



October 27, 2019

Cathy Sheehan
Acting Deputy Commissioner
NYS Dept of Corrections & Community Supervision
Harriman State Campus
1220 Washington Ave.
Albany, New York 12226-2050
Rules@DOCCS.ny.gov

Brielle Christian
Senior Attorney
NYS Commission of Correction
Alfred E. Smith State Office Building
80 S. Swan Street, 12th Floor
Albany, New York 12210
Brielle.Christian@scoc.ny.gov

Re: Proposed revisions General Provisions, 7NYCRR Part 1.5 & Special Housing Units, 7NYCRR Parts 250-321.1 & Proposed Rulemaking relating to Disciplinary and Administrative Segregation of Inmates in Special Housing - I.D. No. CMC-35-19-00002-P

Dear Acting Deputy Commissioner Sheehan and Senior Attorney Brielle Christian:

We are writing to provide comments pursuant to the State Administrative Procedure Act in response to the Notice of Proposed Rulemaking as published in the New York State Register on August 28, 2019.

A) INTRODUCTION

Advertised as reform, these proposed regulations are woefully inadequate, and will continue to allow countless people to be subjected to the endless torture of solitary confinement in New

York prisons and jails, even for minor alleged rule violations. Whether through endless cycles of “time-limited” solitary with no meaningful break in prisons, full discretion to override time limits in jails, unlimited time in keeplock (another form of solitary), or unlimited solitary-by-another-name warehousing in purported alternatives, the proposed regulations will give authority to prison and jails officials to torture people for months, years, decades, and indefinitely.

Solitary confinement is torture. It has long been known to cause devastating physical, psychological, and emotional harm. Solitary is also counterproductive to purported justifications of safety, as it can cause violence and make prisons, jails, and outside communities less safe. It is disproportionately inflicted on Black and Latinx people, as well as on young people, people with mental health needs, and transgender and gender non-conforming individuals. New York must end this barbaric practice.

At a minimum, the state Department of Corrections and Community Supervision (DOCCS) and the State Commission of Correction (SCOC) should amend their proposed regulations to incorporate all aspects of the Humane Alternatives to Long Term (HALT) Solitary Confinement Act, S.1623/A.2500, and the New York Legislature and Governor should enact HALT as soon as the next legislative session begins. Thanks to efforts led by survivors of solitary and their family members, there are more than enough votes in the Legislature to pass HALT, which ends the torture of prolonged solitary confinement for all people and replaces it with more humane and effective alternatives.

These comments are being submitted by the NYCAIC #HALTsolitary campaign. Led by people who have survived solitary or had family members inside, our campaign is a community of people who have survived solitary, family members of people incarcerated, concerned community members, advocates, health/mental health professionals, and people in the human rights, faith, and social justice communities throughout New York State, including over 200 supporting organizations and thousands of members. Since its 2012 founding, our campaign has carried out grassroots organizing and advocacy in NY to: empower communities most harmed by solitary and incarceration, educate people and raise consciousness about solitary and the incarceration system as a whole, mobilize people across the state to engage in efforts to end this torture, and push policymakers to make urgent and necessary changes.

Our campaign has been urging New York State to enact HALT, and has been urging Governor Cuomo to implement HALT’s provisions administratively for years. HALT would: limit solitary to no more than 15 days for all people in line with the UN Mandela Rules; prevent cycling to solitary by limiting solitary to no more than 20 days in a 60-day period; ban it for people with mental health needs, young people, and others; restrict the criteria for who can be placed in

solitary or alternatives; create more humane and effective alternatives; and increase transparency and accountability. The #HALTsolitary campaign is also urging New York City to completely ban the practice of solitary in all city jails (where the vast majority of people are held pre-trial and presumed innocent, and others are there for low-level misdemeanor convictions), and instead utilize proven alternatives that are the opposite of solitary, with full days out of cell and access to meaningful human engagement and congregate programs and services.

The information in these comments comes from many years and decades of investigation of the use of solitary confinement, including the expertise and gathering of information of and by people who have and/or are still subjected to this torture, family members who have loved ones in solitary or who have lost their loved ones to solitary, and organizations that have studied, monitored, and/or investigated the use of solitary confinement.

Our comments will highlight the deep flaws in the proposed regulations, as well as the need for modifications in line with the HALT Solitary Confinement Act, in the following key areas:

- 1) Unlimited solitary confinement through endless cycling in prisons and discretion in jails
- 2) Unlimited solitary through keeplock in general confinement cells
- 3) Solitary by another name in purported alternatives
- 4) Endless warehousing in the flawed alternatives
- 5) Many people most vulnerable to the harm of solitary left behind in solitary
- 6) Explicit allowance of lengths of time in solitary that amount to torture
- 7) Unnecessary years-long implementation period
- 8) Far too many people held in solitary for almost any reason, including for months and years
- 9) People forced to choose between safety and torture
- 10) A lack of transparency and oversight
- 11) A lack of training and procedural protections
- 12) Discretion to deprive people of basic needs, like decent food and showers

B) BACKGROUND: THE TORTURE OF SOLITARY CONFINEMENT

Before discussing the particular components of the proposed regulations' failures and the need for the provisions of HALT, it is imperative to understand the context in which these proposed regulations are being considered. Specifically, New York State currently locks several thousand people in solitary confinement each day, and tens of thousands per year. In solitary in New York currently, people are generally held 23 or 24 hours a day, without any meaningful human contact or programming. People routinely spend months and years in solitary and some people have spent decades, including over 30 years. The sensory deprivation, lack of normal human

interaction, and extreme idleness of solitary confinement can lead to intense suffering and severe damage.¹ Over 30% of all suicides in New York prisons take place in solitary confinement.² A study conducted in New York City jails, written by authors affiliated with the New York City Department of Health and Mental Hygiene, and published in the American Journal of Public Health, found that people who were held in solitary confinement were nearly seven times more likely to harm themselves and more than six times more likely to commit potentially fatal self-harm than their counterparts in general confinement, after controlling for length of jail stay, serious mental illness status, age, and race/ethnicity.³

Moreover, solitary causes great harm not only to the people subjected to it but to their families and communities as well. While someone who has not been in solitary or had a loved one in solitary cannot fully grasp the harm caused by this torture, reading about people's own experiences in solitary,⁴ hearing testimony⁵ from people who survived solitary or had family

¹ See, e.g.,

<https://www.timesunion.com/opinion/article/Stop-incarcerating-the-mentally-ill-in-solitary-13808108.php>;
<http://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>; James Gilligan and Bandy Lee, *Report to the New York City Board of Correction*, p. 3, Sept. 5, 2013, available at:
<http://solitarywatch.com/wp-content/uploads/2013/11/Gilligan-Report.-Final.pdf>; Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, *Journal of Law & Policy*, Vol. 22:325 (2006), available at:
https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy ("Psychiatric Effects of Solitary"); Craig Haney, *Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement*, 49 *Crime & Delinq.* 124 (Jan. 2003), available at:
<http://www.supermaxed.com/NewSupermaxMaterials/Haney-MentalHealthIssues.pdf>; Stuart Grassian and Terry Kupers, *The Colorado Study vs. the Reality of Supermax Confinement*, *Correctional Mental Health Report*, Vol. 13, No. 1 (May/June 2011); Sruthi Ravindran, *Twilight in the Box: The suicide statistics, squalor & recidivism haven't ended solitary confinement. Maybe the brain studies will*, *Aeon Magazine*, Feb. 27, 2014, available at:
<http://aeon.co/magazine/living-together/what-solitary-confinement-does-to-the-brain/>; Joseph Stromberg, *The Science of Solitary Confinement*, *Smithsonian Magazine*, Feb. 19, 2014, available at:
<http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/#.Uwoq5RSWaQ.email>;
<https://citylimits.org/2019/02/12/cityviews-crisis-at-federal-jail-highlights-ongoing-crime-of-solitary-confinement/>;
<https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5c4f5c2970a6adb2776942ac/1548704820918/2018+Voices+of+Women+in+Isolated+Confinement.pdf>;
<http://www.nydailynews.com/opinion/ny-oped-release-prisoners-from-solitary-20180817-story.html>;
<https://www.democratandchronicle.com/story/opinion/guest-column/2018/02/23/end-long-term-solitary-confinement-new-york/364366002/>; <https://thecity.nyc/2019/06/rikers-empties-womens-solitary-unit-after-polanco-death.html>;
<https://www.pbs.org/wgbh/frontline/article/what-does-solitary-confinement-do-to-your-mind/>;
https://www.syracuse.com/crime/2016/07/spitballs_and_throwing_items_50_days_in_solitary_confinement_for_auburn_teen.html;
<https://www.nydailynews.com/new-york/ny-solitary-confinement-injunction-20190619-wotutt2msvbsfegpbdyj232zsu-story.html>.

²

<https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5c5b0007f4e1fc1092af0b30/1549467656168/CANY+Fact+Sheet+-+Solitary+.pdf>

³ <https://solitarywatch.org/wp-content/uploads/2013/11/Gilligan-Report.-Final.pdf>

⁴ <https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5c4f5bd8562fa7fb256b550d/1548704749745/2017+Solitary+at+Southport.pdf>; <https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5c4f5c2970a6adb2776942ac/1548704820918/2018+Voicesof+Women+in+Isolated+Confinement.pdf>.

⁵ <https://www.facebook.com/NYCAIC/videos/425978351341182/?sfnsw=cl>

members in solitary, or participating in a virtual reality solitary experience⁶ can begin to give a glimpse into the horrors of this practice.

