

## **Testimony in Support of Codifying Procedures Concerning Isolated Confinement (Raised HB-7302 An Act Concerning Isolated Confinement and Correction Staff and Wellness Training)**

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The Yale Law School Challenging Mass Incarceration Clinic welcomes the opportunity to submit testimony to the General Assembly for its hearing on House Bill 7302 to codify procedures concerning isolated confinement in Connecticut prisons. As a clinic, we study the legal, social, and political factors that have contributed to the incarceration of over two million people in the United States. We also represent clients in sentencing proceedings and parole hearings. Our research and direct services work make clear that isolated confinement—in particular the isolated confinement of juveniles and individuals with serious mental illness—not only damages those subjected to it, but impairs and endangers other prisoners, prison employees, and the communities to which these prisoners will eventually return.

Isolated confinement is meant to keep prisons safe and orderly by isolating the “worst of the worst” from the general prison population. However, data shows that individuals subjected to isolated confinement are usually *not* the “worst of the worst.” The majority of inmates housed in isolated confinement are individuals who, by virtue of their incomplete cognitive development or impairment, are ill-equipped to adapt to the restrictive prison environment.<sup>1</sup> In essence, members of these vulnerable populations struggle to abide by prison rules and are punished with isolated confinement for their missteps.

The following testimony demonstrates that Connecticut’s use of isolated confinement, particularly for juveniles and individuals with serious mental illness, is cruel, counterproductive, and unjustifiably costly. It relies on empirical data and nationwide trends in state practices—all of which support the conclusion that prisons should only use isolated confinement in rare, emergency circumstances, when all other possible remedies have been exhausted.

1. Isolated confinement is cruel. The devastating impact isolated confinement has on those subjected to it tells us that, if it is used at all, there should be strict, codified limits on who can be put in isolation and for how long. Studies have shown that prisoners placed in isolated confinement even for short stretches of time are at risk of suffering harmful and irreversible psychological effects such as hallucinations, panic attacks, cognitive deficits, obsessive thinking, paranoia, and deficits in impulse control.<sup>2</sup> Moreover, as damaging as isolated confinement can be for relatively healthy and mature individuals, it is even more harmful to the vulnerable populations most likely to end up in restrictive housing, especially juvenile offenders and those with pre-existing mental illness.

### *A. Juveniles are particularly vulnerable to the adverse effects of isolated confinement.*

Significant changes in the human brain structure occur during adolescence. Most notably, the prefrontal cortex and its interconnections within the brain develop when people are in their teens and early twenties. This development of the prefrontal cortex is critical to executive functions like planning, judgment, and the inhibition of impulses.<sup>3</sup> For this reason, juveniles are not simply young adults; their incomplete brain development directly affects their ability to exercise sound judgment and control their impulses. The Supreme Court has recognized that children’s impetuosity, recklessness, and

susceptibility to peer pressure make it less likely that they will weigh consequences such as severe punishment before acting.<sup>4</sup> For precisely this reason, the Supreme Court has noted that “juvenile offenders cannot with reliability be classified among the worst offenders.”<sup>5</sup>

Yet, despite physiological evidence confirming that juveniles are not “the worst of the worst,” state prisons routinely put juvenile prisoners in isolated confinement. Sometimes corrections officials put juveniles in isolation to manage particular categories of prisoners, such as alleged gang members.<sup>6</sup> Other times juveniles are housed in isolation because they are at the pretrial phase of their criminal proceedings.<sup>7</sup> More often than not, however, what lands youth in solitary confinement is the commission of impulsive acts typical of adolescents.<sup>8</sup> Such behavior includes actions that violate the institution’s rules, as well as incidents of self-harm.<sup>9</sup>

