



Correctional
Association
OF NEW YORK

A Force For Progressive Change Since 1844

2090 Adam Clayton Powell, Jr. Boulevard, Suite 200 New York, NY 10027
tel (212) 254-5700 fax (212) 473-2807 www.correctionalassociation.org

**Testimony by Scott Paltrowitz, Associate Director, Prison Visiting Project
The Correctional Association of New York
Before the Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety
Consequences February 25, 2014**

The Correctional Association of New York (CA) would like to thank the Subcommittee for the opportunity to present testimony about the need for fundamental reform of the abuse of solitary confinement at the federal, state, and local levels. The CA has had statutory authority since 1846 to visit New York State's prisons and to report its findings and recommendations to the legislature, other state policymakers, and the public. Our access provides us with a unique opportunity to observe and document actual prison practices and to learn from incarcerated persons and staff. As we documented in our testimony to this Subcommittee in June 2012, New York State both exemplifies the abuse of solitary confinement and the possibilities of reform. Given the more extensive testimony on the use of solitary in NYS in our June 2012 testimony – including an overview of the use of solitary and the positive aspects and limitations of the SHU Exclusion Law limiting the solitary confinement of people with the most severe mental health needs¹ – this submission will give a brief summary update on the ongoing use of solitary in NYS, and then will focus on suggestions for comprehensive reform. Specifically, the testimony will outline and explain five key components that should be implemented at the federal, state, and local levels across the country to end the inhumane and counterproductive use of solitary confinement and to create more humane and effective alternatives. For each component, the testimony will also utilize newly proposed legislation in New York, the Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A08588 (Aubry) / S06466 (Perkins)² as a model for such implementation. Finally, the testimony will offer some concrete steps that Congress itself can take to move toward fundamental reform of the use of solitary confinement.

Summary Update of Use of Solitary Confinement in NYS

Based on the CA's investigations of prisons in NYS, the inhumane and counterproductive use of solitary confinement³ in NYS has generally continued since the time of the last Congressional hearing on solitary before this Subcommittee, although there have been some limited positive changes

¹ Testimony by the Correctional Association of New York, Before the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Human Rights Reassessing Solitary Confinement, June 19, 2012, *available at*: <http://www.correctionalassociation.org/wp-content/uploads/2012/10/testimony-solitary-confinement-june-2012.pdf>.

² An electronic version of the proposed legislation is attached to this testimony and is also *available at*: http://assembly.state.ny.us/leg/?default_fld=&bn=A08588&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y.

³ In New York State, many individuals are confined in double cells and are held in conditions of isolation with that second person. People in such confinement are still locked in their cells 23 or 24 hours per day, without meaningful human interaction or programming, and the negative effects of such isolation have been shown to be as harmful or sometimes more harmful than solitary confinement of a single person. In this testimony we will thus sometimes use the term "isolated confinement" in place of solitary confinement.

and positive steps toward potential future change. Specifically, whether for disciplinary confinement, administrative segregation, or protective custody reasons, people in either Special Housing Units (SHU) or keeplock⁴ in NYS prisons continue to spend 22 to 24 hours per day locked in a cell, without any meaningful human interaction, programming, therapy, or generally even the ability to make phone calls, and generally being allowed only non-contact visits if they receive visits at all. The sensory deprivation, lack of normal human interaction, and extreme idleness has long been proven to lead to intense suffering and psychological damage. A recent study conducted in New York City jails, written by authors affiliated with the New York City Department of Health and Mental Hygiene, and published in the American Journal of Public Health, found that people who were held in solitary confinement were nearly seven times more likely to harm themselves and more than six times more likely to commit potentially fatal self-harm than their counterparts in general confinement, after controlling for length of jail stay, serious mental illness status, age, and race/ethnicity.⁵

Although there appear to have been some decreases in the use of SHU in NYS prisons since the time of the last hearing before this Subcommittee on solitary, there are still far too many people who are subjected to isolated confinement – with more than 3,800 people in SHU as of September 2013, in addition to the many others in state prison who are subjected to keeplock, and the thousands who are in solitary in local city and county jails. Contrary to popular belief, isolated confinement is not primarily used to address chronically violent behavior or serious safety or security concerns, but continues to often come in response to non-violent prison rule violations, or even retaliation for questioning authority, talking back to staff, or filing grievances. Although the United Nations Special Rapporteur on Torture has concluded that isolated confinement beyond 15 days amounts to cruel, inhuman, or degrading treatment, or torture, people in NYS prisons regularly remain in isolated confinement for months and years, and sometimes even decades. The people subjected to isolated confinement are disproportionately African Americans, representing 60% of the people in SHU compared to the already vastly disproportionate 50% of people in NYS prisons and 18% of the total NYS population. The people subjected to isolated confinement also include people particularly vulnerable to either the effects of isolation itself or additional abuse while in isolation, including young and elderly people, people with physical, mental, or medical disabilities, pregnant women, and members of the LGBTI community.

On February 19, 2014, the NYS Department of Corrections and Community Supervision (DOCCS) agreed to an interim stipulation with the New York Civil Liberties Union and the their incarcerated person clients in a potential class-action lawsuit about the use of solitary in NYS prisons.⁶ Some of the key components of the stipulation include: creating alternative disciplinary units with some additional out-of-cell time for 16 and 17 year olds and people with developmental disabilities;

⁴ Keeplock refers to individuals confined for 23 or 24 hours a day either in their same cell in the general prison population or in a separate cellblock.

⁵ Homer Venters, et. al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, American Journal of Public Health, Mar. 2014, Vol. 104, No. 3, available at: <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742>. A separate recent panel of scientists at the annual meeting of the American Association for the Advancement of Science also further reported on the harmful psychological and neurological effects of solitary. See Joseph Stromberg, *The Science of Solitary Confinement*, Smithsonian Magazine, Feb. 19, 2014, available at: <http://www.smithsonianmag.com/science-nature/science-solitary-confinement-180949793/#.Uwoq5RSWaQ.email>.

⁶ *Leroy Peoples, et. al.v. Brian Fischer, et. al.*, Docket Number 11-CV-2964 (SAS), Stipulation for a Stay with Conditions, available at: http://www.nyclu.org/files/releases/Solitary_Stipulation.pdf.

establishing a presumption against solitary confinement of pregnant women; and calling upon experts to offer recommendations for more comprehensive reforms.⁷

These provisions of the stipulation are a positive step forward, and at the same time much more fundamental reform is still needed. Specifically, positively, the stipulation essentially recognizes the inhumane and counterproductive nature of solitary and the need for alternatives that include additional out-of-cell time and improved conditions and services. The stipulation also positively recognizes that solitary has particularly negative effects on young people, people with developmental disabilities, and pregnant women and that there should be limitations on the use of solitary for people who are part of such particularly vulnerable groups. Moreover, the stipulation recognizes that the provisions of the stipulation are initial steps and that more comprehensive reform is needed.

All of these positive recognitions are important first steps and should be expanded upon. For example, as will be discussed in further detail in the next section, the recognition of the need for more humane and effective alternatives to solitary confinement should be expanded both in terms of applying to all people who are separated from the general prison population and in terms of the nature of those alternatives and the amount of out-of-cell time offered. Also, the recognition that certain vulnerable groups should not be placed in solitary confinement should be expanded to include additional vulnerable groups discussed below and to ensure that such groups are never placed in solitary for any length of time. Specifically pertaining to young people, the recognition that 16 and 17 year olds need to receive different treatment than others should be expanded to raise the age of criminal responsibility entirely, such that 16 and 17 year olds are never placed in prison at all, and instead are always in supportive, non-punitive, developmentally appropriate small group environments with specially trained staff.⁸ Similarly, the recognition that young people need to be treated as young people and not subjected to inhumane treatment should be expanded to include not only 16 and 17 year olds but all young people into their mid-twenties, in line with what brain and youth development research has recognized that young people continue to develop mentally, emotionally, and socially into their mid-twenties.⁹ In addition, the recognition that placing people in solitary confinement for extended lengths of time can have detrimental effects needs to be expanded to recognize that long term solitary harms *all* people subjected to it and thus there needs to be dramatic reductions in the lengths of time any person, whether part of a particularly vulnerable group or not, spends in solitary confinement. Moreover, given that the provisions of the stipulation are currently conditional in nature and often settlements are time limited, it is crucial that all positive reforms made should become permanent policy changes, preferably through legislation. Overall, the steps already taken in NYS and this new stipulation are positive developments that need to be expanded upon in NYS and across the country.

