Dear esteemed members of the Judiciary Committee:

As members of the Lowenstein International Human Rights Clinic at Yale Law School, we write to express our strong support for S.B. 1059, the PROTECT Act. S.B. 1059 is critically needed to end DOC’s use of prolonged isolation and abusive restraints practices. Both international human rights institutions and domestic courts increasingly condemn these practices as torturous and cruel and unusual, and states are implementing alternative, more effective tools to reduce their use of these practices.

The Lowenstein Clinic has been investigating solitary confinement in Connecticut for more than a decade. Through the course of our work, we have conducted extensive interviews with dozens of currently and formerly incarcerated people, received complaints from hundreds more, and reviewed thousands of records. Our investigation has focused on restrictive housing programs where some of the worst forms of isolation have historically occurred. These programs are operated at the state’s supermax prison, Northern Correctional Institution (“Northern”), as well as various other DOC facilities.

The Lowenstein Clinic related our findings in an allegation letter that we submitted in 2019 to the U.N. Special Rapporteur on Torture. As detailed in the letter, DOC held individuals in unrelenting isolation for months and, in many cases, years. Once placed in isolated confinement, many prisoners deteriorated and stayed for years. We met many individuals who had histories of mental illness, and we documented numerous instances where people were driven to self-harm by the isolative conditions, such as banging their heads against walls, cutting themselves, or inserting metal objects into their bodies. Rather than provide mental health treatment, however, DOC’s typical response was further punishment, namely forcible placement into immobilizing in-cell shackles. In response, the U.N. Special Rapporteur on Torture “voiced alarm” at “the practices of the Connecticut Department of Correction[],” and stated that “there seems to be a State-sanctioned policy aimed at purposefully inflicting severe pain or suffering, physical or mental, which may well amount to torture.”

In the decade that the Lowenstein Clinic has pursued these issues, DOC has initiated some important reforms, most notably by decreasing the number of people held at Northern. Unfortunately, DOC has continued to subject people at Northern and elsewhere to prolonged isolation and in-cell shackling. DOC has also refused to alter its treatment of people with mental illness. In January 2021, Disability Rights Connecticut (a federally funded oversight group) filed a federal lawsuit on behalf of its constituents to stop DOC’s ongoing isolation and chaining of people with mental illness.

DOC’s recent announcement that it intends to close Northern—while significant—does nothing to address the abuses that have characterized Northern’s 25-year history and persist at other facilities throughout the state. First, DOC expressly authorizes prolonged isolation and in-cell shackling under its policies, and DOC practices those policies at institutions throughout the state. Second, if Northern does close, there is a concern that its abusive culture and practices will simply migrate elsewhere and, moreover, that monitoring those abuses may become more difficult, as people deemed difficult by DOC are dispersed across the system.

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 S.B. 1059.
International human rights law strictly limits the use of isolation and forbids punitive shackling.

Multiple human rights bodies, including the U.N. Special Rapporteur on Torture, have interpreted prolonged solitary confinement to constitute torture under the International Covenant on Civil and Political Rights and the Convention Against Torture, both of which are binding on the United States. The United Nations Standard Minimum Rules for the Treatment of Prisoners, known as “Mandela Rules,” codify international human rights standards and expressly proscribe the use of isolation for over 15 days, for any punitive purpose, or against people with mental illness.

International human rights norms also prohibit the imposition of restraints for punitive purposes. The Mandela Rules prohibit “[t]he use of chains, irons or other instruments of restraint which are inherently degrading or painful” and restrict the use of other forms of restraints. The Rules specify that “[i]nstruments of restraint shall never be applied as a sanction for disciplinary offenses.” Even when the use of restraints is authorized, restraints are to be used only when “no lesser form of control would be effective to address the risks posed by unrestricted movement” and must be the “least intrusive method that is necessary and reasonably available.” Further, the Rules provide that “[i]nstruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.” If these rules are ignored, and if “restraint techniques and/or instruments” are “applied in a degrading and painful manner,” the use of restraints “may amount to torture or another form of ill-treatment.”

