
TRAPPED INSIDE:

The Past, Present, and Future of
Solitary Confinement in New York

NYCLU

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ACKNOWLEDGEMENTS

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ABOUT THE NYCLU

The New York Civil Liberties Union (NYCLU) is one of the nation's foremost defenders of civil liberties and civil rights. Founded in 1951 as the New York affiliate of the American Civil Liberties Union, the NYCLU is a not-for-profit, nonpartisan organization with eight chapters and regional offices and more than 150,000 members across the state. The NYCLU's mission is to defend and promote the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including freedom of speech and religion, and the right to privacy, equality, and due process of law for all New Yorkers. For more information, please visit www.nyclu.org.

Executive Summary

Every day thousands of people in New York State prisons, mostly people of color, are held in 23-hour isolation for months, sometimes years, at a time. As solitary confinement has come under increasing scrutiny, institutions around the world have been turning away from the practice. New York must join them. There are currently two proposals to reform the use of solitary in New York State prisons: a state bill called the HALT Act and regulatory amendments put forward by the Department of Corrections and Community Supervision (DOCCS), the agency that runs prisons in New York State. Both aim to address problematic aspects of solitary confinement, but the NYCLU believes that HALT is the more meaningful option for reform.

Using never-before-released data, this report reveals the current state of solitary confinement in New York State prisons, including the impact of the *Peoples* settlement, the NYCLU's 2012 lawsuit against DOCCS. This analysis also assesses the impacts of the HALT Act and DOCCS' proposal.

TOPLINE FINDINGS

- 40,000 solitary confinement sanctions were given in 2018. One-quarter were in the form of special housing unit, or SHU sanctions, the most restrictive form of isolation. The remainder were in the form of Keeplock sanctions (see Box 3, page 8). Despite a recent drop in SHU sanctions, Keeplock sanctions have increased so much that the overall disciplinary confinement sanctions has actually increased. The HALT Act limits all forms of solitary, including Keeplock, but DOCCS' proposed reforms primarily focus on reducing SHU sanctions, maintaining a loophole that could result in further increases in confinement.
- The HALT Act proposes a 15-day time-cap on solitary confinement that would go into effect one year after the bill's passage. DOCCS' regulatory amendments propose a 30-day time-cap on solitary confinement that would go into effect by October 2022. In addition to having an impact sooner than DOCCS' proposal, HALT would also shorten more than 1,000 SHU sanctions and more than 10,000 Keeplock sanctions annually that fall between the 16- and 30-day range.
- In 2018, over 6,000 solitary confinement sanctions were served directly after a previous sanction, a practice known as "back-to-backs." The HALT Act would prevent a majority of back-to-backs by mandating a 20-day cap on solitary within any 60-day period. DOCCS' proposal does not restrict consecutive sanctions, creating a loophole to its own time-cap.
- On October 1, 2019, eight percent of the SHU population was between the ages of 18 to 21, three percent was aged 55 or older, and 31 percent had a diagnosed mental health challenge. The HALT Act would prohibit solitary confinement for all of these groups, which would reduce the SHU population by several thousand people each year. DOCCS' much more limited list of protected groups addresses age only for people under 18 and includes people with disabilities only if the disability limits the ability to provide "self-care," a vague and unquantifiable group.
- The HALT Act significantly improves conditions for those who are held in solitary by mandating more out-of-cell time and better programming (see Box 5, page 12).
- At full implementation, the HALT Act would reduce the average daily SHU population by double the reduction that DOCCS' proposal would achieve, in addition to reducing tens of thousand of solitary confinement sanction lengths served outside of SHU.

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INTRODUCTION

The State of Solitary Confinement in
New York's Prisons

Introduction

Thousands of people are currently being held in solitary confinement throughout New York State's prison system. They have been held in isolation for weeks, months, and some even years. Solitary confinement, which restricts people to minimal or rare meaningful contact with others,¹ can cause such cruel and irreparable harm that the United Nations considers it torture to hold someone in solitary for more than 15 days.² The United Nations has called on the United States to end this form of torture,³ and New York State now has the opportunity to take a step closer through two very different proposed measures.

For decades, New York prison officials have relied heavily on solitary confinement as a tool to punish and control people who are incarcerated. During the 1990s, prison officials significantly expanded their capacity to isolate people by constructing more than 3,700 special housing units, often referred to as SHUs, to hold people in solitary confinement. By 2012 the Department of Corrections and Community Supervision (DOCCS), the agency responsible for New York State prisons, was confining roughly 4,500 people in SHU on any given day. This does not account for the number of people in other types of solitary confinement outside of SHUs, such as "Keeplock," where people are held in similar isolation in other types of cells (see Box 3, page 8).

Box 1

THE DIFFERENCE BETWEEN JAILS AND PRISONS

Because of a lack of data on solitary confinement in jails, this report focuses on New York State prisons.

Jails are county-level facilities that incarcerate people who are awaiting trial, who have been arrested on parole violations, or have been convicted of a crime and sentenced to incarceration for one year or less.

Prisons are a network of state facilities that imprison people who have been convicted of a crime and sentenced to serve more than one year in incarceration. The Department of Corrections and Community Supervision (DOCCS), a state agency, operates the New York State prison system.

Jails must operate according to regulations issued by the State Commission of Corrections (SCOC), a state watchdog agency, and prisons must operate according to regulations issued by DOCCS. The SCOC has conceded that there has been a "prevalent misuse of solitary confinement" in the jails across the state.⁴ As compared to the state-run prison system, there is little to no public data available on how counties are using solitary confinement in their jails.

¹ National Commission on Correctional Health Care, Solitary Confinement (Isolation). Available at: <https://www.ncchc.org/solitary-confinement>.

² United States General Assembly, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, August 2011. Available at: <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

³ "UN independent expert calls on US to ban prolonged, indefinite solitary confinement," UN News, August 23, 2013. Available at: <https://news.un.org/en/story/2013/08/447382>.

⁴ State Commission of Correction, Regulatory Impact Statement. Available at: <http://www.scoc.ny.gov/pdfdocs/ris.pdf>.

In the years since this expansion, tens of thousands of people have been subjected to inhumane confinement. Solitary confinement in the prison system has been arbitrary (people received wildly different sanctions for the same rule violation), harsh (the average SHU sanction was five months), and designed to be cruel (phone calls with family members were prohibited).

In 2012, the New York Civil Liberties Union (NYCLU) sued DOCCS over its solitary confinement practices. That lawsuit, *Peoples v. Annucci*, resulted in a court-ordered settlement agreement requiring broad changes to disciplinary segregation, the most common form of solitary. The *Peoples* settlement accomplished three major reforms:

- Reduced the number of people who could be placed in disciplinary segregation by eliminating it as a punishment option for some petty rule violations;
- Established guidelines limiting the number of days people could be sentenced to solitary for each type of rule violation and created new mechanisms for early release; and
- Improved conditions by allowing people in solitary confinement to call their families and have greater access to reading materials and radios, among other improvements.

While these are important changes, they are far from enough.

Today approximately 2,300 people are in SHUs across the state and hundreds, potentially thousands, more are in Keeplock. The average length of a SHU sanction is 105 days. Dozens of people have been in SHU for years, several of whom have diagnosed mental health disorders.

No New Yorker should tolerate this inhumane treatment of incarcerated individuals, especially when other states have successfully adopted reforms. New Jersey and Colorado recently enacted reforms to significantly curb the use of solitary confinement. As the Executive Director of Colorado's Department of Corrections explained, Colorado imposed a 15-day cap on solitary confinement because "long-term isolation manufactures and aggravates mental illness."⁵

⁵ Rick Raemisch, "Why We Ended Long-Term Solitary Confinement in Colorado," The New York Times, October 12, 2017. Available at: <https://www.nytimes.com/2017/10/12/opinion/solitary-confinement-colorado-prison.html>.

INTRODUCTION

Box 2

THE HARMS OF EXTREME ISOLATION

New York State laws currently permit the use of 23-hour solitary confinement for months and even years at a time in concrete cells where people do not have access to their personal property.