A Proposed Model for Comprehensive Reform Across the Country

The ongoing crisis of solitary confinement across the country is in need of dramatic reform in order to end the torture currently taking place. The steps already taken in NYS can serve as an initial model for other jurisdictions, and much more fundamental reform is needed, including in line with the

⁷ *Ibid.* For more information about the interim stipulation, please see the testimony submitted to the Subcommittee by the New York Civil Liberties Union.

⁸ See, e.g., Gabrielle Horowitz-Prisco, *Treating youth like youth: why it's time to 'raise the age' in New York*, July 2013, available at: http://www.correctionalassociation.org/wp-content/uploads/2013/07/CANY_Raise-the-Age-in-brief_July-2013_FINAL.pdf.

⁹ See, e.g., Vincent Schiraldi, Commissioner, NYC Department of Probation, *What about Older Adolescents?*, p. 3-5, Nov. 19, 2013, available at: http://johnjayresearch.org/pri/files/2014/01/Vincent-Schiraldi-speech_11.19.13.pdf.

principles drawn from the stipulation discussed above. Specifically, prisons, jails, and detention centers across the country at the federal, state, and local level should:

- 1) Fundamentally transform the response to people's needs and behaviors by creating rehabilitative and therapeutic units as alternatives to isolation and deprivation;
- 2) Restrict the criteria that can result in separation from the general prison population to the most egregious conduct in need of an intensive intervention;
- 3) End long term isolated confinement beyond 15 consecutive days in line with the recommendations of the UN Special Rapporteur on Torture;
- 4) Ban solitary confinement of people who are especially vulnerable either to the effects of isolation itself or to potential abuse while in isolation; and
- 5) Better equip staff to work with incarcerated persons, and make the processes resulting in solitary confinement fairer (including via legal representation), more transparent (including via mandatory reporting), and with more accountability (including via outside oversight).

1. Fundamental Transformation Through the Creation of Alternative Units

There needs to be a fundamental transformation in how correctional agencies across the country respond to people's needs and/or alleged problematic behaviors inside prisons, jails, and detention centers. People who have allegedly engaged in the most egregious conduct should not be subjected to inhumane and counterproductive isolation and deprivation that will only exacerbate their needs or behaviors. Rather, these individuals need additional support, programs, and therapy that are both humane and effective. Thus, if there are people who are such a risk to others that they need to be removed from the general prison population, they should be separated, rather than isolated, into safe, secure therapeutic and rehabilitative units that have substantial out-of-cell time and meaningful human interaction, programs, and therapy.

The HALT Solitary Confinement Act would help create this fundamentally transformed response inside of prisons and jails by requiring that any person separated from the general prison population for more than 15 continuous days must be placed in a separate secure Residential Rehabilitation Unit (RRU).¹⁰ The RRU would be a rehabilitative and therapeutic unit aimed at providing residents with additional programs, therapy, and support to address the underlying causes of their behavior.¹¹ People in RRUs would work with an assessment committee upon entering an RRU to develop a rehabilitation plan,¹² and then would be required to receive six hours per day of out-of-cell programming, plus an additional one hour of out-of-cell congregate recreation, to carry out that plan.¹³ In addition, people who are in segregated confinement for shorter periods of time would have their out-of-cell time increased to four hours per day, including at least one hour of congregate recreation, and all people who are in either segregated confinement or RRUs would have comparable access to services, property, and materials as in general population.¹⁴

¹⁰ Humane Alternatives to Long Term (HALT) Solitary Confinement Act, A08588 (Aubry) / S06466 (Perkins), §2(36).

¹¹ §2(36); §137(6)(i)(i-viii).

¹² §137(6)(i)(iv).

¹³ §137(6)(i)(ii).

¹⁴ §137(6)(i)(iii).

2. *Restricting the criteria that results in separation*

All jurisdictions need to stop placing people in solitary confinement or at the very least drastically restrict the criteria that can result in solitary confinement or separation to the most violent or egregious conduct. Again at the very least, punishment, deprivation, and isolation, and even separation to alternatives to solitary, should no longer be the response to most purported justifications for solitary confinement given by various correctional agencies, whether they be alleged rule violations or certain classifications or designations. If there are people who truly need to be separated because they pose such a risk to others, then the focus should be on those individuals who are actually in need of an intensive rehabilitative and therapeutic intervention in order to decrease the risk posed and help those individuals be better prepared to return to the general prison population and ultimately their community. A person who talks back to an officer or who has too many postage stamps, for example, or indeed who engages in the bulk of non-violent rule violations or classifications that result in isolation, does not require an intensive intervention, so resources should be focused on those who need and could benefit from such an intervention.

The HALT Solitary Confinement Act would drastically restrict the criteria of conduct that can result in isolated confinement or placement in the Residential Rehabilitation Units (RRUs). HALT divides segregated confinement into three categories: emergency confinement, short term segregated confinement, and extended segregated confinement. People could be placed in emergency confinement for up to 24 hours if such placement is necessary to immediately diffuse a substantial and imminent threat.¹⁵ People could be placed in short term segregated confinement for up to three days for a department rule violation if the penalty is proportionate to the violation.¹⁶ Finally, people could be placed in extended segregated confinement for up to 15 days or be placed in an RRU for more serious acts of physical injury, forced sexual acts, extortion, coercion, inciting serious disturbance, procuring deadly weapons or dangerous contraband, or escape.¹⁷ In addition to these restricted criteria, the HALT Solitary Confinement Act would make clear that persons may not be placed in segregated confinement for purposes of protective custody, and that any location used for protective custody must at least comply with the standards for RRUs.¹⁸

3. *Ending long term isolated confinement beyond 15 days*

No person should ever be subjected to torture or cruel, inhuman or degrading treatment in any prison, jail, or detention facility in the United States. Given that the UN Special Rapporteur on Torture has defined any use of solitary beyond 15 days to amount to torture or cruel, inhuman or degrading treatment, 15 days should be the absolute limit for isolated confinement.

The HALT Solitary Confinement Act mandates that no person may be held in isolation more than 15 consecutive days, nor more than 20 days total in any 60 day period (the latter of which is to

¹⁵ §137(6)(j)(i), §2(33).

¹⁶ §137(6)(j)(ii), §2(34).

¹⁷ §137(6)(j)(iii), §2(35). These restricted criteria for the maximum length of time in isolated confinement or placement in the RRUs was derived from the criteria put forward by James Austin during litigation in Mississippi that resulted in a settlement agreement and a dramatic reduction in the number of people in solitary confinement.

¹⁸ §137(6)(j)(iv).

ensure that a person is not cycled in and out of solitary).¹⁹ At these limits, a person must be released back to the general prison population or sent to an RRU.²⁰

4. *Banning the placement of especially vulnerable groups in isolation*

Certain people should never be placed in isolation because either isolation itself can have more devastating effects on them or they are more vulnerable to abuse while in isolation. For example, brain research has demonstrated that a young person continues to develop mentally and socially through their mid-20s and as such a young person who is 19 years old, for example, should not ever be placed in isolation because of the particularly negative effects on that person's psychological and social development. Similarly, a person who has mental health needs or physical disabilities that are only going to be exacerbated by being placed in isolation should not ever be subjected to such confinement. In a similar but different way, members of the LGBTI community have often faced additional abuse by staff by being placed in isolation, even when placed in isolated confinement purportedly for their own protection. Overall, young people, elderly people, people with disabilities, people with mental health needs, pregnant women, and members of the LGBTI community should never be placed in isolated confinement.

