

# Pro Se

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## **SOLITARY CONFINEMENT TAKES CENTER STAGE FROM NEW YORK TO WASHINGTON AND ACROSS THE COUNTRY**

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### **NEW YORK**

As many of you may have heard, on February 19, 2014, the NYS Department of Corrections and Community Supervision entered into an Interim Stipulation with the New York Civil Liberties Union (NYCLU) in Peoples v. Fischer, a case challenging New York's use of solitary confinement. The 12-page *Stipulation For A Stay With Conditions*, requires DOCCS, contingent on receiving necessary funding, to make numerous changes over the next two years regarding the way in which disciplinary solitary confinement is imposed on prisoners. It is our hope that these changes, if implemented, will reduce the overuse of solitary confinement in our State prisons.

The agreement, among other things, requires DOCCS to implement changes to the way in which it imposes solitary confinement on juveniles (16 and 17 year olds), pregnant women and developmentally disabled and intellectually challenged prisoners. The agreement also requires DOCCS to implement new comprehensive and prospective guidelines for all disciplinary infractions and to provide extensive training to hearing officers regarding the new guidelines over the next nine months. The agreement immediately increases exercise time for prisoners in SHU in some facilities.

The Stipulation also requires DOCCS to provide NYCLU with periodic reports regarding these efforts and to allow both DOCCS' and Plaintiffs' experts to tour facilities and offer recommendations. The experts, Dr. James Austin for DOCCS and Eldon Vail for Plaintiffs are formidable. James Austin is the former director of the Institute on Crime, Justice and Corrections at The George Washington University in Washington, DC, and the principal researcher in studies that led to major reforms to the use of solitary confinement in Colorado and Mississippi. Eldon Vail is the former chief of the Washington State Department of Corrections, who successfully implemented reforms to solitary confinement after documenting the connection between prolonged isolation and higher rates of recidivism.

Finally, the agreement stays the litigation for a period of 2 years while DOCCS attempts to implement the terms of the Stipulation.

### **JUVENILES**

Juveniles in disciplinary housing will spend five (5) hours a day, five (5) days a week, engaging in out-of-cell programming and outdoor exercise, thus limiting the time in their cells during the week to no more than nineteen (19) hours a day, except in exceptional circumstances that have been referred to DOCCS' Central Office. DOCCS has also agreed to implement a program to house 16 and 17 year olds classified as medium security in a thirty (30) cell general population housing unit at Woodbourne Correctional Facility and at a fifty (50) bed dormitory general population housing unit at Greene Correctional Facility. Qualifying 16 and 17 year olds will still be admitted to DOCCS' Shock Incarceration Program. DOCCS will house juveniles who have been classified as maximum security at Cocksackie Correctional Facility. Juveniles with disciplinary confinement sanctions of thirty (30) days or less will remain at Woodbourne C.F. and Greene C.F. with Greene C.F. having an eight (8) bed separation unit. Juveniles with SHU time in excess of thirty (30) days will be held in a separate (22) cell housing unit at Cocksackie C.F.

The agreement does not appear to limit solitary time for juveniles in Administrative Segregation, Protective Custody or Involuntary Protective Custody. The agreement does not define what an 'exceptional circumstance' might be. The agreement requires DOCCS to make the required changes within the next eighteen months and no later than August 19, 2015, but only if DOCCS receives the necessary funding.

### **PREGNANT PRISONERS**

Except in exceptional circumstances, DOCCS has agreed to issue a written policy before March 19, 2014, establishing a "presumption against placement of pregnant female prisoners in solitary confinement for disciplinary purposes." Again, 'exceptional circumstances' is not defined and this exemption does not appear to apply to pregnant prisoners being held in other forms of solitary such as Administrative Segregation or Protective Custody or Involuntary Protective Custody.

### **SPECIAL NEEDS INMATES**

Within the next three months, DOCCS has agreed to, absent exceptional circumstances, provide alternatives to SHU for prisoners who have been sentenced to more than thirty (30) days in SHU and "have a BETA/WAIS of 70 or below or who DOCCS otherwise determines have significant limited intellectual capabilities and/or adaptive functioning and coping skills." The program, entitled the "Correctional Alternative Rehabilitation" or "CAR" program, will be established at Sullivan Correctional Facility.

The three-phase CAR program will provide: (1) assessment and orientation, (2) treatment, and (3) transition to non-disciplinary housing settings. In the first phase prisoners will be allowed out of the cell for programming for two (2) hours a day during the week. In the second and third phases of the program, prisoners will be permitted to be out of their cells four (4) hours a day, five (5) days a week. The CAR program will also reward behavioral progress with incentives. This section of the Stipulation is contingent upon DOCCS having available program space to accommodate prisoners who fall within the special needs definition.

### **CENTRAL OFFICE OVERSIGHT OF SHU CONFINEMENT**

DOCCS has agreed, contingent on its ability to secure necessary funding, to hire a new Assistant Commissioner and a research staff position to oversee and monitor the implementation of the disciplinary system throughout the State and to collect data and track performance.

### **NEW GUIDELINES & TRAINING**

Over the next nine months, DOCCS has agreed to create and implement new comprehensive guidelines and policies for *all* confinement sanctions imposed at disciplinary hearings, develop training materials on these guidelines with input from the experts, and provide training on the new guidelines and policies to hearing officers. The new disciplinary policies will include the following:

1. A requirement that Tier Review Officers document reasons for any decision to assign a disciplinary violation other than to the lowest possible tier;
2. A presumption against consecutive confinement sanctions for violations that arise from the same event absent exceptional circumstances;
3. Guidelines for the application of second and third infractions of a particular rule only where the subsequent infraction occurs within a specified time after the original incident as reflected in the new guidelines; and
4. Discretion for hearing officers to depart upward from these guidelines in appropriate circumstances that shall be articulated by the hearing officer and subsequently referred to Central Office.

### **INTERIM ACTIONS FOR SOME SHU PRISONERS**

Some DOCCS' facilities have physical layouts that are more conducive to implementing immediate changes in the way in which disciplinary solitary is imposed. As a result, DOCCS has agreed to take the following initial steps within the next 3 months:

1. In SHU 200s and Upstate Correctional Facility, outdoor exercise time shall be increased by one hour per day;
2. An additional hour of outdoor exercise can be earned on weekends for prisoners at PIMS level 3 at Upstate and SHU 200s; and
3. At Upstate, Southport and SHU 200s, after initial processing following admission to SHU, DOCCS shall provide headphones to all prisoners and in-cell study packets to all inmates on PIMS Level 1.

### **REPORTING AND EXPERT CONSULTATION DURING STAY PERIOD**

During the two-year stay period, DOCCS has agreed to provide NYCLU with various reports and data concerning the implementation of the above noted changes. DOCCS has also agreed that during the stay period, the experts will conduct up to three tours which can include tours of SHU and Keeplock units and interviews of DOCCS staff and prisoners. All communications between the experts, staff and prisoners are subject to a Confidentiality Agreement that prohibits either party from disclosing that information. In addition, DOCCS and NYCLU both agreed to give full consideration to the advice, suggestions or proposals offered by either party's experts.

