



**“Reassessing Solitary Confinement II:
The Human Rights, Fiscal, and Public Safety Consequences”**
Hearing Before the Senate Judiciary Subcommittee on the
Constitution, Civil Rights, and Human Rights

February 25, 2014

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Individuals sentenced to solitary confinement are almost seven times more likely to attempt to hurt or kill themselves than other incarcerated people.¹ This finding is the result of comprehensive research conducted by the city agency charged with providing healthcare to individuals in New York City jails. The harm caused by placing people in solitary confinement could not be more evident. We implore the Senate to take every available action to end its use in the United States.

The Urban Justice Center’s Mental Health Project has advocated on behalf of people with mental illness in the criminal justice system since 1998. Our work includes successful class action litigation to require New York City (NYC) to provide discharge planning to individuals receiving mental health treatment in the City jails, legislative advocacy in support of a law limiting the placement of people with serious mental illness in solitary confinement (known as the SHU Exclusion Law), and grassroots organizing in support of alternatives to incarceration for people with mental illness. Through this work, we are deeply familiar with the difficulties people with mental illness experience within correctional facilities and in accessing services upon release.

For the last decade, we have collaborated with other organizations, family members, and formerly incarcerated individuals in opposing the placement of people with mental illness in solitary confinement in the New York State prisons. During the last two and half years, we have also advocated against the use of solitary confinement in the NYC jails. We support and are actively involved in the New York Campaign for Alternatives to Isolated Confinement and the NYC Jails Action Coalition.

We commend Chairman Durban, Ranking Member Cruz, and the members of the Subcommittee for convening this follow-up hearing on solitary confinement and appreciate the opportunity to provide written testimony. In the testimony we submitted for the June 2012 hearing on solitary

¹ See Kaba, Lewis, Glowa-Kollisch, Hadler, Lee, Alper, Selling, MacDonald, Solimo, Parsons, and Venters, *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 AM. J. PUBLIC HEALTH 442 (Mar. 2014) (hereinafter “Venters et al.”) available at <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301742>.

confinement, we emphasized the particularly harmful effects of punishing people with mental illness by placing them in solitary confinement. Now we call your attention to conclusive evidence of the harm that solitary confinement causes to anyone subjected to it.

The Use of Solitary Confinement in New York City Jails

The NYC Department of Correction (DOC) uses solitary confinement to punish any violation of jail rules. The DOC expanded its solitary confinement capacity from 614 to 998 beds – a 61.5% increase – between 2007 and June 30, 2013.² Although the vast majority of people incarcerated in the City jails are awaiting trial (about 75%), anyone in DOC custody can be subjected to solitary confinement. This population includes adolescents as young as 16 years old and people with mental illness. In fact, almost 27% of the 16 to 18 year olds incarcerated in the City jails were in solitary confinement in fall 2013, and 71% of those were diagnosed as having a mental illness.³ An expert report issued in September 2013 revealed that more than 40% of the individuals held in solitary confinement had a mental illness and that the incidence of mental illness among women and girls in solitary was 84%.⁴

The DOC's use of solitary confinement has come under scrutiny during the last two years and is undergoing some changes. As a result of advocacy by the NYC Jails Action Coalition, the NYC Board of Correction, which regulates conditions of confinement in the City jails, has decided to adopt rules regarding DOC's use of solitary confinement. In the face of mounting public pressure, the DOC has pulled back from its planned expansion of solitary confinement. In collaboration with the NYC Department of Health and Mental Hygiene (DOHMH), the DOC has made some changes to its response to people with mental illness who violate jail rules. The DOC and DOHMH have developed units where clinical staff can provide a therapeutic response to individuals with serious mental illness who engage in problematic behavior. Most people with mental illness sentenced to solitary confinement are still held in 23-hour lockdown, but DOC and DOHMH have created solitary confinement units for this population that provide some opportunity to participate in behavioral programming that may lead to additional out-of-cell time and a reduction in length of solitary confinement sentence.

