



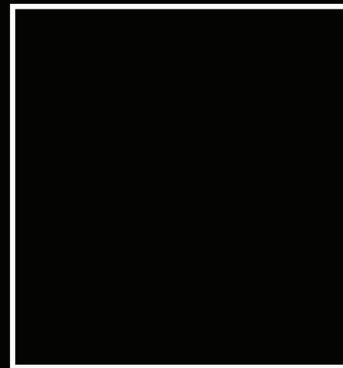
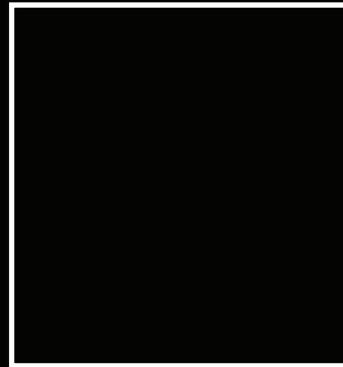
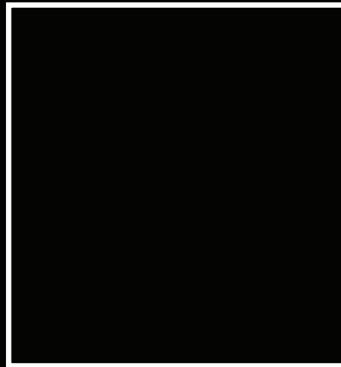
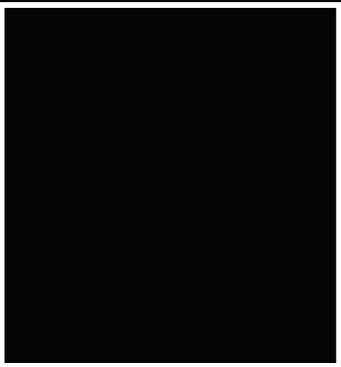
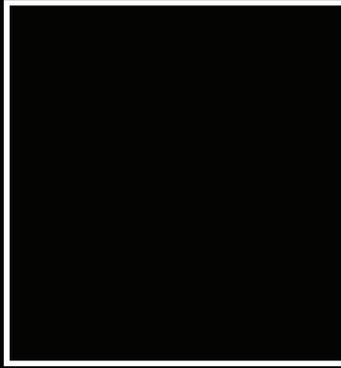
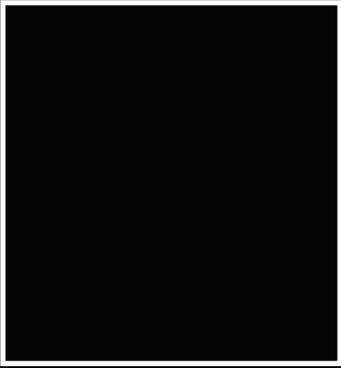
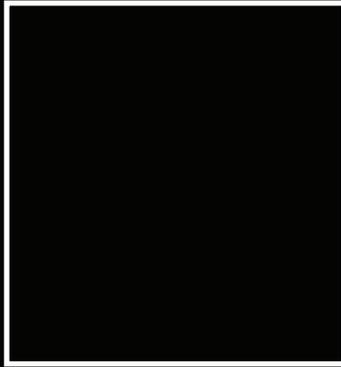
# BOXED IN

The True Cost of Extreme Isolation in New York's Prisons

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A Report by the New York Civil Liberties Union





*“A fair criticism that can be made is whether or not we’re placing the right inmate in disciplinary segregation and are we keeping them there longer than necessary.”*

Brian Fischer, Commissioner, New York State Department of Corrections and Community Supervision, *Albany Times Union*, August 2012

*“I’ll be the first to admit – we overuse it.”*

Commissioner Fischer, January 2012, at New York State Bar Association Panel on Solitary Confinement

*“I guess they forget people make mistakes which land them in jail & the fact that we was living a normal life, too, before our conviction. It’s sad the things we have to go through just to make it home in one piece. . .*

*. . . I still be having a lot of mood swings lately, I don’t be meaning any harm I just be mad at my situation . . .*

*. . . It gets real lonely in here, especially if you don’t have family to communicate with or send you books. I’m grateful to have that, but after you be in this cell for so long it hard to keep your mind outside of these four walls, all you have is memories.”*

Donell, incarcerated at Upstate Correctional Facility

## ACKNOWLEDGEMENTS

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## DEDICATION

*Boxed In* is dedicated to the incarcerated men who so eloquently and courageously shared their stories with the NYCLU. Many of these stories were raw and painful in their telling. We are grateful to these men for entrusting us with their stories and sincerely hope that this report does justice to their experiences.



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# EXECUTIVE SUMMARY

Every day, nearly 4,500 prisoners across New York live in extreme isolation, deprived of all meaningful human interaction or mental stimulation, confined to the small, barren cells where they spend 23 hours a day. Disembodied hands deliver meals through a slot in the cell door. “Recreation” offers no respite: An hour, alone, in an empty, outdoor pen, no larger than the cell, enclosed by high concrete walls or thick metal grates. No activities, programs or classes break up the day. No phone calls are allowed. Few personal possessions are permitted. These prisoners languish in isolation for days, weeks, months and even years on end.

What occurs inside our prisons may seem remote, but it affects all New Yorkers. It impacts public safety: Of the roughly 56,000 people incarcerated in New York’s prisons,<sup>1</sup> about 25,000 are released and return to our communities each year, bringing their prison experiences home with them.<sup>2</sup> It reflects how we allocate increasingly scarce public resources: New York spends about \$60,000 a prisoner – or \$2.7 billion on state prisons – per year.<sup>3</sup> And it raises essential questions about how we value and protect human dignity.

Each of these concerns is directly implicated by an ongoing phenomenon behind New York’s prison walls – the use of “solitary confinement” as punishment on an unprecedented scale and for extraordinary lengths of time.

New York employs an unusual brand of “solitary confinement.” Roughly half of the 4,500 prisoners in “solitary confinement” spend 23 hours a day locked down alone in an isolation cell. The other half are locked down in an isolation cell with another prisoner – a practice known as “double-celling,” which forces two strangers into intimate, constant proximity. The New York Civil Liberties Union (NYCLU) uses the term “**extreme isolation**” throughout this report to capture New York’s particular practice of subjecting one or two prisoners in a cell to the conditions most commonly understood as “solitary confinement.”

The purpose of **extreme isolation** is the absolute deprivation of meaningful human interaction and mental stimulation. Extreme isolation results in forced idleness and the complete cessation of education and rehabilitation. Like extreme isolation, **prisoner separation**, long an accepted corrections practice, removes violent or vulnerable prisoners from the general prison population. But unlike extreme isolation, separation aims to preserve, as much as possible, the social interaction, education and rehabilitation that maintains prisoners’ psychological and physical well-being and supports a productive return to society.

Over the past two decades, New York has spent hundreds of millions of dollars to build and operate an extensive network of extreme isolation cells, which the New York State Department of Corrections and Community Supervision (DOCCS) calls “Special Housing Units” or “SHUs” – and prisoners call “the Box.” New York has nearly 5,000 SHU beds located in 39 prisons across the state,<sup>4</sup> including two dedicated extreme isolation prisons – Upstate and Southport Correctional Facilities – which cost about \$76 million a year to operate.<sup>5</sup> From 2007 to 2011, New York issued more than 68,100 sentences to extreme isolation for violations of prison rules.<sup>6</sup> The average sentence was five months, although many prisoners are held in extreme isolation for years.<sup>7</sup>

The NYCLU set out to investigate New York’s use of extreme isolation. We explored the history that led to the emergence and expansion of the practice in New York. We asked who New York subjects to extreme isolation, for what reasons, and for how long. We sought to understand and articulate its effects on prisoners and their families, as well as an often-overlooked population – the corrections staff assigned to watch them. We compared New York’s use of extreme isolation with practices in other states and asked if the widespread use of the practice violates legal

New York employs an unusual brand of “solitary confinement.” Roughly half of the 4,500 prisoners in “solitary confinement” spend 23 hours a day locked down alone in an isolation cell. The other half are locked down in an isolation cell with another prisoner – a practice known as “double-celling.”

standards. Finally, we considered how reforming the use of extreme isolation would affect the safety of New York's prisons and communities.

In order to answer these questions, the NYCLU conducted an intensive year-long investigation. We communicated with more than 100 prisoners who have spent significant amounts of time – in one case, more than 20 years – inside a SHU cell. We interviewed family members and corrections staff. We consulted corrections experts, mental health professionals, lawyers and academics. We read decades of DOCCS reports and press coverage recounting the history of New York's SHU expansion. We researched the scientific and academic literature regarding the use and effects of extreme isolation. We studied domestic and international legal standards governing extreme isolation and the steps undertaken by other states to reform their use of the practice. Finally, we reviewed DOCCS' internal regulations and policies and analyzed thousands of pages of official DOCCS records obtained through New York's open records laws.

## Findings

Based on a year of study and analysis, the NYCLU found that New York's use of extreme isolation is arbitrary, inhumane and unsafe.

**New York's use of extreme isolation is arbitrary and unjustified.** Extreme isolation is too frequently used as a disciplinary tool of first resort. Corrections officials have enormous discretion to impose extreme isolation as a disciplinary sanction. Prisoners can be sent to the SHU for prolonged periods of time for violating a broad range of prison rules, including for minor, non-violent misbehavior. As a result, the SHU sweeps in a wide swath of prisoners, including those uniquely vulnerable to conditions of extreme isolation, such as juveniles, the elderly, and people with mental illness or substance abuse issues. This same discretion permits bias to corrupt the disciplinary process, as suggested by the disproportionate number of black prisoners in the SHU.

**Extreme isolation harms prisoners and corrections staff.** Extreme isolation causes emotional and psychological harm, inducing apathy, lethargy, anxiety, depression, despair, rage and uncontrollable impulses, even among the healthy and mentally stable. For the vulnerable, particularly those with mental illness, extreme isolation can be devastating and potentially life-threatening. The emotional and psychological harm prisoners experience in extreme isolation is compounded by the formal and informal deprivation of basic necessities, including food, exercise and basic hygiene. Prisoners buckling under the emotional and psychological weight of isolation and deprivation often lack access to adequate medical and mental health care. For corrections staff, working in extreme isolation has lasting negative consequences that affect their lives at work and home.

**Extreme isolation negatively impacts prison and community safety.** People in extreme isolation find its psychological effects fuel unpredictable and sometimes violent outbursts. These outbursts endanger the prisoners

The SHU sweeps in a wide swath of prisoners, including those uniquely vulnerable to conditions of extreme isolation, such as juveniles, the elderly, and people with mental illness or substance abuse issues.

Nearly 2,000 people in New York are released directly from extreme isolation to the streets each year. Prisoners in extreme isolation receive no educational, vocational, rehabilitative or transitional programming.

Corrections officials can separate and remove violent or vulnerable prisoners from the general prison population without subjecting them to the punishing physical and psychological deprivation of extreme isolation.



themselves, as well as other prisoners and corrections staff, who have few resources to manage prisoners struggling under the toll of extreme isolation. Prisoners with mental health issues fare even worse, some resorting to self-harm and suicide. Prisoners carry the effects of extreme isolation back into the general prison population. They also carry them home. Nearly 2,000 people in New York are released directly from extreme isolation to the streets each year.<sup>8</sup> While in the SHU, prisoners receive no educational, vocational, rehabilitative or transitional programming, leaving them less prepared to successfully rejoin society.

## Quick Guide to Boxed In

**Section I**, *The Box*, provides an introduction to extreme isolation, explains why the NYCLU undertook its investigation of extreme isolation in New York prisons and describes the report’s methodology.

**Section II**, *Building the Box*, recounts New York’s history with extreme isolation and the factors that drove and enabled its modern resurgence.

**Section III**, *Box Hits*, describes DOCCS’ process for placing prisoners in extreme isolation and provides a demographic and statistical overview of who serves time in extreme isolation, for what reasons, and for how long.

**Section IV**, *Life in the Box*, provides first-hand accounts of prisoners, corrections staff and family members regarding their respective experiences living, working and supporting loved ones in extreme isolation.

**Section V**, *Thinking Outside the Box*, outlines the NYCLU’s findings, discusses recent reforms in other states, describes an emerging consensus among international human rights bodies and legal scholars critiquing extreme isolation and advocates for evidence-based practices that would end the use of extreme isolation in New York prisons. ■

## RECOMMENDATIONS

New York’s arbitrary, inhumane and unsafe use of extreme isolation has led to an urgent human rights crisis. Extreme isolation is not synonymous with prisoner separation, which has long been an accepted corrections practice. Corrections officials can separate and remove violent or vulnerable prisoners from the general prison population without subjecting them to the punishing physical and psychological deprivation of extreme isolation – a point of consensus among corrections officials in other states, legal scholars and international human rights bodies.

New York must end its use of extreme isolation by:

(1) adopting stringent criteria, protocols and safeguards for separating violent or vulnerable prisoners, to ensure that prisoners are separated only in limited and legitimate circumstances for the briefest period and under the least restrictive conditions practicable; and

(2) auditing the current population in extreme isolation to identify people who should not be in the SHU, transitioning them back to the general prison population and reducing the number of SHU beds accordingly.

These steps will align New York’s prisons with smart and effective evidence-based corrections practices. They will improve the safety of our prisons and communities, bring New York into compliance with international human rights law and emerging legal standards, and reaffirm our commitment to respecting basic human dignity.

A typical special housing unit (SHU) cell for two prisoners, in use at Upstate Correctional Facility and SHU 200s in New York.  
“New Concept in Disciplinary Housing: Upstate,” DOCS Today, Apr. 2003, 15.

# I. THE BOX

## Introduction

On September 5, 2015, Adrian\* will return home after spending more than 1,600 consecutive days in a room the size of a typical elevator. Adrian lives in the “Special Housing Unit” (SHU) at Southport Correctional Facility, located in Pine City, an hour outside of Ithaca. Since his arrival there in February 2011, Adrian has spent 23 to 24 hours a day alone, inside the Box. His one hour outside the Box is in a fenced-in recreation pen, smaller than Adrian’s cell, which prisoners and staff alike call a human kennel. Inside the kennel, Adrian can glimpse the sky through heavy metal grates and hear the din of other isolated inmates.

On his cell wall, the 26-year-old has taped a newspaper photo of an executive’s corner office, with glass walls and city views. Adrian dreams of the life he will live outside, but in the SHU, he does not have access to educational programs or vocational training. When Adrian nears his release, he will receive no transitional services to prepare for his re-entry to society. Like nearly 2,000 other New York prisoners each year, Adrian will be released from extreme isolation directly to the street.

Like most people who end up in the SHU, Adrian was placed in extreme isolation as punishment. Because Adrian has received additional SHU time for disciplinary infractions committed while at Southport, his original two-year SHU sentence has been extended to nearly five.

Adrian is already serving the rest of his sentence in extreme isolation, so if he’s found to break a rule – like talking back or refusing to return a food tray – punishment with additional SHU time is meaningless. Instead, corrections officials may punish Adrian with food, by placing him on “the loaf,” a hard, tasteless brick of bread-and-vegetable matter served with water and a wedge of raw cabbage three times a day.

But corrections officers (COs) also use food to punish Adrian informally. His meals have arrived covered with hair or spoiled. Sometimes meals don’t come at all, an occurrence that happens so often that prisoners have a name for it: a “drive-by.” COs “drive-by” Adrian’s cell without delivering his meal, or leave a covered tray with no food beneath the cover. Adrian has quickly learned that in the Box, little can be taken for granted.

\*\*\*

On May 16, 2012, Marcus marked his 120th day in extreme isolation at Upstate Correctional Facility, in Malone, a town on the Canadian border. Inside a concrete cell about the size of a parking space, the 22-year-old spent 23 hours a day locked down with another prisoner.

For four months, Marcus had little human contact beyond his cellmate. The two men urinated and defecated in clear view of each other. They showered in an open steel cabinet in the corner of the cell. Water flowed three times a week, for 15 minutes. Both men stripped down and washed in sequence: One stepped out, dripping onto the concrete floor, as the other stepped in, all before the clock ran out.

Like Adrian, Marcus received an hour a day of recreation. At the beginning of the hour, a metal door at one end of the cell, controlled remotely by prison guards, swung open. Marcus could step out into a rec pen, where he could hear and see other isolated prisoners in their rec pens – shouting, cursing, babbling – until the rec doors clamped shut.

Marcus was sent to the Box for misbehavior in the general prison population: tattooing his own hands (a broken star, with his initials at the center), smoking in the bathroom, failing to report for work duty and visiting another prisoner’s dormitory.

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\*Prisoners are represented by pseudonyms to protect individual privacy and safety.

Soon after he arrived at Upstate, Marcus began to notice changes in himself: Anxiety and depression that suddenly shifted into uncontrollable bursts of aggression and violence that he took out on his cellmate. Impulses to *do something*. But extreme isolation means doing nothing. By design, extreme isolation affords no opportunity to take classes, learn a trade or otherwise prepare for life after prison. Instead, Marcus and his cellmate spent their days pacing, sleeping, reading, writing. Always, waiting. Waiting for time to run out; waiting to leave the Box.

\*\*\*

Malone native Dan Benware worked for a quarter-century as a DOCCS corrections counselor. In his last decade on the job, Benware, trained as a social worker, witnessed the dramatic increase in New York’s use of extreme isolation.

**Extreme isolation means doing nothing: No opportunity to take classes, learn a trade or otherwise prepare for life after prison.**

He saw the effects on prisoners he counseled who returned from extreme isolation to the general prison population: men who were broken, filled with uncontrollable rage or who had succumbed to deep depression.

Benware also saw the effects of extreme isolation on his close friends and neighbors, the men and women who worked at Upstate. Prisoners’ responses to extreme isolation frequently boiled over into violent hostility and erratic behavior; mental illness flourished. COs at Upstate felt as cooped-up as the prisoners they guarded. Although the state expected COs to manage prisoners in extreme isolation – many with mental illness

or histories of substance abuse – most COs were hired with only a high school diploma or GED. For many, Benware says, what they did and saw inside the prison affected their personal lives and their families.

Monsignor Dennis Duprey, pastor of St. Peter’s Church in Plattsburgh, served as Upstate’s chaplain from the day it opened in 1998 until 2003. He knows the toll that extreme isolation takes on COs: “A system that asks COs to walk into a place for eight hours a day at a minimum, where the people they look after ... do not trust a single word they say, or a single action they do – that’s not a wonderful way to conduct human relationships. When they go home, officers have trouble with their own relationships, with their sons and daughters; they treat them like inmates.”

Both Benware and Duprey understand that violent and vulnerable prisoners must be separated from others. But both men say that separating prisoners does not have to entail extreme isolation. They are baffled that thousands of prisoners, men like Marcus and Adrian, have been placed in the SHU for breaking minor prison rules, drug-related infractions or routine scuffles in the prison yard. These infractions merit a response, to be sure, but a response that is proportional to the offense.

**“When it comes to human beings, we are keeping them in cages that wouldn’t be fit for our cows... It doesn’t take half a brain to realize, we’re not going to get a good product out of this. It’s a Holocaust in our own backyard that few people know about.”**

“Where we live, it’s a large farming community,” Benware said. “We have laws on the books against cattle being confined to these huge, huge barns. The Department of Agriculture watches for that type of abuse. ... Yet when it comes to human beings, we are keeping them in cages that wouldn’t be fit for our cows.”

“It’s a strange parallel, but anybody that’s locked in like that, for those extended times, it doesn’t take half a brain to realize, we’re not going to get a good product out of this. It’s a Holocaust in our own backyard that few people know about and, among those that do, we acknowledge and say ‘ok.’ But it doesn’t work and it’s inhumane.”

\*\*\*

Lynn Finley knows firsthand what Benware and Duprey are talking about. Her son spent five months in extreme isolation at Upstate after he was discovered taking medication, prescribed during a pre-incarceration detox program, without official authorization. Depressed and “hopeless” in extreme isolation, Finley said, her son’s despair turned into constant hyper-alertness and overwhelming anxiety.

Finley has only one child. Yet on the occasions when she was able to travel the four hours from her home in Albany to Upstate, she barely recognized her son. He lost 30 pounds in the SHU, Finley said.

His hands cuffed and secured to a waist chain, Finley’s son and the other prisoners were brought by COs to the visiting room. Each man was placed in a numbered cage, physically separated from his visitor. Inside each cage, small slots at table height allow enough room for a vending-machine food packet or a hand-clasp, no more.

The negative effects of the SHU persisted after her son returned to the general prison population.

“He’s emotionally damaged,” Finley said, adding that her son was terrified of being with other prisoners and terrified of returning to the Box.

“[My son] had a serious addiction problem and he was trying to treat it,” Finley said. “Instead of facilitating his recovery, the prison system punished him severely with extreme isolation. It’s absolutely baffling, and one of the hardest things I’ve had to witness as a mother.”

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These five stories are representative of the tens of thousands of human lives marked by extreme isolation each year in New York. Prisoners experience the daily effects of extreme isolation and its indelible consequences. Corrections staff, who must manage the anxiety, anger and mental illness of men in extreme isolation, endure consequences in their personal and professional lives. Family members on the outside, unable to readily communicate or support their loved ones in isolation, also undergo a particular kind of punishment, imposed on the innocent. New Yorkers collectively bear the expense of the hundreds of millions of dollars it costs to incarcerate people in extreme isolation and we all live in the communities that prisoners will return to when they are released. The NYCLU undertook this study to document the true costs – for all of us – of New York’s use of extreme isolation.

## Prying the Box Open

What occurs behind prison walls is murky. What occurs inside a “prison within a prison,” as many describe New York’s SHUs, is murkier still. The NYCLU produced this report to ensure that all New Yorkers, including policymakers and corrections officials, have information regarding the use and effects of extreme isolation in New York prisons.

From September 2011 to October 2012, the NYCLU conducted an intensive year-long investigation of the social, economic and human costs of extreme isolation in New York prisons. To understand those costs, the NYCLU relied on a variety of quantitative and qualitative sources of information.

First, the NYCLU communicated with more than 100 prisoners. Most were housed at Southport and Upstate Correctional Facilities, although the NYCLU also communicated with prisoners isolated in other SHUs across the state.†

† Where prisoners’ letters are quoted, they are quoted verbatim, with spelling and grammatical errors intact. Below are the pseudonyms of prisoners quoted throughout the report and the SHU facilities where they were housed during the course of the NYCLU’s investigation; some have been in both facilities, over time.

Upstate	Southport
Chris, Miguel, Daniel, Marcus, Kevin, Samuel, Donell, Daryl	Adrian, Trevor, Tevin, Na’im, Stephan, Justin, Hector

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See It Online:  
Correspondence from prisoners in extreme isolation is available online at [www.nyclu.org/boxedin](http://www.nyclu.org/boxedin).

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Second, the NYCLU consulted with lawyers and mental health professionals with experience representing prisoners in extreme isolation in New York. We also reviewed DOCCS' regulations and policies and researched applicable law and legal standards. The NYCLU also consulted with attorneys and academic experts on the use of extreme isolation in other parts of the country, including states that have significantly reformed their use of extreme isolation.

Over the last two decades, New York has employed extreme isolation on a massive and unprecedented scale.

Third, the NYCLU interviewed corrections employees regarding their perspectives on the use of extreme isolation and its impact on their working environment. The NYCLU also spoke with family members and friends of those in extreme isolation who described the toll of isolated confinement on themselves and their loved ones.

Finally, under the New York Freedom of Information Law (FOIL), the NYCLU obtained thousands of pages of records from DOCCS and the Office of Mental Health (OMH). These records include statistical information regarding DOCCS' use of extreme isolation, as well as prisoners' disciplinary and mental health histories.

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See It Online:  
Documents obtained by the NYCLU from DOCCS and OMH are available online at [www.nyclu.org/boxedin](http://www.nyclu.org/boxedin).

