



Yale Law School

Arthur Liman Center for Public Interest Law

March 29, 2021

Re: Testimony submitted for the Record in Support of S.B. 1059, known as the “PROTECT Act,” and addressing solitary confinement, hearing held on March 22, 2021 before the Judiciary Committee

Dear Chairs Winfield and Stafstrom; Vice Chairs Kasser and Blumenthal; Ranking Members Kissel and Fishbein; and members of the Judiciary Committee:

We write because the Arthur Liman Center for Public Interest Law at Yale Law School has worked for decades to reduce the harms of detention, and we have devoted several years to gathering data on the use of what correctional leaders call “restrictive housing” or “administrative segregation” and what is commonly understood to be solitary confinement.¹ We strongly support S.B. 1059.

During the last several years, we have produced the only national, longitudinal database on the numbers of people held in isolation in the United States and the conditions in which they live. The Liman Center has done this work in conjunction with directors of prison systems across the country, who have an organization now called the Correctional Leaders Association (CLA) and which was previously the Association of State Correctional Administrators (ASCA). Together, we have drafted and sent surveys to gather data on restrictive housing practices throughout the United States. In 2013, we provided an assessment of all the policies governing administrative segregation,² and since then, we have published a series of reports detailing the demographic composition of the people held

¹ The authors of this testimony are Wynne Muscatine Graham, a student at Yale Law School and at the Liman Center; Anna VanCleave, the Director of the Liman Center; and Judith Resnik, the Arthur Liman Professor of Law and founder of the Liman Center. Institutional affiliation is provided for identification purposes only; our views, based on the research that we have done, are not to be attributed to Yale Law School.

² See *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies*, YALE LAW SCHOOL, ARTHUR LIMAN PUBLIC INTEREST PROGRAM (June 2013).

in restrictive housing and the conditions under which they live.³ We have also done a study of a small number of jurisdictions that have not used solitary confinement for individuals serving capital sentences.⁴ In addition, the Liman Center has analyzed legislation, pending and enacted, relating to solitary confinement in more than two dozen states and the federal system.⁵

S.B. 1059 marks an important step toward limiting harmful isolation practices and mitigating the impact of solitary confinement. Below, we provide an overview of the many years of research findings that explain why we believe enactment of this legislation is imperative. Further, our experiences as researchers underscore the importance of the legislative provisions, such as those in S.B. 1059, for data collection, reporting, and transparency.

S.B. 1059's Provisions to Mitigate Isolation and Improve Well-Being

The statute's ban on putting individuals into extreme isolation reflects a growing national consensus, supported by many people in detention, their families and advocates, medical and mental health professionals, corrections officials, policy makers, and scholars of these issues. A wide array of individuals and groups have documented that isolation in prisons imposes grave harms and should be limited to the greatest extent possible and for some, abolished.⁶

What is the scope and nature of the use of solitary confinement? Who is impacted? By surveying state and federal correctional departments in 2013 and 2014, we developed a national account of the number of people held in solitary confinement, defined then as

³ [Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison](https://law.yale.edu/sites/default/files/area/center/liman/document/time-in-cell_combined_-web_august_2015.pdf), YALE LAW SCHOOL ARTHUR LIMAN PUBLIC INTEREST PROGRAM (August 2015), at https://law.yale.edu/sites/default/files/area/center/liman/document/time-in-cell_combined_-web_august_2015.pdf (hereinafter 2014 "Time-in-Cell"); [Aiming to Reduce Time-in Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms](https://law.yale.edu/sites/default/files/area/center/liman/document/aimingtoeducetic.pdf), YALE LAW SCHOOL ARTHUR LIMAN PUBLIC INTEREST PROGRAM (November 2016), at <https://law.yale.edu/sites/default/files/area/center/liman/document/aimingtoeducetic.pdf> (hereinafter 2016 "Aiming to Reduce Time-in-Cell"); [Working to Limit Restrictive Housing: Efforts in Four Jurisdictions to Make Changes](https://law.yale.edu/sites/default/files/area/center/liman/document/asca_limn_2018_restrictive_housing_efforts_in_four_jurisdictions_to_make_changes.pdf), YALE LAW SCHOOL, ARTHUR LIMAN CENTER FOR PUBLIC INTEREST LAW (October 2018), at https://law.yale.edu/sites/default/files/area/center/liman/document/asca_limn_2018_restrictive_housing_efforts_in_four_jurisdictions_to_make_changes.pdf; [Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell](https://law.yale.edu/sites/default/files/area/center/liman/document/aimingtoeducetic.pdf), YALE LAW SCHOOL ARTHUR LIMAN PUBLIC INTEREST PROGRAM (October 2018) (hereinafter 2018 "Reforming Restrictive Housing"); [Time-In-Cell 2019: A Snapshot of Restrictive Housing](https://law.yale.edu/sites/default/files/area/center/liman/document/asca_limn_2018_restrictive_housing_released_oct_2018.pdf), YALE LAW SCHOOL ARTHUR LIMAN CENTER FOR PUBLIC INTEREST LAW (September 2020), at https://law.yale.edu/sites/default/files/area/center/liman/document/asca_limn_2018_restrictive_housing_released_oct_2018.pdf (hereinafter "Time-in-Cell 2019").

