HALTsolitary
NEW YORK CAMPAIGN FOR ALTERNATIVES TO ISOLATED CONFINEMENT

Working to end solitary confinement
for people with psychiatric disabilities
MHASC
Mental Health Alternatives to Solitary Confinement

April 4, 2024

Dear Commissioner Sullivan, Dr. Lee, and the rest of the OMH Team,

Thank you again for meeting with us in January to discuss implementation of the HALT Solitary Confinement Law. We again appreciate your time and attention. We wanted to follow up on some of the issues we raised at that meeting and that we continue to see happening in the state prisons. Overall, we remain deeply concerned about the systematic violations of the HALT Law taking place across New York State prisons that continue to mean in practice that the prisons are still subjecting thousands of people to solitary by another name, and about the resulting negative impacts on people's mental health and even loss of life. Please see below a summary of some of the key issues we raised and which we continue to observe. We appreciate your ongoing engagement and your prompt attention to these urgent matters.

Our overall key recommendations at this time include for OMH to work toward:

1. Ending the placement of people on the OMH caseload in any form of segregated confinement, including SHU and in RRUs, RMHTUs, and other units that are not meeting the out-of-cell requirements and thus amount to segregated confinement under the law.
2. Ensuring that the RMHTUs comply with the out-of-cell and programming requirements of HALT, namely that people in the RMHTUs have access to at least seven hours of group out-of-cell time, and ensuring that such out-of-cell time is actually group out-of-cell time with other people in the same shared space.
3. Helping to design and operate OMH therapeutic and rehabilitative group programming in the RRUs.
4. Decreasing the use of disciplinary confinement sanctions and ensuring that the RMHTUs and RRUs operate as therapeutic and rehabilitative environments, especially in light of the facts that people are being sent to disciplinary confinement for reasons banned under the law, Black people are disproportionately sent to disciplinary confinement, and RMHTUs and RRUs currently operate as the most punitive units with the most disciplinary sanctions and disciplinary confinement time imposed in the entire prison system.

5. Working with outside individuals and entities with proven success at operating violence prevention programs, including Dr. Bandy Lee and Dr. James Gilligan and separately AMEND, to carry out pilot projects at RMHTUs and RRUs.
6. Ensuring the appropriate reviews and release mechanisms from RMTHUs and RRUs are being followed.
7. Addressing the repeated deaths of people in RMHTUs and RRUs, including by pursuing the above and by providing timely data and information about deaths.
8. Providing more opportunities for family members to engage with OMH to support their loved ones, and utilizing people in our groups who have mental health needs, who have been incarcerated, and/or are family members as part of OMH's trainings of staff.

1. Special Populations in Segregated Confinement

As discussed during our meeting and shared in writing as requested following our meeting, the HALT law explicitly prohibits the placement of any person with a mental health diagnosis, including any person on the OMH caseload, in segregated confinement.

Subdivision 33 of Section 2 of the Correction law states:

33. "Special populations" means any person: (a) twenty-one years of age or younger; (b) fifty-five years of age or older; ***(c) with a disability as defined in paragraph (a) of subdivision twenty-one of section two hundred ninety-two of the executive law;*** *or (d) who is pregnant, in the first eight weeks of the post-partum recovery period after giving birth, or caring for a child in a correctional institution pursuant to subdivisions two or three of section six hundred eleven of this chapter.*

In turn, paragraph (a) of subdivision 21 of section 292 of the executive law, the NYS Human Rights Law (NYSHRL), defines disability as follows:

21. ***The term "disability" means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which*** *prevents the exercise of a normal bodily function* **or** ***is demonstrable by medically accepted clinical or laboratory diagnostic techniques***

The definition of disability in the NYSHRL has been interpreted broadly as it does not require any showing of limitation of a particular activity or function. *See* Epstein v. Kalvin-Miller Int'l, Inc., 100 F. Supp. 2d 222 (S.D.N.Y. 2000); State Div. of Human Rights ex rel. McDermott v. Xerox Corp., 65 N.Y.2d 213 (1985). According to the NYS Division of Human Rights, "[t]here are no qualifiers as to the severity of the disability. Unlike federal law, there is no requirement under the NYSHRL that the impairment 'substantially limit a major life activity.'" *Reasonable Accommodation and Disability Rights under the NYS Human Rights Law*,

https://dhr.ny.gov/system/files/documents/2022/05/nysdhr-disability-rights-handbook-073020.pdf

Everyone who is placed on the OMH caseload meets this definition of disability as they each have a mental impairment that is demonstrable by medically accepted clinical diagnostic techniques. Through an assessment process, an OMH clinician determines an incarcerated person's diagnosis and Mental Health Service Level. OMH Mental Health Service Levels correspond to individuals' diagnosed mental impairments and current treatment needs. For example, an incarcerated person who has a Mental Health Service Level 3 "needs/may need short-term chemotherapy for disorders such as anxiety, moderate depression, or adjustment disorders OR suffers from a mental disorder that is currently in remission and can function in a dormitory facility that has part-time mental health staff." UCR Policy 9.12: Treatment Needs/Service Level Need, Attachment A.