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Extreme isolation reaches across a broad range of institutional settings in New York: a pre-trial detainee on Rikers Island,<sup>9</sup> a teenager in a juvenile detention facility,<sup>10</sup> a person serving a 10-year prison sentence or an immigrant in a federal detention facility<sup>11</sup> all may be subjected to extreme isolation. This report focuses on the population in New York most frequently subjected to extreme isolation: men in the state prison system.<sup>12</sup>

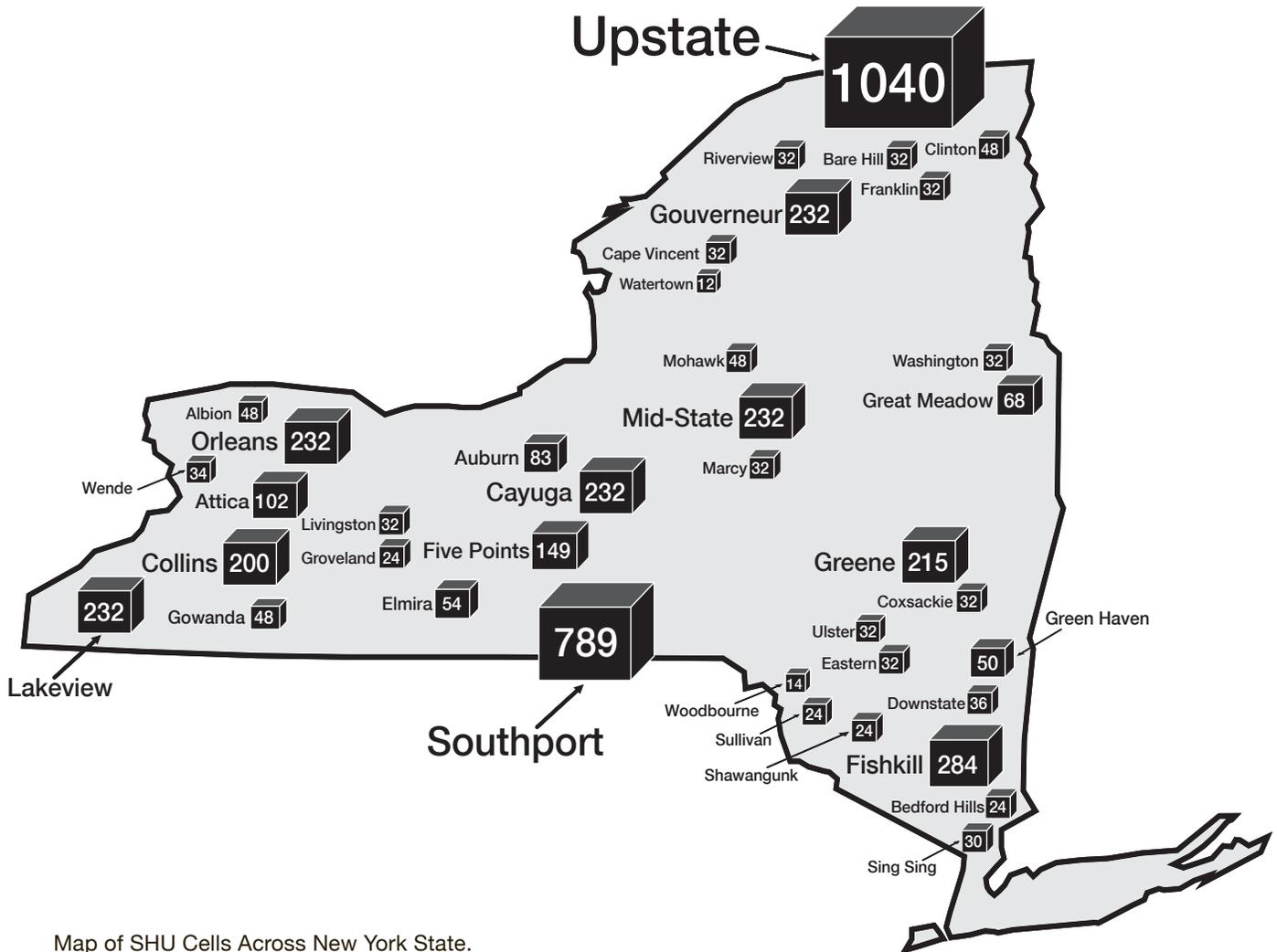
While this report does not explore the use of extreme isolation in other New York detention settings, all facilities that employ extreme isolation share a common purpose: to cut the individual off from all meaningful human contact and mental stimulation. The effects of extreme isolation are constant despite superficial differences in the physical environment or the particular label an institution uses for its brand of extreme isolation. Accordingly, this report's findings and conclusions about extreme isolation in New York prisons apply broadly to all detention settings in New York.

What happens in the Box is far from clear. The NYCLU's inquiry was limited by this lack of transparency as well as DOCCS' reluctance to provide factual information sought by the NYCLU during our investigation.<sup>13</sup> This study relies on statistics and anecdotes, hard numbers and personal experiences. But it is not a comprehensive, technical accounting of every aspect of extreme isolation in New York. Ultimately, this study is an educated glimpse inside the Box. It has answered some questions; many persist.

## New York's Boxes

New York's SHU cells are located in dedicated extreme isolation facilities and in designated buildings or cellblocks on the grounds of New York's minimum-, medium- and maximum-security prisons. New York has two dedicated SHU facilities – Southport, which contains 789 SHU beds, and Upstate, which contains 1,040 SHU beds. In addition, New York has eight designated SHU buildings (SHU 200s) located on the grounds of medium-security prisons, which each have 200 SHU beds. More than 70 percent of the prisoners in the SHU are concentrated at Southport,

## Map of Extreme Isolation Beds Across New York State



Map of SHU Cells Across New York State.

“DOCCS Daily Population Capacity Report – 06/11/12,” obtained through FOIL and on file with the NYCLU.

Upstate and the SHU 200s. Finally, 29 additional minimum-, medium- and maximum-security prisons have SHU cellblocks or SHU beds separated from the general prison population.<sup>14</sup>

The extreme isolation of prisoners such as Marcus and Adrian may vary slightly but is fundamentally identical in most meaningful aspects. They are physically confined to a cell for 23 to 24 hours a day. They receive their meals through their cell door. They may recreate for one hour a day in a small cage, no larger than their cell, enclosed by concrete walls or heavy metal grating. They receive no educational, vocational or rehabilitative programming, and no transitional services to help them prepare for their return to society – even when they are soon to be released. Their personal possessions are strictly limited to legal materials and a few personal books and magazines. They are handcuffed and escorted by corrections officers every time they exit their cells, which may not be for weeks or months.

Subjecting prisoners to extreme isolation raises serious moral, social, penological and economic concerns. Over the last two decades, New York has employed extreme isolation on a massive and unprecedented scale. How New York arrived at this state of affairs is explored in **Section II, *Building the Box.*** ■





## II. BUILDING THE BOX

### The Early Life and Death of Extreme Isolation

From 1821 to 1823, New York’s Auburn state prison experimented with extreme isolation, housing a group of prisoners in individual cells “without any labor or other adequate provisions for physical exercise.”<sup>15</sup> Alexis de Tocqueville and Gustave de Beaumont, who toured Auburn during this period, reported:

This trial, from which so happy a result had been anticipated, was fatal to the greater part of the convicts: in order to reform them, they had been submitted to complete isolation; but this absolute solitude, if nothing interrupt it, is beyond the strength of man; it destroys the criminal without intermission and without pity; it does not reform, it kills. The unfortunates, upon whom this experiment was made, fell into a state of depression, so manifest, that their keepers were struck with it; their lives seemed in danger, if they remained longer in this situation.

Both Beaumont and Tocqueville also challenged the idea that extreme isolation could aid rehabilitative efforts, noting that “this system, fatal to the health of the criminals, was likewise inefficient in producing their reform.” The governor of New York subsequently pardoned 26 of those subjected to the experiment, 14 of whom “returned after a short time after into the prison, in consequence of new offences.”<sup>16</sup>

A handful of other states also experimented with extreme isolation only to quickly reject the practice.<sup>17</sup> In 1890, the Supreme Court surveyed the history of extreme isolation and concluded that “experience demonstrated that there were serious objections to it.” In particular, the court described devastating psychological effects:

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.<sup>18</sup>

“A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition... others became violently insane; others still, committed suicide; ... [those who stood the ordeal better] did not recover sufficient mental activity to be of any subsequent service to the community.”

By the turn of the 20th century, extreme isolation had largely ceased to be a significant feature of incarceration in America.<sup>19</sup>

### The Resurrection of Extreme Isolation in the United States

On October 22, 1983, prisoners at the United States Penitentiary (USP) in Marion, Ill., a federal correctional facility, killed two corrections officers in separate incidents. The warden declared a state of emergency and placed USP Marion on permanent lockdown status. For the next 23 years, all prisoners incarcerated at USP Marion were confined to their cells for 23 hours a day.<sup>20</sup>

The lockdown at USP Marion prompted many states to construct or repurpose freestanding facilities entirely devoted to the extreme isolation of prisoners.<sup>21</sup> By 1991, Human Rights Watch reported that 36 states, including New York, had constructed or repurposed facilities emulating USP Marion, while demonstrating “creativ[ity] ... in making the

conditions particularly difficult to bear, at times surpassing the original model.<sup>22</sup> Today, at least 44 states have such freestanding “supermax” facilities housing approximately 25,000 prisoners.<sup>23</sup>

Many states also expanded the number of extreme isolation units within lower-security facilities.<sup>24</sup> Given these varied housing arrangements, obtaining an accurate count of all prisoners confined to extreme isolation has proven elusive. In 2006, the Commission on Safety and Abuse in America’s Prisons, a bipartisan committee of experts, reported that the figure provided by the U.S. Department of Justice in 2000 – approximately 80,000 – was “just a fraction of the state and federal prisoners who spend weeks or months in expensive, high-security control units [within lower-security facilities] over the course of a year, and it does not capture everyone incarcerated in supermax prisons.”<sup>25</sup>

Beginning in the 1970s, American penal culture and policy witnessed the birth of a newly punitive climate and the rejection of rehabilitation as a major goal of incarceration.

Why were so many states eager to embrace the USP Marion model? The rate of incarceration in the United States began to increase dramatically in the early 1970s. From 1973 to 1993, the U.S. prison population increased by 346 percent, from roughly 204,000 to 909,000.<sup>26</sup> This extraordinary growth put tremendous pressure on correctional systems, which began to experience overcrowding and attendant management and control problems.<sup>27</sup>

Beginning in the 1970s, American penal culture and policy also began undergoing dramatic changes that helped support the expansion of extreme isolation. This period witnessed the birth of a newly punitive climate and the rejection of rehabilitation as a major goal of incarceration.<sup>28</sup>

The construction and operation of extreme isolation facilities became “politically and publicly attractive” – potent “symbols of how ‘tough’ a jurisdiction has become.”<sup>29</sup> And a new rhetoric about prisoners, and the need to house them in extreme isolation, began to emerge. Prison officials depicted a “new ‘dangerous’ prisoner,” one “more violent, more disturbed, more disruptive” – “the worst of the worst” – that had to be separated from the general prison population.<sup>30</sup>

Such rhetoric was seldom supported by hard evidence. From the outset, policymakers failed to examine the link between the exponential increase in the prison population and violence – and to scrutinize whether extreme isolation was an effective response to such violence. Corrections systems failed to establish effective tracking mechanisms to analyze the efficacy of extreme isolation, exemplified by the lack of basic data on how many prisoners are even placed in such conditions. And political officials, who funneled millions to expand the use of extreme isolation, failed to consider the net costs to society when prisoners subjected to these conditions returned home. The vast majority of state prisoners do return to society; at least 95 percent will eventually be released.<sup>31</sup>

## New York Embraces Extreme Isolation

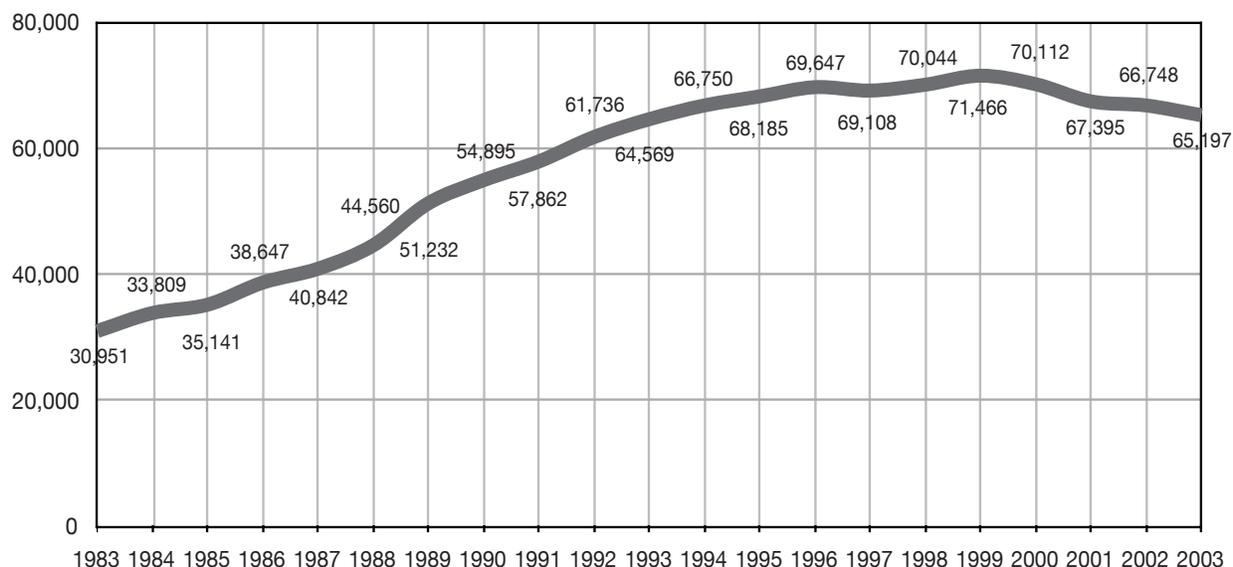
New York epitomized the modern trend to expand extreme isolation. In 1991, the state converted Southport Correctional Facility, a maximum-security prison opened in 1988, into a dedicated extreme isolation facility. Southport was transformed from a prison that “offered extensive classes and clean hallways” to one where prisoners are “kept isolated, shackled at the waist and wrists when allowed out of their 6-by-10 cells and made to spend their daily recreation hour in newly built cages.” As part of its conversion, Southport “ended its vocational and academic classes” and emptied its “instructional wing ... of chairs, tables, chalkboards,” which were sent to other correctional facilities.<sup>32</sup>

Prior to Southport’s conversion, New York used designated cellblocks in lower-security facilities to place prisoners in extreme isolation.<sup>33</sup> Southport was the first facility dedicated solely to housing prisoners in these conditions.

Between 1998 and 2000, New York constructed 10 additional facilities dedicated to extreme isolation, with the combined capacity to house approximately 3,000 prisoners.<sup>34</sup> Nine of these facilities were free-standing buildings – called SHU 200s – located on the grounds of pre-existing medium-security correctional facilities.<sup>35</sup> Each SHU 200

## Growth in New York State Prison Population

Number of prisoners from 1983-2003



By the mid-1990s, New York's prisons were filled to 130 percent of their capacity. Statewide, the prison population, less than 31,000 in 1983, more than doubled by 1999, when more than 71,000 people were incarcerated in New York prisons.

*Inmates Under Custody at End of Calendar Year: New York State Department of Correctional Services 1950-2003, Correctional Association of News York, Mar. 2012.*

consisted of 100 double-occupancy cells. The 10th facility was Upstate Correctional Facility, a stand-alone prison with the capacity to house 1,200 prisoners in 600 double-occupancy cells.<sup>36</sup>

Many of the same factors underlying the national movement toward extreme isolation were in play in New York. Throughout the 1980s and 1990s, New York prisons experienced the growing pressures of overcrowding. In 1983, when USP Marion entered permanent lockdown, New York's prison population was 30,951. By 1990, it was 54,895, and by 1999, it had reached a historic high of 71,466.<sup>37</sup>

Even as New York's use of extreme isolation was dramatically expanding, a robust body of scientific evidence had already linked extreme isolation with grave personal harm.

Non-violent drug offenders made up a large percentage of newly admitted prisoners. The Rockefeller Drug Laws – a program of mandatory minimum sentences for drug offenses enacted in 1973 – coupled with intensified street drug enforcement from the mid-1980s to the 1990s, led to a growing tide of drug commitments to state prison.<sup>38</sup> Annual drug commitments, which totaled 886 in 1980, surged to a high of 11,209 in 1992, and remained above 8,000 until 2000. These commitments constituted approximately 45 percent of total state prison system commitments from 1989 until 2000.<sup>39</sup>

## SHU SYNDROME

Studies have demonstrated that in otherwise healthy and mentally stable individuals, adverse psychological effects manifest even after short, defined periods in extreme isolation. In the mid-1980s, psychiatrist Stuart Grassian studied a group of prisoners living in extreme isolation in the “Special Housing Unit” (SHU) of a Massachusetts prison. He identified a variety of negative physiological and psychological symptoms, which he called “SHU syndrome,” exhibited by these prisoners. These symptoms included social withdrawal; anxiety and nervousness; panic attacks; irrational anger and rage; loss of impulse control; paranoia; hypersensitivity to external stimuli; severe and chronic depression; difficulties with thinking, concentration and memory; and perceptual distortions, illusions and hallucinations.<sup>46</sup> Other studies have documented similar responses by prisoners housed in extreme isolation.<sup>47</sup> For people with pre-existing mental health issues, studies have demonstrated that extreme isolation can be devastating and result in further mental deterioration.<sup>48</sup>

In the mid-1990s, New York also began punishing violent offenders with harsher sentences. In 1995, Governor George Pataki successfully ushered passage of legislation increasing sentences for violent offenders and abolishing parole for individuals convicted of a second violent offense.<sup>40</sup> Three years later, Pataki steered a bill through the Legislature abolishing parole for individuals convicted of a first violent offense.<sup>41</sup> Thus, as the population of non-violent drug offenders continued to swell, New York also began imposing much longer sentences for violent offenses. By the mid-1990s, New York prisons were filled to “130 percent of their capacity.”<sup>42</sup>

The relationship between harsher sentencing and the construction of extreme isolation beds in New York reflected the national embrace of the punitive penological model. In 1994, Congress passed the Violent Crime Control and Law Enforcement Act, which staked federal funds to states for new prisons in return for enacting laws eliminating parole for violent offenders.<sup>43</sup> In 1998, the United States General Accounting Office documented the influence of federal grants on states’ decisions to abolish parole for violent offenders; the grants were a “key factor” in passing such legislation in New York.<sup>44</sup> Between 1996 and 2000, New York received nearly \$200 million in federal funding to construct Upstate and the SHU 200s, which cost roughly \$238 million in total to build.<sup>45</sup>

## Judicial Oversight and the Expansion of Extreme Isolation

Even as New York’s use of extreme isolation was dramatically expanding, a robust body of scientific evidence had already linked extreme isolation with grave personal harm. But New York continued to embrace and sustain its use of extreme isolation, even in the face of this evidence.

In these circumstances, our system of government provides that individuals can turn to the courts to ensure that executive and legislative action does not violate fundamental constitutional rights. Indeed, the Supreme Court has affirmed that “[c]onfinement in ... an isolation cell is a form of punishment subject to scrutiny under Eighth Amendment standards.”<sup>49</sup> And yet, courts presented with evidence of prisoner suffering and trauma in extreme isolation have, for the most part, been unable or unwilling to effectively apply that scrutiny to constrain its use.

Several factors have impeded meaningful judicial review of extreme isolation. Beginning in the 1980s, the Supreme Court issued a series of rulings instructing lower courts to grant enormous deference to executive officials operating corrections systems.<sup>50</sup> At the same time, the Court began requiring prisoners to meet difficult thresholds to prove constitutional violations. With respect to claims challenging conditions of confinement under the Eighth Amendment, the Court has established an elusive

By the turn of the 21st century, New York had constructed a massive network of extreme isolation cells.

standard.<sup>51</sup> Finally, prisoners seeking to challenge conditions of confinement in federal courts face significant procedural and legal obstacles under the Prison Litigation Reform Act, enacted by Congress in 1996.<sup>52</sup> To date, the few federal courts that have held extreme isolation to violate the Eighth Amendment have narrowly restricted their holdings to those prisoners with serious pre-existing mental illness or who are prone to suffering severe mental injury.<sup>53</sup>

By the turn of the 21st century, New York had constructed a massive network of extreme isolation cells. This expansion was driven by a misguided response to prison overcrowding, fanned by political rhetoric, untethered to evidence-based analyses and largely unchecked by the courts. **Section III**, *Box Hits*, explores how DOCCS currently employs extreme isolation – who is subjected to extreme isolation, why and for how long. ■



### III. BOX HITS

DOCCS separates prisoners for three reasons: to punish violations of prison rules (disciplinary segregation); to isolate prisoners who pose a threat to the safety and security of the prison (administrative segregation); and to shield vulnerable prisoners, such as those potentially targeted for violence in the general prison population (protective custody).<sup>54</sup>

The overwhelming majority of separated prisoners are placed in extreme isolation for breaking prison rules (disciplinary segregation). From 2007 to 2011, DOCCS placed prisoners in SHU cells more than 75,000 times; more than 68,100 – roughly 90 percent – of those placements were for disciplinary reasons.<sup>55</sup>

#### How Violations of Prison Rules Lead to Extreme Isolation

Individuals sentenced to prison enter a strictly regimented environment where they must conform to an elaborate set of rules. Corrections officials may discipline prisoners for violating these rules by levying a range of penalties, from a simple reprimand to the progressive deprivation of privileges. In New York, the violation of many rules – from the minor and non-violent to the disruptive and violent – may also result in a “sentence” of extreme isolation (what prisoners call a “Box hit”) to one of New York’s roughly 5,000 SHU beds.

DOCCS regulations contain the “Standards of Inmate Behavior,” a list of more than 100 rules prisoners must obey. These rules govern every aspect of prisoner behavior, from personal grooming (“an inmate shall not grow a beard or mustache over one inch in length”) and eating (“an inmate shall not waste food items”) to intellectual stimulus (“an inmate shall not possess literature or any other material which has been disapproved by the Media Review Committee”) and personal interactions (“an inmate may not provide legal assistance to another inmate without prior approval of the superintendant”).<sup>56</sup>

Particular rules operate as a disciplinary catch-all. For example, Rule 106.10 states: “An inmate shall obey all orders of department personnel promptly without argument.”<sup>57</sup> Thus, even a momentary lapse in obedience can bring harsh consequences: Kevin once received 30 days of keeplock for violating Rule 106.10 after continuing a conversation with another prisoner after a corrections officer ordered him to stop.<sup>58</sup>

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See It Online:

For the complete list of New York’s prison rules, “Standards of Inmate Behavior,” go to [www.nyclu.org/boxedin](http://www.nyclu.org/boxedin).

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Whether a prisoner receives a punishment of extreme isolation for breaking a prison rule depends on three phases of DOCCS’ disciplinary process, which determine: (1) the severity of an alleged rule infraction; (2) whether a prisoner is guilty of the rule infraction; and (3) whether a conviction warrants a punishment of extreme isolation. The operation of each of these phases often differs on paper and in practice.

#### KEEPLOCK IN ISOLATION

Prisoners may also experience extreme isolation as a result of being sentenced to “keeplock,” a form of confinement that DOCCS imposes as punishment for less serious disciplinary infractions.<sup>59</sup> Keeplock subjects prisoners to 23-hour lockdown; the prisoner may remain confined to his ordinary cell within the general prison population or be transferred to a block of keeplock cells within the same facility. Prisoners sentenced to keeplock, however, may also be transferred to the SHU to serve their keeplock time, where they are subject to the same restrictions as those sentenced directly to the SHU.<sup>60</sup> From 2007 to 2011, DOCCS issued more than 136,500 keeplock sentences.<sup>61</sup> A January 2012 snapshot of the SHU population revealed that 428 prisoners – roughly 10 percent – were serving their keeplock time in the SHU.<sup>62</sup>

## Determining the Severity of an Alleged Rule Infraction

DOCCS regulations describe how corrections staff should respond to rule infractions. When staff believe a prisoner has committed a rule infraction for conduct “involving danger to life, health, security or property,” they are directed to submit a “misbehavior report” initiating a formal disciplinary process.<sup>63</sup> DOCCS regulations counsel against submitting misbehavior reports for “minor infractions, or other violations of rules and policies governing inmate misbehavior, that do not involve danger to life, health, security or property.” Rather, DOCCS instructs staff to respond to such misbehavior “by counseling, warning, and/or reprimanding the inmate.”<sup>64</sup>

Each misbehavior report contains a description of the alleged incident and a citation to the rule(s) allegedly violated.<sup>65</sup> A “review officer” at each correctional facility reviews all misbehavior reports and determines the “tier rating” of the alleged rule infraction(s).<sup>66</sup> Every prison rule has a predetermined range of tier ratings that may be assigned to its infraction: (a) I to II, (b) II to III or (c) I to III. The review officer assigns a tier rating from this predetermined range based on the severity of the infraction. The tier rating then determines the type of hearing afforded the prisoner and the range of potential penalties the prisoner may receive if convicted at hearing. (See centerfold, page 30, for an example of the tier rating process.)

Tier I infractions are the least serious; tier III infractions are the most serious. A prisoner convicted of an infraction assigned a tier II rating may receive a sentence to keeplock, which can be served in the SHU.<sup>67</sup> A prisoner convicted of an infraction assigned a tier III rating may receive a sentence to keeplock or the SHU.<sup>68</sup> Thus, infractions assigned either a tier II or III rating may ultimately result in a punishment of extreme isolation. Since every rule has multiple tier ratings, any rule infraction may potentially result in a punishment of extreme isolation – whether a prisoner is housed in a minimum-, medium- or maximum-security facility.

Any rule infraction may potentially result in a punishment of extreme isolation – whether a prisoner is housed in a minimum-, medium- or maximum-security facility.

DOCCS regulations suggest that review officers assign tier I ratings to less serious infractions and tier III ratings to the most serious. Yet DOCCS provides no mandatory standards and little detailed guidance on how review officers should assign tier ratings to infractions in practice. Rather, DOCCS has chosen to vest corrections officials with wide discretion in assigning tier ratings. As a result, DOCCS permits corrections officials to assign tier II and III ratings to alleged infractions that involve non-violent misbehavior.

