



## **Memo on the Impact of the Statewide HALT Solitary Act on Efforts to End Solitary Confinement in NYC**

This memo describes the various ways in which the HALT Solitary Confinement Act, recently enacted by New York State and applicable to New York City jails, requires the Board of Correction to strengthen its current proposed restrictive housing rule in order to be in compliance with HALT. It also discusses the other ways in which HALT interfaces with efforts in New York City to go further to fully and meaningfully end solitary confinement in all its forms. For a more detailed summary analysis of what New York City should do to end solitary confinement, please see [this testimony](#) before the City Council and this [Key Flaws and Recommendations document](#) for the New York City Board of Corrections' current proposed rules on solitary confinement.

### **1. HALT Requires New York City to Go Further In Its Proposed Rules**

Politically, morally, legally, and policy-wise, HALT's passage must make the Board of Correction strengthen various aspects of its current proposed restrictive housing rule, including the following.

- a. HALT prohibits segregated confinement beyond 15 consecutive days, including RMAS level one and in some circumstances level two.** HALT defines segregated confinement as confining a person in *any form* of cell confinement for more than 17 hours a day, and prohibits segregated confinement beyond 15 consecutive days. Under the current proposed BOC rule, people in RMAS level one are confined to a cell alone 24 hours a day, with purported "out-of-cell" time meaning only that people are in a slightly larger cell alone, potentially with a person in a separate nearby cell. Similarly, RMAS level two allows at least in some circumstances that people only have out of cell time where they are alone in a cell with other people in a separate nearby cell. As such RMAS level one, and at least in some circumstances RMAS level two, fit the definition of segregated confinement under HALT, and in turn HALT prohibits people being in RMAS level one and RMAS level two in those circumstances for more than a total of 15 consecutive days for the two levels, and generally more than 20 days total in any 60 day period. Currently, the proposed BOC rule allows people to be in these units indefinitely, in contravention of HALT's requirements. Moreover, all of the other protections of HALT should apply to RMAS level one and in at least some circumstances level two, including the criteria for

being sent to those units and the banning of certain groups of people from ever being in those units (see more below).

- b. ***HALT requires congregate out of cell time in alternatives to solitary.***<sup>1</sup> In alternatives to solitary under HALT, people are guaranteed access to at least seven hours of daily out-of-cell *congregate* programs and activities. Under the Board's current proposed rules, there is no requirement that there be congregate out of cell time in RMAS Level 1 or in RMAS Level 2 at least in some circumstances, and indeed it is envisioned that out-of-cell time will consist of being alone in a cage, potentially with another person or persons in a nearby cage(s). "Out-of-cell" time must require access to meaningful congregate interactions with at least several people at a time in the same open space that is conducive for healthy human interaction and engagement.
- c. ***HALT requires congregate programming and activities in alternatives to solitary.*** Under HALT, people generally are required to have access to at least seven hours of out of cell congregate programs, treatment, services, recreation, activities, and/or meals per day. In all RMAS levels, the proposed BOC rule requires five hours of programming per day, but this programming can be in-cell, there is no specified length of time that there has to be out-of-cell programming, and there is no requirement that programming be congregate. To be in compliance with HALT, all people in each of the RMAS levels must generally have at least seven hours of out of cell congregate programs, recreation, and activities, with exceptions in specifically and narrowly defined situations.
- d. ***HALT requires programs comparable to those in general population in alternatives to solitary.*** HALT requires that people in the alternatives have access to programs and types of work assignments comparable to those in general population, as well as additional out-of-cell, trauma-informed therapeutic programming. Again in all of the RMAS levels, the proposed rules do not require any amount of out-of-cell programming nor that programming even be congregate, let alone comparable to general population programming. The rules must change to ensure programming is out of cell, congregate, and comparable to general population programs.
- e. ***HALT prohibits segregated confinement for people most vulnerable to harm.*** Under HALT, all young people 21 and younger, people 55 and older, pregnant women, new mothers, people with mental health needs, and people with physical disabilities are prohibited from placement in segregated confinement. Given that RMAS level one and RMAS level two at least in some circumstances constitute segregated confinement under

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<sup>1</sup> The definition of the alternative Residential Rehabilitation Units (RRUs) under HALT say that the RRUs are units for people determined to require more than 15 days of segregated confinement. Because the Board's current rules and proposed rules do not change the Department of Correction's practice of issuing disciplinary tickets and sentencing people to what would be lengths of segregated confinement time - albeit now served in RMAS - the definition applies to people in RMAS. In other words, everyone in RMAS is someone who was determined to require more than 15 days of segregated confinement, which is why they are in the RMAS. As such, the RMAS have to comply with all of the requirements for RRUs under HALT, including the criteria for getting in, the mechanisms for getting out, and the required out-of-cell congregate programming comparable to general population plus additional programming.