Harm of Solitary Confinement

The harms of solitary confinement are made plain by a study published in the *American Journal of Public Health* this month.⁵ The authors of the study are all staff of the NYC Department of Health and Mental Hygiene, the agency responsible for providing healthcare to people incarcerated in NYC jails. The researchers analyzed data from 244,699 incarcerations in the

² Gilligan and Lee, *Report to the New York City Board of Correction* (Sept. 2013).

³ *Staff Report: Three Adolescents with Mental Illness in Punitive Segregation at Rikers Island*, CITY OF NEW YORK BD. OF CORRECTION (Oct. 2013), available at http://www.nyc.gov/html/boc/downloads/pdf/reports/Three_Adolescents_BOC_staff_report.pdf.

⁴ Gilligan and Lee, *supra* note 2 at p. 3.

⁵ See Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, *supra* note 1.

NYC jail system from January 1, 2010, through January 31, 2013. This wide-ranging study was praised as the “largest, most comprehensive” look at the use of solitary confinement.⁶

The researchers found that incarcerated individuals “punished by solitary confinement were approximately 6.9 times as likely to commit acts of self-harm.”⁷ Only 7.3% of jail admissions included any solitary confinement sentence, yet “53.3% of acts of self-harm and 45% of acts of potentially fatal self-harm occurred within this group.”⁸ These findings are an indictment of the use of solitary confinement. To continue with this practice knowing full well that it causes people to engage in violence against their own bodies is inexcusable in a civilized society.

These findings reflect the desperation of people condemned to solitary confinement – they are driven to hurt themselves in an effort to escape the painful environment of deprivation and isolation to which they have been sentenced. The most common methods for doing so included laceration, ligature, swallowing a foreign body, and overdose.⁹ The researchers observed that some types of self-harm occur exclusively in solitary confinement settings, such as setting fire to one’s cell or smearing feces.¹⁰

Incredibly these acts of self-harm frequently result in additional time in solitary confinement.¹¹ For instance, one of our clients received an infraction and was sentenced to additional time in solitary confinement for refusing to obey a direct order after she was told to stop cutting her wrist and continued to do so. This young woman has repeatedly attempted to hurt or kill herself by eating soap, drinking bleach, taking pills, cutting her wrists – at times with glass – and attempting to hang herself. She has been taken from solitary confinement to the hospital on multiple occasions only to be returned to solitary confinement. She has spent most of the last two years in solitary confinement as she awaits trial.

Some who act in desperation may not intend to end their own lives, yet that is certainly a risk. During the period of the study, seven acts of self-harm were fatal.¹² One example is a young man who swallowed a toxic soap ball in August 2012 while in the solitary confinement unit for people with mental illness. Correction staff recognized that he was in distress but failed to provide medical attention. He died as a result, and the medical examiner ruled his death a homicide due to the denial of medical care.¹³

⁶ Pearson, *Study of NYC Jails Shows Inmates in Solitary Confinement Are More Likely to Harm Themselves*, Associated Press, February 12, 2014, available at <http://www.startribune.com/lifestyle/health/245257751.html>.

⁷ Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, *supra* note 1 at p. 445.

⁸ *Id.* at p. 442.

⁹ *Id.* at p. 444.

¹⁰ *Id.* at p. 446.

¹¹ *Id.*

¹² *Id.* at p. 442.

¹³ Blau, *Bronx DA Will Not Prosecute Jail Guards in Inmate’s Death Caused By ‘Neglect and Denial of Medical Care’ After Eating Soap*, N. Y. Daily News, March 24, 2013, available at <http://www.nydailynews.com/new-york/bronx/bronx-da-charged-jailers-inmate-soap-death-article-1.1298034>.

