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NEW YORK  
CITY BAR

*Jayne Bigelsen (212) 382-6655 --- Director of Public Affairs*

June 13, 2006

Re: Solitary Confinement of Prisoners with Psychiatric Disabilities  
Passage of Senate Bill 2207-C

Dear Senator:

I am writing this letter as the Chair of the Mental Health Law Committee of the New York City Bar Association (“the Committee”) and its 20,000+ members in support of Senate Bill 2207-C.

When enacted, this legislation would address the inhumane and unjust treatment of prisoners with psychiatric disabilities by outlawing their placement into solitary confinement, by creating alternative therapeutic housing areas for them and by providing training for correctional staff who work in mental health housing areas. Passage of the Bill would reduce the number of suicide tragedies in the New York State’s penal system and bring the system into compliance with Title II of the Americans with Disabilities Act of 1990 (“ADA”), Section 504 of the Rehabilitation Act of 1973 (“Rehabilitation Act”), the Civil Rights of Institutionalized Persons Act (“CRIPA”), and the Eighth Amendment of the United States Constitution. And, having studied the bill extensively, our Committee has reason to believe that this legislation would be cost-effective.

In New York, there are upwards of 700 inmates on the mental health caseload who are in solitary confinement cells known as Special Housing Units (“SHUs”).<sup>1</sup> Inmates housed in SHUs are generally confined for at least 23 hours a day, and consequently face severe social isolation, sensory deprivation, and extreme idleness. Between 1998 and 2001, over 50% of the system’s 48 suicides occurred in SHUs, although less than 7% of the prisoner population is housed in these units.<sup>2</sup>

Inmates with psychiatric disabilities, the fastest growing segment of the penal system population, are particularly vulnerable to the conditions within SHUs. Forty percent of inmates with mental illness in SHUs have reported committing acts of self-mutilation while in prison, only to receive further punishment from the Department of Correctional Services, which punishes prisoners who attempt suicide or who harm themselves. Reportedly, disabled inmates confined to SHUs are three times more likely than non-disabled inmates to engage in acts of self-mutilation and to commit suicide.<sup>3</sup>

Evidence produced thus far in Disability Advocates, Inc. v. New York State Office of Mental Health (“OMH”), et al.,<sup>4</sup> a lawsuit challenging the use of SHUs, indicates that isolated confinement tends to exacerbate a prisoner’s mental illness and prognosis, in some cases creating a significant risk of death by suicide, and that prisoners’ mental impairments prevent them from remaining free of disciplinary infractions long enough to gain release from isolation.<sup>5</sup> These findings are consistent with social science literature describing the tragic psychological effects of isolated confinement on prisoners more generally.<sup>6</sup> Additionally, the American Psychiatric Association has recommended against using SHUs for inmates who suffer from schizophrenia, and the American Association of Community Psychiatrists has asserted that isolation and enforced idleness result in further deterioration and illness.

In addition to raising serious ethical questions, by failing to provide alternative punishments – punishments that do not exacerbate mental illness – as a reasonable accommodation to mentally disabled prisoners, the government discriminates against these prisoners solely on the basis of their disabilities in violation of the ADA and the Rehabilitation Act. The ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”<sup>7</sup> The Rehabilitation Act places the same prohibition on “any program or activity receiving Federal financial assistance . . .”<sup>8</sup> By neglecting to accommodate the special needs of inmates with serious mental illnesses, New York State clearly deprives them of access to programs and services available in the general prisoner population, simply because they are too disabled to remain in the general population under current disciplinary policies. Passage of S2207-C would correct this illegality. Further, like the ADA and Rehabilitation Act, the CRIPA aims to protect the rights of disabled individuals, with a particular focus on conditions of confinement. The statute authorizes the Attorney General to conduct investigations and file suit in order to secure the federal rights of confined persons, including those in state prisons and mental health facilities.<sup>9</sup> Accordingly, the Committee calls upon State legislators to uphold CRIPA’s federal mandate to ensure the safety of disabled individuals in prisons by eliminating the SHU.

