

News (/newyorklawjournal/news/)

NY Proposes New Curbs on Use of Solitary Confinement in State Prisons, Local Jails

The state Department of Corrections and Community Supervision predicts the changes will cost the state \$69 million in the 2020 fiscal year budget, and an additional \$35 million in the outyears.

By **Dan M. Clark** (<https://www.law.com/newyorklawjournal/author/profile/Dan-M.-Clark/>) | August 28, 2019 at 05:06 PM

f

in

t

✉

Print (http://www.law.com/newyorklawjournal/2019/08/28/ny-proposes-new-curbs-on-use-of-solitary-confinement-in-state-prisons-local-jails/)



Photo: Shutterstock.com

New rules proposed by New York state officials Wednesday on solitary confinement in state prisons will bar that sanction for pregnant women and individuals with a disability, and phase in a 30-day cap on the practice over the next three years.

The state Department of Corrections and Community Supervision predicts the changes will cost the state \$69 million in the 2020 fiscal year budget, and an additional \$35 million in the out years.

They're the result of a **failed attempt** (<https://www.law.com/newyorklawjournal/2019/06/21/bill-to-curb-solitary-confinement-fails-but-cuomo-set-to-implement-reforms/>) by lawmakers earlier

Trending Stories

- 1 **Houston Lawyer Ronny Kris Charged for Slapping Plaintiff's Attorney Before Deposition** (<https://www.law.com/texas-lawyer-ronny-krist-charged-for-slapping-plaintiffs-attorney-before-deposition/>) TEXAS LAWYER (/TEXASLAWYER/)
- 2 **Yes, It's True. Atticus Finch First-Year at the University of Texas School of Law** (<https://www.law.com/texas-lawyer-atticus-finch-is-a-first-year-at-the-university-of-texas-school-of-law/>) TEXAS LAWYER (/TEXASLAWYER/)
- 3 **Which Firms Keep Midlevel Associates Happiest? The 2019 National Rankings** (<https://www.law.com/american-lawyer-are-midlevel-associates-happiest-the-2019-national-rankings/>) THE AMERICAN LAWYER (/AMERICANLAWYER/)
- 4 **Midlevel Associates Are Feeling the Burn From All That Work** (<https://www.law.com/american-lawyer-associates-are-feeling-the-burn-from-all-that-work/>) THE AMERICAN LAWYER (/AMERICANLAWYER/)

this year to approve a bill before the end of the legislative session in June to reform the state's laws on solitary confinement. Gov. Andrew Cuomo and lawmakers disagreed, at the time, about the cost of the measure.

The Legislature, instead, agreed to drop the legislation and allow DOCCS to promulgate new standards to advance their goal of reducing the use of solitary confinement in New York.

That was two months ago. The new rules, **proposed by DOCCS** (<http://www.doccs.ny.gov/RulesRegs/CCS-35-19-00001.pdf>), were published in the **State Register** (<https://www.dos.ny.gov/info/register/2019/aug28.pdf>) Wednesday and will include a 60-day public comment period before they're finalized.

If promulgated, the rules would set stricter limits on who is eligible for solitary confinement, and under which conditions. They would also create additional types of units that can be used to isolate incarcerated individuals from the general population without sending them to solitary.

Pregnant women, or women within eight weeks of giving birth, would not be eligible for solitary confinement. Incarcerated individuals with a mental or physical disability, or a serious mental illness, would also be barred from the sanction, according to the proposed rule.

Individuals with a serious mental illness would, instead, be housed in mental health treatment units if their isolation is expected to last for more than 30 days, according to the proposed rule. Within one business day of being placed in solitary, those individuals would be assessed by a clinician.

If that individual is not immediately sent to a mental health treatment unit, they'll be diverted to a different type of isolated unit outside of solitary confinement within 14 days of that initial assessment, the proposed rules said.

Solitary confinement would only be used if an incarcerated individual's behavior violates institutional rules and poses an "unreasonable risk" to the health, safety, or security of staff, other inmates, or facility security, the proposed rules said.

That could include, according to the proposed rule, engaging in a sex act, organizing a riot, damaging property at the prison, brandishing a weapon, attempting to escape from the facility, among other violations listed in the rules.

After an incarcerated individual is placed in solitary confinement, their status would have to be reviewed every seven days for the first two months, and at least every 30 days thereafter. During that time, a three-member panel will review whether the individual should remain in isolation.

While in solitary confinement, or another form of isolated housing, incarcerated individuals will not be allowed to be placed on a restricted diet as a form of punishment, or for any reason, according to the rule.

Staff assigned to monitor individuals in solitary confinement will also be trained in interpersonal skills, de-escalation techniques, implicit bias, and other skills applicable to the sanction.

5 **From Glass Walls to Free Snacks, Associates Dish on What They Love, Hate and Fear**
(<https://www.law.com/ame/glass-walls-to-free-snacks-associates-dish-on-what-they-love-hate-and-fear/>)

THE AMERICAN LAWYER
(/AMERICANLAWYER/)

A 30-day cap on the use of solitary confinement will take effect on Oct. 1, 2022. That will be phased in over the next three years, starting with a 90-day cap effective in October 2021. That will be reduced to a 60-day cap in April 2022 until the 30-day cap takes effect the following year, according to the rule.

There's also an opportunity for individuals in solitary confinement to have their sanction reduced. If they're set to spend less than 90 days in solitary confinement, their time in isolation will be reduced seven days for every 30 days without a violation, according to the rule.

If an individual has received a sanction of solitary confinement for more than 90 days, their time will be reduced by 25% after serving half of it if they've had no violations.

The proposed rules would also create so-called step-down units, which would be used to transition individuals from solitary confinement back to the general population. Those units will include out-of-cell programming and a rehabilitation plan.

While those proposed rules would only apply to state prisons, the state Commission on Correction **proposed its own set of rules** (<https://www.dos.ny.gov/info/register/2019/aug28.pdf>) for local jails Wednesday as well.

Those proposed rules would bar the use of solitary confinement in local jails for pregnant women within eight weeks of their due date, and inmates with either a disability or serious mental illness. The rules would also set similar limits on when solitary confinement could be used, and for how long.

Only the chief administrative officer, the most senior-level individual in the facility at the time, would be able to determine whether an incarcerated individual has committed a violation worthy of landing them in solitary. That determination has to be made in writing, the proposed rules said.

Those rules will also be open for public comment over the next two months before it's finalized. The cost of those changes to local governments are expected to be "minimal," according to the proposed rules.

The #HALTsolitary campaign, which advocated this year for the state to end, or change, solitary confinement, said in a statement Wednesday evening that the proposed rules don't go far enough.

"The proposed regulations fall far short of what is needed to truly end the torture of solitary confinement and would leave many vulnerable New Yorkers behind," the campaign said.

They had advocated for further reforms, like an immediate 15-day cap on solitary confinement rather than the phased-in 30-day limit included in the state's proposed rules. Advocates have said they plan to return to Albany to push for those changes during next year's legislative session.

READ MORE: