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Criminal Justice Issues and Prisoners' Rights

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by [Jean Casella](#) | February 21, 2014

Under pressure from a [lawsuit](#) brought by the New York Civil Liberties Union on behalf of three people held in long-term solitary confinement, New York has agreed to a set of changes to its use of solitary and other forms of extreme isolation in state prisons. The [agreement](#), announced on Wednesday, would bar certain vulnerable populations from isolated confinement, while for the first time setting firm guidelines and maximum durations for isolating others.

New York currently holds some 3,800 men, women, and children in 23-hour-a-day isolation in small, sometime windowless cells, either alone or with one other person. The conditions inside New York's isolation cells are deplorable and result in severe physical and psychological harm, stated the [original complaint in *Peoples v. Fischer*](#), filed in Federal District Court in Manhattan in December 2012. The complaint, which charges the state with violating the plaintiffs' Constitutional rights under the 8th and 14th Amendments, continues:

Individuals are confined idle and isolated for months and years on end in tiny cells. They are allowed only one hour of exercise a day in barren cages smaller than their cell. As additional punishment, prison staff may issue orders depriving individuals of what little remains access to nourishing and edible food, exercise, bedding, and showers may all be denied. At some prisons, two men are forced to share a single isolation cell for weeks and months on end, often leading to violence. Requests for mental health care must be discussed through the food slot in the cell door.

People are placed in isolation on the word of corrections staff, who issue tens of thousands of disciplinary tickets each year that result in time in the state's numerous Special Housing Units (SHUs) or its two supermax prisons. Five out of six tickets are for nonviolent misbehavior, according to a [2012 report](#) by the NYCLU, and disciplinary hearings are at best pro forma. The average SHU sentence is five months, but many extend for years and a few have stretched to decades. UN Special Rapporteur on Torture Juan Mndez has stated that solitary confinement beyond two weeks is cruel, inhuman, and degrading treatment, and often qualifies as torture.

The most dramatic reform brought about by the agreement between the state and the NYCLU is a ban on using solitary to discipline youth under the age of 18, which makes New York the largest state in the nation to prohibit the practice for juveniles in state prisons. In New York, 16 and 17 year olds accused of a felony are automatically tried and incarcerated as adults, and large numbers have ended up in the SHUs, sometimes for their own protection. Under the new deal, juveniles with serious disciplinary violations would be placed in special units with more out-of-cell time and special programming.

The agreement also bans placing pregnant women in solitary, and sets a 30-day limit on isolating people with developmental disabilities. A 2007 court settlement and a [law enacted in 2011](#) already prohibit the use of isolated confinement for people with serious mental illness. Since the passage of the SHU Exclusion Act, several hundred people have been moved from solitary into special Residential Mental Health Units (though [evidence suggests](#) that hundreds of others remain isolated in spite of mental illness, largely due to issues around diagnosis).

It made sense to immediately remove these vulnerable populations from extreme isolation, Taylor Pendergrass, the NYCLU's lead attorney in the suit, told Solitary Watch. But in the longer term, we believe this process will bring about more comprehensive reforms that will affect many more people. Those reforms will come, in large part, in the form of sentencing guidelines that designate punishments for different disciplinary infractions, and for the first time set maximum sentences in the SHU. The negotiated guidelines are covered by a confidentiality agreement until staff can be trained and the new rules put in place a process that should take no more than nine months, Pendergrass said.

The deal also calls for New York State and the NYCLU to each choose an expert who will assess the use of isolated confinement throughout the prison system over the next two years and make further recommendations for change. The state has selected James Austin, a widely known expert on prisoner classification whose report to the Colorado Department of Corrections led to a reduction in the numbers of individuals held in long-term solitary in that state.

The NYCLU has chosen as its expert Eldon Vail, former head of the Washington State Department of Corrections. Vail has [said publicly](#) that solitary confinement produces disastrous results. He is known for conducting studies and programs in Washington's state prisons.

aimed at not only reducing the use of solitary, but also tempering its effects by providing programming, therapy, and group activities for those separated from the general prison population. He knows that treatment works better than torture, Pendergrass said of Vail. He is a pioneer in evidence-based approaches to prison safety and security, which do not include extreme isolation and sensory deprivation.