The HALT Solitary Confinement Act bans any length of isolated confinement of people in such vulnerable groups, including any person: (a) 21 years or younger; (b) 55 or over; (c) with a physical, mental, or medical disability; (d) who is pregnant; or (e) who is or is perceived to be LGBTI.²¹

5. *Enhancing staff skills, procedural protections, transparency, and accountability*

In addition to all of the substantive changes in the use of solitary confinement described above, the environment and processes that surround the use of solitary confinement also need substantial reform, including with respect to the capabilities of staff to effectively work with incarcerated persons, protections during proceedings resulting in solitary, and transparency and accountability in the operation of isolation and separation.

a. Staff Skills, Tools, and Capabilities

As one important component, correction officers and other staff need additional skills, tools, and capabilities to work with people with serious needs, those who engage in problematic behavior, and all people who are incarcerated. Currently, staff too often use force, discipline, punishment, and isolation in response to problems that arise inside of prisons and jails. Staff need additional training, skills, and capabilities related to, for example, trauma-informed programs and care; the practices and goals of mental health treatment and cognitive and behavioral therapy; inter-personal and communication skills; and de-escalation techniques, dispute resolution, and methods to diffuse difficult situations and to interact in a diffusing, non-confrontational way.

The HALT Solitary Confinement Act would require that all staff working in segregated confinement or RRU units receive 40 hours of initial training, and 24 hours of annual training, on such topics as trauma, dispute resolution, restorative justice, and the purposes and goals of a non-punitive

¹⁹ §137(h), §2(35).

²⁰ §137(h).

²¹ §137(g), §2(32).

therapeutic environment.²² In addition, HALT requires all hearing officers to receive 40 hours of initial training, and eight hours annual training, on such topics as the physical and psychological effects of isolation, procedural and due process rights, and restorative justice remedies.²³

b. Procedural Protections

In addition, there must be additional procedural protections in the hearings and administrative proceedings that result in solitary confinement. Such procedures should be conducted by neutral-decision makers, provide meaningful due process, and allow incarcerated persons to be represented by legal counsel. Similarly, once someone is in isolated confinement or otherwise separated from the general prison population, that person should be provided specific plans for how s/he can earn release, and there must be meaningful mechanisms of review to determine whether an individual must remain separated or should return to the general prison population.

The HALT Solitary Confinement Act would require that all hearings that could result in solitary confinement and all assessments to determine if someone is in one of the categories of vulnerable groups who are banned from solitary, must generally take place prior placement in solitary.²⁴ In addition, HALT would allow incarcerated persons to have legal representation by pro bono lawyers, law students, or approved paralegals or peer advocates during proceedings that could result in solitary.²⁵ Also, HALT would provide for various mechanisms of release from RRUs back to the general prison population, including the expiration of a disciplinary sentence, periodic reviews by different levels of reviewing committees, earning release through the completion of specified programs, treatment, and/or corrective action, and a one year maximum length of stay absent exceptional circumstances and approval by an independent outside agency.²⁶ Moreover, HALT provides that a person released from the RRU will have her or his good time restored if s/he had substantially completed the programmatic requirements in the RRU.²⁷ Also of note, HALT would apply to all types and locations of isolated confinement beyond 17 hours, including disciplinary SHU confinement, administrative segregation, and keeplock.²⁸

c. Transparency and Accountability

Moreover, there must be greater transparency and accountability for how isolation and separation are used. There should be mandatory, regular public reporting on how many people are isolated or separated, how long they have been isolated or separated, the demographics of who is being isolated or separated, the justifications for isolation or separation, and the impacts of the use of isolation and separation on costs, safety, self-harm, and recidivism. Also, there should be outside oversight of the use of isolation and separation by entities independent of correctional agencies.

The HALT Solitary Confinement Act would require state and local corrections departments to periodically report on the number of people in isolated confinement and the RRUs, the characteristics of people in such confinement (including related to age, race, gender, and mental health, health, pregnancy, and LGBTI status), and the lengths of stay in isolated confinement and RRUs. Moreover,

²² §137(m).

²³ §137(m).

²⁴ §137(k)(i), §137(k)(ii).

²⁵ §137(k)(i).

²⁶ §137(l)(i-vi).

²⁷ §137(l)(vi).

²⁸ §2(23).

HALT would require that independent, outside agencies monitor and issue public reports regarding compliance with all aspects of the use of segregated confinement and the RRUs described above.²⁹

Overall, the interrelated components of the HALT Solitary Confinement Act – creating alternatives to solitary, restricting the criteria for isolation or separation, ending long-term solitary confinement, banning the solitary confinement of particularly vulnerable groups, and enhancing staff capabilities, procedural protections, and transparency and accountability – can serve as a model for other states and localities as well as the federal government for ending the torture of solitary confinement and replacing it with more humane and effective alternatives.

Necessary Action by Congress

Congress has an opportunity and responsibility to take action to reduce the inhumane and counterproductive use of solitary confinement in federal, state, and local prisons, jails, and detention centers across the country. In line with the above model, Congress should enact laws to: 1) limit the use of solitary confinement and create alternatives in federal prisons operated by the Bureau of Prisons (BOP); 2) establish best practices and provide funding for limiting the use of solitary confinement and creating more humane and effective alternatives in states and localities across the country; 3) close federal prisons operated by the BOP that have proven to be so abusive that they are beyond the possibility of reform, such as ADX Florence; and 4) ensure transparency and oversight of federal, state, and local prisons, jails, and detention centers.

1) Federal BOP Prisons

Congress should enact legislation in line with the model components described above in order to end the inhumane and counterproductive use of solitary confinement and create more humane and effective alternatives in all federal BOP prisons and immigration and other detention centers. Specifically, Congress should require that federal prisons and detention centers create more humane and effective alternatives to solitary that involve substantial amounts of out-of-cell time, end long-term solitary confinement, ban the solitary confinement of people in the vulnerable groups outlined above, including young people and people with mental health needs, and restrict the criteria that can result in being separated from the general population. At the very least, Congress should require the BOP to immediately: stop using solitary confinement during pre-trial detention; enhance conditions of confinement by expanding out-of-cell time and programming and eliminating Special Administrative Measures (SAMs); review the classifications of everyone in solitary and immediately remove those individuals who have not engaged in the most egregious conduct while incarcerated; and begin a process for creating more humane and effective alternatives that can replace solitary for all people.

2) State and Local Prisons and Jails

Congress should also enact legislation requiring the U.S. Department of Justice to engage in rule-making to establish national standards for state and local prisons and jails in line with each of the model components described above. In addition, Congress should provide federal funding through the Bureau of Justice Assistance or another federal agency to incentivize and support the reduction in the use of solitary and the creation of humane and effective alternatives by states and localities.

²⁹ §401-a(4); §45(4-a).

3) *Closure of Abusive Federal Prisons*

Some federal prisons have proven to be so abusive and problematic in their use of solitary confinement that Congress should require the BOP to close these facilities. The federal supermax prison, United States Penitentiary, Administrative Maximum Facility (ADX) in Florence, Colorado is an example of such a facility. As others will discuss in more detail in their testimony to this Subcommittee, ADX has long been condemned for the abuse of solitary confinement taking place there and the facility needs to be closed in order to end the torturous conditions.³⁰ In addition, Congress should prohibit the BOP from opening any supermax prisons in the future and specifically in the immediate term should prohibit the BOP from using the recently acquired facility at Thomson, Illinois as a supermax prison and require that Thomson only be used as a federal prison if any forms of separation are in compliance with the model standards discussed above.