DOCCS has described tier III ratings as reserved “for the most serious offenses, such as assaults on staff or other inmates.”<sup>69</sup> But many rules proscribing non-violent misbehavior have potential tier ratings of III. For example, consider Rules 106.10 (“an inmate shall obey all orders of department personnel promptly

and without argument”), 116.10 (“an inmate shall not lose, destroy, steal, misuse, damage or waste any type of State property”), 109.12 (“an inmate shall follow all facility regulations and staff directions relating to movement within the facility”) and 107.20 (“an inmate shall not lie or provide an incomplete, misleading and/or false statement or information”).<sup>70</sup> Each of these rules prohibits non-violent misbehavior, yet all carry potential tier III ratings that could result in a punishment of extreme isolation.

In fact, DOCCS regularly assigns tier III ratings to these rule infractions in practice. From 2007 to 2011, DOCCS assigned tier III ratings to these rule infractions and upheld the charges at disciplinary hearing the following number of times: 106.10 – 35,095, 116.10 – 6,019, 109.12 – 4,008, and 107.20 – 3,788. The violation of Rule 106.10 alone constituted roughly 15 percent of all upheld tier III charges over this period.<sup>71</sup>

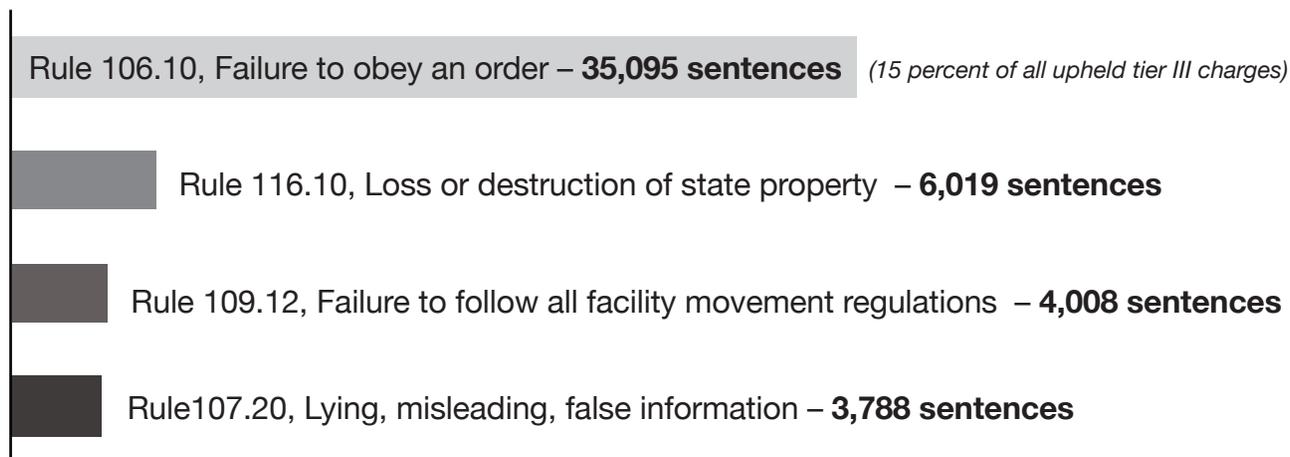
## Determining Whether a Prisoner is Guilty of a Rule Infraction

A prisoner accused of a tier II or III rule infraction receives a formal disciplinary hearing. At the hearing, the prisoner, unaided by legal counsel, may respond to the charges and evidence, call (but not cross-examine) witnesses,



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## Upheld Tier III Infractions Leading to Extreme Isolation Sentences, 2007-2011



DOCCS tier ratings indicate the severity of infractions, which determines whether prisoners can be punished with extreme isolation. Some rules, like Rule 106.10 (“an inmate shall obey all orders”), seem to encompass a broad range of misbehavior and constitute a large subset of cited tier III infractions. From 2007 to 2011, infractions of Rule 106.10 accounted for 15 percent of all upheld tier III charges, reserved for the most serious infractions.

“DOCCS Disciplinary Charge File Analysis – Incidents Occurring between 01/01/2007 and 12/31/2011,” obtained through FOIL and on file with the NYCLU.

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and submit evidence or witness statements on his behalf.<sup>72</sup> Prisoners found guilty may appeal the conviction to the facility superintendent (tier II) or the commissioner (tier III).<sup>73</sup>

“My story was credible. I appealed ... to Albany. You can never beat a ticket. The disciplinary hearings are unfair ... [T]he hearing officers are friends with the COs.” – Donell<sup>‡</sup>

In practice, disciplinary hearings often boil down to the testimony of a corrections officer against that of a prisoner. Hearing officers, who are themselves DOCCS employees, may credit the testimony of a CO over that of a prisoner.<sup>74</sup> From 2007 to 2011, DOCCS held more than 105,500 tier III disciplinary hearings. Nearly 100,000 – roughly 95 percent – of those hearings resulted in a conviction.<sup>75</sup> In many of the disciplinary dispositions that the NYCLU reviewed, hearing officers found prisoners guilty based solely on the misbehavior report and the CO’s testimony while dismissing conflicting prisoner testimony.

Disciplinary hearings often boil down to the testimony of a corrections officer against that of a prisoner.

“The hearing officer didn’t listen to the facts ... I’m not wrong, but [they] find me guilty ... We are incarcerated for a crime. We are in here repaying that. We shouldn’t be punished in here with unfairness.” – Adrian

By placing greater weight on CO testimony than on prisoner testimony, DOCCS’ disciplinary process risks erroneously convicting prisoners because of a CO’s mistake or animus towards a particular prisoner. Indeed, many prisoners who spoke with the NYCLU identified instances where they insist they were erroneously convicted of a particular infraction, even as they took full responsibility for committing other infractions. Errors in the disciplinary

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<sup>‡</sup> Prisoners’ communications are quoted verbatim (spelling and grammatical errors intact).

process have severe consequences in a system like New York’s where a guilty conviction does not just result in a reprimand or a loss of privileges but may result in a sentence of extreme isolation.

## Determining Whether a Conviction Warrants a Punishment of Extreme Isolation

If a prisoner is convicted of an infraction with a tier II or III rating, he may be punished with extreme isolation. Approximately 68 percent of tier III disciplinary hearings resulting in conviction also result in a sentence to the SHU.<sup>76</sup> As with tier ratings, DOCCS provides no mandatory standards and little detailed guidance on when corrections officials should punish convictions with extreme isolation. DOCCS guidelines recommend penalties for certain classes of offenses, but corrections officials are free to craft sentences according to mitigating or aggravating circumstances, such as the prisoner’s prior record, the facility type and the nature of the infraction.<sup>77</sup> Therefore, DOCCS vests corrections officials with wide discretion to punish convictions for a broad range of misbehavior with extreme isolation.

“My first ticket ever was for a fistfight in the yard. It was just a misunderstanding. I was a 20- year-old kid. It was my first time in a max facility and I was scared out of my mind. I got six months.” – Kevin

DOCCS characterizes prisoners in extreme isolation as “disruptive, dangerous or violent,” whose isolated confinement prevents their “assaulting inmates, attacking staff or endangering prison operations.”<sup>78</sup> But in New York, people can be placed in extreme isolation for non-violent misbehavior or a single violent altercation – such as a fistfight in the recreation yard – despite no indication they are a serious threat to prison safety and security. Even DOCCS’ highest authority, Commissioner Brian Fischer, has acknowledged extreme isolation’s potential overuse.<sup>79</sup>

DOCCS provides no mandatory standards and little detailed guidance on when corrections officials should punish convictions with extreme isolation.

DOCCS did not disclose exactly how many people are sent to the SHU for non-violent misbehavior. In December 2011, the NYCLU requested from DOCCS, through the New York Freedom of Information Law (FOIL), a breakdown of the specific infractions resulting in SHU time, which would have revealed the number of prisoners who receive SHU time for non-violent misbehavior. At the time this report went to print, nearly 10 months after the NYCLU’s initial FOIL request and after repeated follow-up requests, DOCCS was still unable or

unwilling to produce this information. DOCCS’ inability to readily access or share data on the specific infractions that lead to SHU time suggests it is not closely tracking its use of extreme isolation – including who it subjects to extreme isolation, for what types of misbehavior, and for how long.

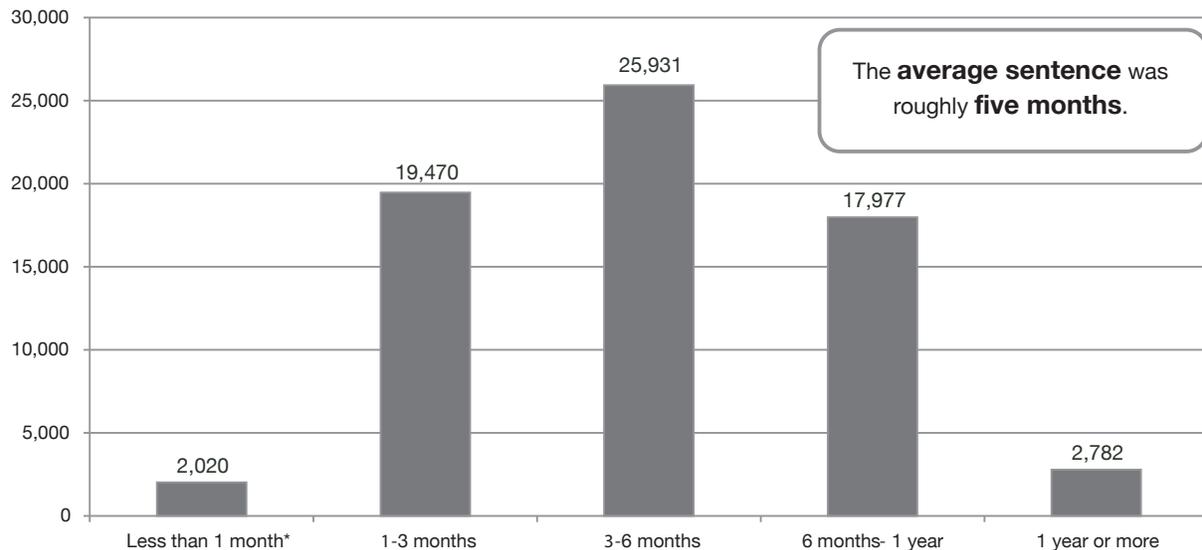
DOCCS was able to provide limited information on the broad categories of infractions resulting in SHU time. From 2007 to 2011, DOCCS held more than 68,000 tier III disciplinary hearings resulting in SHU sentences. Only 16 percent of those sentences were for infractions related to violent misbehavior, specifically assault and weapons.<sup>80</sup>

**INCONSISTENT BOX HITS**

The substantial discretion afforded corrections officials in crafting SHU sentences is exemplified by several instances uncovered by the NYCLU where prisoners received widely disparate SHU sentences, even when the underlying circumstances were substantively similar. For example, Chris received a four-and-a-half month SHU sentence for his first marijuana infraction; Trevor received a one-month keeplock sentence for the same offense. Chris, who received the longer sentence, had not received any prior misbehavior reports for violent conduct, whereas Trevor had received prior misbehavior reports for fighting. In another example, Kevin and Miguel, neither of whom had any prior misbehavior reports, were each involved in a fistfight at their respective prisons. Kevin received a six month SHU sentence; Miguel received a one month keeplock sentence.

## New York Extreme Isolation Sentence Length

Total Sentences 2007-2011



From 2007 to 2011, DOCCS issued more than 68,100 SHU sentences. Of these, more than 20,700 – or roughly 30 percent – were for six months or longer.<sup>81</sup>

“DOCCS Dispositions with SHU Sentences – 01/01/2007-12/31/2011: Length of SHU Sentence by Incident Year,” obtained through FOIL and on file with the NYCLU.

Prisoners’ experiences suggest the regularity with which DOCCS uses extreme isolation to punish non-violent misbehavior. According to DOCCS’ disciplinary records, John received six months in the SHU after a CO discovered homemade alcohol and another person’s television set in his cell. Chris received three months in the SHU after a CO discovered gambling chips and a list of prisoners who owed him chewing tobacco in his cell. Trevor received 45 days in the SHU for tattooing himself.

Drug-related infractions can often lead to sentences in extreme isolation.<sup>82</sup> From 2007 to 2011, DOCCS held more than 21,000 tier III disciplinary hearings resulting in SHU sentences for drug-related infractions. These hearings constituted roughly 23 percent of all tier III disciplinary hearings resulting in SHU sentences during this period.<sup>83</sup>

Roughly 90 percent of drug-related charges are assigned a tier III rating.<sup>84</sup> More than half of drug-related charges are for the violation of Rule 113.24, which prohibits prisoners from using or being “under the influence of any narcotics or controlled substances unless prescribed by a health service provider.” In fact, the violation of Rule 113.24 was one of the top five most commonly upheld tier III charges from 2007 to 2011.<sup>85</sup>

Prisoners in extreme isolation are offered virtually no resources to break the habits that may have brought them to the SHU or extended their SHU sentences.

DOCCS penalty guidelines specifically contemplate punishing prisoners with extreme isolation for alcohol and drug-related infractions – up to three months for a first offense, three to six months for a second offense, and six to 12 months for a third offense. Corrections officials may, however, impose longer sentences at their discretion.<sup>86</sup> Several prisoners that communicated with the NYCLU received SHU sentences that exceeded these recommendations,

## THE UNENDING BOX HIT

“Once you get to Southport, it’s hard to get out. They keep us hostage.” – Tevin

While DOCCS is quick to impose extreme isolation in response to misbehavior in the general prison population, additional punishment for misbehavior once a prisoner is in the SHU is even more swift and severe. Prisoners in extreme isolation can earn additional disciplinary sentences that keep them in the SHU far beyond their initial SHU sentence. DOCCS places no upper limit on the ultimate length of time that a prisoner may spend in extreme isolation.

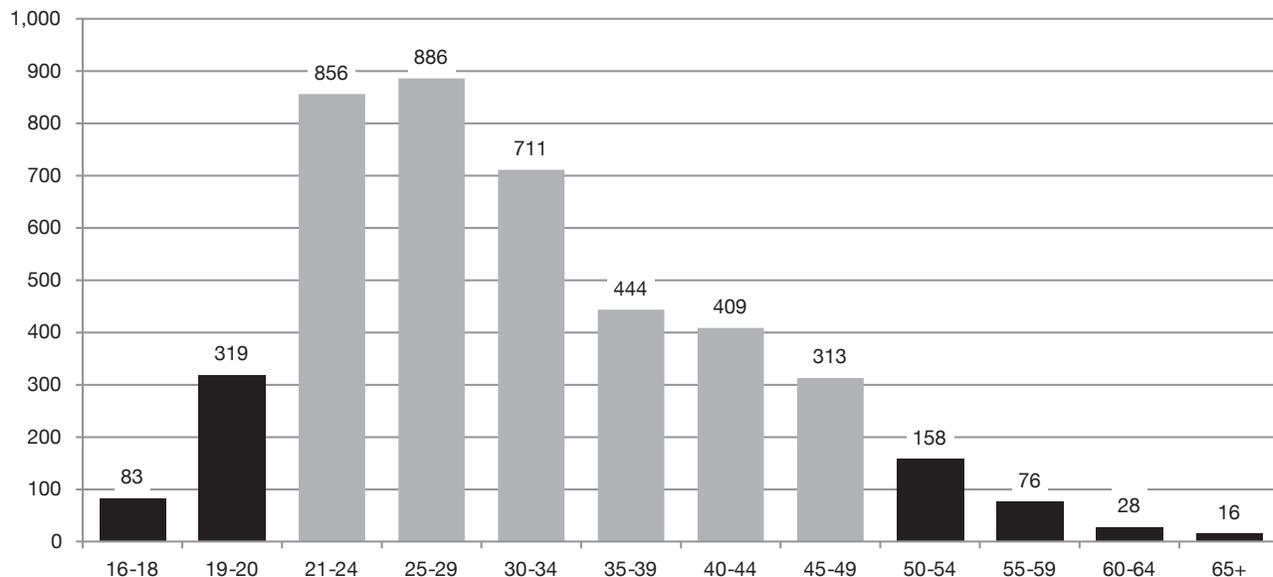
Samuel has earned an additional two-and-a-half-years of SHU time since he arrived at Upstate, all for non-violent misbehavior. For refusing to hand his food tray back to a CO, for example, he received an additional six months in extreme isolation (see centerfold, page 30). Samuel is set to return to the general prison population in October 2012, more than four-and-a-half years after he first arrived at the facility. Donell has received an additional seven months of SHU time for two counts of “tampering with property”: He received a SHU sentence of one month for returning a broken razor to a CO who was collecting used razors, and six months when garbage jammed his cell door.

even for their first drug infraction. For example, Chris received four-and-a-half months in the SHU for his first drug infraction after testing positive for marijuana.

As the guidelines recommend, prisoners found guilty of multiple drug infractions often receive increasingly longer SHU sentences. For example, Stephan, who received one month in the SHU for his first drug infraction

## Age Distribution

New York SHUs



New York’s SHUs house both very young and old prisoners, people that are particularly vulnerable to the harsh conditions of extreme isolation.<sup>88</sup> A January 2012 snapshot of the SHU population revealed that 402 prisoners were 20 or younger; 83 were 18 or younger. The snapshot further revealed that 278 prisoners were 50 or older – elderly, in prison demographics<sup>89</sup> -- including 44 who were 60 or older.<sup>90</sup> According to the snapshot, roughly 1-in-6 SHU prisoners was younger than 21 or older than 49.

“Age by Facility for Offenders Housed in SHU – DOCCS Under Custody Pop. Jan. 1, 2012,” obtained through FOIL and on file with the NYCLU.

and three-and-a-half months for his second, received seven-and-a-half months for his third – all for testing positive for marijuana.

Prisoners in extreme isolation are offered virtually no resources to break the habits that may have brought them to the SHU or extended their SHU sentences. They may not participate in any programming, including substance abuse treatment. This prohibition holds true even if that prisoner was enrolled in a rehabilitative program, such

**Bias may corrupt the disciplinary process that leads to sentences of extreme isolation.**

as a substance abuse treatment program, in the general prison population when he committed the disciplinary infraction that led to SHU time.

When it comes to substance abuse, many prisoners report being able to obtain illegal and pharmaceutical drugs while in the SHU and

many incur subsequent drug infractions while in the SHU. From 2007 to 2011, at Southport and Upstate alone, DOCCS upheld nearly 1,700 drug-related charges.<sup>87</sup>

Kevin, who received additional SHU time after testing positive for marijuana at Upstate, has requested substance abuse treatment to help him avoid future drug-related disciplinary infractions. In a letter to a corrections counselor, Kevin wrote:

[T]his is my 4th dirty urine [and] it is evident that I have a real drug problem and need help (I've asked for help once before) and I firmly believe that by keeping me in "SHU" is not going to help in any way, it's only going to make matters worst for me. So if at all possible may you please help me! (I am sincerely begging you).

Consistent with similar observations by several prisoners about drug use in extreme isolation, Kevin noted that using drugs keeps him "out of trouble" in the SHU:

It keeps me calm. Instead of thinking about the present, I reflect on family events, parties, family and friends. When I'm sober, I'm bored, aggravated, and miserable.

## Who is in the Box?

The DOCCS disciplinary system grants corrections officials wide discretion to charge prisoners with infractions that can lead to extreme isolation, to rely on the word of a corrections officer over a prisoner during the disciplinary hearing and to punish convictions with lengthy sentences to extreme isolation. Not surprisingly, the demographic and statistical evidence illustrates that the SHU captures a wide swath of prisoners, including individuals uniquely vulnerable to conditions

## Disability Advocates, Inc. Lawsuit and SHU Exclusion Law

The number of people in extreme isolation with mental health problems would likely be greater if DOCCS was not subject to an important limitation on who it can place in the SHU – prisoners diagnosed as "seriously mentally ill."<sup>96</sup>

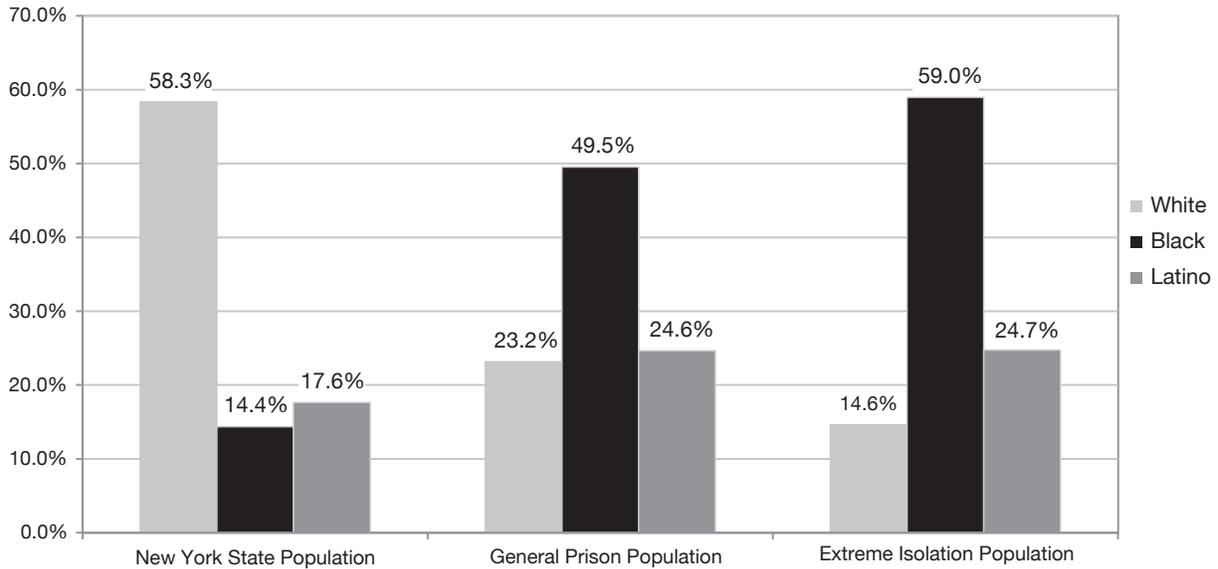
In 2002, Disability Advocates, Inc., the Legal Aid Society's Prisoners' Rights Project and Prisoners' Legal Services of New York filed a landmark lawsuit against DOCCS and OMH alleging that prisoners with mental illness were not receiving adequate mental health treatment in violation of the U.S. Constitution and federal statutes.<sup>97</sup> In particular, the complaint highlighted how the failure to adequately treat prisoners with mental illness often resulted in their placement in extreme isolation, where they deteriorated further.<sup>98</sup> In 2007, OMH and DOCCS agreed to a settlement establishing major improvements to the provision of psychiatric treatment for prisoners with mental illness, including prisoners diagnosed as seriously mentally ill serving disciplinary sentences in extreme isolation.<sup>99</sup>

As the lawsuit wound its way through the judicial system, a coalition of former prisoners, family members, advocates and lawyers – Mental Health Alternatives to Solitary Confinement – began pushing for state legislation to end the use of extreme isolation for prisoners with serious mental illness. In 2008, Governor Eliot Spitzer signed the SHU Exclusion Law, which was co-sponsored by Assemblyman Jeffrion Aubrey and Senator Michael Nozzolio. The law, which came into full effect on July 1, 2011, reinforces and expands upon the settlement provisions pertaining to prisoners with serious mental illness in extreme isolation.<sup>100</sup> At its core, the law mandates the diversion of prisoners with serious mental illness from extreme isolation to units operated jointly by DOCCS and OMH whose purpose is therapeutic, not disciplinary.<sup>101</sup>

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## Racial Distribution

New York State vs. General Prison Population vs. Extreme Isolation Population



A disciplinary system where government officials may act with substantial discretion creates opportunities for bias and prejudice to influence who receives punishment. One manifestation of this may be the disproportionate number of black prisoners in the SHU as compared to the overall prison population.

State population data from Census 2010. Prison population data from “Security Level and Facility by Ethnic Status, DOCCS Under Custody Pop. Jan. 1, 2012,” obtained through FOIL and on file with the NYCLU. SHU population data from “Table 3H: Race/Ethnicity for Offenders Housed in SHU – DOCCS Under Custody Pop. Jan. 1, 2012,” obtained through FOIL and on file with the NYCLU.

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of extreme isolation. These data also suggest that bias may corrupt the disciplinary process that leads to sentences of extreme isolation.

DOCCS has identified 83 percent of New York prisoners as “substance abusers” in need of treatment.<sup>91</sup> According to a sampling of self-reporting data from 2007 to 2012 among prisoners housed at Southport, Upstate and the SHU 200s, an average of 88 percent of men reported some form of substance abuse.<sup>92</sup> These prisoners receive no meaningful treatment and may incur additional SHU time for alcohol or drug-related disciplinary infractions.

