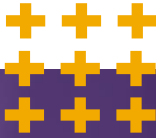


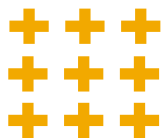


Justice Center for the  
Protection of People  
with Special Needs



# ANNUAL REPORT

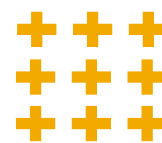
2023



## Humane Alternatives To Long-Term Solitary Confinement

A summary of the Justice Center's  
monitoring of HALT compliance in 2023

# INTRODUCTION



The Justice Center for the Protection of People with Special Needs is responsible for monitoring compliance with the Humane Alternatives to Long-Term (HALT) Solitary Confinement Act as well as the quality of mental health care provided to people who are incarcerated in New York State correctional facilities.<sup>1</sup>

This report summarizes the Justice Center's monitoring activities in 2023 and includes recommendations to improve the programming, treatment, and conditions in segregated confinement, residential rehabilitation, and mental health units.

## HISTORY AND JURISDICTION

The Justice Center began monitoring compliance with the HALT Act on April 1, 2022. Prior to that, the Justice Center was charged with monitoring compliance with the Special Housing Unit (SHU) Exclusion Law<sup>2</sup> and had been doing so since it began operations in 2013. This involves monitoring the quality of mental health care provided by the Office of Mental Health (OMH) to people who are incarcerated in correctional facilities operated by the New York State Department of Corrections and Community Supervision (DOCCS). The Justice Center is guided in this work by its Psychiatric Correctional Advisory Committee.<sup>3</sup>

### The HALT Act:

- Strictly limits the type of conduct that can result in segregated confinement sanctions
- Limits placement in segregated confinement to 15 days.
- Requires alternative rehabilitative measures, including the creation of residential rehabilitation units (RRU) focused on therapy, treatment and rehabilitation.
- Prohibits the use of segregated confinement for vulnerable incarcerated populations.
- Establishes guidelines for humane conditions in segregated confinement.
- Outlines reporting requirements for DOCCS and the Justice Center.
- Provides due process protections in disciplinary hearings for individuals who are incarcerated.

### To fulfill its responsibilities, the Justice Center:

- Reviews the programs, treatment, and conditions of confinement for incarcerated individuals placed in segregated confinement and residential rehabilitation units.
- Conducts systemic reviews of mental health programs in New York State correctional facilities.

<sup>1</sup> Correction Law §§137(6)(d)(e) (h), (i), (j), (k), (l), (m), (n), and (o) and §§138 (7), 401.

<sup>2</sup> Chapter 1 of the Laws of 2008.

<sup>3</sup> Psychiatric Correctional Advisory Committee members are listed in the appendix.

- Reviews the care provided by DOCCS and OMH to incarcerated individuals who are in need of mental health services as well as those who die by suicide and were receiving mental health services at the time of their death.
- Publishes reviews of the programs, treatment, and conditions of confinement for incarcerated individuals placed in segregated confinement and quality of mental health care on the Justice Center's website.
- Issues an annual report with recommendations regarding all aspects of segregated confinement and residential rehabilitation units.

This work is done by visiting correctional facilities and speaking with incarcerated individuals cell-side and in private interviews. All individuals residing in a disciplinary unit at the time of the Justice Center's visit are given a programming and recreation survey and can submit their responses to the Justice Center. The Justice Center also reviews DOCCS and OMH records for individuals who are placed in segregated confinement, residential rehabilitation units, or who die by suicide. All final reviews with responses from OMH and DOCCS are posted on the Justice Center website.<sup>4</sup>

## 2023 HIGHLIGHTS

### In 2023, the Justice Center:

- Visited 21 correctional facilities<sup>5</sup> to monitor compliance with New York State Correction Law concerning segregated confinement and residential rehabilitation units and the quality of mental health care provided to incarcerated individuals.
- Finalized a quality of mental health care review of the Intermediate Care Program at Sullivan Correctional Facility operated by DOCCS and OMH.
- Initiated eight mental health service reviews of individuals who died by suicide at five facilities<sup>6</sup>.
- Received 457 surveys from incarcerated individuals about the programming and recreation they were offered and received while in segregated confinement and RRU. Survey results can be found on the Justice Center's website [here](#).

In total, the Justice Center completed 1,854 cell-side and 118 private interviews with incarcerated individuals and referred 153 people for evaluation by OMH. Records from 352 individuals were reviewed for compliance with the requirements of the HALT law and the quality of mental health care provided to 290 individuals receiving mental health services was also reviewed. Sixteen<sup>7</sup> compliance reviews were finalized in 2023 and all, the facilities were having difficulties adhering to the provisions of the HALT Act.<sup>8</sup>

<sup>4</sup> A report is considered to be final once OMH and DOCCS respond to the report or within 45 days of the draft report being issued, whichever comes first.

<sup>5</sup> The list of facilities visited can be found in the appendix.

<sup>6</sup> Clinton, Greenhaven, Great Meadow, Upstate, and Wende Correctional Facilities

<sup>7</sup> Albion, Attica, Auburn, Bare Hill, Cape Vincent, Clinton, Coxsackie, Great Meadow, Lakeview, Mid-State, Mohawk, Riverview, Shawangunk, Sing Sing, Sullivan, Wyoming

<sup>8</sup> One facility review was finalized in 2023 but was reviewed prior to April 1, 2022, so compliance was assessed based on the SHU Exclusion Law and that facility was not found to be in compliance with the SHU Exclusion Law.

# FINDINGS + RECOMMENDATIONS



## 1 Placement in Segregated Confinement and Residential Rehabilitation Units (RRU)

### *Findings*

#### Vulnerable Populations

The HALT Act eliminated the use of segregated confinement for vulnerable populations. As a result, individuals who are age 21 or younger, age 55 or older, have a disability, or who are pregnant, up to eight weeks postpartum, or caring for children in a facility, cannot be placed in segregated confinement.

