Written Testimony of Michael B. Mushlin, Professor of Law
Hearing Before the Connecticut General Assembly
Joint Committee on Judiciary
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My name is Michael B. Mushlin. I am a Professor of Law at the Elisabeth Haub School of Law at Pace University. I submit this written testimony in support of the Protect Act 2022. Last year I submitted testimony in support of S.B. 1059, a bill a largely similar to the Protect Act 2022, which I understand the legislature passed but was vetoed by your governor. I continue to support this important legislation and specifically those provisions which, if enacted, will end solitary confinement and which will establish a system of external oversight of Connecticut’s prisons. In my testimony, I will address both of these topics.

I. Relevant Background and Experience

I have extensive experience related to this bill’s subject matter. I am the author of Rights of Prisoners, a four-volume treatise, and was a member of the American Bar Association’s Task Force on the Legal Status of Prisoners. The Task Force promulgated a document entitled ABA Standards for Criminal Justice, Treatment of Prisoners, which was approved by the ABA House of Delegates in 2010 and now represents the view of the leading attorney association in the United States about the proper standards governing the treatment of American prisoners and pretrial detainees. I also served as co-chair of the Subcommittee on Implementation of the ABA Resolution on Prison Oversight.

I have served as a board member, chair, and vice-chair of the Correctional Association of New York and the Osborne Association. The Correctional Association of New York has been chartered since 1846 by the New York State legislature with the authority to visit New York State prisons and report to the legislature on its findings. The Osborne Association has a long history of working with currently and formerly incarcerated individuals, as well as families affected by incarceration. I also served as chair of the Corrections Committee of the New York City Bar Association, where I led an investigation into the conditions facing New York inmates on death row.

I also presently serve on or have served on the Advisory Committee on Criminal Law and Procedure of the Unified Court System of New York, the Editorial Board of the Correctional Law Reporter, and the Plea Bargain Task Force of the New York County Lawyers Association. I have participated in the organization of two national conferences on prison reform and prison oversight, both with Professor Michele Deitch of the University of Texas at Austin. I practiced law for 15 years with the Prisoners’ Rights Project of the Legal Aid Society, the Children’s Rights Project of the American Civil Liberties Union, and Harlem Assertion of Rights.

1 ABA Standards for Criminal Justice: Treatment of Prisoners (3d ed. 2011),
[hereinafter ABA Standards].
II. Solitary Confinement

As was true with S.B. 1059, the Protect Act 2022 ends the practice of extreme isolation in Connecticut's penal facilities except in emergency short-term situations. I support this essential legislation. I first confronted solitary confinement five decades ago when I served as trial counsel in a federal civil rights case involving Unit 14, the solitary confinement unit at Clinton prison in upstate New York, near the Canadian border. What I saw there was deeply disturbing. For 23 hours each day, inmates were locked into small windowless cages for months and years on end. No programs or activities were provided to them. Without access to any meaningful activity, they were separated from one another, spending almost all of their time entirely by themselves. During that one precious hour per day when a Unit 14 inmate could leave his cell, there was only one place to go: a small space directly behind his cell called a “tiger cage.” The tiger cage was a small empty space with a barren floor, surrounded on all sides by high concrete walls which were not covered by a roof. An inmate could walk only a few steps in one direction before turning. If he looked up, he could glimpse a bit of the sky but nothing else of the outside world.2

Working on that case, I witnessed firsthand the awful consequences of subjecting human beings to solitary confinement. I will never forget looking into the eyes of those inmates struggling to maintain a foothold on reality and sanity. Afterwards, when visiting other solitary confinement units, no matter where, I see that same pained, desperate stare. I have seen it so often, and in so many different places, that I have come to recognize it instantly as the gaze of a tortured person.

In the years since, I have witnessed the growth and expansion of solitary confinement in prisons, in New York and nationally, through the emergence of “supermax” confinement and the expanded use of “administrative segregation units” or “supermax” prisons, such as your Northern Correctional Institution. Solitary units provide fertile soil for the mistreatment and abuse of prisoners. As one observer put it, “[b]ecause of the absence of witnesses, solitary confinement increases the risk of acts of torture or other cruel, inhuman, or degrading treatment or punishment.”3

In solitary confinement units across the nation, abuses occur daily.4 Where else but in a fictionalized horror story would one learn of places where “bodies are smeared with one’s own excrement; arms are mutilated; suicides attempted, and some completed; objects inserted in the penis; stiches repeatedly ripped from recent surgery; a shoulder partly eaten away”?5

