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AN ACT to amend the correction law, in relation to restricting the use of segregated confinement and creating alternative therapeutic and rehabilitative confinement options

A.2500 (Aubry)  
S.1623 (Sepulveda)

### OPPOSITION MEMORANDUM

Submitted on behalf of  
The New York State Correctional Officers and Police Benevolent Association, Inc.

This legislation would significantly impact utilization of special housing units within New York's prison system by enacting the "Humane Alternatives to Long-Term Solitary Confinement" Act. While the members of the New York State Correctional Officers and Police Benevolent Association, Inc. ("NYSCOPBA") are unequivocally supportive of the humane treatment of all individuals in society, including those for whom they are charged with providing care, custody and control in the correctional setting, NYSCOPBA must nevertheless oppose this legislation for the reasons explained below.

### History of HALT

The "Humane Alternatives to Long-Term Solitary Confinement" Act ("HALT" legislation) was first introduced in January of 2014. Subsequent to its initial introduction, the landscape of special housing unit ("SHU") usage within the State of New York's correctional system was completely overhauled as a result of the historic settlement agreement in *Peoples v. Annucci*, which became fully effective in April of 2016. The *Peoples v. Annucci* litigation originated as a class action lawsuit brought by the New York Civil Liberties Union ("NYCLU") seeking to dramatically modify the manner in which incarcerated individuals are managed within New York's correctional system for disciplinary infractions. When the settlement agreement was announced, NYCLU lauded the terms and conditions of the settlement and explained that the agreement would "comprehensively overhaul" the operational aspects of secure housing units in New York State. Indeed, the very terms of the settlement agreement addressed the primary concerns of the original sponsors of the HALT bill, rendering the current HALT legislation moot.



### **Solitary Confinement Does Not Exist in New York**

Advocates of the HALT proposal improperly synonymize "solitary confinement" with New York's special housing units. The term "solitary confinement" connotes total isolation and separation of incarcerated individuals with limited to no human contact, coupled with limited sustenance (the perceived "bread and water" diet). For many years, inmate advocate groups have been utilizing this phrase – "solitary confinement" – to describe the process of inmates being placed in special housing units, completely mischaracterizing the factual realities of SHUs in New York. NYSCOPBA has continually and consistently sought to correct the mischaracterization of special housing as "solitary confinement." However, despite our best efforts, many continue to believe that solitary confinement as portrayed in Hollywood and in the media actually exists in New York.

In New York's special housing units, inmates still receive property, services and amenities similar to inmates in general population. They receive up to two (2) hours of outdoor recreation per day; two (2) personal visits per week; unlimited legal visits; headphones and personal radios; commissary privileges; the exact same meals as inmates in general population; literature, playing cards, books, and photographs; writing materials; religious materials; frequent mental health assessments; packages, mail, and legal mail access and privileges; access to daily medical sick call and emergency sick call; access to the general library services and law library services; weekly laundry; weekly access to notary public services; weekly religious counseling services; access to the inmate grievance program; access to cell study educational services; daily visits from the Offender Rehabilitation Coordinator for additional counseling services; and potential diversion to residential mental health units. In short, significant attention and acute individualized care is provided to inmates in SHU.

With respect to SHU determinations, incarcerated individuals are provided essential due process rights and are entitled to an evidentiary hearing before an impartial hearing officer to determine whether separation from general population is an appropriate penalty. Any inmate with limited English proficiency or sensorial disability is entitled to access to a facility staff member who shall assist the inmate in pursuit of his or her defense for any level of misbehavior. Inmates also possess the right and opportunity to present their own witnesses and cross-examine any witnesses who present testimony. Hearing officers are required to take into account the inmate's mental state and intellectual capacity during a hearing. Inmates found guilty of any misbehavior charge have the right to appeal this finding to the Commissioner of DOCCS, or his or her designee. Facility Superintendents also retain the discretion to reduce any penalty imposed by a hearing officer. And despite the false assertions from those who want to create a perception of total isolation in a torturous setting, inmates who are confined to SHU following such a hearing receive significant services (as stated above) and more one-on-one individual care than inmates in general population. Prison staff interact with inmates confined to SHU at least every 30 minutes, 24 hours per day, 7 days per week.

### SHU Changes as a Result of the Annucci Settlement

As stated above, the *Annucci* settlement drastically changed the operational aspects of New York's special housing units. Nearly 50 percent of the rules violations that would have resulted in an inmate being placed in SHU – including drug use and drug possession – are now no longer punishable for first-time violations. Petty rules violations, which comprise more than 25 percent of all violations, are no longer eligible for special housing at all.

Moreover, as a result of the *Annucci* settlement, there is now a maximum sentence of SHU confinement of three months for all but a handful of first-time violations, such as assault and escape; and there is a maximum sentence of 30 days for almost all first-time non-violent violations. In addition, the *Annucci* settlement mandates early release from SHU for good behavior and participation in rehabilitative programming. In essence, all SHU confinements receive automatic time cuts (even those that relate to assaults on staff or assaults on other inmates).


Prior to the implementation of any new policies and provisions that would further limit the ability of DOCCS to utilize SHU as a disciplinary measure or deterrent, it is imperative that a thorough and comprehensive study be first undertaken to analyze the impact of the *Annucci* settlement on New York's prison system. In viewing the Department's own data, it is clear that violence within New York's prison system has escalated since implementation of the *Annucci* settlement's provisions.