According to the monthly HALT reports published on the DOCCS website<sup>9</sup>, no one under the age of 21, over the age of 55, or who was pregnant or post-partum was placed in segregated confinement in 2023 and none of these special populations were found in any of the facilities visited by the Justice Center in 2023. The Justice Center also did not find any individuals with a physical, sensory, or cognitive disability placed in segregated confinement.

DOCCS monthly reports and Justice Center site visits show that no one with a serious mental illness designation<sup>10</sup> was placed in segregated confinement in 2023. However, almost 40 percent of incarcerated individuals in segregated confinement have been determined by OMH to need ongoing mental health services<sup>11</sup> and over 10% of incarcerated individuals in SHU have been determined by OMH to have a major mental illness.<sup>12</sup>

There were 88 individuals on the mental health caseload in the SHU, RRU, BHU, or an RMHU at the facilities visited by the Justice Center in 2023. Of those 88 individuals, 34 of them were admitted to the Residential Crisis Treatment Program (RCTP) because they were experiencing a mental health crisis at least once during the six months reviewed by the Justice Center. During the Justice Center's six-month review period, these 34 individuals resulted in 54 admissions to the RCTP and 36 of the transfers to the RCTP were directly from segregated confinement. While some individuals were transferred to the RCTP more than one time in the six months reviewed, no one was transferred to the RCTP three or more times.

### *Recommendations*

<sup>9</sup> DOCCS online reports on HALT can be found [here](#).

<sup>10</sup> See appendix for the definition of a serious mental illness designation.

<sup>11</sup> Based on the number of individuals with a mental health service level of 1, 2, 3 or 4.

<sup>12</sup> Based on the number of individuals with a mental health service level of 1 or 2.

The Justice Center continues to recommend that DOCCS and OMH divert all individuals on the mental health caseload to a residential rehabilitation unit or another program that will provide more timely access to therapeutic programming than they will receive in segregated confinement.

Further, given the high number of people in need of mental health services in segregated confinement and RRU, OMH must be involved in the development and provision of programming in these units. More than 10% of the individuals responding to the Justice Center's programming survey requested mental health groups and services in SHU and RRU.<sup>13</sup>

Segregated confinement poses well documented, serious risks to an individual's mental health. People with ongoing mental health needs should be provided with more access to therapeutic trauma-informed programming aimed at addressing individual rehabilitation needs and underlying causes of problematic behaviors, as is required under HALT.

## 2 Length of Time in Segregated Confinement and RRU

### *Findings*

According to DOCCS' monthly HALT reports, the number of individuals who remained in segregated confinement for more than 15 days decreased from a high of 189 in July 2023 to six in January 2024. There was only one month in 2023 where no individuals were reported to be in segregated confinement more than 15 days. The Justice Center found 42 individuals who were in segregated confinement for longer than 15 days. In response to the Justice Center's findings, DOCCS reported that they were offering anyone who remained in SHU longer than 15 days the same amount of daily programming they would have been offered if they were in the RRU.

Individuals placed in an RRU and who have been there for more than one year are to be assessed independently by OMH and DOCCS to determine if the person should remain in the RRU. Data on the DOCCS website indicates that there are individuals who have been in RRU for more than one year. For example, in May 2023, the maximum length of stay reported was 385 days. None of the individuals whose records were reviewed by the Justice Center included individuals who had been in the RRU for more than a year.

### *Recommendations*

In addition to continuing efforts to move people out of segregated confinement within 15 days as required by law, DOCCS should undertake regular reviews of disciplinary sanctions that result in placement in segregated confinement to ensure that the sanction meets the defined conduct in the HALT Act for placement in segregated confinement.

DOCCS and OMH should undertake regular reviews to ensure that people in the RRU, especially those in need of mental health services, do not remain there any longer than necessary. Since it is apparent that that some individuals are staying in the RRUs for longer than 365 days, DOCCS should include the number of individuals who spend more

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<sup>13</sup> The Justice Center received 47 responses to the survey requesting more mental health services.

than 365 days in RRU in their monthly HALT reports published on their website. HALT requires that all individuals be released from the RRU within 365 days unless they engage in another act of violent conduct or pose a significant and unreasonable risk to the safety and security of other individuals or staff.

### 3 Disciplinary Hearings

#### *Findings*

The Justice Center found that hearings were conducted within the timeframes required in the HALT Act. Most of the records reviewed by the Justice Center described violations of rules that permit a penalty of segregated confinement under the HALT law.

However, the Justice Center found seven instances when individuals did not appear to have engaged in acts that met the threshold for segregated confinement defined in the law as:

- Compelling or attempting to compel another person, by force or threat of force, to engage in a sexual act.
- Causing or attempt to cause serious physical injury or death to another individual or making an imminent threat of same.
- Leading, organizing, inciting, or attempting to cause a riot, insurrection, or other similar serious disturbance.

In each instance, the Justice Center requested that DOCCS review the sanction and each time, DOCCS supported the findings of the hearing. For example, there were two individuals who were charged with a sex offense at a correctional facility. There were no violations or history of sexual misconduct alleged by either participant and based on the documentation provided, it did not appear that either individual involved in the incident was compelled or compelled by force, or threat of force to engage in the sexual act. In response to this finding, DOCCS did not provide any additional information and instead stated, “All mitigating factors are reviewed by the review officer, may be presented at the hearing, and reviewed by the Superintendent. Additionally, an appeal may be filed for consideration of the circumstances for modification or dismissal.”

HALT also permits incarcerated individuals to have legal representation at disciplinary hearings. Seven incarcerated individuals reported to the Justice Center that they were never offered assistance, or were denied assistance, and disciplinary records did not indicate whether support was received when requested.

