



Legislative Affairs
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2019-2020 Legislative Memorandum

Subject: The Humane Alternatives to Long-Term (“HALT”) Solitary Confinement Act (A. 2500 Aubry/ S.1623 Sepúlveda)

Position: SUPPORT

The use of solitary confinement in New York’s jails and prisons is inhumane. Thousands of New Yorkers are subjected to prolonged solitary confinement despite the growing body of research demonstrating that it can irreparably damage an individual’s health. Under state law, correctional officers have broad discretion to subject people to 23-hour isolation for prolonged periods of time, even for minor misbehavior, and including those most vulnerable to the psychological and physical harms of isolation. This discretion permits overt and implicit bias to corrupt the disciplinary process.

The HALT Solitary Confinement Act will end the most harmful uses of isolation and solitary confinement currently in practice throughout New York. The New York Civil Liberties Union supports this legislation and calls for its prompt passage.

Prolonged solitary confinement and the confinement of vulnerable populations constitute inhumane, degrading treatment.

International human rights and health organizations have roundly denounced the use of prolonged solitary confinement as a form of torture.¹ The World Health Organization, United Nations, and other international bodies have recognized solitary confinement as greatly harmful and potentially fatal. In 2016, the National Commission on Correctional Health Care issued guidance to correctional health officials explaining that a period of confinement beyond 15 consecutive days is “inhumane, degrading treatment, and harmful to an individual’s health.”²

Young people aged 21 or younger, the elderly aged 55 or older, pregnant women, women in post-partum recovery, individuals with disabilities (both mental and physical), and individuals with chronic mental illness are particularly vulnerable to the harms of isolation and should never be placed in solitary confinement.

¹ *Solitary confinement should be banned in most cases, UN expert says*, UN NEWS (Oct. 18, 2011), <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says> (defining solitary in excess of 15 days as a form of torture).

² Nat’l Commission on Correctional Health Care, Position Statement on Solitary Confinement (Isolation), <https://www.ncchc.org/solitary-confinement>.

A. *Young people aged 21 and younger and adults aged 55 or older*

Because the adolescent brain undergoes significant development until a person reaches their mid-20s,³ isolation can cause young people permanent psychiatric effects and symptoms, including suicidal ideation, major depression, and a disconnection from reality.⁴ Accordingly, national medical organizations, including the American Medical Association,⁵ the American Academy of Child and Adolescent Psychiatry,⁶ and the National Commission on Correctional Health Care,⁷ have unanimously rejected the use of solitary confinement for juveniles.

Recognizing the particular danger that young people in isolation face, jurisdictions around the country have ended the use of solitary for juveniles, individuals younger than 18. The New York State prison system, New York City's jail system housed on Rikers Island, the federal Bureau of Prisons, Connecticut, Colorado, Los Angeles, and juvenile detention facilities in more than 20 states across the country have already banned solitary confinement for juveniles.⁸ In *V.W. v. Conway*, the district court ordered Onondaga County jail officials to stop placing juveniles in solitary confinement after it found that jail officials were likely acting with deliberate indifference to the excessive risk solitary posed to the health and safety of the class of juveniles, in violation of the U.S. Constitution.⁹ Under the *V.W.* settlement, 16- and 17-year-olds can be confined to their cells for brief periods only if there is an imminent safety risk that less restrictive measures cannot resolve.¹⁰

Placing older adults in solitary confinement also creates a particular set of vulnerabilities to deteriorated health conditions. Older adults are more likely to have chronic health conditions such as heart disease, Alzheimer's disease, diabetes, and lower respiratory disease. Of the national population of incarcerated people over 50,

³ Young Adult Development Project: Brain Changes, Mass. Inst. of Technology, <http://hrweb.mit.edu/worklife/youngadult/brain.html>.

⁴ *V.W. et al. v. Conway, et al.*, 236 F. Supp. 3d 554 (N.D.N.Y. 2017).

⁵ In 2014, the American Medical Association approved a resolution stating solitary confinement is detrimental to adolescent health and should be prohibited, except for extraordinary circumstances, such as those that involve protection of the juvenile, staff, or other detainees. A.M.A. Interim Mtg. (Nov. 2014), https://www.ama-assn.org/sites/default/files/media-browser/public/hod/i14-resolutions_0.pdf.

⁶ The AACAP issued a statement in 2012 opposing the use of solitary confinement in juvenile facilities due to the extreme vulnerability of youth to adverse effects of this practice. American Academy of Child and Adolescent Psychiatry (AACAP), *Policy Statement: April Solitary Confinement of Juvenile Offenders* (2012), http://www.aacap.org/co/root/policy_statements/solitary_confinement_of_juvenile_offenders.

⁷ Position statement that juveniles, mentally ill individuals, and pregnant women be excluded from solitary confinement of any duration due to medical concerns. Nat'l Comm'n on Correctional Health Care, *Position Statement: Solitary Confinement* (April 10, 2016), <http://www.ncchc.org/solitary-confinement>.

