



New York Advocates Fight for Solitary Confinement Reforms

By Jean Casella

Under pressure from a lawsuit brought by the New York Civil Liberties Union on behalf of three people held in long-term solitary confinement, New York has agreed to a set of changes to its use of solitary and other forms of extreme isolation in state prisons. The agreement, announced on February 19, would bar certain vulnerable populations from isolated confinement, while for the first time setting firm guidelines and maximum durations for isolating others.

New York currently holds some 3,800 men, women, and children in 23-hour-a-day isolation in small, sometime windowless cells, either alone or with one other person. “The conditions inside New York’s isolation cells are deplorable and result in severe physical and psychological harm,” stated the original complaint in *Peoples v. Fischer*, filed in Federal District Court in Manhattan in December 2012. The complaint, which charges the state with violating the plaintiffs’ Constitutional rights under the 8th and 14th Amendments, continues:

Individuals are confined idle and isolated for months and years on end in tiny cells. They are allowed only one hour of exercise a day in barren cages smaller than their cell. As additional punishment, prison staff may issue orders depriving individuals of what little remains—access to nourishing and edible food, exercise, bedding, and showers may all be denied. At some prisons, two men are forced to share a single isolation cell for weeks and months on end, often leading to violence. Requests for mental health care must be discussed through the food slot in the cell door.

People are placed in isolation on the

word of corrections staff, who issue tens of thousands of disciplinary “tickets” each year that result in time in the state’s numerous Special Housing Units (SHUs) or its two supermax prisons. Five out of six tickets are for nonviolent misbehavior, according to a 2012 report by the NYCLU. The average SHU sentence is five months, but many extend for years and a few have stretched to decades. UN Special Rapporteur on Torture Juan Méndez has stated that solitary confinement beyond 15 days is cruel, inhuman, and degrading treatment, and often qualifies as torture.

The most dramatic reform brought about by the agreement between the state and the NYCLU is a ban on using solitary to discipline youth under the age of 18, which makes New York the largest state in the nation to prohibit the practice for juveniles in state prisons. In New York, 16 and 17 year olds accused of a felony are automatically tried and incarcerated as adults, and large numbers have ended up in the SHUs, sometimes for “their own protection.” Under the new deal, juveniles with serious disciplinary violations would be placed in special units with more out-of-cell time and special programming.

The agreement also bans placing pregnant women in solitary, and sets a 30-day limit on isolating people with developmental disabilities. A 2007 court settlement and a law enacted in 2011 already prohibit the use of isolated confinement for people with serious mental illness (though evidence suggests that hundreds may still remain isolated, largely due to issues around diagnosis).

“It made sense to immediately remove these vulnerable populations from ex-

treme isolation,” Taylor Pendergrass, the NYCLU’s lead attorney in the suit, told Solitary Watch. “But in the longer term, we believe this process will bring about more comprehensive reforms that will affect many more people.” Those reforms will come, in large part, in the form of “sentencing guidelines” that designate punishments for different disciplinary infractions, and for the first time set maximum sentences in the SHU. The negotiated guidelines are covered by a confidentiality agreement until staff can be trained and the new rules put in place—a process that should take no more than nine months, Pendergrass said.

The deal also calls for New York State and the NYCLU to each choose an expert who will assess the use of isolated confinement throughout the prison system over the next two years and make further recommendations for change.

Even then, however, the reforms will probably be limited, and will bring only modest changes to the lives of some individuals in solitary—particularly those who are in administrative rather than disciplinary segregation.

More sweeping changes to the state’s use of solitary confinement is envisioned in a bill introduced in the New York state legislature. On January 31, legislators joined with advocates, survivors of solitary confinement, and family members of those in isolation in a press conference to announce the Humane Alternatives to Long-Term (HALT) Solitary Confinement Act.

Introducing the speakers at the press conference, Claire Deroche of the National Religious Campaign Against

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Torture called the bill “the most comprehensive and progressive legislative response to date to the nationwide problem of solitary confinement in our prisons and jails.” It would limit solitary confinement to 15 days, and create new alternatives for those deemed a longer-term safety risk to others, replacing the punishment and deprivation of New York’s SHUs with “Residential Rehabilitation Units” offering therapy, programming, and more out-of-cell time.

