



Working to end solitary confinement
for people with psychiatric disabilities

MHASC

Mental Health Alternatives to Solitary Confinement

**Testimony Before the NYS Legislative
Joint Fiscal Committees**

**Mental Hygiene Budget Hearing
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Presented by

**Robert K. Corliss, M.A., Director of Forensic Services
Mental Health Association in NYS, Inc.**

Myra Hutchinson

Member of Rights for Imprisoned People with Psychiatric Disabilities

**Jennifer J. Parish, Director of Criminal Justice Advocacy
Urban Justice Center / Mental Health Project**

Robert K. Corliss

Good morning. We are members of Mental Health Alternatives to Solitary Confinement (MHASC), a coalition of more than sixty mental health and prisoners' rights organizations and hundreds of formerly incarcerated people with psychiatric disabilities, family members, and concerned citizens. We have been working together for more than six years to end the practice of placing people with psychiatric disabilities in solitary confinement (known as "Special Housing Units" or "SHU") in state prisons.

I'm Bob Corliss, Director of Forensic Services at the Mental Health Association in NYS, Inc. Along with Myra Hutchinson and Jennifer Parish, I will present MHASC's concerns regarding the Executive Budget and Article VII legislation.

Let us be very clear at the outset. We are not here to ask you to restore the funding cuts in the OMH budget or the DOCS budget relative to implementation of the SHU bill. Quite honestly, we are bewildered by the proposed expenditures in the first place since the effective date for the SHU bill is July 2011. If nothing were included in this year's budget with respect to the SHU bill, we would not be surprised. Suffice it to say that we are very skeptical about these proposed expenditures and consequent budget cuts.

WE ARE HERE today to vigorously object to the Executive Budget's proposal to defer the effective date of the SHU bill an additional three years – until 2014 – and the Article VII bill's proposal to amend the original legislation by omitting approximately 50% of the SHU beds from

the scope of the bill, and while they are at it, cutting the minimal training included for correction officers. And interspersed amidst the budget proposal and the Article VII Bill is further language suggesting the Administration believes there may be further need to revise additional provisions of the SHU bill.

In short, we who worked with many of you for six years to gain passage of this bill fear there is an effort under way to scuttle the SHU bill as it was written and passed overwhelmingly in both houses.

We should not need to argue the need for banning the use of solitary confinement for persons with mental illness in our state correctional system as per the terms of what came to be known as the “Boot the SHU” legislation signed by then Governor Spitzer last January.

MHASC’s efforts over the last six years have drawn the attention and support of numerous parts of our communities across the state. As we have educated New York citizens about our prisons becoming repositories for a great number of persons with a mental illness, and that those who cannot behave properly are shunted off to solitary confinement for months and often years, an understandable outrage began to emerge. Over 60 good government, human rights, mental health, criminal justice and religious organizations joined with us to “Boot the SHU.” No less than 13 newspapers across the state called on the state to ban the practice of confining persons with a mental illness in the SHU. Some of the newspapers even repeated this refrain as the state administration changed hands.

Assemblyman Aubry, Chair of the Assembly Correction Committee, sponsored the first SHU bill and was joined sometime thereafter by Senator Nozzolio, Chair of the Senate Crime and Correction committee. For many, this legislation represented an authentic “no brainer.”

Unfortunately, in large part because of an under-funded and under-resourced community mental health system, too many persons with a serious mental illness find their way into our jails and prisons—and the numbers appear to be growing. While we also advocate for stronger community mental health services, and preventive services which keep persons with a mental illness from ever penetrating the criminal justice system, we are compelled to be concerned for the plight of those among us who can easily be forgotten, locked away in the state correctional system suffering their delusions, hallucinations, mania and depression in solitary confinement.

Last year, the State Office of Mental Health reported that the number of persons receiving mental health services in the state correctional system had grown in absolute numbers and accounted for 13.5% of the overall prison population. This occurred at a time when the overall prison population had showed a measurable decline. We also know that persons with a mental illness have a difficult time while incarcerated, are often not able to control their temper, miss social cues, and wind up in solitary confinement in special housing units in numbers far greater than their percentage of the total prison population.

