



Initial Review: 10 Severe Limitations of Governor Cuomo's Solitary Confinement Plan and the Need for the HALT Solitary Confinement Act Aug 2019

Governor Cuomo's proposed solitary regulations have severe flaws and fall far short of what is needed to truly end the torture of solitary confinement in New York. Due to efforts led by survivors of solitary and their family members, there is ample support in the Legislature to pass the Humane Alternatives to Long-Term (HALT) Solitary Confinement Act, which truly ends the torture of prolonged solitary confinement for all people and replaces it with more humane and effective alternatives, and we continue to call for its immediate enactment when the legislative session resumes. Some of the key limitations of the Governor's proposal include that it allows:

1. Torturous lengths of time in solitary;
2. Indefinite solitary to continue via keeplock;
3. Many people most vulnerable to the harm of solitary to be left behind;
4. Solitary by another name in purported alternatives;
5. Endless warehousing in the flawed alternative units;
6. Far too many people to be held in solitary under insufficiently limited criteria;
7. People to be forced to choose between safety and torture
8. A lack of transparency and oversight;
9. A lack of training and procedural protections
10. Similarly problematic conditions in local jails.

1. Torturous Lengths of Time in Solitary: HALT imposes a 15 day limit on solitary confinement in line with international standards that prohibit solitary beyond 15 days because it otherwise amounts to torture. By contrast, under the proposed regulations there will be NO TOTAL TIME LIMIT whatsoever for the next *two years*. Then there will be only a 90 day time limit two years from now, then a 60 day limit, and eventually a 30-day limit on solitary *in three years*, October 2022, unless a future Governor rolls back the regulation. Over the next two years, how many people will be in solitary for months and years, some of whom have already spent years and decades in solitary? Does [Sean Ryan](#) (and others like him), who has been in solitary confinement for 25 years and whose mother Arlene Normyle has been active in the #HALTsolitary campaign, have to spend the next two years still in solitary? Moreover, the 30-day limit in and of itself is double the length of time considered torture. Also for the state

prisons, there are no time limits on people being cycled back into solitary shortly after being removed at the time limits. New York must end solitary beyond 15 days for all people.

2. Indefinite Solitary Continued as Keyplock in Own Cell: Under the proposed regulations, the limitations on the lengths of time in solitary do not apply to people in keylock in their own cells, which is another form of solitary confinement. Thus, people will continue to be allowed to be held in solitary or solitary-like conditions indefinitely, and likely for months or years. While people in keylock would be required to be offered five hours out of cell five days a week, there are no requirements for what that out-of-cell time must be, including no requirements for any congregate human engagement or programs during that time, so people could be alone in another cage. All told, people will be isolated between 19 and 24 hours a day, five days of the week, and 22 to 24 hours a day the other two days a week, potentially for months and years.

3. Leaving Some of the Most Vulnerable Behind: The proposed regulations leave behind groups of people most vulnerable to be particularly harmed by solitary. The proposed regulations would restrict solitary for children, pregnant women, new mothers, and narrowly people with disabilities that impair their ability to provide self-care. Yet, all of these groups could still be held in keylock in their own cells, another form of solitary. HALT would ban all forms of solitary for these groups and for all young people aged 18-21, elderly people, and people with mental health needs and physical disabilities (without the very stringent self-care requirement). Young people and people with mental health conditions are disproportionately sent to solitary, and while solitary is torture for all people, it can have particularly devastating effects on a young person whose brain is still developing or a person with mental health needs that are exacerbated by being alone in a box. [Benjamin van Zandt](#), who had a severe mental illness and died by suicide at age 21 after only a brief time in solitary, would not have been protected by these regulations. All of these groups of people should be banned from any length of time in solitary.

4. Solitary by Another Name: The alternative-to-solitary units in the proposed regulations are likely to be very restrictive environments that, at least in some circumstances, will likely mirror solitary confinement. The main alternative units in the proposed state prison regulations allow only 5 hours out of cell per day either four or five days a week, and only 2 hours out of cell for recreation the remaining days. That means people will still be held in full 22-24 hour a day solitary at least two or three days every week, and will still be locked down at least 19 hours the other days. Moreover, the proposed regulations only require that the out-of-cell time be in the most congregate setting available and for purposes of programming, activities, *or* recreation, and thus people in these units could be without any congregate programming. HALT requires 7 hours a day, 7 days a week, with access to meaningful congregate programming and human interaction.