The choices suggest that while the state is on board for some modest reductions in the numbers of people it holds in solitary and the length of time they spend there, the NYCLU envisions more sweeping change, which would eliminate the total isolation of solitary confinement in favor of a more rehabilitative model. In this, it is aligned with other reform efforts in the New York, including a bill introduced [last month](#) in the state legislature that aims to fundamentally transform how prisons respond to people's needs and behaviors by replacing SHUs with Residential Rehabilitation Units.

These more comprehensive reforms could help one group that is not affected by the current rounds of change: those held in administrative segregation rather than disciplinary segregation. These include individuals who are classified as safety risks and sometimes spend decades in solitary confinement. Among these is William Blake, who has spent more than 26 years in isolation and whose essay on life in the SHU, [A Sentence Worse Than Death](#), was published by Solitary Watch last year.

In the meantime, Pendergrass expects there will be some who feel the current deal goes too far, just as others believe it does not go far enough. He did not specify where the pushback is likely to come from. But in the past, [correctional officers unions](#) have generally been strong opponents of any restrictions on the use of solitary confinement.

In a [statement to the New York Times](#), the New York State Correctional Officers and Police Benevolent Association said of the new agreement: Today's disciplinary confinement policies have evolved over decades of experience, and it is simply wrong to unilaterally take the tools away from law enforcement officers who face dangerous situations on a daily basis. Any policy changes must prioritize the safety and security of everyone who works or lives in these institutions.

The NYCLU lawsuit is on hold while Austin and Vail complete their work. If the group and its incarcerated clients are not satisfied with the results, the litigation may resume. Meanwhile, the three named plaintiffs in the suit: Leroy Peoples, Dwayne Richardson, and Tonja Fenton have all been released to the general population from the SHUs. Life in the box stripped me of my dignity, and made me feel like a chained dog, Peoples said in 2012. The lawsuit that bears his name promises to spare many others the same suffering.

Jean Casella is the director of Solitary Watch. She has also published work in The Guardian, The Nation, and Mother Jones, and is co-editor of the book *Hell Is a Very Small Place: Voices from Solitary Confinement*. She has received a Soros Justice Media Fellowship and an Alicia Patterson Fellowship. She tweets [@solitarywatch](#).

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by [Juan Moreno Haines](#)

October 25, 2022

by [Solitary Watch Guest Author](#)

October 13, 2022

by [Vaidya Gullapalli](#)

September 29, 2022

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I think that all inmates should be allowed at least three hours of recreational time a day, and in a setting where they can interact with other inmates. To answer concerns about the safety of prison staff, cells could be designed with cast fixtures, and a separate door leading to an exercise area. Doing so would eliminate the flooding of cells and minimize contact between staff and inmates.

Michelle

The New York State Settlement is the beginning of reforms long overdue. A new day is approaching and correctional staff has to be made to realize brute force, excessive use of solitary confinement, no programs to occupy imprisoned people, is a thing of the past. The public and our representatives realize that 95 percent of all inmates eventually are released back into our neighborhoods. 66 percent after 3 years from release are back into the criminal justice system. The current status quo does not serve the imprisoned, the public or correction officers. The average life span of a correction officer is 59 years after retirement. The stress comes not only from inmates but administrations and supervision that does not fully encompass the abilities of officers, forced overtime leads to family distress, drinking problems and cardiac conditions. Officers' educational requirements have to match NYPD officers (60 College Credits). High turnover of correction officers required giving bonus money to correction officers 5-10-15 years from their first day on job. The NYPD does not offer this benefit. The salary for both NYPD and correction officers is the same. Why does NYPD require higher educational standards? The leadership of COBA, Captains union and Deputies union lacks foresight and refuses to face the future willingly. There are alternatives to solitary confinement in the United States. Correction officers' training has to allow them to deal non-aggressively with inmates in order to maintain control, and not the use of excessive force, indifference to the mental and physical state of inmates. Reforms,

rehabilitation, programs, alternatives to incarceration so people do not enter the criminal injustice system of jails, prisons, parole, loss of voting rights, housing and occupational limitations. As a matriculated student at Kingsborough Community College I urge fellow student to seriously consider a career in corrections. They are horrified at even the thought of 20 years in a jail, with violence a possibility each day. Those refusing to consider such an occupation have family members who are correction officers and I have yet to meet a student whose family urges their relative to even consider being a correction officer. As for us, advocates for the imprisoned, who have committed serious crimes, we believe each human being can change, to be a productive citizen, so we must also accept an officer as a human being and we must work to include him or her in the movement.

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