#### *Recommendations*

DOCCS should:

- Ensure through training and oversight that disciplinary dispositions are in compliance with the definition of conduct that permits a segregated disciplinary sanction.
- Provide information to incarcerated individuals about how to request and obtain legal representation during disciplinary hearings and provide representation when requested.

## 4 Programs, Treatment, and Conditions of Confinement

### *Findings*

#### Programs

The HALT Act requires DOCCS to offer six hours of daily out-of-cell congregate programming, services, treatment, recreation, and/or meals to individuals housed in RRUs with an additional one hour of recreation. In segregated confinement, DOCCS is required to offer four hours of daily out-of-cell programming plus an additional hour for recreation. The law requires that programming be comparable to the programming offered for the general population.

The Justice Center found that most individuals, especially those in SHU, are not attending out-of-cell programming. Further, according to the 2023 survey responses from incarcerated individuals received by the Justice Center:

- Fifty percent indicated that programming is offered daily.
- Fifty-eight percent of respondents housed in an RRU, and 45% of respondents housed in a SHU indicated that programming is only offered two to four hours daily.
- Forty percent said they were offered less than two hours of programming daily.

Of the 323 incarcerated individuals who responded that they have attended programming at least once, 53% felt the programs were helpful while 47% felt it was not helpful. One of the most frequent responses from those that found programming helpful was that it provided an opportunity to get out of their cell and interact with others. Those who said they did not find programming helpful said that there were not sufficient incentives offered for attending programs, such as time cuts to disciplinary sanctions, and that the programming did not help them finish mandatory programs needed before they can be released into the community. These programs include Aggression Replacement Treatment (ART) and Alcohol and Substance Abuse Treatment (ASAT) which are offered in general population, but not in RRU.

Individuals at Albion and Sing-Sing who were interviewed by the Justice Center reported that they enjoyed attending programming. In the Albion RRU, out-of-cell programming occurs for three hours in the morning. In the afternoon, two hours of indoor recreation and one-hour outdoor recreation are offered. Eight out of 10 individuals interviewed participated in programming and two individuals participated in an hour-long congregate lunch in the programming area during the site visit. Programming in the Sing Sing SHU occurs in the morning for three hours. In private interviews with the Justice Center, three incarcerated individuals said they attended programming daily and preferred to attend out-of-cell programming instead of receiving the tablet in the morning. This contrasts with other programs, where incarcerated individuals are choosing the tablet instead of out-of-cell programming because they do not find value in the programming offered.

Incarcerated individuals interviewed by the Justice Center also asked for more programming options. In addition to ART and ASAT, they requested mental health groups,

school, stress reduction, employment, how to communicate, and activities that lead to group discussion.

### *Recommendations*

#### *Increase out-of-cell participation in programming*

As noted by the individuals who responded to the Justice Center's survey, out-of-cell programming provides incarcerated individuals with an opportunity to interact with others in positive ways and helps develop self-regulation and other skills to avoid future disciplinary sanctions. While access to tablets is helpful, exclusive use of tablets and other forms of cell study are not conducive to promoting the development of self-regulation, symptom management, social, recreational, and rehabilitative skills that would benefit individuals with segregated confinement sanctions. To increase participation in this programming, the Justice Center recommends the following:

- DOCCS should ensure consistent compliance statewide for out-of-cell programming requirements and offer therapeutic programming consistent with what is offered in general population.
- OMH and DOCCS should work together to encourage and support out-of-cell programming in segregated confinement and RRUs.

Increasing incentives for attending out-of-cell programming would encourage participation. DOCCS should offer more meaningful time cuts to disciplinary sanctions and consider paying incarcerated individuals for program attendance in RRUs. Payment for program attendance has been successful in Residential Mental Health Units.

#### *Expand Programming Options and Include Mental Health Services and Support*

OMH is currently not involved in programming in SHU or RRU. A high percentage of the people in SHU and RRU have mental health needs. DOCCS and OMH should develop and provide increased programming options that includes mental health groups and topics. Every effort should be made to educate and support people with mental health needs so that they can manage their symptoms and underlying behaviors to avoid conduct that places them in segregated confinement.

DOCCS and OMH should also consider developing peer-led groups in RRUs to expand the array of mental health supports and programming. In response to the Justice Center's survey, DOCCS reported that they are developing a plan to pilot the use of "inmate program assistants" as facilitators in RRU. The Justice Center supports this initiative and urges that OMH be involved in this pilot.

As noted, many incarcerated individuals have requested Aggression Replacement Treatment (ART) and Alcohol and Substance Abuse Treatment (ASAT). The Justice Center acknowledges that it is not feasible to offer this programming in segregated confinement settings due to the limited time an individual spends there but it should be more seriously considered in RRU, especially for incarcerated individuals who have shown an improvement in behavior. An opportunity to participate in these programs could serve as an effective incentive for incarcerated individuals to cease engaging in maladaptive behaviors and attend out-of-cell programming.



Treatment

*Mental Health Services*

The amount of mental health services that an incarcerated individual receives while in segregated confinement and RRU is determined by the mental health service level of the facility they are in.<sup>14</sup>

Currently, OMH provides the following services in SHU and RRU:

<b>Service</b>	<b>Level 1 and 2 Facilities</b>	<b>Level 3 and 4 Facilities</b>	<b>Level 6 Facilities</b>
<b><i>Intake Mental Health Interview</i></b>	Completed by OMH staff in private space within one day of placement	Completed by OMH within 7 days of placement	Within 7 days of placement in RRU ONLY
<b><i>Re-evaluation</i></b>	Re-evaluated in 7 days and then every 30 days	Re-evaluated within 30 days and then every 90 days	Re-evaluated within 30 days and then every 90 days – RRU ONLY
<b><i>Suicide Prevention Screening</i></b>	DOCCS Staff complete upon placement in SHU	DOCCS Staff complete upon placement in SHU	DOCCS Staff complete upon placement in SHU
<b><i>SHU Rounds by dedicated mental health clinician</i></b>	Level 1 Facilities – Daily Level 2 Facilities – at least once a week	At least once every two weeks	None

While anyone can be referred for mental health services at any point, individuals who are on the mental health caseload are seen monthly by a mental health clinician. They also meet with a psychiatrist or nurse practitioner one time within their first month and every three months thereafter even if they are prescribed medication.