Solitary also can cause violence, and makes prisons, jails, and outside communities less safe. This impact is due to the fact that solitary confinement fails to address, and often exacerbates, underlying causes of difficult behavior as people deteriorate psychologically, physically, and socially. Jurisdictions that have reduced solitary have seen a positive impact on safety for both incarcerated people and correction officers (*see more below*). Reductions in solitary also lead to greater safety in the outside community and decrease the likelihood people will return to jail or prison.⁷

C) THE PROPOSED REGULATIONS' FAILURES AND THE NEED FOR HALT

1) Unlimited solitary confinement via endless cycling in prisons and discretion in jails

The proposed regulations will continue to permit people to be locked in solitary confinement for years through endless cycles of “time-limited” solitary with no meaningful break in the state prisons and broad discretion to override purported time limits in the local jails.

In the state prisons, the proposed regulations fail to prevent endless cycling immediately back into solitary at the end of the purported time limits on solitary that will eventually go into effect (*see below*). The regulations state that a person can only be placed in segregated confinement - which as discussed below is defined as being in a Special Housing Unit (SHU) or separate keeplock unit, and does not include keeplock in one's own cell - for the time limits listed of 90 days in October 2021, 60 days in April 2022, and 30 days in October 2022. However, the regulations do not state how long a person has to be out of solitary before they could be put in again for the same time limited periods. In other words, when the regulations eventually impose a time limit of 90 days in solitary, there is nothing in the proposed regulations that would prevent a person from spending 90 days in solitary in a SHU, one day (or less) in general population, in solitary in keeplock, in a purported alternative to solitary, or in another housing unit, and then another 90 days in solitary in SHU again. The same would be true once the eventual 30 day limit is reached. As such, DOCCS administrators, or any correction officers or other DOCCS staff, would have discretion under the regulations to repeatedly send people back to solitary immediately upon their release, rendering the purported time limits essentially meaningless in

⁶ <https://www.theguardian.com/world/ng-interactive/2016/apr/27/6x9-a-virtual-experience-of-solitary-confinement>

⁷

<https://www.prisonlegalnews.org/news/2018/jan/8/solitary-streets-studies-find-such-releases-result-higher-recidivism-rates-violent-behavior/>;

<https://www.nytimes.com/roomfordebate/2012/12/18/prison-could-be-productive/punishment-fails-rehabilitation-works>.

practice and allowing people to continue to be held in solitary for months, years, and decades as they are now.

In the local jails, the proposed regulations permit jail administrators to fully exceed the purported time limits on solitary, and thus have discretion to lock people in solitary for months or years. The proposed jail regulations positively would purport to limit the cycling issue of the prison regulations by setting the time limits within a six month period. Specifically, the regulations state that people can only be locked in solitary for 90 days, 60 days, and eventually 30 days “for a six month period.” (The state regulations have no such timeframe). However, the regulations allow jail administrators to completely ignore and exceed these and all time limits. The criteria under which a jail administrator has the authority to exceed the time limits is very broad and vague and basically would allow any person deemed to be a “threat” to safety or security to be held indefinitely in solitary. Specifically, the regulations permit a jail administrator to exceed the time limits if they determine a person “poses an immediate or continuing unacceptable threat to the safety of staff or other incarcerated individuals or to the security of the facility.”

In addition to prohibiting any person from being in solitary for more than 15 consecutive days, HALT would prohibit any person from being in solitary for more than 20 days in any 60 day period, as a mechanism to ensure that people are not cycled back and forth to solitary. The proposed regulations for the jails themselves (subject to the problematic exceptions described above) make the 90 to 30 day time limits a total time limit within a six month period, thereby also preventing the type of cycling back to solitary described herein. The proposed regulations must have such mechanisms - without exceptions - to prevent cycling back to solitary and make the time limits actually meaningful and real in practice. The proposed regulations should in fact adopt a combination of these provisions by prohibiting solitary for more than 20 days in any 60 day period, and by imposing the time limits as total time limits within a six month period.

In addition to the lack of cycling prevention provisions, the proposed prison regulations allow people to be sent from purported alternative-to-solitary units back to solitary confinement in SHU for very broad reasons, including without even new rule violations. It is positive that the regulations attempt to place some limits on the circumstances under which a person can be sent from an alternative unit to a SHU. However, those limits are overly broad and - given current practices within DOCCS - are very likely to lead to many people being sent from alternative units back to SHU.

While the language is vague and unclear, it appears that there are three ways that a person could be transferred from an alternative unit back to SHU, all of which are very problematic: 1) program non-compliance in an alternative unit; 2) receipt of a disciplinary ticket (termed a

misbehavior report); or 3) if a person is deemed to be “an immediate or continuing unacceptable threat.”

Concerning the removal from the alternative units for *program non-compliance*, no person should ever be sent to solitary confinement for not complying with “program objectives.” That is wholly unacceptable. First of all, what that actually means in practice is vague and unclear. More importantly, people should be offered opportunities for programming, but such programs should not be forced on people and people should not be so harshly penalized if they are not successful in participating in the programs. The consequences for not complying should never be to be sent to torture. Threats, punishment, and torture are not only wrong but they are not effective mechanisms for encouraging people to participate in achieving program objectives.

Experience with the existing Residential Mental Health Treatment Unit (RMHTU) alternatives to solitary for people deemed to have serious mental illness (SMI) illustrates how challenging it can be for some individuals to participate in programs, and how there is a need for compassionate approaches to working with people, creating positive incentives, and building relationships to help encourage participation, whereas further punishment and abuse fails to move people to participate. DOCCS can currently restrict persons in the RMHTU from participating in needed therapeutic programming based upon an assessment by security staff that “exceptional circumstances” exist to bar residents from coming out of their cell due to some poorly-defined security risk. Unfortunately, this exception is being applied far too frequently, and mental health staff generally do not intervene in the decision even if the resident’s mental condition suffers from non-participation. For example, the Justice Center for the Protection of Persons with Special Needs, the state agency legislatively mandated to monitor the SHU Exclusion Law, found in 2017 that 21 patients in the Marcy RMHTU (which has a capacity for 100 patients, and which is reported to be the most therapeutic of all of the alternative mental health units) were excluded from programs and therapy during just a six-month period due to “exceptional circumstances.” Exceptional circumstances have also been used to remove patients entirely from an RMHTU.

Making these exclusions even more detrimental for these patients, advocates have observed that frequently people who have been denied access to programs in the RMHTUs for alleged misbehavior are the same people who later refuse to come out of their cells to participate in programs due to their fear concerning how they will be treated by security staff and misgivings about how they will be treated by program staff if they return to programs. The experiences in implementing the SHU Exclusion Law demonstrate that the security and treatment staff can undermine a therapeutic intervention if there is not a commitment to a rehabilitative and treatment model. Given the punitive response articulated in the regulations to difficulties residents may experience in program participation on these units (along with other failures of

these units described below), there is great concern that a therapeutic or rehabilitative environment will not exist in these units.

Concerning the removal for *receipt of a misbehavior report*, the language is incredibly broad and vague and will likely lead to many people receiving many disciplinary tickets in alternative units. According to the proposed regulations, a person can receive a disciplinary ticket if they are “accused of serious offenses, the alleged behavior demonstrates a threat to safety and/or the incarcerated individual has engaged in repeated acts of disruptive misbehavior” (emphasis added). This language is much more expansive than the criteria listed elsewhere in the proposed regulations and would seem to mean that a person can be sent to solitary confinement from an alternative unit for alleged misbehavior that would not justify placement in solitary from any other location in the prison system. This is another example of the excessively punitive nature of these alternative units. Having the very broad term “threat to safety” could seemingly apply to almost anything that people can currently receive disciplinary tickets for and are sent to solitary confinement for. Would talking back to an officer, disobeying an order, having so-called contraband (even if it is too many postage stamps or a picture of someone’s child that is deemed to be gang-related material), and other similar allegations constitute the requisite threat to safety in this provision and be a reason someone would be sent back to solitary in SHU? Similarly, “repeated acts of disruptive behavior” could also encapsulate a broad range of conduct. Would twice refusing to give your food tray back through the slot in the door you are fed through, or twice talking out of turn in a program class on the unit be enough to get you sent back to solitary?

Looking at the RMHTUs as an example again, while these units are supposed to be therapeutic alternatives to solitary, staff on these units impose the most number of disciplinary tickets and inflict the most amount of additional SHU time of any units in the entire prison system. DOCCS and OMH have replicated the punishment paradigm existing in solitary in units that supposedly exist specifically to divert people from solitary. In 2015 and 2016, the Attica Residential Mental Health Unit (RMHU), Bedford Hills Therapeutic Behavioral Unit (TBU), Five Points RMHU, Great Meadow Behavioral Health Unit (BHU), and Marcy RMHU had some of the highest rates of disciplinary infractions and hearings of any unit in the DOCCS system. Given an average daily census of approximately 200 people on these five units, it is shocking that each year more than 200 of these participants received additional solitary confinement time while on the unit. Even more disturbing is the amount of additional disciplinary time they received. For the two-year period, 433 people received an average of nearly one year of additional segregation time with the annual average at each unit ranging from 7 months (Marcy) to more than 2.3 years (Great Meadow).