People in solitary confinement are cut off from meaningful human interaction—and the consequences can be severe. Solitary confinement that exceeds 15 consecutive days is torture according to the United Nations, because studies show it causes severe mental and physical trauma and irreparable harm. Solitary confinement can cause or exacerbate mental illnesses, stunt brain development in young people, and dramatically increase the risk of self-harm and suicide.⁶

Although there is widespread agreement among lawmakers to curb the use of solitary confinement, the public has had limited information on how solitary is used in New York—until now. This report reveals for the first time previously confidential data on solitary confinement in New York State prisons that the NYCLU obtained through the *Peoples* settlement. The data reveals the answers to three critical questions: how many people are in solitary confinement, who are they, and how long are they being confined. Together, the information in this report provides the fullest picture to-date of the current state of solitary confinement in New York State prisons, and what reforms would meaningfully limit the use of extreme isolation.

Currently pending are two proposals to reform solitary confinement practices, but only one of the measures meets international standards and best practices in other states: The Humane Alternatives to Long-Term Solitary Confinement Act (HALT). This legislation calls for capping all forms of isolation at 15 days, starting one year after the bill's passage. Despite broad support for the bill, Assembly and Senate Leadership never brought the bill to the floor for a vote. Lawmakers will have the opportunity to reconsider the HALT Act when the next legislative session begins in January 2020.

By contrast, DOCCS has put forward a much less robust proposal, which includes a phased-in segregated confinement cap that would take three years to come into full effect. Even then it would allow 30 days in solitary, which is equivalent to *double* the amount of time defined as torture by the U.N. And the gaps and loopholes in DOCCS' proposal would continue other harmful forms of solitary confinement.

As the NYCLU's analysis demonstrates, the HALT Act's more comprehensive and lasting protections are a more humane path forward.

⁶ Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J. L. & Pol'y 325 (2006), available at: https://openscholarship.wustl.edu/law_journal_law_policy/vol22/iss1/24; American Civil Liberties Union, *Alone & Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities*, 2013, available at: https://www.aclu.org/sites/default/files/field_document/alone_and_afraid_complete_final.pdf; Kaba, Fatos et al. *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, *Am J Public Health* 104 (2014), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/>.

HOW MANY PEOPLE ARE IN SOLITARY CONFINEMENT?

How Many People Are in Solitary Confinement?

Disciplinary Confinement

Incarcerated people can be held in solitary confinement for several reasons. The most common is for disciplinary purposes, to punish a violation of facility rules such as fighting, making threats, or disobeying a direct order. There are two types of disciplinary confinement sanctions. People in **SHU**, solitary confinement in a special housing unit, are isolated for up to 23 hours per day in a bare cell the size of a small elevator. People in **Keeplock** are also isolated for up to 23 hours per day—either in a SHU cell, dedicated Keeplock unit, or general population cell—but are allowed to keep their personal property.

Box 3

TYPES OF ISOLATION: SHU AND KEEPLOCK

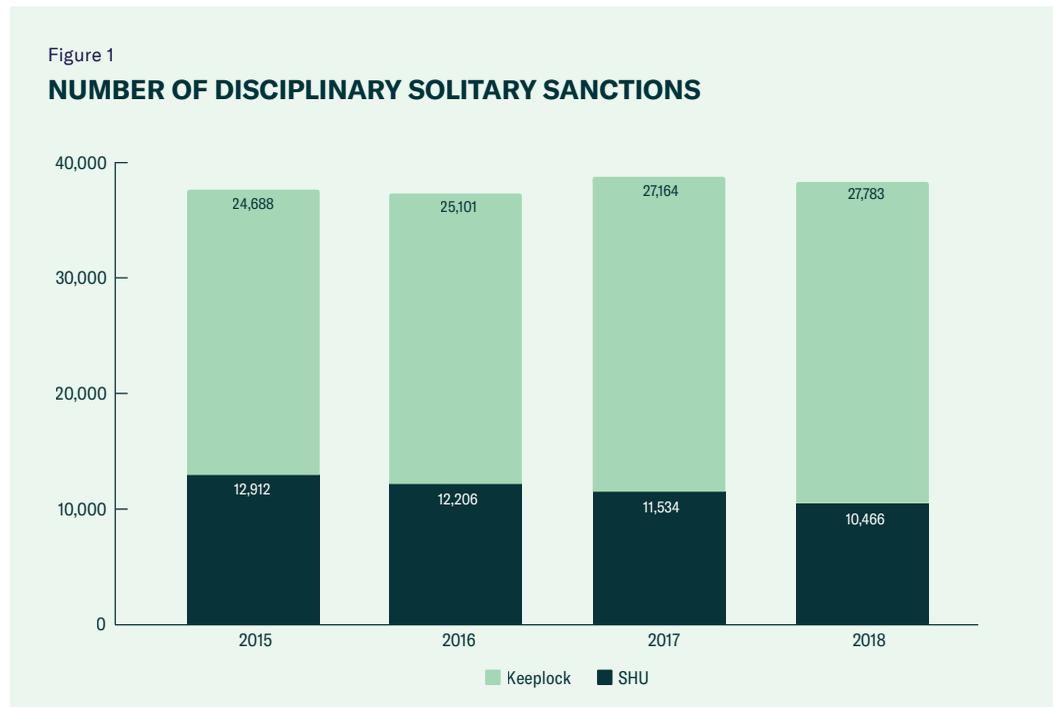
SHU (special housing unit) sanctions are disciplinary solitary sanctions given to people who are found guilty of committing what DOCCS categorizes as a serious facility rule violation. People serving SHU sanctions are confined for up to 23 hours a day in a SHU cell, which is the most restrictive setting in the prison system. Unlike ordinary cells with gate-style doors, SHU cells typically have solid doors with only a small vision panel that can be closed by staff, making it extremely difficult to communicate with anyone outside of the cell. People serving SHU sanctions have severely limited access to personal property, and basic benefits like calling family or purchasing snacks and hygiene items in prison stores are restricted.

Keeplock sanctions are disciplinary solitary sanctions given to people who are found guilty of less serious facility rule violations. Keeplock sanctions can be served in one of three locations, depending on what space is available at each facility:

- **General population cell:** Most Keeplock sanctions are served in general population unit cells, where a person is restricted to their cell.
- **Long-term Keeplock cell:** Keeplock sanctions can also be served in a dedicated long-term Keeplock unit, which varies in design from repurposed SHUs to gate-style doors similar to those in general population. These units are reserved for longer Keeplock sanctions, and because not all facilities have these units, individuals often need to be transferred between facilities to serve a sanction there.
- **SHU cell:** While SHU cells were designed for more serious rule-violators, Keeplock sanctions can also be served in a SHU cell. This happens most frequently in lower security prisons that instead of individual cells have barracks, which make isolation impractical.

People serving Keeplock sanctions are also isolated for up to 23 hours per day, regardless of their location. However, because Keeplock is intended by DOCCS to be less restrictive than SHU, people serving Keeplock sanctions are usually allowed to retain their personal property and have greater access to basic benefits like phones and the prison store. Additionally, in recognition of the more restrictive environment of SHU cells, DOCCS credits people with having been confined for three days for every two days Keeplock is served in a SHU cell.

As part of the *Peoples* settlement in 2016, DOCCS was required to drastically reduce the types of rule violations that could be punished with disciplinary confinement. Since then, the number of SHU sanctions has dropped by 2,400. While this reduction is an important improvement, it is largely offset by the 3,100 sanction increase in Keeplock, which still subjects people to isolation. In fact, when taking Keeplock sanctions into account, the total number of disciplinary solitary sanctions has actually increased, from 37,600 in 2015 to 38,249 in 2018.



Comparison of Proposals

Because so many incarcerated people spend such long periods of time in solitary confinement, placing a time-cap on confinement would be the fastest way to reduce the number of people in extreme isolation.

DOCCS' proposed regulatory changes would **cap segregated confinement, defined as “disciplinary confinement of an incarcerated individual in a special housing unit or in a separate Keeplock unit,” at 30 days by October 2022.** Though disciplinary sanctions in SHU or a separate Keeplock unit would eventually be capped at 30 days, Keeplock sanctions in general population cells would not. DOCCS does not report where each disciplinary sanction is served, but based on snapshots of SHU cell occupancy, it is clear that the majority of Keeplock sanctions are served in general population cells.⁷ As a result, tens of thousands of Keeplock disciplinary sanctions given each year would not be subject to the 30-day time-cap.

