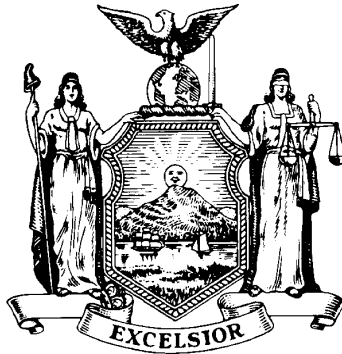


State of New York
Offices of the Inspector General



Review of the First Two Years of HALT
at the New York State
Department of Corrections and Community Supervision

August 2024

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EXECUTIVE SUMMARY

On March 31, 2021, the Humane Alternatives to Long-Term Solitary Confinement Act (HALT) was enacted in New York State to place restrictions on the use, duration, and circumstances of segregated confinement as a punishment for misbehavior in New York State correctional systems and created alternative therapeutic and rehabilitative confinement options. The law was inspired, in part, by the United Nations’s “Nelson Mandela Rules,” which set forth standards for a model system of prison administration and placed primary value on the following basic principle:

*All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.*¹

According to Nelson Mandela, solitary confinement was “the most forbidding aspect of prison life. There was no end and no beginning; there’s only one’s own mind, which can begin to play tricks.”²

Prior to HALT, people held in New York State correctional facilities could be segregated in Special Housing Unit (SHU) cells for up to 23 hours a day over many consecutive days, months, or even years, and offered as little as one hour of daily out-of-cell recreation, which often took place in a caged area attached to the back of their cell. Under HALT, “segregated confinement” was newly defined as confinement of a person in *any* cell for more than 17 hours a day and is generally limited to 15 consecutive days (or 20 days in any 60-day period).

To hold a person in segregated confinement up to 15 consecutive days, the New York State Department of Corrections and Community Supervision (DOCCS) must hold an evidentiary hearing and determine in writing the following three criteria apply:

1. The person committed at least one of seven acts found in Correction Law section 137(6)(k)(ii);
2. The act(s) were so heinous or destructive that placement of the person in general population housing creates a significant risk of imminent serious physical injury to staff or other incarcerated persons, and;

¹ The United Nations Standard Minimum Rules for the Treatment of Prisoners, General Assembly resolution 70/175, annex, Rules of General Application, Basic principles, Rule 1, Adopted December 17, 2015.

² See <https://www.un.org/en-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty>

3. The act(s) were so heinous or destructive that placement of the person in general population housing creates an unreasonable risk to the security of the facility.

HALT also prohibits segregated confinement for vulnerable people, and established Residential Rehabilitation Units (RRUs), which are alternative housing units that provide therapeutic and rehabilitative programs, among many other provisions. RRUs house people transferred from segregated confinement, among others.

Since HALT went into effect on March 31, 2022, several organizations have identified perceived inadequacies in its implementation, including DOCCS's failure to conduct required hearings and provide written justification for holding people in segregated confinement; DOCCS's failure to make individual assessments before handcuffing or shackling incarcerated people; DOCCS's violation of the 15-day cap on segregation; and DOCCS's segregation of people who may arguably be properly classified as "disabled" by the statute. Employing the unique statutory oversight authority and access to DOCCS's internal materials granted to the New York State Inspector General, the review described herein details the Inspector General's investigation of those reported inadequacies, identifies the ways in which DOCCS has already effectuated reforms to address its initial shortcomings in implementation, and makes recommendations for the correction of those which persist.

However, as the Inspector General has found in other unrelated monitoring undertaken of DOCCS, DOCCS's antiquated paper-based recordkeeping systems rendered impossible several important areas of investigation. One such area was investigation into how much vitally important recreation and programming time incarcerated people were offered as required by HALT. Thus, while the Inspector General's review found that DOCCS has and continues to take meaningful steps to comply with HALT, efforts at detailed analysis highlighted the impediments to monitoring a sprawling system with dozens of facilities, which employ divergent and often deficient recordkeeping processes. To that end, and in addition to the recommendations specifically designed to increase DOCCS's compliance with HALT, the Inspector General recommends that DOCCS undertake the process of developing holistic electronic recordkeeping to enable increased oversight and transparency of its compliance with this and other relevant laws.

BACKGROUND

The March 2021 Legislation – Humane Alternatives to Long-Term Solitary Confinement Act (HALT)

In March 2021, the New York State legislature passed the Humane Alternatives to Long-Term Solitary Confinement Act (HALT, S2836/A2277), which amended Correction Law to limit the time a person can spend in segregated confinement, end segregated confinement for vulnerable people, restrict criteria resulting in such confinement, improve conditions of confinement, and create alternative therapeutic and rehabilitative confinement options. The bill, intended to make practices in New York's prisons and jails more humane, was premised on studies that found lengthy and sustained periods of segregated confinement can be tantamount to torture; cause deep and permanent harm, especially to vulnerable people; and lead to further noncompliance with prison rules. On April 1, 2021, then Governor Andrew Cuomo signed HALT into law. It became effective on March 31, 2022.

In summary, HALT:

- Revises the definition of segregated confinement to include *any form* of cell confinement where a person is held more than 17 hours a day.
- Initially limits time spent in segregated confinement to three consecutive days (or six total days in any 30-day period) if an evidentiary hearing determines a person violated DOCCS rules which allow for a penalty of segregated confinement.
- Requires that segregated confinement up to 15 consecutive days be supported by an evidentiary hearing that determines by written decision the following three criteria found in Correction Law section 137(6)(k)(ii) apply:
 1. The person committed one of the following seven acts:
 - a) Causing or attempting serious physical injury or death, or making an imminent threat of the same if the person has a history of causing the same and there is a strong likelihood the person will carry out such a threat;
 - b) Compelling or attempting to compel another by force or threat of force to engage in a sexual act;
 - c) Extorting another by force or threat of force for property or money;
 - d) Coercing another by force or threat of force to violate any rule;
 - e) Leading, organizing, inciting, or attempting to cause a riot, insurrection, or other similarly serious disturbance that results in the taking of a hostage, major property damage, or physical harm to another;

- f) Procuring a deadly weapon or other dangerous contraband that poses a serious threat to facility security; or
 - g) Escaping, attempting to escape, or facilitating an escape from a facility or outside program.
2. The DOCCS commissioner (or designee) determines in writing that the acts were so heinous or destructive that to place the person in general population creates a significant risk of imminent serious physical injury to staff or other incarcerated persons, and,
 3. The DOCCS commissioner (or designee) determines in writing that the acts were so heinous or destructive that to place the person in general population creates an unreasonable risk to the security of the facility.
- Requires the offering of four hours out-of-cell time daily while in segregated confinement.
 - Caps the use of segregated confinement at 15 consecutive days (or 20 total days in any 60-day period), and confinement in RRUs at one year, unless specific acts are committed while in such confinement.³
 - Prohibits placement of people in segregated confinement prior to a disciplinary hearing unless a reasonable belief exists that their misbehavior fits the aforementioned criteria found in Correction Law section 137(6)(k)(ii).⁴
 - Prohibits any segregated confinement of “special populations,”⁵ which includes people who are 21 or younger and those 55 and older; people who are pregnant, up to eight weeks postpartum, or caring for a child in a facility; and those with a “disability” as defined in Executive Law.⁶
 - Prohibits the placement of people in segregated confinement for “Protective Custody” purposes.⁷

³ Correction Law § 137(6)(j)(vi) describes the requirements for the extension of confinement in SHU or an RRU including a new act of certain misbehavior or a determination that the person poses an “extraordinary and unacceptable” risk of imminent harm to safety and security. See also Correction Law § 137(6)(m)(ii) and (iii) for other RRU discharge criteria.

⁴ Correction Law § 137(6)(l).

⁵ Per HALT, members of a special population may be placed in keeplock for up to two days prior to their disciplinary hearing if certain specified criteria are met. Keeplock is defined as the confinement of a person in a general population cell or dorm, or separate keeplock unit, pending a disciplinary hearing. DOCCS discontinued the use of keeplock prior to HALT becoming effective.

⁶ Executive Law defines the term “disability” as “(a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term shall be limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.” See, New York State Executive Law § 292(21).

⁷ Protective custody, which can be voluntary or involuntary, includes alternative confinement for those people who are potential victims or witnesses, lack the ability to live in the general population, or are at high risk for sexual victimization.

- Mandates the implementation of alternative rehabilitative measures including the creation of RRUs, which are separate housing units used for therapy, treatment, and rehabilitative programming.
- Provides for the assessment of people in RRUs and the creation of Individual Rehabilitation Plans (IRPs), and the treatment of people who are seriously mentally ill (SMI) and their placement in Residential Mental Health Treatment Units (RMHTUs).⁸
- Prohibits the use of restraints on people who are participating in out-of-cell activities in RRUs unless an “individual assessment” is made that determines an incarcerated person poses a “significant and unreasonable” safety and security risk.⁹
- Mandates the offering of additional daily out-of-cell time and rehabilitative programming in congregate settings totaling seven hours for people in RRUs (unless “exceptional circumstances” exist that present a safety and security risk).
- Prohibits the denial of services, treatment, basic needs (food, clothing, bedding, etc.), and personal belongings, and the use of special diets as punishment, unless allowing such things would pose a safety or security risk.
- Mandates that staff and supervisors assigned to segregated housing units and RRUs, as well as hearing officers, undergo specialized training.
- Requires DOCCS to publish on its website certain data on segregated and RRU confinements in monthly, semi-annual, and annual reports.
- Requires that the New York State Justice Center for the Protection of People With Special Needs (Justice Center) assess DOCCS’s compliance with HALT and report annually, and that the New York State Commission of Correction do the same for local correctional facilities including the New York City Department of Correction.

COMPLAINT

Following the effective date of HALT, the Inspector General received multiple complaints from incarcerated individuals’ rights groups and incarcerated people and their loved ones alleging that DOCCS had violated various HALT provisions by:

- Disregarding statutory provisions¹⁰ requiring a written determination pursuant to an evidentiary hearing that the person committed certain “heinous or destructive” acts that to place them in general population would create a “significant risk of imminent serious physical injury” to staff or other incarcerated persons and an “unreasonable risk” to facility security to exceed

⁸ Correction Law § 2(21) defines Residential Mental Health Treatment Units (RMHTU) as operated by DOCCS and the New York State Office of Mental Health and including Residential Mental Health Units (RMHUs), Behavioral Health Units (BHUs), Therapeutic Behavioral Units (TBUs), and Intensive and Transitional Intermediate Care Programs (ICPs).

⁹ Correction Law § 137(6)(j)(vii).

¹⁰ New York State Correction Law § 137(6)(k)(i) and (ii).

three days of segregated confinement by asserting that any “Tier III” violation satisfies the requirements.¹¹

- Placing people in segregated confinement for longer than the statutory cap of 15 days, or 20 days in any 60-day period.¹²
- Violating provisions involving RRUs including requiring that all people participating in out-of-cell activities be restrained, among others.
- Refusing to apply RRU-like conditions and privileges to people held in certain alternative programs and units.
- Confining people with disabilities in segregated confinement contrary to HALT.

