



**REPORT ON LEGISLATION BY THE CRIMINAL COURTS COMMITTEE,
CORRECTIONS AND COMMUNITY REENTRY COMMITTEE,
CRIMINAL JUSTICE OPERATIONS COMMITTEE,
AND THE TASK FORCE ON MASS INCARCERATION**

**A.2277-A
S.2836**

**M. of A. Aubry
Sen. Salazar**

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 Humane Alternatives to Long Term (“HALT”) Solitary Confinement Act

THIS BILL IS APPROVED

The Criminal Courts Committee, Corrections and Community Reentry Committee, Criminal Justice Operations Committee, and the Task Force on Mass Incarceration of the New York City Bar Association (“City Bar”) support curtailing the use of solitary confinement (or “solitary”) in state jails and prisons. To this end, we encourage state lawmakers to pass the Humane Alternatives to Long Term (“HALT”) Solitary Confinement Act.¹ Passing this bill would benefit vulnerable persons disproportionately subjected to solitary confinement, increase public safety, and continue New York’s role as a leader in criminal justice reforms.

SOLITARY CONFINEMENT IN NEW YORK: AN INHUMANE AND UNJUST PRACTICE

Almost 1,600 people are in solitary confinement in New York prisons on any given day.² While there is lack of reliable data on the number of people held in solitary in local jails, the State Commission of Corrections has acknowledged a “prevalent misuse of solitary confinement” in such facilities.³ Although the practice goes by many names – “isolated confinement,” “the box,” or “the

¹ The City Bar has long supported the HALT Solitary Confinement Act, most recently in July 2020 (A.2500 / S.1623, NYS 2019-20); *see also* Report in Support of A.8588-A/S.6466-A, July 2014, <https://www2.nycbar.org/pdf/report/uploads/20072748-HALTSolitaryConfinementReport.pdf>.

² New York State Corrections and Community Supervision (DOCCS) Fact Sheet, Mar. 1, 2021, <https://doccs.ny.gov/system/files/documents/2021/03/doccs-fact-sheet-march-2021.pdf> (all website last visited March 15, 2021).

³ New York Civil Liberties Union, *Trapped Inside: The Past, Present, and Future of Solitary Confinement in New York*, at 4, Oct. 2019, https://www.nyclu.org/sites/default/files/field_documents/201910_nyclu_solitary_web.pdf.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

SHU” for special housing unit – solitary is a form of punishment in jails and prisons whereby a person is completely isolated in a small space.⁴ In New York, it is common for people in solitary to spend between 22 and 24 hours a day locked in a cell the size of an elevator without access to meaningful programming or therapy.⁵ They are often also prevented from speaking to anyone by telephone - including a defense lawyer working on their defense and loved ones trying to check on their wellbeing.

The lack of natural human interaction and negligible sensory stimulation can have detrimental effects on a person’s psyche.⁶ The Centers for Disease Control and Prevention (CDC) warns that isolation may increase a person’s risk of premature death from all causes at a rate that rivals increased mortality associated with smoking, obesity, and physical inactivity.⁷ Additionally, even a short time in isolation has been shown to cause serious, permanent mental health problems such as depression, anxiety, rage, panic attacks, hallucinations, self-mutilation and suicide.⁸ The United Nations denounced solitary confinement for periods longer than 15 days, finding that this constitutes torture.⁹

Still, there are few limitations on New York correctional authorities’ use of the punishment, and some people are forced to endure solitary confinement for months and years at a time.¹⁰ The New York State Department of Corrections and Community Supervision (DOCCS) has broad discretion to use solitary as punishment for violations of corrections rules, even for minor violations.¹¹ This discretion disproportionately harms Black and Hispanic people, as they are sent to the SHU with greater frequency than others. Prison census data shows that in 2017, when Black and Hispanic people made up about 75% of the New York prison population, they accounted for 85% of the individuals in long-term solitary confinement in prison facilities.¹²

YOUTH IN SOLITARY CONFINEMENT

It is unclear how many youths are in solitary confinement in New York, because neither the state nor the federal government publishes regular data with that information.¹³ However, the federal

⁴ *Solitary Confinement in New York State: The Facts*, HALTsolitary, <http://nycaic.org/facts/>.

⁵ *Id.*

⁶ *Id.*

⁷ National Academies of Sciences, Engineering, and Medicine, *Social Isolation and Loneliness in Older Adults: Opportunities for the Health Care System*, 2020, <https://doi.org/10.17226/25663>.

⁸ See *Boxed In: The True Cost of Extreme Isolation In New York’s Prisons*, American Civil Liberties Union, page 9, <https://www.nyclu.org/en/publications/report-boxed-true-cost-extreme-isolation-new-yorks-prisons-2012>; Andrew B. Clark, *Juvenile Solitary Confinement as a Form of Child Abuse*, *The Journal of the American Academy of Psychiatry and the Law*, Sept. 2017, <http://jaapl.org/content/45/3/350>.

⁹ *Solitary Confinement in New York State*, *supra* note 4.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Solitary Confinement in New York’s Prisons*, *supra* note 4 at page 2.

¹³ American Civil Liberties Union and Human Rights Watch, *Growing Up Locked Down: Youth In Confinement in Jails and Prisons Across the United States*, 2012, page 63, <https://www.aclu.org/report/growing-locked-down-youth-solitary-confinement-jails-and-prisons-across-united-states>.