⁷ On October 1, 2019, there were 408 people serving Keeplock in a SHU cell and 141 people serving Keeplock in a Keeplock unit.

NUMBERS

DOCCS' proposed changes would, however, **increase the number of out-of-cell hours for people confined to Keeplock**, from the current one hour per day to five hours per day on weekdays excluding holidays, and two hours per day on all other days.

DOCCS' proposal would also further **limit the types of rule violations that would be punishable with SHU** to acts or threats of serious physical injury, forced sexual acts, coercion, incitement of a serious disturbance, procurement of deadly weapons or dangerous contraband, escape, or conduct constituting a felony under the penal law.

Box 4

THE IMPORTANCE OF PRISON PROGRAMS

Prison programs provide opportunities for incarcerated people to work on their personal development. Some programs focus on addressing the causes of problematic behavior that either resulted in a disciplinary sanction or their incarceration, and others focus on providing educational and job training opportunities. Because most effective programs require that people take classes outside of their small cells, prison programs also provide a respite from extreme isolation.

In the New York State prison system, people in SHU are cut off from all out-of-cell prison programs. That practice would continue under DOCCS' proposed regulatory amendments, but the HALT Act would grant access to out-of-cell programming to all those in SHU.

The HALT Act, which mandates a **15-day cap on segregated confinement within one year of the bill's passage**, defines segregated confinement as "any form of cell confinement for more than 17 hours a day." This means that in addition to capping sanctions at half the length of the limit proposed by DOCCS, HALT's 15-day cap would **apply to all disciplinary sanctions**, not just those served in SHU or Keeplock units. By contrast, DOCCS' proposal would cap just a portion of the nearly 40,000 disciplinary sanctions given each year. And segregated confinement **sanctions would only be allowed to exceed three days, up to 15 days, for the most serious rule violations** involving acts of physical injury, forced sexual acts, extortion, coercion, inciting serious disturbance, procuring deadly weapons or dangerous contraband, or escape.

Furthermore, HALT would apply to a much larger number of people. HALT would cover correction facilities across the state, including jails, whereas DOCCS' proposal would only apply to New York State Prisons (see Box 1, page 4). A different state agency, the SCOC, has proposed reforms to solitary confinement practices in jails, but those reforms would be even less effective at ending inhumane solitary confinement.

HALT would also improve conditions of confinement, by requiring **at least four hours of out-of-cell programming per day for anyone in segregated confinement**. This is a drastic difference from the one-hour-recreation minimum required for people in SHU under DOCCS' proposal.⁸

⁸ Under current standards, which are reaffirmed in DOCCS' regulation proposal, all people in special housing units are entitled to at least one hour of out-of-cell time per day. However, through the PIMS incentive program, one can earn up to an additional 2 hours, 3 days a week, depending on the facility and its recreation space capacity. As such, even at the maximum PIMS level (Progressive Inmate Movement System, a behavioral incentive program), people get different benefits simply as the result of the location they are serving their sanction.

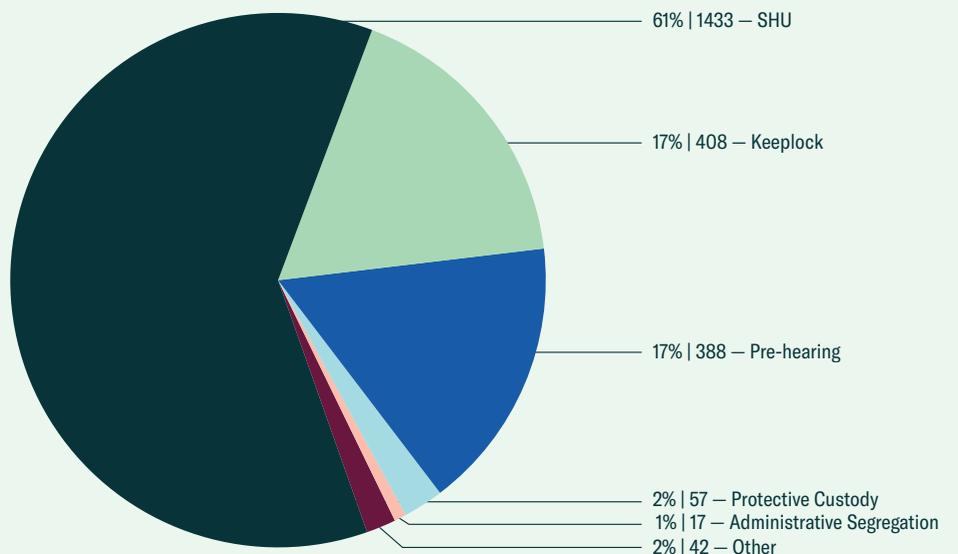
Solitary Confinement Beyond Discipline

While roughly 80 percent of people in SHU are there for disciplinary sanctions, thousands of people each year are confined in SHU cells for other reasons.

When an incarcerated person is charged with a rule violation that is punishable with solitary confinement they are entitled to a hearing. Yet more than half of people charged are held in SHU before their hearing. Hundreds of people spend time in isolation each month before even being found guilty of any rule violation, making **pre-hearing confinement** the second most common reason that people are held in SHU. Current regulations mandate that a hearing must begin within seven days of initial confinement unless there is authorization to do otherwise, which happens frequently. In 2018, 4,900 people held in pre-hearing confinement waited over seven days before their hearing started, 54 of whom waited more than 100 days. Additionally, people held in pre-hearing confinement who ultimately had all of their charges dismissed spent a total of almost 20,000 days in SHU in 2018 alone. Until June 2019, time spent in pre-hearing confinement was not counted toward time served, but this changed as the result of the *Peoples* settlement monitoring process.

Figure 2

SHU POPULATION BY STATUS (OCT 1, 2019)



People can also be confined to a SHU cell for voluntary or involuntary **protective custody** (isolation to safeguard the person from possible harm) and **administrative segregation** (indefinite isolation when DOCCS determines that a person poses a safety threat or unreasonable risk of escape). The conditions in administrative segregation are effectively no different than disciplinary SHU sanctions. Under current protective custody practices, people are given three hours of out-of-cell time per day and are allowed to keep their personal property. However, the people whom DOCCS is attempting to protect still suffer from the negative impacts of extreme isolation. People in protective custody or administrative segregation can spend months or even years in SHU confinement, since the *Peoples* settlement did not have jurisdiction over these groups.

⁹ "Other" includes people in SHU who are pending move, on special watch, or are being held pending an investigation.

NUMBERS

Comparison of Proposals

DOCCS' proposed regulatory amendments **uphold the right to confine people in SHU pre-hearing** (including for rule violations that are only punishable with Keeplock), as well as **for administrative segregation and protective custody**. However, DOCCS' eventual 30-day time-cap would apply to all segregated confinement served in SHU, limiting these three types of confinement to 30 days. Additionally, the regulatory amendments would **give people in administrative segregation the right to keep their personal property**.

The HALT Act's 15-day time-cap would similarly apply to administrative segregation, but mandates that **"no person may be held in segregated confinement for protective custody."** Additionally, HALT mandates that **"all hearings to determine if a person may be placed in segregated confinement shall occur prior to placement in segregated confinement,"** although a number of exceptions would allow for people to be held in solitary as long as the hearing takes place within five days. Not only would HALT dramatically reduce the number of people in pre-hearing confinement, it would also reduce the time spent in SHU pre-hearing for those who fall under the exceptions.

Box 5

ALTERNATIVES TO SEGREGATED CONFINEMENT: THE RRU

Residential rehabilitation units (RRUs) are housing units "used for the treatment and rehabilitative programming of incarcerated individuals serving disciplinary sanctions which extend beyond the maximum duration of placement in segregated confinement." Under both DOCCS' proposed regulatory amendments and the HALT Act, once the respective time-cap in solitary is reached, people are then transferred to an RRU to serve the remainder of their sanction.