Concerning the removal for *being deemed to be a threat*, this language is also so broad and vague that it would seem to allow the prison administration to send any person they want to solitary confinement. It is positive that the provision requires at least higher levels of an individual prison administration (namely the deputy superintendent for security, a program management team, and ultimately the superintendent) to make the decision, and that there is at least some central office review (although it is not clear with whom that review is supposed to take place - is it simply, for instance, the classification and movement central office staff who make determinations about all transfers?). Still the language is so broad that it leaves wide discretion to determine who poses an immediate threat or an unacceptable threat to safety or security. One could even imagine a situation where a prison administration could claim that almost any individual who has just been sent to an alternative RRU from SHU could fit within this definition, because of their alleged rule violation that landed them in SHU to begin with or because of the deterioration they have undergone after spending 90 days or 30 days in SHU and a lack of transitional support into the alternative unit.

Moreover, for all three of these mechanisms of being sent back to SHU, there are no time periods designated for how long a person has to be in an RRU before being sent back to solitary. For the program non-compliance, there is language stating that a person would have to be “chronically failing to comply” and requires other attempts at gaining compliance before transfer to solitary. Presumably one would hope it would require someone to have been in an RRU for a substantial period of time before they are deemed to be *chronically* failing to comply, but those terms are not defined and there are no time periods set. For misbehavior reports, if someone gets a ticket on the first day they are in an RRU, it appears they could be sent right back to solitary. That would again completely eliminate the practical effects of the purported time limits on solitary, as someone could have been sent to solitary for 90 days or 30 days, been out for a day (or even a few hours) and sent right back to solitary, thereby allowing people to cycle right back into solitary in excess of the time limits. Even potentially more problematic, for “being deemed a threat” the administration at an individual prison could determine as soon as someone enters an alternative unit that they pose a threat and send the person right back to solitary, again completely rendering the time limits on solitary meaningless.

Of note, the proposed provisions limiting under what circumstances a person can be sent from an RRU or a Step-Down Unit to a SHU do not apply to people who are not in an RRU or step-down unit and thus do not prevent the immediate cycling to solitary after the purported time limits on solitary, as discussed above. In addition to the problems with the provisions themselves just described, they also do not prevent a person who is released from solitary to general population or a unit other than an RRU or Step-Down Unit at the end of a solitary stay from immediately being sent back to SHU. These provisions also do not prevent a person from being sent from an

RRU or Step-Down to solitary in keeplock in their own cell in general population or within the alternative unit itself for any reason at all.

*HALT would apply the same very limited criteria for how a person can be sent to solitary no matter where the person is currently housed, namely specifically listed and narrowly tailored acts involving the most serious harm (such as causing physical injury, sexual acts, escape, and their equivalent). Moreover, for any location in a prison or jail, HALT provides that “De-escalation, intervention, informational reports, and the withdrawal of incentives shall be the preferred methods of responding to misbehavior unless the department determines that non-disciplinary interventions have failed, or that non-disciplinary interventions would not succeed and the misbehavior involved [one of those same specifically listed acts], in which case, as a last resort, the department shall have the authority to issue misbehavior reports, pursue disciplinary charges, or impose new or additional segregated confinement sanctions.” In addition, the department only has the authority to restrict a person’s out of cell time and programming in an RRU if the person has committed one of those same specifically listed acts and it is necessary. Plus, if any restrictions are imposed, people still need to have at least four hours of daily out-of-cell time involving at least meaningful engagement with staff, and such restrictions can not extend beyond 15 days (except in the most extreme circumstances where the department and mental health commissioners determine there is an extraordinary and unacceptable risk of imminent harm) so as to ensure that the 15-day time limits on solitary are not able to be circumvented. **The regulations must ensure that people - wherever they are housed - can only be locked in conditions of solitary, if at all, for the most egregious conduct and for no more than 15 consecutive days or 20 days total in any 60 day period.***

2) Unlimited solitary through keeplock in own cells

The proposed regulations also will continue to permit people to be locked in solitary confinement for years through another mechanism, namely unlimited time in keeplock in a general confinement cell or otherwise in one’s own cell, another form of solitary with no guaranteed access to meaningful human interaction, even for the most minor rule violations.

Under the proposed regulations, keeplock in a general confinement cell or otherwise in one’s own cell is explicitly excluded from the purported time limits that apply to people in other forms of solitary. Because the regulations are written in a particularly confusing way, it is worth describing in detail how keeplock in one’s own cell is excluded from the time limits. Specifically, for local jails, the time limits explicitly state that the time limits only apply to people in special housing, and not to people confined in a cell or room. For the state prisons, while the time limit provision mentions “keeplock” and thus it may appear that keeplock is included in the time limits, that is only referring to people who are serving their keeplock

sanctions in a SHU or separate keeplock unit and not people who are in keeplock in a general population cell or one's own cell in another unit. The time limits only apply to people in "segregated confinement," which is defined as "disciplinary confinement of an incarcerated individual *in a special housing unit or in a separate keeplock unit.*"⁸ Keeplock in one's own cell is explicitly excluded from that definition, there is a separate definition for keeplock, and there are provisions differentiating when a person is serving keeplock in their own cell and when they are serving their keeplock sanction in a SHU or separate keeplock unit. When the time limit provision refers to "keeplock" it again is referring to if someone has a keeplock sanction but is serving that sanction in a SHU or separate keeplock unit.

This distinction is further evidenced by other provisions indicating when the time limits apply. Specifically, the proposed regulations state in section 301.6(i) that people serving keeplock sanctions in a SHU have to be released at the time limits, but do not mention the time limits at all when discussing people who are in keeplock in their own cell in section 301.6(k) and instead only state that people in keeplock in their own cells have to be released when their sanction ends. In the same way as people serving keeplock sanctions in the SHU, section 301.4 states that people in administrative segregation have to be released from segregated confinement at the time limits. The fact that the regulations explicitly state that people in administrative segregation and people serving keeplock sanctions in a SHU have to be released at the purported time limits, while not saying that people in keeplock in their own cells have to be released at the time limits, only reinforces that the time limits do *not* apply to people in keeplock in their own cells. Thus, if a person is serving keeplock in a general population cell or their own cell elsewhere, the time limits do not apply. As such, a person can remain in keeplock in their own cell indefinitely, including for months or years.

Of note, as described in more detail below, keeplock in one's own cell is also excluded from the criteria for what conduct can result in solitary confinement (again because keeplock is excluded from the definition of "segregated confinement"). As such, people can be held for months, years, and even longer for almost any and all minor non-violent alleged rule violations, particularly given the frequency with which people often accumulate additional tickets and solitary confinement time while they are in solitary confinement.

Also, under these proposed regulations, people who have spent the maximum time limits in segregated confinement do not have to be diverted to one of the alternative units for their remaining SHU sentence. It is a common practice now for persons who have spent significant time in the SHU, but who have not completed their SHU sentence, to have their remaining SHU time converted to keeplock time and then transferred to a keeplock cell. Given the limited (or

⁸ Separate keeplock units are designated units akin to a SHU where people are held in solitary.

no) programming and other more lax condition requirements in the proposed regulations for persons in keeplock (*see below*), it is of concern that DOCCS will not place everyone who has longer disciplinary sentences in the alternative units or discharge them to general population at the end of the purported time limits, but rather send them back to this other form of solitary in their cells in keeplock. Such discretion and likely practices will clearly undermine the limited therapeutic goals of the alternative units and the goals of having time limits on solitary.

It must be emphasized that keeplock in one's own cell is just another form of solitary confinement. People in keeplock in their own cell are still locked alone in their cells without meaningful human contact or programs.

While it is positive that the proposed regulations require some greater out of cell time in keeplock in state prisons than is currently the practice, those out-of-cell hours are still very limited and there are no requirements for how those hours are spent and so could mean a person is offered to be alone in another cage for "recreation" for all of their out-of-cell time. The proposed regulations do not even provide for the same protections in keeplock as the limited protections provided for in the purported alternative RRU, step-down, or AO units, namely that out-of-cell time be in "the most congregate setting available" and that people be in the "least restrictive environment available." The proposed regulations explicitly only say that the amount of time out of cell for people in keeplock be the same as in these other units and that if someone is serving a keeplock sanction in an RRU they be afforded the other protections of the RRU, thereby intentionally making clear that people in keeplock in their own cell are *not* afforded such protections. As such people in keeplock in their own cell will not need to be afforded any congregate human engagement or programs during out of cell time.

Also, the out of cell time for people in keeplock is still very limited, as people can still be forced to be locked down 22 or more hours a day two days a week and 19 hours or more a day the other five days. In turn, because there are no time limits on keeplock in one's own cell, people can be held in these conditions of solitary, without meaningful human engagement or congregate programming, potentially for months and years.

*As under HALT, the regulations should prohibit solitary beyond 15 days **for all forms of solitary**, regardless of their name, including keeplock in a general confinement cell or otherwise in one's own cell in any unit. In turn, again as under HALT, the regulations should define solitary as being locked in your cell for 17 hours or more per day, and any alternatives must have at least seven hours out-of-cell per day with real access to meaningful human engagement and congregate programming.*

3) Solitary by another name in purported alternatives

In addition to allowing indefinite solitary through cycling and keeplock, the proposed regulations' alternatives to solitary will simply be the kind of solitary by another name that took the life of [Layleen Polanco](#) and destroys countless others.

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 and could even spend all of their time out of cell alone in another cage.

For the jails regulations, there are no requirements whatsoever for any alternatives to solitary. Previously adopted regulations required that people in segregated confinement itself generally have at least four hours out of cell per day, without requiring those hours to involve programs or congregate interactions and giving jail administrators the discretion to restrict those hours.

