March 27, 2017: Hearing before the Connecticut Joint Committee on the Judiciary

Testimony of Sameer Jaywant, on behalf of the
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In Support of H.B. No. 7302
"An Act Concerning Isolated Confinement and Correctional Staff Training and Wellness"

My name is Sameer Jaywant, and I am a law student in the Lowenstein International Human Rights Clinic at Yale Law School. Since 2010, the clinic has represented currently and formerly incarcerated persons who have been subjected to isolated confinement, also known as solitary, at Northern Correctional Institution. We are grateful for the opportunity to testify and strongly support the passage of HB 7302, *An Act Concerning Isolated Confinement and Correctional Staff Training and Wellness.* The bill would place reasonable limitations on the use of isolated confinement in Connecticut prisons, which would protect the safety and provide for the well-being of correctional staff and inmates alike.

In 1995, amidst the prison boom of the 1990s, Connecticut opened its first supermax facility: Northern Correctional Institution. Administrators justified the multimillion dollar facility by arguing it was necessary to contain the "worst of the worst." In the ensuing decade, however, Northern became a go-to solution for all types of inmates, from those sentenced to death to low-level offenders who accrued non-violent disciplinary tickets. Meanwhile, the facility acquired a reputation for violent and inhumane conditions. In 2004, the State of Connecticut Office of Protection and Advocacy for Persons with Disabilities sued the Connecticut Department of Corrections (DOC), alleging that the prison conditions constituted cruel and unusual punishment for prisoners with mental illnesses.[1] In response, the DOC agreed to exclude seriously mentally ill prisoners from its Administrative Segregation Program and to evaluate individual prisoners every 90 days for new signs of serious mental illness.

The Lowenstein Clinic began investigating conditions at Northern in 2010, by which time the population had swelled to 450 men. Based on extensive interviews with dozens of current and former prisoners and through the examination of thousands of public records, the Clinic found that Northern had become a default tool used by the DOC to handle even routine and non-violent behavioral issues. Once at Northern, many prisoners deteriorated and stayed for years. We met several men who had been there since the prison had opened some fifteen years earlier. Many had histories of mental illness, and we documented numerous instances where people were driven to self-harm, such as banging their heads against walls, cutting themselves, or inserting metal objects into their bodies. Rather than provide meaningful mental health treatment, the institution's typical response was further punishment, namely forcible placement into four-point shackles. While many staff did their best to maintain professionalism, there was a marked atmosphere of hostility and retribution. Alarmingly, the DOC often returned prisoners from Northern straight to the streets, with no meaningful preparation for that transition.

In December 2011, in anticipation of the release of a public report and possible litigation, the Clinic shared preliminary results of its investigation with DOC leadership. In the following months, the Department began a series of reforms. First, the DOC removed the Chronic Discipline and Security Risk Group programs from Northern. This change was significant, as we had found that prisoners commonly ended up in administrative segregation after initially entering Northern in one of the other programs. Second, the DOC moved the two less restrictive phases of the administrative segregation program to Cheshire CI, where more programming and social opportunities are available, and prisoners reported a positive change in staff and culture.[2] Third, administrators generally stopped admitting individuals to Northern except for grave offenses, typically involving the commission or threat of serious violence. Fourth, prisoners were no longer automatically returned to Northern upon re-arrest. Fifth, the

administration undertook a review of all prisoners at Northern, resulting in a large number of transfers to lower-level facilities and mental health care units. Sixth, Northern introduced some limited social programming, including during Phase I. These reforms were significant and the DOC deserves credit for its initiative and vision.

Since reforms began in 2012, the population in administrative segregation – the most isolated form of confinement – has shrunk by nearly 90 percent. *During this time, staff assaults, inmate assaults, use-of-force incidents, and suicide attempts have all decreased.*[3] This outcome is consistent with research that shows that isolation plays no role in reforming behavior and may be counterproductive.[4]

While these changes are significant, unfortunately all of the reforms made to date are at risk of being reversed by future administrators. Rather than leave the state vulnerable to costly and counterproductive overreliance on isolation, the Connecticut legislature should seize on the momentum behind sensible prison reform and pass HB 7302. The bill codifies the DOC's existing administrative and policy reforms that have enabled it to significantly reduce the use of isolated confinement while promoting safety for staff, prisoners, and the public. Significantly, the proposed legislation would restrict long-term isolation while preserving discretion for corrections administrators to use isolation in emergencies or where there is a risk of serious violence to staff or other prisoners.