Horrible recent news shows how the Governor's units will likely continue to inflict isolation that will cause devastating harm. While [Layleen Polanco](#) was in a purported alternative unit to solitary, and she was spending 20 hours a day locked down in her cell, and even after her

death, it was reported the city department of corrections continues to try to claim she was not in solitary. Similarly, a [17-year-old child with severe mental health needs](#) spent 7 months in what was supposed to be an alternative to solitary in one of New York's state prisons, which meant he generally had only four hours a day out of cell five days a week, and two hours out of cell on the weekends, and for one ten (10) day stretch he never left his cell - spending 24 hours a day in solitary. A judge found that his conditions led him to engage in "self-mutilating behavior, cutting himself on the arm in an apparent cry for help." These tragedies are indicative of what will likely result from having the weakened alternatives put forward by the Governor rather than passing and properly implementing HALT.

5. Endless Warehousing in Alternative Units: The proposed regulations do not place any total time limit on how long a person can spend in any of the alternative units. While the proposed regulations state that people should be released from the alternative units if they have completed their disciplinary sanction or their program, experience in the existing alternative units for people with serious mental illness shows that people are likely to spend months and years in alternative units without a specific time limit, including because they could receive new disciplinary charges or could face barriers to progress through the program. Moreover, for people in administrative segregation, since there is no specified sanction or sanction length, it is even more likely that they would be held indefinitely in these units, as they currently are often held for years and decades in administrative segregation. HALT would generally provide for a one year limit on time in an alternative unit to ensure that people are not warehoused in such units.

6. Flawed Criteria: While the proposed disciplinary confinement criteria list several specific serious types of conduct that are similar to - though not as narrowly defined - as the criteria in HALT, the last criteria of any felony is overly broad, does not in any way match the severity of the other criteria listed, and could allow people to be sent to solitary for non-violent and less serious conduct. This criteria would include non-violent felonies that would not likely even result in jail time if a person was convicted of the act in the outside community, and in turn could include a whole range of conduct like possession of drugs, any contraband, a forged instrument, or obscene material. Moreover, the criteria for administrative segregation - "pose an unreasonable and demonstrable risk to the safety and security of staff, incarcerated individuals, the facility or would present an unreasonable risk of escape" - is a very broad definition that could likely be interpreted by prison staff to include almost anything.

7. Having to Choose Safety or Torture: While the proposed regulations positively include protective custody in the time limits on segregated confinement, people in protective custody for the next two years can be held in solitary indefinitely and even three years from now would still be able to be held in solitary for 30 days and in keeplock in their own cell indefinitely. No person should have to choose between being safe and being tortured. Yet in New York right now, protective custody right now usually means being held 22 to 24 hours a day in solitary confinement. HALT would prohibit that, and prohibit all prolonged solitary confinement, regardless of its name, instead requiring all people have access to programs and services.

8. Lack of Oversight or Even Transparency: The proposed regulations do not provide for any outside oversight whatsoever. They also provide very limited reporting requirements that are similar to what DOCCS is already reporting pursuant to the *Peoples* settlement, namely the numbers of people in segregated confinement, while adding the numbers of people in some of DOCCS alternative units. The regulations do not require DOCCS to report on the number of people in keeplock in their own cells, nor on the already existing alternative units for people with serious mental health needs. Moreover, they do not require any reported details other than the numbers of people in designated units, such as the age or race of the people in solitary or alternative units, or the lengths of time people have spent in each unit. Given the long history of how solitary confinement is used and abused by the department and its employees, it is imperative that there be far greater transparency as well as oversight by entities outside of DOCCS to ensure proper implementation of any restrictions.