There unfortunately have been far too many recent tragic examples in both New York State prisons and local jails of so-called alternative units that are, in practice, only solitary by another name.

Recently in New York City, as widely reported, Layleen Polanco's life was taken from her in solitary confinement. While Layleen was in a unit that was supposed to offer additional programming for people with mental health concerns sentenced to solitary confinement, she was spending at least 20 hours a day locked down in her cell. Even after her death, it was reported that the city Department of Correction (DOC) continued to claim she was not in solitary and counted out-of-cell hours as including an hour each for a shower, for the possibility of a visit (even if she didn't have one), and the possibility of a medical appointment (even if she didn't have one). She was completely isolated, and tragically she died.⁹

Recently in a New York State prison, a 17-year-old child with severe mental health needs - E.L. - spent seven months in solitary confinement. Children in New York State prisons are already supposed to not be in solitary because of settled lawsuits. So E.L. was in what is supposed to be an alternative to solitary. But this is what an alternative looks like when it is actually solitary by another name: he generally had only four hours a day out of cell five days a week, and only two

⁹ <https://thecity.nyc/2019/06/rikers-empties-womens-solitary-unit-after-polanco-death.html>

hours out of cell on the weekends, and for one ten day stretch he never left his cell - spending 24 hours a day in solitary. As reported: “His conditions in the Adolescent Offender Segregation Unit (AOSU) got so bad that he began to react with self-mutilating behavior, cutting himself on the arm in an apparent cry for help.” A judge ruled that he had to be removed from these conditions because of the “irreparable harm” and devastating mental health impacts.¹⁰

As under HALT, at a minimum the regulations should require that any alternative unit (and/or at the very least any separation beyond 15 days) must involve access to at least seven hours out-of-cell per day, every day, with meaningful human engagement and at least six hours for congregate rehabilitative and therapeutic programming and activities. If people have to be separated from the general prison or jail population because they pose a serious risk of harm to the safety of others or themselves, there is no logical reason that they should be subjected to the extreme isolation of solitary confinement that will not only cause intense suffering and damage but also likely exacerbate what led the person to being separated and make prisons, jails, and outside communities less safe. Instead, appropriate treatment and access to meaningful human engagement and congregate programs and recreation must be provided. Specifically, people should be given many hours of out-of-cell time per day (under HALT seven hours per day, seven days a week, and ultimately equivalent to full days out of cell, every day), as well as access to meaningful human engagement and congregate programs and services aimed at addressing their underlying needs and the causes of their behaviors. In addition, there should be a prohibition on the use of restraints in alternative units (at least unless some very narrowly tailored individualized determination is made because of a specific immediate serious risk of harm). What is needed is a fundamental transformation from a focus on punishment, isolation, and deprivation, to a focus on accountability, rehabilitation, treatment, and empowerment. Any alternatives need to essentially be the opposite of solitary, not solitary by another name.

In addition to the tragic examples, New York City and New York State themselves have also had very positive examples - in both prisons and jails - of program-based units that actually address underlying causes of problematic behavior and lead to better outcomes for incarcerated people, staff, and for overall safety of institutions and the community. The Clinical Alternatives to Punitive Segregation (CAPS) unit on Rikers Island is a much more program-intensive, treatment supported, and empowerment-based alternative to solitary confinement that does not restrict the amount of out-of-cell time provided, utilizes de-escalation of difficult situations, and has greatly reduced the amount of violence and self-harm.¹¹ The Merle Cooper program in New York State prisons - now closed purportedly due to resource constraints - also provided a successful program-intensive, empowerment-based unit that involved complete separation from the rest of

¹⁰

<https://www.nydailynews.com/new-york/ny-solitary-confinement-injunction-20190619-wotutt2msvbsfegpbdyj232zsu-story.html>

¹¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4772202/>

the prison population but no isolation of individual people. For people deemed at high risk of recidivism, the Merle Cooper program provided group sessions, intensive programming, peer-led initiatives, increased autonomy and responsibility, most of the day out of cell, and the ability to earn unlocked cells. Even though Clinton Correctional Facility is considered one of the most violent prisons in NY, while it was open (1977 to 2013) Merle Cooper had high levels of reported safety, and near universal praise from correction officers, participants, and administrators.

Other states and countries have implemented program-based alternatives to solitary that have proven both more humane and more effective. For example, the Resolve to Stop the Violence Project (RSVP) in San Francisco jails immersed residents in an intensive program including most of the day out-of-cell, group discussions, classes, counseling, and meetings with victims of violence. RSVP resulted in a 25-fold reduction in violent incidents, five-fold reduction in rearrests for violent crimes, six-fold reduction in jail time, and cost savings.¹² Many European countries rarely utilize solitary confinement - and if used, only for very short periods - and instead have an intense focus on programming, connections to family and community, granting people autonomy and responsibility, creating conditions akin to life outside of incarceration, and preparation for returning home.¹³

These examples show the difference between alternatives that are solitary by another name and real alternatives that are actually more humane and effective. ***Any alternatives to solitary must be real alternatives and not more isolation that causes death and destruction. As the RSVP program, Merle Cooper program, and others demonstrate, if New York State is actually trying to create safety inside of its prisons and jails and in outside communities, then the alternatives to solitary should in fact be close to the opposite of solitary – with full days out-of-cell and opportunities for meaningful, empowering, congregate programming.***

4) Endless warehousing in the flawed alternatives

In addition to the very flawed nature of the alternatives themselves, the proposed regulations will allow indefinite warehousing in those units. The proposed regulations do not place any total time limit on how long a person can spend in any of the alternative units, and thus people could spend

¹² <https://academic.oup.com/jpubhealth/article/27/2/149/1595844>;
<https://www.ncbi.nlm.nih.gov/m/pubmed/15820997/>

¹³ See, e.g., Ram Subramanian and Alison Shames, Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States, Oct. 2013, available at: <http://www.vera.org/sites/default/files/resources/downloads/european-american-prison-report-v3.pdf>; Jessica Benko, The Radical Humaneness of Norway's Halden Prison, New York Times Magazine, March 26, 2015, available at: http://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-haldenprison.html?_r=0 ; 3 See Erwin James, The Norwegian prison where [incarcerated people] are treated like people, The Guardian, Feb. 25, 2013, available at: <http://www.theguardian.com/society/2013/feb/25/norwegian-prison-inmates-treated-likepeople> (documenting conditions at Bastoy prison); Maurice Chammah, Prison Without Punishment, The Marshall Project, Sept. 25, 2015, available at: <https://www.themarshallproject.org/2015/09/25/prison-without-punishment>.

months, years, and decades in these very restrictive environments. 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. The proposed regulations slightly shorten how frequently periodic reviews of people in administrative segregation have to happen (with initial reviews every seven days for the first two months, followed by reviews every 30 days). However, the criteria for those reviews remains very broad and vague involving almost any alleged risk, and given past experience of administrative segregation reviews (which generally currently happen every 60 days), those reviews are likely to be pro forma rubber stamps, not provide any meaningful review of continued placement, and allow people to continue to be held in administrative segregation for months, years, and decades.¹⁴

There is a longstanding history of New York State and local departments of corrections warehousing people in solitary-like conditions in alternative units by another name for extensive periods of time. For example, currently, in New York City jails people are often held for many months in the restrictive Enhanced Supervision Housing Units,¹⁵ and in the New York State prisons people with serious mental health needs are left to languish for many years in the very restrictive alternative residential mental health treatment units (RMHTUs).¹⁶ People have regularly spent years in the alternative RMHTUs, cycling from one alternative unit to another alternative unit.

One of our campaign member's loved one, who is in his early twenties and had pre-existing mental health challenges, has been held in solitary confinement of various forms over the last year and a half, shuffled between SHU and various purported alternative units, including a step-down program and a residential mental health treatment unit. The severely restrictive environments, coupled with staff abuse, has led him to severely deteriorate and in turn attempt suicide multiple times.

It is thus imperative that any form of alternatives must have clear, attainable, and time-limited mechanisms for release. As under HALT, at a minimum, people should be able to be discharged

¹⁴ Joshua Manson, Indefinite Solitary Confinement in New York is Finally Put to the Test, The Appeal/ Solitary Watch, June 3, 2019, available at:

<https://theappeal.org/new-york-indefinite-solitary-confinement-is-finally-put-to-the-test/>.

¹⁵ <https://bds.org/bds-testifies-before-nyc-council-oversight-hearing-on-progress-in-closing-rikers/>

¹⁶ <https://nyassembly.gov/write/upload/publichearing/000865/001525.pdf>

from any alternative units if they: a) complete the length of their disciplinary sanction; b) complete whatever program plan was set up with them at the time they enter an alternative unit; c) are deemed ready for discharge by clinical and program staff during a periodic review; d) complete whatever they are told at their last periodic review they should complete to be able to be discharged; or e) reach a hard and fast maximum total time limit in the alternative unit. HALT requires a maximum length of time in an alternative unit of one year, with very narrow exceptions in extreme situations.

Also of importance, the proposed state prison regulations do not do anything to improve the conditions for people who are placed in alternative Residential Mental Health Treatment Units for people with the most serious mental health needs. HALT includes a provision that requires the RMHTUs to have conditions at least as good as the RRUs, including at least seven hours out of cell per day, seven days a week with access to meaningful congregate programming. The current proposed regulations do not have any such provision, in part because the conditions in the RRUs under the proposed regulations are not generally better than what is required for the RMHTUs. People with the most serious mental health needs should be required to be in units with at least the amount of out of cell time under HALT. Moreover, currently the Behavioral Health Unit (BHU), one of the alternative RMHTUs, only requires people to have access to two hours out of cell time for programming, five days a week and one hour of recreation. Thus, people in the BHU - again people with the most serious mental health needs - are locked down 21 to 24 hours a day five days a week, and 23 to 24 hours a day two days a week. Such a situation is completely unacceptable and can cause devastating harm.

As under HALT, the regulations must include a provision that requires the RMHTUs to have conditions at least as good as the RRUs under HALT, including at least seven hours out of cell per day, seven days a week with access to meaningful congregate programming.

5) Many people most vulnerable to the harm of solitary to be left behind

The proposed regulations leave behind groups of people most vulnerable to be particularly harmed by solitary. The proposed regulations would restrict solitary only for children deemed to be adolescent offenders in adolescent offender facilities, pregnant women, new mothers, and in the state prison regulations narrowly only people with disabilities that impair their ability to provide self-care. The proposed regulations only restrict segregated confinement and administrative segregation, and thus, all of these groups could still be held in keeplock in their own cells, another form of solitary as described above, and the purported alternatives are still incredibly restrictive, also as described above.

In addition, other people also particularly vulnerable to the devastating harms of solitary do not receive any protections under the proposed regulations. While HALT would ban all forms of solitary for the groups in the regulations, *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), these groups are not protected under the proposed regulations. 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.

We know that some people spending even a short number of days in solitary can lead to tragic consequences and even death for anyone and particularly for young people and people with pre-existing mental health needs.¹⁷ As one of countless horrific examples, Bradley Ballard spent only six days in solitary confinement, endured horrific torture and neglect while there, and died as a result.¹⁸ Benjamin van Zandt, who had a severe mental illness and died by suicide at age 21 after only a brief time in solitary, and whose parents have been leaders of the #HALTsolitary campaign and built a replica solitary cell, also would not have been protected by these proposed regulations.¹⁹

As under HALT, the regulations should ban any length of time in solitary for young people (21 and younger), pregnant women and new mothers, people with mental health needs and other physical health/disabilities (without the very stringent self-care requirement), and elderly people (55+). All of these groups of people should be banned from any length of time in solitary.

In addition, even for the very limited categories of people who are purportedly protected by the special populations provisions in the proposed regulations, as discussed throughout the alternative units that these groups can still be placed in under the proposed regulations will be highly restrictive environments that can amount to solitary by another name. As one of the most particularly egregious examples of how harmful these regulations can be even for the supposedly protected special populations, as our allies who are part of Raise the Age New York describe in much greater detail, children under 18 will still be able to be held in conditions that amount to solitary confinement and - directly contrary to the purposes and language of the Raise the Age

¹⁷

<https://medium.com/@djj2125/new-york-city-pays-record-5-75-million-to-family-of-rikers-inmate-bradley-ballard-d41b7a678a57>;

<https://www.timesunion.com/opinion/article/Stop-incarcerating-the-mentally-ill-in-solitary-13808108.php>

¹⁸

<https://medium.com/@djj2125/new-york-city-pays-record-5-75-million-to-family-of-rikers-inmate-bradley-ballard-d41b7a678a57>.

¹⁹ <https://www.timesunion.com/opinion/article/Stop-incarcerating-the-mentally-ill-in-solitary-13808108.php>.

law - that at the very least are vastly more punitive and restrictive than conditions for children of the same age in Office of Children and Family Services Facilities. Specifically, under the proposed regulations (as already required by existing lawsuit settlements), children in “adolescent offender separation units” can still be explicitly locked down 22 hours a day two days a week and 18 hours a day five days a week. By contrast - even though OCFS is supposed to be a partner in administering “adolescent offender” facilities under Raise the Age, other OCFS facilities that house 16- and 17-year-old children do not permit such isolation. Raise the Age Specialized Secure Detention Facilities allow for only very limited “room confinement”. Children - and ultimately all young people and all people - should only be allowed to be placed in such confinement for as limited as time as possible, to be measured in minutes and hours (not days, weeks, months, and years), and only when absolutely necessary for purposes of de-escalation and not for purposes of punishment.²⁰

The regulations should ensure that the protections, limitations, and all conditions for children and young people in the “adolescent offender units” are at least as good as those in other OCFS facilities, including that there should be no solitary confinement or conditions that amount to or are similar to solitary confinement, and instead at most room confinement - for as short a time as possible measured in minutes or hours and only for purposes of de-escalation - can be utilized. In fact, those same conditions and protections should be extended beyond children and even young people to all people in New York prisons and jails.

6) Explicitly permits lengths of time in solitary that amount to torture

While, as discussed above, the purported time limits in the proposed regulations are not actual time limits on the use of solitary because of cycling, indefinite solitary in keeplock, and alternatives that are solitary by another name, even the explicitly mentioned time limits in both the state prison and local jail regulations themselves permit solitary for lengths of time that amount to torture under United Nations standards. Specifically, there will be no time limit whatsoever for the next two years in state prisons (or one and a half years in local jails), then a 90 day limit (four times what is considered to be torture for all people), then a 60 day limit, and ultimately a 30-day limit, which is still double the length of time in solitary considered to be torture for any person in all circumstances (any length of time in solitary is considered torture in many circumstances; beyond 15 days is considered torture in all circumstances).

²⁰ See, e.g., Jennifer Lutz, Mark Soler, and Jeremy Kittredge, Not In Isolation: How to Reduce Room Confinement While Increasing Safety in Youth Facilities (Washington, DC: Center for Children’s Law and Policy and the Justice Policy Institute, May 2019), available at: <http://www.stopsolitaryforkids.org/wp-content/uploads/2019/06/Not-InIsolation-Final.pdf>; New York City Administration for Children’s Services, Room Confinement Policy for Secure Detention, 2016, available at: <https://www1.nyc.gov/assets/acs/policies/init/2016/B.pdf>; Colorado revised statute related to seclusion of individuals, available at: https://leg.colorado.gov/sites/default/files/2016a_1328_signed.pdf.

In 2011, the United Nations Special Rapporteur on Torture concluded that “any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment” and called for “an absolute prohibition” on solitary beyond 15 days *for all people*. Of note, the Special Rapporteur also called for a complete ban on solitary if imposed: as punishment or disciplinary sanction for *any length of time* (which is how most solitary in New York is imposed), or on children or people with mental health needs for *any length of time*, or indefinitely, or *during pre-trial detention*²¹ (for which most people in local jails across New York are held).

In 2013, the UN Special Rapporteur specifically found New York State was in violation of international obligations, and urged New York State to adopt the HALT Solitary Confinement Act.²² The Special Rapporteur concluded that: “The HALT Solitary Confinement Act reflects both safe and effective prison policy and respect for human rights and brings New York prisons and jails into alignment with international law and human rights norms. It should become law in New York State, and serve as a model for change across the United States. This legislation, along with future reforms and advancements, will help bring a timely end to the pervasive use of solitary confinement in New York State prisons and jails and insure that people held there are guaranteed the necessary protections against torture and ill-treatment.”

In line with the 2011 conclusions of the Special Rapporteur, in 2015 the United Nations Mandela Rules - adopted by the UN General Assembly (with the support of the United States) - prohibit solitary confinement beyond 15 days for all people, as well as indefinite solitary for all people, solitary of any length for people with physical or mental health needs that would be exacerbated by solitary, and solitary of any length for women and children.²³

Despite these clear prohibitions on the use of solitary confinement beyond 15 days for all people in all circumstances and full prohibition on any length of time in solitary in many circumstances, and despite New York State being fully on notice since at least 2013 that it is systematically carrying out widespread torture of New Yorkers, the proposed regulations will continue to allow people to be held indefinitely in solitary for the next two years, and ultimately for lengths of time that are double what is considered torture after three years. The proposed regulations would thus

²¹ United Nations General Assembly, Interim Report of the Special Rapporteur of the Human rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, p. 21, 23, Aug. 2011, available at: <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

²²<http://nycaic.org/wp-content/uploads/2013/02/UN-Special-Rapporteur-on-Tortures-Statement-on-Solitary-in-NY-State.pdf>

²³ United Nations Standard Minimum Rules for the Treatment of [Incarcerated Persons] – otherwise known as the “Nelson Mandela Rules” or “Mandela Rules”, Rules 43-45, available at: https://www.unodc.org/documents/justiceand-prison-reform/GA-RESOLUTION/E_ebook.pdf.

explicitly continue to allow thousands of people each day, tens of thousands each year, and scores of thousands over time, to be tortured in lengths of solitary beyond 15 days.

Other states have dramatically reduced the number of people in solitary including by implementing effective time limits. For example Colorado prisons - while they have not gone far enough and still have challenges - have [implemented a 15-day time limit](#), reduced the number of people in solitary from 1,500 (almost 7% of the prison population) to 18 people, and have seen positive outcomes, so much so that “corrections officers who had initially opposed [the changes] changed their minds after they began to see positive results.”²⁴

New York must end the torture of prolonged solitary confinement for all people, and thus must impose HALT’s prohibition on solitary beyond 15 days for all people.

