

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two thick black horizontal bars.

NEW YORK
CITY BAR

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February 8, 2013

Hon. Brian Fischer
Commissioner
New York State Department of Corrections and Community Supervision
Building 2
1220 Washington Ave
Albany, New York 12226-2050

Dear Commissioner Fischer:

On behalf of the New York City Bar Association (“the Association”), we write in support of a comprehensive review of New York State Department of Corrections and Community Supervision’s (“DOCCS”) policies and procedures regarding punitive Special Housing Units (“SHUs”). We believe such a view is of immediate importance. The Association has concerns that segregation is too broadly employed as a disciplinary and administrative tool. Additionally, we have serious reservations regarding the length of stays in segregated housing, and the proportionality between segregation sanctions and purported infractions. The review is particularly timely because of the growing understanding about the human and reentry costs associated with solitary confinement, as well as new literature demonstrating that segregation is often not an efficient security tool.

The Association is an independent, non-governmental organization of 24,000 lawyers, law professors, and government officials from the United States and 50 other countries. Throughout its 143-year history, the Association has consistently maintained that an independent judiciary and respect for the rule of law are essential to all jurisdictions.

The conditions of confinement in jails and prisons, including the use of segregation for punitive and administrative purposes, are a matter of long-standing concern for the Association.¹ Our ongoing concern regarding solitary confinement has been both confirmed and deepened by a recent New York Civil Liberties Union report entitled *Boxed In: The True Cost of Extreme Isolation in New York’s Prisons* (“*Boxed In*”). The report documents the detrimental impact of the “extreme isolation” of solitary confinement: such isolation can cause devastating

¹ See, e.g., Report, *Supermax Confinement in U.S.*, COMMITTEE ON INT’L HUMAN RIGHTS, BAR ASS’N OF THE CITY OF NEW YORK (2010); *Comments On Board Of Correction Proposed Amendments to Minimum Standards For New York City Correctional Facilities*, COMMITTEE ON CORRECTIONS & COMMUNITY REENTRY, BAR ASS’N OF THE CITY OF NEW YORK (2007).

psychological suffering and damage, especially for youth, the elderly, and those suffering from mental illness or drug addiction. The report details how solitary confinement, by drastically constraining movement and social interaction, can cause severe physical and mental deterioration. This harm is plainly to be avoided if possible, both as a matter of humane treatment and because of its public-health and public-safety consequences when these people are released, as many are, directly from solitary confinement back into the community.²

The Association has criticized the growing use of supermax confinement in the United States because the unmitigated suffering caused by extreme isolation and confinement is not justified by the argument that it is an effective means to deal with difficult prisoners.³ On the contrary, a growing body of evidence shows that solitary confinement does not increase prison security. States that have limited or eliminated the use of solitary confinement have seen improvements in security and order. In Mississippi, for example, after the use of solitary confinement was substantially scaled back, the State Department of Corrections reported a meaningful improvement in general prison safety statistics.⁴

Despite the demonstrated harms of solitary confinement and the lack of clear penological justification, *Boxed In* reports that DOCCS is confining inmates in SHU facilities with greater frequency than ever before. The report shows that DOCCS meted out 13,500 solitary confinement sentences in 2011, and that approximately one in four DOCCS prisoners were sentenced to extreme isolation. At the same time, these sentences were often imposed arbitrarily and as punishment for non-violent infractions. Just over eight percent of New York's prison population is in isolation at any given time, and only 16 percent of isolation sentences from 2007 to 2011 were for assault or weapons infractions. The frequent use and scope of extreme isolation to discipline inmates does not meet long-standing international standards governing the treatment of prisoners. The U.N. Standard Minimum Rules for the Treatment of Prisoners, adopted in 1957 and an authority the U.S. Department of State cites as guidance for assessing proper prison conditions, provides that that any disciplinary measure should be "no more restrict[ive] than is necessary for safe custody and well-ordered community life" and specifically provides "[p]unishment by close confinement . . . shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it."⁵ DOCCS could likely meet such reasonable standards as these if it implemented clear rules for the use of solitary confinement: for instance, criteria for which violations may (and may not) draw a sentence of

² The New York State Bar Association also recently urged that New York State "profoundly restrict the use of long-term solitary confinement", and made further recommendations. New York State Bar Association Civil Rights Committee, *Report to House of Delegates* (January 2013). In addition, a group of human rights, mental health and faith-based organizations recently signed on to a letter sent by the NYCLU to the United Nations Special Rapporteur on Torture, asking the U.N. to investigate solitary confinement in New York prisons. See letter dated February 5, 2013, available at http://www.nyclu.org/files/releases/ExtremeIsolation_UNletter_2.5.13.pdf.

³ "New York City Bar Association Urges Reform of Supermax Confinement Facilities in U.S. Prisons," Oct. 5, 2011, available at www.nyclubar.org.

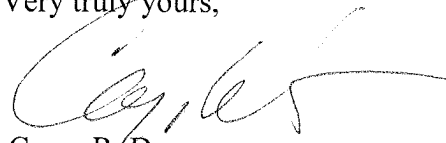
⁴ "Prisons Rethink Isolation, Saving Money, Lives and Sanity," N.Y. TIMES, Mar. 11, 2012, at A1.

⁵ Standard Minimum Rules for the Treatment of Prisoners, adopted July 31, 1957, Res. No XXIV, available at <http://www2.ohchr.org/english/law/treatmentprisoners.htm>.

solitary confinement, guidance on the appropriate length of such a sentence based on the nature of the violation, and a cap on the duration of solitary confinement.

As we are concerned that solitary confinement is a punishment imposed too broadly and without appropriate oversight, we were heartened to learn of your intention to conduct a comprehensive review of DOCCS's policies and procedures regarding the use of solitary confinement. We are particularly encouraged by your suggestion that this process will allow for review and comment by advocates. Your recognition of this critical matter and the necessity for an open and transparent review process reflects a meaningful commitment to reforming this significant problem. We urge you to ensure that this review process is as open and transparent as possible and would welcome the opportunity meet with you or whoever you designate to discuss these issues, and to comment on any proposed DOCCS policy changes. We hope you will publicize the timetable for your review process as soon as possible.

Very truly yours,

A handwritten signature in black ink, appearing to read "Carey R. Dunne". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Carey R. Dunne