METHODOLOGY

The findings in the Inspector General’s review were based on:

- Interviews of 20 DOCCS employees including then DOCCS acting Commissioner Daniel Martuscello III¹³ and other executive/managerial staff involved in HALT implementation, staff training, and tracking the movement and confinement of incarcerated people in SHUs, RRUs, and other units;
- Interviews of three New York State Office of Mental Health (OMH) employees including the OMH deputy director of correction-based operations;
- Interviews of incarcerated people during site visits to three correctional facilities;
- A comprehensive analysis of available data maintained by DOCCS on incarcerated populations, discipline, sanctions imposed and served, and SHU and RRU confinements;
- Review of HALT provisions, DOCCS directives and memoranda, housing logbooks and out-of-cell spreadsheets, audit reports, and HALT-mandated public reports;
- Review of reports issued by the Correctional Association of New York (CANY) and the Justice Center, among other entities, on DOCCS’s implementation of HALT; and
- A survey sent by the Inspector General to all DOCCS facilities with SHU or RRU units, which required facility superintendents to report on compliance with HALT-mandated procedures.

¹¹ Prisoners’ Legal Services of New York argues that HALT’s confinement criteria do not match that of Tier III violations.

¹² Correction Law § 137(6)(i).

¹³ On May 23, 2024, Martuscello was confirmed by the New York State Legislature. The former DOCCS commissioner, Anthony Annucci, retired in August 2023.

FACTUAL FINDINGS

DOCCS Established Residential Rehabilitation Units

Prior to the HALT legislation, DOCCS policy allowed for the confinement of people in SHU cells for periods up to 23 hours a day. In some instances, only one hour of daily out-of-cell recreation was offered to people confined in SHU cells, which if accepted, often took place in a caged area adjoining the back of the cell. Under HALT, “segregated confinement” is newly defined as confinement in a cell for periods of more than 17 hours a day, and which now must be limited to 15 consecutive days (or 20 days in any 60-day period).¹⁴ Also per HALT, people in segregated confinement are to be offered at least four hours out-of-cell programming each day including at least one hour of daily out-of-cell recreation.

Importantly, there is a distinction between confinement *location*, such as SHU and RRU, which indicates a unit of a prison, and confinement *status*, such as segregated confinement, which characterizes a particular set of restrictions placed on a person in any housing location. A person is deemed to be in segregated confinement irrespective of the cell’s location if that person is held for more than 17 hours each day. Accordingly, although DOCCS’s practice is that those sanctioned to segregated confinement be physically housed in SHU, if a person held in a SHU cell is offered at least seven hours out-of-cell daily, they are not considered to be in segregated confinement. Conversely, if a person housed in general population is confined in their cell for more than 17 hours in a day, they are considered to be in segregated confinement.

Shortly after the implementation of HALT, DOCCS issued rules and protocols for new housing units known as RRUs.¹⁵ RRUs were created to provide therapy, treatment, and rehabilitative programming for people sanctioned to more than 15 days of segregated confinement.¹⁶ These units house people transferred from SHU, “special populations,” those needing protective custody, and people in “administrative segregation.”¹⁷ Because people confined in RRUs are required to be offered at least seven hours out of their cells each day, this

¹⁴ For another violent felony act included in Correction Law section 137(6)(k)(ii) occurring within the 60-day period of segregated confinement, up to an additional 15 days of segregated confinement may be added for each subsequent incident.

¹⁵ DOCCS Directive 4933D (latest iteration January 16, 2024).

¹⁶ A person may receive more than 15 days of confinement as a disposition. Per policy, no more than 15 days of that disposition is to be served in SHU, with the remainder to be served in an RRU or another SHU-alternative unit.

¹⁷ DOCCS utilizes administrative segregation for the involuntary removal of a person from general confinement after a determination that they pose “an unreasonable and demonstrable risk to the safety and security of staff, incarcerated individuals, the facility, or would present an unreasonable risk of escape.” While in administrative segregation, a person cannot be confined for more than 17 hours each day.

arrangement is not considered segregated confinement under HALT. Currently, DOCCS operates RRUs at 18 facilities.

Per DOCCS's RRU directive, upon admission to an RRU, a person is assigned to a cell and receives a medical and mental health evaluation and suicide screening. DOCCS and OMH staff are also required to complete assessments and develop an IRP with that person. People housed in an RRU are permitted periodic telephone calls; laundry service; showers; and access to a commissary, law library, and legal supplies/services, among other privileges. Additionally, DOCCS provides them with daily access to tablets, which can be used for limited purposes including certain telephone calls, educational materials, videos, music, and games. They are also permitted their personal property.¹⁸ Incentives (such as additional commissary, books, magazines, hygiene products, haircuts, time cuts,¹⁹ etc.) may be offered or recommended for positive behavior and participation in programs.

The directive further requires that people in an RRU be offered at least seven hours out-of-cell daily, including at least six hours of out-of-cell congregate "programming, work assignments, services, treatment, recreation, activities and/or meals," and one hour of congregate out-of-cell recreation.²⁰ Program components may include cognitive behavioral treatment, emotional regulation techniques, wellness, recreation, communication, and other "personal growth" topics. People 21 and younger are also offered academic programs. Each facility offers different programming packages from an approved list of electronic resources. Program Management Teams (PMTs) are required to assess each RRU participant's progress towards their IRP goals at least every 60 days.²¹

With respect to restraints, this directive states, "Restraints shall not be used when [people] are participating in out of cell activities within an RRU" unless the incarcerated person requests to wear restraints or "an individual assessment is made that restraints are required

¹⁸ If DOCCS determines that a person's access to their personal property poses an existing unreasonable risk to the safety of other incarcerated people or staff on the unit, such access may be denied. This individualized assessment must be documented in a Deprivation Order.

¹⁹ Time cuts are reductions in disciplinary sentences.

²⁰ Programming offered to people held in segregated confinement and RRUs includes programming led by therapeutic staff five days per week, except on recognized state legal holidays. Per HALT, "All other out-of-cell time may include peer-led programs, time in a day room or out-of-cell recreation area with other people, congregate meals, volunteer programs, or other congregate activities."

²¹ Program Management Teams are also required to conduct a status review of each RRU participant every seven days during the person's first two months in RRU and at least every 30 days thereafter.

because of a significant and unreasonable risk to the safety and security of staff or other incarcerated individuals.” These assessments must be documented in a restraint order form.²²

People must be discharged from an RRU within one year²³ of their admission to the unit or within 60 days of their scheduled release to the community unless they commit certain other violations²⁴ while in the unit and pose a significant and unreasonable risk to others.²⁵ When a person successfully completes the goals of their IRP, they must be released from RRU and the sanctions from their original wrongdoing dismissed.

DOCCS Changed Policy to Only Allow Segregated Confinement for the Most Serious Offenses (Tier III)

Although HALT allows DOCCS to place a person in segregated confinement for up to three consecutive days (or six days in any 30-day period) if an evidentiary hearing determines that the person violated DOCCS rules which permit a penalty of segregated confinement, DOCCS does not apply this provision. According to the DOCCS deputy commissioner for correctional facilities, holding a person in segregated confinement for up to three days was inefficient as it would require significant resources to move a person into SHU for such a short duration.

Instead, DOCCS modified its disciplinary guidelines and sanctions to meet Correction Law section 137(6)(k)(ii) criteria so that only people who committed a Tier III offense would be eligible for segregated confinement.²⁶ In practice, if a person is charged with a Tier III violation, DOCCS places that person in segregated confinement for up to five days prior to any disciplinary hearing taking place, as allowed under HALT. If a hearing finds that the person’s actions violated the law’s criteria, the person may be held in segregated confinement for no more than 15 consecutive days, despite receiving a sanction in excess of this.

²² Form 4933DA, RRU Individual Assessment Restraint Order (April 2022), see [Appendix 1](#).

²³ The RRU directive states that people may remain in an RRU beyond the one-year cap if they commit a specified offense, are determined to pose a significant and unreasonable risk to the facility, and the DOCCS and OMH commissioners approve this determination. Additionally, in “extraordinary circumstances,” a person may remain in an RRU beyond regular time limits if both commissioners determine that person poses an extraordinary and unacceptable risk of imminent harm to others.

²⁴ Correction Law § 137(6)(k)(ii).

²⁵ Per the RRU directive, people who commit certain acts of wrongdoing while in an RRU and pose a significant security risk may have their out-of-cell time reduced to at least four hours each day (two hours programming and two hours of congregation recreation) for a period up to 15 days. Such action must be documented in a Report of Exceptional Circumstances.

²⁶ See [Appendix 2](#), HALT Law – Impact on Disciplinary Process (March 29, 2022).

THE INSPECTOR GENERAL'S DETERMINATIONS

DOCCS's Recordkeeping Practices Hinder Oversight of HALT Compliance

DOCCS Was Unable to Identify All Confinements Since HALT Became Effective

At the outset of this review, the Inspector General requested DOCCS provide data on *all* people held in segregated confinement and RRUs since the effective date of HALT, March 31, 2022. However, and as has happened in a variety of ways in past monitoring efforts by the Inspector General, DOCCS advised it was unable to provide this data due to limitations of its systems.

DOCCS maintains and tracks data related to the incarcerated population across dozens of electronic databases. DOCCS accesses these various databases through a central application, which allows it to run reports on the population's histories, statuses, and locations. However, due to their antiquated nature, these databases do not communicate with each other, which requires manual review, cross-referencing, and verification of data to perform meaningful analysis.

Moreover, DOCCS's data does not identify a person's confinement status, such as segregated confinement. Instead, DOCCS advised it is only able to provide data on the location of confinements—SHU or RRU. DOCCS further advised it was unable to provide complete data on all historical confinements since HALT became effective because no mechanism exists for extracting such historical information.²⁷ Rather, DOCCS generates monthly spreadsheets listing all SHU and RRU confinements active at any point during the prior two months.

The Inspector General intended to combine these monthly spreadsheets provided by DOCCS to create a complete list of all SHU and RRU confinements from the effective date of HALT. However, DOCCS could not provide spreadsheets for the period March 31, 2022, through October 31, 2022, because the contents of those files were no longer available as they had been overwritten. DOCCS advised that as of November 1, 2022, it no longer overwrites these spreadsheets. As earlier data was not available, the Inspector General's analysis was limited to SHU and RRU confinements active between November 1, 2022, through January 31, 2024, when the period of review ended.

²⁷ The New York State Office of Information Technology Services hosts DOCCS's IT systems.

DOCCS Was Unable to Readily Identify the Underlying Misbehavior that Led to Disciplinary Confinement

To identify whether DOCCS maintained the required justification for holding people in segregated confinement for disciplinary infractions, the Inspector General attempted to use data maintained by DOCCS to support such confinement. DOCCS maintains data on incidents involving misbehavior by incarcerated people that tracks, among other things, the incident date and location, date of the disciplinary hearing, rules allegedly violated, disposition, and any sanctions. In a separate data set, DOCCS tracks the housing locations (e.g., SHU, RRU) where people serve disciplinary confinements and the duration of such confinements. However, these two sets of data are not linked.

Consequently, in an attempt to verify that each confinement had an underlying misbehavior report and the misbehavior justified the confinement, the Inspector General had to manually cross-reference the two data sets. However, this relied on various assumptions and limited the scope of the review, thus hindering the Inspector General's ability to verify whether *all* people held in segregated confinement committed an offense that warranted such confinement.²⁸

DOCCS Was Unable to Confirm People Were Offered the Appropriate Out-of-Cell Time

Minimizing the number of consecutive days and hours a person must spend in a cell is a crucial part of the HALT legislation, as one of the driving forces behind its enactment is the premise that solitary confinement is inhumane.