### The Effects of the Annucci Settlement

It is unequivocal that as a direct result of the *Annucci* settlement inmates are serving far shorter disciplinary sentences than they were prior to the settlement. However, it is equally clear that since the *Annucci* agreement was implemented, violence inside the State's prison system has been steadily escalating.

In 2013, the final full calendar year not impacted by *Annucci*, the Department reported 645 inmate assaults on staff. Assaults on staff have generally risen each year since 2013, with 2018 being the most violent year with more than 970 such assaults occurring. Although any trend in increasing assaults would be troubling, the trend in New York is even more disturbing as defensive tools for law enforcement have been deployed by the Department throughout the system in an effort to curb violence. For example, DOCCS has trained NYSCOPBA members in the use of pepper spray and deployed this safety tool for officers at facilities throughout the State. A significant amount of security cameras have been installed in many facilities since 2013 and many individual officers are wearing body cameras during their respective work days. Moreover, the State has implemented de-escalation training for all officers in an effort to ensure that NYSCOPBA's members are better equipped to thwart potential violent interactions with inmates. Notwithstanding this plethora of safety tools, violence levels are not diminishing.

The significant rise in inmate-on-inmate assaults since 2013 is equally troubling, despite a decreasing inmate population. In 2013, the Department reported 767 inmate-on-inmate assaults.



859 such assaults were reported in 2014; 915 assaults were reported in 2015; 1,135 were reported in 2016; and, 1,220 inmate-on-inmate assaults were reported in 2017 -- an increase of approximately 62% since 2013. Assault data for 2018 is equally disturbing as the Department has reported more than 1160 such assaults.


The rise in violence within New York's correctional system during a time period in which there has been a mandated reduction of disciplinary confinements cannot simply be dismissed as sheer coincidence. Before any further changes are made to the operational aspects of inmate discipline in New York, the State must first thoroughly examine this increased violence and determine the best ways to reverse this troubling trend.

### HALT Specifications

The HALT proposal as currently drafted would provide a blanket prohibition against placing certain incarcerated individuals in SHU. Specifically, inmates 21 years of age or younger and inmates 55 years of age or older would be part of a newly defined "special population" of inmates who would not have to serve time in special housing units despite committing disciplinary infractions. However, the age of an inmate is not dispositive of the type of behavior that he or she will engage in. For example, there are model inmates who are 21 years of age or younger; and there are extremely dangerous inmates who fall in that same age category that need to be removed from general population at times not only for their own personal safety, but for the safety of other inmates, staff, and the facility as whole. This blanket prohibition as proposed in HALT would remove a critical preventative and corrective tool from the law enforcement officers who are charged with maintaining care, custody and control inside our prisons without any legitimate rationale for creating such an age-based restriction.

The legislation would also prohibit an inmate from being placed in SHU for more than 15 consecutive days (or 20 days in a 60 day period) unless certain delineated egregious acts have been committed by the inmate while in such confinement. Proponents of these provisions of the bill point to the State of Colorado as a model statutory scheme that New York should emulate. They fail, however, to consider Colorado's entire statutory framework. While it is accurate that Colorado has a true SHU 15-day cap, the Colorado prison system also has secondary units that inmates may be transferred to following their SHU stays.

These secondary units bear many similarities to a SHU, including limited out-of-cell time, limited privileges, and segregation from general population inmates. In the first transitional unit, inmates may be housed for up to a year for a variety of violent offenses, including assault on staff and assault on a fellow inmate, and up to six months for possession of dangerous contraband or possession of escape paraphernalia. Inmates in this first transitional unit are allowed four hours out of cell per day, including one hour of outdoor recreation three days per week. Colorado's policies authorize the restraint of these inmates during out-of-cell time. Inmates in this unit are limited to one non-contact visit per month and are not released for "chow"; meals are delivered to inmates in their cells. In the second transitional unit, where inmates may be housed indefinitely, out-of-cell time is also four hours per day including one hour per day for outdoor recreation three



times a week. In this unit, Colorado's policies authorize the restraint of certain inmates when they are out of their cells and inmates are not released for chow. In the third transitional unit, which is generally intended to house inmates for up to six months, inmates are allowed out of their cells for six hours per day including one hour of outdoor recreation three days per week. Inmates are allowed out of their cells to obtain meal trays, but must eat those meals in their cells or in groups designated by the administration. In the second and third transitional units described above, inmates have some opportunities to mingle with other inmates in the transitional program, but are substantially segregated from general population inmates.

While Colorado's tiered transitional units afford inmates more out-of-cell time and privileges than a traditional SHU, they still provide for an enhanced level of supervision and control for inmates whose convictions, history of escape or attempts to escape, and violent behavior within the institution require such measures. The HALT proposal clearly is deficient of these additional transition units that ensure dangerous inmates are closely controlled and physically restrained, when necessary.

### Conclusion

While some of the treatment and rehabilitative provisions of the proposed legislation may, in and of themselves, be deemed laudable, the failure to adequately consider the safety and well-being of all those working inside and living within our prisons, coupled with the inability of DOCCS employees to appropriately utilize disciplinary measures when necessary if this bill were to be enacted requires NYSCOPBA to strongly oppose this legislation.

For all these reasons, we oppose the enactment of this bill.