⁸ A. Radelat, *CT civil rights panel seeks greater protections on solitary confinement*, CT MIRROR (Aug. 7, 2017), <https://ctmirror.org/2017/08/07/ct-civil-rights-panel-seeks-greater-protections-on-solitary-confinement/>; See also R. Raemisch, *Why we ended long-term solitary confinement in Colorado*, N.Y. TIMES (Oct. 12, 2017), <https://www.nytimes.com/2017/10/12/opinion/solitary-confinement-colorado-prison.html>.

⁹ *V.W. et al. v. Conway, et al.*, 236 F. Supp. 3d 554, 583 (N.D.N.Y. 2017).

¹⁰ Under the settlement, confinement for this population can still last longer than 15 days so long as the sentence is considered as the minimum period of time necessary to resolve the imminent threat.

73% report at least one chronic health condition.¹¹ Studies show that solitary confinement can increase the risk for older incarcerated people to develop, or experience exacerbation of, chronic health conditions.¹²

B. Pregnant women and women in postpartum recovery

International standards established by the United Nations require that pregnant women never be placed in disciplinary or administrative segregation given their unique susceptibility to solitary's harmful psychological and physiological effects.¹³ A recent study of reproductive health care for women incarcerated in New York confirmed that pregnant women in solitary are at high risk of harm.¹⁴ Periods of solitary confinement for pregnant women correlate with high stress, which impedes ability to fight infection, increases the risk of preterm labor, miscarriage, or low birth weight in babies, and causes depression for women with no pre-existing mental health issues.¹⁵ In addition, placing pregnant women in solitary can impede their access to necessary prenatal care.¹⁶ Solitary confinement is also harmful for women in postpartum recovery because it can increase the risk of women developing full-blown postpartum depression.¹⁷

The New York State prison system has already implemented a presumption against placing pregnant individuals in special housing units.¹⁸ Whether in prisons or jails, all pregnant women, women who recently gave birth, and mothers in nursery programs should be protected from the serious dangers of solitary confinement.

C. Individuals with disabilities and chronic mental illnesses

Given their heightened vulnerability, individuals with disabilities (whether mental or physical) and chronic mental illnesses should be not be placed in solitary confinement.

¹¹ Lucius & Couloute, *Aging alone: Uncovering the risk of solitary confinement for people over 45*, Prison Policy Institute (May 2017), https://www.prisonpolicy.org/blog/2017/05/02/aging_alone/.

¹² B. Williams, "Older Prisoners and the Physical Health Effects of Solitary Confinement," *Am. J of Public Health* (Dec. 2016), <https://ajph.aphapublications.org/doi/10.2105/AJPH.2016.303468>.

¹³ United Nations (Oct. 6, 2010), "United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders," a.k.a. the U.N. Bangkok Rules, http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/65/L.5. The U.N. Bangkok Rules are a set of 70 rules that were initiated by the government of Thailand to supplement existing international standards on the treatment of prisoners. Formerly known as the "United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders," the rules acknowledged the gender-specific needs of people incarcerated but applied to all prisoners regardless of gender.

¹⁴ Correctional Ass'n of N.Y., *Reproductive Injustice*, at 149 (Feb. 2015), <http://www.correctionalassociation.org/wp-content/uploads/2015/03/Reproductive-Injustice-FULL-REPORT-FINAL-2-11-15.pdf>.

¹⁵ *Id.*

¹⁶ Correctional Ass'n, *supra* n. 14; see also ACLU, *Worse Than Second-Class: Solitary Confinement of Women in the United States*, at 9 (Apr. 2014), https://www.aclu.org/sites/default/files/assets/worse_than_second-class.pdf.

¹⁷ *Id.*

¹⁸ *Peoples v. Fischer*, 898 F. Supp. 2d 618, 622 (S.D.N.Y. 2012). Settlement agreement between class of individuals who had been held in solitary confinement in New York's prisons and the N.Y. State Dep't of Corrections & Community Supervision ("DOCCS").

These individuals are vastly overrepresented in the nation’s jails today.¹⁹ The prevalence of serious mental illness among individuals in New York jails is nearly 15% for men, and twice as high for women.²⁰ Cognitive disabilities—including Down Syndrome, autism, dementia, intellectual disabilities, learning disorders and traumatic brain injury—are among the most commonly diagnosed disabilities in people in jail.²¹ Among individuals with physical disabilities, deaf individuals are most likely to be held in solitary or segregation, often as a “substitute for the provision of accommodations for and protection of deaf and disabled prisoners.”²²

Stronger protections are needed to address the state’s abusive solitary confinement practices.