4) *Transparency and Oversight*

Congress should require that all federal, state, and local prisons, jails, detention centers, and juvenile facilities publicly report the types of information related to the use of solitary described above and provide such information directly to the Bureau of Justice Statistics (BJS). In turn, the BJS should be required to compile such information and at least annually publish the data and a statistical analysis of the data so that the public is able to have an understanding of how solitary confinement and/or alternatives are being utilized around the country. In addition to such reporting, Congress should grant independent, non-profit or community entities access to monitor conditions of confinement, including the use of solitary confinement, in federal, state, and local facilities as one mechanism to foster greater transparency and accountability. The CA's access to monitor conditions in New York State prisons could serve as a model for other states, localities, and the federal government to grant access to outside entities to play a monitoring role. Moreover, Congress should formally call upon the U.S. Department of State to: grant the request by the U.N. Special Rapporteur on Torture to visit prisons in the United States to investigate the use of solitary confinement, and help facilitate full-access site visits to any and all federal, state, and local prisons, jails, and detention requested to be seen by the Special Rapporteur.

Conclusion

The use of solitary confinement is not only inhumane but runs directly counter to one of the main purposes of correctional facilities across the country, namely to help prepare the people who are incarcerated for successful return to their communities. As one person who is incarcerated and held in solitary confinement in a New York State prison recently commented,

One day, most of us will be released back into society . . . if I had to make the choice, I'd rather have a person who committed a crime living next to me if he was rehabilitated, offered a trade, education, and was given fair, humane treatment. one who has something to give back to the community as opposed to one who was locked in a cage, treated like an animal and abused physically, mentally, verbally, and emotionally . . . that kind of treatment will only make a [person] worse! – Person held in solitary confinement in New York State prison.

³⁰ See, e.g., Pardiss Kebriaei, “The Torture that Flourishes from Gitmo to an American Supermax, Jan. 30, 2014, *available at*: <http://www.motherjones.com/politics/2013/05/10-worst-prisons-america-part-1-adx>; James Ridgeway and Jean Casella, “America’s 10 Worst Prisons: ADX: A Federal isolation facility that’s ‘pretty close’ to hell,” May 1, 2013, *available at*: <http://www.motherjones.com/politics/2013/05/10-worst-prisons-america-part-1-adx>.

Today, as this hearing takes place, our public institutions are subjecting tens of thousands of people to the torture of solitary confinement, inflicting severe harm on these individuals, and in turn making our prisons and our communities less safe. Congress needs to take action towards ending the widespread, racially disproportionate use of solitary at the federal, state, and local level, and to shift the paradigm of how our public institutions operate from one of inhumane and counterproductive punishment, isolation, and deprivation, to one of humane and effective rehabilitation and treatment.

Moreover, Congress must recognize that solitary confinement is but one severe component of a broader broken system of mass incarceration, racial injustice, and a paradigm of punishment over rehabilitation and treatment, and that the fundamental transformation necessary for reform of solitary confinement should be applied to a myriad of other policies and practices. In the same way that Congress must take action to reduce the use of solitary confinement and create more humane and effective alternatives, Congress must also act to, for example, reduce sentence lengths, promote the release of more people on parole who have demonstrated their rehabilitation and low risk to society, foster alternatives to incarceration and the use of restorative justice, restore access to Pell grants to people who are incarcerated, and ultimately begin a process of de-carceration, racial justice through healing and community empowerment, and a paradigm shift from punishment, warehousing, and the infliction of harm toward rehabilitation, treatment, and empowerment.

Ultimately, we need a fundamental transformation in how we address social challenges, people's needs, and difficult behaviors in our correctional institutions and in our communities. The Humane Alternatives to Long Term (HALT) Solitary Confinement provides an example of moving toward that transformation by taking a comprehensive approach to reducing the use of solitary confinement and creating more humane and effective alternatives. Congress should adopt, adapt, and apply the key principles from the HALT Solitary Confinement Act – creating alternatives to solitary, restricting the criteria that can result in solitary, ending long-term solitary, prohibiting solitary for particularly vulnerable groups, and enhancing staff capabilities, procedural protections, and transparency and accountability – and thereby begin a process of ending the torture of solitary confinement at the federal, state, and local levels and creating more humane and effective alternatives.

S T A T E O F N E W Y O R K

8588

I N A S S E M B L Y

January 24, 2014

Introduced by M. of A. AUBRY -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to restricting the use of segregated confinement and creating alternative therapeutic and rehabilitative confinement options

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 137 of the correction law is amended by adding a
2 new subdivision 5-a to read as follows:

3 5-A. THE USE OF SEGREGATED CONFINEMENT, EXCLUSION OF CERTAIN SPECIAL
4 POPULATIONS, AND LENGTH OF TIME ANY PERSON CAN SPEND IN SEGREGATED
5 CONFINEMENT SHALL BE RESTRICTED IN ACCORDANCE WITH PARAGRAPHS (G), (H),
6 (I), (J), (K), (L), (M), AND (N) OF SUBDIVISION SIX OF THIS SECTION OR
7 ANY OTHER APPLICABLE LAW.

8 S 2. Subdivision 23 of section 2 of the correction law, as added by
9 chapter 1 of the laws of 2008, is amended to read as follows:

10 23. "Segregated confinement" means the [disciplinary] confinement,
11 OTHER THAN FOR EMERGENCY CONFINEMENT AS DEFINED IN SUBDIVISION
12 THIRTY-THREE OF THIS SECTION, OR FOR DOCUMENTED MEDICAL REASONS OR
13 MENTAL HEALTH EMERGENCIES, of an inmate in a special housing unit or in
14 a separate keeplock housing unit OR ANY FORM OF KEEPLOCK, OR CELL
15 CONFINEMENT FOR MORE THAN SEVENTEEN HOURS A DAY OTHER THAN IN A FACILI-
16 TY-WIDE LOCKDOWN. Special housing units and separate keeplock units are
17 housing units that consist of cells grouped so as to provide separation
18 from the general population, and may be used to house inmates confined
19 pursuant to the disciplinary procedures described in regulations.

20 S 3. Section 2 of the correction law is amended by adding five new
21 subdivisions 32, 33, 34, 35, and 36 to read as follows:

22 32. "SPECIAL POPULATIONS" MEANS ANY PERSON: (A) TWENTY-ONE YEARS OF
23 AGE OR YOUNGER; (B) FIFTY-FIVE YEARS OF AGE OR OLDER; (C) WITH A DISA-
24 BILITY AS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION TWO HUNDRED NINE-
25 TY-TWO OF THE EXECUTIVE LAW, INCLUDING BUT NOT LIMITED TO, FOR PURPOSES
26 OF MENTAL IMPAIRMENT, PERSONS WITH A SERIOUS MENTAL ILLNESS AS DEFINED
27 IN PARAGRAPH (E) OF SUBDIVISION SIX OF SECTION ONE HUNDRED THIRTY-SEVEN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD13381-02-4

A. 8588

2

1 OF THIS CHAPTER; (D) WHO IS PREGNANT; OR (E) WHO IS OR IS PERCEIVED TO
2 BE LESBIAN, GAY, BISEXUAL, TRANSGENDER, OR INTERSEX.

3 33. "EMERGENCY CONFINEMENT" MEANS CONFINEMENT IN ANY CELL FOR NO MORE

4 THAN TWENTY-FOUR CONSECUTIVE HOURS AND NO MORE THAN FORTY-EIGHT TOTAL
5 HOURS IN ANY FIFTEEN DAY PERIOD, WITH AT LEAST ONE HOUR OF OUT-OF-CELL
6 RECREATION FOR EVERY TWENTY-FOUR HOURS.

7 34. "SHORT-TERM SEGREGATED CONFINEMENT" MEANS SEGREGATED CONFINEMENT
8 OF NO MORE THAN THREE CONSECUTIVE DAYS AND SIX DAYS TOTAL WITHIN ANY
9 THIRTY DAY PERIOD.

10 35. "EXTENDED SEGREGATED CONFINEMENT" MEANS SEGREGATED CONFINEMENT OF
11 NO MORE THAN FIFTEEN CONSECUTIVE DAYS AND TWENTY DAYS TOTAL WITHIN ANY
12 SIXTY DAY PERIOD.

