March 24, 2022

Re: Testimony in Support of S.B. 459

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. 459, also known as the PROTECT Act. Since 2010, the Clinic has investigated the use by the Department of Correction (DOC) of prolonged isolation and other abusive practices. The Clinic is also co-counsel in a pending federal lawsuit challenging DOC’s ongoing use of isolation and restraints against people with mental illness.¹

In some important ways, S.B. 459 is more limited than its predecessor bill S.B. 1059, which passed in 2021 but was vetoed by Governor Lamont; the bill does not protect people with mental illness or end abusive restraints. Even so, S.B. 459 presents a critical opportunity to create independent oversight and to codify progress made to date on limiting isolated confinement. Thus, S.B. 459 is a first but crucial step to bringing Connecticut into compliance with international human rights law and, most important, to making this state’s correctional facilities safe and humane environments for all people who must live and work there.

International human rights law requires humane treatment of incarcerated people and requires independent oversight of prisons to prevent torture and other abuses.

International human rights law recognizes that the closed nature of prisons and the immense power vested in state correctional authorities place incarcerated people at high risk of experiencing torture and other serious violations. The United Nations Standard Minimum Rules for the Treatment of Prisoners, named for Nelson Mandela and known as the “Mandela Rules,”² codify international law specific to protecting the rights and dignity of people in prison.

One critical function of the Mandela Rules is to specify limits on how prison authorities may use force, including isolation and restraints. The harms of prolonged solitary confinement are well-documented, and the Mandela Rules expressly proscribe the use of isolation for any punitive purpose, against people with mental illness, or for over 15 days against any person. Where isolation is justified, it must be used only as a last resort and for the shortest possible duration.³ Likewise, the Mandela Rules prohibit the imposition of restraints for punitive purposes or restraints that “are inherently degrading or painful”; rather, restraints may only be used as a last

¹ See Disability Rights Connecticut v. Quiros, 3:21-cv-00146. This testimony does not necessarily represent the views of Yale Law School or Disability Rights Connecticut.
³ Mandela Rules, supra note 2, Rules 43-45.
resort and for the shortest duration possible. The use of isolation or restraints in violation of these rules “may amount to torture or another form of ill-treatment” under the Convention Against Torture and the International Covenant on Civil and Political Rights and – both of which are binding on the United States.

Given the vulnerability of prisoners and the propensity of state detention authorities to abuse their power, the Mandela Rules also require independent oversight of prisons. The oversight authority must have the ability to access prisons, conduct unannounced visits, perform confidential interviews with incarcerated people, report on their findings, and make recommendations. Oversight is not simply a matter of good prison administration; states must create independent oversight systems in order to satisfy their obligations to prevent torture. “Regular inspection of places of detention, especially when carried out as part of a system of periodic visits, constitutes one of the most effective preventive measures against torture.”

Connecticut has engaged in the systemic torture and abuse of incarcerated people in restrictive housing for more than a quarter century.

The recent history of Connecticut’s prisons shows the danger of vesting immense power in a state agency with no public accountability. In 1995, Connecticut built Northern Correctional Institution, the state’s sole supermax facility. Over the next quarter century, Northern would be the site for extraordinary human suffering. Northern’s unrelenting isolation and harsh physical environment, paired with an institutional culture that encouraged violence, fell especially hard on people with mental illness. In 2004, the DOC entered a settlement agreement to remove prisoners with serious mental illness from Northern and to permit outside monitoring. That agreement expired in 2006, and by the time the Lowenstein Clinic started its investigation in 2010, the prison was at maximum capacity and conditions had again deteriorated. Indeed, many of the very same people who had been deemed by outside monitors to be too ill to be at Northern were back.

Over the course of the Clinic’s investigation, we found that DOC routinely relied on indefinite isolation practices at Northern that, in the words of Hon. Stephen Underhill for the U.S. District Court of Connecticut, were “psychologically toxic, cruel, ineffective and counterproductive.”

---

4 Mandela Rules, supra note 2, Rule 47.
6 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 Mandela Rules, supra note 2, Rules 83-85.
8 Theo van Boven (Special Rapporteur on the question of torture & other cruel, inhuman or degrading treatment or punishment), Report submitted in accordance with Commission resolution 2002/38, Comm’n on Human Rights, U.N. Doc. SE/CN.4/2003/68, para. 26(f) (Dec. 17, 2002).
We detailed our findings in a 2019 submission to the U.N. Special Rapporteur on Torture. Once placed in isolated confinement, many prisoners deteriorated and stayed for years. We met scores of people at Northern who had long 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, DOC’s typical response was further punishment, including cell extractions and pepper spray, even in response to suicide attempts. An especially concerning practice was the forcible placement into “in-cell restraints,” a degrading and often painful practice that immobilizes an individual in chains and shackles in a locked cell. 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.”