The SHU also houses many prisoners with mental health problems. Data released by the New York State Office of Mental Health (OMH) shows that in March 2012, more than 600 prisoners in the SHU – roughly 14 percent of the total SHU population – were on the mental health caseload.<sup>93</sup> (Roughly 14 percent of prisoners in the general prison population were also on the mental health caseload.)<sup>94</sup> Among prisoners in the SHU on the mental health caseload, roughly 35 percent had been diagnosed with a major or serious mental illness.<sup>95</sup>

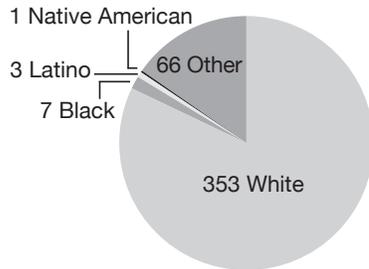
Policies are abstract. Punishments are concrete. **Section IV, *Life in the Box***, goes inside the SHU, using the voices of prisoners, their family members and corrections employees to bring life in extreme isolation fully and vividly into focus. ■

## RACIAL TENSION IN EXTREME ISOLATION

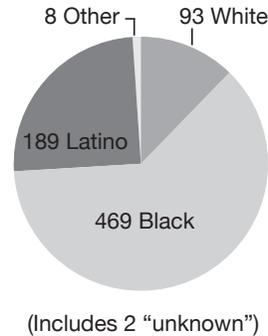
The racial make-up of prisoners in the SHU contrasts particularly sharply with the racial make-up of SHU corrections staff. For example, the corrections staff at Southport and Upstate is about 80 percent white, in marked contrast to the SHU prisoner population at both facilities, which is about 12 percent white.<sup>102</sup>

### Southport

**Corrections staff  
(430 total)**

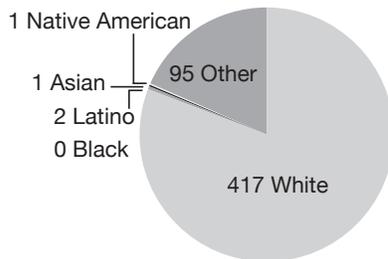


**Prisoners  
(761 total)**

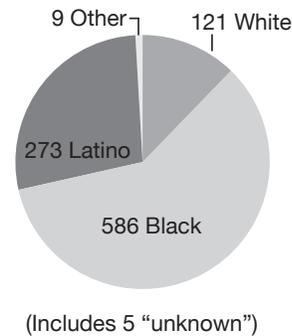


### Upstate

**Corrections staff  
(516 total)**



**Prisoners  
(994 total)**



Prisoners of varying racial and ethnic backgrounds who communicated with the NYCLU consistently noted high levels of racial tension between staff and prisoners. Many black prisoners reported the repeated use of virulent racial epithets by corrections staff at Southport and Upstate. One black prisoner observed that corrections staff at Upstate “call you nigger to your face quicker than anyone else.” Several Southport prisoners reported that staff use the prison’s internal public address system to broadcast racially charged insults or jokes. One prisoner shared a joke he recently heard over the loudspeaker: “What do a black person and a bicycle have in common? They both only work with chains on them.”

White prisoners also commented on the racially charged interactions between prisoners and corrections staff. One white prisoner, who was sent to Upstate for a weapon, recalled, “When I was booked into Upstate ... on the way to my cell, several COs asked me if I was ‘making weapons to stab niggers’ and made several ‘nigger’ jokes, which I had to continue to endure for the rest of my stay there.” Another white prisoner at Upstate observed, “It sucks to be black in here.”





## IV. LIFE IN THE BOX

The experience of extreme isolation is most keenly expressed through the first-hand accounts of the individuals who endure it. From the effects of extreme isolation on the psyche and spirit to the wholesale culture of deprivation to the challenges of effective medical and mental health care, prisoners' lives are shaped and often scarred by their time in extreme isolation. The complicated experience of visiting or working in the Box is not to be underestimated. Even those who are not incarcerated feel its effects.

### Isolation, Idleness, Violence and Suicide

New York's 19th century experiment with extreme isolation linked these conditions of confinement with mental anguish and pain.<sup>103</sup> Recent experience has verified what New York discovered nearly two centuries ago: Extreme isolation inflicts grave harm. In otherwise mentally stable individuals, adverse psychological effects manifest even after short, defined periods in extreme isolation.<sup>104</sup> These same conditions ravage individuals with pre-existing mental illness, who may deteriorate tragically, sometimes to the point of self-mutilation and suicide.<sup>105</sup> The experiences of prisoners who shared their stories with the NYCLU vividly illustrate these findings.

Prisoners in extreme isolation live in a world of unrelenting monotony, marked by isolation and idleness, where all extrinsic purpose and structure slowly unravels. When men in the SHU were asked to picture their lives in the general prison population, many pointed to social interaction, activities and programming around which they structure their time. Stephan misses "communicating with family, talking to other inmates, and playing chess."<sup>8</sup> Daniel, with more than 20 years in and out of the Box, expressed even simpler desires: "I want to interact with others, see others. I want to go to the yard or the shower. I want the liberty of walking down the company [gallery] so that I can feel human."

"You could be in outer space." – Daniel

By design, the SHU frustrates social interaction. Daniel described feeling like he is expected "to just sit quietly like in a space capsule in a cell with very little human contact or cordial conversation." Trevor shared that living locked down in a cell has left him feeling "isolated, forgotten, like you don't matter." Kevin explained: "Nobody likes to be alone. It's not human nature. We're social. When you take that away from a person it's standing still, with nothing. Nothing forward, backward, sideways. You just have you."

The SHU also imposes upon prisoners a deeper and more profound isolation from the outside world. Prisoners in the SHU may not make phone calls. Yet "there is nothing like talking on the phone to a loved one, it's something to give you a sense of normal," Kevin said. Beyond the geographic challenges posed by the far-flung locations of New York's prisons, family visits are neither easy nor encouraged. Prisoners in the SHU must wear restraints – handcuffs secured to a waist chain – and sit behind a physical barrier separated from their loved ones. Kevin described how a friend who visited him at Upstate "couldn't do nothing but cry" at the sight of him shackled and in a cage.

At times, extreme isolation strains relationships to the breaking point. Miguel described how the SHU has taken a negative toll on his family:

Many of us have kids, bad enough we're in a SHU ... but the visit floor has a gate between you and your family. You can't kiss, or hug your family ... A lot of our family and wives abandone or refuse to visit us due to this which in turns mentally break us down and eventually leads to problems ... I've lost my wife and haven't seen my son due to this living condition.

Miguel described the one occasion that his wife and son traveled eight hours by bus to visit him. His son, who was 7 years old, couldn't understand why he couldn't touch his father. They have not come to visit Miguel again.

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<sup>8</sup> Prisoners' communications are quoted verbatim (spelling and grammatical errors intact).

This isolation from loved ones can be traumatic and hinder rehabilitation; studies have documented that prisoners who sustain contact with loved ones are less likely to recidivate after their release.<sup>106</sup> Daniel had no contact with family members during the first 15 years of his incarceration, most of which was spent in extreme isolation. He began receiving regular “support and correspondence” from his sister after his mother’s death and described the grounding effect of their communication: “I truly believe that if it were not for her support coming when it did that my disciplinary record would’ve deteriorated to such a degree that to say I was uncivilized would be inadequate description.”

Without meaningful human interaction, prisoners in extreme isolation have little choice but to focus on themselves. But many who communicated with the NYCLU made clear that the SHU prevents them from positively channeling this focus because they lack access to educational, vocational or rehabilitative programming. Whatever progress they might have been making in the general prison population – towards earning a GED, learning a trade, or dealing with substance abuse or anger management issues – essentially halts upon placement in the SHU. Often, fragile gains are lost.

Many prisoners pass the time reading, writing or sleeping.<sup>109</sup> If their good behavior has earned the privilege of a pair of headphones, they may also listen to a pre-selected radio station.<sup>110</sup> But these activities fail to stave off boredom, listlessness and torpor. Tevin, who spends most of his day reading or exercising, said that he “doesn’t feel like it sometimes” and ends up “just sitting there.” Trevor described “reading what you’ve already read, re-reading,” finding it difficult to concentrate. Daryl similarly reported that after a short period in the SHU, his “motivation started to drain away,” and he “started to do less and less” until he “stopped doing anything.” Adrian explained constantly fighting sleep, “trying to stay awake.” Stephan described succumbing to his lethargy, simply “try[ing] to sleep the day away.”

With little to do and nowhere to be, some prisoners describe time collapsing in on itself. Weeks, months and years begin to bleed together. The distinction between night and day becomes meaningless, and strange and erratic sleeping patterns are commonplace.

Isolation and idleness corrode prisoners’ psyches. Some changes are subtle, almost imperceptible given the nature of isolation, such as withdrawal. Others are more obvious and frightening: the sudden onset of anxiety or rage, or a rapid descent into depression. Virtually every prisoner who communicated with the NYCLU reported disturbing changes in themselves and in those around them. Many fear these changes are permanent.

Some prisoners withdraw into apathy or indifference. Several family members and friends note these changes. Adrian reported that his aunt, after visiting him in the SHU, described him as “withdrawn, less talkative, disinterested.” Trevor’s brother had a similar reaction. Trevor called his brother after returning to the general prison population from Southport. His brother said he noticed changes in the way Trevor spoke and acted. Trevor saw in himself a slow

## Families, Inside and Outside

“The effects that SHU have aren’t restricted to us confined in the actual SHU. Our loved ones are somewhat ‘confined’ too and endure stresses which at times may be more extreme than what we prisoners endure.” – Adrian

Families and loved ones say they experience a peculiar form of punishment when they visit the SHU – or when distance, economics and daily responsibilities prevent crucial personal contact. Extreme isolation facilities like Southport and Upstate, which house more than a third of New York’s total SHU population,<sup>107</sup> are hundreds of miles from New York City and its suburbs, the home communities of 60 percent of the total prison population.<sup>108</sup> Many family members say they suffer sentences along with prisoners, burdened by the inability to change or improve their loved ones’ circumstances.

Taylor Alonso’s son was sent to the SHU for suspected gang involvement.

“What the family goes through – other people are being sentenced without direct involvement, i.e., the families,” Alonso said. “My wife’s Parkinson’s [disease] has flared, it’s through the roof, she can’t even write a letter anymore. As for me, my doctors put me on antidepressants so I can try to make it through the day. I don’t sleep, I’m awake all the time. That’s good, though. I drive to [the prison in] Buffalo and back [to Long Island] in a day, to visit.”

Visiting means metal detectors and long waits to greet a loved one in a cage or behind a glass barrier.

“You don’t get in right away,” said Lynn Finley, whose son spent five months in extreme isolation. “You can wait two hours [to be screened]. I wear nothing metal, nothing at all. I learned that the first time I went up. I don’t wear earrings, underwires – I usually wear an underwire bra – I don’t want any problems at all.”

Finley described the chaos of waiting for vending machines in the visiting room: “Everyone’s in line for the food. ... My son is starving, he said to me, ‘get me everything.’ For a mother to hear that, it’s beyond anything you ever imagined

you'd hear. I get in the line – this woman would stand there and take out chicken after chicken, 10 of them! People would yell at her, 'what are you doing?' ... People were angry she was taking all the chicken, they were afraid it was going to run out. It's the inhumanity of the whole thing, right down to the chicken."

Sade Jackson, a legal secretary and church volunteer, visited her brother at Upstate.

"I had the worst experience," she said. "I felt like I was treated like a criminal. It was extremely upsetting. I went through metal detectors, took off my shoes and all that stuff, and it was still ringing. They said, 'go in the bathroom, take off your bra.' For a woman – I felt violated, they were all male corrections officers."

Removing her brassiere didn't silence the metal detector. Next, Jackson said, corrections officers began to examine her hair.

"I wear a lace front, kind of like a wig, with [metal] pins [to hold the hairpiece in place]. I had to take it off. I was just like, wow ... I felt humiliated. I wanted to cry. I didn't do anything to deserve it. They use it like a power trip."

Her sister Monet Jackson, a hospice worker, visited their brother, too. She negotiated the metal detectors and waited for her brother.

"When I got there, I couldn't touch him," she said. "He was in shackles and in handcuffs. He had to eat with handcuffs."

**"They take people in small groups – they go through packages, everything is very slow,"** Finley said. **"You can't bring anything in but your**

**driver's license and money for the vending machines. If you get there at 7:30 [a.m.], if you're lucky, you'll see them [your family member] at about 10, 10:30. You wait in the room until you're called, you go through screening devices, metal detectors, then into the room with the cages and vending machines. Sometimes your inmate is waiting, most often not. It's really traumatic."**

Alonso shared a story from his first SHU visit. "My son's a big guy, 220 lbs, 6' 4"," Alonso said. "He's a Type 1 diabetic, and he has ulcerative colitis. The first trip I was up, in the last half hour, he started to go into diabetic shock, sweating and shaking, asking for juice. I didn't take any money [inside, because] I was told I was only going to see him through glass. They wouldn't let me go out [to my car] to get money for orange juice. He would rather have gone into shock and have another 15 minutes with us, you can see it in his eyes."

Alonso's wife, Patricia Trainer, expressed deep frustration with the state prison system.

"Who can sit in a box 23 hours a day, either alone or with another man? How are you supposed to change? How do they correct you? They don't do anything for you, they don't give you any education. Prison infantilizes you. Nothing is given or forgiven. I know he's a knucklehead, but he doesn't deserve this."

Pamella Watson, whose daughters Sade and Monet Jackson visited

their brother at Upstate, hasn't seen her son since 2006. A resident of Warrenton, Ga., she could speak to her son on the phone when he was in the general prison population. Now she cannot.

"He's not able to call, he can't call anybody," Watson said. "He pours his heart out in his letters." Since his SHU bid began, Watson said, "he's more emotional. There's a change in him." But he refuses medication

**"They don't treat them like human beings. I'd be the world's most blessed mom if he comes out of solitary sane."**

for his bipolar disorder despite a prior diagnosis, she said. "He says it leaves him disoriented, unaware of his surroundings."

"They don't treat them like human beings" at Upstate, she said. "I'd be the world's most blessed mom if he comes out of solitary sane."

"Who would want to be locked up in one room for 365 days of a year and not have any contact?," Sade Jackson asked. "We were designed to be social beings. It's debilitating to be alone that long. The thing he struggles with more than anything is not having easy access to his family, or his family having access to him."

"They don't even do this to animals," she said. "If I took my dog and locked him into a room for a year, I would go to jail. Why is it acceptable to do this to human beings?"

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distancing from his loved ones. He said, "I know I love [my brother], but now I put the focus all on me."

Many prisoners experience the onset of anxiety in extreme isolation, sometimes catalyzed by "an intense fear of walls closing in on you" or the distinct sensation of living in "a cage." Marcus described his anxiety as stemming from a "horrible ... caged feeling," which would ascend until he "was about to have a nervous breakdown." Daryl described feeling like he was living "in a void of nothingness." In this void, he found "his thoughts racing for no reason" and was "a nervous wreck for no reason."



# SHUT CASE

nce in extreme isolation for refusing to return a food tray.

Samuel's disciplinary hearing, at which he was found guilty of failing to obey a direct order and failing to comply with mess hall policies, occurred on June 14. Samuel refused to attend the disciplinary hearing. According to Samuel, "the hearings are unfair so I don't care. The[y] need to be transparent, they don't follow their own rules, they need more guidelines." Samuel was found guilty of refusing to return his food tray, and punished with an additional six months in the SHU. From 2007 to 2011, DOCCS held more than 68,000 tier III disciplinary hearings resulting in SHU sentences. Only 16 percent of those sentences were for infractions related to violent misbehavior, specifically assault and weapons.

According to the hearing officer, Samuel's punishment was "to act as a deterrent for any future misconduct which could result in a more serious disposition." But Samuel is not likely to be deterred by this punishment. In his words, "they gave me so much Box time for nonsense, I've become immune to it." When it comes to withholding food trays, Samuel echoed what the NYCLU heard from many other prisoners in extreme isolation, "the only way you can see a area supervisor sometime is to hold your tray refusing to give it back to see the Sgt."

Samuel has received an additional 30 months of SHU time since arriving at Upstate in January 2008, all for non-violent misbehavior. "COs escalate situations, escalate drama, find a reason to give you tickets for little, simple things," Samuel said. "They give tickets because they are trying to justify the existence of this place . . . the Box only winds a person up, the way they are treated and humiliated, it gets to the point where they don't care. After being in the Box for so long, it don't mean anything to him."

STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES PAGE 1  
SUPERINTENDENT HEARING DISPOSITION RENDERED

INCIDENT DATE & TIME: 06/05/11 09:17 AM LOCATION: 11-0615  
REVIEW DATE: 06/05/11  
HEARING START DATE & TIME: 06/04/11 09:25 AM BY: CO  
HEARING END DATE & TIME: 06/14/11 10:20 BY: BA  
CHARGE NUMBER: 17-10 INTERFERENCE WITH EMPLOYEE REPORTED BY: [redacted]  
18-10 REFUSING DIRECT ORDER CO: [redacted] DISPOSITION: guilt  
19-10 MESS HALL SERVING/EATING VIOL CO: [redacted] DISPOSITION: guilt

SECTION WILL RESULT IN A MANDATORY DISCIPLINARY SURCHARGE IN THE AMOUNT OF \$100 PER MONTH BEING ASSESSED AUTOMATICALLY AGAINST THE INMATE.

PENALTY	START DATE	RELEASE DATE	SUSPEND	NO DAYS	NO DAYS	NO DAYS	NO DAYS
30	6/14/11	9/14/11					

DATE: 6/14/11

Reasons for disposition: given in to act as a deterrent for any future misconduct which could result in a more serious disposition.

NOTIFIED OF THE FOLLOWING APPEAL PROCEDURES:  
HEARINGS-APPEAL TO SUPERINTENDENT WITHIN 72 HOURS.  
HEARINGS-APPEAL TO COMMISSIONER WITHIN 30 DAYS.

## FORCED IDLENESS

Many prisoners reported that they do not wish to remain idle, but that they are denied access to any educational, vocational or rehabilitative programming in the SHU. Some prisoners may earn the privilege of signing up for in-cell study packets – GED, substance abuse or aggression management – which consist of little more than materials handed through the food slot, for prisoners to complete on their own.<sup>111</sup>

Marcus, who was 20 when he first arrived at Upstate, requested the GED in-cell study packet. During his first month at Upstate, he received essay and math assignments, which he completed and returned. He never received any feedback on these assignments. Marcus, who will be released in 2014, would “like to go to school” and hopes DOCCS can help him with “outreach to colleges.” But he noted that “the Box keeps you away from all that.”

Many wait months simply to access the substance abuse or aggression management packets. Donell requested the aggression management packet, but was informed he would have to wait more than six months. Marcus was quoted a similar waiting period when he requested the substance abuse packet. Samuel requested both “a couple of times but received no response.”

For many prisoners, anxiety is accompanied by severe mood swings, manifested by irrational and uncontrollable outbursts of anger and rage. Daryl described his mood swings:

“[T]hey were kind of like the temper tantrums I threw as a child. Raw & helpless moments of overwhelming & unchanleable emotions exploding out of you. I couldn’t seem to function properly & then I would get so annoyed with my bunkies that I would just beat on them or scream at them & afterward I would feel so horrible, like some monster or something. I know it wasn’t right but at the same time I couldn’t control it either.”

[T]hey were kind of like the temper tantrums I threw as a child. Raw & helpless moments of overwhelming & unchanleable emotions exploding out of you. I was anxious & overly frustrated because I couldn’t seem to function properly & then I would get so annoyed with my bunkies that I would just beat on them or scream at them & afterward I would feel so horrible, like some monster or something. I know it wasn’t right but at the same time I couldn’t control it either.

Kevin also felt that extreme isolation stirred up a whirlwind of emotions: “All the emotions you experience in 15 years, you experience in one day.”

Many prisoners said that they try to bottle up their emotions but they eventually explode in dangerous ways. Donell has found himself “snapping at others” in “daily outbursts.” He “wasn’t like this before.” Donell’s explanation: “Anger is built up and not released.”

Some men admit that extreme isolation has aggravated longstanding difficulties controlling their frustration and anger. Marcus described himself as having “always had a trigger-snap mentality, but not so intense.” He discussed developing “a hair trigger reaction to situations” in extreme isolation; the “littlest things” caused “a crazy adrenaline rush, increased blood pressure, heart racing.” Justin admitted “I suffer from rage,” and that his emotions are “harder to control in the Box.”

“Hostility is endemic to the SHU.” – Justin

The intense emotions that prisoners experience in extreme isolation have little outlet for release. In the general prison population, when your mood is negative, Justin said, “you can take a walk and clear your mind.” In the Southport SHU, “you take out your aggression ... on the gate,” standing by the cell door and arguing with adjacent prisoners or

corrections staff. Tevin saw arguments erupt over “petty things;” “people go off, people you think you have a rapport with, you really don’t.” Na’im similarly noted that “the smallest things set people off.” Adrian witnessed prisoners “losing their social skills.”

When prisoners leave extreme isolation and return to the general prison population, they often find themselves trapped by the intense emotions and uncontrollable impulses they developed while in the SHU. As Donell put it, “population problems start in the Box.” Daryl, who experienced anxiety, depression and mood swings in the SHU, found his transition to a maximum-security facility difficult:

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. It’s when I got here that I noticed how badly the box had effected my charrecter. I’ve always been somewhat anti-social, but my confidence in myself & my ability to communicate is more challenged now than it has been since I was a teenager. My depression is pretty bad off too. All I know tho is I was fine in Attica & then I went to Upstate & it seems like part of me is still there.

“I’ve always been somewhat anti-social, but my confidence in myself & my ability to communicate is more challenged now than it has been since I was a teenager. All I know tho is I was fine in Attica & then I went to Upstate & it seems like part of me is still there.”

Marcus described his return to the general prison population in similar terms. After the extended lack of real social interaction, the thought of “actually talking to people face-to-face” made him “paranoid.” When he did return to general population, Marcus “noticed things were different.” He was “more ready to jump at the littlest things, such as words,” and he couldn’t “hold a conversation without feeling anxious and paranoid.”

Donell expressed fear that his “outbursts of anger” were permanent: “When I go home, I don’t want to be acting like I do in Upstate. I’m hoping I change back.” He said he realizes that these “outbursts of anger might cause you to go back in.” But as Trevor, who is currently serving his seventh SHU sentence, said, the SHU has lasting effects. When a prisoner returns to the general prison population, he said, “no-one knows what you’ve dealt with in the SHU.” If some “guy disrespects you, instead of saying something, you attack him.”

## MAXING OUT

In some cases, a prisoner’s disciplinary sentence to the SHU eclipses the remainder of his entire prison sentence. DOCCS requires these prisoners to serve the balance of their sentence in extreme isolation; every year, roughly 2,000 people are released directly from the SHU back to the community.<sup>112</sup> Prisoners in the general prison population nearing release undergo transitional programming, which assists with release plans and relevant documentation, including a resume, cover letter and letters of reference. Prisoners in extreme isolation, however, are barred from any transitional programming prior to their release.

Adrian will return home directly from the SHU in 2015. He wants to work in an office after his release, but he is worried that won’t be possible. “I have the ambition, but no preparation,” Adrian said. “I thought the goals of DOCCS was to help us ‘correct’ our wrongs. All they’ve done was lock many of us up in a cell. But the nightmare starts with the realization ‘I’m going home from the Box’ lacking any transitional services of all sorts. Me personally, I read to keep my mind busy & intellect growing! And I have a strong desire to never return to jail. But I need help from the ‘professionals’ that work for the state because it’s so obvious my ways aren’t quite the right ones.”

Tevin, who is serving a four-year prison sentence, will also return home directly from the SHU in 2014. He observed, quite obviously, that he is “not prepared” to return to society.

“Mentally, being here drains energy out of you. I feel like the walls are closing in on me. I get suicidal.” – Stephan

Confronted with long-term isolation and idleness, some prisoners succumb to depression. Daryl described careening from anxiety to depression while double-celled at Upstate:

[M]y poor bunkie is going through hell in this cell with me. One minute I’m having an anxiety attack and hes rubbing my back telling me to calm down and the next I’m depressed as all bloody hell telling him listen I gotta make some incision on my arm to releas the pressure. Depression makes me irrational, though. I can’t control that emotion when it comes over me.

Every year, roughly 2,000 people are released directly from extreme isolation back to the community.

For Na’im, extreme isolation intensified his bouts of depression. Na’im attempted suicide after two years at Upstate. He recalled the sensation of “being in a cage all day” and thinking “what do I have to lose – I ain’t leaving the Box soon.” Overwhelmed by “a sense of

hopelessness,” he thought, “you just can’t take it anymore, don’t care what happens.” Na’im is “absolutely afraid” that he might attempt to take his life again. Extreme isolation “makes depression harder to deal with,” he said, because there is “nothing to do to relieve stress.” In the SHU, depression just “builds up” until “you let it out with violence,” he said.

Other prisoners in extreme isolation commit acts of self-mutilation or self-injury, which constitute a violation of prison rules. Rule 123.10 dictates that “An inmate shall not inflict or attempt to inflict bodily harm upon his or her person.”<sup>113</sup> Prisoners who harm themselves in extreme isolation – likely due to the mental anguish caused by such conditions – may find themselves punished with additional SHU time.