RRUs are designed to be less restrictive and provide a higher level of individually tailored programming geared towards treatment and rehabilitation, rather than punishment. However, for RRUs to be a true alternative to segregated confinement, and not simply solitary by another name, their differences from solitary units must be meaningful.

DOCCS' proposed RRUs would include five hours of out-of-cell time on weekdays and two hours on weekends and holidays; the ability to participate in a good behavior incentive system; and programs that promote personal development and group engagement.

The RRU guidelines in the HALT Act include seven hours out-of-cell every day, the right to personal property, and access to programs and work assignments comparable to those offered to people in the general population, in addition to the same programming proposed by DOCCS.

Furthermore, while both proposals allow for early release from RRU after successful completion of programming, the HALT Act sets a one-year cap on time served in an RRU per sentence.

HOW LONG ARE PEOPLE IN SOLITARY CONFINEMENT?

How Long Are People in Solitary Confinement?

SHU Sanction Lengths

Until recently, DOCCS had no limits on the length of time that a person could be held in SHU, except for certain special populations (see page 20). Hearing officers had wide sentencing discretion, resulting in over 20,000 people being held in SHU for six months or more between 2007 and 2011.

The *Peoples* settlement placed several limits on disciplinary sanction lengths including creating sentencing guidelines that established a maximum number of days for each type of rule violation and time-cut requirements for good behavior. While the number of disciplinary SHU sanctions served exceeding 90 days has dropped by half since 2015, more than 2,600 people in 2018 served more than 90 days in SHU on a disciplinary sanction, 131 of whom had sanctions one year or longer. Critically, this accounts only for individual sanctions, and not the cumulative time of consecutive sanctions.

Box 6

TIME-CUTS

Time-cuts are one of the mechanisms DOCCS implemented as a result of the *Peoples* settlement to shorten sanction lengths. With the exception of rule violations related to violent conduct, escape, or unhygienic acts, the sanction length for people serving disciplinary sanctions in SHU can be shortened according to the following guidelines, if the individuals are not charged with any subsequent rule violations while in SHU:

- **For sanctions under 90 days:** 7-day time-cut off original sanction after serving 30 days, and another 7-day time-cut after serving 60 days.
- **For sanctions of 90 days or more:** Depending on behavior, a 10 to 25 percent time-cut off the original sanction after serving half the sanction.

Additionally, people serving a Keeplock sanction in a SHU cell are counted as having served three days for every two days served, and since June 2019, people serving Keeplock elsewhere are eligible for a discretionary time-cut based on what DOCCS considers good behavior.

Figure 3

**DISCIPLINARY SHU SANCTIONS
TIME SERVED AFTER TIME-CUTS**



In addition to disciplinary sanctions, dozens of people currently in administrative segregation and protective custody have spent months, and even years, in SHU. For people in administrative segregation in SHU on October 1, 2019, the average time they had been in SHU was almost eight years.

Comparison of Proposals

DOCCS' proposed regulatory amendments would **cap segregated confinement at 90 days by October 2021, at 60 days by April 2022, and at 30 days by October 2022.** Under this timeline, an estimated 5,000 sanctions of more than 90 days would be served in SHU over the next two years before the 90-day cap goes into effect; and another estimated 15,000 sanctions would exceed 30 days before the ultimate 30-day cap goes into effect. More than half of sanctions given in 2018 were for 90 days or less, yet DOCCS' proposal builds in a two-year delay for the 90-day cap to go into effect.

The HALT Act mandates a **15-day cap on all forms of isolation effective one year after the bill's passage.** This means that an estimated 20,000 sanctions of 30 days or longer would be capped significantly sooner, and sanctions would be capped at half the time suggested by DOCCS. Similarly, at least 1,000 sanctions given each year between 16 and 30 days would not be impacted by DOCCS' proposal, but would be capped at 15 days under HALT.

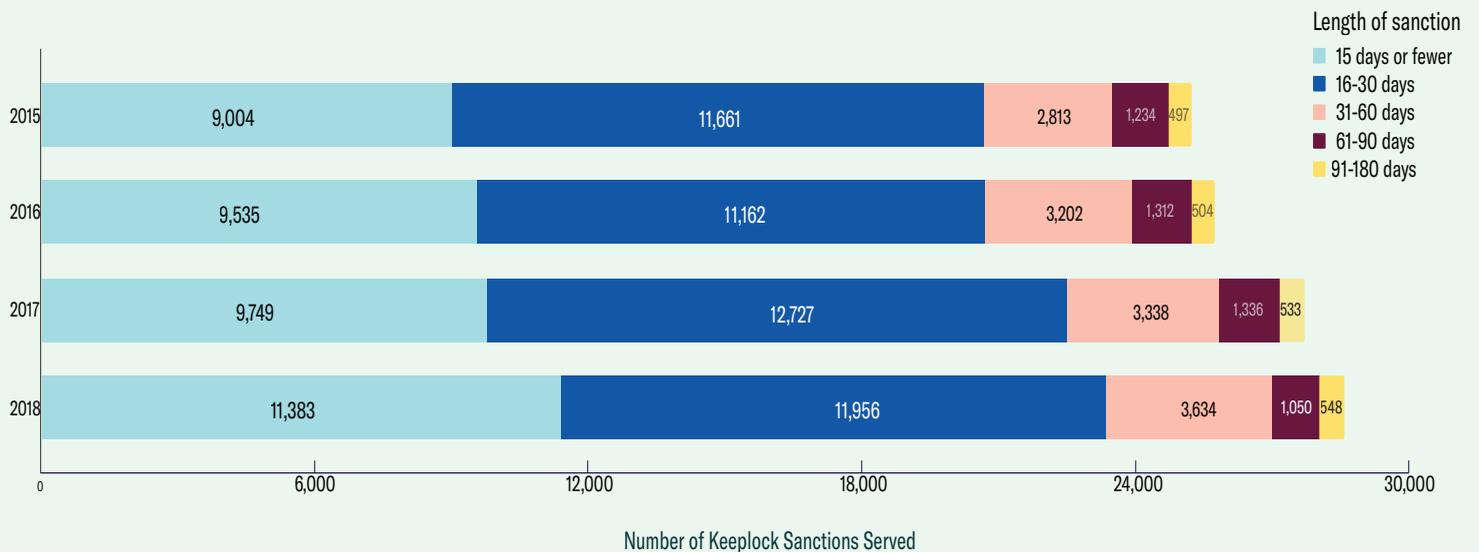
SOLITARY LENGTH OF STAY

Keeplock Sanction Lengths

Keeplock sanctions can be served in SHU, separate Keeplock units, or general population cells. While DOCCS reports the length of Keeplock sanctions, they do not break down where these sanctions are served. The numbers reported in Figure 4 take into account a time-cut policy established through the *Peoples* settlement, where DOCCS credits people with having been confined for three days for every two days Keeplock is served in a SHU cell. As the number of Keeplock sanctions has grown, so too has the number of lengthier sanctions. Between 2015 and 2018, the number of Keeplock sanctions of more than 30 days served (after factoring in time-cuts) increased from over 4,500 to over 5,200. Critically, this accounts only for individual sanctions and not the cumulative time that may have been served due to consecutive sanctions.

Figure 4

DISCIPLINARY KEEPLOCK SANCTIONS TIME SERVED AFTER TIME-CUTS



Comparison of Proposals

DOCCS' proposed **time-cap would only apply to Keeplock sanctions that are served in SHU or a separate Keeplock unit.** DOCCS does not reveal where disciplinary sanctions are served, but snapshots of who was in SHU on a given date are illustrative. For example, on October 1, 2019, of the 408 people serving a Keeplock sanction in SHU, 69 people had been in SHU for 31 to 60 days, 31 people for 61 to 90 days, and 63 people for over 90 days. As with SHU sanctions, these lengthy Keeplock sanctions would continue for the next two to three years until the time-caps go into effect.¹⁰ For those serving Keeplock in a general population cell—likely the majority of Keeplock sanctions—no time-cap would apply. However, the proposed regulatory amendments do include a new time-cut policy, under which people serving Keeplock in a general population cell who have not committed an additional rule violation would be presumptively awarded a **25 percent time-cut after having served half of their Keeplock sanction.**

While Keeplock sanctions are on average much shorter than SHU sanctions (see Figures 3 and 4) they can still result in isolation for months at a time, and in the case of nine people in 2018, for one year or more. After the *Peoples* settlement limited SHU sanctions, Keeplock sanctions increased significantly. If the segregated confinement time-caps do not apply to Keeplock sanctions served in a general population cell, there will likely be a similar increase in Keeplock sanctions, as this provides hearing officers a loophole to evade the time-cap.