7) Unnecessary years-long implementation period

The proposed regulations will take years before imposing any of the so-called time limitations on how long a person can be in solitary. Under the proposed regulations there will be NO TOTAL TIME LIMIT whatsoever for the next two years in the state prisons (and one and a half years in local jails). Then, as noted above, there will be only a 90 day time limit two years from now in the state prisons (and one and a half years in local jails), then a 60 day limit, and eventually a 30-day limit on solitary *in three years* in state prisons, October 2022 (and two and a half years in local jails), unless a future Governor rolls back the regulations. 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?²⁵

It is not clear why NY needs three years to implement the proposed 30-day limit. The prisons and jails can simply stop sending people to solitary for so long. The number of people who will lose their minds or their lives in that time is not acceptable.

Under HALT, there would be a total of a one year implementation period to fully enact the entirety of the provisions of the bill, and all time limits should be implemented at least as quickly as that, with implementation beginning immediately.

²⁴ Rick Raemisch, *Why We Ended Long-Term Solitary Confinement in Colorado*, Oct. 12, 2017, available at: <https://www.nytimes.com/2017/10/12/opinion/solitary-confinement-colorado-prison.html>.

²⁵ <https://theappeal.org/new-york-indefinite-solitary-confinement-is-finally-put-to-the-test/>.

8) Far too many people to be held in solitary for almost any reason, including for months and years

The proposed regulations will continue to allow people to be sent to solitary confinement for almost any reason or no real reason at all, as is current practice, thereby resulting in thousands and even tens of thousands of people to be sent to solitary each year, including for extended periods of time. The proposed regulations have no criteria restrictions for people being sent to keeplock or purported alternative units, which - given current practice - mean people will likely be held in solitary for months or years for a variety of alleged rule violations, including minor, non-violent alleged misconduct. The proposed regulations also have very broad and vague criteria for getting into SHU itself for disciplinary reasons and even broader and vaguer criteria for getting into administrative segregation.

First of all, as noted above, there are no criteria restrictions whatsoever for what conduct can result in placement in keeplock in a general confinement cell. In the regulations for the local jails, the specified criteria discussed below do not apply to people confined to a cell or room for disciplinary reasons because they only apply to people being sent to “special housing.” Similarly, for the state prison regulations, the specified criteria for SHU admissions discussed below do not apply to keeplock because they only apply to admissions to “segregated confinement,” which as detailed above does not include keeplock in a general confinement cell or one’s own cell in any unit. Thus, any alleged rule violations that can currently result in solitary can lead people to be sent to solitary in keeplock. The lack of restricted criteria is even more problematic because again the time limits on solitary also do not apply to people in keeplock. In turn, the extremely long solitary confinement sentences that are currently given to people for all sorts of alleged misconduct, including minor non-violent alleged rule violations, will still lead to people spending months and even years in solitary in keeplock (or cycling between SHU and keeplock, or SHU, alternative units, and keeplock).

Similarly for the purported alternative-to-solitary units that as described above can be solitary by another name, there again is no specified criteria for placement. The proposed regulations state that the residential rehabilitation units (RRUs) are to be used for people with disciplinary sanctions that extend beyond the SHU time limits (and also can house people in administrative segregation) but do not specify any criteria for what conduct can lead to placement in RRUs. Step-down units and AO separation units similarly do not have specified criteria. The only specifically listed criteria are for people being sent to segregated confinement. Again similar to keeplock, since there are no total time limits on how long a person can be in one of these purported alternative units, people could end up spending months or years in these units for minor non-violent alleged misconduct, particularly if people - as discussed above is often the case now - accumulate additional tickets and solitary time while on an alternative unit.

Even for being sent to the SHU itself, the proposed regulations will continue to allow people to be locked in solitary for alleged rule violations that are very broad and include nonviolent behavior. While the proposed disciplinary confinement criteria list several specific serious types of conduct that are similar to the criteria in HALT, the criteria in several places are not as narrowly defined as HALT and 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. In addition to the overly broad felony provision, other individual criteria are themselves overly broad. For example, “make a credible threat of injury” is vague and overly broad. Without defining injury, threat, or credible, this criteria could encapsulate a whole range of conduct and would allow any correction officer or other staff to claim that they were threatened by a person who was incarcerated and send them to solitary confinement, as is currently the practice.

Beyond the disciplinary confinement criteria, 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. This extremely broad criteria for a vague “risk” could thus lead people to be in solitary, and then indefinitely in alternative units, for almost any reason or no reason at all.

Current practices show how problematic having vague and broad criteria can be, particularly when coupled with discretion on the part of staff and hearing officers, and lack of due process protections described below. Currently, people are often sent to solitary for minor alleged rule violations and with broad discretion by corrections staff to lock anyone in solitary for almost any reason. The majority of sentences that result in solitary confinement in New York State currently are for non-violent conduct. People who engage in such conduct should never be isolated and also do not require an intensive rehabilitative and therapeutic intervention. Only those who truly pose a risk of harm to others should be separated so that resources can be focused on providing support to individuals who would actually benefit from such an intensive programmatic and therapeutic intervention.

This broad discretion to impose solitary also exacerbates the racially discriminatory manner in which solitary is inflicted. Black people represent about 18% of all people in New York State, but 50% of those incarcerated in the state, and nearly 60% of people held in long-term solitary confinement units in the state. The *New York Times* documented in 2016 what people who have

been inside have long known: solitary confinement is fueled by racism and imposed disproportionately against Black and Latinx people.²⁶ Similarly in the city jails, a New York City Department of Health and Mental Hygiene study found that Black and Latinx people were less likely to receive appropriate mental health diagnoses and more likely to be subjected to solitary confinement.²⁷

The combination of the proposed regulations' lack of criteria at all for keeplock and purported alternative units, continued vague and broad criteria for even getting into SHU, lack of time limits on keeplock or alternative units, and allowance of people to cycle between SHU, keeplock, and purported alternative units means that while HALT would result in a dramatic reduction in the number of people sent to solitary and the lengths of time they spend in solitary, the proposed regulations will maintain the status quo of sending thousands upon thousands of people to isolation for almost any reason for extremely long periods.

Specifically, one of the fundamental differences between the proposed regulations and HALT is that HALT will essentially eliminate long sentences to solitary confinement for about 80% of the rule violations that current result in solitary confinement for periods that exceed 15 days and can extend to isolating persons for years (because the majority of sentences that result in solitary currently are for non-violent rule violations). Specifically, under HALT, a person can be sent to *any form of solitary*, including SHU, keeplock, or alternative units, only if the person is found guilty of actions that meet very strict criteria that involve the most serious conduct that actually poses real threats of harm to others.²⁸ As explained below, most current rule violations do not involve any of these actions and under HALT if a person does not commit one of these serious actions they can not (and should not) be held in any form of extended solitary.

In contrast, the proposed regulations do not place *any* limitations on the length of a disciplinary sanction itself and, as detailed above, will result in isolation of persons for months and years because under these regulations there is no limitation on either cycling or on how long a person

²⁶ Michael Schwartz, Michael Winerip and Robert Gebeloff, *The Scourge of Racial Bias in New York State's Prisons*, The New York Times, Dec. 3, 2016, *available at*: https://www.nytimes.com/2016/12/03/nyregion/new-york-state-prisons-inmates-racial-bias.html?_r=0.

²⁷ Fatos Kaba et al., Disparities in Mental Health Referral and Diagnosis in the New York City Jail Mental Health Service, 105 Am. J. Pub. Health 1911-1916 (2015), *available at*: <http://ajph.aphapublications.org/doi/full/10.2105/AJPH.2015.302699>.

²⁸ Section 137(j)(ii) of HALT specifies that a person can only be placed in *any form of solitary confinement*, including SHU, keeplock or a residential rehabilitation unit, beyond three days or six days in any thirty day period, if the person commits a serious rule infraction for acts that “were so heinous or destructive that placement in general population housing creates a significant risk of imminent serious physical injury to staff or other incarcerated persons, and creates an unreasonable risk to the security of the facility.” HALT then defines these risks by enumerating seven specific type of conduct that involve: causing or attempting to cause serious physical harm; sex offences; extortion or coercion by force or threat of force; involvement in riots and other serious disturbances; procurement of deadly weapons or other dangerous contraband; or escape or attempted escape.

can be sent to keeplock or any of the alternative units. Imposing long sentences for non-violent conduct will occur under the proposed system and result in thousands of people spending long periods in isolation.

For the state prisons, analyzing all 2016 DOCCS disciplinary hearings (the latest data available to us) illustrates how frequently solitary is likely to be imposed and for how long under the current regulations in contrast to HALT. Focusing on people who spent more than 15 days in segregation as a result of being found guilty at a disciplinary hearing that year, we determined there were over 30,377 such dispositions, resulting in 2,287,682 days of solitary confinement, which is equivalent to 6,267 person-years in solitary. Just to drive home how excessively punitive the current system is and how it will continue to be under the proposed regulations, these statistics have to be repeated: **in one year only, DOCCS imposed over *thirty thousand sentences to extended solitary confinement, and imposed over two million days of solitary confinement, which is the equivalent of over six thousand person-years in solitary.*** That is just in one single year. Also, just in that one year, **more than 1,200 people were given at least 12 months and up to 13 years of solitary confinement time.** Moreover, in addition to the more than 30,000 disciplinary hearings that resulted in prolonged solitary confinement sentences, there were 8,780 hearings in 2016 that resulted in isolation for less than 16 days for a total solitary time of 93,773 days or 257 person-years in isolation.