### **VACATING THE INTERIM STIPULATION AND/OR LIFTING THE STAY**

In return, NYCLU has agreed to suspend its litigation for two years unless either of the following occurs:

1. The funding necessary to implement the changes is not allocated or DOCCS fails to act in substantial conformity with the terms of the agreement. If either should happen, NYCLU can file a Motion to Vacate the Stay but must wait at least six (6) months after the Effective Date (February 19, 2014) before doing so.
2. The parties are not able to reach agreement after exhaustion of good faith negotiations. In this case, NYCLU can make a motion to lift the Stay but must wait at least twelve (12) months after the Effective Date before doing so.

PLS applauds DOCCS, NYCLU and Governor Cuomo's Administration for agreeing to begin taking steps to address the overuse and misuse of solitary confinement in New York State's prisons. While this settlement is certainly a step in the right direction, as expressed in the testimony reprinted below, we have much, much more to do.

## WASHINGTON

In the September 2012 issue of *Pro Se*, (Volume 22, No. 4) the cover article was about a Senate subcommittee hearing on the use and effects of solitary confinement. We noted that it was the first Congressional hearing ever held on this issue and we reprinted the testimony that I submitted on behalf of PLS into the record of that hearing. At the end of that historic hearing, Chairman Senator Dick Durbin stated that this was not the last hearing on this issue and he stayed true to his word.

On February 25, 2014, the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, again chaired by Senator Dick Durbin, held a second hearing on solitary confinement. The purpose of the hearing, entitled “Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences,” was to examine the widespread use of solitary confinement – also known as segregation or isolation – for federal, state, and local prisoners and detainees. In the announcement of the hearing, Chairman Durbin noted that “[t]he United States now holds far more prisoners in solitary than any other democratic nation.” Chairman Durbin again invited advocates and stakeholders to offer their perspectives and experiences on these issues by submitting written testimony to be included in the hearing record and again I submitted testimony on behalf of PLS. We are reprinting the testimony here in light of the *People’s* settlement and our continued concern about the detrimental effects of long-term solitary confinement.

### **INTRODUCTION**

Prisoners’ Legal Services of New York (PLS) would like to thank Senator Durbin, Chair of the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, as well as other committee members, for holding this follow-up Congressional hearing on solitary confinement and for the opportunity to submit written testimony on this critically important civil and human rights issue. The continued use of solitary confinement in the United States prisons, jails and detention centers, despite the proven harm it causes, demands serious investigation and we applaud this committee’s foresight and courage in continuing a public discussion on this topic.

PLS is a nonprofit legal services organization that was established in 1976 in response to the Attica uprising, a three-day siege that culminated on September 13, 1971, when then-Governor Nelson Rockefeller ordered state law enforcement agents to forcibly retake control of the Attica prison.<sup>1</sup> The events at Attica forced public attention on the inhumane treatment and living conditions of New York State prisoners and the creation of PLS, as a result, many of those conditions improved. We learned a great deal from “Attica,” but with respect to the issue of prolonged solitary confinement, we have lost sight of the most important lesson of all: the need for our criminal justice system to continually assess

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<sup>1</sup>That day has come to be known as the day when “the bloodiest prison confrontation in U.S. history” occurred. As a result of the uprising, a special state Commission (the McKay Commission) was created to investigate and report on the incident. After dozens of hearings and thousands of pages of testimony, the McKay Commission issued a report chastising New York State prison authorities for: failing to provide adequate programming and education for prisoners; the lack of any procedures for prisoners to air or resolve their grievances; poor conditions in the prisons; and the overall mistreatment of prisoners.

the effects of the conditions of confinement on prisoners and to consider those effects in light of our evolving standards of decency.

PLS provides civil legal services to indigent prisoners in New York State correctional facilities on issues associated with their conditions of confinement. As a state-wide entity, PLS listens and responds to the concerns and grievances of all those incarcerated in New York State prisons. One might think we have come a long way since Attica, but a review of the more than 10,000 letters PLS receives annually reveals how much there is left to do. PLS responds to every single request we receive. When a prisoner writes to us about a disciplinary disposition that has resulted in a lengthy sentence in solitary confinement or loss of good time, we investigate. If we find a violation of due process or regulatory protections, we file an appeal.

In testimony PLS submitted at this committee's initial hearing on solitary confinement in June 2012, we set forth the sordid history of the use of solitary confinement and encouraged this committee to review that history in analyzing how we, as a nation, should address the issue.<sup>2</sup> We asserted then that the history regarding the use of solitary confinement, together with the drum-beat of constant reports from around the world about the effects of prolonged isolation on individual prisoners, required us to examine whether our evolving standards of decency have brought us to a place where we can no longer tolerate such punishment.

In the almost two years since we submitted testimony on this issue, the long-time concerns of corrections experts, medical and psychiatric experts, academic and religious scholars, and advocates regarding the harmful effects of solitary confinement have continued to be reinforced and legitimized.<sup>3</sup> In addition, there have been extensive investigations done and reports written, concerning the use of solitary confinement.<sup>4</sup> Finally, prominent organizations that had yet to weigh in on the issue have now done so.<sup>5</sup>

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<sup>2</sup> See Congressional Testimony of Prisoners' Legal Services of New York, June 19, 2012.

<sup>3</sup> See, for example, Bureau of Prisons: *Improvements Needed in Bureau of Prisons Monitoring and Evaluation of Impact of Segregated Housing*, May 1, 2013, available at: <http://www.gao.gov/products/GAO-13-429>; Berger, et. al., *Commentary: Toward an Improved Understanding of Administrative Segregation*, *Psychiatry Law*, vol. 41 no. 1, pp.61-64 (Response to O'Keefe, *A Longitudinal Study of Administrative Segregation*, et al., *J. Am. Acad. Psychiatry Law*, vol. 41 no. 1, pp. 49-60) Mar. 1, 2013; American Academy of Child and Adolescent Psychiatry, *Statement Against Youth in Solitary*, April 2012; American Psychiatric Association, *APA Position Statement on Segregation of Prisoners with Mental Illness* (2012); American Public Health Association, *Addressing Solitary Confinement as a Public Health Issue* (2013, Full Policy Statement Available in Early 2014) ; 220<sup>th</sup> General Assembly of the Presbyterian Church (USA), *Commissioner's Resolution on Prolonged Solitary Confinement in US Prisons*, 2012; The National Catholic Review, *We Are One Body*, *America* July 15 – 22, 2013, available at: <http://americamagazine.org/issue/we-are-one-body>; New York State Council of Churches: Resolution Opposing the Use of Prolonged Solitary Confinement in the Correctional Facilities of New York State and New York City, Sept. 2012; ACLU, Stop Solitary Campaign available at: <https://www.aclu.org/we-can-stop-solitary>. For a complete list of the most up-to-date comments on solitary confinement see: ALCU, *Solitary Confinement Resource Materials*. available at: <https://www.aclu.org/files/assets/Solitary%20Confinement%20Resource%20Materials%202012%202017%2013.pdf#page=14>.

<sup>4</sup> See, for example, New York Civil Liberties Union, "*Boxed In – The True Cost of Extreme Isolation in New York's Prisons*" p. 8. (Oct. 3, 2012) available at: <http://www.nyclu.org/publications/report-boxed-true-cost-of-extreme-isolation-new-yorks-prisons-2012>.

