and 45% of acts of potentially fatal self-harm occurred within this group.”<sup>3</sup>

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<sup>1</sup> See Comments by Dr. Terry Kupers to the June 19, 2012 Hearing Before the Subcommittee on the Constitution, Civil Rights, and Human Rights of the U.S. Senate Committee on the Judiciary, *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences*, available at <https://www.judiciary.senate.gov/imo/media/doc/CHRG-112shrg87630.pdf>.

<sup>2</sup> Kaba, Lewis, Glowa-Kollisch, Hadler, Lee, Alper, Selling, MacDonald, Solimo, Parsons, and Venters, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUBLIC HEALTH 442 (Mar. 2014), available at <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742>.

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

It is predictable that [incarcerated persons'] mental state deteriorates in isolation. Human beings require at least some social interaction and productive activities to establish and sustain a sense of identity and to maintain a grasp on reality. In the absence of social interactions, unrealistic ruminations and beliefs cannot be tested in conversation with others, so they build up inside and are transformed into unfocused and irrational thoughts. Disorganized behaviors emerge. Internal impulses linked with anger, fear and other strong emotions grow to overwhelming proportions. . . . It is under these extreme conditions that psychiatric symptoms begin to emerge in previously healthy prisoners. Of course, in less healthy ones there is psychosis, mania or compulsive acts of self-abuse or suicide. We know that the social isolation and idleness, as well as the near absolute lack of control over most aspects of daily life, very often lead to serious psychiatric symptoms and breakdown.<sup>4</sup>

The harmful effects of solitary confinement are so well documented that federal courts across the country have ruled that placing people with severe mental illness in such conditions violates the Eighth Amendment prohibition on cruel and unusual punishment.<sup>5</sup> One court determined that placing people with mental health issues in solitary "is the mental equivalent of putting an asthmatic in a place with little air to breathe."<sup>6</sup>

*Existing Limits on Confinement of People with Mental Illness in New York*

State law imposes limits on the placement of people with serious mental illness in solitary confinement in NYS prisons. People with serious mental illness must be diverted from solitary confinement to a residential mental health treatment unit, where such confinement could potentially be for more than 30 days, except in exceptional circumstances.<sup>7</sup> Residential mental health treatment units are required to be therapeutic in nature and not operated as disciplinary housing.

This law was enacted after OMH and the NYS Department of Correctional Services (DOCS)<sup>8</sup> settled litigation that challenged the adequacy of prison mental health care.<sup>9</sup> The plaintiff alleged that DOCS and OMH failed to provide adequate mental health services and punished

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<sup>4</sup> Terry Kupers, *Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment's Sake?*, in THE ROUTLEDGE HANDBOOK OF INTERNATIONAL CRIME AND JUSTICE STUDIES 213, 215-16 (Bruce A. Arrigo & Heather Y. Bersot Eds., 2013), available at <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/4577>.

<sup>5</sup> American Civil Liberties Union, *The Dangerous Overuse of Solitary Confinement in the United States* (ACLU Briefing Paper), August 2014, available at [https://www.aclu.org/sites/default/files/assets/stop\\_solitary\\_briefing\\_paper\\_updated\\_august\\_2014.pdf](https://www.aclu.org/sites/default/files/assets/stop_solitary_briefing_paper_updated_august_2014.pdf).

<sup>6</sup> *Madrid v. Gomez*, 889 F. Supp. 1146, 1265 (N.D. Cal. 1995).

<sup>7</sup> N.Y. Correct. Law § 137.6(d)(i).

<sup>8</sup> The case was settled before DOCS was merged with the Division of Parole to form the Department of Corrections and Community Supervision.

<sup>9</sup> *Disability Advocates, Inc. v. New York State Office of Mental Health*, No. 1:02-cv-04002 (S.D.N.Y. 2007).

incarcerated persons with serious mental illness with solitary confinement, which aggravates their mental illness. The settlement required a heightened level of care for people with serious mental illness who were placed in solitary confinement as well as additional treatment capacity in state prisons and the psychiatric center that serves the prison system.

The use of solitary confinement is even more constrained in the New York City jails. In January 2015, the NYC Board of Correction amended its Minimum Standards to exclude people with serious mental disabilities or conditions from placement in solitary confinement in NYC jails.<sup>10</sup> In addition, the Minimum Standards authorize medical staff to determine that an incarcerated person must be barred from solitary confinement or moved from solitary confinement to a more appropriate housing unit “when assignment to [solitary confinement] would pose a serious threat to an [incarcerated person’s] physical or mental health.”<sup>11</sup>

Even before the Board of Correction imposed limits on the use of solitary confinement, New York City developed an alternative to solitary confinement for people with serious mental illness. The Clinical Alternative to Punitive Segregation (CAPS) units are clinical settings that do not restrict out-of-cell time but instead offer a comprehensive schedule of therapeutic activities.<sup>12</sup> The CAPS units not only have more mental health staff than traditional units, but the staff are also based on the unit and have office space there. Mental health treatment aides assist people on the unit in groups and other therapeutic activities and engage with them throughout the day.

In the NYC jails, individuals with mental health issues that are not severe enough to disqualify them from placement in solitary confinement are placed in Restrictive Housing Units (RHUs). The RHUs are disciplinary units that offer some clinical interventions. People in the RHUs are initially held in solitary confinement 23 hours per day. They can gradually earn up to four hours out-of-cell time, during which they engage in group and individual therapy, as they progress through an incentive-based system.