*Findings*

The Justice Center reviews six months of mental health records for compliance with OMH policies. Out of the 290 records reviewed in 2023, the Justice Center found 15 instances where there was missing documentation or documentation discrepancies in DOCCS and OMH records. This includes noting that there were no mental health concerns for someone who was on the mental health caseload, missing progress notes, delayed assessments for mental health referrals, and suicide assessments in segregated confinement.

In addition to instances of missing, incomplete, or inconsistent documentation, the Justice Center found that documentation by mental health staff was often lacking individualized information that would be informative to treatment team members and other mental health staff who may provide future treatment to individuals following a transfer to another correctional facility. Examples include instances of the exact same progress notes or recommendations for multiple months, lack of documentation about an individual's

<sup>14</sup> See appendix for the definitions of facility mental health levels

progress, and progress notes that did not memorialize any notable concerns an individual had as well as an overall lack of documentation on attempts to engage someone in treatment and the outcome of those attempts

### *Exceptional Circumstances*

If DOCCS determines that an incarcerated individual in SHU or RRU is a threat to safety or security, they can place the person on exceptional circumstances and reduce the amount of out-of-cell programming and treatment that individual can receive. In 2023, the Justice Center found three individuals placed on exceptional circumstances for less than seven days. “Increased cell-side contact and programming” was used as an alternative to out-of-cell mental health treatment and/or therapeutic programming for these individuals.

### *Recommendations*

More mental health services must be provided in these disciplinary settings. The Justice Center appreciates the difficulties of recruiting and training staff in corrections-based mental health settings. However, there are ways to utilize existing resources more efficiently. For example, OMH and DOCCS could support mental health clinicians so they can lead groups remotely.

Providing timely mental health assessments and opportunities to meet with clinical staff regularly is critical to treatment. The Justice Center appreciates OMH’s efforts to ensure that documentation is completed but documentation should also reflect all efforts to engage with and understand the mental health concerns of incarcerated individuals. The failure to engage in treatment and programming or to work to understand what is really going on with an individual can lead to disciplinary sanctions. They can also cycle in and out of mental health crisis treatment programs and segregated confinement. In rare cases, the result can be suicide.

To address these issues, the Justice Center continues to recommend that OMH and DOCCS assess the case conferencing process for individuals at risk of self-harm or decompensation, and for those who seem to cycle endlessly between crisis treatment programs and disciplinary confinement.

### Conditions of Confinement

#### *Findings*

Program space in the SHU units is in cell block hallways and consists of a single row of Reduced Security Therapy and Recreation Table (RESTART) chairs. The chairs are bolted to the floor and do not offer the opportunity for face-to-face contact, group discussion, or classroom collaboration. Residential rehabilitation units have designated classroom space.

The HALT Act requires that DOCCS offer out-of-cell congregate recreation to all individuals in RRUs, unless exceptional circumstances exist. In both RRU and SHU, recreation must be offered for a minimum of one hour per day.

Recreation at most facilities visited was offered outdoors in individual recreation pens and not in a congregate setting. Some facilities provide recreation in a screened area just

outside of the cell in which the incarcerated individual resides. One facility offered a congregate lunch space.

None of the individuals interviewed in the 15 facilities visited by the Justice Center reported participating in congregate recreation as required under the law. Over 50% of those responding to the Justice Center's programming and recreation survey said they participated in recreation alone; 26% reported that recreation was a combination of congregate and alone; and only six percent reported that they always participated in congregate recreation.

In three facilities visited, every incarcerated individual in both the segregated confinement and residential rehabilitation units were observed to be mechanically restrained in shackles while being escorted to programming and recreation.<sup>15</sup> During programming, individuals are seated in RESTART chairs and the restraints on their ankles are attached to the RESTART chair. This is contrary to HALT's goal of requiring DOCCS to offer out-of-cell therapeutic programming and does not allow for assessment of an individual's progress and participation in programming.

### *Recommendations*

Wherever possible, offer programming in classrooms rather than in segregated confinement hallways. Programming in cell block hallways is not conducive to learning and group discussion. Additionally, ensure that classroom space supports learning and group work.

Expand congregate recreational offerings so that these incarcerated individuals have a chance to interact with others safely.

The use of restraints should be based upon an individualized assessment and should only be used for incarcerated individuals who pose a significant and unreasonable risk to safety and security. DOCCS should consider offering different programming for those individuals who have been determined to need restraints and those who do not need restraints so that not all incarcerated individuals are restrained.

## **5 Assessments, rehabilitation plans and discharge determinations**

### *Findings*

The Justice Center found that most mental health and suicide assessments occur as required by law, but not all. The Justice Center found nine instances where mental health assessments or mental health callouts did not occur within the timeframes outlined in the HALT Act.

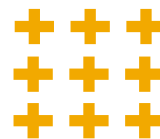
As stated previously, this report is based upon reports that were finalized in 2023. Most of those reports were from site visits that were made in 2022 and in the early months of 2023. As a result, the Justice Center is not able to offer meaningful findings and recommendations about rehabilitation plans and discharge determinations at this time.

<sup>15</sup>Albion (RRU), Great Meadow, Attica

*Recommendation*

OMH should make every effort to conduct assessments and mental health callouts in accordance with requirements in the HALT legislation.