We look forward to your response to this issue (as well as the others) and appreciate OMH's efforts to coordinate with DOCCS to ensure that DOCCS and OMH no longer place people on the OMH caseload in SHU or any other form of segregated confinement (*defined in the law as any form of cell confinement beyond 17 hours a day*).

2. **Out-of-Cell Time and Programming in Residential Mental Health Treatment Units**

The HALT Law requires that all of the Residential Mental Health Treatment Units (RMHTUs - including RMHUs, BHU, and TBU) not only continue to follow the requirements under the SHU Exclusion Law, but also additionally follow all of the requirements for the RRUs. Those requirements include the issues discussed further in other sections below, including access to seven hours of daily out-of-cell group programming, the criteria of conduct for placement in the units, and the mechanisms of release.

We have received numerous complaints from various RMHTUs and heard from OMH and DOCCS staff that out-of-cell time and programming at multiple facilities has not substantially changed after HALT was enacted, that people are provided similar amounts of programming as was provided prior to HALT, and that people are not being provided access to the required seven hours of daily group out-of-cell programs and activities.

To the extent that DOCCS claims that people are receiving additional out-of-cell time by being locked alone in a recreation pen at the end of a tier or on the balcony of one's own cell, that is not out-of-cell time and certainly is not congregate out-of-cell time required under the law.

We encourage OMH to work with DOCCS, peers, and outside experts and providers (see below), to provide additional programming and real group out-of-cell time, where people are not locked

alone in a recreation pen but instead are in a group setting in the same shared space with other people and have access to meaningful programming and activities that will help support their health and well-being and address the reasons why they are being separated.

3. **Out of Cell Time and Programming in the RRUs**

We continue to encourage OMH to work with DOCCS to ensure that OMH can design and operate therapeutic and rehabilitative group programs in the RRUs. The HALT Law envisions throughout that OMH will be directly involved in programming in the RRUs, including, as discussed more below, explicit requirements that mental health staff be involved in rehabilitation plan development and reviews for people in the RRUs. Since before HALT was implemented and up through our most recent meeting, both your team and DOCCS have indicated that you are in dialogue about OMH carrying out group programming in the RRUs. As it is now three years since the law was enacted and two years since it went into full effect, we hope that OMH can finally now begin operating group programs in the RRUs.

Of note, like in the RMHTUs, the HALT Law requires people in the RRUs to have access to at least seven hours of daily out-of-cell group programming and activities, including access to core programs comparable to those in general population and additional therapeutic programming aimed at addressing the reasons they are in the RRUs. We have received innumerable reports from prisons across the state that people do not receive access to the required out-of-cell time or programming. Many people report that they do not receive any out-of-cell time, while others receive up to at most three hours to – rarely – six hours of group out-of-cell time, often only during weekdays. For example, at Upstate C.F., which has by far the largest RRU in the state, the official policy at the facility has been that people at most get access to one module of three hours per day of out-of-cell time (and many people do not receive any out-of-cell time). Of additional note, DOCCS also has failed to provide people in RRUs with access to core programs as required by HALT, including ASAT, ART, academic programs, vocational programs, sex offense programming, and transitional services.

4. **Decreasing Disciplinary Confinement Sanctions and Creating a More Therapeutic Environment in the RMHTUs and RRUs**

As discussed, and has been the case for many years, the disciplinary RMHTUs (namely the RMHUs, BHU, and TBU) have the highest rates of disciplinary sanctions and disciplinary confinement time imposed as any other units across the prison system, and RRUs also have very high rates compared to sanctions for people in the general population. This is particularly disturbing given that the RMHTUs and RRUs are both meant to be therapeutic and rehabilitative environments and given that there is a presumption against the use of disciplinary sanctions under both the SHU Exclusion Law and the HALT Solitary Confinement Law.

In the first year of HALT implementation, April 1, 2022 – March 31, 2023 ("first HALT Year"), across the prison system the total number of disciplinary hearings declined by more than 50% from 2021, though the total amount of segregation time imposed during those hearings decreased by only 2.97% because of a disturbing significant increase in the average segregation time sanctions issued in those hearing. Overall, the average SHU sentence more than doubled from 51 days in 2021 to 104 days in the first HALT year for all DOCCS hearings. Much of this increase, however, was focused on persons in units meant to be therapeutic and rehabilitative alternatives to solitary confinement.