Today, there is a shared bipartisan consensus across the country about the need to limit the use of solitary confinement. Between 2011 and 2015, several states instituted oversight measures to stem the over-use of long-term isolation,[5] took steps to bar juveniles[6] and seriously mentally ill prisoners[7] from long-term isolation altogether, and considered broader reforms.[8]

At the same time, corrections leaders across the country have drastically reduced their reliance on long-term isolation and pioneered safer, less costly alternatives. In August 2013, the Association of State Corrections Administrators (ASCA), an organization of the heads of corrections for all fifty states, issued a set of principles for the use of restrictive housing. The principles called for independent and regular reviews, rehabilitative programming and mental health treatment, and assessment of the effects of restricted housing. In September 2015, ASCA released a survey of segregation practices in collaboration with the Liman Program at Yale Law School.[9] In doing so, ASCA remarked that "[p]rolonged isolation of individuals in jails and prisons is a grave problem drawing national attention and concern. The insistence on change comes not only from legislators across the political spectrum, judges, and a host of private sector voices, but also from the directors of correctional systems at both state and federal levels."[10]

Numerous states have joined Connecticut – including Colorado, Kansas, Maine, Mississippi, New Mexico, Ohio, Virginia, and Washington – in revising their segregation programs so that fewer prisoners spend less time and under less isolating conditions.[11] In the last several years, for example, Colorado has decreased its use of segregated housing by 85 percent by narrowing the criteria for placement, diverting mentally ill prisoners, and reducing the required length of stay. In addition, all prisoners have access to programming and at least 4 hours out of cell.[12] These reforms subsequently led to a reduction in prisoner-on-staff assaults.[13]

These developments reflect an increasing sense that long-term isolation runs afoul of core constitutional rights to humane treatment and due process. Solitary confinement has sparked a slew of litigation, including several well-publicized class action lawsuits.[14] One case – *Ashker v. Brown*, a class action challenging the use of long-term solitary confinement of alleged gang members in California – recently resulted in a landmark settlement that ends indeterminate solitary confinement in California and dramatically reduces the number of people in isolation. And just days ago, a U.S. District Court, finding

that "[s]olitary confinement of juveniles . . . violates the Eighth Amendment's prohibitions against the inhuman treatment of detainees," issued a preliminary injunction barring the isolation of youth in Tennessee.[15]

Moreover, the Civil Rights Division of the U.S. Department of Justice has investigated solitary confinement in the context of juveniles and individuals with mental illness or disabilities.[16] Long-term isolation has drawn criticism from many in the legal community, including the American Bar Association, which has advised that "[s]egregated housing should be for the briefest term and under the least restrictive conditions practicable and consistent with the rationale for placement and with the progress achieved by the prisoner."[17]

In June 2015, in *Davis v. Ayala*, U.S. Supreme Court Justice Kennedy wrote that subjection to solitary confinement brings prisoners to "[t]he edge of madness, perhaps . . . [to] madness itself." He called for greater public and judicial scrutiny of such practices, recalling that "[o]ver 150 years ago, Dostoyevsky wrote, 'The degree of civilization in a society can be judged by entering its prisons.'" He concluded, "There is truth to this in our own time."[18] In a recent case in the Third Circuit, the Court found that there is a liberty interest against unexamined and unjustified uses of solitary for prisoners.[19] In the decision, the Court wrote, "[a]s we have explained, scientific research and the evolving jurisprudence has made the harms of solitary confinement clear: Mental well-being and one's sense of self are at risk. We can think of few values more worthy of constitutional protection than these core facets of human dignity."[20]

