



TESTIMONY OF MICHAEL KEBEDE, ESQ.
LD 1416– Ought to Pass

An Act to Require the Department of Health and Human Services to Immediately Take Custody of Persons Sentenced to Mental Health Facilities That May Not Include County or Regional Jails

Joint Standing Committee on
Health and Human Services
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Senator Ingwerson, Representative Meyer, and distinguished members of the Joint Standing Committee on Health and Human Services, greetings. My name is Michael Kebede, and I am Policy Director at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we urge you to support LD 1416.

Current law allows courts to order the Department of Health and Human Services (“DHHS”) to take custody of certain people for placement in an appropriate mental health institution.¹ LD 1416 would, among other things, require that DHHS place such persons in appropriate settings immediately.²

This change would help protect the constitutional rights of people in state custody. Specifically, people found incompetent to stand trial have a constitutional right to be transferred to a setting that is better suited than a jail is to restoring them to competency. *See, e.g., Youngberg v. Romeo*, 457 U.S. 307, 321-322 (1982) (“[p]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.”). Indeed, as one federal appeals court explained, “[a]lthough jails can sometimes provide treatment to stabilize a patient, they cannot restore a patient to competency.” *Oregon Advoc. Ctr. v. Mink*, 322 F.3d 1101, 1120 (9th Cir. 2003). That court further explained,

incarceration in a county jail delays an incapacitated criminal defendant's possible return to competency. The disciplinary system that jails use to control inmates is ineffective for, and possibly harmful to, incapacitated criminal defendants. Because of their

¹ See 15 MRS §101-D (4), (5).

² LD 1416 would also exclude county and regional jails from the meaning of “correctional facility”. If this bill became law, then DHHS may not transfer psychiatric patients to jails, only to prisons. Under current law, a person committed to the custody of the Department of Health and Human Services (“DHHS”) for placement in an appropriate mental health institution could, in certain circumstances, be sent to a correctional facility. 15 MRS §101-D (4), (5). The law is silent about whether that correctional facility must be a jail or a prison. *See id.*



unpredictable or disruptive behavior, they are often locked in their cells for 22 to 23 hours a day, which further exacerbates their mental illness. Incapacitated criminal defendants have a high risk of suicide, and the longer they are deprived of treatment, the greater the likelihood they will decompensate and suffer unduly.

Id. Thus, the speed with which the state transfers people out of jails and to more suitable healthcare settings could be a matter of life and death. This bill would require that such transfers happen “immediately.”

We urge you to vote *ought to pass*.