Because juveniles’ brains are still developing, they are at a higher risk of suffering psychological harm from isolated confinement.<sup>10</sup> This risk is compounded by the fact that many children are incarcerated after experiencing abuse, neglect, and previous institutionalization. Statistics show that justice-involved juveniles experience chronic trauma at rates triple those of juveniles in the general population.<sup>11</sup> As a result, youth in isolation are far more likely to commit suicide than youth in the general population.<sup>12</sup> Indeed, more than half of all suicides in juvenile facilities occur in isolated confinement or its equivalent, and sixty-two percent of incarcerated youth who commit suicide have a history of isolation.<sup>13</sup> In light of these bleak truths, several federal courts have held that placing juveniles in isolated confinement amounts to cruel and unusual punishment in violation of the Eighth Amendment.<sup>14</sup>

#### *B. Isolated confinement causes and exacerbates mental illness.*

Like juveniles, prisoners with serious mental illness suffer disproportionately adverse impacts when subjected to extreme isolation. When people with mental illness experience isolated confinement, their health deteriorates dramatically and they often engage in bizarre and grotesque behavior. For example, it is not uncommon for mentally ill prisoners in isolated confinement to bang their heads against walls until they lose consciousness, swallow harmful objects, smear themselves with feces, or amputate parts of their own bodies.<sup>15</sup> Moreover, prison administrators, who are untrained as mental health clinicians, often respond to such behavior by withdrawing privileges and lengthening these prisoners’ terms in isolation. These practices further exacerbate psychological trauma instead of providing much needed medical and mental health treatment, and in many cases, lead prisoners to commit suicide.<sup>16</sup>

In recognition of the serious harm extreme isolation brings to individuals with serious mental illness, several federal courts have held that subjecting the severely mentally ill to isolated confinement is cruel and unusual punishment in violation of the Eighth Amendment to the Constitution.<sup>17</sup> In fact, in the landmark case *Madrid v. Gomez*, a federal district court analogized placing a mentally ill person in solitary confinement to “putting an asthmatic in a place with little air to breathe.”<sup>18</sup> The risk of worsening the prisoner’s condition in that circumstance is so grave—“so shocking and indecent”—that such punishment “simply has no place in civilized society.”<sup>19</sup>

2. Isolated confinement jeopardizes institutional safety. Though often framed as a necessary evil to ensure prison safety, studies show that isolated confinement does not enhance security in prisons. According to a 2013 U.S. Government Accountability Office report, no data suggest a positive correlation between the use of isolated confinement and institutional safety.<sup>20</sup> In fact, most anecdotal

evidence from prisons points in the opposite direction: reducing or eliminating isolated confinement can actually make prison a safer and less stressful environment for both corrections officers and prisoners.

For instance, in response to court orders calling for the transfer of prisoners with serious mental illness from isolated confinement to specialized units that offered mental health treatment, Mississippi's supermax prison reduced the number of prisoners in isolation from one thousand to fewer than 150.<sup>21</sup> After the reduction, Mississippi's rate of serious assaults against staff and prisoners decreased by seventy percent.<sup>22</sup> Moreover, the Mississippi Department of Corrections found that nearly eighty percent of the transferred prisoners did not require such restrictive confinement.<sup>23</sup> Today, Mississippi's recidivism rate is still one of the lowest in the country.<sup>24</sup> Similarly, when Maine cut its isolated confinement population by over half, the state Corrections Commissioner noted "no statistically significant rise in incidents of violence. In fact, by some measures, the violence ha[d] decreased."<sup>25</sup> Finally, the Director of the Colorado Department of Corrections has testified in front of the Senate that when the state decreased its use of segregated housing by sixty percent, there was no immediate change in assault rates, and that over the longer term, Colorado "institutions will actually be safer" as a result of the reform.<sup>26</sup>

Underlying this revealing data is a phenomenon that Dr. Craig Haney refers to as the "vicious cycle" of isolated confinement.<sup>27</sup> The prisoners most likely to end up in isolated confinement are those—most notably mentally ill individuals and juveniles—that have trouble adjusting to prison culture and abiding by institutional rules. Once condemned to extreme isolation, these prisoners' previously existing conditions worsen, and new pathologies arise. Each time they are released into the general prison population, they become decreasingly able to cope with the transition and more likely to commit disciplinary offenses that place them back into isolation. This cycle may repeat itself over and over during the course of a prisoner's incarceration, with each instance compounding his psychological and developmental damage, diminishing his potential for successful rehabilitation or reintegration into the general population, and increasing his likelihood of further violating prison rules.

