

SOLITARY WATCH

How the New Settlement Will—and Will Not—Change Solitary Confinement in New York’s Prisons (Redux)

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Last Thursday, a federal judge gave formal approval to the settlement in a class-action suit brought by thousands of people held in solitary confinement in New York’s prisons, represented by the New York Civil Liberties Union. The ruling codifies an agreement reached in December, after extended negotiations, between the plaintiffs and the New York State Department of Corrections and Community Supervision (DOCCS).

In a brief article on the settlement, the [New York Times](#) characterized the promised changes as an “overhaul [of] the way solitary confinement is used in New York State’s prisons.” The *Times* quoted Federal District Court Judge Shira A. Scheindlin as saying that the agreement “should end the use and conditions of solitary confinement in New York as they have existed for decades,” and “will greatly reduce the frequency, duration and severity” of the practice, leading to conditions that are “more humane and more just.” It also quoted lead NYCLU attorney Taylor Pendergrass as saying “In many ways, the hardest part is yet to come,” as the state takes on responsibility for implementing the changes.

Solitary Watch analyzed the terms of the settlement when they were announced last December, and found not a radical “overhaul,” but rather a set of incremental changes that will bring relief to many people in the New York State prison system, **but will also leave thousands behind in solitary confinement. We are republishing the article below.**

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DECEMBER 18—The settlement announced on Wednesday [December 16] by the New York Civil Liberties Union in the *Peoples v Fischer* case brings broad, deep, and meaningful change to the way New York utilizes solitary confinement in its state prisons. It is a significant and hard-won victory for the plaintiffs, their attorneys, and the hundreds of advocates who have long been battling the widespread use of solitary in the state.

Media hailed the changes as an **“overhaul”** of solitary confinement in New York. Governor Andrew Cuomo’s chief counsel, Alphonso David, called the agreement “radical and groundbreaking,” and told the *New York Times* that the governor “saw the lawsuit as an opportunity to make New York prisons a model for the country.”

Everything in the settlement of the four-year lawsuit indeed represents major progress, and the limits and alternatives it prescribes will bring relief to perhaps thousands of individuals suffering in solitary in New York. If there is a downside, it is that the largely celebratory tone of the announcements and press coverage may lead all of the people in long-term solitary to mistakenly expect that their ordeals will soon be over, and the public to believe that the struggle to end prolonged prison isolation in New York has now been won.

In fact, even amidst the hard-won celebrations, there is acknowledgement that the changes the settlement brings are incremental changes. While the agreement begins to address the underlying paradigm of punishment and control through isolation that has been liberally practiced in New York for decades, it does not destroy or replace it. **And even when all its provisions are implemented, thousands of people are likely to remain in solitary, some for years or decades.**

The [79-page settlement](#) details numerous, concrete ways in which the use and impact of solitary confinement will be limited. At the front end, the agreement will lower the number of people placed in

solitary to begin with. As summarized by the NYCLU, the reforms in this area focus on reducing the types of disciplinary violations that are punishable by solitary.

[The settlement] restricts the circumstances that solitary can be imposed as punishment. Nearly half (42) of the 87 rule violations punishable by solitary—including drug use and drug possession—no longer allow solitary sentences for one-time violations. Petty violations—23 out of the 87 violations—are no longer eligible for solitary confinement sanctions at all.[The settlement also] imposes a maximum sentence for solitary confinement of three months for all but a handful of first-time violations such as assault and escape, and a maximum sentence of 30 days for almost all first-time non-violent violations.

The precise disciplinary guidelines are yet to be released pending approval of the settlement by the court, but this is surely a significant change in a state known for [throwing people in the hole](#) for long periods for minor, nonviolent infractions.

At the back end, a portion of those currently in solitary will be removed and placed in alternative forms of housing. According to the NYCLU:

[The settlement] removes more than 1,100 people from traditional solitary conditions and either moves them into rehabilitative units with common spaces and group programming or moves them to into other less isolating disciplinary units. These changes are designed to impact people trapped in solitary with the longest sentences, people with developmental disabilities, people in need of drug therapy or more comprehensive behavioral therapy, juveniles, and people who would otherwise be released directly from solitary to the street. The settlement agreement outlines the types of alternative housing planned, including units where people will be released from their cells for two hours a day for programming and treatment, and two hours a day of recreation, four day a week. The provisions are fairly typical of the “step-down” programs used in other states, and will meaningfully mitigate the isolation and sensory deprivation faced by those in solitary.

