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New Rules for Confining the Mentally Ill

By [SARAH KERSHAW](#)

[New York State](#) would more closely scrutinize its use of solitary confinement for mentally ill prison inmates under the proposed terms of a legal agreement scheduled for review by a federal judge on Friday.

New York is one of several states that have faced lawsuits over the means used to punish mentally ill prisoners, and, under a settlement reached last week, it has agreed to consider changes in how it uses solitary confinement as a disciplinary measure with the mentally ill.

Many advocates hail the agreement as a watershed in prison reform because of the effects long sentences in isolation have had on the most vulnerable prisoners, including suicide and self-mutilation.

Some mentally ill inmates serve months to years in punitive segregation, locked up for 23 hours a day and sometimes restricted to a diet of cabbage and a pasty flour loaf three times daily for up to 30 days for misbehaving.

Disability Advocates Inc. and the [Legal Aid Society](#) of New York sued the state over the practices five years ago, and the resulting agreement goes before Judge Gerard E. Lynch of the Southern District of New York on Friday for final review.

If the agreement is approved, as expected, the state will not be barred from the use of solitary confinement, or punitive segregation, to discipline mentally ill prisoners, but it would have to provide far more assessment and services for mentally ill inmates in solitary. In addition, the state would be required to review the reasons for and the length of proposed segregation sentences.

Many mental health advocates believe that the New York settlement will create pressure on other states to review their policies of confining mentally ill prisoners.

Others, including state lawmakers and advocates, said the agreement was only a small step toward stopping inhumane treatment of these prisoners. Many of those advocates were particularly disheartened last fall when Gov. [George E. Pataki](#) vetoed a bill that would have banned the use of solitary confinement for the mentally ill in New York.

“We see the settlement as a step in the right direction because it provides additional resources and services for treating the mentally ill in prison,” said Robert Gangi, executive director of the Correctional Association of New York, an advocacy group that is now lobbying the new administration in Albany to stop sending mentally ill prisoners into isolation. “But it falls far short of the policy changes that are needed to ensure humane and appropriate treatment for all the mentally ill people in prison.”

In New York, with one of the largest prison populations in the country, mental illness has been diagnosed in about 8,400 of the 63,000 inmates, according to the State Office of Mental Health. The number of inmates has decreased significantly in the last few years, but Mr. Gangi said the number of mentally ill prisoners was rising, possibly because the condition is being more accurately diagnosed.

Under the agreement, mentally ill prisoners sent to solitary confinement would be entitled to leave their cells for therapy and treatment for two to four hours daily. Their placement in solitary confinement would have to be preceded by extensive reviews, all prisoners entering the system would be screened for mental illness, and the state would be required to provide some mentally ill prisoners with alternative residential housing.

State officials said that because of both the agreement and their own budgetary priorities, they had set aside an additional \$9 million in the 2007-8 fiscal year for programs within existing prisons and new or renovated facilities to accommodate mentally ill inmates, a total of \$57.5 million dedicated to mentally ill inmates.

The agreement also stipulates that New York prisons, which local and national advocates say are unique in using restricted diets to punish prisoners already in segregation, cannot use the cabbage-and-loaf punishment for more than seven days with mentally ill prisoners without “exceptional circumstances.”

Lawyers who brought the suit and national prisoner rights advocates said the New York settlement was unique in covering all mentally ill prisoners, from the time they enter the system until they leave, whereas some states have merely stopped sending prisoners with major mental illnesses to prisons with especially harsh conditions.

“The proof of the pudding is in the eating,” said David C. Fathi, senior staff counsel with the [American Civil Liberties Union](#)’s national prison project, who has handled several cases around the country regarding the treatment of mentally ill inmates. “We will have to see how this is implemented. But on paper, it is very significant, a victory and a step forward.”

He added, “Now we can point to New York and say, if New York can do it, why can’t you do it?”