



Yale Law School

Arthur Liman Center for Public Interest Law

March 23, 2022

Re: S.B. 459, “An Act Concerning a Correctional Ombudsman; the Use of Isolated Confinement; Transparency; and Correctional Officers Training and Wellness, also known as the “PROTECT Act”

Testimony in support for submission in the record of the hearing to be held on March 25, 2022 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:

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 or isolated confinement.¹ I submit this testimony because I believe that this research will be of use to the Legislature in its deliberations. Because of what we, who work at the Liman Center as faculty and students have learned, I endorse S.B. 459 and hope that it will become Connecticut’s law.

¹ This testimony, which is to become made a part of the legislative record of S.B 459, is provided by Judith Resnik, the Arthur Liman Professor of Law and founder of the Liman Center. The statement, drawn from prior legislative testimony, is based on the research and analyses of many current and former Liman Center colleagues and students, aiming to understand the uses of isolation and the efforts to limit or abolish it. My institutional affiliation is provided for identification purposes only; this statement is not to be attributed to Yale Law School.

During the last several years, the Liman Center has helped to produce 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 which was then an umbrella term for many forms of isolated confinement. Since then, we have published a series of reports detailing the demographic composition of the people held in restrictive housing and some facets of their living conditions.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 As of the winter of 2022, dozens more proposals have been proposed in many jurisdictions.

S.B. 459 marks an important step toward limiting harmful isolation practices and mitigating the impact of solitary confinement. To explain why I am so supportive of this legislation, I provide an overview of the many years of research findings. The experiences of all of us as researchers underscore the importance of legislative provisions, such as those

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).

³ Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison, 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, 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, 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_liman_2018_restrictive_housing_efforts_in_four_jurisdictions_to_make_changes.pdf; Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell, YALE LAW SCHOOL ARTHUR LIMAN PUBLIC INTEREST PROGRAM (October 2018) (hereinafter 2018 “Reforming Restrictive Housing”); Time-In-Cell 2019: A Snapshot of Restrictive Housing, 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_liman_2018_restrictive_housing_released_o ct_2018.pdf (hereinafter “Time-in-Cell 2019”).

⁴ Rethinking “Death Row”: Variations in the Housing of Individuals Sentenced to Death, YALE LAW SCHOOL, ARTHUR LIMAN PUBLIC INTEREST PROGRAM (July 2016).

⁵ Judith Resnik, Jenny Elizabeth Carroll, Skylar Albertson, Sarita Benesch, and Wynne Graham, *Legislative Regulation of Isolation in Prison: 2018-2021* (August 20, 2021), <https://ssrn.com/abstract=3914942> or <http://dx.doi.org/10.2139/ssrn.3914942> [hereinafter Legislative Regulation of Isolation in Prison 2021].

in S.B. 459, that require data collection, reporting, and transparency and that create innovative methods such as the proposed office of Ombudsperson and the Advisory Committee.

S.B. 459 Provides an Innovative Approach to Limit Isolation and to Improve Well-Being

The statute's limitations on isolated confinement reflect a growing national consensus, supported by people in detention, their families and advocates, medical and mental health professionals, corrections officials, policymakers, and scholars. A diverse array of individuals and groups have documented that isolation in prisons imposes grave harms and should be limited to the greatest extent possible or abolished.⁶

This consensus emerged from decades of the experiences of people held in isolation and the research about the impact and use. In 2012, the Liman Center (then the Liman Program) began its work to understand the scope and nature of the use of solitary confinement. In addition to looking at policies governing the practice, we surveyed state and federal correctional departments in 2013 and 2014 so as to develop a national account of the number of people held in solitary confinement. We focused on “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 22 hours or more 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

As of this writing, we are in the midst of analyzing data collected this past summer. The most recent published information we can provide comes from the 2020 report, which was drawn from a survey in the summer of 2019 before COVID-19. That analysis 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

⁶ See, e.g., Statement, Consensus Statement from the Santa Cruz Summit on Solitary Confinement and Health, 115 NORTHWESTERN L. REV. 335 (2020). That symposium includes other articles discussing the injuries of isolated confinement, as well as the role of law in potentially limiting or ending the practice.

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.

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.

A substantial literature, some from first-hand accounts by people held in isolation and other materials drawn on aggregate studies, 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, in this democratic polity committed to the rights of all individuals, punishment must be justified in reference to legitimate goals. Given the harm and suffering imposed by isolated confinement, the resulting debilitation advances no purposes that governments should pursue when punishing people convicted of crimes. Rather, the use of solitary confinement that we and many others have documented represents thousands of hours, days, months, and years of needless and unjustified human suffering.