Evolving practices in the United States also reflect growing awareness of international human rights norms. Since 1955, international standards have required that solitary confinement must be restricted to extraordinary circumstances.[21] Over the years, those standards have become increasingly strict.[22] In a 2011 report, the United Nations Special Rapporteur on Torture found that after 15 days of absolute isolation, harmful psychological effects often manifest and may even become irreversible. As a result, he concluded that any imposition of solitary confinement beyond 15 days constitutes torture or cruel, inhuman or degrading treatment or punishment.[23] In May 2015, the U.N. General Assembly codified the Special Rapporteur's recommendations regarding solitary confinement in the revised Minimum Standards for the Treatment of Prisoners, named the "Mandela Rules" in honor of Nelson Mandela, who spent decades in solitary confinement.

In short, isolated confinement is costly to taxpayers, does not make communities safer, and can cause serious harm to prisoners, which jeopardizes the safety of correctional staff. As Connecticut has phased out its use of isolation, its prisons have experienced less violence. Unnecessary, prolonged isolation constitutes inhumane and degrading treatment, and has no place in a civilized society. For these reasons, we ask the members of this Committee to support HB 7302, which would codify existing DOC procedures concerning isolated confinement, provide for greater transparency about its use, and provide training and wellness initiatives for correctional staff.

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[1] *State of Connecticut Office of Protection and Advocacy for Persons with Disabilities* v. *Choinski*, Civil Action No. 3:03CV1352 (D. Conn).

[2] As of this submission, we have learned that DOC has shifted Phases II and III of Administrative Segregation to Walker CI from Cheshire CI. We are not in a position to state whether the same degree of programming is available there.

[3] See Connecticut Department of Corrections FY 2015-16 Incident Report, http://www.ct.gov/doc/lib/doc/PDF/PDFReport/Incidents2016.pdf.

[4] NIJ Study at 16-19; David Lovell et al., *Recidivism of Supermax Prisoners in Washington State*, 53 Crime & Delinquency 633-656 (2007); David Mears, *An Assessment of Supermax Prisons Using an Evaluation Research Framework*, 88 The Prison Journal 43-68 (2008).

[5] Colorado's, Delaware's and Maine's legislatures ordered reports regarding the use of and alternatives to isolation, and Colorado's legislation further directed that any savings from population reductions be directed to support mental health treatment and alternatives to segregation. Colorado Laws 2011, Ch. 289, § 1, eff. July 1, 2011 (codified at C.R.S.A. § 17-1-113.9(1); Delaware Bill. HJR 5, Commissioning An Independent Examiner To Study And Make Findings And Recommendations Concerning The Use Of Restrictive Housing In Delaware Correctional Facilities Resolution (passed 2015); Legislative Document 1611 (Maine 2009) (introduced 2009, amended and report passed 2010). The New Mexico, Nevada, and Texas legislatures directed similar studies. H.M. 62 (New Mexico 2011); S.B. 107, 2013 Leg., 77th Sess. (Nev. 2013); S.B. 1003, 2013 Leg., 83d Sess. (Tex. 2013). The Nebraska legislature created a position of an Inspector General for Corrections and restricts the use of segregation for mentally ill prisoners. L.B. 598 (Neb. 2015, passed and sign into law May 27, 2015).

[6] S.B. 2003 (N.J. 2015); S.B. 107 (Nev. 2013). S.B. 61 (California 2013); S.B. 812/H.B. 959 (Florida 2013); S.B. 1517 (Texas 2013).

[7] New York enacted a law in 2008 to make it more difficult to put seriously mentally ill prisoners in long-term punitive segregation, and New York City's Board of Correction voted in September 2013 to write new rules governing the use of isolation. 2008 N.Y. Sess. Laws 1 (McKinney) (codified as amended primarily at N.Y. Correct. Law § 1, 137, 401, & 401-a and at N.Y. Mental Hyg. Law § 45.07 (McKinney 2011). Massachusetts passed similar legislation in 2015, and Texas followed suit with a law that requires mental health assessments prior to placement into segregation. H.B. 1083 (Tex. 2015).