# CONCLUSION

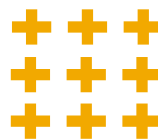


The implementation of the HALT Act provides an opportunity for New York to enhance rehabilitative measures and humane treatment of incarcerated individuals. There are still significant areas outlined in the law where actions must be taken to increase the availability of therapeutic and rehabilitative programming options that incarcerated individuals will attend and benefit from. This can only happen if DOCCS and OMH work together to develop and provide programs that help people understand and manage their symptoms and underlying behaviors that place them in segregated confinement. Further, the large number of people in segregated confinement and RRU with mental health needs makes it imperative that OMH become more involved in the development and provision of programming in these settings.

There are real challenges to serving incarcerated individuals in need of mental health services that will require thoughtful solutions, including how to recruit and retain staff at correctional facilities to carry out this important work. The Justice Center remains committed to assisting DOCCS and OMH in their important roles through its monitoring activities.



# APPENDIX



## Psychiatric Correctional Advisory Committee Members

Stuart Grassian, MD  
Martin Horn  
Jack Beck  
Charlie Giglio  
Dr. Lisa Callahan Ph.D.  
Diane Vanburen  
Jayette Lansbury

## Facilities Visited in 2023

Adirondack  
Attica  
Bare Hill  
Cape Vincent  
Cayuga  
Collins  
Eastern  
Five Points  
Franklin  
Gouverneur  
Greene  
Groveland  
Lakeview  
Mohawk  
Riverview  
Sing Sing  
Upstate  
Washington  
Wende  
Wyoming  
Woodbourne



### **Serious Mental Illness Designation**

An incarcerated individual receives a serious mental illness designation when they have been determined by a mental health clinician to meet at least one of the following criteria:

1. A current diagnosis of, one or more of the following types of Axis I diagnoses, as described in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, and such diagnoses shall be made based upon all relevant clinical factors, including but not limited to systems related to such diagnoses:
  - a. Schizophrenia (all sub-types)
  - b. Delusional disorder
  - c. Schizophreniform disorder
  - d. Schizoaffective disorder
  - e. Brief psychotic disorder
  - f. Substance-induced psychotic disorder (excluding intoxication and withdrawal)
  - g. Psychotic disorder not otherwise specified
  - h. Major depressive disorders
  - i. Bipolar disorder I and II.
2. Actively suicidal or has engaged in a recent, serious suicide attempt.
3. Diagnosed with a mental condition that is frequently characterized by breaks with reality, or perceptions of reality, that lead the individual to experience significant functional impairment involving acts of self-harm or other behavior that have a seriously adverse effect on life or on mental or physical health.
4. Diagnosed with an organic brain syndrome that results in a significant functional impairment involving acts of self-harm or other behavior that have a seriously adverse effect on life or on mental or physical health.
5. Diagnosed with a severe personality disorder that is manifested by frequent episodes of psychosis or depression, and results in a significant functional impairment involving acts of self-harm or other behavior that have a seriously adverse effect on list or on mental or physical health.
6. Been determined by a mental health clinician to have otherwise substantially deteriorated mentally or emotionally while confined in segregated confinement and is experiencing significant functional impairment indicating a diagnosis of serious mental illness and involving acts of self-harm or other behavior that have a serious adverse effect on life or on mental or physical health.

**Mental Health Levels**

<b>Level</b>	<b>Level of Mental Health Need</b>	<b>DOCCS Facility Classification Level</b>
1	Major/serious mental illness, active symptoms, six months of instability	Full-time mental health staff, treatment of major mental health disorders and specialized services including Residential Crisis Treatment Programs
2	Major/serious mental illness, no significant active symptoms, treatment and medication-compliant for one year, six months stability	Full-time mental health staff, treatment of inmates with less acute mental health disorders
3	Short-term medication needs or can function in setting with part-time mental health staff.	Part-time mental health staff, treatment and medication for moderated mental health disorders
4	Mild disorders, no medication needs	Part-time mental health staff, treatment for limited interventions, no medication monitoring
6	Does not require mental health services	No onsite mental health staff





October 31, 2024

Davin Robinson  
Deputy Director, Office of Outreach, Prevention & Support  
NYS Justice Center for the Protection of People with Special Needs  
161 Delaware Avenue  
Delmar, NY 12054

**Humane Alternatives to Long-Term Solitary Confinement (HALT) Annual Report  
Summary of the Justice Center’s Monitoring of HALT Compliance in 2023**

Dear Deputy Director Robinson:

This is in response to the New York State Justice Center’s summary of the monitoring of HALT compliance in 2023 to review the quality of corrections-based mental health care for incarcerated individuals in the Special Housing Unit (SHU) and Residential Rehabilitation Unit (RRU) in DOCCS facilities in accordance with the HALT Legislation, OMH policies, and DOCCS directives.

**1. Placement in Segregated Confinement and Residential Rehabilitation Units (RRU)**

**Recommendations:**

The Justice Center continues to recommend that DOCCS and OMH divert all individuals on the mental health caseload to a residential rehabilitation unit or another program that will provide more timely access to therapeutic programming than they will receive in segregated confinement.

Further, given the high number of people in need of mental health services in segregated confinement and RRU, OMH must be involved in the development and provision of programming in these units. More than 10% of the individuals responding to the Justice Center’s programming survey requested mental health groups and services in SHU and RRU.

Segregated confinement poses well documented, serious risks to an individual’s mental health. People with ongoing mental health needs should be provided with more access to therapeutic trauma-informed programming aimed at addressing individual rehabilitation needs and underlying causes of problematic behaviors, as is required under HALT.

