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Hearing before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights on Solitary Confinement in U.S. Prisons

Testimony of the New York Civil Liberties Union
on the Use and Effects of Extreme Isolation in New York Prisons

July 19, 2012

The New York Civil Liberties Union thanks Chairman Durbin, Senator Graham, and Members of the Subcommittee for the opportunity to submit this written testimony on the issue of "solitary confinement" in New York prisons.

The New York Civil Liberties Union ("NYCLU") was founded in 1951 as the New York affiliate of the American Civil Liberties Union, and is a nonprofit, nonpartisan organization with nearly 50,000 members across the state. Our mission is to defend and promote the fundamental principles and values embodied in the Constitution, New York laws, and international human rights laws, on behalf of all New Yorkers, including those incarcerated in our jails and prisons.

Over the past year, the NYCLU has conducted an investigation into the use of solitary confinement – or what we describe as "extreme isolation" – in New York state prisons. During this investigation, the NYCLU has heard many stories about extreme isolation from prisoners, their families, correctional employees (including mental health professionals and clergy) and advocates. Many of these individuals and organizations will be submitting testimony on New York's use of extreme isolation, including the recent success in passing legislation to protect prisoners suffering from serious mental illness from conditions of extreme isolation, and the long road to fully implementing the promise of that legislation.

We write to provide the Subcommittee with testimony on three discrete features of New York's use of extreme isolation: (1) the types of extreme isolation used in New York prisons; (2) the conditions of extreme isolation from the perspective of prisoners and corrections employees who live and work in these environments; and (3) the frequency with which New York uses extreme isolation to summarily punish non-violent misconduct by prisoners.

As discussed below, the evidence shows that New York uses extreme isolation far too often and for far too long, often for minor violations of prison rules. New York's dependence on extreme isolation abandons rehabilitative efforts in favor of severe punishment that causes significant, often long-lasting, pain and suffering. It makes the jobs of corrections employees who work with prisoners held in these punitive and isolating conditions more difficult. This use of extreme isolation is unlikely to effectively deter the minor misconduct at issue, and leaves prisoners unprepared to rejoin our communities upon release.

The Types of Extreme Isolation Used in New York Prisons

Many different terms describe "solitary confinement" in the federal and state correctional systems, including "supermax," "special housing units" or "SHU," "prolonged isolation," and "the Box." All of these terms describe circumstances in which corrections officials choose to isolate prisoners from all meaningful social contact and environmental stimuli. The NYCLU believes the term "extreme isolation" is most apt in describing the use of isolation in New York. "Extreme isolation" captures the range of ways in which the New York Department of Corrections and Community Supervision ("DOCCS") subjects prisoners to isolation. Moreover, it incorporates two independent, but related, concepts: (1) the degree of isolation a prisoner experiences and (2) the length of time a prisoner experiences such isolation – either or both of which may independently, or in combination, be considered extreme.

DOCCS uses three general types of isolated confinement, all of which may be properly described as extreme isolation. The first is "keeplock," the practice of isolating prisoners to their cells within the general prison population. The second and third are "single-cell SHU" and "double-cell SHU." "SHU" stands for Special Housing Unit, a group of cells separated from the general prison population, where prisoners are isolated and stripped of virtually all privileges. Prisoners in single-cell SHUs are confined to a cell alone; prisoners in double-cell SHUs are confined to a cell with another individual.

DOCCS subjects prisoners to these three forms of extreme isolation – keeplock, single-cell SHU, and double-cell SHU – for a variety of reasons. But by far the most prevalent is to punish those who violate prison rules, a practice known in New York, and in many other corrections systems, as "disciplinary segregation." Of the nearly 4,500 prisoners who may be isolated in a single-cell or double-cell SHU at any given time in New York prisons, and of the many thousands more subject to keeplock, only a tiny percentage are subject to extreme isolation because their mere presence in the general prison population is deemed to pose a substantial threat to safety and security ("administrative segregation") or for their own protection ("protective custody").

Living and Working in Extreme Isolation in New York Prisons

Keeplock: Prisoners in keeplock are confined to their cells in the general prison population for 23 hours a day. They recreate either alone or with others for an hour a day. They maintain the property in their cell and certain other privileges, such as access to the commissary. They cease all education or vocational training, addiction or behavioral therapy, and all other programming or rehabilitative activity.

Single-Cell SHU: Prisoners in single-cell SHU are confined to their cells – some sealed by solid steel doors – for 23-24 hours a day, totally isolated from meaningful human contact. They receive their meals through a narrow slot in their cell door.

They recreate alone in a small cage, no larger than their cell, enclosed by high concrete walls or wire mesh, for an hour a day. In some circumstances, they are forced to "recreate" in these

small, barren spaces while in handcuffs. Many prisoners and corrections officers have described this cage as a "human kennel."

Their personal possessions are limited to legal materials and a few personal books and magazines. They receive no programming or rehabilitative activity, nor transitional services, even if they are within a few months of returning to society.