By contrast, evaluating the thirty thousand hearings that resulted in prolonged solitary, we estimate that only around 6,000 hearings could meet the HALT criteria, which represents only 20% of the total number of such dispositions. Although the length of solitary sentences imposed in 2016 for potential HALT violations was still far too long and unnecessary, even with these sentences HALT would have eliminated roughly 3,500 person-years in solitary. In addition, a significant number of these tickets that could potentially fit the criteria under HALT happened while people were already in solitary confinement (12% of the rule violations occurred in the S-blocks/SHU200 units, or segregation in Southport or Upstate C.F., which is about half of all people in solitary in a variety of SHUs and keeplock across the state),²⁹ and with the interventions required in the HALT's residential rehabilitation units, most of these rule infractions would not have occurred and/or problematic behavior would have been responded to in a more rehabilitative, therapeutic, and effective manner. Moreover, because HALT would impose a 15 day limit on all forms of solitary, including keeplock, and would have a variety of different limits on time spent in alternative units, including an absolute limit of one year (other than in exceptional circumstances), there would be even far greater reductions in the amount of

²⁹ The DOCCS data available does not indicate persons who were in SHUs or keeplock cells in other prisons besides these long-term solitary units or prisons, representing thousands of persons in isolation at any time, so the 12% is a gross underestimation of the impact of tickets for persons already locked in solitary.

solitary confinement time under HALT. Moreover, for all of the disciplinary hearings that resulted in less than 16 days in solitary, HALT would eliminate most of this time in solitary.

Taken all together, because the proposed regulations do not limit the criteria for keeplock or purported alternative units, allow indefinite cycling, and have no time limits on keeplock or alternative units, a similar number of disciplinary tickets and time people are sent to solitary would occur under the proposed regulations.

As under HALT, the regulations should have much more narrow and clearly defined criteria to ensure that people separated from the general population are those who actually need to be because of actual serious violence or harm. Also, the criteria for getting into solitary should apply to all forms of solitary (including administrative segregation, keeplock in one's own cell, and alternative-to-solitary units). All together, there must be strict restrictions on when a person can be separated from the general prison or jail population, such that any such separation is limited to the most serious and egregious conduct. People who engage in less serious rule violations should never be subjected to solitary and do not require an alternative intensive rehabilitative and therapeutic intervention. Only those who truly pose a serious risk of harm to others should be separated so that resources can be focused on providing support to a small number of individuals who would actually benefit from the kind of intensive programmatic and therapeutic intervention that any alternative to solitary should entail.

9) People forced to choose between safety and torture

No person should have to choose between being safe and being tortured. While the proposed state prison regulations positively include protective custody in the time limits on segregated confinement (the jail regulations do not address protective custody), even in the state prisons people in protective custody for the next two years can be held in all forms of solitary indefinitely and even three years from now would still be able to be held in solitary in SHU for 30 days and solitary in keeplock in a general confinement cell or their own cell in another unit for months, years, and indefinitely.

People are frequently put in solitary confinement not as punishment but presumably “for their own protection” but they are not then protected. For instance, young people or transgender women who are housed in prisons or jails for men are often put in solitary for their own protection and then instead face additional abuse while inside. The conditions in protective custody generally resemble conditions in solitary confinement, with people currently spending 22 to 24 hours a day alone in a cell without any meaningful human contact or programs. One's identity - whether sex, race, sexual orientation, age, religion, gender identity or expression - is

not a justification for the torture of solitary confinement. And people shouldn't have to choose between their safety and their mental, emotional, and physical well-being.

As under HALT, the regulations should explicitly guarantee that a person can never be in solitary for protective custody reasons and any units for protective custody must be at least as good as the minimum requirements for the alternatives to solitary under HALT (namely at least seven hours out of cell per day, seven days a week, with access to meaningful human engagement and congregate programming).

10) A lack of transparency and oversight

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.

As under HALT, the regulations should require independent outside oversight of the use of solitary and alternatives in both prisons and jails by entities other than the prison/jail departments. The regulations should also require, as in HALT, detailed reporting on the use of solitary and all alternatives that includes breakdowns by race, age, gender, length of stay in solitary/alternatives, etc.

What takes place to lead people to solitary confinement or what happens to people while in solitary confinement often takes place essentially secretly, cut off from the outside world. Such a situation further creates an environment in which there is little oversight and no accountability and more opportunity for abuse. Currently it is very difficult to even know how many people are in solitary confinement in jails across the state. Similarly the state prisons do not even report the number of people in keeplock in their own cells - again, one form of solitary - and so again the public doesn't even know how many people are in solitary on a given day, let alone why people are in solitary, for how long people have been in solitary, how many people are subjected to solitary in a given year, the age, race, gender, or other demographic breakdown of who is in solitary, etc. This type of information should be readily and easily available to all members of the

public as a way to shed light on what these public institutions are doing in New Yorkers' name and with New Yorkers' taxpayer dollars.

Specifically, as under HALT, there should be public reporting on the use of solitary and alternatives, including a breakdown of everyone in any form of separation, such as by: (i) age; (ii) race; (iii) gender; (iv) mental health treatment level; (v) special health accommodations or needs; (vi) need for and participation in substance abuse programs; (vii) pregnancy status; (viii) continuous length of stay in solitary or alternative units as well as total length of stay in a given time period; (ix) number of days in solitary confinement; (x) a list of all incidents resulting in disciplinary sanctions by facility and the date of occurrence; (xi) the number of incarcerated persons in solitary confinement by facility; and (xii) the number of incarcerated persons in alternative units by facility.

11) A lack of 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. The training requirements thus would seem to be able to be satisfied by a one hour training or even a 15 minute training, whereas HALT would provide for days of training on the relevant topics. 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 during proceedings that can result in solitary confinement.

Greater training and procedural protections are essential because the processes resulting in solitary confinement are often arbitrary and unfair, involve under-equipped staff, and take place with little transparency or accountability. As noted above, correction officers or other staff can often write disciplinary tickets for the most minor of reasons, for false reasons, or due to racial or other bias. The New York State prisons and local jails are laden with staff brutality and other abuses.

At the next level, the hearings or administrative procedures that result in placement in solitary confinement are *not* conducted by judges or other supposedly non-biased neutral decision-makers, but rather by corrections staff. In New York State prisons, approximately 95% of the people who are charged with the most serious rule violations that can result in solitary confinement are found guilty³⁰ and the processes are similar in the jails.

30

<https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5c5b0007f4e1fc1092af0b30/1549467656168/CANY+Fact+Sheet+-+Solitary+.pdf>

Regarding training, at a minimum, as under HALT, any person who will be working on any solitary or alternative unit, and any person who will preside over a hearing that could result in solitary, must have extensive training on relevant topics. HALT would provide a full week of training before someone could work on one of those units or preside over a hearing, and an additional three days of training every year. The proposed regulations should require at least that level of training.

Regarding procedural protections, also at a minimum, people should have the opportunity to have legal representation – by lawyers, paralegals, other incarcerated people, or others – at any hearings or procedures that can result in placement in solitary (until it is ended) or any alternative units, and such procedures should be conducted by neutral decision-makers.

12) Discretion to deprive people of basic needs, like decent food and showers

The proposed regulations provide prison and jail staff and officials the discretion to deprive people of their basic needs while in solitary, including decent food and showers. The proposed regulations positively include a general prohibition on the denial of essential services as a component of discipline or punishment, including “correspondence, hygiene items, clothing, bedding, outdoor exercise, food services, health services, religious items and services, printed materials and publications, and legal reference materials.”

However, for all essential services, despite the general protection, the regulations permit prison officials, including the officer of the day or the deputy superintendent for security, to deny essential services based on a very broad and vague justification, namely a “threat to the safety or security of the facility” or staff or incarcerated people. These very basic and essential needs should never be denied.

Moreover, even for the generally protected items, the regulations do not prohibit the denial of showers, something that is often denied people currently. Showers are not a privilege or a benefit people can work toward obtaining; showers should never be denied. Also, while the regulations prohibit food services from being denied as punishment, the regulations do allow for people in solitary to get alternative meals to what other people in prison are able to receive. The regulations specifically allow for people to receive a “special management meal” if they allegedly throw food, carry out an unhygienic act, or refuse to give a meal tray back. Thus, while special management meals are not allowed to be “the loaf” according to previous litigation, still the regulations are explicitly allowing food deprivation of another form of taking away decent meals as a response to alleged misbehavior. Food should never be used as a tool to manage behavior or impose punishment.

As under HALT, the proposed regulations should absolutely prohibit any limitation or change in food as a punishment and should ensure that people in solitary or alternative units have access to the same food as anyone else in the prison. Similarly, as under HALT, the proposed regulations should prohibit the denial of any basic need or service as punishment, people should have access to all their property regardless of where they are held, there should not be any limitation whatsoever on any basic need, service, or property unless there is an individualized determination made that such restrictions are necessary because of a significant and unreasonable risk, and any such restriction should be limited in time and scope to what is absolutely necessary.

D) CONCLUSION

Solitary confinement is torture. People are suffering. Families are suffering. Communities are suffering. And they will all continue to suffer under the proposed regulations.