The HALT Act's time-cap would apply to all forms of Keeplock, shortening the length of more than 12,000 Keeplock sanctions each year that currently exceed 15 days. By covering all Keeplock sanctions regardless of where they are served, the HALT Act does not risk creating a loophole.

Consecutive Solitary Confinement

While limits on the length of sanctions are important, for any reform to be meaningful it must address consecutive sentences. The negative effects of solitary confinement are often compounded by the practice of imposing consecutive confinement sanctions for new rule violations on people already in confinement. Also known as back-to-backs, these consecutive sanctions are not uncommon: In 2018, 20 percent of all SHU sanctions (more than 2,100) and 14 percent of all Keeplock sanctions (more than 4,000) were back-to-backs.¹¹ Research indicates that using isolation as a form of punishment worsens behavior¹², making it all the more problematic when DOCCS officials punish such misbehavior with more isolation sanctions. Despite efforts to curb consecutive solitary sentences, back-to-backs have been increasing in frequency.

As part of the *Peoples* settlement, DOCCS issued a guidance instructing hearing officers to “consider alternative sanctions other than additional SHU confinement” when an individual is already serving time in SHU. Since implementation of this guidance, back-to-backs in SHU dropped from 67 percent of SHU punishable rule violations in 2015 to 51 percent in 2018. While this change is far from negligible, back-to-back Keeplock sanctions (including only new

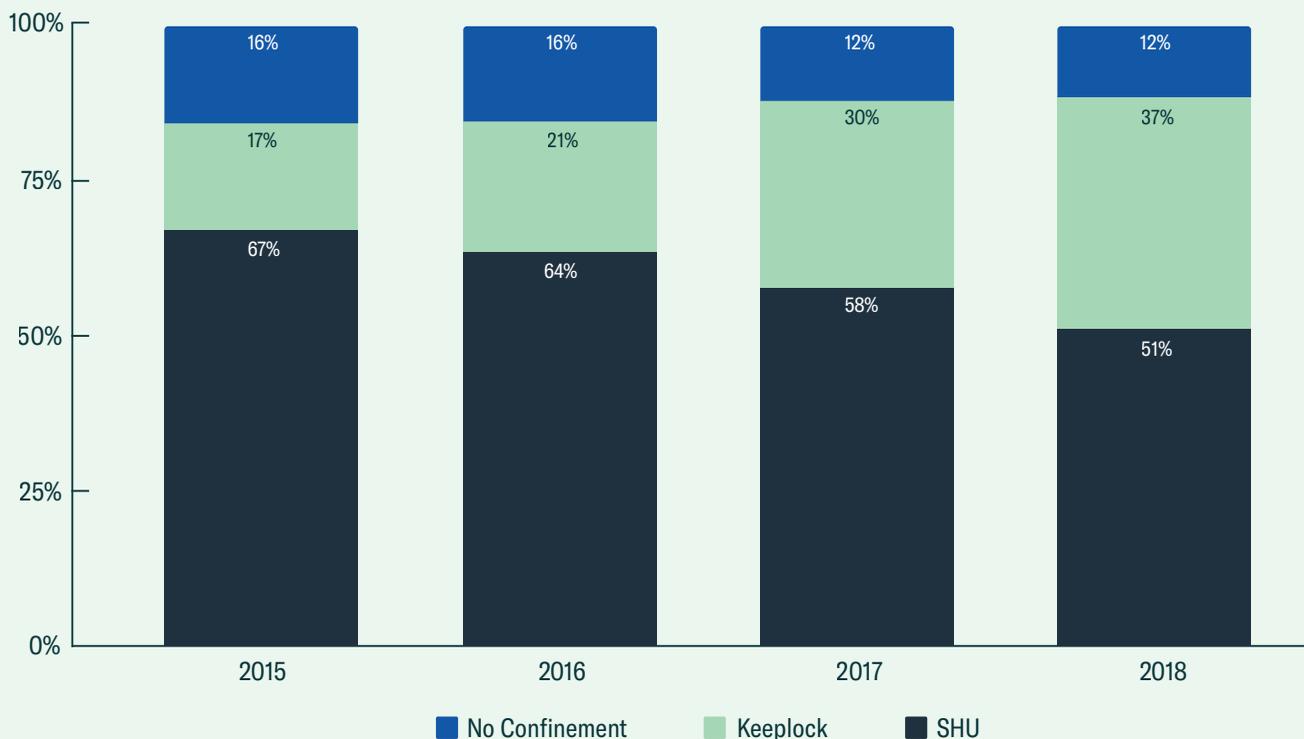
¹⁰ DOCCS' proposal would also extend the time credit of three days for every two served currently offered to people serving Keeplock sanctions in SHU to people who are serving Keeplock sanctions in an RRU.

¹¹ Back-to-back Keeplock sanctions given to individuals who were already serving a Keeplock sanction but not in a SHU cell are not tracked by DOCCS as back-to-backs, so the frequency of this is unknown and therefore not taken into account in these numbers.

¹² Vera Institute of Justice, *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, March 2015. Available at: https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf

Figure 5

SANCTIONS GIVEN FOR SHU PUNISHABLE RULE VIOLATIONS THAT OCCURED IN SHU (BACK-TO-BACKS)



Keeplock sanctions given to people already in SHU) nearly doubled during this same period. Taking this into account, the proportion of people who were held in back-to-back confinement actually increased, from 84 percent in 2015 to 88 percent in 2018.

The impact of back-to-back sanctions on total lengths of stay in SHU can be easily observed through SHU cell population snapshot data. For example, on October 1, 2019, 668 people in SHU had been serving a disciplinary sanction for 30 days or less. However, 100 of these people were in SHU on a back-to-back, one-quarter of whom had been in SHU for over 90 days.

Comparison of Proposals

DOCCS' proposal attempts to address back-to-backs by instructing officers to **rely on de-escalation and other types of intervention “as the preferred methods of responding to misbehavior** [by people already in confinement].” However, it is unlikely that a policy shift from “considering” to “preferring” alternatives to back-to-backs will result in any meaningful change. Consequently, even if segregated confinement sanctions are capped at 30 days, because of back-to-backs, people could still be confined consecutively for months or even years.

The HALT Act mandates that “no person may be placed in segregated confinement for longer than necessary and no more than fifteen consecutive days or **twenty total days within any sixty-day period**” for a serious facility rule violation, and “**no longer than six days in any thirty-day period**” for less serious violations. Given that back-to-backs are commonly used, this requirement is essential to meaningfully restrict lengths of solitary sanctions.

WHO IS IN SOLITARY CONFINEMENT?

Who is in Solitary Confinement?

Today, nearly all people incarcerated in the New York State prison system can be subject to solitary confinement, with a small number of exceptions. In a snapshot of the SHU cell population on October 1, 2019, 99 percent were men, 57 percent were Black, and 24 percent were Latinx. While some of these groups are notably overrepresented in the SHU population in comparison to the general prison population, they are even more starkly overrepresented when compared to the population of New York State.¹³

A number of changes implemented over the last decade have helped limit the placement of certain groups considered “special populations” in SHU. While, pregnant people and juveniles have not been placed in SHU since 2016, these special populations are regularly placed in other forms of confinement.