Seventeen years ago, commenting on solitary confinement, I said in a New York Times Op-Ed that, “there is never justification for prison conditions that cause mental torture.”6 I went on in that

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4 These abuses, which include subjecting inmates to degrading, humiliating and unnecessary suffering, often do not cause physical injury. Even though constitutional rights are violated by these acts, federal courts have often failed to provide relief to victims of these abuses. The reason is that the Prison Litigation Reform Act (PLRA) deprives federal courts of the ability to provide relief from degrading and even torturous behavior if there is not physical injury.
Op-Ed to observe that since most inmates will someday return to our communities, “it is a mistake to think that these kinds of conditions do not directly affect us.” More recently, my colleague Michele Deitch and I stated in an Op-Ed that it is an outrage that in America, solitary confinement continues to be inflicted on “thousands of prisoners . . . in some cases for years, and often for minor rule violations at great cost their mental health and potential for rehabilitation.”

Prisons must be safe and humane, and they can be without solitary confinement. Indeed, with solitary they can be neither safe, nor humane. There are alternatives to solitary confinement for everyone, not just the mentally ill, pregnant women, and juveniles for whom solitary confinement is especially hazardous. Because solitary is so inhumane and so unnecessary, the American Bar Association in its standards prohibits any isolation of the mentally ill or juveniles, and even for those who must be isolated the standards absolutely prohibit “[c]onditions of extreme isolation . . . regardless of the reasons for a prisoner’s separation from the general population.” The animating idea behind these standards is the one that my colleague Fred Cohen put so well “[i]nmates may need to be insulated from each other, and for a variety of valid reasons, but insulation (separation) and contemporary penal isolation are quite different concepts and operations.”

The Protect Act 2022 fully conforms to the standards of the American Bar Association and the approach outlined above by Mr. Cohen. When enacted, it will go a long way toward ensuring that your prisons are free from the scourge of solitary confinement that injures not just the incarcerated, but also the staff of your prisons and the general public. This essential reform will remove from your state the shame of subjecting people under your control to torturous conditions of confinement known as solitary confinement.

When your governor vetoed S.B. 1059, last year’s legislation, he signed an executive order instead addressing solitary confinement which, as I understand it, made some, but not all of the changes required by S.B.1059. This executive order while welcome, is not a replacement for legislation, as an executive order can be overturned unilaterally with a stroke of a pen by your current governor or by his replacement. This topic is too important to be regulated by a malleable executive order.

III. External Oversight

I also strongly support the Protect Act 2022 provisions creating external oversight of your prisons through the establishment of an oversight commission which as I understand it will be called the Commission of Correctional Oversight. Without oversight, other reforms such as the elimination of solitary confinement are much less likely to occur.

Prisoners are under lock and key twenty-four hours a day, seven days a week, and therefore they must depend on their keepers for all their human needs. They are held behind walls and closed doors, living “in a shadow world that only dimly enters our awareness.” American prisons in particular “mainly confine the most powerless groups . . . poor people who are disproportionately

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7 Id.
9 ABA STANDARDS § 23-2.8.
10 Id. § 23-3.8.
11 Statement of Fred Cohen, supra note 5 (emphasis in original).
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African-American and Latino. Without oversight, any reforms envisioned for Connecticut’s use of solitary confinement, no matter how well-intended, are less likely to be implemented.

Shorn of oversight, and the public support that it provides, even prison administrators with the best of intentions are not able to run decent prisons. Some people think that prison officials automatically oppose vigorous oversight. However, that is not true. Many prison officials recognize the importance of public oversight. For example, Jack Cowley, a warden from Oklahoma, wrote that without the accountability that comes with oversight, “the culture inside the prisons becomes a place that is . . . foreign to the culture of the real world.” A.T. Wall, the Director of Corrections in Rhode Island, observed that without “light, light, and more light,” there is a real danger of prison abuse, and “we, [the public], cannot sit idly by. If we do so, we run the substantial risk that the dynamics of these environments will default to a position where misconduct can ultimately flourish.” As Dr. Stan Stojkovic has said, “[w]ithout adequate oversight, correctional problems compounded. Issues like correctional health care, prison crowding, prison violence, and the management of prisons become almost impossible to address.” No sensible prison administrator wishes this to happen.