<sup>5</sup> See, for example, New York State Bar Association Committee on Civil Rights Report to the House of Delegates, *Solitary Confinement in New York State*, Presented to and Approved by the NYS Bar Association House of Delegates, January 25, 2013, p. 1 & 6, available at: <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26699>.

We now have even more proof that individuals subjected to solitary confinement are more likely to engage in self-harm.<sup>6</sup> We have more proof that individuals subjected to long term isolation become more, rather than less, violent.<sup>7</sup> We have witnessed individuals who have spent their entire professional lives working in the field of corrections coming to the conclusion that solitary confinement does not rehabilitate.<sup>8</sup> We have learned that, in most cases, severe isolation actually increases, rather than decreases recidivism and thus threatens public safety.<sup>9</sup> We have learned that best practices do not support the use of solitary confinement and that evidence-based policies and treatment practices are what should govern our decision-making in the criminal justice sphere.<sup>10</sup> Finally, with respect to the use of solitary confinement in New York State, we have learned more about the racial disparities and arbitrariness in the imposition of solitary confinement penalties.<sup>11</sup>

Based on what we have learned, we assert that we have now arrived at the time and place where our evolving standards of decency will no longer allow us to tolerate the continued use of long-term solitary confinement.

### **SOLITARY CONFINEMENT IN NEW YORK IN 2014**

Solitary confinement in New York State in 2014 is still confinement 23 hours a day in a cell the size of an elevator for single cells and a parking space for double cells, typically with no commissary, no phone, no packages or privileges and no visits.<sup>12</sup> Although given different labels such as administrative segregation, voluntary or involuntary protective custody or disciplinary confinement, the conditions of the confinement are very similar. For most in solitary confinement there is little to no human contact, often for years at a time. The one hour of exercise that is allotted to those confined to solitary is done, for most, in a small cage attached to the back of the cell. As noted in our 2012 testimony, in New York State there is still no limit to the length of time a prisoner can be placed in solitary confinement.<sup>13</sup>

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<sup>6</sup>Associated Press, *Inmates in Solitary Confinement 7 Times More Likely to Harm Themselves: Study*, Feb. 13, 2014, available at: <http://www.cbsnews.com/news/inmates-in-solitary-confinement-7-times-more-likely-to-harm-themselves-study/> citing American Journal of Public Health peer-review study of New York City jail inmates confined to solitary confinement.

<sup>7</sup>Erica Goode, *Rethinking Solitary Confinement*, N.Y. TIMES, Mar. 11, 2012, at A1. This article is available online under the title, “Prisons Rethink Isolation, Saving Money lives and Sanity,” available at: <http://www.nytimes.com/2012/03/11/us/rethinking-solitary-confinement.html?pagewanted=all>.

<sup>8</sup>George H. Bohlinger, III, *The Cruelty of Solitary Confinement*, October 28, 2013, available at: [http://www.washingtonpost.com/opinions/the-cruelty-of-solitary-confinement/2013/10/28/3c3e3ffa-3da6-11e3-b0e7-716179a2c2c7\\_story.html](http://www.washingtonpost.com/opinions/the-cruelty-of-solitary-confinement/2013/10/28/3c3e3ffa-3da6-11e3-b0e7-716179a2c2c7_story.html).

<sup>9</sup> Lovell & Johnson, “*Felony and Violent Recidivism Among Supermax Prison Inmates in Washington State*,” available at: <http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidivism-4-19-04.pdf>.

<sup>10</sup>American Public Health Association Policy Statement 201310 Addressing Solitary Confinement as a Public Health Issue, Nov. 5, 2013, available at: <http://www.apha.org/about/news/pressreleases/2013/2013adoptedpolicystatements.htm>.

<sup>11</sup> NYCLU “*Boxed In*” *supra* note 4, pp. 23-25.

<sup>12</sup>New York State Bar Association Committee on Civil Rights Report to the House of Delegates, *Solitary Confinement in New York State*, Presented to and Approved by the NYS Bar Association House of Delegates, January 25, 2013, p. 1 & 6, available at: <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26699>. See also NYCLU, “*Boxed In*” *supra* note 4, p.5 & 35.

<sup>13</sup> Congressional Testimony of PLS *supra* note 2 at p. 2.

Over the past 30 years there has been a steady increase in the length of solitary confinement time that is imposed on prisoners in New York State for alleged misbehavior. Because of this, prisoners, who in the 1980's, were given 30 days in solitary confinement, are now often given years of solitary confinement time without any regard to whether such prolonged isolation will have any positive effect on prison security or the individual's future conduct.

In 2012, with a population of approximately 56,700, over 4,300 prisoners, or 7.6% of the prison population, were held in solitary confinement. In 2014 those numbers have decreased somewhat with a prison population of 53,959 and little over 7% of the population or, 3,804 currently being held in solitary confinement.

When citizens of the United States are facing a loss of liberty in the criminal context, they are provided, not only significant due process rights, but legal counsel to protect those rights. However, once a person is convicted and sent to prison, at least in New York State, those protections disappear. If a prisoner is the subject of an administrative segregation, protective custody or disciplinary hearing, his due process rights are minimal and he is not entitled to counsel either at the hearing or on appeal, even though he is facing a loss of liberty equal to, or arguably greater than that which we, as Americans, so highly protect on the outside.

#### **A. Due Process & Regulatory Violations Result in Illegally Imposed Solitary Confinement**

In 2013, PLS received 1,236 requests for assistance from prisoners sentenced to disciplinary solitary confinement, hundreds of who had been sentenced to years in isolation. PLS does not have the staff to investigate all of these requests but we do at least respond to every request. For the cases we reject, we either advise prisoners that they do not have a claim or we provide counsel and advice as to how they can proceed on their own. PLS provided counsel and advice in 857 of the 1,236 requests we received and accepted 220 cases for investigation. Upon full investigation, which involves reviewing all of the documents associated with the disciplinary hearing, listening to the tape of the hearing and often interviewing the accused and his witnesses, PLS found that 111 cases warranted further administrative advocacy; of those 111 cases, PLS prevailed, either administratively or in the courts, in 75 (68%) of them. The result was that over 89 years of solitary confinement time was expunged from prisoners' records and prisoners were, in turn, released from solitary confinement and allowed to participate in the rehabilitative and educational programs that have been proven crucial to successful reentry.

While solitary confinement itself causes grave concerns, these statistics heighten those concerns by demonstrating that there are individuals being wrongfully held in solitary confinement as a result of due process violations. While PLS does what it can to accept as many cases as possible, there is a huge unmet need due to PLS' limited resources. As a result, it is more likely than not that there are thousands of New Yorkers currently wrongfully being held in solitary confinement as a result of due process violations.

**B. Sentencing at Initial Hearings and Modifications on Appeal Are Often Arbitrary and Irrational**

Although we welcome the administrative modifications or reversals of disciplinary hearings, they are insufficient to remedy the irreparable harm that has already occurred as a result of the solitary confinement time – often more than three months – that prisoners have been forced to serve prior to the modification or reversal. Moreover, the length of the penalties and the arbitrariness with which they are imposed and, in many instances, modified is cause for serious concern.