The harms of solitary confinement are widespread. A good deal of research addresses the problems experienced by correctional staff who work in solitary confinement units.¹⁴ The well-being of staff and prisoners is interdependent, and overseeing the placement of individuals in deep isolation brings with it pain and suffering that can be alleviated by ending that practice. S.B. 459 is path-breaking in recognizing these problems by limiting the time to be spent in cell and the duration of confinement and by bringing important improvements into staff training and support. Subsection (i) provides for special training, and subsection (j) calls for “employee assistance programs” that recognize the trauma and stress of such settings for those who work in them as well as for those who live in them.

Those harms are what makes ending isolation so important, and S.B. 459 provides important steps through imposing constraints, including its goals of using isolation as little

¹² Time-in-Cell 2019 at 12-13.

¹³ Time-in-Cell 2019 at 48-50.

¹⁴ 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).

as possible and as briefly as possible. Further, S.B. 459 would enable Connecticut to join other states that prohibit the use of isolated confinement for people under the age of 18.¹⁵ Another subpart of the legislation calls on the Department of Corrections to “endeavor to meet the U.N. Mandela Rules on the Minimum Standards for the Treatment of Prisoners,” also prescribing that isolation not be used, if possible, and be capped at fifteen days; that point is reiterated in S.B. 459 (c) (4), stating that people are not to be held “longer than necessary” and for “no more than fifteen consecutive days or thirty total days within any sixty-day period.” Moreover, the “same incident” cannot be the basis for more than one placement.

The Importance of Reporting, Transparency, and Data Collection

S.B. 459 includes a critical set of provisions that would create the Office of the Correction Ombuds and a Correction Advisory Committee, coupled with reporting obligations by the Department of Correction that makes 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 readily available to the public about the specific practices when a system uses solitary confinement. Until the Liman Center joined with the correctional leaders in 2013 and 2014, no reliable data existed on the number of people held in isolation; previous estimates were long out of date.¹⁶ The information we have gleaned underscores the need to ensure routine data collection and analyses.

I can also report that collecting the data found in the *Time-in-Cell* books 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. 459 responds to these problems in important respects.

First, the bill requires the Department of Correction to provide to the Judiciary Committee information on a series of measures – on the use of lockdowns; whether people “with serious mental illness” or other disabilities are in “isolated confinement and restrictive housing;” what pro-social programming is available; when and if “in-cell

¹⁵ As of 2020, sixteen jurisdictions—fifteen states and the federal government — had enacted statutes that limit or prohibit the use of restrictive housing for youth, pregnant prisoners, or those with serious mental illness. See *Legislative Regulation of Isolation in Prison 2021* at 15.

¹⁶ 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 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)).

restraints” are used; and how the Department is cooperating with the Correction Ombuds and Advisory Committee.

Second, this bill calls on the Department to make annual reports to the Criminal Justice Policy and Planning Division by using “disaggregated and anonymized data” delineated by “facility, age, race, and gender, to inform the public about key information. Specifically, the bill would enable reporting on the total number of people on each of the first days of each of the months in a year; the length of confinement in specified increments; the existence of self-harms and assaults; the form of “use of force” deployed (if imposed); the grievances filed; programs offered, and jobs held by incarcerated people. These legislative mandates are central to enabling an understanding of the extent of the use of isolated confinement and some of its impact. Only through such mandated reporting provisions can public tracking become possible.

Third, the creation in the Office of Governmental Accountability of an Ombudsperson and a Correction Advisory Committee makes possible a means of ongoing interactions among individuals held, staff, and the public about the use of isolated confinement and other serious concerns, such as the use of force. S.B. 459 makes the critical link of “corrections, public health, and human services” by charging the Ombudsperson with reporting on these issues. Further, people held are given a critical, confidential avenue for making their experiences known and the problems potentially addressed. 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. The individuals to be members of the Advisory Committee ensure that a wide range of expertise can be brought to bear on the problems, as the people to be included are those “directly impacted” as well as individuals with specified professional expertise.

These aspects of the legislation are essential. The ongoing monitoring, transparency, and oversight proposed by S.B. 459 will enable clarity about the use and impact of the other reforms. The staffing and appointment of an independent ombuds and Advisory Committee can help to ensure that substantive reforms are meaningful and lasting.

Moreover, when making the PROTECT Act law, Connecticut would join other jurisdictions that have enacted legislation requiring greater transparency in corrections. Since October 2018, the federal government and [revise/check numbers] states have put legislation into place that requires correctional departments to provide information about their use of restrictive housing.¹⁷

¹⁷ 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).

S.B. 459 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. I urge enactment. Thank you for your consideration of these comments.

Sincerely,

Judith Resnik, Arthur Liman Professor of Law, Yale Law School