



## **Testimony by the Campaign for Alternatives to Isolated Confinement**

Submitted to the Senate Judiciary Committee

Subcommittee on the Constitution, Civil Rights and Human Rights

Reassessing Solitary Confinement II: The Human Rights, Fiscal, and

Public Safety Consequences

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The New York Campaign for Alternatives to Isolated Confinement (CAIC) would like to thank Chairman Durbin, Ranking Member Cruz, and the members of the Subcommittee for the opportunity to provide written testimony regarding the urgent need to take action to address the problem of isolated confinement at the federal, state, and local levels.

Founded in 2013, the Campaign for Alternatives to Isolated Confinement consists of organizations and individuals who are working for sweeping reform of isolated confinement policies and practices in New York State. The leadership of the campaign includes individuals who have been directly affected by solitary confinement – people who themselves experienced solitary, and people who have family members or loved ones who are currently in solitary. It also includes concerned community members, lawyers, and individuals in the human rights, health, and faith communities throughout New York State.

Our testimony will summarize the key aspects of the problem using New York State as an example, and then outline the key components of meaningful reform, which are reflected in recently proposed legislation in New York State.

### **The Problem: The Torture of Solitary Confinement**

The torture of solitary confinement and other forms of extreme isolation can be broken down into at least five key problem areas that are seen throughout the country, including in New York: 1) the conditions of solitary confinement are inhumane and counterproductive; 2) there are far too many people in solitary confinement; 3) people remain in solitary confinement for far too long – regularly months, years, and decades at a time; 4) even people particularly vulnerable to either the effects of isolation itself or additional abuse while in isolation are in solitary, including young and elderly people, people with disabilities or mental health or addiction needs, pregnant women, and members of the LGBTI community; and 5) the processes leading to isolation are arbitrary and unfair, involve insufficiently equipped staff, and are carried out with little transparency or accountability.

First, the conditions of solitary confinement are inhumane and counterproductive. The use of isolation is an extension and perpetuator of mass incarceration and a paradigm focused on punishment and dehumanization rather than rehabilitation, treatment, and support. In New York prisons and jails, as across the country, people are confined in a cell the size of an elevator for 22

to 24 hours a day, without any meaningful human contact, programs, or therapy. The one or two hours out of cell, if provided and utilized, take place alone in a recreation cage. In New York State prisons, people in solitary confinement are not even allowed to make phone calls. Such isolation has been proven to often cause deep and permanent psychological, physical, and social harm, and in turn exacerbate rather than effectively address the underlying causes of difficult behavior. A recent study published in the American Journal of Public Health found that people in solitary confinement in New York City jails were nearly seven times more likely to commit self-harm than people in the general jail population. People suffer not only in solitary but when they reenter a community setting, including those who spent long periods in isolation and those released directly from solitary to the community.

Second, there are far too many people subjected to these inhumane and counterproductive conditions, disproportionately people of color, and most often for alleged non-violent conduct. In New York State prisons alone, on any given day, there are around 3,800 people in one form of isolation, Special Housing Units (SHU), while many other people are in keeplock. In addition to the state prisons, thousands more people are held in solitary confinement in city and county jails, including New York City jails. The racial disparities are clear: although African Americans represent only around 18% of the total population of New York State, 50% of the people in NYS prisons are African American, and even more disproportionately, 60% of people in the SHU in NYS prisons are African American. Additionally of concern, five out of the six sentences that result in SHU sentences are for non-violent conduct. The most egregious examples include people having too many postage stamps, talking back to officers, refusing to give back a food tray, or speaking up for one's own or others' rights.

Third, people are held in solitary confinement for far too long. The United Nations Special Rapporteur on Torture has concluded that holding any person in solitary beyond 15 days amounts to cruel, inhuman, or degrading treatment, or torture. Yet, in New York State, as around the country, it is regular practice to hold people in isolation for months and years, and sometimes even for decades. In New York, the majority of individual SHU sentences are for 90 days or more, and many people receive additional SHU time while in solitary, again leading to regularly holding people in solitary for months and years.

Fourth, people are in solitary confinement who are particularly vulnerable either to the effects of isolation itself or to additional abuse while in isolation. Young people, elderly people, people with disabilities, people with mental health or addiction needs, pregnant women, and members of the LGBTI community are subjected to solitary confinement. In New York State, as of the latest available data, around 400 youth under the age of 21 are in isolation at any given time, and around 18% of the people in SHU are on the mental health caseload.