To illustrate the arbitrary and capricious nature of the disciplinary process in New York State, attached, as Exhibit A (**not attached in this reprint**), is a chart showing the results of 18 disciplinary cases PLS handled this past year. As you can see, the imposed penalties are extraordinarily long, ranging from six months for “smuggling” – our client had a piece of candy in his pocket – to five years for participating in a disturbance in a prison yard and striking another prisoner and an officer. Equally as disturbing, however, is the arbitrariness and randomness of penalties. The chart shows an instance where three prisoners were given identical charges, but two of the prisoners were given three years in solitary while the third was given one. The chart also shows that a prisoner found in possession of an amount of marijuana that was so small it could not be weighed, and some gang materials, received the same one year penalty given to the prisoner who was involved in a disturbance in the yard throwing punches at an officer.

However, it is the bizarre nature of the modifications that occur during the administrative review process that really highlight the randomness of the imposition of disciplinary penalties in New York State. When it came to reviewing the penalties for the three prisoners who were accused of being involved in the disturbance in the yard, the prison administration modified the penalties for the two prisoners who were given three years in solitary by reducing one penalty to two years and the other to 18 months, but then refused to modify the one year penalty for the third prisoner. The result was that three prisoners who were accused of engaging in the exact same misbehavior received solitary confinement times of two years, one year and six months, and one year, respectively.

Moreover, we should not lose site of the randomness of the initial penalties that are imposed. Where is the rationale for issuing a punishment of five years in solitary confinement for being involved in a yard disturbance and then cutting that penalty in half on appeal? Where did the five years come from? Where did the modified two and ½ year penalty come from? What is there to prevent a penalty of 20 years and then a reduction to 10? There is no rhyme or reason to the imposition of such penalties. There is no rational purpose being served, but there is great harm being done.

A poignant example of this is set forth in the administrative appeal (**not attached in this reprint**) by a PLS attorney for the client identified as J.T. in Exhibit A. As the appeal demonstrates, the client was deteriorating in solitary confinement. For the first four years of his incarceration, the client had few disciplinary problems and had never been sentenced to solitary confinement. However, in 2012 he was found guilty of violent conduct, fighting, weapon possession, creating a disturbance and refusing a direct order and was given a penalty of 13 months in solitary. From that point on, his life seemed to spiral out

of control. While serving the 13 months in solitary he accumulated an additional 28 months of solitary time resulting in his maximum release date being six months after his solitary confinement sentence expired. Although we presented clear and cogent arguments on the issue, citing not only the science surrounding the long-term effects of solitary confinement on one's mental health but also the public safety issue involved in releasing an individual from solitary directly into the community, our pleas were ignored.

### **C. Prisoners Suffering from Mental Illness are Still Being Subjected to Solitary Confinement**

Pursuant to extensive litigation and the passage of what is referred to as the 2008 SHU Exclusion Law, there have been significant improvements in the area of the treatment of prisoners suffering from mental illness in New York State.<sup>14</sup> The 2008 SHU Exclusion Law prohibits the confinement of seriously mentally ill prisoners in solitary confinement. However, for some clients, the SHU Exclusion Law has become meaningless because, despite the fact that they were diagnosed with a serious mental illness when they came into prison, they were re-diagnosed while in prison and thus no longer benefit from the Exclusion Law. For others, although they suffer from mental illness, because their condition does not fall within the definition of "serious mental illness," they are not exempt from solitary confinement.

Below are examples of four cases that demonstrate the irrational, arbitrary and very arguably unconstitutional way in which solitary confinement sentences are presently being imposed on prisoners in New York State who suffer from mental illness or intellectual capacity issues:

#### **Case No. 1**

Our client received six months solitary confinement for fighting, creating a disturbance, assault on staff, unhygienic act and refusing a direct order. He failed to file a timely appeal due to extremely limited literacy skills. During our interview with him we learned that he was in the Special Needs Unit (SNU)<sup>15</sup> prior to receiving the misbehavior report at issue. We also learned that he was scheduled to be released from prison on February 14, 2014.

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<sup>14</sup> In 2002, PLS, together with PRP, Disabilities Advocates, Inc. (DAI) and the law firm of Davis Polk, filed the case of Disability Advocates, Inc. v. New York State Office of Mental Health, S.D.N.Y. 02-CV-4002 (Lynch, J.), on behalf of prisoners with mental illness in New York. The lawsuit alleged that such prisoners are denied adequate mental health care, harshly punished for the symptoms of their mental illnesses and frequently confined under conditions amounting to cruel and unusual punishment. As a result, the suit charged, the mental health of mentally ill prisoners routinely deteriorates, sometimes to the point that the prisoners engage in self-mutilation or suicide. A private settlement agreement was reached in this case that included, *inter alia*, using diagnostic criteria to define serious mental illness (SMI), adding hundreds of treatment beds, offering the possibility of time cuts to SMI prisoners in long-term SHU or keeplock, and placing limits on the types of misconduct for which SMI prisoners may be punished.

<sup>15</sup> SNU provides "programs and housing areas for offenders who have intellectual and adaptive behavioral deficits and, as a result, may have significant difficulty adjusting to the prison environment. These units are therapeutic communities that provide short and long-term habilitative and rehabilitative services to offenders who have been identified as developmentally disabled or who possess significant intellectual and adaptive behavior deficits. These offenders generally present with an IQ below 70 and have adaptive behavior deficits that impair independent functioning in the general prison population. *See*: Department of Corrections and Community Supervision Report Pursuant to Chapters 130 and 132 of the Laws of 2010, October 6, 2011, available at: <http://www.op.nysed.gov/surveys/mhpsw/doccsrpt.pdf>.

Due to our client's limited literacy and intellectual skills, we requested permission to file a late appeal, but our request was denied. We then sought a discretionary modification of the penalty asking for time served, noting that our client had already served nearly four months in solitary and would otherwise be forced to "max out" directly from solitary into the community. We stressed the benefit to both our client and the community of allowing our client to transition back to the SNU prior to release, rather than face release to the streets immediately following six months in solitary. Our request was denied. Our client maxed out on 2/14/14 as scheduled.

### **Case No. 2**

Our client had multiple suicide attempts and a former diagnosis of schizophrenia but had been re-diagnosed to mood disorder NOS by DOCCS. He had been placed in solitary confinement three times over the past year. His letters when he was in solitary were deeply disturbing and often included suicidal ideation.

### **Case No. 3**

Our client, who read at a second grade level and had a history of mental illness, was accused of throwing a bar of soap at a corrections officer. He was found guilty at his hearing and sentenced to eight months in solitary. Despite the fact that our client was clearly not capable of communicating in English, the hearing was conducted in English and he was not offered a translator. Our client struggled to understand basic concepts throughout the hearing and the hearing officer was not able to understand many of our client's own words. Furthermore, although our client did not have a current mental health diagnosis at the time of the hearing, he has a long history of mental health problems. We submitted a supplemental appeal and the hearing was ultimately reversed, but not before our client served over five months in solitary.

### **Case No. 4**

Our client was charged with smuggling, unhygienic act, refusing a direct order, weapon possession, altered item and two counts each of violent conduct and assault on staff. He was being transferred to the mental health unit when this incident took place. On appeal, his six year solitary confinement sentence resulted in a reduction to five years.