3. Isolated confinement jeopardizes public safety. While the transition from isolated confinement to the general prison population is undoubtedly a difficult one, the transition "from isolation to the street" can be even more arduous.<sup>28</sup> Yet, every year in this country, tens of thousands of prisoners are expected to reintegrate into society directly from isolated confinement. Between 2008 and 2014, Connecticut prisons alone released an average of forty prisoners per year from segregated housing directly into the community, either at the end of their sentences or on "special parole."<sup>29</sup> These prisoners were expected to "go from complete isolation one day to complete freedom the next," and to re-establish themselves as productive members of their communities, despite being both unequipped to do so and especially psychologically vulnerable from their time in isolation.<sup>30</sup> The results of this process are predictably tragic: these individuals often end up jobless, homeless, and in many cases, back in prison.<sup>31</sup>

In fact, social science research establishes that prolonged exposure to extreme isolation is disabling. Recidivism rates for prisoners released from segregated housing directly into their communities are considerably higher than the rates for other offender populations, and the former group is also much quicker to recidivate.<sup>32</sup> This phenomenon is further magnified when one compounds the impacts of isolated confinement and serious mental illness.<sup>33</sup> In addition to being more likely to recidivate overall, prisoners released directly from segregation tend to commit more serious—i.e., more violent—crimes than their counterparts.<sup>34</sup> In a pilot study performed in Washington state, the majority of new crimes

committed by prisoners released from general prison population were drug and property crimes, with only thirty-nine percent of new crimes being violent. In contrast, well over half of the new crimes committed by prisoners released from segregated housing populations were violent in nature (e.g., homicide, assault, or robbery).<sup>35</sup> These data suggest that a treatment-focused approach to responding to disciplinary infractions, rather than isolated confinement, would be more effective in preparing prisoners for their transitions back to their communities and thus in reducing recidivism and enhancing public safety in the neighborhoods and towns to which these prisoners return.

The U.S. Supreme Court has advised that a state's primary obligation in operating a correctional system "must be to ensure the safety of guards and prison personnel, the public, and the prisoners themselves."<sup>36</sup> As these statistics demonstrate, the practice of isolated confinement runs counter to this mandate by endangering each of the aforementioned parties: it severely diminishes the mental and developmental wellbeing of the prisoners subjected to it, rendering those inmates ill-equipped to transition back into general prison populations and eventually back into communities outside prison. As a result, isolated confinement creates long term risks to public safety, when individuals who have been held in conditions that are, by definition, antisocial, and who have not had access to rehabilitative resources are released back into their communities. Isolated confinement is thus directly at odds with prisons' obligations to protect the public, prison staff, and prisoners themselves from future harm.

4. Other jurisdictions are moving away from isolated confinement use. In recognition of the widespread harm caused by solitary confinement, several legislatures have codified limits on the use of isolation both for particularly vulnerable populations and for prisoners in general. A number of states and jurisdictions have restricted the use of isolation on adults and outrightly banned the solitary confinement of youth,<sup>37</sup> while others have limited isolation to a very narrow set of emergency situations.<sup>38</sup> A growing number of state legislatures have enacted similar outright and conditional bans on the use of solitary confinement on those with serious mental illness.<sup>39</sup> Notably, in January 2016, the Department of Justice implemented important reforms to federal isolated confinement use, including banning its use "for juveniles, prohibiting its use as a response to low-level infractions, expanding treatment of those with mental illness, increasing the amount of time inmates spend out of their cells, and ensuring inmates are not released into communities directly from solitary confinement."<sup>40</sup>

While Connecticut has made some strides toward reducing isolated confinement and eliminating the isolation of juveniles and those with serious mental illness, it lags behind many other states and jurisdictions. Most glaringly, Connecticut has yet to codify any limits on isolated confinement or the isolation of particularly vulnerable populations in its penitentiaries. The proposed bill thus presents a critical opportunity for Connecticut to bring itself into closer alignment with the standards adopted by a number of other states.