In addition, the HALT Solitary Confinement Act would completely ban the use of isolation on vulnerable populations, including not only youth and pregnant women but also the elderly, all people with physical, psychological, or developmental disabilities, and those identifying as LGBTQ.

The bill is being sponsored in the Assembly by Jeffrion Aubry (D, Queens), called solitary confinement “an issue whose time has come.” Aubry said it was time to set standards for treatment of all people in prison, regardless of their offenses. “I don’t believe that having committed a crime suspends your human rights” said Aubry. “That’s not the America I want to live in. That’s not the New York State I want to live in.”

The legislation’s Senate sponsor, Bill Perkins (D, Harlem) pointed out that solitary is increasingly being seen as a “moral issue” and a “crime against humanity.” The 15-day limit set by the bill conforms to recommendations made by UN Special Rapporteur on Torture, Juan Méndez, but far surpasses restrictions currently placed on solitary in any American prison system.

Five Mualimm-ak began his statement at the press conference by telling listeners: “I lived five years of my life in a space the size of your bathroom.” Mualimm-ak, who said he never committed a violent act in prison, was given stints in solitary for offenses as minor as “wasting food” by “refusing to eat an apple.” “New York State should be a leader” when it comes to prison conditions, said Mualimm-ak, who has been out of prison for two years and is working against what he calls “solitary torture.” Instead, New York state prisons and city jails practice isolated confinement at levels well above the national average.

Wrapping up the event, Scott Paltrowitz of the Correctional Association said that the legislation, “recognizes that we need a fundamental transformation of how our public institutions address people’s needs and behaviors, both in our prisons and in our communities.”

The legislation is in large part the work of the New York Campaign for Alternatives to Isolated Confinement (CAIC), which describes itself as joining together “advocates, formerly incarcerated persons, family members of currently incarcerated people, concerned community members, lawyers, and individuals in the human rights, health, and faith communities throughout New York State.” CAIC considers solitary and all forms of prison isolation to be “ineffective, counterproductive, unsafe, and inhumane,” and cites evidence showing that solitary confinement increases recidivism while failing to reduce prison violence.

The legislation, drafted over the past year, is more ambitious and far-reaching than bills on solitary that have been introduced in other states. As a result, it is unlikely to pass in anything resembling its current form—but supporters are determined to push forward. “The HALT Solitary Confinement Act implements rational, humane alternatives to the costly, ineffective, and abusive use of long-term solitary confinement in New York prisons and jails,” said Sarah Kerr of the Legal Aid Society’s Prisoners’ Rights Project, who helped draft the legislation. “The need for reform is well-documented and the time for change is now.”

About Solitary Watch

Solitary Watch (www.solitarywatch.com) is a web-based project aimed at bringing solitary confinement out of the shadows and into the light of the public square. Our mission is to provide the public—as well as practicing attorneys, legal scholars, law enforcement and corrections officers, policymakers, educators, advocates, and people in prison—with the first centralized source of background research, unfolding developments, and original reporting on solitary confinement in the United States.

The print edition of Solitary Watch is produced quarterly and is available free of charge to currently and formerly incarcerated people, to prisoners’ families and advocates, and to non-profit organizations. To receive a copy, send a request to the address or email below.

We also welcome accounts of life in solitary confinement, as well as stories, poems, essays, and artwork by people who have served time in isolation. Please send contributions to “**Voices from Solitary**” at the address below.

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Voices from Solitary: A Day in the Life

The following essay was written by Sarah Jo Pender, 34, who is currently 13 years into a 110-year sentence at the Indiana Women's Prison on the far west side of Indianapolis for escaping from prison in 2008, at which time she was placed in solitary confinement. In early February, Solitary Watch received word that, after spending over five years in isolation, Pender was recently moved out of solitary to a transition dorm, where she will remain 90 days before being moved back with the general population. —Lisa Dawson

My name is Sarah Jo Pender. I have been held under the wide thumb of prison administrators for five years in solitary confinement at the Indiana Women's Prison. My official punishment for escaping ended four years ago, but I am still here and there is nothing I can do to get myself out.