Moreover, by subjecting disabled individuals to prolonged periods of isolated confinement with deliberate indifference to their health needs, the government may violate the right of prisoners with mental illness to be free from cruel and unusual punishment as guaranteed by the Eighth Amendment of the United States Constitution. In New York, there is no limit on the length of time a prisoner can be sentenced to SHU. On average, inmates with psychiatric disabilities are sentenced to SHU for 38 months – seven times longer than prisoners without mental health care needs.<sup>10</sup> According to the United States Supreme Court, both the treatment a prisoner receives and the conditions of a prisoner’s confinement fall within the protective parameters of the Eighth Amendment.<sup>11</sup> Within this context, the Supreme Court has held that mere knowledge of a serious risk of injury constitutes deliberate indifference to the welfare of an individual and is thereby violative of the Eighth Amendment.<sup>12</sup> Given the long-established mental health risks of prolonged solitary confinement, the government has surely exhibited

deliberate indifference in the confinement of disabled inmates to SHU. The State Legislature must not passively allow such constitutional violations to persist.

Finally, the Committee urges you to help enact bill S2207-C because its implementation would save the State money and alleviate harm to the public by eliminating the costly negative consequences of SHU confinement. First, the discontinuance of using SHUs on prisoners with psychiatric disabilities would protect the State from the expense of defending against lawsuits under the aforementioned laws. Second, it would reduce the costs associated with releasing prisoners who, due to neglect and inadequate treatment, are more ill than when they were first incarcerated and therefore more likely to experience homelessness, less likely to seek mental health care in the community, and, accordingly, more likely to require continued government services and to return to prison. Third, the provision of appropriate mental health treatment to inmates with psychiatric disabilities would reduce costs stemming from disruptive behavior and the injury psychiatrically disabled inmates inflict upon themselves and correction officers. Relatedly, inmates who receive the necessary treatment are more likely to be released sooner and thereby to save the government the expense of maintaining them in prison

For the above-stated reasons, the Committee respectfully recommends the passage of S2207-C; a bill to eliminate the use of cruel and inhumane SHUs in lieu of effective mental health services, not only as a matter of ethical obligation, but also in furtherance of established legal mandates protecting the rights of disabled individuals and in the name of fiscal responsibility and public safety.

With your leadership, New York will join other states in this critically important step toward improving the treatment and preserving the rights of prisoners with psychiatric disabilities. The Committee looks forward to learning of your progress on this important matter and my colleagues and I are available to meet with you and staff should you wish to receive more information regarding our research on this subject.

Respectfully submitted,

Virginia K. Trunkes, Esq.  
Chair, Committee on Mental Health Law

**Committee on Mental Health Law**  
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**Peter Yoerg (Secretary)**

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1. Correctional Association of New York, *Mental Health in the House of Corrections*, June, 2004
  2. <http://www.correctionalassociation.org/PVP/publications/SHU-fact.pdf>
  3. Correctional Association of New York, *Mental Health in the House of Corrections*, June, 2004.
  4. No. 02-4002 (S.D.N.Y. filed May 28, 2002).
  5. Declaration of Terry A. Kupers, MD, MSP, Disability Advocates, Inc. v. OMH, et al., No. 02-4002 (S.D.N.Y. filed March 6, 2006) ¶¶ 11-12 (issued upon his inspection of 13 New York Department of Corrections (“DOC”) prisons to assess treatment services for mentally disabled prisoners at the request of Disability Advocates, Inc.). Dr. Kupers is an Institute Professor in the Graduate School of Psychology at Wright Institute in Berkeley, a staff member of Alta Bates Medical Center in Berkeley, and a Diplomate of the American Board of Psychiatry & Neurology. Id. ¶ 1. His committee positions and publications demonstrate expertise on the topic of prisoners with mental illness. Id. ¶¶ 1-3. For purposes of the assessment, Dr. Kupers interviewed 183 prisoners (nearly all on the Office of Mental Health caseload), inspected various prison housing units, and reviewed a large volume of documents, including clinical charts and custody files of almost all of the 183 prisoners interviewed, as well as additional cartons of clinical files of prisoners who committed suicide. Id. ¶¶ 8-9.
  6. See, e.g., Hans Toch, MEN IN CRISIS: HUMAN BREAKDOWN IN PRISONS (Aldine 1975); Craig Haney, *Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement*, in CRIME & DELINQUENCY (2003).
  7. 42 U.S.C. § 12132.

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8. 29 U.S.C. § 794(a).
  9. 42 USC § 1997 et seq.
  10. <http://www.correctionalassociation.org/PVP/publications/SHU-fact.pdf>
  11. Helling v. McKinney, 509 U.S. 25, 31 (1993).
  12. Farmer v. Brennan, 511 U.S. 825, 836 (1994); Estelle v. Gamble, 429 U.S. 97, 104 (1976).