Under HALT, persons held in segregated confinement must be offered at least four hours daily out-of-cell programming including one hour of recreation, while those held in an RRU are to be offered at least seven hours of daily out-of-cell time including six hours of congregate programming, services, treatment, recreation, activities and/or meals and one additional hour of out-of-cell congregate recreation. Given this mandate, it is incumbent on DOCCS to track whether people held in the various forms of confinement, including segregated confinement, are offered the appropriate amount of out-of-cell programming and recreation.

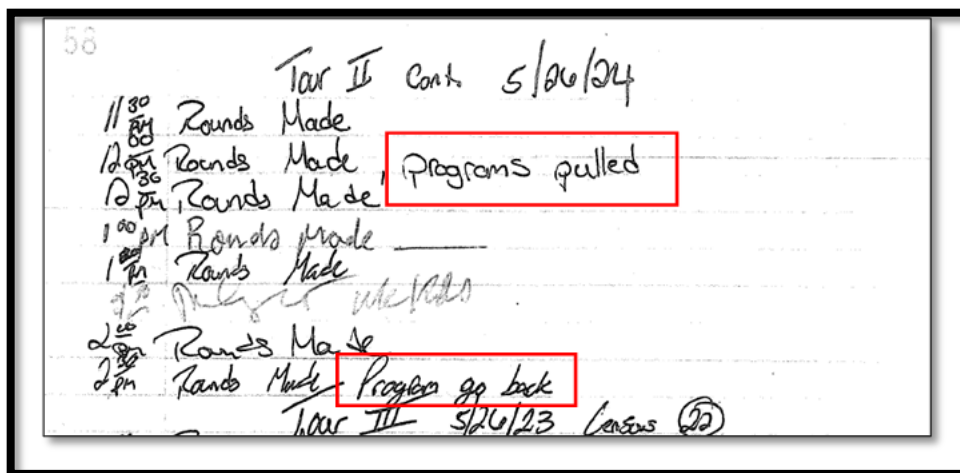
However, when the Inspector General attempted to verify whether the appropriate amount of out-of-cell time was offered to people, significant barriers were encountered. Since

²⁸ For example, because of the data limitations, the Inspector General's review was necessarily limited to instances in which a person's confinement began on the same date the person had a reported incident of misbehavior and assumed, given that fact, the misbehavior was the reason for the confinement. Using this methodology, the Inspector General could not confirm the underlying misbehavior for approximately 14 percent of confinements.

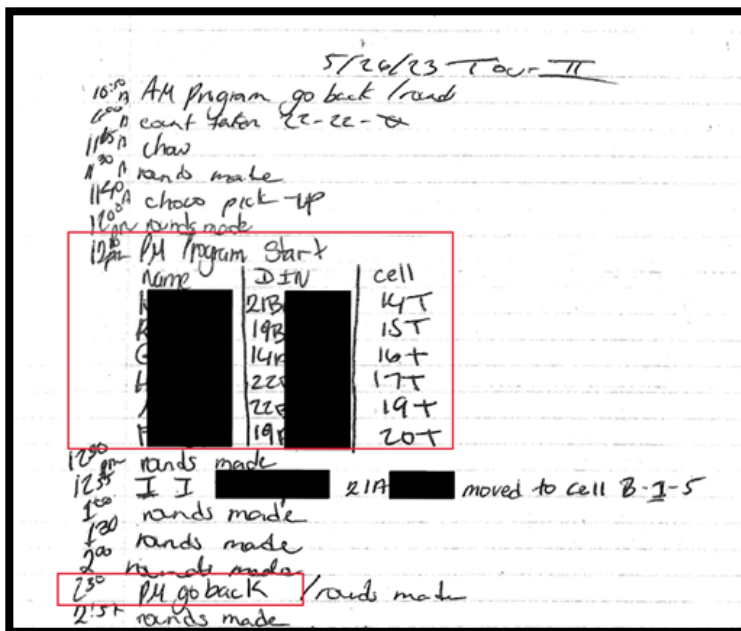
DOCCS has not modernized many of its archaic pen and paper recordkeeping practices, investigators were required to conduct onerous examinations of various handwritten paper logs and files maintained in a nonuniform manner within each facility and in archives. These logs are used by DOCCS to record all activities and movements within a designated area.

Based on log entries reviewed during site visits to correctional facilities, the Inspector General found no consistent methodology for logging offers of out-of-cell programming and/or recreation, whether such offers were accepted or refused, or for recording the length of time spent out of cell. For example, paper logs maintained at Fishkill Correctional Facility, in some instances, listed each person who was offered out-of-cell programming or recreation, whether they attended, and if so, the duration. On the other hand, some paper logs maintained at Greene Correctional Facility simply noted “programs pulled,” an entry for a group of people held in RRU, which does not reveal if each person in that group was offered programming/recreation, who accepted or refused it, and if accepted, the length of time spent out of cell.²⁹

Excerpts from Housing Logs at Greene Correctional Facility



²⁹ Greene Correctional Facility advised that it utilizes an additional log in its program area on which the names of people who attended programming as well as their arrival and departure times are recorded. However, this program area log does not capture all people who have been offered time out of cell but only those who have accepted programming.



In an October 24, 2022 memorandum, DOCCS instructed facilities to offer an additional three hours out-of-cell time to people held in SHU beyond 15 consecutive days and to track this offer on a weekly spreadsheet. The Inspector General reviewed these spreadsheets for a sample of 22 people and found out-of-cell time was offered approximately 97 percent of the time.³⁰ While this is an improvement in the tracking of certain people, the spreadsheets are not used to track out-of-cell time for *all* people but only those held in SHU longer than 15 days. And like the other paper logs and records maintained by DOCCS, the information contained within is cumbersome to access and difficult to analyze systemwide.

Given DOCCS's deficient recordkeeping, the Inspector General attempted to verify whether DOCCS was offering the appropriate amount of out-of-cell time in other ways. First, the Inspector General sent a survey to the superintendent of each correctional facility that operates a SHU and/or RRU and asked that they self-report on compliance with HALT provisions including the offering of out-of-cell opportunities. In their responses, all facility superintendents (or their designees) reported offering the required number of hours of out-of-cell time to people held in SHU and RRU.

The Inspector General also reviewed numerous SHU and RRU inspection reports issued by the DOCCS Special Housing and Incarcerated Individual Disciplinary Programs Unit in 2022 and 2023. These inspections, which evaluate compliance in a number of areas systemwide (e.g.,

³⁰ The Inspector General selected people from among those with the longest SHU confinements active between November 2022 and February 2023.

supervisory rounds, restraints, tablets, etc.), have been updated to include the review of records relevant to HALT, including unit and program logs, to determine if the appropriate amount of out-of-cell time is being offered. As relevant to this review, the inspections found issues of non-compliance at eight facilities that failed to record program participation, start/end times, and refusals. The inspections reveal that DOCCS recognizes the necessity to accurately track and document this information to ensure compliance with HALT.

The Inspector General similarly reviewed reports issued by the Justice Center, which found that 33 percent of those people surveyed stated they were not offered the appropriate amount of out-of-cell programming, and approximately 20 percent advised they were not always offered daily out-of-cell recreation.³¹ The Justice Center also separately conducted interviews with incarcerated people who consistently reported that they were not offered out-of-cell programming on a daily basis. In a discussion with the Inspector General, the Justice Center advised that it was “almost impossible” to determine out-of-cell time from its review of facility logs and programming schedules. Likewise, CANY, in its interviews of incarcerated people, also reported some people claimed they were not offered all daily HALT-mandated out-of-cell programming opportunities. Specifically, in CANY’s March 2023 report, it noted that “many incarcerated individuals in different RRUs reported that staff had denied them the ability to participate in programs” and some RRUs provided “as little as three hours out-of-cell time.”³² The Inspector General also interviewed 14 incarcerated people at three facilities who had been held in SHU or RRU. All claimed they were offered out-of-cell programming and recreation opportunities.

Given the inconsistencies and inadequacies in DOCCS records, and the conflicting information reported by other sources, the Inspector General could not always determine whether the incarcerated population was offered the appropriate amount of out-of-cell time.³³ In addition, DOCCS’s pen and paper recordkeeping practices hinder DOCCS’s ability to readily access complete records on people held in its 44 facilities, identify systemic trends, and transparently and accurately report to the public and oversight entities on the circumstances of the more than

³¹ The Justice Center for the Protection of People With Special Needs, Programming and Recreation Survey Analysis 2023 (January 19, 2024).

³² The Correctional Association of New York, Assessing the Early Months of Implementation of the HALT Solitary Confinement Law in New York State Prison (March 2023).

³³ Prisoners’ Legal Services of New York and other incarcerated individuals’ rights groups lodged similar complaints about people in other alternative units/programs (Step Down Program, Administrative Segregation, Protective Custody, RMHTUs, etc.). As movements in these units/programs is tracked in the same antiquated manner, the Inspector General’s efforts to comprehensively investigate these claims were similarly thwarted.

32,000 people in its custody. As such and in furtherance of true transparency, the modernization of DOCCS recordkeeping systems is imperative.

DOCCS Reports on Confinement Location (SHU) Not Status (Segregated Confinement)

Pursuant to HALT, DOCCS must publish monthly reports on its website, along with semi-annual and annual cumulative reports listing the total number of people in segregated confinement and RRUs on the first day of each month. In such reports, DOCCS reports on the number of people *held in SHU cells* under the heading Segregated Confinement. However, placement in a SHU cell does not necessarily equate to segregated confinement, which is defined as confinement for more than 17 hours a day in *any cell*. According to DOCCS, since October 24, 2022, all people held in SHU beyond 15 days are offered three hours of additional time out of cell, thereby removing them from segregated confinement.

In presenting statistics in this fashion, DOCCS did not clearly distinguish between status (segregated confinement) and location (SHU) and thereby overstated the number of people held in segregated confinement. Indeed, in an excerpt from its July 2023 report (pictured below), DOCCS reported that 189 people were held in segregated confinement for more than 15 consecutive days. In fact, even though these people were housed in SHU cells more than 15 days, because they were offered three additional hours out-of-cell time after the 15th day, as required by DOCCS policy, they were no longer considered to be in segregated confinement. And although monthly reports include a footnote that attempts to explain this fact to a reader, it fails to fully explain the significance of offering the additional out-of-cell time to this SHU-housed population.

Table 3

NYS Department of Corrections and Community Supervision BOB July 1, 2023 Individuals Housed in Segregated Confinement or RRU BOB on July 1, 2023		
	Segregated Confinement***	RRU
1-7 Days	113	196
8-15 Days	139	135
16-20 Days	108	117
21-30 Days	76	253
31-90 Days	5	699
91-180 Days	0	334
181+ Days	0	133
Total	441	1,867
Average LOS	13.5	68.3
Median LOS	14.0	47.0
Maximum LOS	32.0	373.0
Individuals with over 15 days	189	1,536

***Effective October 24, 2022, individuals who are incarcerated in a SHU cell for more than 15 days are offered three additional hours of outdoor recreation for a total of seven hours out of cell time daily.

The significance of this issue has lessened over time, as DOCCS is now largely in compliance with HALT’s 15-day cap on segregated confinement. Thus, those people held in SHU cells are, for the most part, in “segregated confinement.” Nonetheless, the Inspector General recommends that DOCCS increase transparency in its public reports by providing clear statistics on the number of people held in segregated confinement.