**DOCCS Response:**

DOCCS understands Correction Law Section (2) Subdivision 33 – Special populations to mean incarcerated individuals that are twenty-one years of age or younger, fifty-five years of age or older, have a disability as defined in paragraph (a) of subdivision twenty-one of section 292 of the Executive



Law: such as a Serious Mental Illness (SMI), developmentally disable, sensorially disable or physical disabilities.

Furthermore, Senate Bill S6977 was introduced recently to expand the definition of persons with a disability for purposes of the definition of special populations. The proposal is to include all individuals on the OMH caseload; however, this bill has not passed yet.

About your recommendation to offer mental health therapeutic programming, DOCCS continues to discuss with OMH any security concerns they may have in order to find a resolution as they are not involved in SHU or RRU programming at this time.

The focus of programming in SHU and RRU is for participants to identify the behaviors which led to their disciplinary confinement, develop and practice emotional regulation strategies, review strategies and expectations for their next level of programming (General Population, Residential Rehabilitation Unit (RRU), Step Down Program (STP) Community, or Residential Mental Health Therapeutic Unit (RMHTU), and gain an understanding of holistic health and rehabilitation. The curriculum used by DOCCS integrates Trauma Informed Care theories and practices geared to assist in behavioral modification and emotional regulation.

Our department continues to review and evaluate on an ongoing basis the programs and services offered to incarcerated individuals in our custody in order to make improvements whenever feasible.

## **2. Length of Time in Segregated Confinement and RRU**

### **Recommendations:**

In addition to continuing efforts to move people out of segregated confinement within 15 days as required by law, DOCCS should undertake regular reviews of disciplinary sanctions that result in placement in segregated confinement to ensure that the sanction meets the defined conduct in the HALT Act for placement in segregated confinement.

DOCCS and OMH should undertake regular reviews to ensure that people in the RRU, especially those in need of mental health services, do not remain there any longer than necessary. Since it is apparent that that some individuals are staying in the RRUs for longer than 365 days, DOCCS should include the number of individuals who spend more than 365 days in RRU in their monthly HALT reports published on their website. HALT requires that all individuals be released from the RRU within 365 days unless they engage in another act of violent conduct or pose a significant and unreasonable risk to the safety and security of other individuals or staff.

### **DOCCS Response:**

DOCCS continues to make every effort to moving incarcerated individuals in SHU to therapeutic programs within 15 days as required by HALT. Any individual who stays in SHU more than 15 days is offered programming, amenities, and privileges similar to those in RRU until they are able to transfer.

Consistent with Correction Law § 137(6)(k)(ii), an objective review of custodial adjustment is done for each individual in RRU for 365 days. Incarcerated individuals are released from placement in RRU unless they pose an extraordinary and unacceptable risk of imminent harm to the safety and security of incarcerated persons and staff. In such cases, the decision to retain an individual in RRU is reviewed by designees of the Department and OMH Commissioners.

### **3. Disciplinary Hearings**

#### **Recommendations:**

##### **DOCCS should:**

Ensure through training and oversight that disciplinary dispositions are in compliance with the definition of conduct that permits a segregated disciplinary sanction.

Provide information to incarcerated individuals about how to request and obtain legal representation during disciplinary hearings and provide representation when requested.

##### **DOCCS Response:**

DOCCS continues to train hearing officers to ensure that disciplinary dispositions are in compliance with conduct that permits placement in segregated confinement. Sanctions are reviewed by the facility Superintendents to determine that they are within the published guidelines. Any sanctions that have departed upwards from the published guidelines are reviewed at the Central Office level.

The process of requesting legal representation is outlined in Directive 4932, "Standards Behaviors and Allowances". The Serving Officer explains the disciplinary procedure to the incarcerated individual and provides him or her with Form 4932B (Side A & B attached) which explains the procedure in detail. It is the incarcerated individual's responsibility to secure representation, and they can do so by utilizing their tablet with phone capabilities in addition to the legal tablet. Law Library Services are available upon request. This information is detailed in the incarcerated individuals in-cell SHU Manual. Their right to assistance and legal representation is also addressed by the hearing officer on record at the onset of the hearing process.

### **4. Programs, Treatment, and Conditions of Confinement**

#### **Recommendations:**

##### **Programs**

##### **Increase out-of-cell participation in programming**

As noted by the individuals who responded to the Justice Center's survey, out-of-cell programming provides incarcerated individuals with an opportunity to interact with others in positive ways and helps develop self-regulation and other skills to avoid future disciplinary sanctions. While access to tablets is

helpful, exclusive use of tablets and other forms of cell study are not conducive to promoting the development of self-regulation, symptom management, social, recreational, and rehabilitative skills that would benefit individuals with segregated confinement sanctions. To increase participation in this programming, the Justice Center recommends the following:

- DOCCS should ensure consistent compliance statewide for out-of-cell programming requirements and offer therapeutic programming consistent with what is offered in general population.
- OMH and DOCCS should work together to encourage and support out-of-cell programming in segregated confinement and RRUs.

Increasing incentives for attending out-of-cell programming would encourage participation. DOCCS should offer more meaningful time cuts to disciplinary sanctions and consider paying incarcerated individuals for program attendance in RRUs. Payment for program attendance has been successful in Residential Mental Health Units.

#### **DOCCS Response:**

#### **Programs**

##### **Increase out-of-cell participation in programming**

Incarcerated individuals in SHU and RRU are offered daily out-of-cell programming by utilizing incentives. In SHU, it is our experience that most individuals given their relatively short stay would rather focus on their hearing.

Incarcerated individuals in SHU are offered out for out-of-cell programming, but if they decline, they are able to have access to a tablet. If an individual refuses programming, it is beneficial to provide them with some form of tool such as the tablet to have access to programs and increase connectedness, etc. In addition, providing access to the tablet allows those incarcerated individuals that requested legal representation at their hearings the ability to seek legal representation during normal business hours.