Office of Juvenile Justice and Delinquency Prevention conducted a survey of 7,073 youths in custody in 2003, of which a quarter of detainees reported having been placed in solitary confinement at some time during their incarceration, and in 2014 the same office reported that nearly half of juvenile detention facilities reported locking youth in some type of isolation for more than four hours at a time.”¹⁴ In 2012, prior to City and State reforms, the New York City Department of Correction (DOC) reported that more than 14% of adolescents were sent to solitary at least once while detained, with the average length of stay – for those at Riker’s Island – being about 43 days.¹⁵

In January 2015, the New York City Council voted unanimously to end solitary for persons aged 21 and younger at all City jails and replace it with an “Enhanced Supervision Housing Unit” at Rikers Island.¹⁶ Although these policies did not go into effect until January 2016, the immediate effect in New York City was that youth aged 18 and older could only be sentenced to 30 days of solitary. Disturbingly, people aged 18-21 outside of New York City – many of whom have not been convicted of a crime – can still be held in solitary for potentially indefinite periods of time. And New York City officials skirted the local ban by transferring some youths to facilities outside the City where the restrictions on solitary confinement did not apply.¹⁷ A legislative solution is necessary to protect youth – and others – in all corners of the state from the unnecessary harm of solitary confinement.

THE HALT SOLITARY CONFINEMENT ACT

The HALT Solitary Confinement Act would end the most dangerous aspects of solitary confinement currently used throughout New York. It proposes limiting a person’s time in solitary to no more than 15 consecutive days at a time, and no more than 20 days for every 60-day period.¹⁸ It would also mandate that DOCCS provide more out-of-cell time, therapy, and support programs.¹⁹ Evidence suggests that improved programming for people in solitary could benefit both them and the public, since it can address the trauma caused by isolation and reduce the high recidivism rates of people who endured solitary before release from custody.²⁰ Finally, the Act would ban solitary for pregnant women, new mothers, the mentally disabled, persons 21 years or younger, and those

¹⁴ Andrew B. Clark, *Juvenile Solitary Confinement as a Form of Child Abuse*, The Journal of the American Academy of Psychiatry and the Law, Sept. 2017, <http://jaapl.org/content/45/3/350>.

¹⁵ *US: Teens in Solitary Confinement: Youth Suffer Serious Harm From Weeks, Months in ‘Lock Down’*, Human Rights Watch, Oct. 10, 2012, <https://www.hrw.org/news/2012/10/10/us-teens-solitary-confinement>.

¹⁶ Jasmine Gards, *New Solitary Confinement Plan For Younger Inmates At Rikers*, NPR, Jan. 14, 2015, <https://www.npr.org/sections/thetwo-way/2015/01/14/376708912/new-solitary-confinement-plan-at-rikers-humane-or-putting-officers-at-risk>; Miranda Katz, *Rikers Won’t End Solitary Confinement of Young Adults Just Yet*, The Gothamist, Jul. 13, 2016, http://gothamist.com/2016/07/13/solitary_confiement_rikers.php.

¹⁷ Ashley Southall and Jan Ransom, *New York City’s Young Inmates Are Held in Isolation Upstate, Despite Ban*, NY Times, July 22, 2018, <https://www.nytimes.com/2018/07/22/nyregion/inmate-solitary-young-nyc.html#:~:text=At%20least%2010%20young%20inmates,Facility%2C%20according%20to%20their%20lawyers>.

¹⁸ HALT Solitary, *Legislation: Summary of the Human Alternatives to Long-Term (HALT) Confinement Act*, <http://nycaic.org/legislation/>.

¹⁹ *Id.*

²⁰ Anjali Tsui, *Does Solitary Confinement Make Inmates More Likely to Reoffend?*, Frontline, Apr. 18, 2017, <https://www.pbs.org/wgbh/frontline/article/does-solitary-confinement-make-inmates-more-likely-to-reoffend/> (discussing how persons held in solitary have much higher rates of recidivism than persons not held in solitary).

ages 55 and older.²¹ The Act currently has majority support in both houses of the legislature and should be acted on immediately to save countless people in custody from further harm.²²

CONCLUSION

We applaud the Legislature and Governor Cuomo for continuing to demonstrate leadership by taking steps to both protect and provide humane treatment for the vulnerable, marginalized people currently housed in New York's jails and prisons. New York reformed bail, speedy trial, and discovery, helping to make our legal system more equitable for all, regardless of race, ethnicity or socioeconomic status. New York's elected officials should not disregard the plight of those detained in solitary confinement. We are left with a unique opportunity to combat the inhumane use of solitary confinement and promote a better outcome for all New Yorkers.

We urge the Legislature to act now and pass the HALT Solitary Confinement Act.

Criminal Courts Committee
Terri S. Rosenblatt, Chair

Corrections and Community Reentry Committee
Gregory D. Morril, Chair

Criminal Justice Operations Committee
Tess M. Cohen, Chair

Task Force on Mass Incarceration
Sean Hecker, Chair

Reissued March 2021*

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²¹ HALT Solitary, *supra* note 16.

²² A.2277-A, <https://assembly.state.ny.us/leg/?bn=A02277&term=2021>; S.2836, <https://www.nysenate.gov/legislation/bills/2021/s2836>.

* This report was first issued in July 2020; during the terms of the aforementioned committee chairs: Gregory D. Morril, Corrections and Community Reentry Committee; Terri S. Rosenblatt, Criminal Courts Committee; Sarah Berger, Criminal Justice Operations Committee; Sean Hecker, Mass Incarceration Task Force.