DOCCS Lacked HALT-Mandated Justification for Holding Some People in Segregated Confinement

To place a person in segregated confinement for up to 15 days, HALT requires that DOCCS have an evidentiary hearing that determines the person committed the aforementioned three criteria specified in Correction Law section 137(6)(k)(ii). DOCCS is required to document the justification for this determination in writing. However, the Inspector General reviewed disciplinary files for a sample of Tier III incidents involving people placed in segregated confinement and found that many lacked sufficient written justification for such confinement.

Specifically, a review of 119 incidents occurring between September 2022 and December 2022 found that approximately 24 percent (29 incidents) lacked sufficient written justification that the person committed one of the seven categories of offenses. For example:

- 16 of these disciplinary matters involved interference with a DOCCS employee. In one such example, in November 2022, a person incarcerated at Attica Correctional Facility was directed multiple times by a correction officer to return to their cell but refused to do so. After being found guilty of interference with a DOCCS employee, a Tier III violation, the person was sanctioned to and served 14 days in segregated confinement. While these actions pose a risk to the facility, they do not meet HALT criteria. Notably, the disciplinary file includes paperwork written by the hearing officer that, “I find that the misbehavior does not constitute a k(ii) offense.” This note was crossed out.
- Nine of these disciplinary matters involved lewd conduct. In one such example, in September 2022, a person incarcerated at Clinton Correctional Facility stuck their arms through their cell bars and, while holding a mirror to observe an officer, began to masturbate. After being found guilty of lewd conduct, a Tier III violation, they were held in SHU for 40 days, the first 25 of which were in segregated confinement. While HALT allows segregated confinement if a person compels or attempts to compel another person, by force or threat of force, to engage in a sexual act, there was no evidence in DOCCS’s records that this person used or threatened force to compel the officer to engage in such an act.
- Two disciplinary matters involved stalking. In one example, in December 2022 at Wyoming Correctional Facility, an incarcerated person placed a Christmas card on the desk of a civilian working at a facility shop. The person, who was not authorized to be in this area of the facility, had no previous history of such conduct—which was determined by DOCCS to be a mitigating factor in their

disposition. The person's actions caused the civilian employee to fear for their safety. A hearing officer found the person guilty of a Tier III charge of stalking, for which the person served 21 days in SHU. While these actions pose a risk to the facility, they do not meet HALT criteria, which would allow for segregated confinement.

DOCCS Corrective Action - The Confinement Justification Form

On June 26, 2023, then acting Commissioner Martuscello took action to aid staff in complying with HALT with his issuance of a new form, the Confinement Justification form.³⁴ In a memorandum to superintendents accompanying the form, Martuscello directed review officers to complete this form when reviewing Misbehavior Reports for Tier III violations. As noted above, to hold a person in segregated confinement, the three criteria found in Correction Law section 137(6)(k)(ii) must apply. For the first criteria, the form requires the review officer to identify which of the seven offenses found in Correction Law section 137(6)(k)(ii)(A-G) were committed by the incarcerated person. The form also directs review officers to assess and document the second and third criteria (the acts are so heinous or destructive that placing the person in general population would create a "significant risk of imminent serious physical injury" and "unreasonable risk to the security of the facility") were met to justify segregated confinement.

Following the hearing, the hearing officer must indicate if they agree with the review officer's determination that segregated confinement is justified. This decision must also be approved by the facility superintendent. If any reviewer determines that the conduct does not meet the HALT criteria, the person is to be released from segregated confinement.

Continuing its review from above, the Inspector General examined a second set of disciplinary files for a sample of Tier III incidents occurring after the new form was implemented by DOCCS. This review of 100 incidents occurring between June 2023 and January 2024 found that nearly one in five (17 incidents) lacked sufficient written justification that the person committed one of the seven categories of offenses.³⁵ Fourteen of these disciplinary matters involved threats of violence towards a DOCCS employee.

In one such example, in June 2023, a person incarcerated at Bare Hill Correctional Facility refused to depart at the conclusion of their program. After a DOCCS staffer repeatedly

³⁴ See [Appendix 3](#), Confinement Justification Record (June 26, 2023). The initial confinement justification form was revised in September 2023. See [Appendix 4](#).

³⁵ Of note, nine of these disciplinary files did not include a Confinement Justification form.

ordered the person to return to their cell, the person responded with expletives, stating, “I’m not going anywhere . . . I’m going to kill the first Mother [F*****] I see.” After stating that he feared for his life, he pled guilty to all charges including making a threat, a Tier III offense. At a hearing, the person was found guilty of making threats and sanctioned to 45 days of confinement, of which 15 were spent in segregated confinement. Although HALT requires that threats be supported by a history of causing serious physical injury or death, the disciplinary file indicated no such history. Indeed, the hearing officer wrote, “Past charges do not indicate that this individual has like behaviors.”

DOCCS Placed Certain People on OMH’s Caseload in Segregated Confinement Without a Required OMH Determination

When a person is charged with threatening another person with serious physical injury or death, Correction Law section 137(6)(k)(ii)(A) authorizes DOCCS to place that person in segregated confinement for up to 15 days only if all the following criteria have been met:

- An evidentiary hearing finds that the person threatened another person with imminent serious physical injury or death;
- The person had a history of causing such physical injury or death;
- The DOCCS commissioner (or designee) reasonably determines that there is a strong likelihood the person will carry out such threat;
- The DOCCS commissioner (or designee) finds the threat(s) were “so heinous or destructive that placement of the individual in general population housing creates a significant risk of imminent serious physical injury to staff or other incarcerated persons, and creates an unreasonable risk to the security of the facility;”

In instances where the person is on the OMH caseload³⁶ or appears to require psychiatric attention, Correction Law further requires that the OMH commissioner (or designee) reasonably determine that there is a strong likelihood the person will carry out such threat. To effectuate this, DOCCS’s Confinement Justification form includes a section instructing hearing officers, prior to sanctioning a person to segregated confinement for making threats, to seek this OMH determination. The form further notes that absent such OMH determination, the person shall not be confined solely on the basis of threats.

However, during the review of the aforementioned sample of disciplinary files for incidents resulting in segregated confinement, the Inspector General found that four out of eight

³⁶ According to OMH’s deputy director of correction-based operations, OMH Levels 1 through 4 require mental health services and are considered on “OMH’s caseload.”

disciplinary files involving threat violations lacked documentation reflecting that OMH determined there was a strong likelihood the person would carry out the threat.

For example, in October 2023, a person held at Franklin Correctional Facility was found guilty of making a violent threat. After advising a sergeant that other incarcerated people had “looked up my crime and told me I couldn’t live [in his current housing unit] anymore,” he stated that he was going to assault the first incarcerated person with whom he came into contact. Despite this person being on OMH’s caseload (OMH Level 3), the DOCCS disciplinary file did not contain any record reflecting a determination by OMH of a strong likelihood the person would carry out the threat. The person was sentenced to a 60-day confinement penalty of which 15 days were served in segregated confinement.

In another example, in July 2023 at Auburn Correctional Facility, an incarcerated person stated to an officer, “That fat f*** is gonna get it, something is gonna happen.” Then he stated to staff, “When I get back to my cell, they better watch out. I’ll throw on them. . . I have HIV.” DOCCS consulted OMH, as the person was an OMH Level 1, which determined that “there is not a strong likelihood that the individual will carry out the threat.” Despite this determination and contrary to HALT, DOCCS still held the person in segregated confinement for 15 days of their 45-day sanction.

Differing Interpretations of Members of a Special Population with a Mental Disability

HALT mandates that members of a special population—defined in Correction Law as people who are 21 or younger; 55 or older; with a disability, as defined in the Executive Law; or pregnant, postpartum, or caring for a child in a correctional facility³⁷—are not to be placed in segregated confinement for any length of time.³⁸ Executive Law defines disability as a physical, mental, or medical impairment resulting from anatomical, physiological, genetic, or neurological conditions, which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.³⁹

³⁷ Correction Law § 2(33).

³⁸ HALT does allow members of a special population to be placed in keeplock for up to 48 hours pending a disciplinary hearing and transfer to an RRU or RMHTU, but DOCCS discontinued the use of keeplock prior to HALT’s effective date. According to the deputy commissioner for correctional facilities, this action was taken because DOCCS “felt keeplock would serve no useful purpose and the use of non-confinement sanctions would be more effective.”

³⁹ Executive Law § 292(21).

There is significant disagreement between DOCCS, OMH, incarcerated individuals' rights groups, and members of the legislature as to whether certain people who are receiving mental health services have a disability such that they should be classified as members of a special population.

By way of background, upon admission and as needed thereafter, OMH assesses each person's need for mental health services and designates an OMH level based on such need. Levels 1 through 4 require mental health services, and are considered on "OMH's caseload," whereas Level 6 does not require mental health services and is therefore not on OMH's caseload.⁴⁰ According to OMH, people who experience a "substantial functional disability due to their mental health" are considered "seriously mentally ill" (SMI).⁴¹ Of the 32,918 people incarcerated at DOCCS as of April 1, 2024, approximately 9,658 (29 percent) required mental health services and were on OMH's caseload, of which approximately 1,879 (6 percent) were designated SMI.

The position of DOCCS and OMH is that only people designated by OMH as SMI are properly considered members of a special population and thus may not be held in segregated confinement. As such, DOCCS diverts them to a number of alternative units/programs including RRUs, Residential Mental Health Units, and Step-Down Units, among others. Conversely, per DOCCS and OMH, people who are on OMH's caseload but not designated as SMI do not fall under the definition of special population. Therefore, per DOCCS, these non-SMI people may be placed in segregated confinement.

Incarcerated individuals' rights groups including CANY, which provides monitoring and oversight of State correctional facilities, and Prisoners' Legal Services of New York (PLSNY), which offers legal representation/assistance to indigent incarcerated people, have argued otherwise. According to CANY, HALT's definition of a special population prohibits "anyone with a mental health diagnosis, including anyone on [OMH's] caseload, and anyone with a physical or cognitive disability diagnosis" from being placed in segregated confinement. OMH, in its response to CANY's report and finding, noted, "Not all mental health diagnoses are synonymous with an individual experiencing substantial functional disability." PLSNY, in a complaint to the Inspector General, also noted that "many people who have mental illnesses that

⁴⁰ There is no Level 5 designation.

⁴¹ OMH may designate certain Level 1 and Level 2 individuals SMI. These individuals are referred to as "1S" and "2S," respectively.

meet the Executive Law standard of disability are not classified as [SMI], so as to be exempt from SHU.”

A State Senate bill (S6977/A7533) proposed in the 2023-2024 session sought to amend the Correction Law to clarify “the definition of persons with a disability for purposes of the definition of special populations.”⁴² The bill language noted, “Under [the definition of special populations], any person in DOCCS custody who is, for example, on the OMH mental health caseload, would be deemed to be in the ‘special population’ banned from segregated confinement.” The bill’s proposed amendments included further defining “disability” to include (i) all people with any mental health diagnosis; (ii) all people on [OMH’s] caseload currently or within the past year; (iii) all people with any intellectual, developmental, or cognitive diagnosis; (iv) all people with any physical disability diagnosis or mobility impairment; and (v) all people with any sensorial disability diagnosis.”

Of note, given this interpretation, DOCCS would be prohibited from placing any incarcerated person who is on OMH’s caseload in segregated confinement. However, this interpretation appears to conflict with another section of the HALT legislation, Correction Law section 137(6)(k)(ii)(A), which requires that DOCCS consult OMH in certain instances when seeking to hold a person who is on OMH’s caseload in segregated confinement.