Individuals in RRU are also offered daily out-of-cell programming, and in the event they decline, they do not have access to the tablet during program hours. This is outlined in the RRU Directive #4933D, "Residential Rehabilitation Units" which states that tablets should not be offered during programming hours.

Compliance with offering therapeutic programming in RRU and SHU is monitored by members of the Executive Team at the facility level, as well as Central Office staff through routine site visits. As previously stated, OMH is not involved in programming in RRU or SHU.

Regarding your recommendation to provide incentives to increase program participation, the Department's policy includes a standardized incentive program with the expectation of universal application statewide. Incentives are provided when earned through positive progress and participation.

Incentives are awarded to participants exhibiting positive behavior and/or progress toward achieving their Individual Rehabilitation Plan (IRP) goals. The Program Management Team (PMT) conducts meaningful reviews of incarcerated individuals to assess their progress.

Disciplinary time cut recommendations are made at the discretion of the PMT with the Superintendent giving final approval. An incarcerated individual may request a time cut at any time through the discretionary review process.

## **Recommendations:**

### **Expand Programming Options and Include Mental Health Services and Support**

OMH is currently not involved in programming in SHU or RRU. A high percentage of the people in SHU and RRU have mental health needs. DOCCS and OMH should develop and provide increased programming options that includes mental health groups and topics. Every effort should be made to educate and support people with mental health needs so that they can manage their symptoms and underlying behaviors to avoid conduct that places them in segregated confinement.

DOCCS and OMH should also consider developing peer-led groups in RRUs to expand the array of mental health supports and programming. In response to the Justice Center's survey, DOCCS reported that they are developing a plan to pilot the use of "inmate program assistants" as facilitators in RRU. The Justice Center supports this initiative and urges that OMH be involved in this pilot.

As noted, many incarcerated individuals have requested Aggression Replacement Treatment (ART) and Alcohol and Substance Abuse Treatment (ASAT). The Justice Center acknowledges that it is not feasible to offer this programming in segregated confinement settings due to the limited time an individual spends there but it should be more seriously considered in RRU, especially for incarcerated individuals who have shown an improvement in behavior. An opportunity to participate in these programs could serve as an effective incentive for incarcerated individuals to cease engaging in maladaptive behaviors and attend out-of-cell programming.

More mental health services must be provided in these disciplinary settings. The Justice Center appreciates the difficulties of recruiting and training staff in corrections-based mental health settings. However, there are ways to utilize existing resources more efficiently. For example, OMH and DOCCS could support mental health clinicians so they can lead groups remotely. Providing timely mental health assessments and opportunities to meet with clinical staff regularly is critical to treatment. The Justice Center appreciates OMH's efforts to ensure that documentation is completed but documentation should also reflect all efforts to engage with and understand the mental health concerns of incarcerated individuals. The failure to engage in treatment and programming or to work to understand what is really going on with an individual can lead to disciplinary sanctions. They can also cycle in and out of mental health crisis treatment programs and segregated confinement. In rare cases, the result can be suicide. To address these issues, the Justice Center continues to recommend that OMH and DOCCS assess the case conferencing process for individuals at risk of self-harm or decompensation, and for those who seem to cycle endlessly between crisis treatment programs and disciplinary confinement.

**DOCCS Response:**

**Expand Programming Options and Include Mental Health Services and Support**

DOCCS continues to believe there are therapeutic benefits to offering mental health programming and support to individuals in SHU and RRU. OMH is not involved in programming in SHU and RRU and the Department continues to engage them in ongoing discussion about their participation.

The peer led groups pilot program was initiated at Greene and Cayuga Correctional Facilities and depending on the outcomes can possibly be expanded to other facilities.

Earned Eligibility Program (EEP) that includes Transitional Services, ART, ASAT are not offered in RRU and SHU as they are not appropriate for that setting; however, educational materials related to drug, and alcohol rehabilitation are available for the incarcerated individuals.

**Recommendations:**

**Conditions of Confinement**

Wherever possible, offer programming in classrooms rather than in segregated confinement hallways. Programming in cell block hallways is not conducive to learning and group discussion. Additionally, ensure that classroom space supports learning and group work.

Expand congregate recreational offerings so that these incarcerated individuals have a chance to interact with others safely.

The use of restraints should be based upon an individualized assessment and should only be used for incarcerated individuals who pose a significant and unreasonable risk to safety and security. DOCCS should consider offering different programming for those individuals who have been determined to need restraints and those who do not need restraints so that not all incarcerated individuals are restrained.

**DOCCS Response:**

**Conditions of Confinement:**

DOCCS continues to canvas each facility for programming areas that are more conducive to learning and allows for group interaction. Regarding your recommendation concerning congregate recreation, DOCCS reviews on an ongoing basis each facility's layout to explore space and logistics in an effort to make improvements. Current improvements consist of capital projects including construction of congregate recreation areas; however, some projects have not yet reached completion status.

Incarcerated individuals in RRU's can attend programs unrestrained unless they pose a serious safety and security risk.

## **Mental Health Services**

DOCCS will defer to OMH for the recommendation about additional mental health services.

Individuals in SHU and RRU are seen daily during rounds or for intake by OMH. DOCCS continues to have a referral process in place, and all staff are encouraged to make an OMH referral (Form 3150) should they have any safety concerns about an individual.

## **5. Assessments, rehabilitation plans and discharge determinations**

### **Recommendation**

OMH should make every effort to conduct assessments and mental health callouts in accordance with requirements in the HALT legislation.

### **DOCCS Response**

DOCCS will defer to OMH on this recommendation. The Department will continue to assist OMH in facilitating Mental Health callouts and assessments in SHU and RRU.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Donahue', written over a faint circular stamp.