The calls for oversight of penal facilities have been persistent and growing. The ABA’s Standards for the Treatment of Prisoners, adopted in 2010, declared that “[g]overnmental authorities should authorize and fund a governmental agency independent of each jurisdiction’s correctional agency to conduct regular monitoring and inspection of the correctional facilities in that jurisdiction and to issue timely public reports about conditions and practices in those facilities.” Additionally, the ABA passed a formal Resolution on Oversight which recommends an independent body to monitor prisons. To be effective, the oversight body must be adequately funded and staffed; have expertise; conduct regularly scheduled and unscheduled inspections; issue reports on particular problems; have access to all relevant records and the authority to conduct confidential interviews; make investigation reports public; have the authority to require prison administrators to respond publicly to monitoring reports; and develop plans to rectify problems identified. Specifically, the ABA Resolution states:

The monitoring entity is independent of the agency operating or utilizing the correctional or detention facility . . . . [I]t is authorized to inspect or examine all aspects of a facility’s operations and conditions including, but not limited to: staff recruitment, training, supervision, and discipline; inmate deaths; medical and mental-health care; use of force; inmate violence; conditions of confinement; inmate disciplinary processes; inmate grievance processes; substance-abuse treatment; educational, vocational, and other programming; and reentry planning. The Commission on Safety and Abuse in America’s Prisons, which surveyed the state of the American prison system over a decade ago, also called for a comprehensive system of oversight. It

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13 GIBBONS & KATZENBACH, supra note 3, at 77.
14 See Barbara Attard, Oversight of Law Enforcement is Beneficial and Needed—Both Inside and Out, 30 PACE L. REV. 1548 (2010); Andrew Coyle, Professionalism in Corrections and the Need for External Scrutiny: An International Overview, 30 PACE L. REV. 1548 (2010).
15 GIBBONS & KATZENBACH, supra note 3, at 16.
16 Id. at 78 (citing testimony of Rhode Island Corrections Director A.T. Wall).
17 Id. at 78 (citing testimony of Rhode Island Corrections Director A.T. Wall).
18 ABA STANDARDS § 23-11.3(a).
20 Id.
21 GIBBONS & KATZENBACH, supra note 3.
based this recommendation on the reality that “[m]ost correctional facilities are surrounded by more than physical walls; they are walled off from eternal monitoring and public scrutiny to a degree inconsistent with the responsibility of public institutions.” To rectify this imbalance, the Commission called on every state to create an independent agency to monitor prisons and jails and on the federal government to create a national nongovernmental agency to inspect penal facilities at the request of prison administrators.

Joining the movement for greater oversight, Eric Holder, then Attorney General of the United States, utilizing the power granted under the Prison Rape Elimination Act (PREA), promulgated standards that call for oversight of virtually all penal institutions in the United States. These standards aim to ensure that prisons and jails receiving federal funding take steps to respond to instances of sexual abuse of prisoners and take preventative measures. Attorney General Holder also decided that compliance with the standards required audits of all confinement facilities covered under PREA at least every three years. These include adult prisons and jails, juvenile facilities, lockups (housing detainees overnight), and community confinement facilities, whether operated by the Department of Justice or a state, local, corporate, or nonprofit authority. This oversight represents a significant change, but it is very limited in its scope by focusing on only one problem.

When external prison oversight is enforced and prison leaders open their doors to regular independent oversight, significant positive changes in the treatment of prisoners and the operation of its prisons will result. Effective external independent oversight requires both regulatory and monitoring power. An agency with regulatory powers can impose and enforce minimum standards. An agency with monitoring powers is also important because unlike a regulatory body they are charged with, as my colleague Michele Deitch notes, “routine and regular review of every institution as a preventative measure: it is oversight to help in improvement, not to point out what went wrong.” In my opinion, both aspects of prison oversight are essential to ensure that Connecticut’s prisons run effectively, that its prisons are safe, and that they operate in a manner that ensures the safety of the prisoners and the staff.

The Protect Act 2022, as I understand it, does provide monitoring, and also gives the office it establishes the authority to recommend systemic changes in the operation of the prisons but does not give the Commission power to regulate the prisons. Thus, while the Protect Act 2022 is not as comprehensive as I would prefer, it is a major step in the right direction. I, therefore, enthusiastically support it. Thank you for the opportunity to present to you my testimony on this important legislation.

Respectfully Submitted,

Michael B. Mushlin, Professor of Law

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22 Id. at 15.
23 Id. at 16, 79.
25 Id. §§ 15601–02.
26 Id. at 3.