The Inspector General reviewed the more than 11,000 reported SHU confinements between November 1, 2022, and January 31, 2024, to determine if any members of a special population were held in segregated confinement during this period. The review found that at least six people under 21 years of age were confined in SHU; however, each person was released from SHU the same or next day. Accordingly, as these people were never confined in a cell for more than 17 consecutive hours in one day, they were, under the definition set forth by HALT, never in segregated confinement. The review also found at least 24 instances involving 22 people over 55 years of age who were confined in SHU. For 19 of the 24 confinements, the person was released from SHU the same day as their confinement began or the next day and were therefore similarly never in segregated confinement. The remaining five people were held in segregated confinement for varying durations; two were released after two days, two were released after three days, and one person was released from segregated confinement after seven days. DOCCS advised that these SHU confinements were inadvertent and due to either delays in

⁴² At the close of the legislative session on June 6, 2024, this bill did not pass.

updating the person’s status in DOCCS’s population management system or an oversight by a facility. According to DOCCS, since the effective date of HALT, its electronic incarcerated management system includes a flashing indicator of “No SHU Cell” to flag members of a special population for staff. DOCCS further advised that it did not maintain historical data for members of a special population who were pregnant, in a postpartum recovery period, or had a medical disability. Therefore, the Inspector General could not review these categories for SHU confinement.

The differing interpretations of which people constitute members of a special population with respect to a mental disability raises the possibility that certain people were held in segregated confinement contrary to HALT. Given DOCCS’s and OMH’s interpretations, the Inspector General found that between November 1, 2022, and January 31, 2024, there were no members of a special population with a mental disability placed in segregated confinement. However, using the broader interpretation suggested by incarcerated individuals’ rights groups and sponsors of the bill presented to the State legislature, during this same period, at least 2,383 people on OMH’s caseload were held in segregated confinement.⁴³ (See chart below.)

OMH Level	Number of Individuals Held in Segregated Confinement By OMH Level and Confinement Start Date (Month & Year)															Overall
	November 2022	December 2022	January 2023	February 2023	March 2023	April 2023	May 2023	June 2023	July 2023	August 2023	September 2023	October 2023	November 2023	December 2023	January 2024	
SMI	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
1	12	14	22	15	14	14	25	20	18	16	17	15	25	18	17	204
2	60	52	40	51	46	51	55	50	55	49	50	54	53	55	56	571
3	77	107	107	98	114	111	114	111	107	122	110	105	95	111	132	1,207
4	25	36	36	21	31	27	35	46	27	31	22	27	26	37	34	401
6	315	397	443	418	413	415	422	422	379	488	382	443	393	423	450	4,821
Unknown	19	14	4	13	9	7	12	10	17	15	15	8	10	34	38	222
Total	538	640	676	640	650	648	695	710	640	751	618	670	619	700	796	7,173
Total on OMH Caseload	174	209	205	185	205	203	229	227	207	218	199	201	199	221	239	2,383
% on OMH Caseload	32%	33%	30%	29%	32%	31%	33%	32%	32%	29%	32%	30%	32%	32%	30%	33%

Absent further clarification from the New York Legislature, class-action litigation commenced in May 2024 may resolve this issue.⁴⁴

⁴³ Due to limitations in the data provided by DOCCS, the Inspector General could not determine the OMH level for approximately four percent of all SHU confinements.

⁴⁴ See *Anthony, et al, v State of New York*, Sup Ct, Kings County, May 7, 2024, Capell, J., index No. 512871/2024.

For Almost 15 Months, DOCCS Restrained People While Out-Of-Cell Without Conducting HALT-Mandated Individual Assessments

Per HALT, restraints are prohibited for people participating in out-of-cell activities within RRUs unless an individual assessment finds they are required because of a significant and unreasonable risk to the safety and security of other incarcerated people or staff. However, just 20 days after the effective date of HALT, then acting Commissioner Anthony Annucci issued a memorandum advising that he had directed all superintendents supervising RRUs, RMHTUs, Step-Down Programs, and/or Diversion Units to place people in restraints when they were being escorted or participating in out-of-cell activities and programs.⁴⁵ Per the memorandum, people were to be shackled with wrist restraints when being escorted to and from their cells and program areas. Once in a program area, a person was to be secured with leg restraints to chairs/desks, which are referred to by DOCCS as “ReSTART”⁴⁶ chairs/desks, before the wrist restraints are removed.



DOCCS ReSTART Desks (Corcraft image)

According to the memorandum, this action was a result of an escalation in violence within the referenced units that was “very concerning and will not be tolerated.” The memorandum stated that this directive was made under authority vested in him by New York State Correction Law⁴⁷ and was in line with HALT. Although HALT established a presumption

⁴⁵ See [Appendix 5](#), Safety (April 21, 2022). The memorandum allowed for the removal of restraints in seven specific circumstances.

⁴⁶ Reduced Security Therapy And Recreation Table.

⁴⁷ See Correction Law § 112, which describes the powers and duties of the DOCCS commissioner.

against using restraints barring an “individual assessment,”⁴⁸ this blanket order ignored such individual assessments for the hundreds of people in RRUs who attended programming.⁴⁹

On the heels of this new instruction to use restraints, Annucci convened a Central Office HALT subgroup and established a formal process for it to meet every two weeks to evaluate the need to continue or modify this order. In an internal memorandum on May 6, 2022, Annucci further documented his justification for the change in procedure, reporting that restraints were necessary to comply with the U.S. Constitution’s Eighth Amendment prohibition on the infliction of “cruel and unusual punishment” by not exposing incarcerated people to potential dangers, and to create a safe workplace for staff, as is required under the Public Employees Safety and Health Act (PESH).

Annucci also instructed that “use of force incidents and assaults, and the level of program participation” must be considered when determining the need to continue the order for restraints. Annucci pointed to a disturbing trend in the overall increasing rate of assaults on incarcerated people and staff when comparing the period January through April 2021 to the same period in 2022—assaults among incarcerated people rose approximately 40 percent from 308 in 2021 to 432 in 2022, and assaults on staff rose more than 21 percent from 342 in 2021 to 415 in 2022. The increase was against a “steady and unprecedented decline” in the overall prison population. The memorandum also cited two serious incidents, which resulted in facility lockdowns and frisks: the cutting of the face of a correction officer at Cape Vincent and a series of assaults between rival gangs at Attica. The lockdown at Attica resulted in “31 assaults on staff, 50 uses of force and 58 weapons confiscated.” The use of restraints was continued by unanimous vote at each biweekly meeting. This mandate, which is no longer in effect, remained in force for approximately 14 months, until June 2023, shortly before Annucci’s retirement from State service.

According to DOCCS records, following the order to use restraints on people in RRUs when out of cell, there were some fluctuations but little overall change in the total number of

⁴⁸ Correction Law § 137(6)(j)(vii). Of note, Annucci’s memorandum includes language from HALT addressing the presumption against the use of restraints but refers only to the need to conduct “an assessment” rather than the “individual assessment” required by the Act.

⁴⁹ This mandate was initially implemented in all DOCCS facilities but, according to DOCCS, gradually pared back in some facilities. For example, in late July and August 2022 respectively, Adirondack Correctional Facility and Hudson Correctional Facility began conducting individual assessments and only restraining people when deemed appropriate.

assaults by an incarcerated person on either staff or another incarcerated person systemwide and within RRUs.

Assault Rates (April 2022 – June 2023)

Month/Year	Incarcerated on Incarcerated Assaults	Incarcerated Assaults on Staff	Total Assaults
April-2022	130	122	252
May-2022	132	146	278
June-2022	126	138	264
July-2022	130	140	270
August-2022	131	152	283
September-2022	129	117	246
October-2022	125	119	244
November-2022	133	118	251
December-2022	145	119	264
January-2023	155	117	272
February-2023	126	114	240
March-2023	135	116	251
April-2023	157	112	269
May-2023	208	112	320
June-2023	180	147	327

On June 21, 2023, then newly appointed acting Commissioner Martuscello issued guidance rescinding Annucci’s restraint order and providing for people in RRUs to be escorted and attend programming without restraints.⁵⁰ The guidance noted that people could be restrained only if an individual assessment was conducted that determined they posed a significant and unreasonable risk to the safety and security of other incarcerated people or staff and a restraint order approved by the facility superintendent was issued. This order complies with HALT’s restraint provisions. According to Martuscello, after his order, although pockets of violence were observed in these units, it was not like before.

Assault Rates (July 2023 – March 2024)

Month/Year	Incarcerated on Incarcerated Assaults	Incarcerated Assaults on Staff	Total Assaults
July-2023	212	137	349
August-2023	177	170	347
September-2023	182	155	337
October-2023	193	167	360
November-2023	181	169	350
December-2023	201	152	353
January-2024	226	190	416
February-2024	207	174	381
March-2024	227	189	416

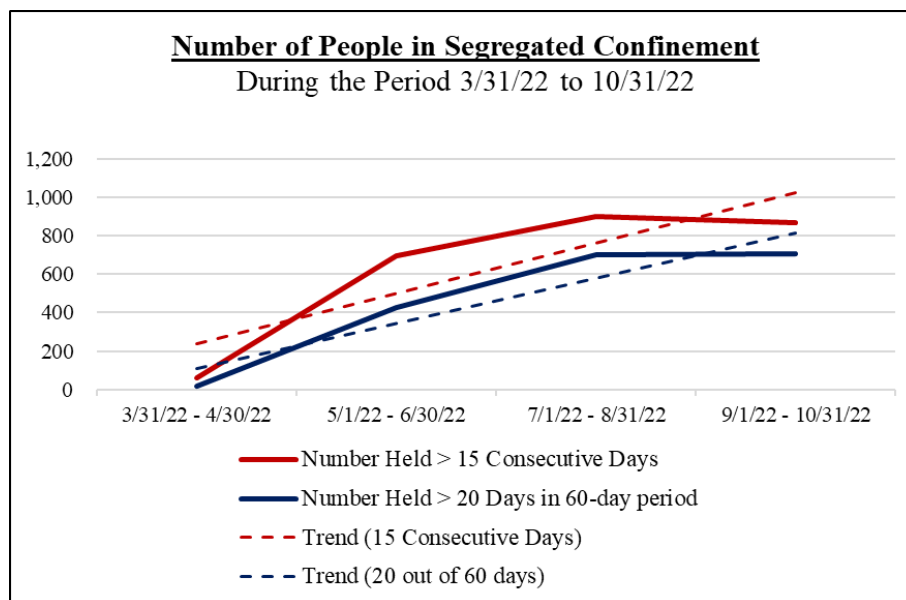
⁵⁰ See [Appendix 6](#), HALT – Restraints (June 21, 2023).

While both the implementation and rescinding of the restraint order could have contributed to the change in the number of assaults, this could not be confirmed as a causal factor.

During the First Seven Months of HALT, DOCCS Held People in Segregated Confinement for Periods Exceeding Mandated Limits

HALT limits the time a person can be held in segregated confinement to no more than 15 consecutive days or a total of 20 days in any 60-day period. After 15 consecutive days (or 20 days in any 60-day period), a person must be released from segregated confinement or diverted to an RRU or other SHU-alternative unit.