James Donahue  
Associate Commissioner

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

\_\_\_\_\_ Correctional Facility

**Superintendent's Review of Disciplinary Disposition Form**

Incarcerated Individual Name: \_\_\_\_\_ DIN: \_\_\_\_\_

Hearing Officer: \_\_\_\_\_ Title: \_\_\_\_\_

Incident Date/Time: \_\_\_\_\_ Hearing Date: \_\_\_\_\_

Penalty Imposed: \_\_\_\_\_

**REASON FOR SUPERINTENDENT'S REVIEW** (Check all that apply):

- Mental Health at issue during hearing process (confinement imposed exceeds 30 days)
- Loss of Visitation imposed at hearing (Check all that apply):
  - Visit Room related misconduct
  - Drug related misconduct (113.33 and/or 113.34)
- Confinement sanction is more than 30 days
- Confinement sanction imposed exceeds established guidelines
- Disciplinary confinement imposed/suspended on a SHU Alternative Incarcerated Individual
- Discretionary Review/Time Cut request

**RESULT OF SUPERINTENDENT'S REVIEW:**

- No Change to Penalty  Reduce Confinement/Sanction

**REASON FOR DECISION:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

cc: Attach one copy upon completion to the disciplinary hearing packet/disciplinary office for action, if necessary, retain original in the Superintendent's Office.

NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

**TIER ASSISTANCE**

**Part 1:**

**I/I Name and DIN:** \_\_\_\_\_

**Requested Witnesses:**

**Name:** \_\_\_\_\_ **DIN:** \_\_\_\_\_ **Cell/Cube:** \_\_\_\_\_

**Name:** \_\_\_\_\_ **DIN:** \_\_\_\_\_ **Cell/Cube:** \_\_\_\_\_

**Staff Name:** \_\_\_\_\_ **Staff Name:** \_\_\_\_\_ **Staff Name:** \_\_\_\_\_

**Video request:** \_\_\_\_\_ BWC \_\_\_\_\_ Fixed \_\_\_\_\_ Both (if available)

**Incarcerated Individual Representation requested: Name** \_\_\_\_\_ **DIN** \_\_\_\_\_

**Legal Representative requested:** \_\_\_\_\_ Yes \_\_\_\_\_ No

**Part 2:**

**Assigned Assistant:** \_\_\_\_\_

**Incarcerated Individuals can have the following: (Check the boxes if given to the I/I and ensure H/O has a copy.)**

- Unusual Incident Report – only if the UI has been finalized with the Superintendent’s electronic signature.
- Use of force report – only if the UOF report has been finalized with the Superintendent’s electronic signature.
- Memorandums from staff
- Contraband receipts
- Strip frisk forms
- Cell frisk forms
- Incarcerated Individual’s medical
- Logbook entries – Copies, or if the assistant is going to handwrite what has been written, the assistant must re-write it exactly as how it is written in the logbook.
- Witness statements
- Other \_\_\_\_\_ (describe)

**Incarcerated Individuals cannot have:**

- Preliminary UI, UOF or To-From. Must be read to the Incarcerated Individual.
- Photographs. If requested, secure a copy and place in the Hearing Officer’s packet
- Gang related materials.
- Another Incarcerated Individual’s medical report
- Staff medical information
- Departmental Directives with “D” distribution

**Representation Criteria listed on the back of this page!**



**Assistant Signature:** \_\_\_\_\_ **(Date/Time)** \_\_\_\_\_ **(AM/PM)**

**I/I Signature:** \_\_\_\_\_ **(Date/Time)** \_\_\_\_\_ **(AM/PM)**

**Outside Representative Requirements: (It is the charged individual's responsibility to secure representation.)**

- (1) an attorney, having good standing, admitted to practice in any state.
- (2) a law student, provided that an attorney member of the law school's faculty certifies to the Department, in writing, that the faculty member has direct supervisory authority over the student, shall make reasonable efforts to ensure that the student's conduct is compatible with the professional obligations of a lawyer, and provide the faculty member's contact information through the school's publicly listed business phone number and school issued email address.
- (3) a paralegal, provided that an attorney, having good standing, admitted to practice in any state certifies to the Department, in writing, that shall make reasonable efforts to ensure that the paralegal's conduct is compatible with the professional obligations of the lawyer and the paralegal has met one or more of the following requirements:
  - (i) Successful completion of the Certified Paralegal (CP) certifying examination of NALA.
  - (ii) Graduation from an ABA approved program of study for paralegals.
  - (iii) Graduation from a course of study for paralegals which is institutionally accredited but not ABA approved, and which requires not less than the equivalent of 60 semester hours of classroom study.
  - (iv) Graduation from a course of study for paralegals, other than those set forth above, plus not less than six months of in-house training as a paralegal.
  - (v) A baccalaureate degree in any field, plus not less than six months in-house training as a paralegal.
  - (vi) A minimum of three years of law-related experience under the supervision of an attorney, including at least six months of in-house training as a paralegal; or
  - (vii) Two years of in-house training as a paralegal.
- (4) another incarcerated individual, provided that the proposed representative is willing to serve as such representative and meets the following objective criteria:
  - (i) is located at the same facility where the charged individual is located. If a charged individual with an approved incarcerated representative is transferred prior to any pre-hearing contact with their representative, the charged individual may request a postponement for representation by a different incarcerated individual, subject to all Departmental criteria for such representation.
  - (ii) is medically able to participate and has a Beta IQ score above 70;
  - (iii) has not been found guilty of any Tier III offense within the last year;
  - (iv) has received a high school or equivalency diploma or is currently enrolled in a high school equivalency program; and
  - (v) is pursuing their most recently assigned earned eligibility or program plan with no current program refusals.

**Note: If the incarcerated individual representative has been discovered receiving compensation or the perception of compensation for providing representation, then they will not be permitted to be an incarcerated individual representative.**