Finally, the processes resulting in solitary confinement are arbitrary and unfair, involve under-equipped staff, and take place with little transparency or accountability. The hearings or administrative procedures that result in placement in solitary confinement are not conducted by judges or other supposedly non-biased neutral decision-makers, but rather by corrections staff. In New York, around 95% of the people who are charged with rule violations are found guilty. In addition, security staff often do not have sufficient training to work with people with the most

serious needs or the most problematic behaviors, nor do they have or utilize sufficient tools other than punishment and isolation to work with incarcerated people more generally.

### **The Solution: Key Components of Meaningful Reform**

In order to address the five key problem areas, meaningful reform across the country at the federal, state, and local level will need to include five key components: 1) fundamentally transforming how our institutions respond to people's needs and behaviors; 2) drastically restricting the criteria that can result in separation from the general prison population; 3) ending long term isolation beyond 15 days; 4) banning the placement of certain vulnerable people in solitary; and 5) better equipping staff and making the processes resulting in solitary fairer, more transparent, and with more accountability. The Humane Alternatives to Long Term (HALT) Solitary Confinement Act – newly proposed legislation in New York State, A08588 (Aubry) / S06466 (Perkins) – provides an example of comprehensive reform that incorporates these key components.

First, there needs to be a fundamental transformation in the response to people's needs and behaviors, from one that is focused on punishment, isolation, and deprivation, to one focused on accountability, rehabilitation, and treatment. The HALT Solitary Confinement Act would move towards that transformation by creating alternative rehabilitative and therapeutic units, called Residential Rehabilitation Units (RRUs), where people are guaranteed six hours of out-of-cell time for programs and therapy, plus an additional hour for recreation.

Second, there needs to be a drastic restriction in the criteria that can result in someone being separated from the general prison population. The HALT Solitary Confinement Act relies on and modifies the criteria developed by James Austin, an expert in the litigation about solitary in Mississippi. Specifically, people are only allowed to be placed in long term isolation up to 15 days or in RRUs if they engage in more serious acts of physical injury, forced sexual acts, extortion, coercion, inciting serious disturbance, procuring deadly weapons or dangerous contraband, or escape.

Third, there must be an end to long term solitary confinement. Given that the UN Special Rapporteur on Torture has concluded that solitary confinement for all people should be banned after 15 days because the devastating psychological effects of solitary can become permanent after that period of time, localities, states, and the federal government should never place someone in solitary for more than 15 days. The HALT Solitary Confinement Act would mandate that no person be held in isolation for more than 15 consecutive days, in line with the Special Rapporteur's recommendations.

Fourth, people from certain vulnerable groups should never be placed in solitary confinement for any length of time either because isolation itself can have more devastating effects on them or because they are more vulnerable to abuse while in isolation. The HALT Solitary Confinement Act bans the placement, for even one day, in solitary confinement of young people, elderly people, people with disabilities, people with mental health or addiction needs, pregnant women, and members of the LGBTI community.

Fifth, staff must be better equipped to work with people who are incarcerated, including those with the most serious needs or who engage in the most difficult behaviors, and the processes that result in solitary confinement must be fairer, more transparent, and conducted with more accountability. The HALT Solitary Confinement Act would require training of people working in the RRUs or isolation units as well as for hearing officers who make decisions that result in solitary confinement. It would also require additional procedural protections for people facing the possibility of solitary confinement, as well as mandatory public reporting of the use of isolation and separation and outside oversight of the implementation of the law by independent state entities. Also of note, the HALT Solitary Confinement Act would apply to all types and locations of solitary confinement, including disciplinary confinement in SHU, keeplock, and administrative segregation, and would cover both state prisons and local city and county jails in New York State.

## **Conclusion**

The use and abuse of solitary confinement across the country is in need of dramatic reform and a fundamental transformation. Prisons and jails at the federal, state, and local levels can no longer use the inhumane and counterproductive practice of solitary confinement, and must create alternatives that are humane and effective. The HALT Solitary Confinement Act provides one example of a comprehensive approach toward ending the torture of solitary confinement in a humane and effective manner, and the growing movement of the Campaign for Alternatives to Isolated Confinement indicates that the time is ripe for fundamental change.

We submit this testimony to inspire change in how we treat people who are incarcerated, as well as people in our communities. We call on the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights to explore the key components of the HALT Solitary Confinement Act as a model for humane and effective reform and to take action now in line with these components to move towards ending the torture of solitary confinement across the country.