13 36. "RESIDENTIAL REHABILITATION UNIT" MEANS SECURE AND SEPARATE UNITS
14 USED FOR THERAPY, TREATMENT, AND REHABILITATIVE PROGRAMMING OF PEOPLE
15 WHO WOULD BE PLACED IN SEGREGATED CONFINEMENT FOR MORE THAN FIFTEEN
16 DAYS. SUCH UNITS ARE THERAPEUTIC AND TRAUMA-INFORMED, AND AIM TO ADDRESS
17 INDIVIDUAL TREATMENT AND REHABILITATION NEEDS AND UNDERLYING CAUSES OF
18 PROBLEMATIC BEHAVIORS.

19 S 4. Subdivision 6 of section 137 of the correction law is amended by
20 adding eight new paragraphs (g), (h), (i), (j), (k), (l), (m), and (n)
21 to read as follows:

22 (G) PERSONS IN A SPECIAL POPULATION AS DEFINED IN SUBDIVISION THIRTY-
23 TWO OF SECTION TWO OF THIS CHAPTER SHALL NOT BE PLACED IN SEGREGATED
24 CONFINEMENT FOR ANY LENGTH OF TIME. ANY SUCH PERSONS THE DEPARTMENT
25 WOULD OTHERWISE PLACE IN SEGREGATED CONFINEMENT SHALL REMAIN IN GENERAL
26 POPULATION OR BE DIVERTED TO A RESIDENTIAL REHABILITATION UNIT. IF A
27 PERSON IN A SPECIAL POPULATION IS PLACED IN EMERGENCY CONFINEMENT FOR
28 MORE THAN SIXTEEN HOURS, HE OR SHE SHALL BE ALLOWED OUT-OF-CELL AT LEAST
29 FOUR HOURS.

30 (H) NO PERSON MAY BE IN SEGREGATED CONFINEMENT FOR LONGER THAN NECES-
31 SARY AND NEVER MORE THAN FIFTEEN CONSECUTIVE DAYS NOR TWENTY TOTAL DAYS
32 WITHIN ANY SIXTY DAY PERIOD. AT THESE LIMITS, PERSONS MUST BE RELEASED
33 FROM SEGREGATED CONFINEMENT OR DIVERTED TO A SEPARATE SECURE RESIDENTIAL
34 REHABILITATION UNIT.

35 (I) (I) ALL SEGREGATED CONFINEMENT AND RESIDENTIAL REHABILITATION
36 UNITS SHALL CREATE THE LEAST RESTRICTIVE ENVIRONMENT NECESSARY FOR THE
37 SAFETY OF RESIDENTS, STAFF, AND THE SECURITY OF THE FACILITY.

38 (II) PERSONS IN SEGREGATED CONFINEMENT SHALL BE ALLOWED OUT-OF-CELL AT
39 LEAST FOUR HOURS PER DAY, INCLUDING AT LEAST ONE HOUR FOR RECREATION.
40 PERSONS IN RESIDENTIAL REHABILITATION UNITS SHALL BE ALLOWED AT LEAST
41 SIX HOURS PER DAY OUT-OF-CELL FOR PROGRAMMING, SERVICES, TREATMENT,
42 AND/OR MEALS, AND AN ADDITIONAL MINIMUM OF ONE HOUR FOR RECREATION.
43 RECREATION IN ALL UNITS SHALL TAKE PLACE IN A CONGREGATE SETTING, UNLESS
44 EXCEPTIONAL CIRCUMSTANCES MEAN DOING SO WOULD CREATE A SIGNIFICANT AND
45 UNREASONABLE RISK TO THE SAFETY AND SECURITY OF OTHER INCARCERATED
46 PERSONS, STAFF, OR THE FACILITY.

47 (III) PERSONS IN SEGREGATED CONFINEMENT AND RESIDENTIAL REHABILITATION
48 UNITS SHALL: (A) RECEIVE AT LEAST COMPARABLE MEDICAL AND MENTAL HEALTH
49 CARE TO GENERAL POPULATION, INCLUDING OBSTETRICAL AND GYNECOLOGICAL
50 SERVICES, IN A SETTING ENSURING PRIVACY AND CONFIDENTIALITY; (B) HAVE
51 THEIR BASIC NEEDS MET IN A MANNER COMPARABLE TO GENERAL POPULATION, AND
52 NEVER HAVE RESTRICTED DIETS NOR ANY ORDER RESTRICTING ANY BASIC NEED
53 IMPOSED AS A FORM OF PUNISHMENT; (C) IF IN A RESIDENTIAL REHABILITATION
54 UNIT BE ABLE TO RETAIN ALL THEIR PROPERTY WITH THEM; (D) HAVE COMPARABLE
55 ACCESS TO ALL SERVICES AND MATERIALS AS IN GENERAL POPULATION; AND (E)
56 BE ABLE TO RETAIN PROGRAM MATERIALS, COMPLETE PROGRAM ASSIGNMENTS, AND
A. 8588

1 CONTINUE UPON RETURN ALL UNCOMPLETED PROGRAMS THEY WERE IN PRIOR TO
2 PLACEMENT IN SEGREGATED CONFINEMENT OR A RESIDENTIAL REHABILITATION

3 UNIT.

4 (IV) WITHIN TEN DAYS OF ADMISSION TO A RESIDENTIAL REHABILITATION
5 UNIT, AN ASSESSMENT COMMITTEE COMPRISED OF PROGRAM, REHABILITATION,
6 MENTAL HEALTH, AND SECURITY STAFF SHALL ADMINISTER AN ASSESSMENT AND
7 DEVELOP IN COLLABORATION WITH THE RESIDENT AN INDIVIDUAL REHABILITATION
8 PLAN, BASED UPON THE PERSON'S MEDICAL, MENTAL HEALTH, AND PROGRAMMING
9 NEEDS, THAT IDENTIFIES SPECIFIC GOALS AND PROGRAMS, TREATMENT, AND
10 SERVICES TO BE OFFERED, WITH PROJECTED TIME FRAMES FOR COMPLETION AND
11 RELEASE FROM THE RESIDENTIAL REHABILITATION UNIT.

12 (V) RESIDENTS IN RESIDENTIAL REHABILITATION UNITS SHALL HAVE ACCESS TO
13 PROGRAMS AND JOBS COMPARABLE TO ALL CORE OUT-OF-CELL PROGRAMS IN GENERAL
14 POPULATION. SUCH RESIDENTS SHALL ALSO HAVE ACCESS TO ADDITIONAL
15 OUT-OF-CELL, TRAUMA-INFORMED THERAPEUTIC PROGRAMMING AIMED AT PROMOTING
16 PERSONAL DEVELOPMENT, ADDRESSING UNDERLYING CAUSES OF PROBLEMATIC BEHAV-
17 IOR RESULTING IN PLACEMENT IN A RESIDENTIAL REHABILITATION UNIT, AND
18 HELPING PREPARE FOR DISCHARGE FROM THE UNIT AND TO THE COMMUNITY.

19 (VI) IF THE DEPARTMENT ESTABLISHES THAT A PERSON COMMITTED AN ACT
20 DEFINED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION WHILE
21 IN SEGREGATED CONFINEMENT OR A RESIDENTIAL REHABILITATION UNIT AND POSES
22 A SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY AND SECURITY OF OTHER
23 RESIDENTS OR STAFF, THE DEPARTMENT MAY RESTRICT THAT PERSON'S PARTIC-
24 IPATION IN PROGRAMMING AND OUT-OF-CELL TIME AS NECESSARY FOR THE SAFETY
25 OF OTHER RESIDENTS AND STAFF. IF RESTRICTIONS ARE IMPOSED IN SEGREGATED
26 CONFINEMENT, THE DEPARTMENT MUST STILL PROVIDE AT LEAST TWO HOURS
27 OUT-OF-CELL TIME. IF RESTRICTIONS ARE IMPOSED IN A RESIDENTIAL REHABILI-
28 TATION UNIT, THE DEPARTMENT SHALL DEVELOP A NEW REHABILITATION PLAN,
29 PROVIDE AT LEAST THREE HOURS OUT-OF-CELL TIME, AND ON EACH DAY PROGRAM-
30 MING RESTRICTIONS ARE IMPOSED PROVIDE AT LEAST TWO HOURS OF OUT-OF-CELL
31 ONE-ON-ONE THERAPY WITH THE RESIDENT AND ONE HOUR OF OUT-OF-CELL RECRE-
32 ATION. THE DEPARTMENT SHALL REMOVE ALL RESTRICTIONS WITHIN FIFTEEN DAYS,
33 AND MAY NOT IMPOSE NEW RESTRICTIONS UNLESS THE PERSON COMMITS A NEW ACT
34 DEFINED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION.