⁴ [Rethinking "Death Row": Variations in the Housing of Individuals Sentenced to Death](https://law.yale.edu/sites/default/files/area/center/liman/document/rethinking_death_row.pdf), YALE LAW SCHOOL, ARTHUR LIMAN PUBLIC INTEREST PROGRAM (July 2016).

⁵Time-in-Cell 2019, at 80-83.

⁶ See, e.g., Statement, Consensus Statement from the Santa Cruz Summit on Solitary Confinement and Health, 115 NORTHWESTERN L. REV. 335 (2020).

“separating prisoners from the general population, typically in cells (either alone or with cellmates), and holding them in their cells for most of the hours of the day for thirty days or more.”⁷ Based on the data collected, we estimated that, in 2014, about 80,000 to 100,000 people were in solitary confinement in prison systems across the country.⁸ More recently, we have defined restrictive housing as holding an individual in a cell for an average of at least 22 hours per day for at least fifteen continuous days. Using this definition, our 2016 report identified 67,442 people in solitary in prison systems in 48 jurisdictions,⁹ and our 2018 report estimated that about 61,000 people were in isolation as of the fall of 2017.¹⁰

The 2020 report, drawn from data in the summer of 2019 before COVID, estimated that 55,000 to 62,500 people were held in isolation in prisons around the country.¹¹ In the 33 jurisdictions that responded to our survey, almost 3,000 people had been kept in solitary confinement for more than three years.¹² In addition, jurisdictions reported that more than 3,000 people in solitary confinement had been diagnosed with a serious mental illness, which was differently defined across jurisdictions.¹³ In at least six jurisdictions, more than ten percent of the people in solitary confinement had been diagnosed with a serious mental illness.

The 2020 report also concluded that race affects placement in solitary confinement. Black women are much more likely to be placed in isolation than white women. In 2019, 22% of the total female prison population was Black; 42% of women in solitary confinement were Black. Black and Hispanic men are also somewhat more likely to be placed in restrictive housing than white men. In 2019, Black men made up 40% of the total custodial population and 43% of the solitary confinement population. Hispanic men made up 15% of the total custodial population and 17% of the solitary confinement population.

Literature and research make plain that denying human beings sociability—interaction with other humans—undermines their physical and mental health and can have long-lasting effects on individuals and their families. Moreover, solitary confinement advances no legitimate purposes of governments when punishing people convicted of crimes. The use of solitary confinement that we documented represents thousands of hours, days, months, and years of unnecessary human suffering.

S.B. 1059 provides important remedies by requiring opportunities for interaction that reduce isolation. The bill calls for the Department of Correction to place no limit on

⁷ See 2014 Time-in-Cell at 11.

⁸ 2014 Time-in-Cell at 2.

⁹ 2016 Aiming to Reduce Time-in-Cell at 1.

¹⁰ 2018 Reforming Restrictive Housing at 4.

¹¹ Time-In-Cell 2019 at 5.

¹² Time-in-Cell 2019 at 12-13.

¹³ Time-in-Cell 2019 at 48-50.

the number of letters an incarcerated person may send and to provide writing materials and postage free of charge to enable individuals to send up to two social letters each week.¹⁴ In addition, S.B. 1059 requires that all people in prison be afforded at least one social contact visit each week, and that no one be deprived of a social contact visit without a hearing.¹⁵ These measures, along with much else, are essential to the humane treatment of people while in confinement and to help individuals who are released to function after incarceration.

Moreover, a good deal of research addresses the harms to correctional staff who work in solitary confinement units.¹⁶ The well-being of staff and prisoners is interdependent. S.B. 1059 is pathbreaking in recognizing these problems, as the legislation will bring important improvements in training and support.

Further, the bill includes critical provisions prohibiting the use of inhumane and dangerous restraints. The bill bans “life-threatening restraints” and limits the use of pharmacological and physical restraints to rare circumstances.¹⁷ The bill also requires that, if, in an exceptional case, physical restraints are used, the Department of Correction must provide for continual monitoring “to ensure the person’s safety and well-being; S.B. 1059 requires for a medical professional to check the imposition of restraints to ascertain that the restrained person is able “to perform necessary bodily functions, including breathing, eating, drinking, standing, lying down, sitting, and using the toilet.”¹⁸

The Importance of Reporting, Transparency, and Data Collection

S.B. 1059 also includes a critical set of provisions that require reporting which in turn make transparency and oversight possible. We know first-hand the importance of these requirements because, as we have done research during the last several years, we have repeatedly been struck by how little is known publicly about the practices of solitary confinement. Until the Liman Center joined with the correctional leaders in 2013 and 2014, no recent, reliable data existed on the number of people held in isolation; previous estimates were long out of date.¹⁹ The information we have gleaned underscores the need to ensure routine data collection and analyses.