At present, however, there are more than 4,000 people in solitary in New York State prisons. This number comprises about 8 percent of the prison population—nearly double the [national average of 4.4 percent](#) in all state and federal prisons, and far above states that have instituted more sweeping reforms, such as Colorado and Washington.

Until more details and data are released and the changes are fully implemented (with some scheduled to take as long as two years), it is not possible to know how much the settlement provisions will lower the overall number of people in solitary. **It seems safe to say, however, that thousands rather than hundreds will be left behind.**

Among those who will not be released from solitary are individuals in Administrative Segregation, as opposed to Disciplinary Segregation. The 20-30 people in “Ad Seg” have been placed in solitary based on an assessment of risk, rather than any particular disciplinary infraction. They include a handful of men who have served the longest solitary sentences in New York State, some stretching [two to three decades](#).

For individuals who remain in solitary, the settlement does have provisions for modest changes to conditions of confinement. It provides for “basic human needs for people in solitary, including access to telephone calls, reading materials and a shower curtain in shared cells, and abolishes the use of serving inedible food (the “loaf”) as a form of starvation punishment,” the NYCLU states.

Other provisions of the settlement address what promises to be the biggest uphill battle to effective implementation of even these incremental reforms: the culture of corrections staff in New York State, where disciplinary “tickets” carrying solitary confinement sentences have been handed out liberally by corrections officers who clearly value their unrestricted power to do so.

The day the settlement was announced, the New York State Correctional Officers & Police Benevolent Association (NYSCOPBA) [issued a statement](#) in which its president, Michael Powers, said, “Our state’s disciplinary confinement policies have evolved over decades of experience, and it is simply wrong to unilaterally take the tools away from law enforcement officers who face dangerous situations on a daily basis.” Placing limits on solitary, the statement says, will likely lead to increased assaults on staff.

The settlement, to which the union was not a party, “requires de-escalation training of over 20,000 Department of Corrections and Community Supervision personnel on how to diffuse situations before solitary becomes a consideration.”

All of these provisions represent major concessions on the part of Governor Andrew Cuomo and the leadership of the Department of Corrections and Community Supervision (DOCCS), which has to deal with what promises to be a largely hostile rank-and-file prison staff. So does the price tag on the changes: \$62 million for implementing the terms of the settlement, “including the conversion of traditional solitary blocks into more rehabilitative spaces with group dayrooms and outdoor space.”

Significantly, the agreement also “establishes a robust monitoring regime to ensure compliance with the terms of the settlement, including quarterly reporting to the public.” “Massive culture change is a challenge,”

NYCLU Executive Director Donna Lieberman [told the press](#). “We need to be monitoring like a hawk, and we will be monitoring like a hawk to ensure that the reforms are actually carried out.”

While the NYCLU oversees the reforms, which must remain in place for the five-year span of the settlement, other advocates and lawmakers are working to bring a full and permanent end to the use of solitary in New York.

The [Humane Alternatives to Long-Term Solitary Confinement Act](#), introduced in January 2014 in both houses of the New York State Legislature, would all but eliminate the use of solitary beyond 15 days—the limit recommended by UN Special Rapporteur on Torture Juan E. Méndez, and codified in the UN’s new [“Mandela Rules,”](#) which set minimum standards for the treatment of people in prison. The legislation would establish “Residential Rehabilitation Units” for individuals who need to be separated from the general population for longer periods of up to one year, with a minimum of seven hours out-of-cell time daily.

To date, the HALT Solitary Confinement Act is the most comprehensive and progressive piece of legislation yet to be introduced in the United States. With 55 co-sponsors in the Assembly and Senate, it is gaining momentum, but has a long road—and likely some revisions—ahead before it sees passage.

The NYCLU’s Taylor Pendergrass lead counsel in the *Peoples* case, [told the New York Times](#) that he hopes the new settlement is a “seismic shift” that will make way for further change. “This is the end hopefully of an era where people are just thrown into the box for an unlimited amount of time on the whim of a corrections officer,” he said. “This will not be the end of the road for solitary confinement reform, but we really think it’s a watershed moment.”