“When I go home, I don’t want to be acting like I do in Upstate. I’m hoping I change back.”

Daniel, who at 52 has spent more than two decades in and out of extreme isolation, has a long history of self-mutilation. He has used razors, staples, envelope clasps and cigarette butts to inflict pain upon himself. He described the psychological toll the SHU has taken on him:

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 other 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.

Daniel has received 15 misbehavior reports for self-harm. The majority of these reports resulted in a formal reprimand, but the most recent resulted in a four-month SHU sentence.

## Two in a Box

“It’s two grown men in a small space.” – Miguel

Every day, roughly 2,250 men at Upstate and the SHU 200s wake up in extreme isolation with another prisoner, their “bunkie.”<sup>114</sup> Double-celled prisoners experience the same isolation and idleness, withdrawal and anxiety, anger and depression as do prisoners living alone in the SHU. But double-celled, they must also endure the constant, unabating presence of another man in their personal physical and mental space. The detrimental effects of housing two people in a cell for 24 hours a day have been documented.<sup>115</sup> The stories of double-celled prisoners provide a vivid and disturbing human counterpoint.



Cellmates must constantly negotiate a small and cramped space of roughly 100 square feet – about the size of a parking spot – that includes a toilet, open shower stall, writing platform and bunk beds. The unrelenting lack of privacy is the primary cause of tension, many double-celled prisoners say, particularly while showering or using the toilet. No curtain or barrier separates the shower from the rest of the cell, forcing prisoners to expose themselves to their cellmates while bathing. Similarly, no curtain separates the toilet from the rest of the cell; a prisoner urinating or defecating must do so in full view of, and mere feet away from, his cellmate. Daryl described, with equal parts amusement, irritation and disbelief, how one bunkie asked him to stand in the corner and sing whenever the bunkie used the toilet, both to mask sound and ease tension.

Double-celled, prisoners must also endure the constant, unabating presence of another man in their personal physical and mental space.

The lack of privacy grinds down prisoners' patience. Small things that might normally go unnoticed suddenly become pronounced and grating. Marcus vividly described the pungent odor that permeated his cell when sharing the space with cellmates close in age. He observed that young men in their late teens and early 20s are still "going through changes, hormones" that left the cell "stink[ing] from bad odors."

Some prisoners express that the lack of privacy hinders their ability to think. Kevin "need[s] solitude to get [his] thoughts together," but is constantly distracted by his cellmate's presence. For Miguel, this distraction disrupts any rehabilitative process. He stated that "double-celling makes it much more difficult to take personal responsibility for your own actions" because you find yourself constantly "reactive to your bunkie."

Not surprisingly, many double-celled prisoners find it nearly impossible to establish or maintain healthy, positive relationships. Rather, these relationships are marked by frustration and antagonism, often devolving into violence or the constant threat of violence. Marcus, whose misbehavior reports document no prior violence, shared that double-celling resulted in several physical altercations. Sometimes, he would "want to fight just because of the close space."

## Locked In: COs in the Box

Corrections officers in extreme isolation settings are a study in contrasts: Authority figures, they also perform menial tasks, such as delivering food trays and mail, which can undermine their ability to maintain control. Many say that prisoners in the SHU take out their frustrations on COs. Many also note that the job requires adherence to a near-military code of honor – a culture that is, in its own way, as hierarchal and isolating as the prison culture they monitor.

"Overall, SHUs are more stressful to work," a retired CO, who served two multi-year assignments at Upstate, wrote. "Inmates are more dependent on officers in confinement since the officers provide the feed-up trays to feed them three times a day, give them requested supplies and turn on the shower water, open the rec pen doors, etc."

Monsignor Dennis Duprey, who served as chaplain at Upstate for six years and now leads a church that includes COs and their families, said COs struggle with the reality that they must in some ways serve the people they're assigned to guard.

"I heard more than once, 'I feel like I'm a waiter to them,' [because] everything that the inmate gets has to be delivered by a CO – even their laundry," he said. "The position of the CO changes. Some COs find it demeaning; they have become a waiter to those they thought they were guarding. That process of being demeaned – COs are affected by the experience."

"There are so many different noises, cat calls, whistles, yelling, foul language worse than anything you ever heard on the outside," wrote the retired CO, who lives near the New York-Canada border. "Hearing the different languages [prisoners speak] was a big eye-opener for a country boy who had never heard much more than French from the Canadians in the shopping malls."

The SHU's smell followed him home.

"You got used to the smell somewhat, but when you got out, the smell was in your clothes and hair," he wrote. "It was nasty."

COs and prisoners alike face constant scrutiny, he wrote.

"Your first impression walking through Upstate is how long the corridors are," he wrote. "They seem to stretch on for miles. All the gates are controlled by one person. There were some 800

He explained that “the littlest things cause people to bug out.” Even if his cellmate “didn’t do nothing,” he would just get “so pissed off.”

Tevin, a self-described “neat freak,” discussed his frustration when his bunkies would “look in the mirror, as they brush their teeth, leaving toothpaste speckz on the mirror & all over the sink” or “blow their nose in the sink while washing their

“I was a happy-go-lucky guy when I married my wife, but she tells me over the years I became more serious. Lots of officers have gotten divorced, become drinkers or too rough and bossy with their family. The job changes you. You have to be on edge all the time.”

face.” After “constantly cleaning up after them & respectfully explaining that we both have to be mindful,” Tevin would eventually “get physical.” For Tevin, double-celling is a process of “built up irritation [that] leadz to provoked violence.”

Daryl experienced the unusual situation of double-celling with someone he “consider[ed] a close personal friend,” but the arrangement quickly unraveled:

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.

One of Marcus’s bunkies was a “good dude” who reminded him of his brother. But Marcus still got “aggetated or annoyed ... when I [had] to share a shower day, shit while he [wa]s awake, or when we work[ed] out because it smell[ed].”

Some prisoners said that when they sensed that violence with their cellmate was imminent and asked corrections staff to intervene, staff refused to take any action. Chris explained:

First off they put you in a cell with just about anyone & you’ve got to just handle it. If you & your bunky don’t get along & tell the COs they

video cameras recording everything inside and out of the facility, so you always felt you were being watched by Big Brother.”

One retired DOCCS staffer says that civilian prison staff have to watch their backs because trusted allies are few.

“I had to have two mouths and play it well,” he said. “For security, I had to be an inmate-hater to [prison staff], yet I played a different role when dealing with the inmates. It was always a balancing act.”

For another retired CO, the challenge wasn’t balance but separation.

“There’s a thin line between officer and inmate,” he said. “If they [prisoners] know they can rattle you, you’re gone – and you lose control.”

Two things that might help COs, Duprey said, are more education and wider exposure to diversity.

“Going into working with this kind of population, never having been further than 50 miles from home in these multicultural facilities, they’re not equipped to deal with it,” he said. “It’s easier to become a hard ass, to put it plain.”

The retired CO wrote that his tenure at Upstate, constantly on guard and in “serious mode,” changed his personality.

“I was a happy-go-lucky guy when I married my wife, but she tells me over the years I became more serious,” he wrote. “Lots of officers have gotten divorced, become drinkers or too rough and bossy with their family. The job changes you. You have to be on edge all the time.”

A third CO said officers know that inmates can “get at them.”

“They know, I have to choose a side to maintain my own safety,” he said.

The code of honor must be maintained by inmates and COs alike.

“I have to behave a certain way, even if I don’t believe in the culture,” he said.

“You have to go along [with the culture],” he said. “It’s brutal. It’s political. It’s not just inmates. You have to be known to be ‘one of us.’ What we do may not be 100 percent morally comfortable, but it could be your life.”

“There is no neutral on either side,” he said. “The blue has to stay with the blue.”

## PUNISHED FOR SEEKING HELP

Time and time again, prisoners explained to the NYCLU that refusing to return their food tray was one of the only ways to get corrections staff to address a particular problem or concern. Locked into their cells, prisoners have few other options for summoning the attention of staff. Na'im described how he and eight other individuals on his gallery refused to return their trays to gain the attention of a CO. They sought to alert the CO that the "porter," a prisoner on the gallery permitted to assist corrections staff, had refused to deliver food to several men. In response, all nine prisoners were charged with disciplinary infractions, and Na'im received the loaf for seven days.

tell us there is nothing they can do unless we are fighting & bleeding. So basically to avoid a problem & fight the CO want you to fight & then we get tickets.

When violent outbursts occur, prisoners can receive additional SHU time. Daryl's physical altercation with his friend resulted in a misbehavior report – and two more months in the Box.

## Culture of Deprivation

The deprivation of many basic necessities, including food, exercise and basic hygiene, compound the psychological effects of life in the Box. Such deprivations occur routinely as a matter of formal DOCCS policy – as additional punishment in the SHU – and as informal practice.

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See It Online:

DOCCS restricts what prisoners can have in the SHU, from the number of underwear to the size of a bar of soap. For a list of property prisoners are allowed in the SHU, go to [www.nyclu.org/boxedin](http://www.nyclu.org/boxedin).

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DOCCS policy officially sanctions the denial of basic necessities. DOCCS regulations permit "deprivation orders" stripping prisoners in the SHU of any "specific item, privilege, or service ... when it is determined that a threat to the safety or security of staff, inmates, or State property exists."<sup>116</sup> No "item, privilege, or service" is exempt from a deprivation order, including "minimum standard items," such as showers, recreation, clothing, bedding and paper (including toilet paper).<sup>117</sup>

Consistent with DOCCS' overall disciplinary philosophy, which permits corrections officials to punish a wide range of offenses with extreme isolation, DOCCS grants corrections officials comparably wide discretion to impose deprivation orders. Deprivation orders must be reviewed daily and renewed every day after seven days. However, DOCCS regulations do not cap the total amount of time such orders may ultimately span.

No "item, privilege, or service" is exempt from a deprivation order, including "minimum standard items," such as showers, recreation, clothing, bedding and paper (including toilet paper).

At Southport, where prisoners are escorted from their cells for shower and recreation, deprivation orders stripping prisoners of these privileges are not uncommon. But Southport returns privileges one at a time, a week at a time. For example, Adrian was denied showers, recreation, cell-cleaning supplies and haircuts after a tier III misbehavior report for altering state property (his state-issued trousers) and having a weapon (the trousers' "sharpened zipper"). After one week, Adrian received cell-cleaning supplies; after two weeks, haircuts; after three weeks, showers; after four weeks, recreation. All in all, Adrian

## RECREATION RESTRAINTS

For their first 30 days in the facility, prisoners at Southport must wear handcuffs secured to a waist chain during recreation. After a minimum of 30 days without a disciplinary infraction, they may attend recreation without restraints. But if they incur an additional disciplinary infraction, they lose this privilege until they have again accumulated 30 days without a disciplinary infraction.<sup>123</sup>

Not surprisingly, restraints make it almost impossible to engage in even the small modicum of exercise that the recreation pen permits. Tevin observed, “only thing I could do is stand up in the cage. There is no way of working out period.” Stephan similarly noted, “The only thing we could do during that hour is walk back and forth in the cage so I am not able to exercise.” Restraints make recreation particularly onerous in the winter. Being “force to stand out there handcuff around the waist with cuffs on my wrist,” Stephan explained, “I can’t put my hands in my pockets to warm up.”

observed, “the entire process last for roughly 28 to 30 days.”

Daniel received a deprivation order stripping him of clothing (save what he was wearing), bedding and towels after receiving a tier III misbehavior report for having property in an unauthorized area, refusing a direct order and obstructing visibility. Daniel had covered the window of his cell door with his shirt, in his words, “for the purpose of getting the area supervisor to appear.” After Daniel removed his shirt from the window, corrections staff entered his cell where they discovered towels hanging on a line from the end of his bed. Daniel’s deprivation order lasted approximately a week.

“The only thing Upstate works for is losing weight. It’s a starving diet.” – Kevin

DOCCS also authorizes the deprivation of nourishing, edible food as a form of punishment. Prisoners in the SHU who commit certain disciplinary infractions may be punished with a “restricted diet,” or what is commonly known as “the loaf.”<sup>118</sup> The loaf is a “football-sized” brick of baked bread-and-vegetable matter, which the prisoner receives, with a wedge of raw cabbage and water, for every meal over the course of the punishment. Na’im, who received “the loaf” for one week, described it as a “hard, big piece of bread” that “you have to break ... with your hands.” Donell described it as “something you’d feed a bird or dog.”

Samuel, who has received the loaf at Upstate, does in fact, “feed it to the birds outside,” from his recreation pen. But he doesn’t actually eat it. He and others choose to fast because they say eating the loaf results in painful constipation. Tevin, who has received the loaf several times, said that after eating it once, he “never touched it again,” living only on “water! literally for 7 days all 3 meals.”

DOCCS regulations acknowledge the serious dangers of food deprivation by requiring that prisoners on the loaf receive a medical examination “within 24 hours of the commencement of the restriction and daily thereafter during the period of restriction.”<sup>119</sup> Yet several prisoners reported that these examinations did not occur. Tevin, for example, observed: “There is rules before being placed on the loaf, I’m suppose to see the nurse, so she could check my vitals, weight, to make sure I’m healthy enough for the loaf. None of that took place on my behalf.”

DOCCS also authorizes the deprivation of nourishing, edible food as a form of punishment.

Just as minor misconduct can result in SHU time, minor misconduct in the SHU can result in the loaf. Prisoners in the SHU may receive the loaf as punishment for throwing food, committing “unhygienic acts” or refusing to return a food tray. Prisoners may also receive the loaf as punishment for “refusing to obey a direct order at the time of meal distribution,” covering virtually any misbehavior even if unrelated to food or hygiene. Finally, prisoners may receive the loaf for any infraction if they have already been sentenced to the SHU for the remainder of their prison sentence.<sup>120</sup>

A person who receives a tier III misbehavior report in one of the circumstances above may also receive the loaf for up to seven consecutive days prior to the disciplinary hearing (“pre-hearing restricted diet”). Thus, the mere allegation that a prisoner has committed a particular infraction can trigger punishment even before he has been found guilty at the disciplinary hearing.<sup>121</sup>

For refusing to return a Styrofoam cup, Tevin was put on the loaf for seven days prior to his disciplinary hearing. In Tevin’s words: “I refused to give it up, so I could have a cup to eat my oatmeal out of or my cold cereal, or drink water out of.” At the hearing, Tevin received an additional two days of the loaf – and two months of additional SHU time.

The denial of food also occurs as a matter of unwritten policy. Many prisoners experience the informal deprivation of food when a CO distributing food trays passes their cell without delivering their meal, an unwritten practice universally known as a “drive-by.” (More subtly, some COs deliver covered trays – visible on security cameras – that carry no food under the cover.) Hector described an extreme experience, where COs deprived him of food for several days:

Sometimes if the guard it is angry with the inmate do not give it the eat and put him under starvation. I personally already suffered those kind of violations and mistreatments. One time some of those guards did not feed me for four days and after a sergeant take care of that matter and made them to feed me those guards depriving me of food two more days.

Many men also consistently reported that COs deprive them of their opportunity for “recreation.” These deprivations occur both as a matter of official policy (as the subject of a deprivation order) as well as unofficial sanction.

“There is no rec. You just go from one cage to another.” – Daryl

Some prisoners refuse to participate in recreation because of the harsh environment of the recreation pens, which prisoners and COs alike describe as “human kennels.”<sup>122</sup> Inside the pen, prisoners are surrounded by concrete walls or heavy metal grating, obstructing an open view of the sky. They are empty, barren spaces, smaller than the SHU cell itself.

Prisoners describe recreation as frustrating – there is little to do but pace – and terrifying. Marcus said that whenever he set foot in the recreation pen, he was assaulted by a cacophony of “guys screaming like crazy people.” Na’im described recreation pens filled with men “yelling and screaming about nothing,” which he concluded was “a product of the SHU.”

Even as they experience the deprivation of basic necessities, prisoners in extreme isolation may also face threats to their physical safety. Prisoners at Southport reported that incidents of staff-on-prisoner violence were common. Many incidents occurred while prisoners were being escorted to shower or recreation, the primary points of contact between staff and prisoners at Southport. Adrian witnessed COs assault his neighbor as they returned him to his cell:

### **“USE BUTTER”**

DOCCS restrictions on prisoners’ possessions in extreme isolation force some men to request medical assistance for simple personal care. For example, several prisoners reported requesting ointment for dry skin, a minor but pervasive problem, particularly in the winter. Na’im requested ointment for his lips, which he described as “cracked to the point of bleeding.” He recalls the nurse responding, “We don’t give ... ointment here,” and recommending he drink water. “They’re basically saying because I’m in SHU I can’t receive ... ointment,” he said. Na’im resorted to “us[ing] margarine we get with our meals” as an emollient. Chris suffered a similar problem with his nose, which he described as “really dried out” with “open sores.” When he requested ointment during sick call, the nurse recommended he drink water. Chris persisted and asked to see a doctor. The doctor’s response: “Use butter.”

[S]till cuffed and chained being pushed into his cell from behind by officer [redacted] and followed by officer [redacted]. At which point they started to beat him up. A number of other officers came and the beating continued for a number of minutes. Finally a few sergeants arrived all action stopped.

Some Southport prisoners forgo recreation entirely in order to limit the potential for conflict with staff that could escalate into violence.<sup>124</sup> Na'im explained why he chose not to participate in recreation:

I have not been outside since my arrival and I have no intention of going to rec before my SHU release date. I've seen to many individuals get jumped by staff and receive extra SHU time just because. To avoid that I stay in so I can stay out of their way and leave when I'm supposed to.

The combined effects of extreme isolation and deprivation prompted many prisoners to express a desire for mental health counseling and treatment. In the SHU, however, meaningful treatment, like so much else, is elusive, if not altogether absent.

### **Denied When Needed Most: Medical and Mental Health Care**

Studies have documented the culture of medical and mental health neglect that often pervades correctional environments of extreme isolation.<sup>125</sup> The provision of meaningful medical and mental health care in extreme isolation is made more difficult by barriers to confidentiality.<sup>126</sup> Prisoners recounted these realities to the NYCLU and detailed some of the consequences.

Prisoners in extreme isolation who have a medical problem, whether minor or serious, may not leave their cells to meet with medical staff. Instead, they must alert staff by submitting a "sick call slip" or, in an emergency, notifying a corrections officer. They must then wait until a member of the medical staff, accompanied by a CO, comes to their cell door. Once medical staff arrives, the prisoner must explain his problem through the locked cell door, sometimes huddling or crouching at the food slot and speaking loudly or shouting. Samuel described the situation as, "all medical care thru a door yelling back and forth."

"You got the correction officers standing in front of the cell listening to you speak to the nurse about your medical concerns." – Justin

Prisoners have described staff passing by their cells even when they have submitted a sick call slip. Donell wrote this grievance, which was denied, describing this experience:

On March 14, 2012, I filled out a sick call for March 15th morning sick call rounds. The description of the sick call I stated 'I've been having a lot of sharp chest pains, I've been trying to deal with it but it seems like its getting worst & sometimes its hard for me to breath.' When RN [redacted] ... did sick call rounds she stoped at my neighbor cell to give him his meds & kept walking. I tried telling her I signed up for sick call & she totally ignored & didn't acknowledge my statement.

Several people reported that unless they stand right at the cell door when the nurse arrives, the nurse will pass, without speaking to them.

Neglect is also the dominant theme of prisoner accounts of mental health care in extreme isolation. Some prisoners arrive in extreme isolation with pre-existing mental health diagnoses for which they must continue to receive counseling and treatment. Many others seek counseling and treatment while confined in the SHU. Whether receiving or seeking mental health care, prisoners consistently described the prevailing sensation of being "brushed off" by mental health staff.

Prisoners with mental illness who are on the "mental health caseload" go on regular and confidential "call-outs" to meet with a social worker and a psychiatrist. Even these prisoners, however, describe serious difficulty receiving appropriate attention.

At Southport, several people described their interviews with the social worker as “short conversations.” Trevor, who suffers from depression and paranoia, sees a social worker every two to three weeks. Trevor said the conversations consist of little more than two questions: “How are you?” and “Are you thinking of suicide?” He observed, “Short of attempting suicide one has to flip out and go to an outside source to get anything done.” Trevor did attempt suicide during a prior bid at Southport after he failed to receive the mental health care he felt he needed. For his suicide attempt, he received a misbehavior report and two additional months in extreme isolation at Southport. Reflecting on the suicide attempt, Trevor said: “It’s as though I am being forced to act out before they get up to anything – then they ask stupid questions like ‘why did you do that?’ This place is not built for [mental health] and we should not be here.”

Stephan, who also suffers from depression and paranoia, sees a social worker every six weeks. He described the conversation as lasting a “maximum of 15 minutes.” He noted that every time he attempts to discuss his mental health problems, the response is a “brush off.” In March 2012, Stephan attempted suicide. He explained that his paranoia was getting increasingly worse; it seemed as if “the chains getting tighter for rec, more shit-talking from COs, COs using racist slurs, playing with my food.” He concluded, “They are going to kill me anyway, might as well do it myself.” Stephan was placed on suicide watch at another facility for a few days before he was transferred back to Southport.

At Southport, prisoners meet with a psychiatrist via teleconference – commonly referred to as “doc in a box.”

Interviews with a psychiatrist occur even less often than with social workers. At Southport, prisoners meet with a psychiatrist via teleconference – commonly referred to as “doc in a box” – which further attenuates the relationship between mental health professional and patient. Na’im, who suffers from depression and has attempted suicide, “sees” the psychiatrist once every three months. He observed that it was “hard to open up to a TV screen.” Trevor, who sees the psychiatrist every 90 days, similarly observed, “Video-conferences are non-personal and allow OMH doctor’s (and [OMH] as a whole) to dismiss inmates at any point and there is nothing the inmate can do about it.”

Aside from the roughly 600 prisoners in the SHU who are on the mental health caseload,<sup>127</sup> prisoners who are not on the caseload, but who experience a mental health problem while in the SHU, must submit a written request or flag down a staff member on rounds. As in the medical context, confidentiality is nil: The prisoner must discuss his mental health problem within earshot of COs and other prisoners, provided there is an opportunity to speak with mental health staff at all. A number of prisoners at Upstate described long delays, sometimes of a month or more, before a request to speak with mental health staff was answered.

Several prisoners said that even when they caught the attention of a staff member, the ensuing exchanges were unproductive. Marcus tried several times to describe his feelings of anxiety, frustration and anger to mental health staff. He said that he found staff “don’t look you in the eyes” or “roll their eyes, look down the hall, act like they’re not listening.” He had hoped to have a “one-on-one conversation with someone where I could express my feelings” and receive “help finding different ways to deal with things.” He eventually gave up trying to receive help.

Daryl’s story, which documents sustained efforts to access mental health treatment in the SHU, is also typical of what others report. Two weeks after arriving at Upstate in November 2010, Daryl wrote a letter to OMH requesting mental health services. He described his feelings as “either wanting to explode for no reason or lay down and cry.” He could not concentrate and felt he was deteriorating daily.

In mid-December, Daryl’s first meeting with a mental health staff member went poorly. Daryl described having to yell through the door, his words reverberating around his cell. He explained that he had a history of mental health issues, including ADHD, and wanted to be able to focus, particularly on his studies. He felt the staff member was “evasive” and “mocking” and that “OMH was trying to talk me out of thinking I needed treatment.”

From December 2010 to March 2011, Daryl repeatedly wrote to OMH requesting assistance. He received no response. He continued feeling like a “nervous wreck” and that his life had “no substance, nothing to grasp onto.” On March 17,

2011, he flagged down a mental health staff member. He asked to see a doctor and to be placed on medication. Daryl recalled the staff member responding, “There is nothing wrong with you, get away from the door.”

Following this meeting, Daryl began writing many letters, to the Upstate OMH unit chief, to DOCCS officials and to prisoners’ rights advocates, explaining his desire to receive mental health services. On May 31, 2011, Daryl wrote to the Upstate OMH unit chief:

“I[t] seems like we’re all just caged animals to these people & if we suffer, so what.”

I ... am asking you once ‘again’ for your help in aiding me to receive mental help. My conditions is getting wors as time gos by & I have no way to ‘help myself’ with this matter. All im asking for is a chance to be heard & receive treatment for my mental ailments. On top of the fact that I have ADHD. I also have a learning disability. How am I suposed to make any progress? If somebody in your unit would actually listen to me I would have a chance to get better. My agitation & depression at [OMH] failure to help me in anyway have already driven me over the edge twice now & I’ve now been in two fist fights. I have not been this adgitated or been in any fist fights prior to comming to this facility & the longer I go without help the wors I get. Please help me.

On June 21, 2011, Daryl’s cellmate wrote to the Upstate OMH unit:

I am not a doctor but I do know for a fact because he is my bunkie that not only do we discuss alarming incidences in his past, it is more than obvious that Daryl needs help right now. You even motioned to me through the locked cell door that Daryl is not quite right, and I nodded back in agreement.

What I really do not understand is that he (Daryl) most definitely seems to ‘want and need’ psychological help and you also apparently agree however, ‘no’ help is being afforded or offered to him (Daryl) by Upstate CF or DOCCS.