During the first HALT Year, persons in the disciplinary RMHTUs had the highest hearing rate based upon the total RMHTU population of any unit in the entire prison system, representing a rate nearly five times greater than the rate for all people in DOCCS. Other disciplinary units also experienced excessively high hearing rates compared to the entire prison system: the hearing rates of SHU sanctions were 4.26 times greater in the Correctional Alternative Rehabilitation Program (CAR), 3.8 times greater in Special Housing Units (SHU), and 3.6 times greater in the Residential Rehabilitation Units (RRU). Specifically, for the entire prison system there were 12,577 disciplinary hearings resulting in segregation, with an annualized rate of 40.7 sanctions for 100 incarcerated persons in DOCCS, while for the disciplinary RMHTUs there were 367 disciplinary hearings resulting in segregation, with an annualized hearing rate of 195.2 sanctions for 100 incarcerated persons.

Worse still, the amount of segregation *time* imposed on residents of the disciplinary RMHTUs was even more exaggerated compared to the entire prison system. Compared to all disciplinary hearings in DOCCS during the first HALT Year, the disciplinary RMHTU segregation rate for the RMHTU average population was **8.45 times** higher than the rate for the entire DOCCS population. Specifically, the average SHU sentence in the first year of HALT implementation for the entire prison system was 104 days (already absurdly high), and the total SHU time (1,308,733 days) resulted in an annualized rate of SHU time for each person in DOCCS population of 42.4 days. In contrast, the average SHU sentence for people in the disciplinary RMHTUs was 183.5 days, and the total SHU time of 67,346 days for an average RMHTU population of only 188 residents resulted in an annualized rate of 358.2 days per RMHTU resident.

These disturbing findings are nothing new, but a continued pattern over many years. As previously reported publicly, for the years 2015 – May 2019, the disciplinary RMHTUs consistently had one of the highest average segregation sentences and segregation rates per unit population of all units in the prison system. *See* Punishment of People with Serious Mental Illness in New York State Prisons: An Analysis of 2017-19 Disciplinary Data in Prison Residential Mental Health Treatment Units. At the same time, the year of April 1, 2022 – March 31, 2023, had the largest discrepancy between the disciplinary RMHTU segregation time rate and all DOCCS hearings since we have been specifically monitoring these disciplinary practices

starting in 2015. During the first HALT Year, the average disciplinary RMHTU segregation sentence rose by 77% from 2021 and was 82% higher than the RMHTU rate for 2017-19. The amount of segregation time imposed on the average disciplinary RMHTU resident during the first HALT Year was 72% higher than in 2021 and 36% higher than in 2017-19. It is outrageous that after implementation of the HALT Law, there could be a dramatic *increase* in SHU time for disciplinary RMHTU residents.

Although not as dramatic as the situation with disciplinary RMHTU residents, people in the RRUs also experienced excessive SHU sanctions during the first HALT Year. The hearing rate for RRU residents (148 hearing per 100 RRU residents) was 3.7 times higher than the rate for all DOCCS prisons, and the segregation time rate (151 SHU days per each RRU resident) was 3.6 times higher than for the entire DOCCS population. Several RRUs had much higher segregation rates that ranged from four to more than six times the SHU rate for all persons in DOCCS. Particularly disturbing was the finding that the top four RRU units with the highest SHU rates also have a disciplinary RMHTU in the facility: Great Meadow RRU – 6.4 times higher than all hearings' SHU rate; Coxsackie RRU – 5.3 times higher; Five Points RRU – 5.3 times higher; and Bedford Hills RRU – 4.9 times higher.

In addition, the rate of total SHU time for the average population was higher in other units, most of which are meant to serve as rehabilitative and therapeutic units: CAR – 5.9 times higher than for all DOCCS hearings; Step Down Programs (SDP) – 4.3 times; and SHU- 3.3 times. These extremely high rates reflect both the high hearing rates referred to above and higher average SHU sentences (average SHU sentences were higher for: SDP – 2.1 times higher than all DOCCS hearings; CAR – 1.4 times; and SHU – 1.2 times higher).