### **D. Juveniles and Other Vulnerable Populations, Including Sensorially Disabled and the Elderly, Are Not Exempt From Solitary Confinement**

In our June 2012 testimony we set forth the position of the U.S. Supreme Court regarding the limited culpability of juveniles as well as the extensive scientific research that suggests that juveniles should not be held culpable for their conduct to the same degree that adults are because juveniles lack fully developed frontal lobes required for impulse control and because their brain structure is fundamentally and significantly different from that of adults.<sup>16</sup>

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<sup>16</sup> See Congressional Testimony of Prisoners' Legal Services of New York, pp. 5-7, June 19, 2012.

On February 19, 2014, the New York Civil Liberties Union and New York State DOCCS announced an historic settlement regarding the use of solitary confinement that, *inter alia*, will have some impact on 16 and 17 year old juveniles.<sup>17</sup> The agreement provides for the implementation of new comprehensive and prospective guidelines concerning solitary confinement penalties for all prisoners. However, those guidelines will still permit the imposition of solitary confinement penalties of months and, in many cases, years – penalties that significantly exceed the 15 day maximum suggested by the United Nations Special Rapporteur on Torture, Juan E. Méndez.<sup>18</sup> The agreement also stays the pending litigation for two years while experts analyze the use of solitary confinement in New York State.

While we are pleased that New York State is making steps toward addressing this issue and we commend NYCLU and NYS DOCCS on their efforts, there is still much to be done. The relief in the agreement, which will not be implemented for at least nine months, will allow for juveniles to be let out of their cells for up to five hours per day during the week for exercise, education and programming. But juveniles will still be held in solitary throughout the weekends and they will still be limited to only one hour of exercise per day, an amount we know is insufficient for their prospects of healthy development. In addition, they will still be subject to the imposition of years of 19 to 23 hour a day confinement which typically carries with it loss of packages, commissary and phone privileges and even sometimes visitation privileges. Such harsh penalties have been proven to cause serious medical and psychological harm and significantly interfere with a juvenile's ability to stay connected with his/her family – a connection that has been found to be instrumental to rehabilitation and successful reintegration into society upon release.

The above referenced settlement agreement also does not provide any immediate relief for youth between 18 and 21, sensorially disabled prisoners or elderly prisoners – all of whom continue to be harmed when subjected to long-term solitary confinement.

### **EVOLVING STANDARDS OF DECENCY**

In our June 2012 testimony we wrote at length about how our evolving standards of decency were bringing us to a place where we could no longer tolerate the use of solitary confinement in our country.<sup>19</sup> Since that time, the New York State Bar House of Delegates has adopted a resolution calling upon all governmental officials charged with the operation of prisons and jails throughout New York State to profoundly restrict the use of long-term solitary confinement and urging that the imposition of long-term solitary confinement on persons in custody beyond 15 days be proscribed.<sup>20</sup> There has been legislation

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<sup>17</sup> *Peoples, et. al v. Fischer, et. al, Stipulation For a State With Conditions*, Docket Number 11-CV-2694, S.D.N.Y. (Scheidlin, J.) Feb. 19, 2014 available at: <http://www.nyclu.org/news/nyclu-lawsuit-secures-historic-reforms-solitary-confinement>.

<sup>18</sup> Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, *Interim Rep. of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, U.N. Doc. A/66/268 (Aug. 5, 2011) (by Juan Mendez), available at <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

<sup>19</sup> See Congressional Testimony of Prisoners' Legal Services of New York, pp. 7-10, June 19, 2012.

<sup>20</sup> New York State Bar Association Committee on Civil Rights Report to the House of Delegates, *Solitary Confinement in New York State*, *supra* note 12, p. 2.

introduced in at least 12 states to reduce or eliminate the use of solitary confinement.<sup>21</sup> There has also been an extensive investigation into the use and abuse of solitary confinement in New York.<sup>22</sup> In light of this, we urge this committee to recognize that our evolving standards of decency can no longer tolerate the wide-spread use of long-term solitary confinement in our prisons and jails.

## **RECOMMENDATIONS**

Our evolving standards of decency mandate Congressional reform in the area of solitary confinement. That reform should do the following:

1. Fundamentally transform how our public institutions respond to incarcerated people's needs and alleged behaviors/threats, from inhumane and counterproductive isolation and deprivation to alternative therapeutic and rehabilitative units that provide additional support, programs, and treatment together with meaningful out-of-cell time and human interaction;
2. Drastically restrict the criteria that can result in separation from the general prison population to the most egregious conduct;
3. End long term isolation beyond 15 days as called for by the UN Special Rapporteur;
4. Ban any length of time of solitary confinement for people who are more vulnerable either to the effects of isolation itself or additional abuses while in isolation, including young people, elderly people, people with physical disabilities, people with mental health or addiction needs, pregnant women, and members of the LGBTI community;
5. Better equip and train staff to effectively work with incarcerated persons;
6. Make the processes resulting in solitary fairer, including legal representation at hearings and upon appeal; and
7. Make the entire process involving the implementation of solitary confinement or separation more transparent, including mandatory reporting requirements with more accountability through independent outside oversight.

## **ACROSS THE COUNTRY**

Concern over the use and abuse of solitary confinement continues to grow, as do the efforts to address those concerns. From California to New York, from Maine to Florida, states are proposing and enacting legislation to limit the use of solitary confinement. PLS thanks Brittany Stonesifer, of Legal Services for Prisoners with Children in California, for compiling a comprehensive list of the proposed and recently enacted legislation which, with permission, we reprint below:

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<sup>21</sup> America Civil Liberties Union, *Solitary Confinement Resource Materials*, pp. 14-15, available at: <https://www.aclu.org/files/assets/Solitary%20Confinement%20Resource%20Materials%2012%2017%2013.pdf#page=14>.

<sup>22</sup> NYCLU "Boxed In" *supra* note 4.

**Solitary Confinement;**  
**A Survey of Legislative Reform Efforts**  
As of 2/5/14

**California**

**AB1652:** This bill would restore the ability of prisoners placed in solitary confinement because of gang validation to receive earned-time credits toward their release from prison. The bill would also prohibit prisoners who are placed in solitary confinement for gang-validation purposes from receiving indeterminate segregation terms and would instead place a three-year limit on such terms.

- Introduced: 2/14/14
- Status: Read on Assembly floor

**SB61:** This bill would prohibit solitary confinement of juvenile detainees as a form of punishment or coercion. SB61 provides that minors may be held in solitary confinement only where the minor poses an immediate and substantial risk of harm to others or to the security of the facility, and all other less restrictive options have been exhausted. Even under these circumstances, the bill would require that confinement be for the minimum period of time required to address the safety risk and not compromise the mental or physical health of the minor. Further, SB61 would require juvenile facilities to investigate and document any solitary confinement involving minors in their custody. Finally, the bill would mandate that each county's juvenile justice commission include at least two parents or guardians of previously or currently incarcerated youth and one expert in adolescent development.