On August 23, 2011, in a letter to an attorney who had been assisting him in trying to obtain mental health services at Upstate, Daryl stated:

All I know is what im feeling & all I can do is relay that to the people who are supposed to be professionals. But the vibe im getting is that they just don’t give a fuck. I[t] seems like we’re all just caged animals to these people & if we suffer, so what. I am an emotional & passionate person & im in physical & emotional pain 24 hours a day. So how do you think I take being treated like a dog? I live this insanity every day. Theres empty promises of help just around a corner that never comes into view. Well im telling you now that I am a defeated man. The prison system has won. They broke me. I’m broken & defeated & all I want to do now is go to sleep. No pain, no insanity ... just blissful eternal rest.

A few days later, Daryl attempted suicide. ■



# V. THINKING OUTSIDE THE BOX

New York has become trapped inside a Box of its own design.

Over the past two decades, New York has spent hundreds of millions of taxpayer dollars building and operating a vast network of extreme isolation cells – without a comprehensive accounting of the impact of extreme isolation on prison safety, its effects on incarcerated people and corrections staff, or the costs when prisoners held in extreme isolation return to the general prison population or to their home communities.

New York’s abuse of extreme isolation represents a catastrophic distortion of an essentially acceptable practice. Separating violent or vulnerable prisoners from the general prison population is an important last-resort option for corrections officials. In New York, however, two decades of using extreme isolation as a one-size-fits-all disciplinary response has corrupted the legitimate use of prisoner separation beyond all recognition. New York’s use of extreme isolation as punishment is inhumane, regressive and counter-productive. It harms prisoners and corrections staff, while undermining, rather than promoting, prison and community safety.

Corrections officials in other states have dramatically reformed their use of extreme isolation while maintaining and improving prison safety.

New York’s decades-long use of extreme isolation makes ending the practice appear difficult or impossible. But there is ample guidance to help New York move towards humane and effective evidence-based corrections practice: Corrections officials in other states have dramatically reformed their use of extreme isolation while maintaining and improving prison safety. In addition, international human rights bodies and legal scholars are reaching the consensus that extreme isolation inflicts grave and potentially irreparable harm, and that its use is no longer legally defensible. Reflecting this consensus, groups like the American Bar Association have recommended the abolition of extreme isolation and promulgated standards properly constraining the use of prisoner separation.

With these guideposts in mind, New York must take immediate steps to end its use of extreme isolation: New York must (1) **Adopt** stringent criteria, procedures and safeguards for separating prisoners; and (2) **Audit** the population of prisoners in extreme isolation.

## Findings

### Finding No. 1: New York’s Use of Extreme Isolation is Arbitrary and Unjustified.

The NYCLU found that extreme isolation is too frequently used as a disciplinary tool of first resort. Corrections officials have wide discretion to impose lengthy periods of extreme isolation as a disciplinary sanction for a wide range of misbehavior, including minor and non-violent disciplinary infractions. The substantial discretion afforded to corrections officials means the SHU sweeps in many prisoners, including individuals – such as juveniles, the elderly, and people with mental health issues and substance abuse problems – uniquely vulnerable to conditions of extreme isolation. Such discretion also permits bias to corrupt the process for determining who receives extreme isolation as punishment, as suggested by the disproportionate number of black prisoners in the SHU.

### Finding No. 2: Extreme Isolation Harms Prisoners and Corrections Staff.

The NYCLU’s study confirms what New York discovered nearly two centuries ago and what numerous scientific studies have concluded since: Extreme isolation causes grave harm.

Prisoners who communicated with the NYCLU reported experiencing some combination of apathy, lethargy, anxiety, depression, despair, rage and uncontrollable impulses. These anecdotal reports are consistent with the robust body of scientific evidence demonstrating that in otherwise healthy individuals, isolation causes measurable cognitive and emotional impairments, even over short and defined periods of time. These impairments inflict serious emotional and psychological pain on prisoners. Prisoners who are double-celled face the added, constant pressure of co-existing in confinement with a total stranger, violating norms of personal privacy and basic human dignity.

The NYCLU also found that the emotional and psychological harm experienced by prisoners in extreme isolation was compounded by the formal and informal deprivation of basic necessities, including food, exercise and basic hygiene. At the same time, the NYCLU found that prisoners buckling under the emotional and psychological weight of isolation and deprivation often lacked access to adequate medical and mental health care.

Prisoners buckling under the emotional and psychological weight of isolation and deprivation often lacked access to adequate medical and mental health care. Over the course of the NYCLU's study, several prisoners attempted suicide or seriously contemplated taking their lives.

Vulnerable prisoners, particularly those with mental illness, reported greater harm. Over the course of the NYCLU's study, several prisoners attempted suicide or seriously contemplated taking their lives. Several others had previously attempted suicide or engaged in self-harm while confined to extreme isolation. Again, these accounts are consistent with scientific literature documenting the deterioration of prisoners with mental illness in conditions of extreme isolation.

For corrections staff, working in extreme isolation had lasting negative consequences, including persistent discord and stress that permeated their lives even outside the workplace. Staff reported that the SHU relegates them to performing menial functions, undermining their ability to maintain authority and increasing the

likelihood of conflict. Moreover, gaps in basic education and training hamper the ability of staff to respond effectively to prisoners living in the difficult environment of extreme isolation. An atmosphere of distrust in the SHU creates a parallel culture of isolation among corrections staff, who fear retribution by isolated prisoners and potential exposure by peers. This distrust discourages staff from seeking help for their own mental health and emotional concerns and from intervening on behalf of prisoners.

### Finding No. 3: Extreme Isolation Decreases Prison and Community Safety.

The NYCLU found that extreme isolation negatively impacted safety within the SHU. Consistent with the scientific literature, prisoners described how the psychological effects of extreme isolation resulted in uncontrollable outbursts of anger, rage and aggression against other prisoners and corrections staff. In particular, the practice of double-celling prisoners – some of whom were ostensibly separated from the general prison population for violent behavior – increased the risk of additional violent behavior between cellmates.

Vulnerable prisoners also reported that extreme isolation caused particular harms that led to decreased safety inside the SHU. Prisoners with mental illness reported severe emotional and psychological consequences, including self-harm and attempted suicide. Prisoners, including those with substance abuse problems, reported access to illegal and pharmaceutical drugs in the SHU, even as they were denied access to substance abuse therapy or treatment. Several prisoners noted that their personal drug use, particularly marijuana, increased while in extreme isolation in an effort to ease the intense emotional and psychological toll of living in the SHU.

The NYCLU also found that many of the negative effects of extreme isolation persisted when prisoners returned to the general prison population. After long periods in extreme isolation, prisoners reported that social interactions were difficult and challenging. They further found it difficult to control their emotions, reacting aggressively and violently to situations that would not previously have provoked such a response. Corrections staff similarly noted that

prisoners returning from the SHU to general population often struggled to respond appropriately to minor stresses or avoidable confrontations.

Finally, the NYCLU found that extreme isolation increased the potential for negative outcomes when prisoners return to the community. Extreme isolation results in the complete cessation of any rehabilitative activity. Many prisoners in the SHU reported progress in educational or vocational programming in the general prison population, but found those gains abruptly halted by their transfer to extreme isolation. Prisoners who were going to be released to the community directly from the SHU reported that their inability to access any programming – including transitional services that prepare prisoners for re-entry – left them feeling less equipped to return home and significantly increased their fear of reverting to behavior that resulted in their incarceration.<sup>128</sup>

## Alternatives: Reconsidering Extreme Isolation Across the United States

New York is not alone in its unjustifiable use of extreme isolation. Across the United States, prisons and jails abuse extreme isolation. Several states, however, have recently undertaken a critical analysis of their use of extreme isolation, resulting in dramatic reductions in the number of prisoners held in these conditions without jeopardizing prison safety and security. These reforms provide a clear road map for rethinking the use of extreme isolation in New York.

The recent experience of three states is instructive. Mississippi, following a successful American Civil Liberties Union lawsuit, formed a task force in 2006 to evaluate the population in extreme isolation and the rationale for their placement there.<sup>129</sup> In Maine, a grassroots political campaign urging reform of the state's use of extreme isolation resulted in a year-long study commissioned by the state Legislature in 2010.<sup>130</sup> In 2011, the Colorado Legislature similarly ordered an independent review of the state's use of extreme isolation.<sup>131</sup>

Each of these states came to the conclusion that they were grossly overusing extreme isolation. Each responded by dramatically reducing the number of people confined in such conditions. In Mississippi, Deputy Commissioner Emmitt Sparkman explained:

If you had talked to me before we started our project to reduce the use of segregation, I'd have told you that the majority of offenders in our long-term segregation were dangerous and a threat to staff and offender safety. But when we looked at their cases, we saw that many of the people we were holding in segregation were not a threat. They started with minor violations, were put in segregation, and continued with disruptive – but not violently disruptive – behavior.<sup>132</sup>

Mississippi ultimately transferred roughly 85 percent of people in extreme isolation back to the general prison population.<sup>133</sup>

In Maine, the legislature-sponsored study recommended sweeping reforms to the state's use of extreme isolation, including dramatically reducing the number of men subjected to these conditions.<sup>134</sup> Commissioner Joe Ponte, appointed in 2011, supported the study's recommendations. Within his first few months as commissioner, Ponte reduced the population in extreme isolation by 70 percent.<sup>135</sup>

In Colorado, the legislature-sponsored study also reached the conclusion that the state was overusing extreme isolation. In particular, the study noted that only about 25 percent of prisoners had been placed in extreme isolation for injuring other prisoners or staff.<sup>136</sup> As a result of the study, the Colorado Department of Corrections began reducing the population in extreme isolation. It has currently transferred more than 30 percent of the prisoners in extreme isolation back to the general prison population.<sup>137</sup>

Many of the negative effects of extreme isolation persisted when prisoners returned to the general prison population. Extreme isolation increased the potential for negative outcomes when prisoners return to the community.

Each state reformed its use of extreme isolation without adverse safety and security consequences. In Mississippi, Deputy Commissioner Sparkman noted, “when we started moving people to lower security levels, we found that there was no increase in violence.” Moreover, for those individuals who remained in isolation, the Department of Corrections “gave them more freedoms” and saw, as a consequence, “a huge decrease in violence.”<sup>138</sup>

In Maine, limiting the use of “segregation to the more violent offenders [had positive results];... all of our data show us that the situation actually has improved and not gotten worse.”

Sparkman also observed that reducing the use of extreme isolation had “positive effects on staff too,” by “improv[ing] their work conditions.” He noted that in extreme isolation, “you typically have two-on-one escorts and use restraints, and there are continuous searches – and that’s a drain on staff.” With fewer men in extreme isolation, Sparkman concluded, “there’s much less stress on staff.”<sup>139</sup>

Maine also experienced a decrease in violence, both in the general prison population and among the people who remained in isolation, as Commissioner Ponte observed:

We had to measure the outcomes. Did we increase inmate violence? And every measure we’ve had, first in segregation – the acting out, the use of chemicals, the use of force, use of restraint chair – those numbers have dropped significantly, so segregation is a better place. And then we took those measurements and looked at them in population – inmate assaults, staff assaults, use of force – did they increase after we limited the use of segregation to the more violent offenders? All of our data show us that the situation actually has improved and not gotten worse.<sup>140</sup>

Similarly, Colorado has not reported any increase in violence or other disruptive activity.<sup>141</sup>

The finding that reducing the population in extreme isolation has a neutral or positive effect on levels of prison violence is supported by experiences in other corrections systems. An inquiry by the Commission on Safety and Abuse in America’s Prisons, a bipartisan committee of experts, concluded that the increasing use of extreme isolation “is counter-productive, often causing violence inside facilities.”<sup>142</sup> The Commission cited to evidence suggesting “diminishing returns in safety,” including a study of corrections systems in Arizona, Illinois and Minnesota, which concluded that extreme isolation had little to no effect on lowering overall violence.<sup>143</sup> The Commission also cited to a study that suggested that corrections officers who work in extreme isolation “are more likely to be assaulted.”<sup>144</sup> The Commission noted that while “[i]t may be that segregated prisoners ... pose a greater threat to officers ... it may also be true that harsh living conditions in segregation only exacerbate those tendencies.” It concluded that extreme isolation “is not the only option” and that “dangerous prisoners can be safely managed without isolating them in locked cells 23 hours a day.”<sup>145</sup>

Mississippi, Maine and Colorado have also experienced significant economic savings as a result of reducing their use of extreme isolation. In Mississippi, the dramatic reduction in the number of prisoners in extreme isolation allowed the state to completely shutter its dedicated extreme isolation facility, saving roughly \$5.6 million a year.<sup>146</sup> Colorado’s reforms will allow the state to close one dedicated extreme isolation facility, saving Colorado taxpayers \$4.5 million in fiscal year 2012-13 and \$13.7 million in fiscal year 2013-14.<sup>147</sup>

Mississippi, Maine and Colorado have also experienced significant economic savings as a result of reducing their use of extreme isolation.

Maine also anticipates savings from the state’s reforms. Because prisoners in extreme isolation require additional supervision, reducing that population enables the state to use staff more efficiently, lowering overtime costs. Whereas overtime costs were between \$1,800 and \$2,000 per two-week pay period per officer before the reforms, Commissioner Ponte stated: “Now they’re running between \$400 to 500 in a pay period. It’s a substantial reduction.”<sup>148</sup>

## INTERNATIONAL HUMAN RIGHTS AND EXTREME ISOLATION IN THE UNITED STATES

Treaties ratified by the United States are binding under the Supremacy Clause of the U.S. Constitution: “[A]ll treaties made ... under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.”<sup>153</sup> The following is a summary of the key treaties containing provisions governing the treatment of prisoners and the human rights bodies that monitor their implementation:

International Covenant on Civil and Political Rights (ICCPR): The ICCPR is an international human rights treaty that provides a range of protections for civil and political rights. Together with the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, the ICCPR is part of the International Bill of Human Rights. The ICCPR obligates state parties to respect the civil and political rights of individuals, including the right to life and human dignity; equality before the law; freedom of speech, assembly and association; freedom of religion; freedom from torture; and due process and fair trial. The United States ratified the ICCPR in 1992; 167 countries have ratified the ICCPR to date.

Human Rights Committee (HRC): The HRC is a body of independent experts responsible for issuing interpretive guidance on the ICCPR and monitoring its implementation by ratifying countries. The HRC publishes its interpretation of ICCPR provisions in the form of “general comments.” State parties are obligated to report to the HRC every four years; the HRC examines each report and addresses its concerns and recommendations in the form of “concluding observations.”

Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT): CAT is an international human rights treaty that obligates state parties to prohibit and prevent torture and cruel, inhuman or degrading treatment or punishment. The United States ratified CAT in 1994; 151 countries have ratified CAT to date.

Committee Against Torture: The Committee Against Torture is a body of independent experts responsible for issuing interpretive guidance on CAT and monitoring its implementation by ratifying countries. State parties are obligated to report to the Committee every four years; the Committee examines each report and addresses its concerns and recommendations in the form of “concluding observations.”

The Vera Institute of Justice, an independent non-profit that conducts research and analysis of criminal justice systems, has similarly concluded that reducing the use of extreme isolation can benefit states. Through its Segregation Reduction Project, Vera is working to demonstrate “that it is possible for states to save money and achieve better outcomes by significantly reducing the numbers of prisoners held in segregation without jeopardizing institutional safety, and to create a model that can be adapted for use in many other U.S. jurisdictions.”<sup>149</sup> Vera is currently working with state corrections agencies in Illinois, Maryland, New Mexico and Washington to assess and reduce their use of extreme isolation.

### Extreme Isolation is Legally Indefensible

Even as a growing number of states are undertaking a long-overdue, evidence-based analysis of their use of extreme isolation, international human rights bodies and legal scholars are reaching the consensus that the separation of violent or vulnerable prisoners should be used sparingly and under stringent controls and safeguards. Guidance from these sources makes clear that New York must radically reform how and when it separates prisoners.

New York is subject to international human rights standards contained in treaties ratified by the United States. The United States is a party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), which contain provisions specifically applicable to the treatment of prisoners.<sup>150</sup> Both treaties prohibit torture and cruel, inhuman or degrading treatment or punishment.<sup>151</sup> In addition, the ICCPR further requires state parties to treat prisoners “with humanity and with respect for the inherent dignity of the human person” and to establish rehabilitation as the “essential aim” of incarceration.<sup>152</sup>

The Human Rights Committee (HRC) has found that conditions of solitary confinement may amount to cruel, inhuman or degrading treatment or punishment, in violation of ICCPR Article 7.<sup>154</sup> The HRC has specifically observed that solitary confinement in the U.S. may violate the terms of Article 10, by incarcerating prisoners “in general conditions of strict regimentation in a depersonalized environment.”<sup>155</sup> The Committee Against Torture has similarly noted that the practice of extreme isolation in U.S. prisons may violate that treaty by constituting “cruel, inhuman or degrading treatment or punishment.”<sup>156</sup>

International human rights authorities are unanimous that solitary confinement should be an exceptional measure imposed as a last resort, for as brief a period as possible.

The United Nations Special Rapporteur on Torture, an independent human rights expert, recently concluded that:

Given its severe adverse health effects, the use of solitary confinement itself can amount to acts prohibited by article 7 of the International Covenant on Civil and Political Rights, torture as defined in article 1 of the Convention against Torture or cruel, inhuman or degrading punishment as defined in article 16 of the Convention [against Torture].<sup>157</sup>

International human rights authorities are unanimous that solitary confinement should be an exceptional measure

imposed as a last resort, for as brief a period as possible. International human rights authorities have also called for the blanket prohibition against solitary confinement for particular vulnerable populations, including juveniles and those suffering from mental disabilities.<sup>158</sup>

These conclusions are echoed by mainstream legal scholars in the United States, including the largest association of American lawyers, the American Bar Association (ABA). In its Standards for the Treatment of Prisoners, the ABA recognized that:

Some dangerous prisoners pose a threat to others unless they are physically separated. But such separation does not necessitate the social and sensory isolation that has become routine. Extreme isolation is not about the physical protection of prisoners from each other. It is a method of deterrence and control – and as currently practiced it is a failure.<sup>159</sup>

The ABA’s standards call for a complete abolition of conditions of extreme isolation.<sup>160</sup> The standards also include a strict set of safeguards and protocols to ensure that prisoners are only separated when absolutely necessary, based on a demonstrable need for separation,<sup>161</sup> and that separation is “for the briefest term and under the least restrictive conditions practicable.”<sup>162</sup> The standards acknowledge that special care must be taken whenever separating juveniles and prisoners with mental illness,<sup>163</sup> and that no prisoner with a serious mental health illness should ever be separated for longer than 30 days.<sup>164</sup> These basic principles and protections mirror those recommended by other legal scholars and experts, including the Commission on Safety and Abuse in America’s Prisons<sup>165</sup> and the ACLU’s National Prison Project.<sup>166</sup>

International human rights bodies, legal scholars and corrections officials in other states have concluded that the separation of violent or vulnerable prisoners should occur sparingly and under tight controls. To date, federal courts applying U.S. constitutional standards have accorded state corrections officials using extreme isolation an extraordinary amount of deference – deference that has contributed to the harmful use of extreme isolation across the United States. Courts must re-examine these conclusions, especially in light of the growing body of scientific and academic scholarship demonstrating that extreme isolation inflicts grave harm upon all prisoners and has a potentially detrimental effect on prison safety and security. New York’s systemic misuse of extreme isolation cannot indefinitely elude judicial review. New York should take immediate action to implement humane, effective and sweeping reforms.

## Recommendations

Violent and vulnerable prisoners can be separated from the general prison population without extreme isolation. In New York, however, extreme isolation and prisoner separation have become inextricably intertwined. Under New York's current regime, separating a prisoner – for reasons capricious or substantial – entails subjecting that prisoner to punishing physical and psychological deprivation.

New York must end its use of extreme isolation. This goal can be achieved by two practical steps: (1) adopting stringent criteria, procedures and safeguards for prisoner separation and (2) auditing the current population of prisoners in extreme isolation.

## Recommendation No. 1: Adopt Stringent Criteria, Procedures and Safeguards for Prisoner Separation.

New York must adopt clear and objective standards to ensure that prisoners are separated only in limited and legitimate circumstances, for the briefest period and under the least restrictive conditions practicable. To achieve this objective, New York standards must incorporate the following major principles drawn from the ABA, ACLU's National Prison Project, Commission on Safety and Abuse in America's Prisons and international human rights standards:

**Use clear and objective criteria consistent with the limited and legitimate uses of separation:** New York must adopt standards and procedural protections that ensure that a prisoner is separated only when officials have proven through specific and demonstrable evidence that the prisoner: (1) is chronically violent or assaultive, (2) presents a serious escape risk or (3) otherwise poses a serious ongoing threat to prison safety and security or whose personal safety is at risk, while in the general prison population.<sup>167</sup>

**Create individualized plans for separated prisoners and conduct periodic reviews of prisoner separation:** Whenever a prisoner is separated, an individualized plan should be developed, which includes an assessment of the prisoner's needs, a strategy for correctional officials to assist the prisoner in meeting those needs, and a statement of expectations for the prisoner to progress toward fewer restrictions and eventually return to the general prison population based on the prisoner's behavior. A prisoner's separation must be periodically reviewed to evaluate the prisoner's progress under the individualized plan and to determine whether the prisoner continues to meet the criteria for separation. This review must include an ongoing evaluation of any harm the prisoner is experiencing as a result of the separation. If at any point it is determined that separation is no longer necessary or threatens the physical or mental health of the prisoner, it should be immediately terminated.

**Account for prisoners' vulnerability when deciding whether separation is appropriate:** When determining whether separation is appropriate, the particular characteristics of the prisoner and the potential effects of separation on that prisoner must be taken into account. DOCCS must give special attention to vulnerable populations, such as juveniles, the elderly, prisoners with mental illness or developmental disabilities, prisoners with substance abuse problems, monolingual non-English speakers, and prisoners with mobility, visual and hearing disabilities. It may never be proper to separate particular types of vulnerable prisoners. Certainly it is true that, as separation is currently practiced in New York, juveniles and persons with mental illness should be categorically barred from the SHU.

**Establish a centralized, high-level and multidisciplinary body to review prisoner separation:** The decision to separate a prisoner according to the criteria above should be reviewed by a centralized body, appointed by the commissioner, which includes qualified mental health professionals, counselors and community supervision staff.

**Ensure that conditions of separation are the least restrictive possible:** When prisoners are separated, the conditions of confinement should be the least restrictive possible. Meaningful human interaction and mental stimuli should not be stripped away. Pre-existing mental health treatment, substance abuse treatment, educational and vocational classes, and other rehabilitative programming should be continued whenever possible. Prisoners' rights to adequate and confidential medical and mental health services should never be compromised. The practice of punishing prisoners with the deprivation of basic human necessities – food, recreation, hygiene – should be abolished. Double-celling should never be used in situations where a prisoner has been separated from the general prison population for violent behavior

or potential vulnerability.

**Provide for transition when separation is discontinued:** When separation is no longer deemed necessary, the prisoner should transition back to the general prison population in a manner that best prepares the prisoner to successfully reintegrate. If a prisoner will still be separated at the date of release from prison, the prisoner must receive transitional programming and be transferred to a less restrictive setting well in advance of release.

## Recommendation No. 2: Audit the Population of Prisoners in Extreme Isolation.

Adopting stringent criteria, procedures and safeguards for prisoner separation will ensure that DOCCS' future use of separation is appropriately constrained. But a significant number of prisoners currently in the SHU should never have been separated in the first place. Even in those limited cases where a pre-existing SHU sentence may have been initially appropriate under the criteria outlined above, the need for separation may have long since passed. Thus, New York should conduct a comprehensive, transparent audit of the current SHU population, including the following steps:

**Establish an independent audit committee:** New York should appoint an independent multi-disciplinary committee to audit DOCCS' entire SHU population. This audit should identify which prisoners in extreme isolation do not qualify for separation consistent with the criteria outlined in Recommendation No. 1. DOCCS should transition these prisoners back to the general prison population and reduce the number of SHU beds accordingly.

**Ensure that audit process and results are transparent:** New York's use of extreme isolation has been facilitated, in part, by the dearth of publicly available information about its use. The audit process and its results should be made publicly available. In addition, DOCCS should collect and publish data on a quarterly basis reflecting statistical and demographic information on the prisoners who have been separated from the general prison population, for what reasons and for how long.<sup>168</sup>

**Reinvest financial savings back into DOCCS:** New York has asked DOCCS to accomplish critically important public services – maintaining safe prisons and ensuring positive outcomes when prisoners return to the community – with far too few resources for far too long. DOCCS should retain control over any financial savings that accrue from reforming New York's use of extreme isolation so that it can reinvest those funds in programming and staff. ■



# EPILOGUE

New York’s use of extreme isolation exemplifies the costly mistakes that have afflicted other aspects of American criminal justice policy over the last few decades: Laws based on rhetoric and assumptions instead of evidence and analysis; policies hyper-focused on punishment at the expense of rehabilitation, to the point of compromising public safety; politics that discredit the humanity of those who commit crimes, sanctioning treatment that conflicts with our fundamental values and essential human rights.