The HALT Solitary Confinement Act has majority support in both houses of the state's legislature. The proposed regulations should incorporate all aspects of HALT and the bill needs to be brought to a vote, passed, and enacted so that every prison and jail in New York State has, among other provisions and at a minimum:

- A total and absolute limit on any and all forms of solitary (regardless of their name or location) of no more than 15 consecutive days for all people, in line with the UN Mandela Rules, and 20 days total in any 60 day period to ensure the 15 day limit is real;
- More humane and effective alternatives that are actually real, that are not solitary by another name that causes death and destruction, and that take the opposite approach of solitary (as implemented in the RSVP and Merle Cooper programs), with at least seven hours out of cell every day and access to meaningful human engagement and congregate programming;
- Clear, specific, and attainable mechanisms and time limits for release from all alternatives to solitary, including an absolute one year limit except in extreme circumstances;
- A complete ban on solitary for people with mental health needs, people aged 21 and younger or 55 and older, and others, including a provision that all existing RMHTUs have conditions at least as protective as the RRU alternatives in HALT;³¹

³¹ In addition to HALT, as noted above New York should also ensure that the protections, limitations, and all conditions for children and young people in the “adolescent offender units” are at least as good as those in other OCFS facilities, including that there should be no solitary confinement or conditions that amount to or are similar to solitary confinement, and instead at most room confinement - for as short a time as possible measured in minutes or hours and only for purposes of de-escalation - can be utilized. In fact, ultimately those same conditions and protections should be extended beyond children and even young people to all people in New York prisons and jails.

- Restricted criteria for who can be placed in solitary or alternatives to the most egregious conduct; and
- Increased transparency, outside independent oversight, training, procedural protections, and prohibitions on the denial of basic needs like food and showers.

For New York City’s jails, where the vast majority of people are held pre-trial and presumed innocent, others are there for low-level misdemeanor convictions, and many are in jail due to mental illness, substance addiction, poverty, and other vulnerabilities, solitary should be prohibited altogether, particularly given that the UN Special Rapporteur has called for a complete ban on solitary during pre-trial detention.

There are growing calls across the United States (joining the longstanding calls internationally) to end the torture of solitary confinement.

As a representative example, major presidential candidates have been calling for an end to solitary. Senator Sanders called for an end to solitary confinement, calling it “a form of torture. It is unconstitutional, plain and simple.”³² Sen. Elizabeth Warren said: “solitary confinement is cruel and inhumane. We must end this practice.”³³ Sen. Kamala Harris: “I will end mass incarceration and build a system that treats people humanely and creates public safety by ...Ending solitary confinement...”³⁴ 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.”³⁵ Beto O’Rourke: “let’s absolutely end solitary confinement.”³⁶ Pete Buttigieg will “[r]educ[e] [the] use of solitary confinement, including abolishing its prolonged use” (which is defined internationally as beyond 15 days).³⁷ Joe Biden will “start by ending the practice of solitary confinement, with very limited exceptions such as protecting the life of an imprisoned person.”³⁸

These calls from the presidential candidates follow longstanding calls in New York State, nationwide, and internationally, including from the New York City Council,³⁹ President Obama,⁴⁰ the Pope,⁴¹ Supreme Court Justice Kennedy (conurrence starts on p. 33),⁴² the Texas prison

³² <https://twitter.com/berniesanders/status/1163246701743726592?lang=en>.

³³ <https://twitter.com/ewarren/status/1156982642996326400>.

³⁴ <https://twitter.com/kamalaharris/status/1171896951845150725>.

³⁵ https://www.booker.senate.gov/?p=press_release&id=957.

³⁶ <https://www.youtube.com/watch?v=vekojdqDOEE>.

³⁷ <https://peteforamerica.com/issues/>.

³⁸ <https://joebiden.com/justice/>.

³⁹ <https://queenseagle.com/all/council-resolution-halt-solitary-act-dromm-aubry-johnson>

⁴⁰

https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html.

⁴¹

<http://solitarywatch.com/2014/10/26/pope-francis-denounces-solitary-confinement-calls-for-prison-conditions-that-respect-human-dignity/>.

guards union,⁴³ NJ Legislature,⁴⁴ the NY Catholic Conference,⁴⁵ NY Bishop Scharfenberger,⁴⁶ the UN Special Rapporteur on Torture,⁴⁷ the NY Association of Psychiatric Rehabilitation Service,⁴⁸ the Mental Health Association of NYS and its individual chapters across the state, over 1,000 New York State mental health professionals,⁴⁹ over 100 leading faith leaders across the state,⁵⁰ the Tompkins County Legislature, Vera Institute of Justice,⁵¹ Working Families, Citizen Action, the New York Civil Liberties Union,⁵² Human Rights Watch,⁵³ Amnesty International, Indivisible, over 200 organizations across New York State,⁵⁴ and countless others in the press, public, and government.

Over 130 New York State legislators also now specifically support the HALT solitary confinement Act, including 99 New York State Assembly Members who voted to pass HALT in 2018, 79 current Assembly cosponsors, 34 New York State Senate cosponsors, and additional Senators and Assemblymembers who committed to vote for HALT. From Colorado⁵⁵ to North Dakota⁵⁶ to Washington⁵⁷ to Connecticut to Maine to Mississippi to North Carolina, other states - while still having challenges and needing greater change - have dramatically reduced the use of

⁴² https://www.supremecourt.gov/opinions/14pdf/13-1428_1a7d.pdf.

⁴³ <https://www.texasobserver.org/texas-prison-guard-union-calls-curtailed-solitary-confinement-death-row/>.

⁴⁴ http://www.slate.com/blogs/xx_factor/2016/10/24/new_jersey_legislature_passes_bill_limiting_solitary_confinement.html.

⁴⁵

<http://www.nyscatholic.org/wp-content/uploads/2016/02/2016-LEGISLATIVE-AGENDA-HALT-Act-FINAL.pdf>.

⁴⁶

<http://www.timesunion.com/tuplus-opinion/article/Albany-bishop-Solitary-confinement-needs-reform-7238837.php>.

⁴⁷

<http://nycaic.org/wp-content/uploads/2013/02/UN-Special-Rapporteur-on-Tortures-Statement-on-Solitary-in-NY-State.pdf>.

⁴⁸ <https://www.timesunion.com/opinion/article/Viewpoint-Let-s-lead-the-way-on-solitary-13969876.php>;

<http://www.nyaprs.org/e-news-bulletins/2017/015454.cfm>.

⁴⁹

<https://www.syracuse.com/state/2019/06/new-york-mental-health-advocates-push-for-solitary-confinement-rules.html>

⁵⁰ <https://www.nystateofpolitics.com/2019/05/faith-leaders-push-for-ending-solitary-confinement/>

⁵¹

<https://www.vera.org/newsroom/statement-from-vera-supporting-the-humane-alternatives-to-long-term-halt-solitary-confinement-act>

⁵² <https://www.nyclu.org/en/legislation/humane-alternatives-long-term-halt-solitary-confinement-act>

⁵³

<https://www.hrw.org/news/2019/04/30/human-rights-watch-memo-support-new-york-state-halt-solitary-confinement-act>; <https://www.hrw.org/news/2019/05/29/my-father-served-over-month-solitary-confinement>

⁵⁴ <http://nycaic.org/campaign-members/>.

⁵⁵ Rick Raemisch, *Why We Ended Long-Term Solitary Confinement in Colorado*, Oct. 12, 2017, available at:

<https://www.nytimes.com/2017/10/12/opinion/solitary-confinement-colorado-prison.html>.

⁵⁶ Dashka Slater, *North Dakota's Norway Experiment*, Mother Jones, July/Aug. 2017, available at:

<http://www.motherjones.com/crime-justice/2017/07/north-dakota-norway-prisons-experiment/>.

⁵⁷ *More Than Emptying Beds: A Systems Approach to Segregation Reform (Washington State)* (2016), available at:

<https://www.bja.gov/publications/MorethanEmptyingBeds.pdf>

solitary confinement and seen positive outcomes, while other countries rarely if ever use this inhumane and counter-productive practice and have much better outcomes for all.⁵⁸

The people of New York can wait no longer for this torture to stop. New York State must lead the way in ending solitary confinement and creating more humane and effective alternatives that can serve as an example across the country. The deaths of Layleen Polanco, Kalief Browder, Bradley Ballard, Benjamin van Zandt, and countless others, and the destructive impact on thousands upon thousands of people in the New York State prisons and jails over many years, demand that New York State end this horrific and deadly practice once and for all. Eliminating solitary confinement would have tremendous benefits for people who are currently incarcerated and their families and communities, and for New York State as a whole.

While these proposed regulations are focused on solitary: beyond ending the torture of solitary confinement, New York State must end the urgent human rights and racial justice crisis created by and exacerbated by the incarceration system as a whole for the people incarcerated as well as their families and communities. New York State must take bold and dramatic action to decarcerate, promote racial justice through healing and community empowerment, and shift from its extreme punitive approach (rooted in a racist system) to a public health, healing, and empowerment approach.

As some examples of immediate policy changes to begin this necessary shift,⁵⁹ New York State must reduce prison sentence lengths, release more people on parole who have demonstrated their rehabilitation and low risk to society, restore access to higher education and full voting rights to people while they are incarcerated, end police and correction officer violence and killings, promote community-based care for mental health needs and substance use, promote and expand meaningful opportunities for in-person and overnight prison visitation, and adopt meaningful alternatives to incarceration and restorative and transformative justice. Ultimately, New York must end solitary and make the other interconnected necessary changes to ensure the health, safety, and well-being of all of our fellow community members.

⁵⁸ See, e.g., <http://archive.vera.org/sites/default/files/resources/downloads/european-american-prison-report-v2.pdf>; <http://solitaryconfinement.org/uploads/DeepCustodyShalevAndEdgar.pdf>.

⁵⁹ <https://nyassembly.gov/write/upload/publichearing/000957/001758.pdf>.