Generally, women in segregation are held between two weeks and six months, though multiple offenses can extend sentences to years of punishment. The isolation unit is comprised of twenty-five single cells along one hall separated from general population. My cell is 7' x 10' of painted concrete, white and chipping, with a barred, sealed window at the rear and a steel door with a small observation window at the front. A slab of concrete and thin mattress makes my bed. A stainless steel sink and toilet encrusted with years of use sits three feet from my head when I sleep.

Food is never hot and is served on plastic trays through a hatch in the door. Sometimes, it is tolerable only if I don't chew it first. Unpalatable globs of flour that was once upon a time pasta is drenched in a tomato base and served sixteen different ways mixed with mechanically separated chicken bits and soy pellets marked for animal feed. However, the bread is always edible and I can buy a jar of peanut butter if I want. What a luxury.

Here, it is cold. Artificial ventilation blows directly onto my bed so that no amount of repositioning brings relief from the chill. My bed must be made by 7 a.m. each day, so that I cannot access my full bed linens during the day when it is the coldest. The captain threatens to strip our cells of belongings, including all bedding if we are caught covering ourselves with the sheets during the day. I am wearing three pairs of socks right now, and my toes are purple and stinging cold.



I am confined to my cell 22 hours each day, and the other 2 hours am handcuffed and escorted 25 feet down the hallway to another locked room for "recreation and exercise," though the space is only twice the size of my cell. In the largest room, I can take nine steps before I must turn around again and again. But there is a television that I can watch public broadcasting and lots of books. Books keep us sane. Since books are a main source of time management and entertainment, the prison uses them as a method of punishment. Women on disciplinary status are only allowed one non-religious book and one religious book at a time. I am allowed to possess up to five books. If we are caught with too many books during a room search, we are subject to further discipline.

Six days a week, my hands are restrained through the door hatch and an officer escorts me into a shower room. Four stalls line one wall; each stall is enclosed by three concrete walls and a steel mesh door that shuts us in and gets locked. I have fifteen minutes to shower with an

army of black bugs on the walls. Black mold peppers the baseboards and thick scales of scum cling to ripped shower curtains. Then I am recuffed and escorted back to my perpetually cold cell.

As a kid, I slept with my bedroom door cracked for a sliver of the hall light to visually orient me when my bladder woke me up at night. Now, my room is constantly lit even at 2 a.m. I can push a button to dim the fluorescent bulbs, but I can never, ever sleep in darkness. However, the nights are usually quiet, except for the occasional slamming metal door, ringing phone, and piercing scream from one of the actively psychotic or suicidal women housed on the unit.

Despite knowing that isolation can drive people insane, the mental health care here is woefully inadequate. Once a month, a mental health staff comes to ask us if we are hallucinating, hearing voices, or are suicidal. More frequent meetings can be requested, but they offer no coping skills, no therapy, no advocacy. The luckiest among us are prescribed anti-depressants to numb us from the hardest parts of being alone.

I am fortunate to have incredible support from my family and friends. To pass the time, I read, write, learn and plan for the future when I can be with them again. What sanity I eek out of these letters, books, phone calls and visits is enough to sustain me just a little longer. I am mentally stable now, but my mind broke down under the weight of isolation 3 1/2 years ago, and it was a long, slow, painful process of putting myself back together.

Acutely psychotic women who refuse medication are frequently locked in a cell where they bang and talk and argue with voices, scream about God and demons, and/or refuse to shower or eat for fear of being poisoned. This can go on for weeks until some

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invisible threshold is crossed and officers dressed in full riot gear come in, hold her down, and a nurse injects her with an anti-psychotic medicine. This scene gets repeated every two weeks until she cooperates.