Many prisoners have described the mental and emotional toll that these conditions have taken on them. One prisoner, who has withstood years of extreme isolation, described the range of emotions he has experienced over that period:

> *These cells are designed to isolate and discourage any natural conversation. The air vents hum loudly all 24/7 hrs a day enough to cause deafness. When you're out of the cell it seems different because the noise level changes. With so little to do your mind rots with thoughts that are uncommon or unnatural and you wonder where the hell did that come from. It goes further than daily doldrums because a lack of any constructiveness only contributes to destructiveness and the Prison System is designed to make a person like myself and others unfortunate to self-destruct become numb lose the sense of reality to the degree that any commotion at all is better than vegetating by letting hours pass without nothing on your mind or will to do anything. I can become bitter thinking about the experiences had in these Special Housing Units and the bad far outweighs the good to the point of even trying to write family, there's nothing to share because the starkness leaves you wanting to rant and rave until they come to kick the remaining sense out of you . . . .*

Another prisoner, whom DOCCS punished by placement in a single-cell SHU, described the experience:

> *Its crazy they really treat us like where some animal. I guess they forget people make mistakes which land them in jail and the fact that we was living a normal life too before our conviction. . . . I don't even tell my family the things I go through cause I don't want them to worry about me. I still be having a lot of mood swings lately, I don't be meaning any harm I just be mad at my situation and I take it out on other inmates verbally and police sometimes. It gets reall lonely in here, especially if you don't have family to communicate with or send you books. Im greatful to have that, but after you be in this cell for so long it hard to keep your mind outside of these four wall, all you have is memorys.*

Most of these men fear their return to the general prison population, or for those who will be directly released from extreme isolation, to society. One prisoner described finding himself "snapping at others" in "daily outbursts" and observed that he "wasn't like this before." He concluded, "I'm hoping I change back when I go back to being around people." As explained by

a correctional officer, "Some guys are in SHU for nothing, [they] turn into this violent thing in the Box."

One prisoner who has since returned to the general prison population after being sent to the SHU for punishment noticed that the effects of extreme isolation have lingered with him:

> *I don't really know how to explain my transition to [general prison population]. When I arrived here I was terror stricken for the first two weeks, at least. That kind of behavior is nothing like me at all. Its when I got here that I realized how badly the box had effected my charrecter. I've always been somewhat anti-social, but my confidence in myself and my ability to communicate is more challenged now then it has been since I was a teenager. My depression is pretty bad off too. All I know tho is I was fine in [the general prison population] and then I went to [the SHU] and it seems like part of me is still there.*

Another prisoner described his frustration at not being able to access any programming while in SHU that would prepare him to rejoin the community upon release from prison:

> *But the nightmare starts with the realization 'Im going home from the Box' lacking any transitional services of all sorts. Me personally, I read to keep my mind strong and intellect growing! And I have a strong desire to <u>never</u> return to jail. But I <u>need</u> help from the 'professionals' that work for the state because its so obvious my ways aren't quite the right ones. Do you know what I mean?*

<u>Double-Cell SHU</u>: Prisoners in double-cell SHU are subject to all the same conditions as those in single-cell SHU, but also share their cell with another individual. For many prisoners, their relationship with their cell-mate is marked by intense frustration, antagonism, and violence or the constant threat of violence. This dynamic is an unavoidable consequence of isolating two men together in a small and cramped space where they must shower, urinate and defecate in full view of each other, and discuss any medical or mental health problems at their cell door within close earshot of each other.

One prisoner, whose disciplinary issues have all been for non-violent and minor misconduct, observed that sharing a double-cell SHU resulted in physical altercations with his cell-mate. Sometimes, he would "want to fight just because of the close space." He explained that "the littlest things cause people to bug out," and that even if his cell-mate "didn't do nothing," he would just get "so pissed off" that he would start a fight.

Another prisoner, who shared a double-cell SHU for a short period with a friend of his, made similar observations. He and his cell-mate ended up fighting in their cell:

To be clear, we did not fight for any other reason than that we found we simply could not get along while being locked together if locked 24 hours in a cell. I was having my problems & he was burdend by the fact that his wife had just died & with both our moods being dark & depressing all the time we didn't mix well & after a few days I ended up attacking him. Someone I consider a close personal friend, because of my own inability to function normaly in the box. He has since then forgiven me . . . .

Working in SHU: Correctional officers ("CO") who have worked in the Special Housing Units say, "The job changes you." One retired CO stated, "Overall the SHUs are more stressful to work." Some COs who have worked in the SHU complain in particular of nightmares and emotional distress. "You have to be on edge all the time," one retired CO shared.

Interactions between COs and prisoners in the SHU further strain this tension, with negative effects on COs. According to a chaplain who formerly worked in a SHU, "the atmosphere [of] the SHU is difficult not just for the inmates in it, but also for corrections officers." In facilities where prisoners are "locked up all day long, the position of the CO changes from what people are used to . . . [it is] . . . not a wonderful way to conduct human relationships."