The science on the issue is quite clear. The research is both recent and historical. The social isolation and sensory deprivation associated with solitary confinement exacerbates psychiatric symptoms which can lead to psychotic decompensation, injury to self or others, and on occasion,

to suicide. Arguably, locking up persons with a serious mental illness in solitary confinement, usually for extended periods of time, constitutes cruel and unusual punishment. At the very least, it represents an egregious example of deep-rooted patterns of mistreatment and neglect for the well-being of vulnerable and sick human beings.

Because the state of New York—through various administrations—has elected to look the other way on this issue, the state has found itself on the other end of numerous lawsuits beginning in the early 1980s. While many of these lawsuits have chipped away at the deleterious effects of solitary confinement on persons with a mental illness, invariably the remedies sanctioned by the court have come up short in effectuating adequate and sustainable corrective action. Thus, the need for even more lawsuits.

The state has also chosen to pay out vast sums of money to families and estates of prisoners who have lost their lives in preventable deaths in our state correctional facilities rather than take the action necessary to provide necessary and appropriate mental health treatment to very ill prisoners.

We in the advocacy community were thrilled last year, when the work of Assemblyman Aubry and Senator Nozzolio was rewarded with the signing of the SHU bill by then Governor Spitzer. At long last, New York State appeared to make a statement that it would no longer tolerate the noxious effects of long-term solitary confinement on persons with a mental illness. No longer would the state wait for the courts to direct the kinds of reform needed before it took action.

But the Governor's proposed budget and Article VII legislation threaten to set back this progress.

Myra Hutchinson

My name is Myra Hutchinson. I am a family member and have come to put a human face on this issue. I advocate for a young man named Sedlis, who was sentenced to 5 to 10 years. I thought he would be out in 5 years, but now he has served 13 years in prison. Before he got sick with schizophrenia, he was a straight-A student and completed 2 years at Morrisville College and was accepted to matriculate at Stony Brook. But he had a psychotic break and was arrested and put into the prison system. He was untreated for 4 years, and his behavior during this time was psychotic, which resulted in him getting repeated infractions and racking up extensive SHU time. His SHU sentence was extended to 2023 – way past his maximum release date. Because he was in SHU without treatment for so long, he also wound up with an additional prison sentence of 2 to 4 years for throwing urine and feces. While in SHU, he was put on the loaf. He told me to visit because he feared he would starve to death.

Fortunately, Sedlis was eventually admitted to Central New York Psychiatric Center (CNYPC) where he was treated and came to terms with his illness. After 9 months in CNYPC, he was sent back to SHU, where he remains today.

Very little has changed for Sedlis even with the *DAI* Settlement in effect. His SHU time has been cut back from 2023 to 2010. However, that time cut has no real impact on him because he

will max out in 2010 anyway. He will remain in the SHU until the day he is released to return home.

If the SHU law had been in effect when Sedlis received his first infraction and was sentenced to SHU, his horrific prison experience might have been quite different. He would have been evaluated, treated earlier, and diverted from the SHU. Diversion from SHU and treatment might have prevented the subsequent infractions, a product of his untreated mental illness, which led to the lengthy SHU sentence he is currently serving. It is also likely that he could have been released on parole.

The fact is that all the problems he had before treatment are now gone. He has gotten only one ticket in the last 9 years that he has been in the SHU. He is currently stable. He is taking his medication. And he is looking forward to the day when he can leave those horrible conditions.

This is not the only story. My friend Leah Gitter's family member, Robert, is serving an absurd sentence for 4 2/3 to 20 years, languishing in prison. After 7 years of incarceration, he got his first SHU ticket. He has bipolar disorder, and he has deteriorated so extensively since his SHU time that he has been constantly going in and out of the SHU for infractions. (Some of these infractions are minor, such as turning on a light, smoking a cigarette, and not following direct orders correctly.) He is now in CNYPC, but he has a SHU ticket hanging over his head. He got the ticket when he was in a severe episode, and he had to be hospitalized immediately, so his SHU ticket is still pending. He is in a black hole. He told Leah: "I am not the same man. I am changed forever."

Then there is Karen Smalls who constantly worries about her brother. He is diagnosed with psychotic disorder, symptoms of depression and paranoia. He lives in fear of being attacked by the COs, being touched inappropriately and beaten.

Kathy Woodson's son has a traumatic brain injury, and he has experienced extreme punishment for his disabilities. He lost 150 lbs. in Attica – he was eating paint chips off the wall because they were starving him. He has been beaten, sexually abused, and not provided with adequate treatment.