- Introduced: 1/8/13
- Status: Passed Senate; Passed Assembly Public Safety and Appropriations Committees; Ordered to Assembly Inactive File

**SB1363:** This bill mirrored SB61 (above) with the additional requirement that any minor placed in solitary confinement be evaluated face to face by a clinician within one hour of placement and every four hours thereafter. This bill would have also placed additional restrictions on the use of solitary confinement for minors who exhibited suicidal behavior.

- Introduced: 2/24/12
- Status: Died in Senate Public Safety Committee

**Colorado**

**SB14-021:** This bill would extend the repeal date of a legislative oversight committee concerning the treatment of mental illness in the criminal and juvenile justice systems and would add to the committee's duties the responsibility to consider issues related to the administrative segregation of persons with mental illness, especially concerning safety and direct release into the community.

- Introduced: 1/8/14
- Status: Referred to Senate Appropriations Committee

**SB11-176:** This bill would have prevented the placement of prisoners with serious mental illnesses in administrative segregation. Further, the bill would have required that prisoners placed in administrative segregation be reintegrated into general population at least six months prior to being released from prison. The amended version of the bill that was ultimately signed into law, however, did not include these provisions. As signed by the Governor, the law imposes reporting requirements on the use of administrative segregation and states that association with a prison gang or security-threat group alone shall not be a sufficient basis for placement in administrative segregation. The signed law also allows prisoners in administrative segregation to receive full earned time credits after their first 90 days in this segregation. At the same time, however, the Colorado Department of Corrections separately conducted a review of its segregation procedures and implemented reforms to significantly reduce the use of administrative segregation.

- Introduced: 2/21/11
- Status: Amended and signed into law

### **Florida**

**SB812/HB959:** This bill would have created the “Youth in Solitary Confinement Reduction Act,” which would have prohibited placing prisoners under age 18 in solitary confinement, with limited exceptions. The bill would have limited the use of “emergency isolation” of minors to a maximum of 24 hours for those youth who present an immediate and serious threat to security, to themselves, or to others. Even under these circumstances, the bill would have required that minors be placed in emergency isolation only where all other less-restrictive options had been exhausted and only for the shortest period of time required to address the safety risk. Youthful prisoners in emergency isolation would have been given a mental health evaluation within one hour of placement and every four hours thereafter. The bill further would have restricted the use of “disciplinary cell confinement” to a maximum of 72 hours after a finding that the minor committed a major rule violation. Minors under disciplinary cell confinement, under the bill, would have received status checks every 15 minutes as well as two hours of daily exercise. Finally, the bill would have reduced the isolation of youthful prisoners who require protective custody by providing access to numerous privileges available to general population youthful prisoners.

- Introduced: Senate, 2/12/13; House, 2/21/13
- Status: Died in Senate Criminal Justice Subcommittee

### **Maine**

**LD1611/HP1139; Resolve 216:** As introduced, this bill would have set minimum standards for the humane treatment of “special management prisoners,” including a 45 day limitation on placement in “special management units” unless the prisoner had committed certain rules violations within the previous 45 days. This bill also would have prevented the use of special management units for mentally ill prisoners as well as prohibited the use of corporal punishment against special management prisoners. Lastly, this bill would have required the Commissioner of Corrections to conduct a review of its use of special management units. Though the bill did not ultimately pass, the Governor issued a “resolve”

requiring the Department of Corrections to conduct a review of these units and submit a report to the Legislature.

- Introduced: 12/23/09
- Status: Passed Senate and House, but signed in alternate form by Governor (as ‘resolve’)

### **Massachusetts**

**SB1133/HB1486:** This bill would allow segregation of prisoners who pose a substantial threat to the safety of others, of damaging or destroying property, or to the operation of the facility. The bill would, however, require segregated housing to be the briefest term and under the least restrictive conditions practicable. Further, the bill would require prisoners placed in segregated housing to receive notice and a hearing within 15 days, and then every 90 days, regarding the reasons and evidence for the segregation. The bill would limit segregation to a maximum of six months “except in the most extraordinary circumstances” and set minimum standards for the humane treatment of prisoners in segregated housing.

- Introduced: 12/11/13
- Status: Referred to Senate Committee on Public Safety and Homeland Security, and House Judiciary Committee

### **Montana**

**HB536:** This bill would have prohibited long-term solitary confinement for protective custody, special management, or non-punitive administrative purposes, as well as for prisoners under the age 18 or prisoners with serious mental illnesses. “Long-term” was defined as any period extending more than three consecutive days within a 30 day period. The bill also would have banned long-term solitary confinement for prisoners within one year of their release dates, except under limited circumstances. Further, HB536 would have limited the use of long-term solitary confinement to those prisoners determined through due process to pose a significant risk to the safety of themselves, others, or the facility, and only then if all other less-restrictive options had been exhausted. HB536 described in detail the due process required to place a prisoner in solitary confinement as well as the minimum standard of conditions which must be afforded to solitary confinement prisoners. Finally, this bill would have banned solitary confinement of any prisoner for more than 90 consecutive days and would have required prison administrators to maintain, and make available to the public, records relating to the use of solitary confinement.

- Introduced: 2/18/13
- Status: Died in House Standing Committee

### **Nevada**

**SB107:** As introduced, this bill would have prohibited the use of solitary confinement against prisoners unless the prisoner presented a serious and immediate risk of harm to himself or herself, others, or the security of the facility, and all other less-restrictive options had been exhausted. The introduced bill further would have prohibited the use of solitary confinement for the purpose of punishing a prisoner and provided that if a prisoner is held in solitary confinement, the period of the confinement must be the minimum time required to address the threat and must end if the mental or physical health of the

prisoner is compromised. The bill, however, was amended before it was signed into law. The amended bill eliminated the above provisions as they would have applied to adult offenders and substituted a set of standards relating to the “corrective room restriction” of minor offenders. As adopted, the bill allows such restriction of minors only if all other less-restrictive options have been exhausted and only for the purposes of modifying negative behavior of the minor, holding the minor accountable for a rule violation, or ensuring the safety of the minor, others, or the institution. The adopted bill also defines conditions which must be present when a minor is held in corrective room restrictions and states that minors may not be held on this restriction of more than 72 consecutive hours.

- Introduced: 2/11/13
- Status: Amended and signed into law

### **New Hampshire**

**HB480:** This bill would prohibit the use of solitary confinement for prisoners under age 18 as well as prisoners with serious mental illnesses. “Mental illness” is defined in the bill to include being actively suicidal. The bill would also limit the use of solitary confinement such that no prisoner may be held in confinement for more than six weeks for a disciplinary infraction, which may only include those offenses which involve behavior that poses a danger to the inmate or others. The bill would also require that, prior to being placed in solitary confinement, a prisoner be given a hearing and an evaluation by a mental health clinician. Lastly, the bill would establish a new committee to assess the use, impact, and effectiveness of solitary confinement in New Hampshire.

- Introduced: 1/2/13
- Status: Retained in House Committee on Criminal Justice and Public Safety

### **New Mexico**

**HM62/ SM40:** This “memorial” established an interim committee to convene a working group to gather information about the use of solitary confinement, its conditions, its impact on prisoners, and its effectiveness at reducing prison problems and costs. Under this bill, the working group, which includes members from advocacy organizations, produced a report of its findings and recommendations in 2012, and a final report in 2013.