DOCCS' Dependence on Extreme Isolation as a Disciplinary Response

DOCCS utilizes extreme isolation far too often and for far too long for minor, non-violent misconduct. DOCCS's dependence on extreme isolation as a one-size-fits-all disciplinary response interrupts or ends prisoners' rehabilitation, makes correctional officers' jobs more difficult and dangerous, and is less effective than other disciplinary alternatives.

Like all highly regulated prison environments, DOCCS has a long list of rules governing every aspect of prisoners' behavior. DOCCS vests its correctional officers with virtually unbridled discretion to punish any rule violation with extreme isolation, and substantial discretion regarding the length of the extreme isolation imposed. As a result of this policy, DOCCS sentences many prisoners to brutal stints in extreme isolation for non-violent misbehavior.

For example, minor misconduct such as leaving a classroom, leaving work duty without permission, or smoking a cigarette in an unauthorized area, can result in the punishment of a month of extreme isolation. Drug or alcohol-related offenses, such as testing positive on an urinalysis, typically lead to 3 months of extreme isolation for the first offense, 6 months for the second offense, and a year for the third offense.

Indeed, many prisoners we have communicated with are serving time in extreme isolation for such minor violations of prison rules. For example, one prisoner received four months of extreme isolation for a series of minor misbehaviors, including leaving class without permission, smoking a cigarette in the bathroom, sleeping through work duty, and visiting another prisoner's dormitory. This prisoner was only 21 years old at the time he was transferred to the SHU to serve his 120 day sentence. Another prisoner has repeatedly bounced in and out of the

SHU for drug use. Most recently, DOCCS elected to punish him with extreme isolation for a year because of a single positive test for marijuana on an urinalysis.

While DOCCS is quick to impose extreme isolation in response to minor misbehavior by prisoners in the general prison population, additional punishment for minor misbehavior once a prisoner is already in the SHU is even more swift and severe. Thus, prisoners in extreme isolation face the very real possibility of earning additional lengthy disciplinary sentences that keep them in the SHU beyond their initial sentence. For example, one prisoner in the SHU received an additional six months of extreme isolation as punishment for refusing to hand his food tray back to a CO after a meal. Another prisoner in the SHU received an additional six months of extreme isolation as punishment for "tampering with property" when he returned a used but broken razor to a CO who was collecting such items.

Lengthy sentences to extreme isolation are unlikely to effectively deter misbehavior. Prisoners who engage in non-violent behavior in violation of technical rules are often manifesting symptoms of pre-existing mental illness or behavioral problems. There is no evidence to suggest that subjecting these prisoners to extreme isolation will improve their ability to obey minor prison rules, especially as compared to well-established alternatives like counseling and treatment. Similarly, for those prisoners who purposefully and knowingly disregard prison rules by engaging in non-violent misconduct, like drug use, lengthy sentences to extreme isolation totally suspend the rehabilitative programming that could effectively alter their behavior, such as substance abuse treatment. Instead, punishing these prisoners with extreme isolation simply engenders anger, hostility, and depression (and rarely deters drug use, which continues unabated in SHU), which correctional officers working in the SHUs are then forced to confront on a daily basis.

In some cases, DOCCS use of extreme isolation does not just interrupt rehabilitative programming or therapy – it abandons it entirely. In these cases, a prisoner's disciplinary sentence to extreme isolation eclipses the remainder of his or her entire prison sentence. DOCCS requires these prisoners to serve the remainder of their prison sentence in extreme isolation, and releases them directly from such conditions back to their communities with no transitional programming. One prisoner, who is serving a four-year prison sentence for a drug-related offense, is currently in extreme isolation and will be held in SHU until he is released. He has observed, quite obviously, that he is "not prepared" to return to society.

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Prisoners, corrections professionals, advocates, and the public all want safe and effective prisons. All of these stakeholders share the belief that prisons should be safe places for those who live and work in them. All also want to ensure that when people who have been sent to prison are released – as the vast majority of prisoners ultimately are – incarceration has effectively prepared them to rejoin and strengthen our communities.

Whether the extraordinarily severe punishment of extreme isolation should be imposed on prisoners should be evaluated against this overall goal of ensuring safe and effective prisons. In New York, the evidence demonstrates that DOCCS's dependence on extreme isolation as a one-size-fits-all disciplinary solution is a significant impediment to this common objective. Extreme isolation leaves prisoners unprepared to re-enter society. It imposes severe anguish and psychological pain on prisoners who have committed little more than minor misconduct or non-violent drug use. And it takes a severe toll on correctional officers who must wrestle with the psychological and physical costs of managing prisoners living in these punitive and isolating conditions.

We thank the Committee for holding this hearing and for taking the opportunity to consider the grave implications of extreme isolation on prisoners, corrections officers, and the public. We urge the Committee to take action to facilitate substantial reforms to the use of extreme isolation around the country, and in New York.

Sincerely,

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