Lissette Brooks' brother is about to complete a nine-year sentence, most of which has been spent in SHU. He has been diagnosed with schizophrenia. She tells us that he has completely changed since he has been in SHU – he is disconnected from reality, hears voices, and has a blank stare most of the time. Here is how she describes him: "His mental health state has further deteriorated and is the worst we have ever seen. His affect is flat – he has a glazed look in his eyes – he was easily agitated and distracted – could not engage in simple conversation or a game of cards."

These are just a few real-life horror stories of the SHU, and there are many more in this booklet which we will leave with you. Unfortunately there are even more stories of suffering that we don't even know about from those locked in SHU with no one on the outside to tell their story.

We know that the administration's proposal is not a matter of money. If it was truly about real cost savings, people with serious mental illness would not be sent to prison. They would be provided with treatment, which we know is not only cheaper but also more humane. When you are considering the budget, think about the voices of the voiceless who could easily be forgotten in this financial crisis.

Jennifer J. Parish

I am Jennifer Parish, Director of Criminal Justice Advocacy in the Urban Justice Center's Mental Health Project.

As Bob said, we are not here to ask you to restore money to the budget. We are not here because funding for our program was cut. We are here because the Department of Correctional Services' budget "savings" on the SHU Exclusion Legislation is actually a Trojan Horse. Wrapped in the rhetoric of fiscal responsibility is an outright assault on the SHU legislation that you have supported, legislation that you negotiated with the previous Governor only a short time ago, legislation that has not yet taken effect.

Bob and Myra have described the need for this legislation and the sound judgment behind enacting a law to protect people with psychiatric disabilities in our prisons. Now I will explain how the Governor's budget and Article VII legislation significantly erode the fundamental purpose of the SHU exclusion law.

First – It is absolutely unnecessary to be renegotiating the terms of this law in the context of the 2009-2010 budget. One significant compromise between the bill that was originally passed and vetoed by Governor Pataki and passed again in 2007 and the one that Governor Spitzer signed last January was the delay in effective date. (The original bill would have taken effect eighteen months after it became law.) Other than the involvement of the NYS Commission on Quality of Care and Advocacy for Persons with Disabilities in monitoring mental health treatment in the prisons, the law is not effective until July 2011 – **more than a year** after the 2009-10 budget cycle ends. That means that this budget does not need to contain funding to implement the bill. DOCS and OMH are not required by this law to remove people with serious mental illness from SHU during this budget cycle. So there is no need to allocate additional funding for DOCS to staff new treatment areas or for OMH staff to assess people sentenced to SHU or to provide enhanced treatment.

The executive attributes a savings of \$11.4 million to the postponement of hiring 86 new staff. We do not oppose their proposal not to hire 86 new staff members in this fiscal year. But we see no reason to delay or amend the SHU bill to achieve this savings.

Second – To the extent that money needs to be spent during the 2009-10 budget cycle in preparation for complying with the law in July 2011, the Governor needs to be candid about the amount actually needed and how it will be spent.

The executive claims that the SHU law requires construction of additional residential mental health unit facilities. Pursuant to the *DAI* settlement agreement, DOCS and OMH are required to

build a “Residential Mental Health Unit” (“RMHU”) at Marcy Correctional Facility. The SHU bill requires prisoners with serious mental illness to be diverted from segregated confinement to a “residential mental health treatment unit” (“RMHTU”) which is broadly defined in the law as “housing for inmates with serious mental illness that is operated jointly by the department and the office of mental health and is therapeutic in nature.” A Residential Mental Health Unit, like the one being constructed at Marcy, is one form of residential mental health treatment unit, but the law makes clear that RMHTUs also include the intermediate care program and intensive intermediate care program. DOCS and OMH are not required under the law as it is written to construct more residential mental health units. They have some flexibility. The primary requirement is that the units are not operated as disciplinary housing units and decisions about treatment and the conditions of confinement are based upon the therapeutic needs of the prisoner.

You should challenge the agency to reduce costs by retrofitting existing prison facilities to provide the program areas required. The law is about providing treatment services to prisoners with serious mental illness; it is not about providing a particular housing configuration. DOCS can comply with the law without constructing new facilities. The prison population is shrinking. There is plenty of capacity in the system. DOCS may need to think creatively about how best to use this space in tough economic times, but the agency should not be allowed to get away with creating the specter of exorbitant costs – and then claim that these costs prevent them from making these critical reforms.