5. Isolated confinement is costly. Segregated housing is approximately three times more costly than housing in the general population.<sup>41</sup> Moreover, the long-term social costs of isolated confinement far exceed its intended short-term benefits.

Post-release, ex-offenders that have spent time in isolated confinement face a major uphill battle securing gainful employment and housing. This is particularly true for juveniles and individuals with serious mental illness, many of whom have never held full-time jobs prior to incarceration. As a result, the specialized educational and vocational training programs available to prisoners in the general

population are invaluable to these populations. For juvenile offenders in particular, such programs are the only available method of obtaining GED certification. Meanwhile, for prisoners in isolated confinement, the opportunity to participate in the prison's educational and vocational programming are often nonexistent or significantly limited.<sup>42</sup> For these individuals, the challenges of reintegration are significantly exacerbated by the lasting effects of their time in isolation.

For example, in Connecticut, most of the educational programs offered to prisoners in segregation comes in the form of “in-cell programming.”<sup>43</sup> In-cell programming offers no opportunity to interact with educators or other prisoners, depriving them of a chance to develop important social skills necessary for them to interact successfully in the workplace. Those prisoners who do have access to “out-of-cell programming” are typically still held in heavy restraints in confined areas during the duration of their program.<sup>44</sup> These conditions are not conducive to constructive learning and can actually be counterproductive in some cases by lowering prisoners' motivation and self-worth. Additionally, unlike most of their non-segregated counterparts, segregated prisoners do not get an opportunity to hold jobs within the institution, which could have otherwise allowed them to cultivate useful skills for a future workplace.

The deprivation of educational and vocational opportunities translates to increased risk of joblessness and homelessness when prisoners are released, and ultimately, greater reliance on the public fisc.<sup>45</sup> These hidden ex post costs, taken in combination with the fact that segregated housing units are inherently expensive to operate, demonstrate that the practice of isolated confinement simply does not make good economic sense.

The majority of American prisoners confined in isolation—a number estimated to be as high as 80,000—have made and will continue to make the difficult transition to the outside world. As we hope to have illustrated, isolated confinement puts these individuals and the communities to which they return at high risk of failure and recidivism.

6. Conclusion. The toll isolated confinement takes on the public, the prison system, and individual prisoners—particularly juveniles and those who suffer from mental illness—is unjustifiable. The Connecticut Department of Corrections has begun to acknowledge as much. In recent years, the DOC has scaled back its use of isolated confinement and issued a series of administrative directives to help guide prisons on how to reduce their reliance on its use.<sup>46</sup> This bill represents an opportunity for Connecticut to codify the DOC's recent strides and ensure that vulnerable populations are treated humanely and receive the protections they need and deserve.

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<sup>1</sup> Elizabeth Alexander, “*This Experiment, So Fatal*”: *Some Initial Thoughts on Strategic Choices in the Campaign Against Solitary Confinement*, 5 U.C. IRVINE L. REV. 1, 12 (2015).

<sup>2</sup> *Fact Sheet: Psychological Effects of Solitary Confinement*, SOLITARY WATCH 2 (2011), <http://solitarywatch.com/wp-content/uploads/2011/06/FACT-SHEET-Psychological-Effects-FINAL-x1.pdf>.

<sup>3</sup> Kim Taylor-Thompson, *Minority Rule: Redefining the Age of Criminality*, 38 N.Y.U. REV. L. & SOC. CHANGE 143, 174 (2014).

<sup>4</sup> *Id.* at 160.

<sup>5</sup> *Roper v. Simmons*, 543 U.S. 551, 569 (2005).