In Connecticut, as the U.N. Special Rapporteur on Torture recently affirmed, DOC’s routine reliance on prolonged isolation and in-cell shackling appears to constitute torture, or at a minimum, cruel, inhuman and degrading treatment. Both practices cause immense suffering. As the Special Rapporteur emphasized, “the severe and often irreparable psychological and physical consequences of solitary confinement and social exclusion are well documented and can range from progressively severe forms of anxiety, stress, and depression to cognitive impairment and suicidal tendencies.” Likewise, a previous Special Rapporteur on Torture concluded that the punitive use of restraints is never justified and can inflict severe trauma in additional to physical injury. Though DOC characterizes its use of long-term isolation as “administrative” or “management,” in practice the punitive intent is clear: to hold individuals accountable for violations and to make those violations painful enough to deter future violations. Indeed, DOC routinely uses both isolation and in-cell shackling in lieu of treatment to control people with mental illness, which itself constitutes torture.

S.B. 1059 addresses practices that Courts have increasingly found to constitute cruel and unusual punishment in violation of the Eighth Amendment to the Constitution.

Connecticut’s reliance on long-term isolation and punitive shackling also violates the United States Constitution. Like their international counterparts, federal courts across the nation have credited empirical evidence documenting the extensive and long-lasting harms of solitary confinement. “The abundance of medical and psychological literature,” stated the Third Circuit, “firmly establish[es]” the adverse impacts of isolation. The Tenth Circuit noted that “solitary confinement, even over relatively short periods, renders prisoners physically sick and mentally ill. It destroys any ability they may once have had to relate positively to others.” The Fourth Circuit elaborated on the specific documented harms, including “paranoia and hallucinations; mood-spectrum symptoms of depression, withdrawal, appetite and sleep disturbance . . . suicidal ideation; . . . feelings of impending doom . . . and behavioral self-control symptoms of aggression, assaults, and self-mutilation.” These recent remarks from across the federal appellate court system emphasize the deleterious effects of solitary confinement in response to the Eighth Amendment challenges brought by incarcerated individuals. What the growing evidence reveals to the courts is that “the use of solitary confinement itself” may be considered a cruel and unusual punishment, in violation of the prisoners’ constitutional rights.
Even Supreme Court Justices have taken note of the harms of prolonged isolation and the constitutional issues that this practice raises. In June 2015, in *Davis v. Ayala*, 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.” In 2018, Justice Sotomayor built on these statements, referencing the growing empirical evidence revealing “that solitary confinement imprints on those that it clutches a wide range of psychological scars.” Noting that “[w]e are no longer so unaware” of the often invisible, yet extensive harms of solitary confinement, Justice Sotomayor urged the “courts and corrections officials [to] remain alert to the clear constitutional problems raised by keeping prisoners” in solitary confinement, “in what comes perilously close to a penal tomb.”

Courts increasingly recognize the cruel and unusual harms caused by prolonged isolation. Connecticut should do the same. Passage of the PROTECT Act will bring Connecticut into alignment with the robust and growing case law that condemns use of prolonged isolation.

**S.B. 1059 opens space for the implementation of alternative practices that do not isolate and torture individuals.**

Not only are courts across the nation taking note of the harms of prolonged isolation; many prison and jail systems are, too. Nationwide, correctional systems are recognizing that prolonged isolation is both cruel and counterproductive. In order to reduce their use of prolonged isolation, these systems are implementing alternative programs that emphasize prosocial programming, individualized mental health treatment, and restorative justice initiatives, among other elements. For example, prisons and jails in North Carolina, New Jersey, and Virginia use alternative, less isolative units instead of restrictive housing units, which has contributed to decreased disciplinary offenses. Alternative units are also being used to provide individualized mental health treatment. Massachusetts, Colorado, and Maine are examples of states that use dedicated mental health units, and they have reported decreased violence and self-harm. New York, California, and Ohio implement programs to prevent violence and resolve disputes that emphasize conflict resolution and exposure to others instead of isolation. These programs, too, have yielded positive outcomes, such as fewer violent incidents and lower levels of recidivism. This non-exhaustive list shows that across the country, correctional systems are finding that reducing isolation is having a positive effect on safety.

S.B. 1059 is an opportunity for Connecticut to acknowledge that isolation does not make prisons and jails safer, and to eliminate this inhumane, unlawful, and counterproductive practice.