We need transparency here.

Third – The changes to the SHU exclusion law that the Governor is proposing are not appropriate for Article VII legislation. These are significant modifications that delay and diminish the protections that the executive agreed to when this bill was negotiated with the legislature.

Delaying this reform for three more years means that for the next five years, our prisons will continue to isolate people who are experiencing delusions, people who are hearing voices, those who are crippled by depression or alone with racing manic thoughts. This can’t wait five years. We don’t think it should wait a day. But we supported the compromise to give the administration three years – a year and a half more than originally proposed – before requiring the removal of people with serious mental illness from SHU. But we cannot delay any longer.

In supporting this compromise, we were aware that as a result of the *DAI* settlement, people with serious mental illness confined to SHU would receive some additional treatment during this period before the law is implemented. However, if the Governor’s proposal is accepted and implementation is delayed further, there will be a period after the *DAI* settlement expires and before the law takes effect. During this gap people with serious mental illness in SHU will have even less protection than they currently have.

And this isn’t just about delaying implementation of the bill – it is about completely denying the protections of the law for about half of the people in SHU. The administration wants to limit the protections of this law to the prisons (designated level one and level two facilities) that house individuals whom OMH has designated the most severely in need of mental health treatment.

The administration claims that individuals confined to SHU in other prisons (level three and level four facilities) – facilities that have part-time mental health staff able to provide psychiatric treatment and medication – do not need the SHU legislation protections. But these are not facilities where there are absolutely no mental health services. People who take psychiatric medication and have been stabilized are housed there. People who have been on the mental health caseload in the past but refuse to take psychiatric medication are housed there. People who may not have agreed to receive mental health treatment in prison but who, after being subjected to isolation for a period of time, may need it are also in these facilities. In fact, during recent site visits to Greene and Gouverneur (correctional facilities that would be excluded from the law), the Correctional Association found 19% and 23% of the prisoners, respectively, at each facility's SHU were receiving mental health treatment. If the Article VII legislation is passed, these people will not have to be assessed, and those who have (or develop) serious mental illness won't have the right to be removed from SHU regardless how much they deteriorate as a result of their SHU confinement.

Furthermore, the existing law already limits the services provided in level three and level four facilities. Rather than being screened within one business day of placement in SHU as required at level one and level two facilities, individuals in these facilities must be screened within 14 days. Also, the intervals for reassessing individuals initially determined not to have a serious mental illness are similarly extended for individual in level three and level four facilities. The existing legislation is the product of a compromise with the administration on the appropriate level of protection for prisoners housed at different correctional facilities. Cutting out these protections is not a budget fix. It is a major retreat from the reforms promoted by passage of this law.

I encourage you to review the testimony submitted by Betsy Sterling of Prisoners' Legal Services of New York and Sarah Kerr of Legal Aid Society's Prisoners' Rights Project, co-counsel for the plaintiffs in *DAI*. They make clear that there is no reason to believe that the savings claimed will materialize unless the State also fails to meet its commitments under the *DAI* settlement agreement. They also point out that some provisions of the Article VII legislation actually violate the terms of the settlement agreement.

Finally, the proposed Article VII legislation would reduce the amount of mental health training provided to correctional staff. The original bill contained 40 hours of training for DOCS staff assigned to work in residential mental health treatment programs. The existing legislation requires a minimum of eight hours of training on mental illness for staff transferred into these units. The administration proposes eliminating this requirement. As Myra emphasized, interactions between correction officers and people with serious mental illness are frequently fraught with misunderstanding and hostility. It is vital that correction officers be provided with the necessary mental health training.

Please remember – settlement of the *DAI* lawsuit in April 2007 did not preempt the need for the SHU legislation. The private settlement agreement is a time-limited remedy that increases treatment services, but it does not provide a true and lasting fix to the problem – removing prisoners with serious mental illness from SHU. The law is about diversion. We can't have real treatment without removing ill prisoners from the toxic environment of isolation.

We urge you to reject the proposed changes to the SHU law. The reforms mandated by this law are as vital as ever. OMH and DOCS have demonstrated their unwillingness to implement reform on their own. The improvements brought about through the *DAI* settlement are temporary, half measures. We need a permanent remedy to the problem of isolating people with serious mental illness in SHU. Please continue to support these critical reforms.