



CAMPAIGN FOR ALTERNATIVES TO ISOLATED CONFINEMENT (CAIC) TESTIMONY FOR NYS PUBLIC PROTECTION BUDGET HEARING

Regarding the New York State Executive Budget Proposals
State Fiscal Year 2018-2019
January 30, 2018

The Campaign for Alternatives to Isolated Confinement (CAIC) aims to end the torture of solitary confinement for all people through passage of the Humane Alternatives to Long-Term (HALT) Solitary Confinement Act, A. 3080-Aubry / S. 4784-Parker. CAIC is a community of people who have survived solitary, family members of people incarcerated, concerned community members, advocates, health and mental health professionals, and people in the human rights, faith, and social justice communities throughout New York State.

CAIC believes that New York State must make a myriad of policy changes to address the ongoing incarceration crisis in our state – including changes related to parole, merit time, bail, speedy trial, discovery, prison brutality, higher education, reentry, the racist nature of the system, and more. CAIC will defer to the testimony of its colleagues, allies, and member organizations on those topics, and will focus our testimony on the need for New York to end the torture of solitary confinement in our prisons and jails.

Governor's Proposal in Budget Regarding Solitary

It is positive that Governor Cuomo has recognized the need to address the use of solitary confinement in his budget proposal and that there have been small limitations on the use of solitary confinement as a result of the *Peoples* litigation and a proposal to limit solitary in jails through new regulations. At the same time, the Governor's plans – which do not appear to provide for any changes apart from what is required by the *Peoples* settlement or proposed in the flawed new regulations – fail to recognize how far behind other states New York State remains, the urgent need for dramatic and fundamental reform, or the opportunity for New York to become a leader in progressive policy.

Specifically, while Governor Cuomo praises the fact that New York prisons have 5% of those imprisoned in solitary confinement, that percentage is still worse than the national average of 4.4% and much worse than a number of states across the country that have less than 1% or 2% (and New York's current percentage in prisons is actually around 5.6%: 2,899 out of 49,635 as of 1/23/18). Similarly, while Governor Cuomo lauds the fact that New York prisons have reduced the number of people in solitary by 29%, other states around the country have reduced the number of people in solitary by upwards of 75% to 90%. By going from having the one of the worst records across the country with regard to the use of solitary to being just slightly less horrible and still worse than most of

the country is not something to be praising so heavily – New York still has a long way to go! Also, the 5.8% is just the percentage of people in one form of solitary in New York prisons – Special Housing Units (SHU) – and does not include people who are in 23- to 24-hour per day keeplock in their own cells, which is also solitary confinement and is estimated to be at least hundreds of people each day (and DOCCS refuses to provide information about the number of people in keeplock in their own cells).

Although not specifically addressed in his budget proposal, the Governor referenced in his state of the state book the proposed new regulations regarding solitary confinement in local jails. CAIC affirms the intent and attempt by Governor Cuomo and the State Commission of Correction (SCOC) to limit the use of solitary confinement in New York jails through the proposed regulations, including the spirit of ensuring that all people in solitary confinement receive at least four hours out-of-cell per day and children and pregnant women at least six hours out-of-cell. At the same time, CAIC believes that the failure of the Governor and SCOC to consult with people who are in solitary, have survived solitary, have had family members in solitary, or otherwise are advocates and experts on the topic, has resulted in poorly drafted proposed regulations that in many ways undermine the purpose of limiting solitary confinement. Moreover, the regulations are extremely limited and will continue to allow for thousands of New Yorkers to be subjected to the torture of solitary confinement each day, including because – among other flaws – the regulations do not apply to prisons, have no total time limit for how long a person can spend in solitary, and do not provide for meaningful alternatives.¹

What is Needed: the HALT Solitary Confinement Act

New York state must pass the Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A. 3080 / S. 4784 and thereby end the torture of solitary confinement for all people and create more humane and effective alternatives. Among other changes, HALT would: 1) end the torture of solitary for all people by imposing a limit of 15 consecutive days; 2) create more humane and effective alternatives to solitary that involve meaningful out-of-cell human contact and programs; 3) restrict the criteria that can result in solitary or alternative separation to the most egregious conduct in need of an intensive intervention; 4) ban certain groups of people from spending even one day in solitary and ending solitary confinement in protective custody units; 5) enhance procedural protections, staff capabilities, and transparency and accountability through mandatory reporting and outside oversight.

- 1) **End the torture of solitary confinement for all people by imposing a limit of 15 consecutive days in solitary**, and 20 days total in a 60 day period (whereas current practice or proposed regulations do not impose any total time limit);

¹ For a more in depth analysis of the limitations of the proposed regulations, see the comments on the regulations submitted by CAIC, *available at*: <http://nycaic.org/wp-content/uploads/2017/12/Campaign-for-Alternatives-to-Isolated-Confinement-CAIC.pdf>; *see also* comments submitted by numerous other people and groups: <http://nycaic.org/testimony/>.