Other women who enter sane will become so depressed that they shut down or hurt themselves. I watched a woman claw chunks of flesh from her cheeks and nose and write on the window with her blood. My neighbor bashed her head against the concrete until officers dragged her to a padded cell. When she returned, the scab on her forehead was huge and shaped like the country of Brazil. Right across from my cell, a woman slit her own throat with a razor and was wheeled out on a gurney. Two others tried to asphyxiate themselves with bras and shoe-

strings. Now no one has shoestrings and we shuffle around in floppy tennis shoes with loose tongues. Once, I found some embroidery floss and tied up the middle lace holes to keep myself from tripping. A guard demanded that I give her the five inch strings and then formally punished me for this violation. Another woman cut her wrists using the metal band around a pencil eraser. Now, all our pencils are stripped naked. It is always the poor prisoner porter who is forced to clean up the blood puddles and shit smears left behind when someone's mind spirals down the rabbit hole.

How is this an acceptable management tool for human beings? Short-term isolation is understandably useful for investigations, medical quarantines, emergencies, etc., but using long-term isolation to manage behavior is inhumane and hateful,

especially when prison administrators do not offer a clear alternative. There is no behavioral therapy, no guidance, no education. There are no identified, achievable goals for the prisoner to earn her way out of isolation. The decisions seem arbitrary and capricious at best. There is no due process to protect our miniscule civil rights.

In the thirteen years I have been held prisoner, I have never committed an act of violence. I escaped from another prison over five years ago with the help of a prison guard. I essentially walked out of the back door. Today, that guard is at home a free man while I am still kept in this earthly purgatory. Why and for how long I do not know, because the prison administrators refuse to tell me. How's that for human rights in America?

CALIFORNIA—In the wake of a massive hunger strike last summer and fall in California's prisons, the legislature held hearings on the use of solitary confinement, and on the new "step-down program proposed by the Department of Corrections and Rehabilitation. Advocates, along with some legislators, remain critical of the program because it relies entirely on "debriefing" or participating in "behavior modification" as paths toward release from the state's notorious "Security Housing Units, where many are currently held for years or decades. Legislation to limit the use of solitary has now been proposed in the California Assembly.

NEW YORK CITY—Under pressure from years of activism and two scathing reports, New York City jails have been forced to begin reducing their use of solitary confinement, particularly for youth and people with mental illness. While many on Rikers Island remain in dismal conditions, some have been moved to new therapeutic units. The New York City Board of Correction, which has oversight of city jails, has also voted to develop new rules governing the use of isolation.

News Briefs

SOUTH CAROLINA—In December, a state judge ruled that prison officials were culpable of systemic, ongoing violations of the state's constitution through their use of solitary confinement and other forms of abuse and neglect on individuals with mental illness in South Carolina's prisons. "Inmates have died...for lack of basic mental health care," the judge stated, "and hundreds more remain substantially at risk for serious physical injury, mental decompensation, and profound, permanent mental illness."

NEW MEXICO—After a year-long study, the New Mexico Center on Law and Poverty and the ACLU of New Mexico issued a report in November on the state's use of solitary confinement, which far exceeds the national average. About 16 percent of the state's prison population is in isolation, and terms in solitary average three years. An independent group is now looking at ways to reduce the use of isolation in New Mexico's prisons.

LOUISIANA—Herman Wallace, one of the two remaining members of the Angola 3 who remained incarcerated in solitary confinement after more than 41 years, died on October 4, 2013, after a brief taste of freedom. He was 71 years old. Three days prior to Wallace's death, a judge had overturned his conviction in the 1972 murder of an Angola corrections officer, and ordered him released immediately, despite efforts by the state of Louisiana to keep him jailed pending a new trial.

NATIONAL CALL FOR SUBMISSIONS—Architects/Designers/Planners for Social Responsibility is seeking drawings of the SHU/solitary confinement. Please include a short description of the space and your experience being there, and a statement giving ADPSR permission to publish your drawing. All work will be displayed online and some will be part of a traveling exhibition which will support ADPSR's proposal to prohibit architects from designing execution chambers and spaces designed for long-term solitary confinement. Work accepted until May 30, 2014. Send to: ADPSR, PO Box 9126, Berkeley, CA 94709.