9. Insufficient Training and Procedural Protections: While the proposed regulations require some training for both hearing officers and people who work on solitary units and alternative units, they do not provide any requirements for how long those trainings can last. They thus would seem to be able to be satisfied by an hour training or even a 15 minute training, whereas HALT would provide for days of training on the relevant topic. Similarly the proposed regulations do not provide adequate procedural protections for people facing either solitary confinement or alternative units, and HALT - among other provisions - would at least allow people to have representation.

10. Similar Limitations in Local Jails: The combination of the recently passed State Commission of Correction regulations and the current proposed local jails regulations create a similar, though in some ways more flawed, set of proposed rules for local jails. The proposed regulations for local jails have roughly the same - and thus similarly problematic - disciplinary and administrative segregation criteria, lengths of permissible time in solitary, and special populations prohibitions. The local jail regulations do have a shorter time frame for limiting the lengths of solitary and put the time limits within a six month period to partially address concerns about people cycling in and out of solitary. The local jail regulations also use a broader definition of disability by removing the required impairment on self-care. On the other hand, jail administrators have discretion go around those protections. Also, alternatives to solitary are not required, and instead the previously passed rules require people in segregated confinement to have only four hours out of cell, without any requirements for human interaction or congregate programming. People all across the state -- predominantly people who are awaiting trial and presumed innocent -- are subjected to the torture of solitary confinement in local jails, for weeks, months, and years. The state must act to pass HALT and end this torture everywhere in the state. Costs cited by the Governor are both misleading and no excuse for torture.

Conclusion

Solitary confinement is torture. Thousands of people, disproportionately Black and Latinx people, suffer in solitary in NY each day, and tens of thousands each year. And unless HALT is passed, people will continue to spend months, years, and decades in solitary in NY (including over [30 years](#)), certainly for the next two years and beyond that in conditions that are likely to be solitary by another name. The sensory deprivation, lack of normal interaction, and extreme idleness of solitary can lead to intense suffering and severe psychological, physical, and even neurological damage. [More than 30% of all prison suicides](#) in New York take place in solitary. The entire United Nations, including the US, passed rules prohibiting solitary beyond 15 days for any person, because it otherwise amounts to torture. Colorado implemented a 15-day limit in its prisons and reduced the number of people in solitary from 1,500 to 18. HALT would similarly include a 15-day limit on solitary, and would create more humane and effective alternatives. States that have reduced solitary have seen a positive impact on safety for both incarcerated people and correction officers.

Recently, [Senator Sanders](#) called for an end to solitary confinement, calling it “a form of torture. It is unconstitutional, plain and simple.” He is part of a growing chorus of voices across the country to stop this torture, including from other presidential candidates. Sen. [Elizabeth Warren](#) said: “solitary confinement is cruel and inhumane. We must end this practice.” Sen. [Corey Booker](#) has said: “[s]olitary confinement is torture. It is an archaic, damaging, and inefficient practice that has been proven to have irreversible effects. ... [T]his practice is wholly unjust and leaves the incarcerated worse off.” [John Hickenlooper](#): “We also need to end solitary confinement, which is cruel and unusual punishment, and makes it next to impossible for [people] to reenter society when their prison term ends.” [Beto O’Rourke](#): “let’s absolutely end solitary confinement.” [Pete Buttigieg](#) will “[r]educe use of solitary confinement, including abolishing its prolonged use” (which is defined internationally as beyond 15 days). [Joe Biden](#) will “start by ending the practice of solitary confinement, with very limited exceptions such as protecting the life of an imprisoned person”

34 New York State Senators from Long Island to Upstate New York are officially co-sponsoring the HALT Solitary Confinement Act – a clear majority – and additional Senators have committed to vote for the bill, as well. 79 New York State Assembly Members also officially co-sponsor HALT – another clear majority – and the bill passed in that house in 2018.

The New York City Council passed a resolution in support of HALT, the second such statement by a local government (in May 2019, the Tompkins County Legislature also [passed a resolution](#) supporting HALT). The Progressive Caucus and the Women's Caucus of the NYC Council have [called](#) for a complete end to solitary confinement.

New York State Legislators and Governor Cuomo must pass HALT on the very next day the legislature is in session to end this torture in a meaningful way.