Young People and People Age 55 and Older

While the health impacts of solitary confinement are detrimental to anyone, they are significantly heightened for young people.¹⁴ Since the *Peoples* settlement placed multiple restrictions on the isolation of people under 18, the number of disciplinary confinement sanctions given to 16- and 17-year-olds dropped by more than half from 332 in 2015 to 127 in 2018. Furthermore, people under 18 who do receive disciplinary confinement sanctions are now placed in special juvenile separation units (JSUs), instead of SHU, where cell confinement is limited to 18 hours on all weekdays excluding holidays (with possible exceptions) rather than the standard 23 hours, with a mandated two hours of “outside exercise, weather permitting” on all other days. As a result of these changes, no person under the age of 18 has served a disciplinary sanction in a SHU cell in several years. However, dozens of 16- and 17-year-olds each year are still subject to 18-hour isolation in JSUs.

Research has shown that isolation can stunt brain development in young adults,¹⁵ making solitary confinement especially dangerous to people under the age of 21. And people 55 and older are more susceptible to health problems which can be compounded by isolation in SHU cells.¹⁶ Despite these risks, thousands of disciplinary confinement sanctions are given to people 21 and younger or 55 and older each year.¹⁷ The most recent available SHU cell population data indicates that they account for more than 10 percent of the population currently in solitary.

¹³ The 2018 New York State Prison population was 95 percent male, 48 percent Black, and 25 percent Latinx. The 2018 New York state general population was 49 percent male, 18 percent Black, and 19 percent Latinx.

¹⁴ Massachusetts Institute of Technology, Young Adult Development Project: Brain Changes. Available at: <http://hrweb.mit.edu/worklife/youngadult/brain.html>.

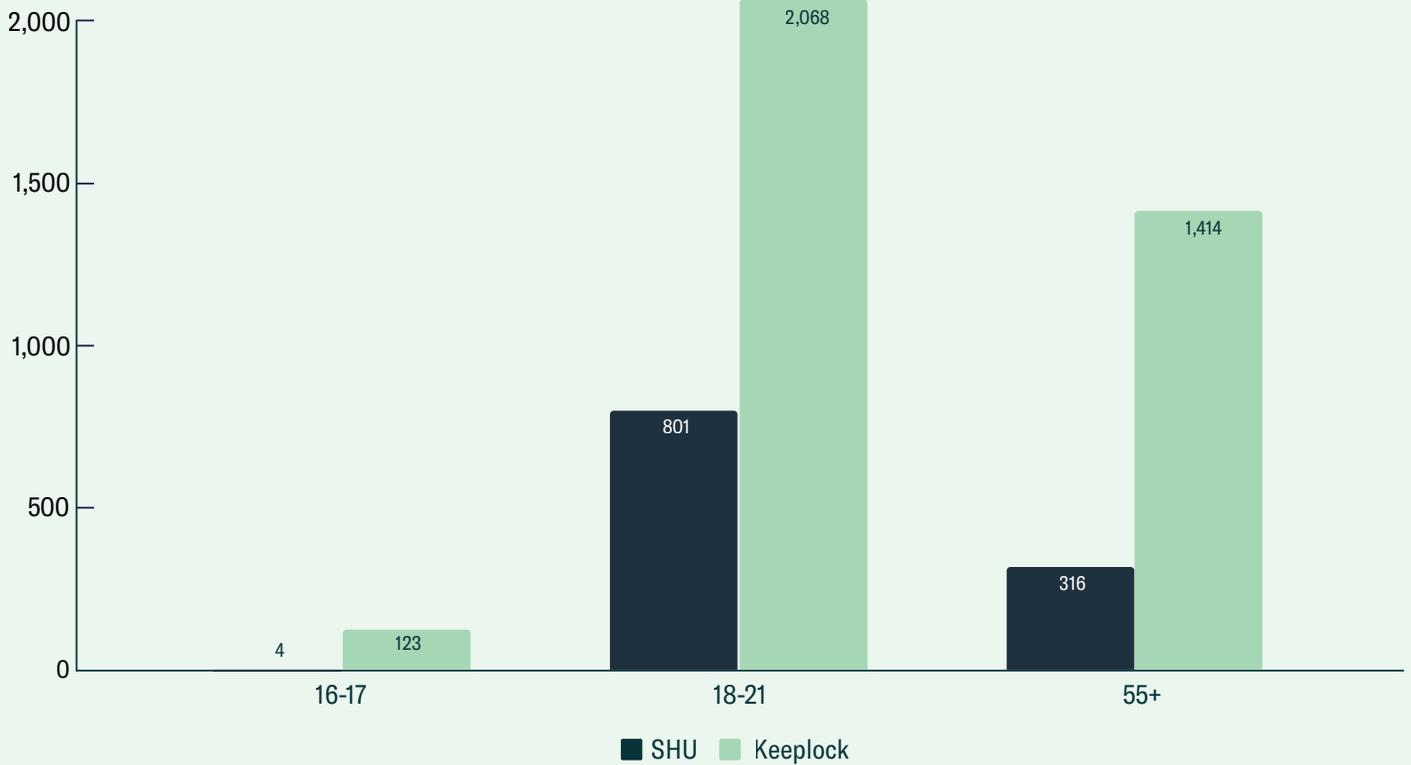
¹⁵ Human Rights Watch and the American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, October 2012. Available at: <https://www.aclu.org/report/growing-locked-down-youth-solitary-confinement-jails-and-prisons-across-united-states>.

¹⁶ Prison Policy Institute, *Aging alone: Uncovering the risk of solitary confinement for people over 45*, May 2, 2017. Available at: https://www.prisonpolicy.org/blog/2017/05/02/aging_alone/.

¹⁷ In 2018, people between the ages of 22 and 54 received 9,345 SHU sanctions and 24,178 Keeplock sanctions.

Figure 6

DISCIPLINARY CONFINEMENT SANCTIONS BY AGE (2018)

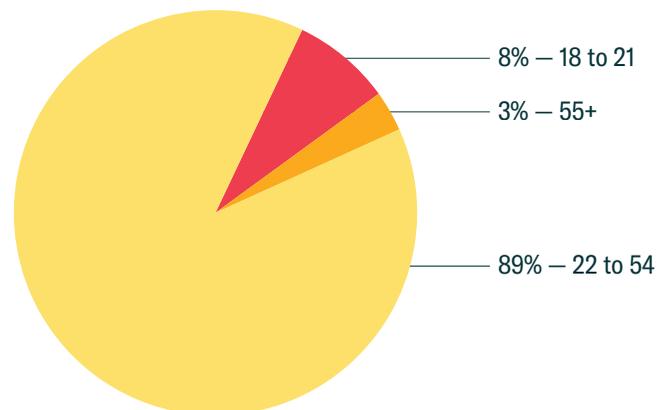


Comparison of Proposals

DOCCS' proposed regulatory amendments, which rename JSUs as AOSUs (adolescent offender separation units), would improve the conditions of confinement for people under 18. In addition to **removing the “weather permitting” clause for recreation**, the regulations **modify the current mandated programing** to include “programs and activities that promote personal development and group engagement, addressing underlying causes of problematic behavior resulting in placement in the unit and helping prepare for discharge from the unit to general confinement or the community.” DOCCS' proposal would also **expand the PIMS (Progressive Inmate Management)**

Figure 7

SHU POPULATION BY AGE (OCT 1, 2019)



WHO IS IN SOLITARY?

incentive system to people under 18, which includes four levels of incentives that people can earn based on good behavior.

The HALT Act, like DOCCS' proposal, mandates no person in a special population be placed in segregated confinement for any amount of time. However, unlike DOCCS' definition of special populations, which only includes people under 18, HALT's definition would include all **persons 21 and younger and those 55 and older**. Under HALT's more inclusive definition, thousands of people in these age groups who are currently serving SHU or Keeplock sanctions would be exempt from all forms of segregated confinement.

| Box 7 "SPECIAL POPULATIONS" DEFINITION | |
|---|--|
| DOCCS' Proposed Regulatory Amendments | The HALT Act |
| <p>Any person:</p> <ul style="list-style-type: none"> a) Housed in an adolescent offender facility; b) Who is pregnant, or in the first eight weeks of post-partum recovery period after giving birth, or caring for a child in a correctional institution; c) Who suffers from a disability as defined in paragraph (a) of subdivision twenty-one of section two hundred ninety-two of the Executive Law and said disability impairs the individual's ability to provide self-care within the environment of a correctional facility. | <p>Any person:</p> <ul style="list-style-type: none"> a) Twenty-one years of age or younger or fifty-five years of age or older; b) 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; c) With a disability as defined in paragraph (a) of subdivision twenty-one of section two hundred ninety-two of the Executive Law. |

People with Disabilities: Spotlight on Mental Health

The *SHU Exclusion Law* passed in 2008 mandates that a person with a serious mental illness¹⁸ (SMI) must be transferred to a rehabilitative mental health treatment unit (RMHU) if they are held in SHU for longer than 30 days. The *Peoples* settlement further restricted confinement of people with mental health diagnoses, requiring hearing officers to take account of mental health diagnoses not only for the purpose of assessing guilt but also during sentencing. The *Peoples* settlement also mandated the establishment of a correctional alternative rehabilitation (CAR) program for people with intellectual or cognitive disabilities. Still, many people with disabilities are not exempted and continue to be placed in solitary confinement.

