

Solitary Reform in NY State Prisons: A Primer

On December 16, 2015, the New York Civil Liberties Union announced an overhaul to the use of solitary confinement in New York State prisons. The agreement, which is awaiting court approval, comes as a result of the NYCLU's 2012 class-action lawsuit, *Peoples v. Fischer*, challenging New York's use of solitary confinement. For more information on the NYCLU's lawsuit and campaign against solitary confinement, visit www.BoxedInNY.org.

Under this historic set of reforms, the state commits itself to (1) reducing the number of people put into solitary confinement (2) reducing the time people spend in solitary and (3) altering the conditions of solitary by abolishing some of its most dehumanizing aspects and emphasizing rehabilitative features that will improve overall safety -- for prisoners, prison guards and all New Yorkers.

The agreement is expected to last five years – three years for implementing reforms followed by a two-year monitoring period – and has been estimated to cost \$62 million. The 80-page settlement agreement contains dozens of reforms, reflecting the complexity of comprehensively reforming a practice deeply ingrained in the state correctional system for decades. Here is a summary of some of the major reforms.

Reducing the number of people placed in solitary

- The agreement will result in the end of traditional solitary confinement for over 1,100 people (one-quarter of the current solitary population). 388 people trapped in solitary with sentences longer than 180 days will be given common spaces and rehabilitative programming. 738 people will be removed from solitary and placed in less isolating units, the majority of which will include tailored rehabilitative programming to reduce isolation and improve safety. This includes:
 - 175 people who were placed in solitary for minor offenses
 - 275 people with longer-term sentences in need of more intensive behavioral therapy (a “step-down” program)
 - 163 people in need of drug treatment
 - 64 people who are developmentally disabled
 - 39 people who would otherwise be released directly from solitary to the streets
 - 22 juveniles

New policies will restrict the circumstances that solitary can be imposed as punishment. Under those policies, nearly half (42) of the 87 rule violations that are currently punishable by solitary no longer allow solitary sentences for first-time violations. Petty violations -- 23 out of the 87 violations -- are no longer eligible for solitary confinement sanctions at all.

- Solitary confinement sanctions will no longer be imposed for a one-time violation of rules regarding drug use or drug possession (drug-related violations have historically accounted for as many as one-fifth of the solitary population).

- Over 20,000 of Department of Corrections and Community Supervision (DOCCS) personnel will be trained on how to de-escalate situations before solitary becomes a consideration. All new corrections officers will also receive this training. Furthermore, staff working in solitary or in the new rehabilitative units will also receive training on how the stresses of solitary impact people's behavior. DOCCS will reach out to the U.S. Department of Justice for technical assistance with the training.
- All officers who give out disciplinary sentences will be required to consider interventions (e.g., counseling) or less severe forms of punishment (e.g., denying privileges) before issuing a sentence to solitary. When they do issue a solitary sentence, they must report in writing why it was necessary.

Reducing the time spent in solitary

- All people in solitary will now be eligible for automatic early release for good behavior and participation in rehabilitative programming. An individual's mental health status must be considered when evaluating whether to grant early release.
- Before the lawsuit, there were no maximum limits on solitary for any type of misbehavior. The settlement imposes a maximum sentence for solitary confinement of three months for all but a handful of violations such as assault and escape and a maximum sentence of 30 days for almost all first-time non-violent violations.
- Commonly-invoked violations that once gave correction officers wide discretion to impose long solitary sentences (e.g., disobeying orders) now carry a maximum of 30 days of solitary confinement for first-time violations.

Altering the conditions of solitary

All people in solitary will be provided access to telephone calls for the first time. This is critically important for the incarcerated and their families, who often live great distances apart, making visits difficult. All people in solitary will also be given the opportunity for more visits.

- For people expected to be in solitary longer than 180 days, the settlement establishes first-ever universal access to rehabilitative counselors and educational instructors, including substance abuse therapy and cognitive behavioral therapy.

People will never again be deprived of basic necessities, including food, as a form of punishment. The notorious food-as-punishment known as "the loaf" will be abolished.

- Every person being admitted to solitary will be given clear written notice of their ability to confidentially access mental health services.
- Policies will provide more safeguards when "double-celling," or putting two people into a solitary confinement cell, which has historically led to tension and distress.

There will be increased access to reading materials, radio and a shower curtain in shared cells

- DOCCS will conduct pilot projects providing offline tablet computers to people in solitary and “rolling phone carts,” which could dramatically expand telephone access.

Ensuring compliance

- The NYCLU will receive extensive electronic data each quarter to analyze progress.
- DOCCS will publicly post the size and composition of its solitary population every quarter, and post an update on the status of the reforms every year.
- Any exceptions that DOCCS makes to the rules limiting solitary will be reported to the NYCLU.
- A nationally recognized corrections expert chosen by the NYCLU will conduct advanced review of all materials and training, tour of solitary units for 40 days and confidentially interview people in solitary.
- The federal court will ultimately decide any disputes over compliance with the agreement. If New York is not successful in “significantly reducing” the use of solitary, the agreement can be extended for an additional year.

To download the full settlement agreement, please visit www.nyclu.org.