HALT, the proposed rules must expand the very limited designations of people who are excluded from placement in the RMAS. Currently, the rules use a very narrow definition of people with mental health needs by focusing only on people with “Serious Mental Illness”, and do not exclude young people or elderly people at all, nor people with physical disabilities or who have medical conditions. Under HALT, these categories of people should be prohibited from RMAS level one and the most restrictive form of RMAS level two.

- f. ***Legal Representation at Hearings***. Under HALT, people at hearings are permitted to be represented by lawyers, paralegals, law students, or another incarcerated person. As such, under HALT at the very least people have a right to be represented at any proceedings that can result in placement in RMAS level one or level two.

It would be an absurd situation, and now contrary to the law in New York State, if New York City had policies that were worse for people than in jails and prisons across the state under HALT, including in alternatives to solitary. As such, the BOC’s rules should be strengthened to ensure that at a minimum during the hours of out-of-cell time that people in alternatives are to have, that they actually be in congregate settings conducive to interacting with other people in a meaningful way in the same space, and that the programming be required to be out-of-cell and congregate with multiple other people, again in the same space.

## **2. New York City Must Go Further than HALT to End Solitary Completely**

While the HALT Solitary Confinement Act provides for transformational change that will relieve suffering and make prisons, jails, and outside communities across New York State safer, there is a growing recognition that New York City must go farther to ban solitary confinement entirely and lead the way for ultimately ending this practice across the state and country. Solitary confinement is torture, and any length of time in such conditions can cause immense suffering and devastating harm. While the 15 day limit on solitary under international law is more widely known, the UN Special Rapporteur on Torture also called for the prohibition of solitary confinement for people in pretrial detention, who make up the vast majority of people in city jails (with the rest of people in the jails serving sentences for relatively minor misdemeanor charges).

Research and studies show that even a few days in solitary confinement can cause physical and mental harm and increase the risk of death. On the day she passed away, Layleen Polanco spent only a few hours locked in her cell before she tragically and preventably died. At the same time, while there is no evidence that restricting people’s out of cell time improves safety, evidence shows the exact opposite is true and units - like the CAPS program in NYC jails, the former Merle Cooper Program in a NY state prison, and the RSVP program in San Francisco jails - that involve full-days out of cell with pro-social programming achieve far better results and reduce violence. The Mayor and the Board of Correction have promised to fully end solitary

confinement in New York City jails, and they must do so in a real and meaningful way, including by going farther than HALT in the following ways.

- a. ***Fully end solitary confinement and not just solitary beyond 15 days.*** While the HALT Solitary Confinement Act prohibits solitary confinement beyond 15 days for all people and bans solitary confinement for certain categories of people, New York City must completely end solitary confinement - of any length of time - in its jails, as the Mayor and the Board of Correction have promised to do.
- b. ***Fully ending solitary confinement in New York City means 14 hours out of cell per day with meaningful congregate programming and activities.*** While HALT creates alternatives to solitary that provide people with access to at least seven hours out of cell per day, New York City has a general minimum standard that all people - other than those in solitary confinement or other restrictive housing - have at least 14 hours out of cell per day. As such, ending solitary confinement should mean that all people in the city jails have access to at least 14 hours out of cell per day, with access to meaningful congregate programming with other people.
- c. ***People's right to representation should be strengthened, with enforceable notice requirements.*** While HALT provides that people are permitted to have access to attorneys, paralegals, law students, or other incarcerated people at disciplinary hearings, because people in the city jails generally already have attorneys representing them in their pending court cases, people should have access to their own counsel or legal advocate for hearings and placement reviews, and both the person incarcerated and their attorney of record should be provided timely written notice of the reason for proposed placement in restrictive housing. This notice should include specific information regarding the allegations and a failure to provide such notice should constitute a due process violation warranting dismissal.
- d. ***There should be a shorter time limit for getting out of alternative units.*** Particularly in the context of city jails where people spend much shorter times in the jails than in state prisons, there should be shorter time limits for getting out of alternative units. Under HALT, there are various mechanisms to be released from alternatives, with an ultimate outside limit of one year absent extraordinary circumstances. If in fact there are changes made in the RMAS to have meaningful congregate programs and activities in each level, the time limits listed in the proposed rule should be actual hard limits, meaning that people should move through level one in 30, 45, or at most 60 days, and should move through levels two and three after at most 15 days. If the RMAS conditions were to remain similar to what are now proposed, as noted above, there would need to be a maximum 15 day limit for level one and potentially level one and level 2 combined.