While DOCCS' disciplinary data does not record a person's disability status, it does include their mental health status.

¹⁸ N.Y. Ins. Law § 137. Available at: <https://www.nysenate.gov/legislation/laws/COR/137>.

In 2018, seven percent of SHU sanctions (765) and nine percent of Keeplock sanctions (2,377) were given to people with an SMI. While many of these people are diverted to an RMHU, where confinement is less restrictive and there is more access to mental health care, up to a dozen serve time in SHU each month, and an unknown number are confined elsewhere.

In addition to the SMI diagnosis, DOCCS utilizes an Office of Mental Health (OMH) service level system that categorizes people who require mental health services from OMH levels 1 to 4.¹⁹ Not all people between levels 1 and 4 get an SMI classification; however, all persons with an SMI classification are between levels 1 and 4. Because the *SHU Exclusion Law* applies only to those with an SMI, people classified with an OMH level 1 through 4 who do not also have an SMI designation are currently not excluded from SHU.

In 2018, 32 percent of SHU sanctions and 36 percent of Keeplock sanctions were given to people with mental health service needs (OMH levels 1 to 4). Furthermore, on October 1, 2019, 11 percent of the SHU population had a major mental health disorder (OMH levels 1 and 2), and another 20 percent required shorter term mental health care.

Figure 8

DISCIPLINARY CONFINEMENT SANCTIONS (2018)

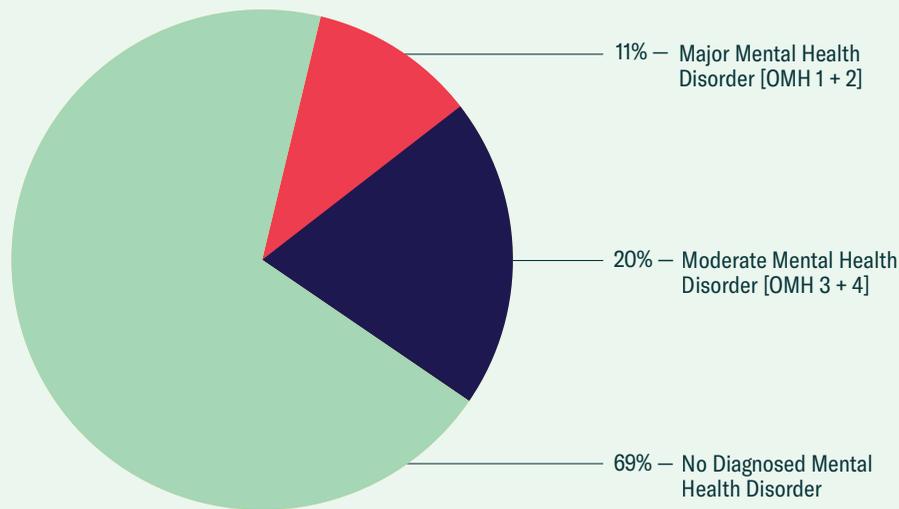


¹⁹ People requiring mental health services are classified by DOCCS Office of Mental Health into four levels:

- Level 1: Person diagnosed with a major mental illness and/or severe personality disorder with active symptoms and/or a history of psychiatric instability.
- Level 2: Person diagnosed with a major mental illness without significant “active” symptoms but with a history of complying with mental health treatment and of psychiatric stability.
- Level 3: Person who is or may be in need of short-term psychiatric medication.
- Level 4: Person who is or may be in need of short-term mental health intervention, excluding psychiatric medication.

Figure 9

SHU POPULATION BY MENTAL HEALTH STATUS (OCT. 1, 2019)



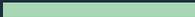
Comparison of Proposals

Both proposals use the same section of the state human rights law to define people with disabilities. However, their slightly different definitions of “special populations” create a stark contrast between the two proposals in terms of who would count as a special population and be excluded from segregated confinement.

DOCCS’ proposed regulatory amendments mandate that **special populations shall not be placed in segregated confinement or administrative segregation “for any length of time.”** However, for a person with a disability to be considered as a special population, DOCCS’ proposal requires that **“said disability impairs the individual’s ability to provide self-care within the environment of a correctional facility.”** This clause does not specify what “self-care” means, who would be authorized to make this determination, or how it would be made, which could create wide disparities in how the policy is interpreted. For example, a person with a diagnosed mental health disorder who is medicated into compliance could be seen as able to provide “self-care,” and thus would not be exempted from segregated confinement. Similarly, a person with hearing impairments who under normal circumstances would be perfectly able to provide self-care would likely also be excluded from the special population exemption, despite the increased harm that isolation would have to their mental health as a result of the compounded sensory deprivation.²⁰ Many people with disabilities, including those with an OMH level 1 to 4 without an SMI, may be excluded from the very definition that was designed to help protect them.

The HALT Act similarly mandates that **special populations shall not be placed in segregated confinement for any length of time.** However, unlike DOCCS’ proposal, the human rights law definition of disability is not caveated by any further clause, so all people with any disability would be exempted from segregated confinement. This means that under HALT, the exemption from SHU for people with an SMI would be extended to thousands more people with other physical and mental disabilities who are more vulnerable to the negative impacts of isolation. For example, the extension of this exemption to people with an OMH level of between 1 and 4 alone would decrease the daily SHU population by one-third. And the impact of the extension would be compounded by the fact that, unlike DOCCS’ proposal, it would additionally exempt people from Keeplock in a general population cell.

²⁰ American Civil Liberties Union, *Caged In: Solitary Confinement’s Devastating Harm on Prisoners with Physical Disabilities*, 2017. Available at: https://www.aclu.org/sites/default/files/field_document/010916-aclu-solitarydisabilityreport-single.pdf.



PROJECTED IMPACT

of DOCCS' Proposal and the HALT Act

PROJECTED IMPACT

The analysis below compares the projected impact of DOCCS' proposed regulatory amendments and the HALT Act if each were fully implemented today. Using a snapshot of people held in SHU on October 1, 2019, the NYCLU projects that DOCCS' proposal would likely lead to a 43 percent reduction in the SHU population, while the HALT Act would lead to an 88 percent reduction. Additionally, HALT's time-cap and restrictions would apply to tens of thousands of Keeplock sanctions served each year in a general population cell, whereas under DOCCS' proposal, these sanctions would be subject only to conditions changes and not caps or restrictions.

Restrictions on Who Can Be Held in Segregated Confinement

Non-Disciplinary Confinement: DOCCS' proposal would improve the conditions of non-disciplinary confinement, but would not impact the number of people who could be placed in segregated confinement for non-disciplinary reasons. The HALT Act would ban the placement of people under protective custody from segregated confinement, and would eliminate pre-hearing confinement except for a number of charges for which it would be capped at five days. This would exclude from the October 1 SHU population 57 people who were under protective custody and 215 people who had been in pre-hearing confinement for more than five days.

Age: DOCCS' proposal does not introduce new age restrictions for segregated confinement. The HALT Act expands age restrictions to people 21 and younger, and 55 and older, which would exclude 262 people from the October 1 SHU population.