The mental torment that drives individuals to commit acts of self-harm is damaging to the individuals who experience it. These acts of self-harm also tax jail resources. The study evaluated the response to self-harm which includes medical and mental health evaluations, correction officer escorts, and possibly local emergency medical services, hospital emergency departments, and inpatient units. Based on these data, the researchers estimated that “every 100 acts of self-harm result in 36 transfers to a higher level of care and 10 hospital admissions. Every 100 acts of self-harm conservatively represent approximately 3760 hours of additional time by correction officers (for hospital transport and suicide watch) and approximately 450 excess clinical encounters in the jail system.”¹⁴

As mentioned above, New York City – like some other jurisdictions – has moved toward creating alternative therapeutic units for people with serious mental illness sentenced to solitary confinement. However, maintaining a regime of solitary confinement as the first line of punishment and exempting those with serious mental illness will not adequately address the problem of self-harm. According to this research, “[s]elf-harm is significantly correlated with patients who were in solitary confinement, irrespective of [serious mental illness] status or age.”¹⁵

Certainly we should not place adolescents or people with serious mental illness in solitary confinement – the effects on their development and disabilities respectively are apparent. But this study reveals that anyone placed in solitary confinement is significantly more likely to take the extreme action of harming him- or herself in response to this punitive environment.

Therefore, solitary confinement cannot remain a legitimate form of correctional management.

Recommendations

The Urban Justice Center endorses the approach advanced by the Campaign for Alternatives to Isolated Confinement and set forth in the Humane Alternatives to Long-Term (HALT) Solitary Confinement Act (A08588 / S06466)¹⁶ recently introduced in the New York State legislature:

1) Fundamentally Transform the Response to People’s Needs and Behaviors

Rather than isolation and deprivation that is inhumane and counterproductive, people who commit serious acts which justify separation from the general prison population should be provided with additional support, programs, and therapy to help to address their needs and behaviors.

- The HALT Solitary Confinement Act creates Residential Rehabilitation Units (RRUs) where individuals who present a danger to the safety of others can be separated from the general prison population and provided six hours out-of-cell programming and therapy aimed at addressing the underlying causes of behavioral problems.

¹⁴ Venters et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, *supra* note 1 at p. 446.

¹⁵ *Id.* at pp. 444-45.

¹⁶ The Humane Alternatives to Long-Term (HALT) Solitary Confinement Act is available at <http://open.nysenate.gov/legislation/bill/A8588-2013>.

2) Stop Placing People in Isolation and Restrict Criteria for Separation

The criteria that can result in isolation must be restricted to the most egregious conduct. The individuals who engage in such conduct should be the focus of an effective and humane intervention.

- The HALT Solitary Confinement Act allows up to 15 days in isolation or a longer time in RRUs for serious acts of physical injury, forced sexual acts, extortion, coercion, inciting serious disturbance, procuring deadly weapons or dangerous contraband, or escape.

3) End Long-Term Isolation – No More than 15 Days

The United Nations Special Rapporteur on Torture says that isolated confinement beyond 15 days is cruel, inhuman, or degrading treatment, or torture, so 15 days should be the absolute limit on isolated confinement.

- The HALT Solitary Confinement Act limits the time that a person may be held in isolation to 15 consecutive days and no more than 20 days total in any 60-day period. At these limits, a person must be released from isolation or sent to an RRU where he or she can receive at least six hours of out-of-cell programming and/or treatment.

4) Ban the Isolation of Vulnerable People

Certain people should never be placed in isolation because either isolation itself can have more devastating effects or these individuals are more vulnerable to abuse while in isolation.

- The HALT Solitary Confinement Act bans even one day of isolated confinement of special populations 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.

5) Better Equip Staff and Make Processes Fairer and More Transparent

Correction officers and other staff need more tools to work with people with serious needs or who engage in problematic behavior. There must be greater transparency and accountability for how isolation is used. People need more due process protections during hearings that lead to isolation.

- The HALT Solitary Confinement Act requires mandatory training for hearing officers and staff in RRUs and isolation units, additional procedural protections (including representation), public reporting, and outside oversight.

The HALT Solitary Confinement Act is a blueprint for transforming the punitive, ineffective environment of punishment into one of rehabilitation. Ultimately we will not eliminate violence from our jails and prisons through the violence that solitary confinement incites. Instead we must look to the causes of behavior and address them.

We urge you to take action to end the practice of solitary confinement in the United States.