E.O. 21-1 marks important but insufficient progress to end torture and cruel, inhuman and degrading treatment in Connecticut prisons.

DOC has initiated some important but limited reforms to reduce its reliance on isolation. As a starting point, the population at Northern decreased from approximately 400 in 2009 to less than 50 in 2021. Northern’s closure in July 2021 was welcome but overdue, as that facility had been purpose-built to cause human suffering. Governor Lamont’s Executive Order 21-1, which limits isolated confinement to 15 consecutive days or 30 out of 60 days, represents further though tenuous progress.

Since Northern’s closure in July 2021, we have carefully reviewed DOC’s revised policies and have continued to investigate restrictive housing statuses at other facilities, including Walker CI, Garner CI, and Corrigan CI. Unfortunately, serious concerns remain:

- EO 21-1 continues to permit the use of isolation as a sanction, provides DOC broad discretion to define justifications for isolation, and contains no limits on repeat placements. Under current policy and practice, even overt manifestations of mental illness such as self-harm may be classified as disciplinary violations justifying isolation. Because EO 21-1

---

14lowenstein_clinic_un_special_rapporteur_final_submission_to_post.pdf .
places no limits on repeat placements, a person who continues to accrue disciplinary sanctions, including for reasons related to mental illness, could end up spending 50% of their time in isolated confinement.

- EO 21-1 fails to provide adequate protections for people with mental illness, nor does it require meaningful programming within restrictive housing so that individuals can engage pro-social activities or address the underlying causes for any disruptive behavior.
- DOC continues to subject people to degrading and often painful in-cell shacking, including in response to mental health crises. EO 21-1 and the revised directives do not place strict time limits on restraints or adequately constrain their use.

In sum, as Juan Méndez, former UN Special Rapporteur on Torture, notes in his testimony to this Committee on S.B. 459, the executive order – while a step forward – observes “neither the letter nor the spirit” of the Mandela Rules.

Our experience teaches that, over time, an agency with unfettered discretion over powerful tools like isolation or in-cell restraints will tend to overuse, and ultimately, abuse its authority. When the Clinic began our investigation in 2010, DOC had recently emerged from a settlement agreement wherein it promised to end the long-term isolation and punitive shackling of people with mental illness. Today, as detailed above, those same essential problems remain. We are concerned that, without codification at the statutory level and robust oversight, even the modest reforms seen to date will erode over time and ultimately mean little difference in reality for the human beings in DOC’s custody or their families and communities.

**S.B. 459 provides robust oversight to prevent abuses and create a forum to find solutions.**

By enacting S.B. 459, Connecticut would join the growing number of states that have independent oversight bodies to monitor prison practices, assess prison conditions, and serve as a conduit between government actors and the general public.\(^\text{14}\) Oversight bodies serve as the “eyes and ears” for government and non-government actors. According to Michelle Deitch, a leading scholar on prison oversight, outside monitors “break down some imagined barrier between the inside and outside worlds, and question the way things ‘have always been done.’”\(^\text{15}\) Because oversight bodies constantly evaluate and assess prison conditions, they can identify troubling practices early on and provide solutions before problems arise.

Under S.B. 459, the Office of the Correction Ombuds and its Correction Advisory Committee would bring independent oversight, democratic participation and transparency to Connecticut’s correctional system. The Ombuds Office would have the power to monitor, examine and independently report on DOC procedures and policies. One especially critical part of S.B. 459 is that the advisory board will include directly impacted people and representation from communities most impacted by incarceration. In Connecticut, the burdens of incarceration fall most heavily on Black and brown communities, who make up more than two-thirds of the prison

---


population. DOC’s own data shows that in 2020 and 2021, Black and brown people accounted for more than 80% of the people in restrictive statuses and subjected to in-cell restraints.

**S.B. 459 invites the creation of alternative practices to create safe and humane prisons.**

By codifying the limits on isolation from E.O. 21-1, this bill would commit Connecticut to explore more effective and humane alternatives to isolation. By so doing, Connecticut would join a growing list of states that 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.16 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.17 This non-exhaustive list shows that across the country, correctional systems are finding that reducing isolation is having a positive effect on safety.

### Conclusion

On behalf of the Lowenstein International Human Rights Clinic at Yale Law School, we reiterate our strong support for S.B. 459 and urge the Connecticut legislature to pass this bill. Recent reforms mark a hopeful and important break with the past. But more is needed to ensure that Connecticut lives up to its obligations to prevent torture and to respect the humanity and dignity of people in its prisons. S.B. 459 would codify the progress made to date by limiting time spent in isolated confinement. Just as important, S.B. 459 would create a system for independent oversight to address critical issues affecting the lives of the people held in the state custody.

Respectfully submitted,

Hope Metcalf

Supervising Attorney

Luke Connell

Michelle Fraling

Rachel Talamo

Student Law Interns

---