[8] In June 2015, the New York Assembly passed the Humane Alternatives to Long-Term Solitary Confinement Act (A4401 / S2659, which would overhaul New York's use of long-term isolation; other states, including Indiana, Montana, and New Hampshire, have considered similar bills. S.B. 557 (Ind. 2015); H.B. 490 (Mont. 2015); H.B. 480 (New Hampshire 2013).

[9] Association of State Correctional Administrators and The Liman Program, Yale Law School, Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison, August 2015, http://www.law.yale.edu/documents/pdf/Liman/ASCA-Liman_Administrative_Segregation_Report_Sep__2_2015.pdf. As director of the Liman Program from 2010 to 2014, I co-authored a previous report on segregation policies. Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies (2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2286861

[10] Press Release, New Report on Prisoners in Administrative Segregation Prepared by the Association of State Correctional Administrators and the Arthur Liman Public Interest Program at Yale Law School, Sept. 2, 2015, http://www.asca.net/system/assets/attachments/8895/ASCA%20LIMAN%20Press%20Release%208-28-15.pdf?1441222595.

[11] See generally Vera Institute for Justice, Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives (May 2015), http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf; John Buntin, *Exodus: How America's Reddest State – And Its Most Notorious Prison – Became a Model of Corrections Reform*, 23 Governing 20, 27 (2010); Terry A. Kupers et al., *Beyond Supermax Administrative Segregation: Mississippi's Experience Rethinking Prison Classification and Creating Alternative Mental Health Programs*, 36 Crim. Just & Behav. 1037, 1046 (2009); Steve Mills, *Quinn's Prison Plan Causes Stir,* Chi. Tribune (Feb. 23, 2012), Lance Tapley, *Maine's Dramatic Reduction of Solitary Confinement*, Crime Report (July 21, 2011), http://www.thecrimereport.org/archive/2011-07-maines-dramatic-reduction-of-solitary-confinement; Lance Tapley, *Reform Comes to the Supermax*, Portland Phx. (May 25, 2011), http://portland.thephoenix.com/news/121171-reform-comes-to-the-supermax/; Bernard Warner & Dan Pacholke, Wash. Dep't of Corr., Vera/DRW Project: A Project Update, (2012), *available at* http://www.asca.net/system/assets/attachments/5084/3.%20BWarnerVERA-%2040.pdf?1352145093.

[12] Vera Report, at 18.

[13] Id. at 18.

[14] Center for Constitutional Rights, Summary of Ashker v. Governor of California Settlement Terms (Sept. 1, 2015), https://ccrjustice.org/sites/default/files/attach/2015/08/2015-09-01-Ashker-settlement-summary.pdf. An exhaustive list of recent litigation is beyond the scope of this short testimony, but the following gives a sense of the breadth and scope of litigation activity. *Allah v. Bartkowski*, 574 Fed.Appx. 135, 2014 WL 3537881(3d Cir. 2014) (reversing dismissal of eighth and fourteenth amendment claims against prison officials arising out of plaintiff's stay in solitary confinement); *Incumaa v. Stirling*, --- F.3d ---- 2015 WL 4081648 (4th Cir. Jul. 1, 2015) (reversing dismissal of due process claims by inmate who had been confined in solitary for more than 20 years); *Wilkerson v. Goodwin*, 774 F.3d 845 (5th Cir. 2014) (finding inmate had clearly established right to procedural due process prior to placement into solitary); *Cunningham v. Federal Bureau of Prisons*, Case No. 1:12-cv-01570 (D. Colo., June 15, 2015) (class action on behalf of mentally ill prisoners at federal supermax prison); *Anderson v. Colorado*, 887 F.Supp.2d 1133 (D.Colo. 2012) (ordering access to