The CAPS units have been much more successful than the RHUs. In fact, CAPS provided the model for improving other mental health units in the NYC jail system. In evaluating the units, Correctional Health Services compared outcomes for people who spent time in both CAPS and RHU and found that “significantly lower rates of self-harm and injury occurred during treatment in the CAPS unit as opposed to punishment in the RHU.”<sup>13</sup> They concluded

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<sup>10</sup> N.Y.C. RULES & REGS. tit. 40, § 1-17(b)(1)(iii).

<sup>11</sup> N.Y.C. RULES & REGS. tit. 40, § 1-17(b)(2).

<sup>12</sup> Glowa-Kollisch, Kaba, Waters, Leung, Ford, and Venters, *From punishment to treatment: the “Clinical Alternative to Punitive Segregation” (CAPS) program in New York City jails*, *INT’J ENVIRON RES PUBLIC HEALTH*. 2016; 2: 13(2), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4772202/>.

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

that “clinical improvements among incarcerated patients with mental illness are linked to less restrictive and more therapeutic approaches.”<sup>14</sup>

#### *Need for SCOC to Adopt Regulations Requiring Treatment Interventions in Lieu of Punishment*

The SCOC must not ignore the fact that many incarcerated persons with mental health issues end up in solitary confinement because jails do not provide adequate mental health care. No one should be punished for their illness. Jails must provide adequate mental health treatment and interventions to prevent people with mental illness from being isolated in solitary confinement.

New York City’s experience reforming its approach to solitary is instructive and should be considered in adopting rules for jails across the state. For people with mental health treatment needs, providing treatment and addressing behavior in a therapeutic space is not only possible but more effective. Engaging people, not isolating them, is key for improving behavior and creating safer jails.

The regulations that the SCOC adopts should include provisions to prevent inadequate mental health care from leading to people being placed in solitary confinement. People with mental illness should not be subjected to the toxic environment of solitary.

#### *Inadequacy of Proposed Regulations*

The proposed regulations – while providing individuals in disciplinary or administrative segregation with four hours out of cell daily – do not protect people with mental illness from the harms of solitary confinement. The proposed regulations allow the jail’s chief administrative officer to override this requirement where it would “pose a threat to the safety, security or good order of the facility.” This provision allows some individuals to continue to be in complete isolation, and because the proposed regulations contain no limit on the amount of time a person can spend in solitary confinement, a person with mental illness could be confined for weeks, months, or even years.

Moreover, the regulations contain no directions for how the out-of-cell time may be spent. This lack of specification allows a jail to provide an individual with out-of-cell time without ensuring that the person actually can interact with other people during that time. Currently individuals in solitary must be provided with an hour of recreation, but for most people that hour does not serve as a break from isolation as congregate recreation generally is not provided.

#### *Recommendations for Improving Proposed Regulations*

We endorse the Humane Alternatives to Long-Term (HALT) Solitary Confinement Act, A.3080/S.4784, as a comprehensive approach to regulating the use of isolation in prisons and jails. The HALT Act provides SCOC with a roadmap for overhauling the proposed regulations. The provisions of the HALT Act are based on the findings and recommendations of the United Nations Special Rapporteur on Torture – which have now been enshrined in the Standard Minimum Rules for the Treatment of Prisoners (known as

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<sup>14</sup> *Id.*

the Mandela Rules) – as well as the lived experiences of people subjected to solitary confinement.

We endorse the recommendations of the Campaign for Alternatives to Isolated Confinement that SCOC modify its regulations to do the following:

- 1) End the torture of solitary confinement for all people by imposing a limit of 15 consecutive days in solitary, and 20 days total in a 60-day period;
- 2) Create more humane and effective alternatives, by expanding the amount of out-of-cell time guaranteed to all people who are separated and ensuring that out-of-cell time involves meaningful human contact and programs;
- 3) Restrict the criteria that can result in a person being placed in solitary or otherwise separated to the most egregious conduct (whereas the current regulations do not put any limit on why someone can be sent to solitary);
- 4) Ban certain groups of people, including people with mental illness, from spending even one day in solitary confinement, by expanding the type of protected categories of people and ensuring that the protections for those groups provide meaningful support;
- 5) Enhance procedural protections, staff qualifications and capabilities, and transparency and accountability, going far beyond the minimal internal reporting required by the proposed regulations; and
- 6) Apply all protections to prisons as well as jails.

We encourage SCOC to conduct a public hearing before adopting regulations. Because the practice of solitary confinement has come under scrutiny by the international community, courts, medical experts, academics, and correction administrators, there is a body of research about the harms of solitary confinement – including that it does not make jails and prisons safer – as well as promising practices for reducing its use.<sup>15</sup> Jurisdictions across the country are changing the way they use solitary confinement – in some cases in response to legislation or litigation and in others at the instigation of correctional administrators. The SCOC would benefit from hearing about these models for replacing solitary confinement as

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<sup>15</sup> For instance, through its Segregation Reduction Project, the Vera Institute of Justice worked with six jurisdictions to “review criteria to determine how to safely transition people from segregation to the general prison population; assess disciplinary sentences and lengths of stay in segregation; expand response options to disciplinary issues; enhance programs to transition people out of segregation; and improve programming and conditions of confinement for those who remain.” Vera built on this project with its Safe Alternatives to Segregation Initiative, which collaborated with ten state and local corrections systems to reduce their use of solitary confinement. For more information, see <https://www.vera.org/projects/reducing-segregation/learn-more>.

well as firsthand accounts from those who have experienced it. This information should guide the SCOC in revising its regulations to bring about meaningful change.

*Conclusion*

New York should lead the way in ending the use of torture in jails and prisons. SCOC regulations must require fundamental change in the way incarcerated people are treated. We encourage you to adopt regulations that will accomplish this goal.