¹⁴ S.B. 1059, Sec. 4(b).

¹⁵ S.B. 1059, Sec. 4(a).

¹⁶ See generally Cyrus Ahalt, Colette S. Peters, Heidi Steward & Brie A. Williams, *Transforming Prison Culture to Improve Correctional Staff Wellness and Outcomes for Adults in Custody “The Oregon Way”: A Partnership Between the Oregon Department of Corrections and the University of California’s Correctional Culture Change Program*, 8 *ADVANCING CORRECTIONS* J. 130 (2019).

¹⁷ S.B. 1059, Sec. 3(c)(1)-(4).

¹⁸ S.B. 1059, Sec. 3(c)(2)-(3).

¹⁹ One estimate came from a report that put the number of individuals held in supermax facilities at 25,000, see AMNESTY INTERNATIONAL, *Entombed: Isolation in the U.S. Federal Prison System* (2014), available at <http://www.amnestyusa.org/sites/default/files/amr510402014en.pdf> (citing Daniel P. Mears, *A Critical Look at*

Collecting the data that we have summarized above was labor-intensive. We surveyed each jurisdiction and not all replied, and what we gathered was not as complete as we would have liked. Indeed, we know that after several years of surveys and reports, the information we have obtained is only a beginning in understanding the impact of solitary confinement on the people held and on the institutions that impose this form of suffering. S.B. 1059 responds to these problems in important respects.

First, the bill requires the Department of Correction (DOC) to “at least annually submit to the Criminal Justice Policy and Planning Division . . . disaggregated and anonymized data” on the number and demographics of people in isolation as well as “[a] list of the unique individuals in the custody of the department . . . subjected to any form of isolated confinement” in the twelve months prior to submission²⁰ The bill’s provisions also require that the DOC maintain detailed records on individual placements in isolation or in restraints and expand reporting requirements to cover all individuals subjected to isolated confinement.²¹ Legislatively mandated reporting provisions like these make possible the tracking of the use of isolation and of restraints.

Second, the bill creates a structure for independent oversight. The Correction Accountability Commission created by the bill would be staffed by individuals appointed by legislators and the Governor and would include at least four individuals who are incarcerated, formerly incarcerated, or a family member of such a person.²² No member of the commission is to be a volunteer for or an employee of the Department of Correction.²³ The bill also establishes the Office of the Correction Ombuds, which the legislation calls on to evaluate the services provided to incarcerated individuals, review DOC procedures, and receive and investigate complaints.²⁴

These aspects of the legislation are essential. The ongoing monitoring, transparency, and oversight proposed by S.B. 1059 will enable clarity about the use and impact of the other reforms. The staffing and appointment of an independent ombuds and the implementation of reporting and oversight protections can help to ensure that substantive reforms are meaningful and lasting.

Supermax Prisons, Corrections Compendium, 2005). Data from the Bureau of Justice Statistics put the number at 81,622. See Angela Browne, Alissa Cambier & Suzanne Agha, *Prisons Within Prisons: The Use of Segregation in the United States*, 24 FEDERAL SENTENCING REPORTER 46, 46 (October 2011) (citing James J. Stephan, *Census of State and Federal Adult Correctional Facilities, 2005*, Bureau of Justice Statistics, U.S. Department of Justice (October 2008).

²⁰ S.B. 1059, Sec. 3(g).

²¹ S.B. 1059, Sec. 3(e).

²² S.B. 1059, Sec. 1(b).

²³ *Id.*

²⁴ S.B. 1059, Sec. 1(a)(1)(A)-(C).

Moreover, when making the PROTECT Act law, Connecticut would join other jurisdictions that have enacted legislation requiring greater transparency in corrections. Since October 2018 alone, the federal government and six states have put legislation into place that requires correctional departments to provide information about their use of restrictive housing.²⁵

S.B. 1059 comes at a critical juncture, as state and federal legislatures across the country are recognizing their vital role in bringing to an end the profound isolation of people held in detention. We request that this statement be made a part of the legislative record of S.B 1059. Thank you for your consideration of these comments.

Sincerely,

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²⁵ See U.S. Senate Bill 756, One Hundred and Fifteenth U.S. Congress, Second Session (enacted December 2018); Maryland House Bill 1001, Maryland General Assembly, 2019 Session (enacted May 2019); Michigan Senate Bill 848, Ninety Ninth Michigan Legislature, 2018 Regular Session (enacted June 2018); Minnesota Senate File 8, Ninety First Minnesota Legislature, 1st Special Session 2019-2020 (enacted May 2019); Nebraska Legislative Bill 230, 2019-2020 Nebraska Unicameral Legislature (enacted February 2020); New Mexico House Bill 364, 2019 New Mexico Legislature, Regular Session (enacted April 2019); Virginia Senate Bill 1777, House Bill 1642, 2020 Virginia Legislative Session (enacted March 2019).