35 (VII) RESTRAINTS SHALL NOT BE USED WHEN RESIDENTS LEAVE A CELL OR
36 HOUSING AREA FOR ON-UNIT OPERATIONS, UNLESS A RESIDENT WAS FOUND AT A
37 HEARING TO HAVE COMMITTED AN ACT OF VIOLENCE ON THE RESIDENTIAL REHABIL-
38 ITATION UNIT WITHIN THE PREVIOUS SEVEN DAYS OR IS CURRENTLY ACTING IN AN
39 UNACCEPTABLY VIOLENT MANNER, AND NOT USING RESTRAINTS WOULD CREATE A
40 SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY AND SECURITY OF OTHER
41 RESIDENTS OR STAFF.

42 (VIII) THERE SHALL BE A PRESUMPTION AGAINST THE IMPOSITION OF MISBE-
43 HAVIOR REPORTS, PURSUIT OF DISCIPLINARY CHARGES, OR IMPOSITION OF ADDI-
44 TIONAL TIME IN SEGREGATED CONFINEMENT FOR INDIVIDUALS IN SEGREGATED
45 CONFINEMENT OR RESIDENTIAL REHABILITATION UNITS. THE DEPARTMENT SHALL
46 USE OTHER NON-DISCIPLINARY INTERVENTIONS TO ADDRESS ANY PROBLEMATIC
47 BEHAVIOR. NO RESIDENT SHALL RECEIVE SEGREGATED CONFINEMENT TIME WHILE IN
48 SEGREGATED CONFINEMENT OR A RESIDENTIAL REHABILITATION UNIT EXCEPT WHERE
49 IT IS DETERMINED PURSUANT TO A DISCIPLINARY HEARING THAT HE OR SHE
50 COMMITTED ONE OR MORE ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J)
51 OF THIS SUBDIVISION WHILE ON THE UNIT, AND THAT HE OR SHE POSES A
52 SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY OF RESIDENTS OR STAFF,
53 OR THE SECURITY OF THE FACILITY.

54 (J) (I) THE DEPARTMENT MAY PLACE A PERSON IN EMERGENCY CONFINEMENT
55 WITHOUT A HEARING IF NECESSARY FOR IMMEDIATELY DEFUSING A SUBSTANTIAL
A. 8588

1 AND IMMINENT THREAT TO SAFETY OR SECURITY OF INCARCERATED PERSONS OR
2 STAFF.

3 (II) THE DEPARTMENT IS ENCOURAGED TO USE RESPONSES OTHER THAN SEGRE-
4 GATED CONFINEMENT IN RESPONSE TO DEPARTMENT RULE VIOLATIONS. THE DEPART-
5 MENT MAY PLACE A PERSON IN SHORT TERM SEGREGATED CONFINEMENT IF IT
6 DETERMINES, PURSUANT TO AN EVIDENTIARY HEARING, THAT THE PERSON COMMIT-
7 TED A DEPARTMENT RULE VIOLATION WARRANTING SUCH CONFINEMENT AND THE
8 LENGTH OF SEGREGATED CONFINEMENT IMPOSED IS PROPORTIONATE TO THE
9 VIOLATION.

10 (III) THE DEPARTMENT MAY PLACE A PERSON IN EXTENDED SEGREGATED
11 CONFINEMENT OR A RESIDENTIAL REHABILITATION UNIT ONLY IF, PURSUANT TO AN
12 EVIDENTIARY HEARING, IT DETERMINES THE PERSON COMMITTED, WHILE UNDER
13 DEPARTMENT CUSTODY, OR PRIOR TO CUSTODY IF THE COMMISSIONER OR HIS OR
14 HER DESIGNEE DETERMINES IN WRITING BASED ON SPECIFIC OBJECTIVE CRITERIA
15 THE ACTS WERE SO HEINOUS OR DESTRUCTIVE THAT GENERAL POPULATION HOUSING
16 CREATES A SIGNIFICANT RISK OF IMMINENT SERIOUS PHYSICAL INJURY TO STAFF
17 OR OTHER INCARCERATED PERSONS, ONE OF THE FOLLOWING ACTS: (A) CAUSING OR
18 ATTEMPTING TO CAUSE SERIOUS PHYSICAL INJURY OR DEATH TO ANOTHER PERSON;
19 (B) COMPELLING OR ATTEMPTING TO COMPEL ANOTHER PERSON, BY FORCE OR
20 THREAT OF FORCE, TO ENGAGE IN A SEXUAL ACT; (C) EXTORTING ANOTHER, BY
21 FORCE OR THREAT OF FORCE, FOR PROPERTY OR MONEY; (D) COERCING ANOTHER,
22 BY FORCE OR THREAT OF FORCE, TO VIOLATE ANY RULE; (E) LEADING, ORGANIZ-
23 ING, OR INCITING A SERIOUS DISTURBANCE THAT RESULTS IN THE TAKING OF A
24 HOSTAGE, MAJOR PROPERTY DAMAGE, OR PHYSICAL HARM TO ANOTHER PERSON; (F)
25 PROCURING DEADLY WEAPONS OR OTHER DANGEROUS CONTRABAND THAT POSES A
26 SERIOUS THREAT TO THE SECURITY OF THE INSTITUTION; OR (G) ESCAPING,
27 ATTEMPTING TO ESCAPE OR FACILITATING AN ESCAPE FROM A FACILITY, OR WHILE
28 UNDER SUPERVISION OUTSIDE OF SUCH A FACILITY, RESULTING IN PHYSICAL HARM
29 OR THREATENED PHYSICAL HARM TO OTHERS, OR IN MAJOR DESTRUCTION TO THE
30 PHYSICAL PLANT.

31 (IV) NO PERSON MAY BE HELD IN SEGREGATED CONFINEMENT FOR PROTECTIVE
32 CUSTODY. ANY UNIT USED FOR PROTECTIVE CUSTODY MUST, AT A MINIMUM,
33 CONFORM TO REQUIREMENTS GOVERNING RESIDENTIAL REHABILITATION UNITS UNDER
34 PARAGRAPHS (I), (L), (M), AND (N) OF THIS SUBDIVISION. WHEN APPLIED TO A
35 PERSON IN PROTECTIVE CUSTODY, THE CRITERIA IN SUBPARAGRAPH (II) AND
36 CLAUSE (A) OF SUBPARAGRAPH (III) OF PARAGRAPH (L) OF THIS SUBDIVISION
37 SHALL BE THAT "THE PERSON STILL IS IN NEED OF PROTECTIVE CUSTODY"; AND
38 THE CRITERIA IN SUBPARAGRAPH (IV) OF PARAGRAPH (1) OF THIS SUBDIVISION
39 SHALL BE THAT "THE PERSON IS IN VOLUNTARY PROTECTIVE CUSTODY."