Prisons are institutions remote from public view, rendering prisoners particularly vulnerable to mistreatment and abuse. They are “persons who most of us would rather not think about ... [b]anished” to a “shadow world that only dimly enters our awareness.”<sup>169</sup> If prisons are opaque, the SHUs are virtual black boxes. It is no surprise, then, that the confluence of misguided approaches to criminal justice has manifested itself most demonstrably in the SHUs.

The mistakes we have made in subjecting so many to extreme isolation now offer us a critical opportunity. The NYCLU hopes this report, documenting the complex human experience in New York’s SHUs, will engender serious debate and ultimately lead to reform of extreme isolation. If we can bring light into the Box and fix the darkest corners of our prisons, we can surely replicate that success – using humane and effective evidence-based approaches – in other parts of our criminal justice system. ■



# ENDNOTES

- 1 “DOCCS Daily Population Capacity Report – 06/11/12,” obtained through the New York Freedom of Information Law (FOIL) and on file with the NYCLU (reporting 55,969 prisoners under DOCCS custody). The NYCLU’s original FOIL request and documents produced by DOCCS are available online at [www.nyclu.org/boxedin](http://www.nyclu.org/boxedin).
- 2 Paul Guerino, Paige M. Harrison and William J. Sabol, *Prisoners in 2010* (Washington: U.S. Department of Justice, 2011) 24 (reporting 25,481 prisoners released from New York state prisons in 2009 and 25,365 prisoners released in 2010).
- 3 *The Price of Prisons: What Incarceration Costs Taxpayers*, Vera Institute of Justice, Jan. 2012: 8, 10.
- 4 “DOCCS Daily Population Capacity Report – 06/11/12,” obtained through FOIL and on file with the NYCLU.
- 5 DOCCS operating costs broken down by facility as of March 3, 2011, obtained through the New York State Assembly Committee on Correction and on file with the NYCLU.
- 6 “DOCCS Dispositions with SHU Sentences – 01/01/2007-12/31/2011: Number of SHU Sentences by Year and Original Length of Sentence,” obtained through FOIL and on file with the NYCLU.
- 7 “DOCCS Dispositions with SHU Sentences – 01/01/2007-12/31/2011: Length of SHU Sentence by Incident Year,” obtained through FOIL and on file with the NYCLU.
- 8 “DOCCS Summary of Inmates Released 01/01/2008-12/31/2011 Statewide from SHU,” obtained through FOIL and on file with the NYCLU.
- 9 *See, e.g.*, Jeanmarie Evely, “Solitary Confinement on the Rise at Rikers,” *City Limits*, 27 Mar. 2012.
- 10 *See, e.g.*, *Custody and Control: Conditions of Confinement in New York’s Juvenile Prisons for Girls*, American Civil Liberties Union and Human Rights Watch, Sept. 2006: 105-113 (discussing the “isolated confinement” of girls in two New York juvenile facilities).
- 11 Nina Bernstein, “Move Across Hudson Further Isolates Immigration Detainees,” *New York Times*, 16 Mar. 2010 (noting that New York immigration detainees held in New Jersey’s Hudson County Correctional Center were “punished with isolation”).
- 12 Men make up roughly 99% of the total number of prisoners in extreme isolation. “DOCCS Daily Population Capacity Report – 06/11/12,” obtained through FOIL and on file with the NYCLU. But the NYCLU recognizes that women are also held in extreme isolation in New York prisons and that their experiences, while equally harrowing, may be distinct to that of men.
- 13 The NYCLU submitted a FOIL request for DOCCS records on December 9, 2011. The request sought comprehensive and detailed information on how DOCCS uses extreme isolation, including information regarding the number of prisoners placed in extreme isolation, the reasons for their placement, and the length of their isolated confinement. On April 2, 2012, the NYCLU submitted an administrative appeal to DOCCS challenging its failure to produce a substantive response to the majority of the request. On May 10, 2012, after failing to receive a response to the administrative appeal, the NYCLU communicated to DOCCS that it would seek court-ordered document production. From May to July 2012, DOCCS produced records partially responsive to the FOIL request. At the time this report went to print, the NYCLU was still waiting for DOCCS to produce records responsive to several items in the original FOIL request.
- 14 “DOCCS Daily Population Capacity Report – 06/11/12,” obtained through FOIL and on file with the NYCLU.
- 15 Harry Elmer Barnes, “The Historical Origin of the Prison System in America,” *Journal of the American Institute of Criminal Law & Criminology* 12 (1921): 53.
- 16 Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States and Its Application in France*, trans. Francis Lieber (Philadelphia: Carey, Lea & Blanchard, 1833) 5-6.
- 17 Pennsylvania constructed one of the first U.S. prisons – the Eastern Penitentiary – dedicated to housing prisoners in extreme isolation. Charles Dickens famously toured the Penitentiary in 1842 and concluded: “The system here, is rigid, strict, and hopeless solitary confinement. I believe it, in its effects, to be cruel and wrong.” Based on interviews with

several prisoners, Dickens described those effects as a “slow and daily tampering with the mysteries of the brain ... immeasurably worse than any torture of the body.” He further disputed the Penitentiary’s rehabilitative purpose, observing that “independent of the mental anguish it occasions – an anguish so acute and so tremendous, that all imagination of it must fall far short of the reality – it wears the mind into a morbid state, which renders it unfit for the rough contact and busy action of the world.” Charles Dickens, *American Notes for General Circulation* (New York: D. Appleton & Co., 1868) 43-48. Pennsylvania abandoned extreme isolation in the post-Civil War period. Harry Elmer Barnes tracked the adoption and abandonment of extreme isolation across half a dozen other states as follows:

STATE	ADOPTED	ABANDONED
Maine	1824	1827
Maryland	1809	1838
Massachusetts	1811	1829
New Jersey	1820	1828
	Reintroduced in 1833	1858
Rhode Island	1838	1844
Virginia	1824	1833

Barnes, *supra* note 15, at 56 n. 54.

- 18 *In re Medley*, 134 U.S. 160, 168 (1890).
- 19 See Craig Haney and Mona Lynch, “Regulating Prisons of the Future: A Psychological Analysis of Supermax and Solitary Confinement,” *N.Y.U. Review of Law & Social Change* 23 (1997) 485-88 (discussing the general trend towards circumscribing the use of extreme isolation in the late 19th and early 20th centuries).
- 20 Stephen C. Richards, “USP Marion: The First Federal Supermax,” *The Prison Journal* 88 (2008) 10. In 2007 the federal government converted USP Marion into a medium-security prison, ending its permanent lockdown status. *Id.* at 18.
- 21 *Prison Conditions in the United States*, Human Rights Watch, 1991: 3. See also Russ Immerigeon, “The Marionization of American Prisons,” *National Prison Project Journal* (Fall 1992) 1. Marion emulated the model established by Alcatraz, a federal correctional facility opened in 1934, where the “most troublesome prisoners” were concentrated “in a place of draconian isolation.” Haney and Lynch, “Regulating Prisons of the Future,” *supra* note 19, at 488. The federal government shuttered Alcatraz in 1963 after years of controversy. David A. Ward and Allan F. Breed, *The United States Penitentiary, Marion, Illinois: A Report to the Judiciary Committee, U.S. House of Representatives, 98th Cong., 2nd Sess., 1984*: 1 (“Alcatraz, it was charged, was America’s Devil’s Island, it was ‘Hellcatraz’ – a place where convicts slowly went insane from the tedium and hopelessness of endless years on ‘the Rock.’”).
- 22 *Prison Conditions in the United States*, *supra* note 21, at 4. Some dispute exists as to the precise number of states that were constructing or repurposing facilities entirely dedicated to extreme isolation in the 1980s and 1990s. In a 1996 survey conducted by the National Institute of Corrections, 32 states reported having such facilities. U.S. Department of Justice, National Institute of Corrections, *Supermax Housing: A Survey of Current Practice* (Washington: U.S. Department of Justice, 1997) 7. The accuracy of that figure is in serious doubt. New York, for example, reported having no such facilities despite its operation of prisons with “the design characteristics and many of the operating procedures of what other states defined as supermax.” Roy D. King, “The Rise and Rise of Supermax,” *Punishment and Society* 1 (1999) 173.
- 23 Daniel P. Mears, *Evaluating the Effectiveness of Supermax Prisons*, Urban Institute Justice Policy Center, Mar. 2006: 4.
- 24 Rachael Kamel and Bonnie Kerness, *The Prison Inside the Prison: Control Units, Supermax Prisons, and Devices of Torture*, American Friends Service Committee, 2003: 2.
- 25 John J. Gibbons and Nicholas de B. Katzenbach, *Confronting Confinement: A Report of the Commission on Safety and Abuse in America’s Prisons*, Vera Institute of Justice, June 2006: 52, citing James J. Stephan and Jennifer C. Karberg, *Census of State and Federal Correctional Facilities, 2000* (Washington: U.S. Department of Justice, 2003).
- 26 Tracy L. Snell, *Correctional Populations in the United States, 1993* (Washington: U.S. Department of Justice, 1995) iii; Patrick A. Langan et al., *Historical Statistics on Prisoners in State and Federal Institutions, Yearend 1925-1986* (Washington: U.S. Department of Justice, 1988) 15. The prison population continued to increase, hitting a peak of roughly 1.52 million in 2009, and declining slightly since then. Lauren E. Glaze, *Correctional Population in the United States, 2010* (Washington: U.S. Department of Justice, 2011) 3. These figures exclude the number of individuals incarcerated in jails.

- 27 Chase Riveland, *Supermax Prisons: Overview and General Considerations* (Washington: U.S. Department of Justice, 1999) 5 (“As correctional populations have escalated in recent years, prison crowding has become the norm in most jurisdictions. Most prisons across the country have been operating at well over 100% of design capacity. This crowding aggravated by the increase in street gang members, drug offenders, mentally ill, and youthful offenders has stressed the prisons and corrections systems. ... One response on the part of prison officials in many jurisdictions, in attempting to maintain control, has been the introduction of supermax units or facilities.”).
- 28 Leena Kurki and Norval Morris, “The Purposes, Practices, and Problems of Supermax Prisons,” *Crime & Justice* 28 (2001) 390; Jesenia M. Pizarro, Vanja M. K. Stenius and Travis C. Pratt, “Supermax Prisons: Myths, Realities, and the Politics of Punishment in American Society,” *Criminal Justice Policy Review* 17 (2006) 8-9.
- 29 Riveland, *supra* note 27, at 5.
- 30 Kurki and Morris, *supra* note 28, at 391.
- 31 Timothy Hughes and Dora James Wilson, *Reentry Trends in the United States: Inmates Returning to the Community After Serving Time in Prison* (Washington: U.S. Department of Justice 2004) 1.
- 32 “Trying to Economize, New York Creates Its Own Alcatraz,” *New York Times* 20 Feb. 1991: B1.
- 33 The section of the New York Codes, Rules and Regulations, which compiles state agency rules and regulations, addressing the operation of SHUs was first adopted in 1970. N.Y. Comp. Codes R. & Regs. tit. 7, ch. 6 (“Special Housing Units”). New York prison litigation in the 1970s and 1980s featured complaints about the conditions in various SHUs. *See, e.g., Sostre v. McGinnis*, 442 F.2d 178 (2d Cir. 1971) (discussing conditions in the SHU at Green Haven Correctional Facility); *Frazier v. Ward*, 426 F.Supp. 1354 (N.D.N.Y. 1977) (discussing conditions in the SHU at Clinton Correctional Facility).
- 34 *Lockdown New York: Disciplinary Confinement in New York State Prisons*, Correctional Association of New York, 2003: 9-10. The Correctional Association refers to the SHU 200s as “S-Blocks.”
- 35 The medium-security correctional facilities are Cayuga, Collins, Fishkill, Gouverneur, Greene, Lakeview, Marcy, Mid-State, and Orleans. *Id.* In 2008 the SHU 200 at Marcy was converted from an extreme isolation facility to a “Residential Mental Health Unit,” providing heightened mental health services to prisoners subject to disciplinary lockdown. The conversion was one of the settlement terms achieved in a lawsuit by prisoners’ rights advocates against DOCCS and OMH challenging the inadequate provision of mental health care. *Marcy Correctional Facility*, Correctional Association of New York, April 2008: 1.
- 36 Upstate was originally designed to house all prisoners in extreme isolation in double cells. In December 2001, 160 of the cells were reclassified as single cells, giving Upstate the capacity to house 1,040 men – 880 in double cells and 160 in single cells. “New Concept in Disciplinary Housing: Upstate,” *DOCS Today*, Apr. 2003, 15.
- 37 *Inmates Under Custody at End of Calendar Year: New York State Department of Correctional Services 1950-2003*, Correctional Association of New York, Mar. 2012.
- 38 Judith Greene and Marc Mauer, *Downscaling Prisons: Lessons from Four States*, The Sentencing Project, 2010: 6.
- 39 *Trends in New York State Prison Commitments*, Correctional Association of New York, 2009.
- 40 Kevin Sack, “Agreement on Revisions in Sentencing,” *New York Times* 25 May 1995: B1.
- 41 Raymond Hernandez, “Assembly Passes Pataki’s Measure to Limit Parole,” *New York Times* 30 July 1998: A1.
- 42 Sarah Metzgar, “A Future Crowded with Fears: ‘We’re Jamming People In – People Who Have Nothing Left to Lose. That’s Tinder for an Explosion.’,” *Albany Times Union* 10 Sept. 1996: A1.
- 43 Paula M. Ditton and Doris James Wilson, *Special Report: Truth in Sentencing in State Prisons* (Washington: U.S. Department of Justice, 1999) 1; *Lockdown New York*, *supra* note 34, at 13.
- 44 U.S. General Accounting Office, *Truth in Sentencing: Availability of Federal Grants Influenced Laws in Some States* (Washington: United States General Accounting Office, 1998) 6.
- 45 *Lockdown New York*, *supra* note 34, at 13-14.
- 46 Stuart Grassian, “Psychopathological Effects of Solitary Confinement,” *American Journal of Psychiatry* 140 (1983) 1450.

- 47 *E.g.*, S.L. Brodsky & F.R. Scogin, “Inmates in Protective Custody: First Data on Emotional Effects,” *Forensic Reports* 1 (1988); Stuart Grassian, “Psychiatric Effects of Solitary Confinement,” *Washington University Journal of Law & Policy* 22 (2006); Craig Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” *Crime and Delinquency* 49 (2003); Haney and Lynch, “Regulating Prisons of the Future,” *supra* note 19; Holly A. Miller and Glenn R. Young, “Prison Segregation: Administrative Detention Remedy or Mental Health Problem?,” *Criminal Behavior and Mental Health* 7 (1997); Peter Scharff Smith, “The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature,” *Crime and Justice* 34 (2006).
- 48 *E.g.*, Sasha Abramsky and Jamie Fellner, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness*, Human Rights Watch, 2003: 145-68; Kristin G. Cloyes et al., “Assessment of Psychosocial Impairment in a Supermaximum Security Unit Sample,” *Criminal Justice and Behavior* 33 (2006) 760, 773-74; Grassian, “Psychiatric Effects of Solitary Confinement,” *supra* note 47, at 332, 348; Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement,” *supra* note 47.
- 49 *Hutto v. Finney*, 437 U.S. 678, 685 (1978).
- 50 In *Turner v. Safly*, 482 U.S. 78 (1987), the Supreme Court formally articulated a standard of deference, known as the rational basis test. Under this standard, “when a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.” *Id.* at 89. This standard has subsequently been applied to uphold a wide range of prison restrictions affecting fundamental constitutional rights. *See, Beard v. Banks*, 548 U.S. 521 (2006) (access to publications); *Overton v. Bazzetta*, 539 U.S. 126 (2003) (visiting); *Washington v. Harper*, 494 U.S. 210 (1990) (administration of psychotropic medication); *O’Lone v. Estate of Shabazz*, 482 U.S. 342 (1987) (religious exercise).
- 51 A prisoner challenging conditions of confinement must demonstrate both a “sufficiently serious” deprivation (i.e. objective standard) and that officials acted with a “sufficiently culpable state of mind” (i.e. subjective standard). *Wilson v. Seiter*, 501 U.S. 294, 298 (1991).
- 52 Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified as amended at 18 U.S.C. §3626, 28 U.S.C. §1915, 28 U.S.C. §1346, 42 U.S.C. §1997e, and other scattered sections). The Prison Litigation Reform Act (PLRA) requires prisoners, *inter alia*, to exhaust administrative remedies and demonstrate physical injury. For more information on the harmful consequences of the Prison Litigation Reform Act and the reasons it should be significantly amended, see SAVE Coalition, Prison Litigation Reform Act (PLRA): Myths and Facts, <http://www.savecoalition.org/myths.html>.
- 53 *See, Jones’El v. Berge*, 164 F. Supp. 2d 1096, 1116-1126 (W.D. Wis. 2001); *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999), *rev’d on other grounds*, 243 F.3d 941 (5th Cir. 2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D. Tex. 2001) (“Conditions in [extreme isolation] units clearly violate constitutional standards when imposed on the subgroup of the plaintiffs’ class made up of mentally-ill prisoners”); *Madrid v. Gomez*, 889 F. Supp. 1146, 1265-66 (N.D. Cal. 1995). Several of these same courts have also observed, in dicta, the toll that extreme isolation takes on all individuals, regardless of their mental stability. *See, Jones’El*, 164 F. Supp. 2d at 1101 (“Confinement in a supermaximum security prison such as Supermax is known to cause severe psychiatric morbidity, disability, suffering and mortality. Prisoners in segregated housing units who have no history of serious mental illness and who are not prone to psychiatric decompensation (breakdown) often develop a constellation of symptoms known as ‘SHU Syndrome.’”); *Ruiz*, 37 F. Supp. 2d at 907 (describing extreme isolation units as “virtual incubators of psychoses-seeding illness in otherwise healthy inmates”); *Madrid*, 889 F. Supp. at 1235, 1267 (observing that “many, if not most inmates in [extreme isolation] experience some degree of psychological trauma in reaction to their extreme social isolation and the severely restricted environmental stimulation,” and that the regime “may press the outer bounds of what most humans can psychologically tolerate”). Recently, a federal district court held that a New York state prisoner, who was placed in the SHU for over two years after a cell search revealed papers prohibited under prison rules, stated a plausible claim under the Eighth Amendment. *Peoples v. Fischer*, No. 11 Civ. 2694, 2012 WL 2402593, at \*1 (S.D.N.Y. June 26, 2012) (“Leroy Peoples was housed in [the SHU] for over two years, even though there was never any finding that he posed a threat to the safety of others or the security of the prison. His placement in the SHU for such a time period was grossly disproportionate to the non-violent violation that he was found to have committed. He has therefore stated a plausible claim that defendants violated his Eighth Amendment right to be free from cruel and unusual punishment.”).
- 54 N.Y. Comp. Codes R. & Regs. tit. 7, §§ 253.7, 254.7 (disciplinary segregation), 301.4 (administrative segregation), and 330.2 (protective custody). Prisoners in protective custody are generally permitted three hours per day of out-of-cell time, including an hour for recreation, and may take two meals per day outside their cells. They are also permitted phone calls and personal property. *Id.* §§ 330.4-330.5.
- 55 “DOCCS Summary of Inmates Newly Placed into SHU Cells – 01/01/07-12/31/11” and “DOCCS Dispositions with SHU Sentences – 01/01/2007-12/31/2011: Number of SHU Sentences by Year and Original Length of Sentence,” obtained through FOIL and on file with the NYCLU.

- 56 N.Y. Comp. Codes R. & Regs. tit. 7, § 270.2.
- 57 *Id.*
- 58 Select disciplinary records for infractions discussed throughout the report are available at [www.nyclu.org/boxedin](http://www.nyclu.org/boxedin).
- 59 N.Y. Comp. Codes R. & Regs. Tit. 7, §§ 251-1.6, 253.7, 254.7.
- 60 *Id.* § 253.7. According to DOCCS regulations governing “keeplock admission” to the SHU: “An inmate in a medium or minimum correctional facility or Upstate Correctional Facility may be housed in a special housing unit for reasons such as, but not limited to, the following: ... (2) for confinement pursuant to a disposition of a disciplinary (Tier II) or superintendent’s (Tier III) hearing.” *Id.* § 301.6.
- 61 “DOCCS Dispositions with Keeplock Sentences – 01/01/2007-12/31/2011,” obtained through FOIL and on file with the NYCLU.
- 62 “Table 4-7: Selected Offender Populations in SHU – DOCCS Under Custody Pop. Jan. 1, 2012,” obtained through FOIL and on file with the NYCLU.
- 63 N.Y. Comp. Codes R. & Regs. tit. 7, § 251-3.1.
- 64 *Id.* § 251-1.5.
- 65 *Id.* § 251-3.1.
- 66 *Id.* § 251-2.2.
- 67 *Id.* § 253.7. *See* note 60 (discussing DOCCS regulations governing “keeplock admission” to the SHU).
- 68 *Id.* § 254.7.
- 69 DOCCS, *Prison Safety in New York* (Albany: Department of Correctional Services, 2006) 17 (emphasis added).
- 70 N.Y. Comp. Codes R. & Regs. tit. 7, § 270.2.
- 71 Percentage calculated from “DOCCS Disciplinary Charge File Analysis – Incidents Occurring between 01/01/2007 and 12/31/2011,” obtained through FOIL and on file with the NYCLU.
- 72 N.Y. Comp. Codes R. & Regs. tit. 7, §§ 253.5-253.6, 254.5-254.6. The prisoner must be served with the misbehavior report at least 24 hours in advance of the hearing. Tier III hearings have additional procedural safeguards for prisoners whose “mental state or intellectual capacity is at issue.” In these circumstances, the hearing officer must investigate evidence concerning the prisoner’s mental condition or intellectual capacity at the time of the incident. The hearing officer may, on the basis of this evidence, adjourn the hearing or request an assistant for the prisoner. If the hearing officer proceeds with the hearing and finds the accused prisoner guilty, the officer may, in light of the prisoner’s mental condition or intellectual capacity, dismiss the charge.
- 73 *Id.* §§ 154.8, 253.8.
- 74 In the prison litigation context, claims of government misconduct and abuse often rest on the plaintiff prisoner’s word against that of defendant corrections officers. In such cases, prisoners typically find their testimony viewed with skepticism by both judges and juries. *See* Margo Schlanger, “Inmate Litigation,” *Harvard Law Review* 116 (2003) 1555, 1615 & n. 177 (observing that “both judges and juries tend to find convicted criminals unappealing and unbelievable witnesses” and extrapolating from studies that “find that, all else equal, jurors are more likely to convict a defendant if they know that he has a prior conviction”).
- 75 “Inmate Disciplinary System – Count of Tier 3 Hearings: 2007-2011,” obtained through FOIL and on file with the NYCLU.
- 76 *Id.*
- 77 DOCCS, “Guidelines for Disciplinary Dispositions,” July 2005, obtained through FOIL and on file with the NYCLU.
- 78 DOCCS, *Prison Safety in New York*, *supra* note 69, at 19.
- 79 Jean Casella and James Ridgeway, “New York’s Black Sites,” *The Nation* 30 July 2012.