Solitary confinement is torture. The entire United Nations General Assembly – consisting of every nation of the world, including with support and a vote by the United States – passed the Mandela Rules, which prohibit any person from being in solitary confinement beyond 15 consecutive days. These rules follow the standards articulated by the United Nations Special Rapporteur on Torture, who determined that any amount of time beyond 15 days in solitary for any person amounted to torture, or cruel, inhuman, or degrading treatment.

New York State should not be subjecting people in its prisons and jails to torture. People held 23-24 hours a day without any meaningful human contact or programs has long been demonstrated to cause devastating physical, psychological, and emotional harm. Yet thousands of people each day in New York prisons and jails spend 22 to 24 hours a day locked in a cell the size of an elevator, alone or with one other person. They may be permitted 1-2 hours to exercise alone in a cage; they do not receive any meaningful programs or therapy, and often cannot make phone calls. The sensory deprivation, lack of normal human interaction, and extreme idleness can lead to intense suffering and severe damage. Isolated confinement fails to address, and often exacerbates, underlying causes of difficult behavior as people deteriorate psychologically, physically, and socially. In turn, solitary confinement also decreases institutional and community safety.

Despite the 15 day prohibition in the Mandela Rules, people sent to solitary in New York State prisons and jails regularly spend months or years there; some individuals have been in solitary confinement in New York's prisons for more than two decades (upwards of 30+ years). New York currently places no limit on the total time a person can spend in isolated confinement and the changes from *Peoples* and the proposed regulations do not change that situation. Other states have dramatically reduced the number of people in solitary including by implementing effective time limits. Colorado prisons, for example, have [implemented a 15-day time limit](#) in line with the Mandela Rules, reduced the number of people in solitary from 1,500 (almost 7% of the prison population) to 18, and have seen positive results. New York must end the torture of solitary for all people.

- 2) **Create more humane and effective alternatives, by expanding the amount of out-of-cell time** guaranteed to all people who are separated to at least seven hours daily and ensuring that out-of-cell time involves **meaningful human contact and programs** (whereas current practice involves one hour out of cell per day for people in solitary and a few hours in the limited number of alternative units);

Solitary confinement is not only inhumane but also counterproductive. If people have to be separated from the general prison or jail population because they pose a serious risk of harm to the safety of others, there is no logical reason that they should be subjected to the extreme isolation of solitary confinement that will not only cause intense suffering and damage but also likely exacerbate what led the person to being separated. Instead, appropriate treatment and access to programs and recreation must be provided. Specifically, people must be given many hours of out-of-cell time per day, as well as access to meaningful programs and services aimed at addressing their underlying needs and the causes of their behaviors. What is needed is a fundamental transformation from a

focus on punishment, isolation, and deprivation, to a focus on accountability, rehabilitation, and treatment.

Other states and countries have implemented program-based alternatives to solitary that have proven both more humane and more effective. Colorado has utilized program-based alternatives to solitary and seen positive results. European countries rarely, if ever, utilize solitary confinement and instead have an intense focus on programming, connections to family and community, granting people autonomy and responsibility, creating conditions akin to life outside of incarceration, and preparation for returning home. New York itself has had very positive examples in both prisons and jails. The Clinical Alternatives to Punitive Segregation (CAPS) unit on Rikers Island is a much more program-intensive, treatment supported, and empowerment-based alternative to solitary confinement that has large amounts of out-of-cell time, utilizes de-escalation of difficult situations, and has greatly reduced the amount of violence and self-harm. The Merle Cooper program in New York prisons – now closed purportedly due to resource constraints – also provided a successful program-intensive, empowerment-based unit that involved complete separation from the rest of the prison population but no isolation of individual people.

- 3) **Restrict the criteria that can result in a person being placed in solitary** or otherwise separated to the most egregious conduct (whereas current practice and proposed regulations allow for very minor conduct to result in solitary);

The majority of sentences that result in solitary confinement in NYS are for non-violent conduct. People who engage in such conduct should never be isolated and also do not require an intensive rehabilitative and therapeutic intervention. Only those who truly pose a risk of harm to others should be separated so that resources can be focused on providing support to individuals who would actually benefit from such an intensive programmatic and therapeutic intervention.

In addition, restricting the criteria would help to limit the amount of discretion given to correction officers and other staff for imposing solitary confinement, and in turn would limit the amount of racial discrimination that infuses the process of sending people to solitary. Black people represent about 13% of all people in NYS, but 50% of those incarcerated in NYS, and nearly 60% of people held in long-term solitary confinement units in NY. The *New York Times* documented in 2016 what people who have been inside have long known, solitary confinement is fueled by racism and imposed disproportionately against Black and Latino people.