40 (K) (I) ALL HEARINGS TO DETERMINE IF A PERSON MAY BE PLACED IN SHORT
41 TERM OR EXTENDED SEGREGATED CONFINEMENT SHALL OCCUR PRIOR TO PLACEMENT
42 IN SEGREGATED CONFINEMENT UNLESS A SECURITY SUPERVISOR, WITH WRITTEN
43 APPROVAL OF A FACILITY SUPERINTENDENT OR DESIGNEE, REASONABLY BELIEVES
44 THE PERSON FITS THE CRITERIA FOR EXTENDED SEGREGATED CONFINEMENT. IF A
45 HEARING DOES NOT TAKE PLACE PRIOR TO PLACEMENT, IT SHALL OCCUR AS SOON
46 AS REASONABLY PRACTICABLE AND AT MOST WITHIN FIVE DAYS OF TRANSFER
47 UNLESS THE CHARGED PERSON SEEKS MORE TIME. ALL HEARINGS SHALL AT A MINI-
48 MUM COMPLY WITH THE STANDARDS OF ALL DEPARTMENT RULES FOR DISCIPLINARY
49 HEARINGS AS OF JANUARY FIRST, TWO THOUSAND FIFTEEN. PERSONS AT ALL
50 HEARINGS SHALL BE PERMITTED TO BE REPRESENTED BY ANY PRO BONO OR
51 RETAINED ATTORNEY, OR LAW STUDENT; OR ANY PARALEGAL OR INCARCERATED
52 PERSON UNLESS THE DEPARTMENT REASONABLY DISAPPROVES OF SUCH PARALEGAL OR
53 INCARCERATED PERSON BASED UPON OBJECTIVE WRITTEN CRITERIA DEVELOPED BY
54 THE DEPARTMENT CONCERNING QUALIFICATIONS TO BE AN ASSISTANT AT A HEAR-
55 ING.

A. 8588

5

1 (II) ON NOTIFICATION A PERSON IS TO BE PLACED IN SEGREGATED CONFINEMENT AND PRIOR TO SUCH PLACEMENT, HE OR SHE SHALL BE ASSESSED BY RELE-

3 VANT LICENSED MEDICAL, SOCIAL, AND/OR MENTAL HEALTH PROFESSIONALS TO
4 DETERMINE WHETHER HE OR SHE BELONGS TO ANY SPECIAL POPULATION AS DEFINED
5 IN SUBDIVISION THIRTY-TWO OF SECTION TWO OF THIS CHAPTER. IF A PERSON
6 DISPUTES A DETERMINATION THAT HE OR SHE IS NOT IN A SPECIAL POPULATION,
7 HE OR SHE SHALL BE PROVIDED A HEARING WITHIN SEVENTY-TWO HOURS OF PLACE-
8 MENT IN SEGREGATED CONFINEMENT TO CHALLENGE SUCH DETERMINATION.

9 (L) (I) ANY SANCTION IMPOSED ON AN INCARCERATED PERSON REQUIRING
10 SEGREGATED CONFINEMENT SHALL RUN WHILE THE PERSON IS IN A RESIDENTIAL
11 REHABILITATION UNIT AND THE PERSON SHALL BE DISCHARGED FROM THE UNIT
12 BEFORE OR AT THE TIME THAT SANCTION EXPIRES.

13 (II) WITHIN THIRTY DAYS OF ADMISSION TO A RESIDENTIAL REHABILITATION
14 UNIT AND EVERY SIXTY DAYS THEREAFTER, THE ASSESSMENT COMMITTEE SHALL
15 REVIEW EACH RESIDENT'S PROGRESS AND DISCHARGE A RESIDENT UNLESS IT
16 DETERMINES IN WRITING THROUGH CREDIBLE AND RELIABLE EVIDENCE THAT THERE
17 IS CURRENTLY A SUBSTANTIAL LIKELIHOOD THAT THE RESIDENT WILL COMMIT AN
18 ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION.

19 (III) WITHIN ONE HUNDRED DAYS AFTER ADMISSION TO A RESIDENTIAL REHA-
20 BILITATION UNIT AND EVERY ONE HUNDRED TWENTY DAYS THEREAFTER, A REHABIL-
21 ITATION REVIEW COMMITTEE, COMPRISED OF CORRECTIONAL FACILITY EXECUTIVE
22 LEVEL PROGRAM, REHABILITATION, AND SECURITY STAFF SHALL DISCHARGE A
23 RESIDENT FROM A RESIDENTIAL REHABILITATION UNIT UNLESS IT DETERMINES IN
24 WRITING, AFTER CONSIDERING THE RESIDENT'S ORAL STATEMENT AND ANY WRITTEN
25 SUBMISSIONS BY THE RESIDENT OR OTHERS, THAT: (A) THERE IS CURRENTLY A
26 SUBSTANTIAL LIKELIHOOD THAT THE RESIDENT WILL COMMIT AN ACT LISTED IN
27 SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION, SIGNIFICANT
28 THERAPEUTIC REASONS EXIST FOR KEEPING THE RESIDENT IN THE UNIT TO
29 COMPLETE SPECIFIC PROGRAM OR TREATMENT GOALS, AND REMAINING IN THE UNIT
30 IS IN THE BEST INTEREST OF THE RESIDENT; OR (B) THE RESIDENT HAS COMMIT-
31 TED AN ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDI-
32 VISION DURING THE ONE HUNDRED TWENTY DAYS PRIOR TO THE REVIEW.

33 (IV) IF A RESIDENT HAS SPENT ONE YEAR IN A RESIDENTIAL REHABILITATION
34 UNIT OR IS WITHIN SIXTY DAYS OF A FIXED OR TENTATIVELY APPROVED DATE FOR
35 RELEASE FROM A CORRECTIONAL FACILITY, HE SHALL BE DISCHARGED FROM THE
36 UNIT UNLESS HE OR SHE COMMITTED AN ACT LISTED IN SUBPARAGRAPH (III) OF
37 PARAGRAPH (J) OF THIS SUBDIVISION WITHIN THE PRIOR ONE HUNDRED EIGHTY
38 DAYS OR HE OR SHE CAUSED THE DEATH OF ANOTHER PERSON WHILE UNDER DEPART-
39 MENT CUSTODY OR ESCAPED OR ATTEMPTED TO ESCAPE FROM DEPARTMENT OR OTHER
40 POLICE CUSTODY AND THE REHABILITATION REVIEW COMMITTEE DETERMINES HE OR
41 SHE POSES A SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY OR SECURITY
42 OF INCARCERATED PERSONS OR STAFF, BUT IN ANY SUCH CASE THE DECISION NOT
43 TO DISCHARGE SUCH PERSON SHALL BE IMMEDIATELY AND AUTOMATICALLY
44 SUBJECTED TO AN INDEPENDENT REVIEW BY THE JUSTICE CENTER ENTITY WITH
45 OVERSIGHT RESPONSIBILITIES UNDER SECTION FOUR HUNDRED ONE-A OF THIS
46 CHAPTER, WITH TIMELY NOTICE GIVEN TO THE INCARCERATED PERSON OF THE
47 SUBMISSION OF THE CASE TO THE JUSTICE CENTER AND OF THE DECISION OF THE
48 JUSTICE CENTER. IF THE JUSTICE CENTER DISAGREES WITH THE DECISION TO
49 NOT DISCHARGE, THE RESIDENT WILL BE IMMEDIATELY RELEASED FROM THE RESI-
50 DENTIAL REHABILITATION UNIT. IF THE JUSTICE CENTER AGREES WITH THE DECI-
51 SION TO NOT DISCHARGE, THE DISCHARGE PROCEDURES SET FORTH IN THIS PARA-
52 GRAPH SHALL APPLY INCLUDING ANNUAL REVIEWS BY THE JUSTICE CENTER OF A
53 DECISION BY THE REHABILITATION REVIEW COMMITTEE TO REFUSE TO RELEASE A
54 RESIDENT, HOWEVER, UNDER NO CIRCUMSTANCES SHALL ANY SUCH PERSON BE HELD
55 IN THE RESIDENTIAL REHABILITATION UNIT FOR MORE THAN THREE YEARS UNLESS
56 THE REHABILITATION REVIEW COMMITTEE DETERMINES HE OR SHE COMMITTED AN
A. 8588

1 ACT LISTED IN SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION

2 WITHIN ONE HUNDRED EIGHTY DAYS PRIOR TO THE EXPIRATION OF THE THREE YEAR
3 PERIOD AND POSES A SIGNIFICANT AND UNREASONABLE RISK TO THE SAFETY OR
4 SECURITY OF INCARCERATED PERSONS OR STAFF.