- 80 Percentages calculated from “Inmate Disciplinary System – Count of Tier 3 Hearings: 2007-2011,” obtained through FOIL and on file with the NYCLU.
- 81 “DOCCS Dispositions with SHU Sentences – 01/01/2007-12/31/2011: Number of SHU Sentences by Year and Original Length of Sentence,” obtained through FOIL and on file with the NYCLU. DOCCS permits discretionary time cuts to SHU sentences under its “Progressive Inmate Movement System” (PIMS), which is a three-level system of graduated privileges in the SHU. Prisoners on Level I, which is the most restrictive, can graduate to Level II after a minimum of 30 days without a disciplinary infraction. Similarly, prisoners on Level II can graduate to Level III after a minimum of thirty days without a disciplinary infraction. Prisoners on Levels II and III who commit a disciplinary infraction drop back to Level I. These levels are pegged to potential SHU time cuts. A “Disciplinary Review Committee” (DRC) reviews the case of each prisoner halfway between his date of arrival and date of release from the SHU. Level I and II prisoners are eligible to receive a time cut of up to 1/2 the amount of SHU time remaining. Level III inmates are eligible to receive a time cut of up to 2/3 the amount of SHU time remaining. The issuance of a time cut is up to the discretion of the DRC, just as the determination of tier ratings and whether misbehavior warrants a SHU sentence is up to the discretion of corrections officials.
- 82 For more information on DOCCS’ placement of substance abusers in extreme isolation, see *Barred from Treatment: Punishment of Drug Users in New York State Prisons*, Human Rights Watch, Mar. 2009: 35-51. Drug-related rules include 113.14 (“An inmate shall not possess outdated or unauthorized types of quantities of medication, nor shall an inmate sell, exchange or provide any medication to anyone.”); 113.24 (“An inmate shall not use or be under the influence of any narcotics or controlled substances unless prescribed by a health service provider and then only in the amount prescribed.”); 113.25 (“An inmate shall not make, possess, sell or exchange any narcotic, narcotic paraphernalia, controlled substance or marijuana. An inmate shall not conspire with any person to introduce such items into the facility.”); 180.14 (“An inmate shall comply with and follow the guidelines and instructions given by staff regarding urinalysis testing pursuant to the requirements of departmental Directive No. 4937 (N.Y. Comp. Codes R. & Regs. tit. 7, part 1020). This includes providing a urine sample when ordered to do so.”). N.Y. Comp. Codes R. & Regs. tit. 7, § 270.2.
- 83 Percentages calculated from “Inmate Disciplinary System – Count of Tier 3 Hearings: 2007-2011,” obtained through FOIL and on file with the NYCLU.
- 84 Percentages calculated from “DOCCS Disciplinary Charge File Analysis – Incidents Occurring between 01/01/2007 and 12/31/2011,” obtained through FOIL and on file with the NYCLU.
- 85 *Id.*
- 86 DOCCS, “Guidelines for Disciplinary Dispositions,” *supra* note 77.
- 87 “DOCCS Disciplinary Charge File Analysis, Table 3 – Charge by Year of Incident by Facility,” obtained through FOIL and on file with the NYCLU.
- 88 For a discussion of the unique dangers that extreme isolation poses for juveniles, see Amy Fettig, “Teenagers Too Often End Up in Solitary,” *New York Times*, 5 June 2012, <http://www.nytimes.com/roomfordebate/2012/06/05/when-to-punish-a-young-offender-and-when-to-rehabilitate/the-dangers-of-juveniles-in-solitary-confinement>; Human Rights Watch, “US: Look Critically at Widespread Use of Solitary Confinement,” 18 June 2012, <http://www.hrw.org/news/2012/06/18/us-look-critically-widespread-use-solitary-confinement>. For a discussion of the particular vulnerabilities of elderly prisoners in extreme isolation, see James Ridgeway, “The Graying of America’s Prisons,” *The Crime Report*, 7 Dec. 2009, <http://www.thecrimereport.org/viewpoints/the-graying-of-americas-prisons>.
- 89 *See At America’s Expense: The Mass Incarceration of the Elderly*, American Civil Liberties Union, June 2012: v (“There is an overwhelming consensus among correctional experts, criminologists, and the National Institute of Corrections that 50 years of age is the appropriate point marking when a prisoner becomes ‘aging’ or ‘elderly.’ The lack of appropriate healthcare and access to healthy living prior to incarceration, added to the heavy stresses of life behind bars, accelerates the aging process of prisoners so that they are actually physically older than average individuals.”); *Old Behind Bars: The Aging Prison Population in the United States*, Human Rights Watch, Jan. 2012: 17 (“In the community, age 50 or 55 would not be considered ‘older.’ But incarcerated men and women typically have physiological and mental health conditions that are associated with people at least a decade older in the community. This accelerated aging process is likely due to the high burden of disease common in people from poor backgrounds who comprise the majority of the prison population, coupled with unhealthy lifestyles prior to and during incarceration. These factors are often further exacerbated by substandard medical care either before or during incarceration. The violence, anxiety, and stress of prison life, isolation from family and friends, and the possibility of spending most or all of the rest of one’s life behind bars can also contribute to accelerated aging once incarcerated.”).



- 90 “Table 3B and 3F: Age by Facility for Offenders Housed in SHU – DOCCS Under Custody Pop. Jan. 1, 2012,” obtained through FOIL and on file with the NYCLU.
- 91 DOCCS, *Identified Substance Abuse* (Albany: Department of Correctional Services, 2007) i.
- 92 Percentages calculated from “Table 16D: Self-Report Substance Abuse for Southport CF, Upstate CF and SHU 200 Facilities – DOCCS Under Custody Pop. Jan. 1, 2012,” obtained through FOIL and on file with the NYCLU.
- 93 Percentage calculated from “Active Mental Health Inmate-Patients Housed in Segregated Confinement, First Quarter 2012,” obtained through FOIL and on file with the NYCLU.
- 94 Percentage calculated from “CNYPC Net Facility Caseload Census as of May 31, 2012,” obtained through FOIL and on file with the NYCLU.
- 95 Percentage calculated from “Active Mental Health Inmate-Patients Housed in Segregated Confinement, First Quarter 2012,” obtained through FOIL and on file with the NYCLU. For an explanation of mental health classifications, see New York State Commission on Quality of Care and Advocacy for Persons with Disabilities, *Review of Residential Crisis Treatment Programs (RCTPs)* (Schenectady: N.Y. State Commission on Quality of Care and Advocacy for Persons with Disabilities, 2010) 1.
- 96 Prisoners designated as seriously mentally ill are those: (1) exhibiting nine types of Diagnostic and Statistical Manual IV Axis I diagnoses – schizophrenia (all sub-types), delusional disorder, schizophreniform disorder, schizoaffective Disorder, brief psychotic disorder, substance-induced psychotic disorder (excluding intoxication and withdrawal), psychotic disorder not otherwise specified, major depressive disorders, bipolar disorder I and II; (2) “actively suicidal or [who have] engaged in a recent, serious suicide attempt;” or (3) who commit acts of self-harm motivated by breaks or perceived breaks with reality, or caused by an organic brain syndrome, psychosis or depression. N.Y. Correct. Law. § 137.6 (McKinney 2011).
- 97 As New York expanded its use of extreme isolation, reports of the startling number of prisoners with serious mental illness held in these units began to surface. See Mary Beth Pfeiffer, “A Death in the Box,” *New York Times* 31 Oct. 2004: 48; Jennifer Gonnerman, “Suicide in the Box,” *Village Voice* 23 Dec. 2003: 40. In 2003, 20 percent of prisoners in extreme isolation were receiving mental health treatment. Roughly half of these prisoners were diagnosed with a major or serious mental illness. One grim barometer of the number of seriously mentally ill prisoners in extreme isolation was the suicide rate in the SHU. Between 1998 and 2004, 34 percent of prisoner suicides occurred among individuals in the SHU, while comprising 7 percent of the total prison population. *Mental Health in the House of Corrections: A Study of Mental Health Care in New York State Prisons*, Correctional Association of New York, June 2004: 48, 57.
- 98 Complaint at 12-13, *Disability Advocates, Inc. v. New York State Office of Mental Health*, No. 02-CV-4002 (S.D.N.Y. May 28, 2002) (“Inadequate mental health treatment in the prisons results in prisoners with mental illness suffering psychiatric deterioration and engaging in symptomatic behaviors which ... violate DOCS rules for prisoner conduct. Prisoners with mental illness are frequently sentenced to periods of isolated confinement for engaging in such symptomatic conduct. ... Once punished with confinement in a twenty-three hour isolated confinement housing area, many prisoners with mental illness become even less able to conform to prison rules because their mental conditions worsen. As a result, many prisoners with mental illness, who are suffering from their illnesses and who are serving time in isolated confinement, become subject to additional disciplinary sanctions including additional consecutive periods of isolated confinement.”).
- 99 Private Settlement Agreement, *DAI v. OMH*, 02-CV-4002 (S.D.N.Y. Apr. 27, 2007), available at <http://www.disability-advocates.org/complaints/DAIvOMHSettlement.pdf>. A history of legal challenges to inadequate mental health treatment in specific SHUs (resulting in settlements) preceded the DAI lawsuit. See Private Settlement Agreement, *Anderson v. Goord*, No. 87-CV-141 (N.D.N.Y. Dec. 16, 2003); Stipulation, *Eng v. Goord*, No. 80-CV-385S (W.D.N.Y. June 12, 2000); Stipulation, *Langley v. Coughlin*, No. 84-CV-5431 (S.D.N.Y. July 23, 1987).
- 100 SHU Exclusion Law of 2008, codified as amendments to N.Y. Mental Hyg. Law § 45 (McKinney 2011) and N.Y. Correct. Law. §§ 2, 137.6, 401, 401-a (McKinney 2011).
- 101 N.Y. Correct. Law §§ 137.6(d), 2.21 (McKinney 2011). The law does, however, provide a loophole to diversion in two “exceptional circumstances.” First, “when ... removal would pose a substantial risk to the safety of the inmate or other persons, or a substantial threat to the security of the facility.” Second, “when the mental health clinician determines that such placement is in the inmate’s best interest based on his or her mental condition and that removing such inmate to a residential mental health treatment unit would be detrimental to his or her mental condition.”
- 102 Percentages calculated from “DOCCS Ethnic Breakdown of Employees by Facility from Data as of 01/07/2012” and “Table 3H: Race/Ethnic for Offenders Housed in SHU – DOCCS Under Custody Pop. Jan. 1, 2012,” obtained through FOIL and on file with the NYCLU.

- 103 See **Section II**, *Building the Box*.
- 104 See *supra* note 46-47.
- 105 See *supra* note 48.
- 106 See William D. Bales and Daniel P. Mears, “Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?,” *Journal of Research in Crime and Delinquency* 45 (2008) (studying the relationship between visitation and recidivism in Florida and concluding that visitation reduces and delays recidivism); Creasie Finney Hairston, “Family Ties During Imprisonment: Do They Influence Future Criminal Activity?,” *Federal Probation* 52 (1988) (discussing five empirical studies indicating that maintenance of family and community ties is positively related to lower recidivism); Norman Holt and Donald Miller, *Explorations in Inmate-Family Relationships*, Research Report No. 46 (Sacramento: California Department of Corrections, 1972) (“The central finding of this research is the strong and consistent positive relationship that exists between parole success and maintaining strong family ties while in prison.”); Minnesota Department of Corrections, *The Effects of Prison Visitation on Offender Recidivism* (St. Paul: Minnesota Department of Corrections, 2011) (“Using multiple measures of visitation ... and recidivism, ... the study found that visitation significantly decreased the risk of recidivism ...”); Marta Nelson, Perry Deess, and Charlotte Allen, *The First Month Out: Post-Incarceration Experiences in New York City*, Vera Institute of Justice, Sept. 1999 (reporting results of study tracking prisoners returning from New York jails and prisons and concluding that prisoners with stronger familial support had greater success reintegrating).
- 107 “DOCCS Daily Population Capacity Report – 06/11/12,” obtained through FOIL and on file with the NYCLU.
- 108 DOCCS, *Under Custody Report: Profile of Inmate Population Under Custody on January 1, 2011* (Albany: Department of Corrections and Community Supervision, 2011) 4.
- 109 Reading is one of the few real activities available to prisoners in the SHU, despite DOCCS statistics that document low literacy among a significant percentage of prisoners: One in three state prisoners (34 percent) read below the eighth-grade level, including roughly one in five (19 percent) who read below the sixth-grade level. Literacy appears to be lower still in extreme isolation facilities: A quarter of prisoners housed at Upstate and Southport read below the sixth-grade level. DOCCS, *Hub System: Profile of Inmate Population Under Custody on January 1, 2008* (Albany: Department of Correctional Services 2008) 45, 47.
- 110 See *supra* note 81 for a discussion of PIMS, a three-level system of graduated privileges in the SHU. At Southport, Level I prisoners receive two showers per week and must remain in restraints during recreation and visits. They are permitted 5 books or magazines. Level II prisoners may exercise and conduct visits without restraints. They receive headphones and a state-issued winter coat. They are permitted 5 additional books or magazines and have limited commissary privileges, restricted primarily to writing materials and toiletries. Level III prisoners receive three showers per week. They are permitted one pair of personal sneakers and shorts, and they may purchase candy from the commissary. PIMS operates similarly at Upstate, although the physical design of the cells, which are directly connected to recreation pens, obviates the need for restraints during recreation on Level I. Prisoners on Levels I and II receive three showers per week, whereas prisoners on Level III receive four showers per week. “Southport Correctional Facility SHU Staff and Inmate Orientation Manual” and “Upstate Correctional Facility SHU Inmate Orientation Manual,” obtained through FOIL and on file with the NYCLU.
- 111 Prisoners must be on PIMS Levels II or III to obtain the GED packet and must be on Level III to obtain the substance abuse or aggression management packets. *Id.*
- 112 “DOCCS Summary of Inmates Released 01/01/2008-12/31/2011 Statewide from SHU,” obtained through FOIL and on file with the NYCLU.
- 113 N.Y. Comp. Codes R. & Regs. tit. 7, § 270.2.
- 114 “DOCCS Daily Population Capacity Report – 06/11/12,” obtained through FOIL and on file with the NYCLU.
- 115 See, e.g., *Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences: Hearing Before the Subcommittee on the Constitution, Civil Rights, and Human Rights of the Senate Committee on the Judiciary*, 112th Congress (2012) (statement of Craig Haney, Professor of Psychology, University of California, Santa Cruz) (“[Double-celled prisoners] are ... simultaneously isolated and overcrowded. They ... really can’t relate in any meaningful way with whom they’re celled, and so they basically develop a kind of within cell isolation of their own. And it adds to the tension, and the tensions then can get acted out on each other. It creates hazards for the people who are forced to live that way. It creates hazards for the correctional officers who have to deal with prisoners who are living under those kinds of pressures.”). In *Madrid v. Gomez*, a case examining conditions of extreme isolation at California’s Pelican Bay State

prison where “[r]oughly two-thirds of the inmates [were] double celled,” the court cited testimony from Professor Haney and Dr. Stuart Grassian in observing:

[Double-celling] does not compensate for the otherwise severe level of social isolation .... The combination of being in extremely close proximity with one other person, while other avenues for normal social interaction are virtually precluded, often makes any long-term normal relationship with the cellmate impossible. Instead, two persons housed together in this type of forced, constant intimacy have an ‘enormously high risk of becoming paranoid, hostile, and potentially violent towards each other.’ The existence of a cellmate is thus unlikely to provide an opportunity for sustained positive or normal social contact.

889 F. Supp. 1146, 1229-30 (N.D. Cal. 1995) (internal citations omitted).

116 N.Y. Comp. Codes R. & Regs. tit. 7, § 305.2 (a).

117 *Id.* § 305.2(e).

118 *Id.* § 304.2(b).

119 *Id.* § 304.2(f).

120 *Id.* § 304.2(b).

121 *Id.* § 304.2(c).

122 In 2003 the Correctional Association surveyed 238 prisoners in the SHU, a significant number of whom reported “never or rarely” attending recreation. Psychiatrists, who accompanied the Correctional Association on site visits to the SHUs, “pointed out that refusing recreation often indicates clinical depression, over-medication and/or listlessness brought on by social isolation and reduced stimulation.” *Lockdown New York*, *supra* note 34, at 19, 35-36.

123 “Southport Correctional Facility SHU Staff and Inmate Orientation Manual,” obtained through FOIL and on file with the NYCLU.

124 The Correctional Association’s survey of prisoners in the SHU, see note 122, included 88 prisoners at Southport, nearly 40 percent of whom reported “never or rarely” attending recreation. The “most common reason cited was fear of harassment by correction officers, around whom they feel particularly vulnerable while wearing mechanical restraints.” *Lockdown New York*, *supra* note 34, at 36.

125 See Abramsky and Fellner, *supra* note 48, at 154-160; Jamie Fellner and Joanne Mariner, *Cold Storage: Super-Maximum Security Confinement in Indiana*, Human Rights Watch, Oct. 1997: 115-120; *Reassessing Solitary Confinement: Hearing Before the Subcommittee*, *supra* note 115 (statement of Physicians for Human Rights).

126 See Abramsky and Fellner, *supra* note 48, at 156; Fellner and Mariner, *supra* note 125, at 119; Sharon Shalev, *A Sourcebook on Solitary Confinement*, Mannheim Centre for Criminology, London School of Economics and Political Science, Oct. 2008: 63-64.

127 Percentage calculated from “Active Mental Health Inmate-Patients Housed in Segregated Confinement, First Quarter 2012,” obtained through FOIL and on file with the NYCLU.

128 There is evidence to suggest that placing prisoners in extreme isolation increases their risk of recidivism after release. In Washington state, researchers tracked re-arrest rates among prisoners released over two years. The study found that prisoners who had spent at least three continuous months in extreme isolation were somewhat more likely to commit new felonies. Moreover, among those prisoners who experienced extreme isolation, those who were released directly from extreme isolation had a higher rate of recidivism than those who had returned to the general prison population prior to their release. David Lovell and Clark Johnson. “Felony and Violent Recidivism Among Supermax Prison Inmates in Washington State: A Pilot Study” (2004), available at <http://www.son.washington.edu/faculty/fac-page-files/Lovell-SupermaxRecidivism-4-19-04.pdf>. The Commission on Safety and Abuse in America’s Prisons has cited to these findings as suggesting “a link between recidivism and the difficult living conditions in [extreme isolation], where good rehabilitative and transitional programming are less available.” Gibbons and Katzenbach, *supra* note 25, at 55.

129 Terry A. Kupers, et al., “Beyond Supermax Administrative Segregation: Mississippi’s Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs,” 36 *Criminal Justice and Behavior* 1037, 1039-1041 (2009); Erica Goode, “Prisons Rethink Isolation, Saving Money, Lives and Sanity,” *New York Times* 10 Mar. 2012: A1.

- 130 *Final Report of Review of Due Process Procedures in Special Management Units at the Maine State Prison and the Maine Correctional Center*, March 2011, available at [http://www.aclu.org/files/assets/maine\\_-\\_final\\_doc\\_report\\_on\\_smus.pdf](http://www.aclu.org/files/assets/maine_-_final_doc_report_on_smus.pdf) (last visited 31 Aug. 2012); Lance Tapley, “Reform Comes to the Supermax,” *Portland Phoenix*, 25 May 2011.
- 131 James Austin and Emmitt Sparkman, *Colorado Department of Corrections Administrative Segregation and Classification Review* (National Institute of Corrections, Oct. 2011), available at [http://www.ccjrc.org/pdf/2011\\_Solitary\\_Confinement\\_Report.pdf](http://www.ccjrc.org/pdf/2011_Solitary_Confinement_Report.pdf) (last visited 31 Aug. 2012).
- 132 Emmitt Sparkman, “Mississippi DOC’s Emmitt Sparkman on Reducing the Use of Segregation in Prisons,” 31 Oct. 2011, <http://www.vera.org/blog/mississippi-docs-emmitt-sparkman-reducing-use-segregation-prisons>.
- 133 Kupers, *supra* note 129, at 1041.
- 134 *Final Report of Review of Due Process Procedures in Special Management Units at the Maine State Prison and the Maine Correctional Center*; *supra* note 130, at 4-6.
- 135 Lance Tapley, “Reducing Solitary Confinement,” *Portland Phoenix* 2 Nov. 2011.
- 136 Austin and Sparkman, *supra* note 131, at 17.
- 137 Percentage calculated from comparing *id.* at 4 (identifying 1,552 prisoners in extreme isolation in October 2011) and Kirk Mitchell, “Colorado Prisons Turn Away from Heavy Use of Solitary Confinement,” *Denver Post* 4 June 2012 (stating that as of April 2012 there were 1,012 prisoners in extreme isolation).
- 138 Sparkman, *supra* note 132.
- 139 *Id.*
- 140 Tapley, “Reducing Solitary Confinement,” *supra* note 135.
- 141 Denise Maes, “Victory in Colorado: Closing Solitary Confinement Unit Good for Budget and Public Safety,” *ACLU Blog of Rights*, 21 Mar. 2012, <http://www.aclu.org/blog/prisoners-rights/victory-colorado-closing-solitary-confinement-unit-good-budget-and-public>.
- 142 Gibbons and Katzenbach, *supra* note 25, at 14.
- 143 *Id.* (citing Chad S. Briggs, Jody L. Sundt and Thomas C. Castellano, “The Effects of Supermaximum Security Prisons on Aggregate Levels of Institutional Violence,” *Criminology* 41 (2003): 1341-76).
- 144 *Id.* (citing Peter C. Kratcoski, “The Implications of Research Explaining Prison Violence and Disruption,” *Federal Probation* 52 (1988): 27-33).
- 145 *Id.*
- 146 Sparkman, *supra* note 132.
- 147 Rachel Alexander, “DOC Explains Closing CSP II,” *Cañon City News* 21 Mar. 2012.
- 148 Alex Barber, “Less Restriction Equals Less Violence at Maine State Prison,” *Bangor Daily News* 15 June 2012.
- 149 Vera Institute of Justice, Segregation Reduction Project, <http://www.vera.org/project/segregation-reduction-project> (last visited 31 Aug. 2012).
- 150 International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Exec. Doc. E, 95-2, 999 U.N.T.S. 171 [hereinafter ICCPR]; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 [hereinafter CAT].
- 151 *See* ICCPR, *supra* note 150, art. 7 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); CAT, *supra* note 150, art. 2 (“Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”); *id.* art. 16 (“Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture ....”).

- 152 ICCPR, art. 10.1, states, “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” ICCPR, art. 10.3, states, “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.
- 153 U.S. Const. art. VI, cl. 2. The U.S. has signed and ratified both the ICCPR and CAT, but has placed significant restrictions on their enforceability in U.S. courts. The ICCPR is non-enforceable in U.S. courts because the U.S. ratified the treaty with an attached non-self-execution reservation. (A reservation is “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.” Vienna Convention on the Law of Treaties art. 2(1)(d), May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679) The non-self-execution reservation is a statement to the effect that a treaty requires domestic implementing legislation to operate as binding domestic law; Congress has yet to pass legislation implementing the ICCPR. Both the ICCPR and CAT are further limited by reservations restricting the scope of their protection. The U.S. attached a reservation to article 7 of the ICCPR, binding it under that article only to the extent that any “cruel, inhuman or degrading treatment” amounts to treatment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution. *International Convention on Civil and Political Rights: Hearing before the Senate Comm. on Foreign Relations*, 102d Cong., 1st Sess., 1991. The U.S. attached a similar reservation to article 16 of CAT, clarifying that any prohibited treatment is only that which is “cruel, inhuman or degrading” as interpreted via the Fifth, Eighth and Fourteenth Amendments. *Convention Against Torture: Hearing Before the Senate Comm. on Foreign Relations*, 101st Cong. 2nd Sess., 1990.
- 154 U.N. Human Rights Comm., *General Comment No. 20*, ¶ 6 (Oct. 3, 1992).
- 155 U.N. Human Rights Comm., *Concluding Observations of the Human Rights Committee: United States of America*, ¶ 32, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006).
- 156 U.N. Comm. Against Torture, *Conclusions and Recommendations of the Committee Against Torture: United States of America*, ¶ 36, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006).
- 157 *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman, or Degrading Punishment or Treatment*, ¶ 70 U.N. Doc. A/66/268 (Aug. 5, 2011) [hereinafter *2011 Interim Report of Special Rapporteur*]; see also *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman, or Degrading Punishment or Treatment*, ¶¶ 77-85, U.N. Doc. A/63/175 (July 28, 2008) [hereinafter *2008 Interim Report of Special Rapporteur*].
- 158 *2011 Interim Report of the Special Rapporteur*, *supra* note 157, ¶¶ 77-78; *2008 Interim Report of the Special Rapporteur*, *supra* note 157, ¶¶ 80, 83 (citing to guidance from the Committee against Torture and the Committee on the Rights of the Child, as well as the Basic Principles for the Treatment of Prisoners).
- 159 *ABA Standards for Criminal Justice: Treatment of Prisoners* 3d ed. (Washington: American Bar Association, 2011) Standard 23-1.2 Commentary.
- 160 *Id.* at Standard 23-3.8(b) “Segregated Housing” (“Conditions of extreme isolation should not be allowed regardless of the reasons for a prisoner’s separation from the general population.”); Standard 23-4.3(a) (“[Disciplinary] sanctions should never include: ... conditions of extreme isolation ....”).
- 161 *Id.* at Standard 23-2.7(b) “Rationales for Long-Term Segregated Housing.”
- 162 *Id.* at Standard 23-2.6(a) “Rationales for Segregated Housing.”
- 163 *Id.*
- 164 *Id.* at Standard 23-2.8 “Segregated Housing and Mental Health”. The Standards define “serious mental illness” as “a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality or cope with the ordinary demands of life within the prison environment and is manifested by substantial pain or disability. It includes the status of being actively suicidal; severe cognitive disorders that result in significant functional impairment; and severe personality disorders that result in significant functional impairment and are marked by frequent episodes of psychosis, depression, or self-injurious behavior.” *Id.* at Standard 23-1.0(s) “Definitions”.
- 165 Gibbons and Katzenbach, *supra* note 25, at 52-60.
- 166 ACLU National Prison Project, Model Act: Improving Public Safety, Protecting Vulnerable Populations & Ensuring Process in Imposing Long-Term Isolated Confinement, available at [http://www.aclu.org/files/pdfs/prison/model\\_stop\\_solitary\\_act\\_-\\_7-11.pdf](http://www.aclu.org/files/pdfs/prison/model_stop_solitary_act_-_7-11.pdf) (last visited 31 Aug. 2012).

- 167 Separation under the third prong – where there is specific and demonstrable evidence that the prisoner “poses a serious ongoing threat to prison safety and security” – can include separation for medical reasons, such as airborne contagion. *See, e.g.*, ABA Criminal Justice Standards on the Treatment of Prisoners, Standard 23.2.6(a) “Rationales for Segregated Housing;” 23-2.7(a)(iii) “Rationales for Long-Term Segregated Housing.”
- 168 DOCCS should withhold personal identifying information of separated prisoners to protect individual privacy and safety.
- 169 *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 354 (1987) (Brennan, J., dissenting).

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