Moreover, the conduct that people in the disciplinary RMHTUs and the RRUs were found guilty of violating during the first HALT year raises significant concerns that people were being sanctioned for conduct that was not eligible for a SHU sanction under the HALT Law and for some of these residents, conduct that may have been manifestations of their mental health needs rather than deliberate actions intended to violate prison rules. For example, a large number of people in the disciplinary RMHTUs and RRUs received disciplinary sanctions and excessive SHU time – at rates far higher than the rest of the prison population – for: (1) conduct described as lewd or unhygienic acts that were likely related to the persons' underlying mental health issues and (2) aberrant or disruptive actions that did not involve violence but were punished for violating the rules concerning threats, creating a disturbance, interference with staff, or harassment. For hearings with charges of unhygienic acts or lewd conduct, the RMHTU SHU rate was **59 times higher** than for such hearings in the rest of DOCCS units, and the RRU rate was 10 times higher. For disturbance hearings without an assault or fight, the RMHTU SHU rate was **23 times higher** than the DOCCS rate and the RRU rate was 4.8 times higher.

The HALT Solitary Law has very explicit requirements for what conduct can result in placement in either segregated confinement, RRUs, or RMHTUs. The law requires individualized determinations at a hearing – where representation is supposed to be allowed under the law – that any particular incident of conduct both fits within the very explicit list of acts in the law and that such act(s) were so heinous or destructive that remaining in general population poses a significant risk of *imminent serious physical injury* to staff or other incarcerated persons *and* an unreasonable risk to the security of the facility. The type of unhygienic acts, lewd conduct, and disturbance sanctions not only do not rise to the level of this heinous or destructive language, but do not even meet any of the listed acts in the HALT law, namely:

(a) "causing or attempting to cause serious physical injury or death to another person or making an imminent threat of such serious physical injury or death if the person has a history of causing such physical injury or death and the commissioner and, when appropriate, the commissioner of mental health or their designees reasonably determine that there is a strong likelihood that the person will carry out such threat. The commissioner of mental health or his or her designee shall be involved in such determination if the person is or has been on the mental health caseload or appears to require psychiatric attention. The department and the office of mental health shall promulgate rules and regulations pertaining to this clause;
(b) compelling or attempting to compel another person, by force or threat of force, to engage in a sexual act;
(c) extorting another, by force or threat of force, for property or money;
(d) coercing another, by force or threat of force, to violate any rule;
(e) leading, organizing, inciting, or attempting to cause a riot, insurrection, or other similarly serious disturbance that results in the taking of a hostage, major property damage, or physical harm to another person;
(f) procuring a deadly weapon or other dangerous contraband that poses a serious threat to the security of the institution; or
(g) escaping, attempting to escape or facilitating an escape from a facility or escaping or attempting to escape while under supervision outside such facility."

For example, lewd conduct, unhygienic acts, interference with staff, or staff harassment charges do not amount to compelling or attempting to compel another person to engage in a sexual act, nor amount to causing or attempting to cause serious physical injury or death. Similarly, the disturbance charges do not rise to the level of causing or attempting to cause a riot, insurrection or other similarly serious disturbance that results in the taking of a hostage, major property damage, or physical harm to another person.

Yet, people continue to be sent to solitary confinement and alternatives for these and other reasons banned by the law and DOCCS' own data continues to show that thousands of sentences to segregated confinement have been for conduct that is not permissible under HALT, with again

the highest rates of segregated confinement time imposed on people who are already in disciplinary RMHTUs and RRUs. Also, as it relates to imminent threats of serious physical injury or death, we would be interested to know whether OMH has, as required by the HALT law, been involved in any determinations of such a threat in individual disciplinary hearings or has taken any steps toward promulgating regulations related to that provision of the HALT law.

5. **Working with Outside Experts**

As we have recommended in the past, we believe it would be beneficial for OMH and DOCCS to work with outside experts who have decades of successful experiences designing and operating proven alternatives to solitary and violence prevention measures. We wanted to flag that we understand that the Governor's office and DOCCS have been in communication with Dr. Bandy Lee and Dr. James Gilligan, and separately, AMEND, regarding the possibility of doing pilot projects at multiple prisons, including at RMHTUs and RRUs, and we hope that OMH will collaborate in those endeavors.

By way of background: Dr. Bandy Lee is a forensic psychiatrist and violence expert with more than two decades of experience evaluating, treating, and designing programs for incarcerated people who have engaged in violence. Dr. James Gilligan is a psychiatrist who has spent 50 years studying the causes and prevention of individual and collective violence in the U.S. and around the world for the World Health Organization, the World Court, the secretary-general of the United Nations, and others. Dr. Gilligan was the leader for fifteen years of violence prevention programs in the Massachusetts prisons, and with Dr. Bandy Lee, the leader for ten years of preventing violence through the jails of the City and County of San Francisco. For example, they helped design and evaluate the Resolve to Stop the Violence Project (RSVP) in San Francisco jails, which saw in-house violence drop to zero after the first month, and an 83% reduction in the rate of violent re-offenses after returning to the community. Of note, Dr. Lee and Dr. Gilligan also did an evaluation of programming and mental health care in NYC jails in 2013.