5 (V) AFTER EACH ASSESSMENT COMMITTEE AND REHABILITATION REVIEW COMMIT-
6 TEE DECISION, IF A RESIDENT IS NOT DISCHARGED FROM THE RESIDENTIAL REHA-
7 BILITATION UNIT, THE RESPECTIVE COMMITTEE SHALL SPECIFY IN WRITING (A)
8 THE REASONS FOR THE DETERMINATION AND (B) THE PROGRAM, TREATMENT,
9 SERVICE, AND/OR CORRECTIVE ACTION REQUIREMENTS FOR DISCHARGE. THE RESI-
10 DENT SHALL BE GIVEN ACCESS TO THE PROGRAMS, TREATMENT AND SERVICES SPEC-
11 IFIED, AND SHALL BE DISCHARGED FROM THE RESIDENTIAL REHABILITATION UNIT
12 UPON COMPLETION UNLESS THE RESIDENT HAS COMMITTED AN ACT LISTED IN
13 SUBPARAGRAPH (III) OF PARAGRAPH (J) OF THIS SUBDIVISION DURING THE
14 PREVIOUS ONE HUNDRED TWENTY DAYS.

15 (VI) WHEN A RESIDENT IS DISCHARGED FROM A RESIDENTIAL REHABILITATION
16 UNIT, ANY REMAINING SENTENCE TO SEGREGATED CONFINEMENT TIME WILL BE
17 DISMISSED. IF A RESIDENT SUBSTANTIALLY COMPLETES HIS REHABILITATION
18 PLAN, HE OR SHE WILL HAVE ALL GOOD TIME RESTORED UPON DISCHARGE FROM THE
19 UNIT.

20 (M) ALL STAFF, INCLUDING SUPERVISORY STAFF, WORKING IN A SEGREGATED
21 CONFINEMENT OR RESIDENTIAL REHABILITATION UNIT SHALL UNDERGO A MINIMUM
22 OF FORTY HOURS OF TRAINING PRIOR TO WORKING ON THE UNIT AND TWENTY-FOUR
23 HOURS ANNUALLY THEREAFTER, ON SUBSTANTIVE CONTENT DEVELOPED IN CONSULTA-
24 TION WITH RELEVANT EXPERTS, INCLUDING TRAUMA, PSYCHIATRIC AND RESTORA-
25 TIVE JUSTICE EXPERTS, ON TOPICS INCLUDING, BUT NOT LIMITED TO, THE
26 PURPOSE AND GOALS OF THE NON-PUNITIVE THERAPEUTIC ENVIRONMENT AND
27 DISPUTE RESOLUTION METHODS. PRIOR TO PRESIDING OVER ANY HEARINGS, ALL
28 HEARING OFFICERS SHALL UNDERGO A MINIMUM OF FORTY HOURS OF TRAINING, AND
29 EIGHT HOURS ANNUALLY THEREAFTER, ON RELEVANT TOPICS, INCLUDING BUT NOT
30 LIMITED TO, THE PHYSICAL AND PSYCHOLOGICAL EFFECTS OF SEGREGATED
31 CONFINEMENT, PROCEDURAL AND DUE PROCESS RIGHTS OF THE ACCUSED, AND
32 RESTORATIVE JUSTICE REMEDIES.

33 (N) THE DEPARTMENT SHALL MAKE PUBLICLY AVAILABLE MONTHLY REPORTS OF
34 THE NUMBER OF PEOPLE AS OF THE FIRST DAY OF EACH MONTH, AND SEMI-ANNUAL
35 AND ANNUAL CUMULATIVE REPORTS OF THE TOTAL NUMBER OF PEOPLE, WHO ARE (I)
36 IN SEGREGATED CONFINEMENT; AND (II) IN RESIDENTIAL REHABILITATION UNITS;
37 ALONG WITH A BREAKDOWN OF THE NUMBER OF PEOPLE (III) IN SEGREGATED
38 CONFINEMENT AND (IV) IN RESIDENTIAL REHABILITATION UNITS BY (A) AGE; (B)
39 RACE; (C) GENDER; (D) MENTAL HEALTH LEVEL; (E) HEALTH STATUS; (F) DRUG
40 ADDICTION STATUS; (G) PREGNANCY STATUS; (H) LESBIAN, GAY, BISEXUAL,
41 TRANSGENDER, OR INTERSEX STATUS; AND (I) TOTAL CONTINUOUS LENGTH OF
42 STAY, AND TOTAL LENGTH OF STAY IN THE PAST SIXTY DAYS, IN SEGREGATED
43 CONFINEMENT OR A RESIDENTIAL REHABILITATION UNIT.

44 S 5. Section 401-a of the correction law is amended by adding a new
45 subdivision 4 to read as follows:

46 4. THE JUSTICE CENTER SHALL ASSESS COMPLIANCE WITH THE TERMS OF, AND
47 AT LEAST ANNUALLY REPORT ON AND MAKE RECOMMENDATIONS TO THE DEPARTMENT,
48 LEGISLATURE, AND PUBLIC IN WRITING, REGARDING ALL ASPECTS OF SEGREGATED
49 CONFINEMENT AND RESIDENTIAL REHABILITATION UNITS IN STATE CORRECTIONAL
50 FACILITIES PURSUANT TO SECTION ONE HUNDRED THIRTY-SEVEN OF THIS CHAPTER,
51 INCLUDING BUT NOT LIMITED TO POLICIES AND PRACTICES REGARDING: (A)
52 PLACEMENT OF PERSONS; (B) SPECIAL POPULATIONS; (C) LENGTH OF TIME SPENT;
53 (D) HEARINGS AND PROCEDURES; (E) CONDITIONS, PROGRAMS, SERVICES, CARE,
54 AND TREATMENT; AND (F) ASSESSMENTS AND REHABILITATION PLANS, AND PROCE-
55 DURES AND DETERMINATIONS MADE AS TO WHETHER PERSONS SHOULD REMAIN IN
56 RESIDENTIAL REHABILITATION UNITS.

A. 8588

1 S 6. Subdivision 4 of section 45 of the correction law, as amended by
2 section 15 of subpart A of part C of chapter 62 of the laws of 2011, is
3 amended to read as follows:

4 4. (A) Establish procedures to assure effective investigation of
5 grievances of, and conditions affecting, inmates of local correctional
6 facilities. Such procedures shall include but not be limited to receipt
7 of written complaints, interviews of persons, and on-site monitoring of
8 conditions. In addition, the commission shall establish procedures for
9 the speedy and impartial review of grievances referred to it by the
10 commissioner of the department of corrections and community supervision.

11 (B) THE COMMISSION SHALL ALSO ASSESS COMPLIANCE WITH THE TERMS OF, AND
12 AT LEAST ANNUALLY REPORT ON AND MAKE RECOMMENDATIONS TO THE DEPARTMENT,
13 LEGISLATURE, AND PUBLIC, REGARDING ALL ASPECTS OF SEGREGATED CONFINEMENT
14 AND RESIDENTIAL REHABILITATION UNITS IN FACILITIES GOVERNED BY SECTION
15 FIVE HUNDRED-K OF THIS CHAPTER, INCLUDING BUT NOT LIMITED TO POLICIES
16 AND PRACTICES FOR BOTH REGARDING: (I) PLACEMENT OF PERSONS; (II) SPECIAL
17 POPULATIONS; (III) LENGTH OF TIME SPENT; (IV) HEARINGS AND PROCEDURES;
18 (V) CONDITIONS, PROGRAMS, SERVICES, CARE, AND TREATMENT; AND (VI)
19 ASSESSMENTS AND REHABILITATION PLANS, AND PROCEDURES AND DETERMINATIONS
20 MADE AS TO WHETHER PERSONS SHOULD REMAIN IN RESIDENTIAL REHABILITATION
21 UNITS.

22 S 7. This act shall take effect immediately.