



New York Civil Liberties Union

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Via certified mail and email

Cathy Y. Sheehan, Esq.
Deputy Commissioner and Counsel
New York State Department of Corrections and Community Supervision
1220 Washington Avenue
Albany, New York 12226

Re: Unlawful rulemaking activity with respect to HALT Act rules
Rule ID No. CCS-16-22-00003-EP

Dear Deputy Commissioner Sheehan:

We write to express serious concern over the New York State Department of Corrections and Community Supervision's ("DOCCS") ongoing failure, in violation of state law, to assess public comments on DOCCS rules implementing the Humane Alternatives to Long-Term Solitary Confinement Act ("HALT") in state prisons. By no later than December 9, 2022, we ask that you confirm whether and when DOCCS will produce such an assessment.

Over a year since HALT became law, DOCCS has declined to finalize permanent rules implementing the Act. Instead, after its initial combined emergency/proposed rulemaking in April 2022, DOCCS has bypassed the standard rulemaking process, implementing its HALT rules by repeatedly and successively invoking emergency rulemaking — on April 20; July 20; September 14; and, most recently, on November 16.¹

Although an agency may adopt emergency rules when necessary,² repeated re-adoption requires the agency to produce a contemporaneous assessment of public comments. *See* State Admin. Procedure Act ("SAPA") §§ 202(6)(a), (6)(e). This guardrail is designed to prevent agencies from using emergency rulemaking to avoid public accountability that the standard notice-and-comment process otherwise ensures.

¹ Dates refer to the date on which notice appeared in the State Register.

² This letter does not address the legitimacy of DOCCS's assertion that, on four successive occasions, emergency rulemaking has been "necessary for the preservation of the public health, safety or general welfare." SAPA § 202(6)(a).

To date, DOCCS has failed to assess any public comments submitted on its proposed HALT rules. These include comments from the very legislators who sponsored HALT, who raise serious and foundational concerns over the proposed rules' conformity with the Act.³ This failure represents a clear and unambiguous violation of the State Administrative Procedure Act and undermines core values of transparency and accountability that form the bedrock of our regulatory system.

DOCCS is obliged to account for its rulemaking activity to members of the public — including the tens of thousands of incarcerated New Yorkers whom its HALT rules will directly and profoundly impact. Accordingly, by no later than December 9, 2022, we ask that you confirm whether and when DOCCS will produce an assessment of public comments received on its proposed HALT rules.

We appreciate your attention to this important issue and look forward to receiving your response.

Yours sincerely,



Antony Gemmell
Director, Detention Litigation

³ Assertions in the two most recent notices of emergency rulemaking, dated September 14 and November 16, that DOCCS has “received no public comment since publication of the last assessment of public comment” are meritless. Nowhere does SAPA limit in this way the obligation to assess public comments. *See* SAPA § 202(6)(e). And the emergency rules in question merely incorporate by reference DOCCS’s original HALT rules, ID No. CCS-16-22-00003, on which DOCCS indisputably received public comments.