



TESTIMONY OF MICHAEL KEBEDE, ESQ.
LD 405 – Ought to Pass as Amended

**An Act to Define “Solitary Confinement” for the Laws Governing
Jails and Correctional Facilities**

Joint Standing Committee on
Criminal Justice and Public Safety

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Senator Beebe-Center, Representative Hasenfus, and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Michael Kebede, and I am a policy director for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions.

If enacted, this bill would define solitary confinement as the isolation of a jail or prison resident from the general population of the jail or prison for 22 hours or more within a 24-hour period. There is no definition of solitary confinement in the Maine Revised Statutes, but the Department of Corrections can – and has – promulgated rules that define solitary-like conditions.¹ See 34-A M.R.S. §1403(1) (“The commissioner may perform any legal act relating to the care, custody, treatment, relief and improvement of clients”). A DOC policy titled “Disciplinary Segregation Status” defines “restrictive housing” as “housing that separates a resident from the general population and restricts the resident to their cell for up to twenty-two (22) hours per day for the safe and secure operation of the facility.” DOC Policy 15.2.5 (IV) (“Definitions”). The DOC Commissioner himself has said, “It was obvious that no good comes of locking people away in a cell for 22 hours a day.”²

We agree with the commissioner: the harms of solitary confinement are undeniable.³ But a statutory definition alone, without more, is highly

¹ Maine Department of Corrections Policy Number 15.2, Effective Feb. 1, 2002, Latest Revision September 27, 2022, available at <https://www.maine.gov/corrections/policies>.

² Susan Sharon, *VIDEO: Maine State Prison Leading Nationwide Charge to Reduce Solitary Confinement*, April 14, 2017, Maine Public, available at <https://www.mainepublic.org/courts-and-crime/2017-04-14/video-maine-state-prison-leading-nationwide-charge-to-reduce-solitary-confinement>.

³ The United States Supreme Court agrees, too; over a century ago, it observed that solitary confinement—even for short periods—causes prisoners to become “violently insane” and “commit[] suicide.” *In re Medley*, 134 U.S. 160, 168 (1890). Indeed, many



unlikely to reduce the incidence of solitary confinement in Maine. The ACLU recommends amending this bill to turn it into a tool for this committee to investigate whether, and to what extent, solitary confinement or solitary-like conditions exist in Maine jails and prisons. The committee can use the DOC's own language (i.e., "restrictive housing" or "disciplinary segregation"), and use the definition of solitary confinement proposed by this bill.⁴ Any resulting information will better equip this committee to take appropriate action.

Thank you for your time and attention.

courts now appear to consider the harms of solitary confinement to be essentially undisputed. *See, e.g., Palakovic v. Wetzel*, 854 F.3d 209, 225 (3d Cir. 2017) (acknowledging the "robust body of legal and scientific authority recognizing the devastating mental health consequences caused by long-term isolation in solitary confinement"); *Porter v. Clarke*, 923 F.3d 348, 355–56 (4th Cir. 2019) (noting that "[i]n recent years, advances in our understanding of psychology and new empirical methods have allowed researchers to characterize and quantify the nature and severity of the adverse psychological effects attributable to prolonged placement of inmates in isolated conditions"); *Troutman v. Louisville Metro Dep't of Corr.*, 979 F.3d 472, 484 n. 9 (6th Cir. 2020) ("The Supreme Court, as far back as 1890, has expressed concern about the mental anguish caused by solitary confinement") (internal quotation marks omitted).

⁴ The DOC's rules require each facility's Chief Administrative Officer to provide monthly reports to the Commissioner on the use of disciplinary segregation. This should make it relatively easy for the DOC to report the relevant data to a legislative committee. *See* DOC Policy Ch. 15, No. 15.2, Procedure K: Data Collection and Reporting, page 16 of 21, available at https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/49876476_0.pdf.