From March 31, 2022 through October 24, 2022, DOCCS offered no more than four hours out-of-cell time for programming and/or recreation to people held in SHU, which, under HALT, constitutes segregated confinement.⁵¹ During this period, of the approximately 6,200 people held in SHU, over 2,500 (40 percent) were held for more than 15 consecutive days, while approximately 1,850 (30 percent) were held more than 20 days in a 60-day period.⁵²



According to DOCCS, at the outset, a lack of RRU capacity was the primary factor contributing to the holding of people in segregated confinement beyond the 15-day cap. As of February 2023, DOCCS reported that it had sufficient physical space within its established RRUs

⁵¹ See DOCCS Monthly HALT Reports for May 2022 through November 2022, <https://doccs.ny.gov/research-and-reports>.

⁵² The data reported by DOCCS included confinements that occurred between October 24, 2022, and October 31, 2022. During this time, DOCCS offered people in SHU a total of seven hours out-of-cell and, thus, such people were no longer in segregated confinement.

to house any person receiving a confinement sanction. However, a deficit of appropriate mental health staffing has resulted in a shortage of beds for people designated OMH Level 2, as these people require housing in a facility with full-time OMH staff. This lack of beds prevents the timely transfer of a person from a SHU cell to an RRU or other SHU-alternative unit. OMH acknowledges that it lacks sufficient staff to maintain these types of beds. As this staffing shortage still exists today, the Inspector General recommends that DOCCS and OMH assess and adjust the number and types of beds and associated staffing levels needed to ensure people are timely transferred to the appropriate RRU or SHU-alternative unit as mandated.

Other issues cited by DOCCS as preventing the timely transfer of people to RRUs include transportation schedules/lack of transportation, refusal by incarcerated people to be transported, and the need to ensure that people in RRUs are kept separate from their enemies and/or codefendants. On average, more than 300 people are transferred from SHU to an RRU each month to comply with HALT's 15 consecutive day cap on segregated confinement. All these transfers are processed through Central Office's Class & Movement unit.

To address the fact that DOCCS was not always able to timely transfer people to an RRU or another SHU-alternative unit, on October 24, 2022, the deputy commissioner for correctional facilities issued a memorandum advising facility superintendents of the need for "a proactive approach to address the issue of incarcerated individuals being held in SHU beyond 15 days."⁵³ Per the memorandum, people held in SHU more than 15 consecutive days pending transfer to an RRU or SHU-alternative unit must be offered an additional three hours of outdoor exercise, bringing their total daily out-of-cell time to seven hours. The offer of additional out-of-cell time removes these people from segregated confinement. Notably, the memorandum does not instruct facilities to provide other privileges and services required by HALT for these same people such as the development of a tailored IRP, out-of-cell congregate programming, and access to personal property.

Despite offering additional out-of-cell time to people who have been held in SHU more than 15 consecutive days, incarcerated people informed the Inspector General that DOCCS did not always afford them these other privileges and services. For example, one person told the Inspector General that while they were confined in SHU more than 15 days at Clinton Correctional Facility, they were not provided programming or access to their personal property.

⁵³ See [Appendix 7](#), Segregated Confinement (October 24, 2022).

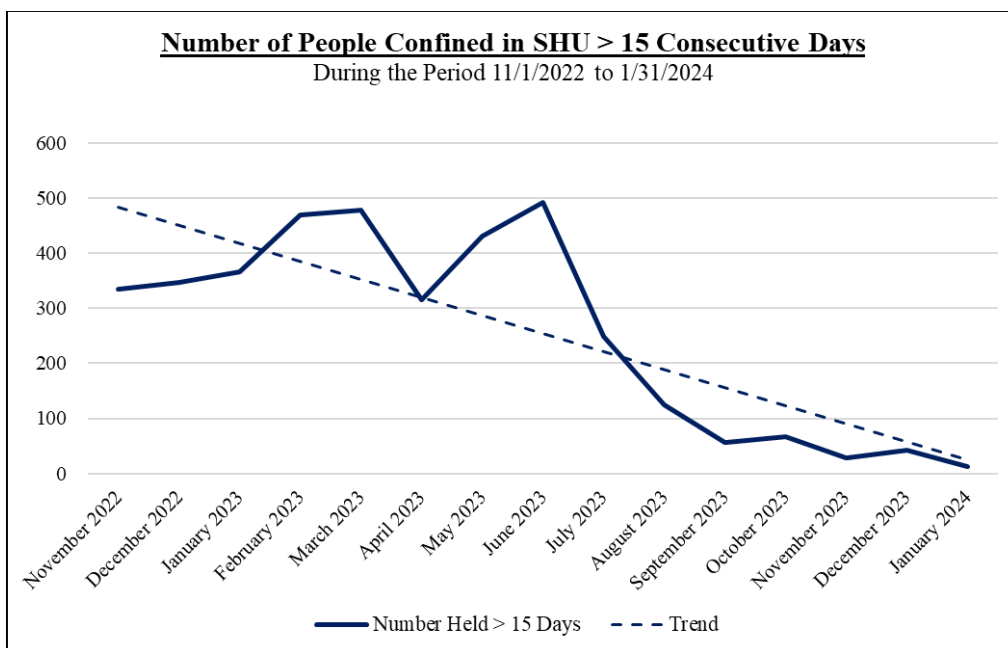
Another person confined in SHU more than 15 days at Washington Correctional Facility indicated they were not provided access to their personal sheets and sneakers. A third person who was confined in SHU at Woodbourne Correctional Facility claimed they were not afforded their personal property, stating, “the more you complain, the more you lose.” For the reasons described above related to the limitations of DOCCS recordkeeping, the Inspector General was not able to verify or disprove any of these anecdotal accounts.

In addition, many facilities, in their response to the Inspector General’s survey, reported they do not always offer these additional privileges to people held in SHU more than 15 days. Specifically, of the 36 facilities with SHU cells:

- All responsive facilities indicated they provide people held in SHU more than 15 consecutive days with an additional three hours out-of-cell time,⁵⁴
- 28 facilities do not create an IRP for people held in a SHU cell,
- 26 facilities do not provide access to personal property to people held in a SHU cell, and
- 25 facilities do not provide congregate recreation to people held in a SHU cell.

And during the period reviewed, there were many people confined to a SHU cell for more than 15 days who reportedly did not receive such privileges. The Inspector General’s review found that in the 36 DOCCS facilities with a SHU, approximately 4,210 SHU confinements surpassed 15 consecutive days during the period November 1, 2022, through January 31, 2024. Based on facility responses to the Inspector General’s survey, people confined in at least 25 of these facilities were likely denied the aforementioned mandated privileges. An encouraging finding, as seen in the chart below, is that the number of people confined in SHU more than 15 consecutive days has trended downward, particularly since July 2023. Thus, the number of people that are being denied these privileges while housed in a SHU cell has dramatically decreased. Such privileges would also be required to be offered to people held in SHU more than 20 total days in any 60-day period, unless they commit another act described in Correction Law section 137(6)(k)(ii).

⁵⁴ The responses from two facilities were unclear as to whether they offer the additional out-of-cell time.



DOCCS’s Implementation of Other HALT Provisions

Comparable Core Programs and Work Assignments in RRU

During the Inspector General’s review, it became evident that there is unclear and inconsistent terminology used in describing programming requirements under HALT with respect to “core” and “mandatory.” Per HALT, a person in an RRU must have “access to programs and work assignments comparable to core programs and types of work assignments in the general population.” However, core programs are not defined in HALT nor in DOCCS directives. In its March 2023 report, CANY noted that people housed in RRUs at four facilities claimed that core programs—“such as education, vocational, ASAT, and ART”—were not being offered. ASAT is the Alcohol and Substance Abuse Treatment program while ART refers to DOCCS’s Aggression Replacement Training program. Indeed, nearly all people interviewed by CANY at these four facilities reported that they had not been offered programs in RRU that were consistent with those they could receive in general population,⁵⁵ and many reported not being offered ASAT or ART programs. In its 2023 Programming and Recreation Survey Analysis, the Justice Center indicated incarcerated people also claimed they were not offered “mandatory” programs such as ASAT and ART. However, “mandatory” is not referenced in HALT.

DOCCS, in its response to CANY, advised that people in RRUs receive Cognitive Behavioral Treatment (CBT) programming and that it is a misconception they are required to have access to mandatory DOCCS programming. “To provide for mandatory programs that

⁵⁵ The facilities included Orleans, Coxsackie, Albion, and Upstate.

allow for credit toward merit time or limited credit time, would reward misbehavior, serve as a disincentive for positive institutional adjustment, and not address the fundamental behavior which resulted in their placement in an RRU.” In response to the Justice Center’s report, DOCCS reported it currently utilizes a variety of therapeutic material in its core curriculum in RRUs including CBT and Interactive Journaling “with a focus on developing new thought patterns and coping strategies to succeed in general population.” DOCCS also indicated it routinely adds holistic group materials including topics on support recovery, self-regulation, CBT, soft skills, and lessons to encourage thoughtful reflection on one’s behaviors and the impact that has on their goals. Academic studies are also offered.

Moreover, DOCCS reported it does not offer ASAT and ART to people in RRUs because these programs require continuous participation and often a reliance on “familiarity with the same group membership.”⁵⁶ DOCCS further noted that substance abuse treatment is best suited for a residential therapeutic community setting, and aggression programming uses closed-group modality. Instead, educational material related to drug and alcohol rehabilitation is available to incarcerated people on tablets and by request. Both the curriculum in SHU and RRU include courses related to behavior modification, self-regulation and other topics that encourage group discussion and developing pro-social behaviors.

DOCCS advised the Inspector General that, as required by HALT, comparable programming, from a selection of over 1,000 courses, is offered to people housed in RRUs. According to the DOCCS deputy commissioner for program services, as 80 percent of the prison population has substance abuse issues and 91 percent exhibits aggression, programming in RRUs is developed to meet these needs. DOCCS’s RRU Program Manual reads, “the curriculum includes cognitive behavioral treatment (CBT), emotional regulation techniques, wellness, recreation, communication, and a variety of topics which emphasize personal growth.” In addition, the Program Management Team will review and refer those eligible to Intensive Alcohol and Substance Abuse Treatment, Step-Down to General Population, and/or Step-Down to Community programs.

With regard to work assignments, DOCCS advised that approximately 49 people housed in RRUs across 16 facilities are provided work assignments as porters and painters. DOCCS

⁵⁶ See DOCCS response included in the Justice Center for the Protection of People With Special Needs, Programming and Recreation Survey Analysis 2023 (January 19, 2024).

indicated these are the only work assignments currently offered to people in RRUs. Some work assignments available to general population are not offered to those in RRU because such assignments are physically located outside the RRU.

Absent a statutory definition of core programming, a complete determination cannot be reached as to DOCCS's compliance or non-compliance.

Out-of-Cell Congregate Recreation in RRUs

Per HALT, people housed in RRUs are required to be offered recreation in a congregate setting “unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other incarcerated individuals, staff, or the facility.” According to CANY's March 2023 report, some people housed at Upstate Correctional Facility's RRU reported that they did not have access to congregate recreation. CANY also reported that in the RRUs at Upstate Correctional Facility and Orleans Correctional Facility, outdoor recreation for people took place in recreation pens attached to people's cells, and that outdoor recreation at Coxsackie Correctional Facility's RRU was not congregate and took place in the previous SHU recreation pens. DOCCS did not dispute these claims and advised that Upstate Correctional Facility currently has plans to build or expand its congregate recreation pens and Orleans Correctional Facility, which has no congregate recreation pens, has awarded a contract for the construction of one.