- 4) **Ban certain groups of people from spending even one day in solitary confinement**, by expanding the type of protected categories of people and ensuring that the protections for those groups provide meaningful support (whereas current practice and proposed regulations only impact 16- and 17-year-old children, pregnant women, and people with the most serious mental illness)

Countless people are in solitary confinement who are particularly vulnerable either to the effects of isolation itself or to additional abuse while in isolation. Young people, elderly people, people with disabilities, people with mental health or addiction needs, pregnant

women, and members of the LGBTQI community are subjected to solitary confinement. While solitary confinement is torture for all people, it can have particularly devastating effects on some of these categories of people, including a young person whose brain is still developing or a person with mental health needs that are exacerbated by being alone in a box.

Some individuals are put in solitary confinement not as punishment but presumably “for their own protection” but they are not then protected. For instance, young people or transgender women who are housed in prisons or jails for men are often put in solitary confinement for their own protection and then instead face additional abuse while inside. The conditions in protective custody generally resemble conditions in solitary confinement, with people spending 22 to 24 hours a day alone in a cell without any meaningful human contact or programs. Moreover, often the isolation that is connected with such confinement may lead to additional abuse by staff, rather than protection. One’s identity - whether sex, race, sexual orientation, age, religion, gender identity or expression - is not a justification for the torture of solitary confinement. And people shouldn’t have to choose between their safety and their mental, emotional, and physical well-being.

- 5) Enhance **procedural protections, staff qualifications and capabilities**, and **transparency and accountability** (whereas current practice and proposed regulations have almost none of these aspects)

The processes resulting in solitary confinement are often arbitrary and unfair, involve under-equipped staff, and take place with little transparency or accountability. As noted above, correction officers or other staff can often write disciplinary tickets for the most minor of reasons, or for false reasons or due to racial or other bias. Jails and prisons across the state are laden with staff brutality and other abuses. As one element of that, staff are not equipped to work with people with serious needs or who engage in challenging behavior, and so brute force and disciplinary sanctions as punishment become the only ways staff have of responding.

At the next level, the hearings or administrative procedures that result in placement in solitary confinement are not conducted by judges or other supposedly non-biased neutral decision-makers, but rather by corrections staff. In New York prisons, approximately 95% of the people who are charged with the most serious rule violations that can result in isolated confinement are found guilty.

Further, what takes place to lead people to solitary confinement or what happens to people while in solitary confinement often takes place essentially secretly, cut off from the outside world. Such a situation further creates an environment in which there is little oversight and no accountability and more opportunity for abuse. While the SCOC purportedly will be providing some oversight over some of the information that is being shared by jails under the current regulations proposal, it is absolutely critical that the public have a clearer understanding of how solitary confinement is being used in jails and prisons. Currently it is very difficult to even know how many people are in solitary

confinement in jails across the state. Similarly the state prisons do not even report the number of people in keepplock – one form of solitary – and so again the public doesn't even know how many people are in solitary on a given day, let alone why people are in solitary, for how long people have been in solitary, how many people are subjected to solitary in a given year, the demographic breakdown of who is in solitary, etc. This type of information should be readily and easily available to all members of the public as a way to shed light on what these public institutions are doing in our name and with our taxpayer dollars.

Conclusion: The Need for Fundamental Change

The use and abuse of solitary confinement in New York State must end. New York can no longer use the inhumane and counterproductive practice of solitary confinement for the lengths and reasons that is currently being practiced. Instead New York must end the torture of solitary and must create alternatives that are humane and effective.

Across New York State, nationwide, and internationally there have been innumerable statements denouncing solitary, including from [President Obama](#),² the [Pope](#),³ [Supreme Court Justice Kennedy](#) (concurrency starts on p. 33),⁴ the [Texas prison guards union](#),⁵ [NJ Legislature](#),⁶ the [NY Catholic Conference](#) (endorsing HALT),⁷ [NY Bishop Sharfenberger](#) (endorsing HALT),⁸ the [UN Special Rapporteur on Torture](#) (endorsing HALT),⁹ and the [NY Association of Psychiatric Rehabilitation Services](#) (endorsing HALT)¹⁰. Over 150 organizations across New York State support CAIC/HALT, including over a dozen mental health organizations around the state.¹¹ Over 100 NY legislators also now support HALT.

Recently, the Corrections Commissioner of Colorado documented in the *New York Times* why Colorado prisons have implemented a 15-day limit on solitary confinement for all people, reduced the number of people in solitary from 1,500 to 18 people, and adopted

² https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html.