- Introduced; 3/5/11
- Status: Passed

### **New York**

**AB8588/SB6466:** This bill, which would create the “Humane Alternatives to Long-Term Solitary Confinement Act” or “HALT, “lays out extensive and detailed alternatives to New York’s current solitary confinement system. Specifically, the bill differentiates between “emergency confinement,” “short-term and extended segregated confinement,” and “residential rehabilitation units,” and creates varying standards with regard to each. First, the bill states that no prisoner age 21 or younger, age 55 or older, or with a physical or mental disability may be placed in segregated confinement for any period of time. Next, the bill would prohibit keeping most prisoners in segregated housing “for longer than necessary” and never more than 15 consecutive days nor 30 total days within a 60 day period. This bill

would require that prisoners kept in segregated confinement or rehabilitation units be kept in the least restrictive environment necessary for the safety of others and the facility and would prohibit housing prisoners in segregated confinement for protective purposes. The bill would also establish specific procedures for the regular evaluation of the programming needs, mental and physical health, and any continued reasons for confinement of any prisoner kept in segregated confinement or a rehabilitation unit. The bill would generally create presumptions that a person should be released from segregated confinement after set periods of time unless there exist specific reasons for continued confinement, but still places maximum caps to the length of time most prisoners may be confined. Lastly, the bill would create standards for training of correctional staff that interact with segregated prisoners, for monthly public reporting on the use of solitary confinement, and for external oversight on compliance with the provisions of the bill.

- Introduced: 1/24/14
- Status: Referred to Corrections Committee

**SB1401:** This bill would prohibit the use of segregated confinement for any disciplinary, administrative, protective, or other reason unless the prisoner has engaged in highly dangerous, violent, or serious escape-related behavior while incarcerated at the facility. SB1401 also would set a maximum period of segregated confinement at 90 days, except for prisoners whose behavior “exposes a pattern of extreme violence or danger,” in which case prisoner would nonetheless be reviewed by an independent board every 90 days to determine whether a continued need for segregation exists. The bill also would create a diversion system to direct prisoners with serious mental illnesses to residential mental health treatment units.

- Introduced: 1/9/13
- Status: Referred to Senate Corrections Committee

**SB5906:** This bill would have created the exact provisions currently outlined in SB1401 above.

- Introduced: 10/5/11
- Status: Died in Senate Corrections Committee

**AB9342/ SB6422:** This bill, which created the “SHU Exclusion Law” in 2008, requires the Department of Corrections to remove prisoners with serious mental illness from solitary confinement whenever possible and establishes mental health treatment units for the care of mentally ill prisoners who have previously been held in solitary confinement. The bill also requires the Department to provide documentation when mentally ill prisoners are kept in solitary confinement and explain the security or other concerns preventing the release of these prisoners from such confinement. The bill also establishes that mentally ill prisoners in solitary confinement must be treated with higher standard of care and must be periodically assessed to determine whether any less-restrictive options would be appropriate.

- Introduced: 7/17/07
- Status: Signed into law

**Texas**

**SB1802/ HB686:** This bill would require the Department of Corrections to annually submit a report regarding the number of prisoners referred to mental health services from both general population and administrative segregation, the number of suicide attempts in both general population and administrative segregation, the number of prisoners confined to administrative segregation immediately prior to their release from prison, the rates of recidivism and post-release employment among prisoners in relation to their placement in administrative segregation the length of and reasons for placement in administrative segregation, and information regarding the activity of gangs and security threat groups. The bill also would require the Department to submit a plan regarding its use of administrative segregation and including certain minimum access to programming, mental health services, and social interaction.

- Introduced: 3/8/13
- Status: Referred to Senate Criminal Justice Committee

**SB1357:** This bill would require Texas counties to establish standards regarding their use of administrative segregation or seclusion. These standards would include the requirement that jails first evaluate the suitability of using less-restrictive means of confinement, especially for minors and prisoners with mental health issues, and provide the prisoner with a mental health evaluation. The bill also would prohibit county jails from placing prisoners under age 18 in administrative segregation for more than four hours unless the confinement is due to an actual or attempted assault or escape. Lastly, this bill would require counties to annually submit a report documenting the number of prisoners confined in administrative segregation or seclusion, the length of each prisoner's segregation, the reasons for each prisoner's segregation, a summary of demographics of confined prisoners, and any mental illnesses or incidents of self-harm among prisoners kept in segregation.

- Introduced: 3/7/13
- Status: Referred to Senate Criminal Justice Committee

**SB1003/ HB1266:** This bill defines “disciplinary seclusion” as separation of a prisoner from other prisoners for disciplinary reasons for a period of 90 minutes or more and requires juvenile facilities to collect data regarding the number and length of placements in disciplinary seclusion, and to make that data publically available. The bill further requires the appointment of an independent third party to conduct a review of administrative segregation in Texas correctional facilities and to produce a report and recommendations aimed at reducing administrative segregation placements, diverting mentally ill prisoners from segregation, and decreasing the length of time individuals spend in segregation.

- Introduced: 3/1/13
- Status: Signed into law

**HB3303:** This bill would prohibit the detention of children in solitary confinement unless solitary confinement is necessary to ensure the physical or mental health or safety of the child or another child in the same facility.

- Introduced: 3/11/11
- Status: Referred to House Judiciary and Civil Jurisprudence Committee

## Virginia

**HJ126/ SJ93:** This joint resolution would have ordered a legislative study on the use of solitary confinement, including the costs of such confinement, the impact of prolonged solitary confinement on prisoners, the effect of solitary confinement on prison safety, and the possibility of limiting the use of long-term confinement. The study was to have taken special notice of the impact of solitary confinement on mentally ill prisoners.

- Introduced: 1/11/12
- Status: Tabled in House Rules Committee

## Federal

**US S 744:** This bill, which creates the “Border Security, Economic Opportunity, and Immigration Modernization Act,” defined solitary confinement as cell confinement for 22 hours or more per day and limits the length of solitary confinement to 14 consecutive days unless the Department of Homeland Security determines that further placement is justified by an extreme disciplinary infraction or is the least restrictive means of protecting the prisoner or others. This bill also bans the use of solitary confinement for prisoners under age 18 and severely restricts the use of solitary confinement for prisoners with serious mental illnesses. It also prohibits the use of solitary confinement for protective custody purposes.

- Introduced: 4/17/13
- Status: Passed Senate

**US S 162:** This bill, which would have created the “Justice and Mental Health Collaboration Act,” would have authorized the Attorney General to award grants to enhance the capacities of correctional facilities to create, implement, and improve alternatives to solitary confinement and segregated housing. The bill would have specifically authorized such grants for the implementation and enhancement of mental health screening and treatment for prisoners placed in solitary confinement.

- Introduced: 1/28/13
- Status: Placed on Senate Legislative Calendar on 6/20/13

## CONCLUSION

French criminologists, Gustav de Beaumont and Alexis de Tocqueville, who saw the effects of solitary confinement when they toured Auburn prison in 1831 stated: “This experiment, of which the favourable results had been anticipated, proved fatal for the majority of prisoners. It devours the victim incessantly and unmercifully; it does not reform, it kills. The unfortunate creatures submitted to this experiment wasted away.” Charles Dickens, in 1842, commented on the effects of solitary confinement when he toured Eastern State Penitentiary outside Philadelphia: “[T]here is a depth of terrible endurance in it which none but the sufferers themselves can fathom . . . this slow and daily tampering with the mysteries of the brain [is] immeasurably worse than any torture of the body.” In 1890, in the case of *In Re Medley*, 134, U.S. 160, involving the use of solitary confinement on prisoners in Philadelphia’s Eastern State, the U.S. Supreme Court found: “A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and

others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.”