Mental Health: Both DOCCS' proposal and the HALT Act bar people with disabilities (as defined in the State Human Rights Law) from being placed in segregated confinement. However, DOCCS' proposal narrows the exclusion to people with disabilities who are unable to "provide self-care," a term which they fail to define, and which could easily result in maintaining the status quo. Under a generous interpretation, this could possibly result in the exclusion of people with a serious mental illness (SMI) or OMH level 1 major mental health disorder. On the other hand, the HALT Act excludes all people with an SMI or OMH level between 1 and 4 from segregated confinement. Under these circumstances, DOCCS' standard could reduce the number of people in SHU on October 1 by up to 80 people, while the HALT Act would reduce it by 722 people.

Time-Caps

In addition to the difference in the timeline of implementation of the two proposals, at full implementation, DOCCS' regulatory amendments cap segregated confinement at 30 days, whereas the HALT Act caps it at 15 days. On October 1, 2019, 1,239 people had a SHU start date that was more than 30 days before October 1, and another 451 had a SHU start date that was between 15 and 30 days before October 1. However, the wording of each proposal's time-cap clause creates additional differences in their impact, particularly with regards to back-to-back sanctions. DOCCS' proposal, which caps "segregated confinement as a result of a disciplinary hearing" at 30 days, offers no language that would limit subsequent sanctions resulting from a separate disciplinary hearing. Of the 1,239 people who had a

SHU start-date more than 30 days before October 1, 294 were serving back-to-backs, whom under DOCCS' proposal could remain in SHU.²¹

The HALT Act includes a cap of 20 days within any 60-day period. Although available data does not track separate sanctions in SHU by individual over time, of the 655 people who had a SHU start-date that was 15 days or fewer before October 1, 63 people had actually been in a SHU cell for more than 20 days.

| PROJECTED IMPACT OF PROPOSALS (Based on SHU population of 2,345 on October 1, 2019) | | |
|--|---|-------------------|
| | <u>Number of People Excluded & % Impact on SHU Population</u> | |
| Restrictions | DOCCS | HALT |
| Protective custody | 0 | -57 / -2% |
| Prehearing confinement | 0 | -215 / -9% |
| Age | 0 | -262 / -11% |
| Disability ²² | -80 / -3% | -722 / -31% |
| Time-Cap | | |
| DOCCS 30-day cap, excluding back-to-backs | -945 / -40% | n/a |
| HALT 15-day cap & 20-day cap/60 days | n/a | -1,753 / -75% |
| Projected Total Daily SHU Population²³ (accounting for overlapping restrictions/caps) | 1,333 (-43%) | 280 (-88%) |

Segregated Confinement Outside SHU

DOCCS' proposal does not consider Keeplock served in a general population cell as segregated confinement, but the HALT Act does. As such, tens of thousands of Keeplock sanctions where people are isolated in their own cell each year, under HALT, would be capped at 15 days if not barred from being confined altogether. Under DOCCS' proposal, they would remain in Keeplock for the same length of time, but in improved conditions.

Taken together, DOCCS' proposal could reduce the daily SHU population by about 1,000 people. But the HALT Act could reduce the daily SHU population by about 2,000 people and end the torture of long-term confinement by tens of thousands of sanctions each year.

²¹ The regulations would allow DOCCS to hold people in SHU for more than 30 days on back-to-backs. This analysis projects that the 294 people who were in SHU for more than 30 days on back-to-backs would not be subject to the 30-day cap. However, it is possible that not all of the 294 people would continue to be held.

²² The projections for this category only take account of mental health disabilities, as data on other types of disabilities was not available.

²³ The total projected SHU population does not take account of restrictions on SHU punishable offenses put forth by each proposal as they are listed in vague categories that do not indicate specific charges. However, the list of offense categories is quite similar between proposals, and is thus projected not to have a differential impact.

CONCLUSION

Conclusion

The NYCLU's analysis reveals that DOCCS' proposed regulations do not adequately limit the use of solitary confinement. The proposed regulations fail to effectively restrict the many forms of solitary confinement, fail to end the continued use of torture through long periods of isolation, and fail to protect all vulnerable populations from the harms of solitary confinement. Conversely, the HALT Act would provide a much more humane approach to limiting solitary confinement. It imposes comprehensive restrictions on all forms of solitary confinement, ends the use of torture through long periods of isolation, and protects all vulnerable populations from the harms of solitary confinement.

The HALT Act would also provide greater transparency and accountability by requiring more in-depth public reporting on confinement practices and by requiring that an independent agency regularly evaluates DOCCS' compliance with confinement restrictions. And unlike the proposed regulations, neither DOCCS nor any future administration can roll back the HALT Act, because it is legislative, rather than regulatory, reform.

For all these reasons, the NYCLU believes that the HALT Act represents the more humane path forward to meaningfully curb the use of solitary confinement.

APPENDIX: COMPARISON OF DOCCS AND HALT PROPOSALS

| Issue | DOCCS Regulatory Amendments | The HALT Act |
|---|--|--|
| Segregated Confinement Definition | “The disciplinary confinement of an incarcerated individual in a special housing unit [SHU] or in a separate Keeplock unit.” | “Any form of cell confinement for more than seventeen hours a day other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment.” |
| Keeplock as Segregated Confinement | Applies only to Keeplock sanctions served in SHU or a separate Keeplock unit. | Applies to all forms of Keeplock. |
| Time-Caps and Timeline | 90-day cap on segregated confinement by October 2021, 60-day cap by April 2022, 30-day cap by October 2022. | 15-day cap on all segregated confinement within one year after bill’s passage. |
| Facility Rule Violations Specificities | Segregated confinement sanctions may only be given to people found to have committed or threatened to commit more serious acts of physical injury, forced sexual acts, coercion, inciting a serious disturbance, procuring deadly weapons or dangerous contraband, escape, or conduct constituting a felony under the penal law. | Segregated confinement sanctions may only exceed 3 days if the person is found to have committed or threatened to commit more serious acts of physical injury, forced sexual acts, extortion, coercion, inciting serious disturbance, procuring deadly weapons or dangerous contraband, or escape. |
| Consecutive Sanction Limits (Back-to-Backs) | No mandatory limits but officers are instructed to rely on de-escalation and other types of intervention as the “preferred” methods for responding to subsequent rule violations. | No person may be placed in segregated confinement for no more than 15 consecutive days or 20 total days within any 60-day period; For less serious rule violations, no person may be placed in segregated confinement for more than 6 days in a 30-day period. |
| RRU Time-Cap | No later than the expiration of the sanction imposed or upon successful completion of programming, whichever is earlier. | No later than the expiration of the sanction imposed or upon successful completion of programming, whichever is earlier, with a one-year maximum time in RRU. |

| Issue | DOCCS Regulatory Amendments | The HALT Act |
|--|---|--|
| Pre-Hearing Confinement | Upholds the right to hold people in SHU pre-hearing confinement, including for rule violations that are only punishable with Keeplock; Hearing must commence within seven days of initial confinement unless authorization is received to do otherwise. | Hearings must take place prior to confinement, with number of exceptions under which the hearing must take place within five days. |
| Administrative Segregation | 30-day eventual time-cap with the right to keep personal property. | 15-day time-cap. |
| Protective Custody | 30-day eventual time-cap with the right to keep personal property. | Bans the use of segregated confinement for those in protective custody. |
| Out-of-Cell Time | <p>SHU: At least 1 hour of out-of-cell time per day.</p> <p>Keeplock: 5 hours per day on weekdays excluding holidays, and 2 hours per day on all other days.</p> | At least 4 hours of out-of-cell <i>programming</i> per day for <i>all</i> segregated confinement. |
| Time-Cuts | Extends current SHU time-cut policies to SHU sanctions served in RRU; creates an additional time-cut policy for Keeplock. | Upholds existing time-cut policies. |
| Special Populations: Young People and People Over 55 | Bans segregated confinement for any amount of time for people under 18; Expands programming requirements and incentive program for alternatives to segregation for people under 18. | Bans segregated confinement for any amount of time for people 21 and younger, and 55 and older. |
| Special Populations: People with Disabilities | Bans segregated confinement for any amount of time for people with disabilities as defined in the state human rights law if said disability impairs the individual's ability to provide self-care within the environment of a correctional facility. | Bans segregated confinement for any amount of time for people with disabilities as defined in the state human rights law. |

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