outdoor recreation space for supermax prisoners); *Disability Law Center v. Massachusetts Department of Correction*, 1:07-cv-10463-MLW, 2012 WL 1237760 (D.Mass. April 12, 2012) (lawsuit resulting in settlement decree on behalf of mentally ill prisoners in segregation); *C.B., et al. v. Walnut Grove Correctional Authority, et al.*, Case No. 3:10-cv-663 (S.D. Miss.) (Consent Decree, February 3, 2012) (prohibiting solitary confinement of youth in Mississippi); *Wilkerson v. Stalder*, 2013 WL 6665452 (M.D.La. Dec. 17, 2013) (denying defendants summary judgment where plaintiff prisoners were held in isolation for 40 years); *Parsons v. Ryan*, CV12-0601-PHX-NVW (D. Ariz.); *Disability Rights Network of Pennsylvania v. Wetzel*, 1:13-cv-00635-JEJ (M.D. Pa.) (class action on behalf of mentally ill prisoners); *Shoatz v. Wetzel*, Slip Op. 2014 WL 294988 (W.D. Pa. Jan. 27, 2014) (denying motion to dismiss and finding that 22 years of solitary confinement adequately stated eighth amendment claim).

[15] *Doe v. Hommrich*, No. 3-16-0799 (M.D. Tenn. March 22, 2017).

[16] In its investigation of Pennsylvania's correctional system, the Department of Justice Civil Rights Division issued findings that the placement of prisoners with mental illness and intellectual disabilities in restrictive housing units (RHUs) violated the Eighth Amendment and Americans with Disabilities Act. Letter, DOJ Civil Rights Division to Governor Tom Corbett, February 24, 2014. See also Justice Department and Columbus, Georgia, Agree to Landmark Reforms Regarding the Treatment of Prisoners with Serious Mental Illness, January 21, 2015, https://www.justice.gov/opa/pr/justice-department-and-columbus-georgia-agree-landmark-reforms-regarding-treatment-prisoners; Justice Department Settles Claims Against Leflore County, Mississippi to Address Security and Facility Conditions at the Leflore County Juvenile Detention Center, May 13, 2015, https://www.justice.gov/opa/pr/justice-department-settles-claims-against-leflore-county-mississippi-address-security-and; Department of Justice Announces Investigation of the Jefferson County Jail in Birmingham Alabama, June 3, 2015, https://www.justice.gov/opa/pr/department-justice-announces-investigation-jefferson-county-jail-birmingham-alabama; U.S. Attorney for the Southern District of New York Finds a Pattern and Practice of Excessive Force and Violence at New York City Jails on Rikers Island that Violates the Constitutional Rights of Adolescent Male Inmates, August 4, 2014, https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-finds-pattern-and-practice-excessive-force-and-violence-nyc-jails.

[17] Am. Bar Ass'n, ABA Standards for Criminal Justice: Treatment of Prisoners intro. (3d ed. 2011), available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_midyear2010_102i.authcheckdam.pdf; *see also* Margo Schlanger, Margaret Love & Carl Reynolds, Criminal Justice Magazine (Summer 2010).

[18] *Davis v. Ayala*, 135 S.Ct. 2187 (2015).

[19] *Williams v. Sec. Pennsylvania Dept. of Corrections*, ___F.3d___, 2017 WL 526483 (3d Cir. 2017).

[20] *Williams*, 2017 WL 526483, at 17.

[21] Standard Minimum Rules for the Treatment of Prisoners, R. 57, E.S.C. Res. 663C, U.N. Doc. E/3048 (Aug. 30, 1955) amended by E.S.C. Res. 2076, U.N. Doc. E/5988 (May 13, 1977), available at http://www2.ohchr.org/english/law/treatmentprisoners.htm ("Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.").

[22] The committee that oversees the Convention Against Torture (which the United States has ratified) has recognized the severe harmful effects of solitary confinement and repeatedly questioned U.S. reliance on such practices. *See, e.g.*, Comm. Against Torture, Report of the Committee Against Torture, 73, U.N. Doc. A/61/44 (Nov. 14–15, 2005; May 1–19, 2006) (questioning the United States about its supermax practice and its effects on prisoners' mental health); Comm. Against Torture, Report of the Committee Against Torture, 32, U.N. Doc. A/55/44 (Nov. 8-19, 1999; May 1–19, 2000) (expressing concern about the United States' "excessively harsh regime of the 'supermaximum' prisons").

[23] U.N Special Rapporteur on Torture, Interim Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ¶ 76, U.N Doc. A/66/268 (Aug. 5, 2011).