³ <http://solitarywatch.com/2014/10/26/pope-francis-denounces-solitary-confinement-calls-for-prison-conditions-that-respect-human-dignity/>.

⁴ https://www.supremecourt.gov/opinions/14pdf/13-1428_1a7d.pdf.

⁵ <https://www.texasobserver.org/texas-prison-guard-union-calls-curtailment-solitary-confinement-death-row/>.

⁶ http://www.slate.com/blogs/xx_factor/2016/10/24/new_jersey_legislature_passes_bill_limiting_solitary_confinement.html.

⁷ <http://www.nyscatholic.org/wp-content/uploads/2016/02/2016-LEGISLATIVE-AGENDA-HALT-Act-FINAL.pdf>.

⁸ <http://www.timesunion.com/tuplus-opinion/article/Albany-bishop-Solitary-confinement-needs-reform-7238837.php>.

⁹ <http://nycaic.org/wp-content/uploads/2013/02/UN-Special-Rapporteur-on-Tortures-Statement-on-Solitary-in-NY-State.pdf>.

¹⁰ <http://www.nyaprs.org/e-news-bulletins/2017/015454.cfm>.

¹¹ <http://nycaic.org/campaign-members/>.

program-based alternatives.¹² It is time for Governor Cuomo, the New York legislature, and New York's prisons and jails to take this type of bold initiative and end the torture of solitary for all people. From North Dakota¹³ to Washington¹⁴ to Connecticut to Maine to Mississippi to North Carolina, other states have dramatically reduced the use of solitary confinement in a manner far surpassing the limited changes made in New York, while other countries rarely if ever use this inhumane, medically harmful, and counter-productive practice¹⁵.

Beyond ending the torture of solitary, New York must end the urgent human rights and racial justice crisis created by the incarceration system as a whole for the people incarcerated as well as their families and communities and all New Yorkers. New York must shift from its punitive approach (rooted in a racist system) to a public health and empowerment approach. Some concrete policy changes from NY policy-makers should be adopted this budget season or this legislative session: releasing elderly people and all parole-ready people from prison; improving access to quality healthcare for people incarcerated and ensuring continuity of care for people returning home; vastly improving health care for women, transgender people, and gender non-conforming people generally; ending the incarceration of people with mental health needs, of people with addiction issues, of people who are survivors of domestic violence, and others; reducing the number of all people incarcerated in prisons and jails more generally through bail, speedy trial, discovery and sentencing reform; stopping officer brutality of people in prison and closing some of the most notoriously horrific prisons and jails such as Attica, Clinton, Great Meadow, and Rikers Island; ensuring closer family and community ties for people while they're incarcerated; and addressing the intergenerational harm and trauma caused by the incarceration system and the other racialized systems of social control that preceded it through reparations and a truth, justice, and reconciliation commission.¹⁶

All of these policy changes, like ending the torture of solitary confinement, would have tremendous benefits for people who are currently incarcerated and their families and communities, and for New York State as a whole.¹⁷ Ultimately, we urge the entire New York legislature and Governor to take an expansive view of justice reform in New York to encompass all of these solutions, and to end the torture of solitary confinement through HALT and make other bold and transformative policy changes to ensure the health and well-being of all of our fellow New Yorkers.

¹² Rick Raemisch, *Why We Ended Long-Term Solitary Confinement in Colorado*, Oct. 12, 2017, available at: <https://www.nytimes.com/2017/10/12/opinion/solitary-confinement-colorado-prison.html>.

¹³ Dashka Slater, *North Dakota's Norway Experiment*, Mother Jones, July/Aug. 2017, available at: <http://www.motherjones.com/crime-justice/2017/07/north-dakota-norway-prisons-experiment/>.

¹⁴ *More Than Emptying Beds: A Systems Approach to Segregation Reform (Washington State)* (2016), available at: <https://www.bja.gov/publications/MorethanEmptyingBeds.pdf>

¹⁵ See, e.g., <http://archive.vera.org/sites/default/files/resources/downloads/european-american-prison-report-v2.pdf>; <http://solitaryconfinement.org/uploads/DeepCustodyShalevAndEdgar.pdf>.

¹⁶ See, e.g., <https://nationinside.org/campaign/challenging-incarceration/facts/>.

¹⁷ See, e.g., The Editorial Board, *Mass Imprisonment and Public Health*, The New York Times, Nov. 26, 2014, available at: <https://www.nytimes.com/2014/11/27/opinion/mass-imprisonment-and-public-health.html>; *On Life Support: Public Health in the Age of Mass Incarceration*, Nov. 2014, available at: <https://www.vera.org/publications/on-life-support-public-health-in-the-age-of-mass-incarceration>.