One would think we might have learned from our mistakes which were so eloquently identified by experts in the field and the great legal minds of our times in the 1800’s, and yet, 183 years later, at a time when we are fully cognizant of the harmful, and often disastrous, effects of solitary confinement, we continue to use it.

As demonstrated above, there is a significant movement afoot in New York State, and indeed, in this country, to reexamine our use of solitary confinement with an eye toward heeding history’s warnings, but we have a long way to go.

*If you have questions regarding the Peoples settlement please contact PLS for further information. If you are a juvenile, a person with special needs or a pregnant woman, please advise PLS so that we are able to provide you with information specific to your situation.*

## News and Notes

### Medicaid Applications

In the last issue of *Pro Se*, we advised our readers to take advantage of a beneficial initiative: Medicaid Benefits. For those of you who are interested in applying for Medicaid benefits, please contact Joanne Nigro, Director of Guidance, 1220 Washington Ave, Building #2, Albany, NY. 12226-2050. Ms. Nigro is coordinating this effort.

**HELP PRISONERS’ LEGAL SERVICES CELEBRATE NATIONAL PRO BONO WEEK**

National Pro Bono Week is October 19-25<sup>th</sup> and, during that week, PLS will host an event highlighting the challenges of incarceration. To that end, we are seeking submissions on the following topics:

- experiences in the Special Housing Unit;
- experiences of juveniles in prison;
- experiences of immigrants in prison; and
- how incarceration affects relationships with children.

Submissions should be no more than ten (10) pages in length and mailed, with the below release, to: Pro Bono & Outreach Coordinator, Prisoners’ Legal Services, 41 State Street, Suite M112, Albany, New York 12207, **no later than JUNE 1<sup>st</sup>**. If you speak/write in a language other than English, please feel free to submit your story in your native language.

By sharing your first-hand stories, we hope to educate the public about the issues you face, and recruit attorneys to take cases *pro bono*, thus increasing access to justice for indigent incarcerated persons across the State. While we cannot guarantee that each piece will be read or displayed, we encourage all submissions and will do our best to integrate each one into the event. PLS reserves the right to make editorial changes to submissions.

*Please note that contributing your story for the Pro Bono Event described above is not the same as seeking legal assistance/representation from PLS.*

*If you are seeking legal assistance, you must write separately to the appropriate PLS office.*

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**PLEASE INITIAL ON THE APPROPRIATE LINE(S) AND SIGN BELOW.**

\_\_\_\_\_

PLS may use my real name.

\_\_\_\_\_

I authorize PLS to use my submission at their event.

\_\_\_\_\_

I authorize PLS to use my submission on their website, in *Pro Se*, and/or for other informational purposes

I consent to PLS including this submission as part of its National Pro Bono Week event. I understand that my contribution will be retained by PLS and may be used by PLS for future events.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## AYUDA SERVICIOS JURÍDICOS DE LOS PRESOS (PLS) CELEBRE NACIONAL PRO BONO SEMANA

Nacional Pro Bono Semana es 19-25 de Octubre y, durante esa semana, PLS seremos los anfitriones de un evento que destaca los desafíos de la encarcelación. Para ello, estamos buscando presentaciones sobre los siguientes temas:

- experiencias en la Unidad Especial de Vivienda (SHU);
- experiencias de los menores en la prisión;
- experiencias de los inmigrantes en la prisión; y
- cómo afecta a la encarcelación relaciones con los niños.

Las propuestas deben ser no más de diez (10) páginas de extensión y enviado por correo con el lanzamiento de abajo a: Pro Bono & Outreach Coordinator, Prisoners’ Legal Services, 41 State Street, Suite M112, Albany, New York 12207, no más tardar **el 01 de Junio**. Si usted habla/escritura en una idioma que no sea Inglés, por favor siéntase libre para enviar su historia en su lengua maternal.

Al compartir sus historias de primera mano, esperamos educar al public sobre los problemas que usted enfrenta, y contratar a abogados para llevar casos *pro bono*, lo que aumenta el acceso a la justicia de las personas encarceladas indigents en todo el Estado. Si bien no podemos garantizar que cada pieza se lee o se muestra, animamos a todas las propuestas y haremos todo lo posible para integrar cada uno de ellos en el evento. PLS se reserve el derecho de relizar cambios en la redacción de propuestas..

*Tenga en cuenta que contribuye para el evento de Pro Bono descript arriba no es lo mismo que buscar la asistencia juridical/representación de PLS. Si usted está buscando ayuda legal, se debe escribir por separado a la oficina de PLS apropiado.*

**POR FAVOR ESCRIBA SUS INICIALES EN LA LÍNEA(S) APROPRIADA Y FIRME ABAJO.**

- \_\_\_\_\_ PLS puede usar mi nombre real.
- \_\_\_\_\_ Autorizo PLS usar mi presentatción en su evento.
- \_\_\_\_\_ Autorizo PLS usar mi presentación en su página web, en *Pro Se*, y/o para otros fines informativos.

Doy mi consentimiento para PLS incluyendo esta presentación como parte de su evento Nacional Pro Bono Week. Yo entiendo que mi contribución será retenido por PLS y puede ser utilizado por PLS para futuros eventos.

\_\_\_\_\_  
Firma

\_\_\_\_\_  
Fecha

**Pro Se  
114 Prospect Street  
Ithaca, NY 14850**

**PLS Offices and the Facilities Served**

Requests for legal representation and all other problems should be sent to the local office that covers the prison in which you are incarcerated. Below is a list identifying the prisons each PLS office serves:

**ALBANY, 41 State Street, Suite M112, Albany, NY 12207**

**Prisons served:** Bedford Hills, CNYPC, Coxsackie, Downstate, Eastern, Edgecombe, Fishkill, Great Meadow, Greene, Greenhaven, Hale Creek, Hudson, Lincoln, Marcy, Midstate, Mohawk, Otisville, Queensboro, Shawangunk, Sing Sing, Sullivan, Taconic, Ulster, Wallkill, Walsh, Washington, Woodbourne.

**BUFFALO, 237 Main Street, Suite 1535, Buffalo, NY 14203**

**Prisons served:** Albion, Attica, Collins, Gowanda, Groveland, Lakeview, Livingston, Orleans, Rochester, Wende, Wyoming.

**ITHACA, 114 Prospect Street, Ithaca, NY 14850**

**Prisons served:** Auburn, Butler, Cape Vincent, Cayuga, Elmira, Five Points, Monterey Shock, Southport, Watertown, Willard.

**PLATTSBURGH, 121 Bridge Street, Suite 202, Plattsburgh, NY 12901**

**Prisons served:** Adirondack, Altona, Bare Hill, Chateaugay, Clinton, Franklin, Gouverneur, Moriah Shock, Ogdensburg, Riverview, Upstate.

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