The Inspector General's site visit to Greene Correctional Facility in June 2023 noted no congregate recreation pens, while a site visit to Fishkill Correctional Facility in July 2023 found congregate recreation pens for its medium-security RRU but not its maximum-security RRU.

Of the 18 facilities with RRUs, 12 currently have a congregate recreation pen, while six do not.⁵⁷ DOCCS advised that construction or expansion of congregate recreation pens at eight facilities has yet to commence but, as of the date of this report, awards have been made to contractors for such pens at five of these facilities.⁵⁸ Once completed, all facilities with an RRU will have a congregate recreation pen.

⁵⁷ The correction facilities with congregate recreation pens include Adirondack, Attica, Auburn, Albion, Bedford Hills, Coxsackie, Elmira, Five Points, Great Meadow, Hudson, Mid-State, and Upstate. The six correction facilities without congregate recreation pens are Cayuga, Collins, Fishkill, Gouverneur, Greene, and Orleans.

⁵⁸ The correction facilities with projects to build or expand recreation plans include Cayuga, Collins, Fishkill, Gouverneur, Greene, Mid-State, Orleans, and Upstate. At Cayuga, Collins, Gouverneur, Orleans and Upstate, contracts have been awarded. DOCCS also plans to build a congregate recreation pen at Wende for its Step-Down Program.

CONCLUSION

Subjecting people to segregated confinement for lengthy periods without meaningful human interaction, programming, recreation, or therapeutic services can cause lasting impact to their physical and mental health. Given this, the primary aim of HALT is to limit the use of segregated confinement for the most serious violations, and even then, to limit it to no more than fifteen days. Having the ability to monitor practices to ensure compliance with HALT is vital to protecting the wellbeing of the incarcerated population.

DOCCS's implementation of HALT's standards has evolved over the last two years. This is evidenced by the improvement of compliance with HALT time limits, revocation of a systemwide restraint order, development of a uniform confinement justification form, acceleration of transfers from SHU to RRUs, promulgation of an RRU directive, and creation of congregate recreation pens and RRUs. However, DOCCS's use of antiquated and nonuniform paper recordkeeping practices and electronic tracking mechanisms hinders internal monitoring and compliance reviews by outside agencies. As such, DOCCS could not provide the level of detail sought by the Inspector General in its analyses of DOCCS compliance with various requirements of HALT, such as providing the required hours of out-of-cell programming and recreation. Accordingly, a modernization of DOCCS recordkeeping is essential to its ability, and the ability of other oversight bodies, to ensure compliance with this critical law.

These measures should include clarifying in written policy and practice the requirement for facilities to track the offering of out-of-cell opportunities to all people serving disciplinary confinements, whether such offers were accepted or rejected, and the amount of time spent out of cell by persons engaged in programming, recreation, and other out-of-cell activities. Additionally, DOCCS should develop and implement electronic recordkeeping systems for tracking the same, link misbehavior and confinement data to readily identify the basis for all disciplinary confinements, and enhance its data mining capabilities including the ability to generate a historical record of all confinements.

Further, the international community has recognized that prolonged isolation can exacerbate or adversely affect those with mental illness. In New York State, DOCCS in its care and custody role, OMH in its promotion of mental health, and the Inspector General in its oversight capacity, share a common goal of treating the most vulnerable people with humanity and dignity. HALT was designed to protect those designated as members of a special population from being exposed to segregated confinement but lacks specificity in its definition of who

should be protected. Statutory clarification is necessary to ensure that DOCCS is appropriately applying the law with respect to this vulnerable population.

Modernizing DOCCS's movement and tracking systems and ensuring its disciplinary policies are aligned with contemporary rehabilitative and therapeutic standards will assist DOCCS, OMH, and the Inspector General in achieving their shared goal. Only then will the system move towards one that no longer promotes confinement that, to its subjects, is "the most forbidding aspect of prison life."

DOCCS'S RESPONSE TO THE INSPECTOR GENERAL'S REPORT AND RECOMMENDATIONS

DOCCS has reviewed the Inspector General's comprehensive review of the Department's implementation of HALT including the acknowledgement of the evolution of such implementation over the last two years. In response to the Inspector General's investigation and report, DOCCS will clarify in written policy and practice the requirement of tracking the offering of out-of-cell opportunities for people serving a disciplinary confinement sanction and will standardize such recording with the creation of a stamp to be utilized in all such unit log books. While the Department has established a long term goal of delivering increased technology to staff, which would allow for more electronic record keeping, our housing units are not wired nor do they have connectivity to the DOCCS network, which we are beginning to explore, however, would be a costly and time consuming endeavor. We also have to balance such use of technology with the importance of interacting with the incarcerated individual rather than spending the majority of time on data entry, and detracting from safety and security procedures.

Appendix 1

4933DA (04/22)
REF: Directive #4933D

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
CORRECTIONAL FACILITY

RESIDENTIAL REHABILITATION UNIT INDIVIDUAL ASSESSMENT RESTRAINT ORDER

Initial Individual Assessment Renewal

RECOMMENDATION	<p>I recommend that incarcerated individual _____ DIN _____ Be placed on a restraint order when out of cell from _____ to _____ because of the following reasons:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Incident involved assault on staff <input type="checkbox"/> Incident involved assault on staff with a weapon <input type="checkbox"/> Sanctioned or pending assault on I/I and animosity exists with the victim or other I/I assigned to RRU <input type="checkbox"/> Sanctioned or pending assault on I/I <input type="checkbox"/> Sanctioned or pending assault on I/I with a weapon <input type="checkbox"/> Fight with I/I currently assigned to RRU and animosity exists <input type="checkbox"/> Sanctioned or pending for an incident involving gang violence and animosity exists with others assigned to RRU <input type="checkbox"/> Separatee submitted and pending or separatee approved and pending transfer order with others assigned to RRU <input type="checkbox"/> Refusal to comply with RRU movement protocols when not in restraints <input type="checkbox"/> Pending disciplinary while assigned to RRU for violent conduct, disruptive behavior on housing unit or program area or threats of violence to staff or I/I <input type="checkbox"/> Recent history of extreme violence that indicates I/I may present a threat to the safety of I/I's and staff <input type="checkbox"/> Other. Explanation/Justification: _____ _____ _____ <p>Supervisor Name: _____ Supervisor Signature: _____</p>
AUTHORIZATION	<ul style="list-style-type: none"> <input type="checkbox"/> Approved: Restraint order to/from RRU program area and the incarcerated individual shall be secured in the RESTART table during programming <input type="checkbox"/> Disapproved Reason for approval/disapproval: _____ _____ _____ <p>Type of restraints to be used/manner of application: _____ _____</p> <p style="text-align: right;">_____ _____ Superintendent _____ Date</p> <p>Notice to I/I: You may write to the Superintendent or designee to make a statement as to the need for continuing this order.</p>

Distribution
 White - Superintendent
 Canary - DSS
 Pink - RRU Sergeant / Housing Unit
 Goldenrod - Incarcerated Individual
 Scan to Assistant Commissioner for Special Housing and Incarcerated Individual Disciplinary Programs

Appendix 2



**Corrections and
Community Supervision**

KATHY HOCHUL
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

MEMORANDUM

To: All Incarcerated Individuals

From: Anthony J. Annucci, Acting Commissioner

Subject: HALT Law – Impact on Disciplinary Process

Date: March 29, 2022

Effective Thursday March 31, 2022, the Humane Alternatives to Long Term (HALT) Solitary Confinement Act will take effect. With the enactment of this law, there are required changes to our Superintendent's Hearing process. On November 1, 2021, our disciplinary guidelines and sanctions were modified so that only Tier III offenses that align with the law warrant a confinement penalty.

As a result, the disciplinary hearing process has been revised to comply with the provisions of HALT as follows:

- If a charged individual is placed in segregated confinement prior to their disciplinary hearing, the hearing must be completed within 5 days, unless the incarcerated individual requires either medical attention or OMH treatment, is not present at the facility (i.e., Out to Court Status) or the incarcerated individual requests a postponement. If the charged individual requests a postponement at the commencement of the hearing, then the hearing will be postponed and will be completed within 15 days of the incident, unless an extension is approved.
- Upon issuance of the misbehavior report, the incarcerated individual will be served with the disciplinary ticket and the attached Tier Assistance form, which includes the criteria for both outside representation and representation by an incarcerated individual. This form should be completed upon receipt and brought to the first scheduled meeting with the assigned hearing officer (i.e., the commencement of the hearing). Charged individuals will be given at least 24-hours after the service of the misbehavior report to prepare a defense.
- Upon commencement of the hearing with the assigned hearing officer, the charged individual will choose to either:
 1. Continue with the hearing immediately, or
 2. Request a postponement of the hearing to seek
 - Assistance: and/or
 - Representation (See attached Tier Assistance Form)

- If assistance is requested by the charged individual, the Superintendent or their designee will assign an assistant. There is no longer a required 24-hour wait time from the initial meeting with the assistant to the reconvening of the hearing. Failure to attend the hearing will result in the hearing continuing without the presence of the charged individual, and the charged individual will forfeit the ability to request a postponement. Requests to postpone will not be accepted by escorting staff.
- If an incarcerated individual requests representation, it is the incarcerated individual's responsibility to seek outside representation during the time access to the phone is provided. Access to the phone will occur within 48 hours of the commencement of the hearing. It is the incarcerated individual's responsibility to inform their representative of the scheduled date/time of the postponed hearing and all Departmental requirements for such representation.
- If a charged individual determines they would like to be represented by another incarcerated individual, it is the charged individual's responsibility to specifically identify their chosen incarcerated representative at the commencement of the hearing. If all Departmental requirements are not met, the hearing will proceed with the charged individual being unrepresented and they will not be permitted to identify an alternate representative.
- All potential witnesses must be identified at the start of the hearing. The hearing officer will determine the relevance and necessity of any future witness requests.
- All parties, representatives, witnesses, and other persons who participate during the hearing shall conduct themselves in a professional manner consistent with the appropriate standards of decorum. Failure to follow direction and act appropriately may result in removal from the hearing for the remainder of the hearing process.
- If after a Superintendents Hearing an incarcerated individual receives a disciplinary confinement sanction of more than 15 days, they will be transferred to a Residential Rehabilitation Unit (RRU) or Step-Down Unit (SDU), at or prior to reaching 15 days in SHU, to complete the remainder of their disciplinary confinement. The hearing officer is not restricted by HALT from issuing a sanction above 15 days, as sanctions are NOT capped at 15 days, but must be in line with the previously published disciplinary guidelines.
- As a result of the HALT law, no incarcerated individual may be placed in SHU for longer than necessary and no more than 15 consecutive days or 20 days total in a 60-day period, unless the conduct constitutes a violent felony act. Then the individual can be returned to SHU as long as they have spent at least 15 days in a RRU prior to returning to SHU.
- The rumor that an incarcerated individual cannot receive more than 15 days of confinement as a disposition is false. An incarcerated individual may receive a disposition within the current guidelines, or in excess of the guidelines in certain cases. No more than 15 days of that disposition will be served in SHU; the remainder will be served, depending on the case, in either a RRU, RMHTU, SDP, or other alternative unit.

