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Re: Proposed [DOCCS](#) Regulations: I.D. No. CCS-16-22-00003-ERP

Dear Deputy Commissioner Sheehan,

FILL IN GROUP NAME OR CHANGE TO “I am writing” IF INDIVIDUAL PERSON is writing – in the interest of safety, dignity, and human rights – to urge the New York State Department of Correction and Community Supervision (DOCCS) to amend its proposed regulations to restore visits, restore family care packages, and adhere to the letter and spirit of the HALT Solitary Confinement Law (the HALT Law).

FILL IN INFO ABOUT YOURSELF OR YOUR GROUP

1. Protect Visits with Family, Friends, and Loved Ones

Visiting with children, family members, and other loved ones is critical for incarcerated people, their children, family members, and loved ones, and is beneficial for facility and community safety. Rather than limiting visits with loved ones, DOCCS should be facilitating greater access to visitation. The proposed regulations seek to drastically limit people’s access to visits, allowing restrictions on visitation to be imposed for *any* DOCCS rule violation, including extremely minor violations and those that have nothing to do with visits. Given the large number of administrative rules and given that nearly all disciplinary tickets result in guilty findings, under the proposed regulations essentially any staff member would have the ability to take away any person’s visits for nearly any reason or no reason at all. This is beyond unacceptable, would cause tremendous harm to people incarcerated and their families and loved ones, and would only increase tension and abuse and decrease safety for everyone.

2. Restore Care Packages and Direct Mail

Receiving care packages from family, friends, and loved ones serves as a critical form of connection and community, provides people with essential food and nutrition, provides access to religious materials, and more. The proposed regulations would strip people of the ability to bring

care packages on visits and the ability to directly mail packages. This package ban – which has already been in effect across the state – is depriving people of their only source of nutritional food, imposing heavy burdens on families, and depriving people of connections with their families, friends, loved ones, and communities. In turn, the package ban is increasing tension and weakening safety for everyone. The proposed regulations must be amended to rescind the package ban and ensure everyone is able to bring packages on visits and directly send packages.

In a similar vein, the regulations should also be amended to guarantee that people can receive direct correspondence from family and friends, including letters, birthday and holiday cards, postcards, and photographs – DOCCS is currently instituting a policy to only provide people with *photocopies* of mail, which also has negative impacts on people and their relationships with their children, other family members, friends, loved ones, and communities.

3. Fully Implement the HALT Solitary Law

Solitary confinement causes immense, lasting, and deadly harm – and the ill effects of extreme isolation and deprivation worsen, rather than improve safety. After a ten-year campaign led by survivors of solitary confinement, families of people in solitary, and families who have lost loved ones because of solitary, the HALT Solitary Confinement Law now requires DOCCS to stop the torture of long-term solitary beyond 15 days, ban solitary for groups of people most vulnerable to its negative impacts, and ensure that people who most need effective treatment and support receive it, including through pro-social programming, to aid in their growth and so that everyone behind bars and in the broader public can be safer and healthier. If implemented properly, HALT will relieve immense suffering and make prisons, jails, and outside communities safer. To date, DOCCS has been [blatantly violating](#) various core components of the HALT Solitary Law, including the [15-day limit on solitary](#), the [ban on special populations](#) from solitary, the [requirements for alternatives](#), the [restrictions on what conduct](#) can result in any separation, the [restrictions on restraints](#) during programming, and the continued [use of illegal regulations](#).

While DOCCS has made some revisions to its previous proposed regulations, including adding in some requirements in the Residential Rehabilitation Units (RRUs) and for protective custody, DOCCS' proposed regulations [continue to have various components that directly violate](#) the HALT Solitary Law and must be revised to comply with the law.

a. The regulations must comply with the HALT Law's limitations on the types of conduct that are eligible for placement in segregated confinement or alternative RRUs

HALT is explicit that in order for a person to be placed in segregated confinement beyond 3 days, or in an alternative Residential Rehabilitation Unit (RRU), they must be found guilty of one of the specific acts listed in the HALT Law AND the act must be “so heinous or destructive”

that the person poses a “significant risk of imminent serious physical injury.” The overarching language is necessary to protect against the use of solitary confinement, an extreme and dangerous punishment, for minor infractions and as retaliation and cover-up for staff abuses, and to ensure that resources devoted for alternative interventions are utilized in circumstances actually in need of an intensive intervention.

The proposed regulations fail to even mention the specific acts listed in HALT or the overarching “heinous or destructive” and “imminent serious physical injury” language. Regulations prior to HALT include a list of acts, but those acts allow a wider range of acts to result in segregated confinement, only apply for disciplinary confinement (and not other forms of segregated confinement or RRUs as under HALT), and do not include the “heinous” or “imminent serious physical injury” language. The proposed regulations downgrade a small number of Tier III rule violations under their current rules, but still include acts that do not qualify for placement in segregated confinement or RRU under HALT (such as possessing an unauthorized tool). The proposed regulations don’t even indicate that only Tier III rule violations can result in SHU/RRU. Without changes, far more people will be sent to SHU and RRUs than permitted by the law. This is [already happening](#).

b. The regulations must follow the HALT Law’s ban on solitary for all people with mental health needs and all people with any disability