The *Peoples* settlement agreement²³ was merely the first in a series of steps to be undertaken by the State to reform New York’s use of isolated confinement. Filed by the NYCLU in 2011, *Peoples* challenged the Department of Corrections and Community Supervision’s solitary confinement practices. In settling, the State agreed to reduce the number of infractions punishable by segregation, comply with guidelines on when to use solitary, and provide step-down programming to phase individuals who have been in long-term confinement to be held in general population. But for now, correctional officers in New York prisons can still subject people to solitary confinement for prolonged periods.

The HALT Solitary Confinement Act advances reform measures necessary to end abusive solitary confinement practices for individuals in jails and prisons. It prohibits any form of isolation exceeding 15 days and bans solitary confinement for vulnerable populations. Other jurisdictions have made similar improvements. In Colorado, correctional officials are no longer allowed to place anyone in long-term isolation that exceeds 15 days.²⁴

¹⁹ Ctr. for American Progress, *Disabled Behind Bars: The Mass Incarceration of People with Disabilities in America’s Jails and Prisons* (July 18, 2016), <https://www.americanprogress.org/issues/criminal-justice/reports/2016/07/18/141447/disabled-behind-bars/>.

²⁰ Testimony by New York Sheriff’s Association before the Assembly Committees on Corrections and Mental Disabilities, Nov. 2014.

²¹ *Id.*

²² See Helping Educate to Advance the Rights of the Deaf, “#DeafInPrison Campaign Fact Sheet,” <http://www.behearddc.org/images/pdf/deafinprison%20fact%20sheet%20.pdf>; see also HEARD, “HEARD Publishes Second Report on Abuse of Deaf Prisoners in Florida,” 2014, <http://www.behearddc.org/blogs-avlogs/109-heard-publishes-yet-anotherreport-on-abuse-of-deaf-prisoners-in-florida.html>; Ridgeway & Casella, “Deaf Prisoners in Florida Face Abuse and Solitary Confinement,” *Solitary Watch* (May 21, 2013), <http://solitarywatch.com/2013/05/21/deaf-prisoners-in-florida-facebrutality-and-solitary-confinement>. For HEARD’s database of deaf individuals who are behind bars, see HEARD, “Prison Advocacy,” <http://www.behearddc.org/advocacy/prison-advocacy.html>.

²³ *Peoples v. Fischer*, 898 F. Supp. 2d 618, 622 (S.D.N.Y. 2012). Settlement agreement between class of individuals who had been held in solitary confinement in New York’s prisons and the N.Y. State Dep’t of Corrections & Community Supervision (“DOCCS”).

²⁴ R. Raemisch, *Why we ended long-term solitary confinement in Colorado*, op-ed, N.Y. TIMES (Oct. 12, 2017), <https://www.nytimes.com/2017/10/12/opinion/solitary-confinement-colorado-prison.html>.

The HALT Solitary Confinement Act contains key provisions that could end abusive solitary confinement practices.

The HALT Solitary Confinement Act is rooted in the principle that no one should be subject to inhumane, degrading treatment. The bill prohibits correctional officers from resorting to solitary confinement as the default option for addressing disciplinary or administrative issues. The HALT Act reorients the system toward practices that emphasize treatment and rehabilitation over punishment and isolation.

Notably, the bill comprehensively defines “segregated confinement,” capturing all forms of confinement that exceeds 17 hours of isolation per day and rightly protect people held in SHU, keep-lock, involuntary protective custody, and voluntary protective custody.

The HALT Solitary Confinement Act would do the following:

- **Prohibit long-term solitary/segregated confinement** by limiting the time spent in confinement to not more than 15 consecutive days, or 20 days total in any 60-day period;
- **Ban solitary confinement of special/vulnerable populations:**
 - 21 years or younger;
 - 55 years or older;
 - anyone with a physical, mental, or medical disability;
 - anyone pregnant; or in the first 8 weeks of post-partum recovery period or anyone who is a new mother or caring for a child while in a jail or prison;
- **Require 6 hours of out-of-cell programming plus one hour of out-of-cell recreation per day;**
- **Create alternatives to isolated confinement and applying limitations for alternatives** by requiring larger jails to provide Residential Rehabilitation Units (RRUs) – rehabilitative units with access to support, services, and programs for behavioral needs, as well as 6 hours out-of-cell programming plus one hour of out-of-cell recreation and 60-day reviews for release determinations;
- **Allow reinstatement of credit toward early release for successful completion of RRUs for consideration for early release from jail/prison;**
- **Require necessary training for staff;** and
- **Require public reporting of who is in isolation, RRUs, and for how long.**

The HALT Solitary Confinement Act advances the ultimate goal of bringing an end to abusive solitary confinement practices. To enact anything less than such significant reform is to continue to ignore the principles and protections of the U.S. Constitution’s Eighth and Fourteenth Amendments.²⁵

The NYCLU strongly supports the HALT Solitary Confinement Act. We urge lawmakers to resist compromises that would allow the state to continue practices of torture, and pass this legislation in 2019.

²⁵ U.S. Const. amend. VIII and IXV; *see also Estelle v. Gamble*, 429 U.S. 97, 102 (1976).