**Conclusion**

On behalf of the Lowenstein International Human Rights Clinic at Yale Law School, we reiterate our strong support for S.B. 1059, and urge the Connecticut legislature to pass this bill. DOC’s current practices involving prolonged isolation and in-cell restraints constitute severe and ongoing violations of the human rights of incarcerated individuals. Said plainly, DOC engages in acts of torture. In addition, courts across the country are increasingly finding that prolonged isolation constitutes cruel and unusual punishment in violation of the Eighth Amendment to the Constitution. S.B. 1059 is an important step towards promoting and protecting the constitutional rights and humane treatment of incarcerated people across Connecticut prisons.

State legislatures are working to end these inhumane practices; just days ago, the New York State legislature passed the HALT Solitary Confinement Act ending long-term isolation, implementing alternative rehabilitation
measures, and imposing reporting requirements related to solitary confinement. We urge Connecticut to join the growing movement to enact serious reform.

Thank you for your time and attention to this important matter.

Sincerely,

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2 Id.
5 See International Covenant on Civil and Political Rights art. 7, Dec. 16, 1966, 999 U.N.T.S. 171 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 15 (Dec. 10, 1948); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 2, 16, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter Convention against Torture]. Under international law, solitary confinement as defined as 22 or more hours spent isolated in one’s cell.
7 Id. ¶ 43-5.
8 Mandela Rules, supra note 6, ¶ 47; see also Theo van Boven (Special Rapporteur on the question of torture & other cruel, inhuman or degrading treatment or punishment), Rep. of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, in accordance with Assemb. Res. 57/200 of 18 December 2002, ¶ 51, U.N. Doc. A/58/120 (July 3, 2003) (while “the restraint of violent or agitated inmates may be necessary in some circumstances, . . . this should always be conducted in accordance with the [Basic Principles for the Treatment of Prisoners]”).
9 Mandela Rules, supra note 6, ¶ 43.
10 Id. ¶ 48.
11 Id.
13 UN Expert, supra note 3 (statement of Nils Melzer).

14 The four criteria to constitute torture under the Convention Against Torture are that it (1) causes severe pain or suffering, and is (2) intentionally inflicted, (3) for some purpose, (4) by (or with the acquiescence of) a public official. The key difference between torture and CIDT is that intent and purpose are required elements of torture, but not CIDT. See Convention Against Torture, supra note 5, art. 1.

15 UN Expert, supra note 3 (statement of Nils Melzer).

16 Manfred Nowak (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), Interim rep. of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, ¶ 55 U.N. DOC. A/63/175 (July 28, 2008) (quoting MDRI, Torment not treatment: Serbia’s segregation and abuse of children and adults with disabilities 19, 47, 49 (2004)).

17 Juan E. Méndez (Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), Rep. of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, ¶ 63, U.N. Doc. A/HRC/22/53 (Feb. 1, 2013) (footnote omitted).

18 The following cases, in addition to the opinions cited in the testimony, exemplify some of the most recent litigation relying on empirical evidence in evaluating Eighth Amendment violations. Porter v. Pennsylvania Department of Corrections, No. 18-3505, 2020 WL 5200680 (3d Cir. Sept. 1, 2020) (“[i]t is well established in both case law and scientific and medical research that prolonged solitary confinement . . . poses a substantial risk of serious psychological and physical harm”); Mon-Cortes et al. v. Peters, No. 6:18-CV-00678-SB, 2020 WL 2089479, at *4 (D. Or. Apr. 30, 2020) (“research suggesting that the conditions to which inmates in solitary confinement are subjected often lead to profound psychological peril for the inmate”); Reynolds v. Amone, 402 F. Supp. 3d 3, 17 (D. Conn. 2019) (relying on expert testimony that argued DOC’s isolation practices are “psychologically toxic, cruel, ineffective and counterproductive”), aff’d in part, vacated in part, Reynolds v. Quiros, No. 19-2858-pr (2d Cir. 2021).

19 Williams v. Pennsylvania Department of Corrections, 848 F.3d 549, 567 (3d Cir. 2017).

20 Grissom v. Roberts, 902 F.3d 1162, 1178 (10th Cir. 2018).

21 Porter v. Clarke, 923 F.3d 348, 356 (10th Cir. 2019).


24 Id. at 290.

25 Id.


27 Id.


31 Gilligan & Lee, supra note 31; Lee & Gilligan, supra note 31.