



HARVEY EPSTEIN  
Assemblymember 74<sup>th</sup> District

THE ASSEMBLY  
STATE OF NEW YORK  
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**Testimony in Opposition to Proposed Regulation CCS-35-19-00001**  
**Office of Assemblymember Harvey Epstein**  
**October 25<sup>th</sup>, 2019**

My name is Harvey Epstein and I am the Assemblymember representing New York's 74<sup>th</sup> Assembly District, which includes the neighborhoods of the Lower East Side, East Village, Stuyvesant Town/Peter Cooper Village, Murray Hill, Tudor City and the United Nations. Thank you for the opportunity to submit comments on the proposed regulations to restrict the use of solitary confinement.

Some 4,500 New Yorkers are currently in solitary confinement. I have met with individuals who have suffered under the current system to hear their stories of the physical and mental harm that solitary confinement has caused for them. While I appreciate the recognition from the Department that something must be done to address this crisis, the proposed regulations fall far short.

The regulations provide for an inadequate 30-day cap on solitary confinement, a 100 percent increase from the maximum established in the United Nations' Mandela rules, widely recognized by human rights organizations as the humane standard. The UN considers solitary confinement in excess of 15 days to be a form of torture. Worse, the proposed regulations would allow for incarcerated individuals to cycle in and out of solitary confinement indefinitely—one of the greatest injustices of the existing system that would be upheld under the proposed regulations.

A glaring loophole in the proposal would enable the use of de facto solitary confinement for almost any reason in the form of "keeplock confinement," wherein an incarcerated individual is restricted to their cell with limited opportunities for recreation. Incarcerated individuals in keeplock confinement are vulnerable to the same harmful mental and physical effects as their counterparts outside of the general population, yet not even the insufficient 30-day cap would apply to incarcerated individuals in keeplock confinement.

Many of the vulnerable populations to whom solitary confinement causes the greatest harm would continue to suffer if the proposed regulations were adopted. As defined in the proposal, "Special populations" is too narrow, leaving the door open for young people (18-21), people with disabilities and mental health needs, and the elderly, to be subjected to the harms of solitary confinement.

Finally, language in revised section 250.2(e) would lead to incarcerated individuals being



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placed in solitary confinement for “engaging in conduct constituting a felony under the penal law.” As written, this would mean incarcerated individuals who committed a non-violent felony could land in solitary confinement.

For the reasons stated above, I strongly oppose the adoption of the regulations as written and urge the Department to redraft them to (1) lower the cap on the number of days that can be spent in solitary confinement to 15 and prevent indefinite cycling, (2) close the keeplock loophole, (3) broaden the definition of “special populations” to include incarcerated individuals age 18-21, the elderly, and people with mental disabilities not covered under the proposed regulations, and (4) narrow the language in revised 250.2(e) to prevent incarcerated individuals who commit a non-violent felony from being automatically placed in solitary confinement.

Thank you for the opportunity to submit testimony on this important issue.