Attachment

for posting
R. Bruna
3/29/22

Appendix 3



Corrections and Community Supervision

KATHY HOCHUL
Governor

DANIEL F. MARTUSCELLO III
Acting Commissioner

MEMORANDUM

TO: All Superintendents

FROM: Daniel F. Martuscello III, Acting Commissioner

SUBJECT: Confinement Justification Record

DATE: June 26, 2023

In accordance with Deputy Commissioner Noeth's, All Superintendent's Memo dated May 8, 2023, Pre-Hearing Confinement Guidelines - **Revised and Reissued**, the below procedure will aid in ensuring confinement of incarcerated individuals in compliance with the provisions of the HALT Law. Effective immediately, all Tier III Superintendent's Hearing Packets will include a Confinement Justification Record Form. This form shall indicate the justification for confinement or release from confinement.

Attached is a copy of the form to be utilized and completed by the review officer in conjunction with the initial review of the misbehavior report. Upon completion of the hearing, the hearing officer will indicate whether they agreed with the review officer's decision, and that continued confinement is justified. Lastly, during the superintendent's final review, the superintendent will also specify if they agree with the prior determinations of justification for confinement. If, at any point in the review process, it is determined that the misbehavior report does not meet the requirements of Correction Law §137, the individual shall be released from confinement.

A completed copy of this form shall be attached to the hearing packet. In addition, superintendents are still required to complete **Superintendent's Review of Disciplinary Disposition Form**.

Please share this memorandum and the attached Confinement Justification Record Form with all hearing and review officers.

Any questions regarding this matter should be addressed to Director Anthony Rodriguez, Office of Special Housing/Incarcerated Individual Disciplinary Programs (518) 457-2337.

Attachment

Appendix 4

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
CORRECTIONAL FACILITY

TIER 3 CONFINEMENT JUSTIFICATION FORM

I/I Name: _____ DIN: _____ Date of Misbehavior Report: _____

Rule Violation(s): _____

SECTION 1: PRE-HEARING CONFINEMENT JUSTIFICATION (Must be completed by the Review Officer)

The undersigned, as the Superintendent's Designee, reasonably believes that the individual's acts were so heinous or destructive that placement in general population creates a significant risk of imminent serious physical injury to staff or other incarcerated persons and creates an unreasonable risk to the security of the facility **AND** the incarcerated individual's conduct falls within one or more of the offenses eligible for Segregated Confinement or placement in a Residential Rehabilitation Unit under Correction Law §137(6)(k)(ii). YES NO

- If NO, the individual shall not be placed in pre-hearing confinement.
- If YES, check all offenses that apply in COLUMN A on Page 2 of this form.

Review Officer: _____ Signature: _____ Date: _____

SECTION 2: CONFINEMENT SANCTION JUSTIFICATION (Must be completed by the Hearing Officer)

The undersigned, as the Commissioner's designee and pursuant to an evidentiary hearing, hereby determines that the incarcerated individual committed an act that was so heinous or destructive that placement in general population creates a significant risk of imminent serious physical injury to staff or other incarcerated persons, creates an unreasonable risk to the security of the facility, **AND** the incarcerated individual's conduct falls within one or more of the offenses eligible for Segregated Confinement or placement in a Residential Rehabilitation Unit under Correction Law §137(6)(k)(ii).
 YES NO

- If NO, the individual **shall not** be issued a confinement sanction.
- If YES, you **must**:

1. Provide specific objective criteria to support this determination: _____

2. Check all offenses that apply in COLUMN B on Page 2 of this form.

Hearing Officer: _____ Signature: _____ Date: _____

SECTION 3: SUPERINTENDENT'S REVIEW (Must be completed by Superintendent or Designee)

The undersigned has reviewed the evidentiary findings, sanction(s) imposed, and the requirements of Correction Law §137(6)(k)(ii). As a result of that review, it is hereby determined that: (Check the appropriate box.)

- The sanction is appropriate and complies with all applicable requirements of Correction Law §137(6)(k)(ii).
- The sanction does not comply with all applicable requirements of Correction Law §137(6)(k)(ii). Therefore, confinement is not appropriate, and the sanction is reduced as follows: _____

- The sanction complies with all applicable requirements of Correction Law §137(6)(k)(ii), but as a discretionary matter, the sanction is reduced as follows: _____

Superintendent: _____ Signature: _____ Date: _____

Appendix 5



Corrections and Community Supervision

KATHY HOCHUL
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

MEMORANDUM

TO: All Superintendents

FROM: Anthony J. Annucci, Acting Commissioner

SUBJECT: Safety

DATE: April 21, 2022

The Humane Alternatives to Long Term (HALT) segregated confinement Law provides that restraints shall not be used when incarcerated individuals are participating in out-of-cell activities within a Residential Rehabilitation Unit (RRU), unless an assessment is made that restraints are required because of a significant and unreasonable risk to the safety and security of staff or other incarcerated individuals.

Since the effective date of the HALT Law, we have closely monitored the activities within our Special Housing Units and RRUs and have seen an escalation of violence that has occurred in not only RRUs across the state, but also in Regional Mental Health Therapeutic Units (RMHTU), Step Down Programs (SDP) and Diversion Units. This trend is very concerning and will not be tolerated.

As a result of what has occurred since the effective date across the system, on April 19, 2022, under my authority as Acting Commissioner in accordance with Section 112 of the Correction Law, and in line with the above cited provision of the HALT Law, I directed all Superintendents who supervise an RRU, RMHTU, SDP and/or Diversion Units, to utilize restraints any time an incarcerated individual is under escort and while participating in out-of-cell programming. For the immediate safety of all staff and incarcerated individuals, this order shall remain in effect until further notice.

Incarcerated individuals will be placed in wrist restraints prior to exiting their cells for escort to the program areas. Upon arrival in the program area, incarcerated individuals will be secured to a RESTART chair with leg restraints and the wrist restraints will be removed. Prior to returning to their cells at the conclusion of the program module wrist restraints will be reapplied, followed by the removal of leg restraints. Incarcerated individuals will then be escorted back to their cells.

When an incarcerated individual is out of their assigned cell, restraints shall be removed to accommodate the following:

1. A request of a Physician or a Physician's Assistant (PA) when removal is necessary to permit medical treatment.
2. A request of the Parole Board at a parole hearing.
3. A request of a Judge or Magistrate.
4. An order of the Deputy Superintendent for Security Services or higher-ranking authority.
5. A scheduled shower when the incarcerated individual can be secured in a shower room.
6. A scheduled period of exercise when the incarcerated individual can be secured in an exercise area.
7. A visit.

Under these circumstances, if mechanical restraints are removed, they will be reapplied prior to the incarcerated individuals being returned to their cells.

The safety of staff and incarcerated individuals is of paramount importance, and I will do whatever is in my power to protect each and every individual in a facility. Any questions regarding this matter should be directed to your Assistant Commissioner for Facility Operations.

Appendix 6




Corrections and Community Supervision

KATHY HOCHUL
Governor

DANIEL F. MARTUSCELLO III
Acting Commissioner

MEMORANDUM

TO: All Superintendents

FROM: Daniel F. Martuscello III, Acting Commissioner 

SUBJECT: HALT – Restraints

DATE: June 21, 2023

On April 21, 2022, former Acting Commissioner Annucci issued a memorandum entitled "Safety," which, under the Commissioner's authority, directed superintendents to utilize restraints any time an incarcerated individual was under escort and while participating in out-of-cell programming in all Residential Rehabilitation Units, Step-Down and Diversion Units.

Since that time, we have closely monitored the activities within our RRUs and alternative units, monitored program participation, along with key violence indicators, and engaged superintendents, staff, and the incarcerated population. We have taken careful steps to methodically return each facility to performing an individualized assessment to determine if an individual should be restrained while participating in out-of-cell program, as stated in the HALT Law.

Effective immediately, the April 21, 2022, memorandum is rescinded. In accordance with the HALT Law and DOCCS Directive #4933D, "Residential Rehabilitation Units", we will begin escorting and programming incarcerated individuals unrestrained. If, after an individual assessment is performed, it is determined that restraints are required because of a significant and unreasonable risk to the safety and security of other incarcerated individuals or staff, [Form #4933D-A](#), "Residential Rehabilitation Unit Individual Assessment Restraint Order," must be completed and submitted to the Superintendent (or Acting Superintendent) for approval.

The safety of staff and incarcerated individuals continues to be of primary importance. Any questions regarding this matter should be directed to your Assistant Commissioner for Facility Operations.

Appendix 7




Corrections and Community Supervision

KATHY HOCHUL
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

MEMORANDUM

TO: All Superintendents

FROM: Joseph H. Noeth, Deputy Commissioner for Correctional Facilities 

SUBJECT: Segregated Confinement

DATE: October 24, 2022

As you are aware, the HALT law requires that no incarcerated individual may be placed in segregated confinement (SHU) for longer than necessary and for no more than 15 consecutive days. As we continue to deal with an uptick in violence and work diligently to expand our current Residential Rehabilitation Unit (RRU) capacity, it has become necessary to take a proactive approach to address the issue of incarcerated individuals being held in SHU beyond 15 days.

As an interim measure, I am directing you to take the following action until the above-mentioned circumstances have abated.

Incarcerated individuals in SHU are currently offered three hours of out-of-cell programming and one hour of outdoor exercise. Effective immediately, those incarcerated individuals who are beyond 15 days in SHU will be offered an additional three hours of outdoor exercise, bringing the total out-of-cell time offered to seven hours.

To memorialize this direction and allow for appropriate tracking, a detailed spreadsheet has been developed along with instructions on how to complete the document together with an example, which are attached. The spreadsheet will document the following information:

- Facility
- Report Week (Sunday to Saturday)
- Locator Code
- Incarcerated Individual Name
- DIN
- 16th Day in SHU
- Date of the Week Started
- Program Offered/Accepted
- Recreation Offered/Accepted
- Exceptional Circumstance
- Transfer

The completed spreadsheet must be emailed every Monday, by 12:00 p.m., to SpecialHousing@doccs.ny.gov as an Excel Spreadsheet. Questions regarding this matter should be directed to Director Anthony Rodriguez, Office of Special Housing/Incarcerated Individual Disciplinary Programs (518) 457-2337.

Spreadsheet Instructions

At the top:

- Enter Facility Name. (e.g. Albion C F)
- Enter Date parameter for beginning and end of week. The date parameter must be entered as follows year, month, and day. Example: 20221030 - 20221105.

From left to right:

- Enter incarcerated individual's location in SHU using locator format (**xx-xx-###**)
- Enter incarcerated individual's name: **Last Name, First Initial, Jones, K.** (not JONES, KEVIN or JONES)
- Enter incarcerated individual's DIN: **00A9999** (not 00-A-9999 or 00a9999)
- Enter **date** representing incarcerated individual's 16th day in SHU (**#####**)
 - **This information must be transferred to the weekly spreadsheet, as long as the incarcerated individual is housed in SHU.**
- Enter the **day** of week incarcerated individual started their 16th continuous day in a SHU cell.
 - **This information must only be input on the first spreadsheet where the incarcerated individual's name initially appears. Information will not be transferred to subsequent weekly spreadsheets, instead N/A will be entered in this field.**
- Click on cell in the column which references the applicable day and activity (programs, recreation) and select the appropriate response from the drop-down list; **Yes, No, or N/A.**
- Click on the cell in the column titled Exceptional Circumstances and select the appropriate response from the drop-down list: **Yes, No, or N/A**
 - **Incarcerated individuals on an exceptional circumstance must be offered 4 hours of out-of-cell daily, including 2 hours of therapeutic programming and 2 hours of recreation.**
- When the incarcerated individual is transferred from SHU, the date must be entered on the spreadsheet.