Separately, AMEND is based out of the University of California San Francisco and works with corrections systems on culture change initiatives that work very closely with staff. As it states on their website, "Amend's Prison Culture Change Initiative invests in developing and supporting culture change leaders who are dedicated to improving culture in U.S. prisons, providing them with multi-year immersive training programs and technical assistance that draw on dignity-driven and public health-oriented correctional practices from Norway and elsewhere to inspire immediate changes in prisons that improve the health and well-being of people who live and work there."

6. **Rehabilitation Plans, Reviews, and Releases from RRUs + 1 Year Limit**

The HALT Law requires that every person in an RMHTU and RRU have a rehabilitation plan developed by program and mental health staff in conjunction with the individual in the unit whose plan is being developed. In turn, every person is supposed to have a review – again involving program and mental health staff – every 60 days in the RRU to determine if they should be discharged from the RRU. If a person is not released, the law requires that program and mental health staff inform the person what they have to do to be released, provide access to whatever is required, and then the person must be released if it is completed.

We would be interested to know if OMH has been a part of the development of rehabilitation plans or the periodic reviews. We have received many reports from people inside that they have not had such rehabilitation plans developed nor had such periodic reviews, or the plans or reviews have not been meaningful. We are not aware of people being released from RMHTUs or RRUs at these reviews or being provided what they need in order to be released and then released after completing what is required. Overall, there is a very large number of people in the RRUs – more than the number of people in SHU prior to HALT's implementation. Part of that large number stems from the failure to implement HALT's conduct criteria discussed above, part of it relates to the extreme disciplinary sentences DOCCS is imposing, and part of it is a failure to follow the reviews and release mechanisms under HALT, as people spend months and longer in the RRUs and RMHTUs. We would appreciate any information you are able to provide about what role, if any, OMH is playing in these rehabilitation plans or reviews for people in RMHTUs and/or RRUs, and any information you have regarding people being released and/or provided what they need to do in order to be released from these units.

In a related manner, the HALT Law provides generally for a one year time limit on placement in RRUs and RMHTUs, with very narrowly tailored exceptions including if the OMH and DOCCS Commissioners personally determine there is an extraordinary and imminent risk of harm. We have received multiple complaints about people being held in such units past the one year limit. Would you be able to provide information on the total number of people who have spent more than one year in an RMHTU since HALT went into effect, and how many people currently have been in an RMHTU for the last year? Would you also be able to provide any information on whether the OMH Commissioner has been involved in any decisions to override the one year limit?

7. **Deaths**

We have tragically heard from family members and people inside about several deaths in RRUs and RMHTUs. We believe these deaths are directly related to all of the ways HALT has not been

implemented described above and how RMHTUs and RRUs too often continue to operate as solitary by another name.

As requested this fall and during our meeting, would you be able to provide us the number of people who have died in each of the SHU, RRU, and RMHTU units, and the total number in DOCCS custody, in 2021, 2022, 2023, and 2024 at whatever date you share the information? Can you provide the number of people who have died by suicide, the number of suicide attempts, and the number of incidents of self-harm in those different units and in total in DOCCS custody?

8. **Engagement with Family Members and People Who Have Come Home**

Thank you again for providing the contact information for a first point of contact at Central New York Psychiatric Center. We appreciate that information. We continue to encourage OMH staff across the prison system to recognize family members and loved ones as people who are helpful and critical to the mental health care and well-being of people that OMH works with, and in turn to engage with family members in a respectful and welcoming way.

Also as discussed at our meeting, we wanted to follow-up to see if it would be possible for people in our groups with mental health needs, who have been incarcerated, and/or who have had family members inside to be part of training that OMH provides to OMH and DOCCS staff under the SHU Exclusion Law and the HALT Law.

Conclusion

Thank you again for the ongoing engagement with our groups. We again appreciate the time you spent meeting with us and appreciate your concern for the health and well-being of people in the state prisons. We hope that we can continue to work together to help ensure that the state prisons are fully and effectively implementing the HALT Solitary Confinement Law, are truly restricting solitary and utilizing real alternatives that are not operating as solitary by another name, and are ensuring that everyone in the prison system is receiving the mental health and other care and support they need to be healthy and thrive.

Sincerely,
MHASC and #HALTsolitary Campaign