The HALT Law explicitly states that all people with a disability under section 292(21)(a) are banned from spending even one day in segregated confinement. The proposed regulations only ban people who fit that definition AND also wrongfully require that the “said disability impairs the individual’s ability to provide self-care within the environment of a correctional facility.” This additional language regarding individual impairment is not in the HALT Law, would apply to a much narrower set of people, directly contradicts the explicit language of the law, and must be removed from the proposed regulations. DOCCS’ [assessment of public comment](#) from the last public comment period acknowledged that this language should be removed and even said that it had been removed, but it is still in the current proposed regulations. In practice, people who qualify as members of the “special populations” category under HALT, including people with mental health needs and visual and hearing impairments, are being [illegally locked](#) in segregated confinement, regardless of their disability.

c. The regulations must require that step-down programs, administrative segregation, and any other units comply with HALT’s protections for SHU and RRU

DOCCS must ensure there are no other forms of solitary by another name for any people, for any reason, under any circumstances. The current regulations continue to allow for such forms of solitary without complying with HALT’s protections for SHU and RRU. For example, the

proposed regulations leave in place existing regulations for step-down programs that allow people to be held indefinitely in segregated confinement. Under existing regulations, people in step-down units are only afforded five hours of out-of-cell time, four days a week, yet there is no time limit on how long a person can be in a step-down unit and no criteria for what conduct can result in placement in step-down units. In practice, people in step-down units report that all of these violations of the HALT Law are occurring. The regulations must ensure that either there is a 15-day limit on the use of these units or the units provide people access to at least seven hours of daily out-of-cell group programming and activities, as well as the RRUs' restricted criteria for placement and mechanisms for release.

The proposed regulations also continue to allow people to be placed in administrative segregation for overly broad criteria. While the proposed regulations properly remove DOCCS's ability to place people in SHU or an RRU for administrative segregation, and now have added that people in administrative segregation must not be locked in a cell for more than 17 hours a day, they do not specify any other requirements or protections for people in administrative segregation, and instead remove previous protections for people in administrative segregation, including requirements that people confined in administrative segregation are subject to the same time limitations as those in segregated confinement, and requirements that people must have access to normal property and privileges while in administrative segregation.

To the extent that anyone remains in an administrative segregation status, they should be held in the general population, with all the protections that affords, and the regulations should state this explicitly and stipulate all of those protections. If DOCCS plans to confine people with an administrative segregation status in an alternative location, the requirements and protections of any such placements must afford protections equivalent to those provided in general population, or at least be as protective as the requirements for the RRUs.

d. DOCCS must ensure that people confined in Residential Mental Health Treatment Units are afforded the rights and protections specified by the HALT Solitary Law.

The proposed regulations do not specify – as HALT requires – that at the very least, the RMHTUs comply with all of the protections for the RRUs, in addition to the other requirements for the RMHTUs. In practice, people in the RMHTUs are reporting that they are not afforded access to seven hours of daily out-of-cell group programming and activities, as required for RRUs. Relatedly, people are also reporting being locked in cell confinement for more than 17 hours a day, meaning they are in segregated confinement – including for months at a time – in violation of the prohibition on people with mental health needs being placed in segregated confinement.

e. The regulations must follow the HALT Law's requirement to prioritize non-disciplinary responses

The HALT Law explicitly requires that DOCCS employ de-escalation and non-disciplinary responses as the preferred method for responding to any disruptive behavior by incarcerated people. DOCCS may only issue disciplinary tickets as a last resort, and only if non-disciplinary interventions have failed or, in the case of acts specified by the law, non-disciplinary interventions are not likely to succeed. The proposed regulations contain none of these requirements and they must be added.

f. The regulations must facilitate, rather than block, people's access to representation under HALT

The HALT Law explicitly states that all people at hearings that can result in a placement in segregated confinement or in an RRU are permitted to have representation. The proposed regulations only permit representation for people in pre-hearing confinement. This requirement violates HALT and must be removed. While the assessment of public comment on the last version of the regulations agreed and said that an amendment was made to ensure that representation was permitted at any hearing that can result in segregated confinement, the text of the proposed regulations did not change in that respect and still only permits representation for people in pre-hearing confinement.

The proposed regulations also continue to fail to provide guidance about securing representation for a disciplinary hearing, notifying a representative, how to schedule and meet with a representative, how to obtain relevant evidence from DOCCS, and how to participate in the hearing in-person and via videoconference. The proposed regulations must also permit both in-person representation and representation by video conference in order to comply with constitutional due process requirements for representation. DOCCS is currently only allowing telephonic "representation." This means that an attorney or paralegal can only call into a hearing via telephone. Telephonic representation, for example, prevents a representative from reviewing evidence, witnessing testimony, and making objections and arguments in response to communication cues that are imperceptible on the phone.

CONCLUSION

Overall, proper implementation of the HALT Solitary Confinement Law will relieve suffering, stop torture, and save lives. DOCCS' current regulations will violate the law, and in turn will continue to perpetuate solitary by another name, inflict damage on people's health and well-being, and undermine the safety benefits of HALT. At the same time, the current regulations would inflict other forms of devastating isolation, including vastly expanding the ability to take

away people's visits and banning family care packages. These policies will – and already are – inflicting tremendous harm on people incarcerated and their families and loved ones, while also increasing tension and worsening safety for everyone. We urge DOCCS to change its regulations in the ways described above in order to be in compliance with the law, achieve the law's intended practices and results, and improve the lives, well-being, and safety of people in its custody and their families, friends, and loved ones.