



TESTIMONY OF MICHAEL KEBEDE, ESQ.
LD 1536 – Ought Not to Pass

An Act to Amend the Laws Governing Bail

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 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. On behalf of our members, I urge you to oppose LD 1536.

LD 1536 proposes to reverse amendments made to the Bail Code in 2021. The ACLU of Maine supported the amendments to Maine's Bail Code when LD 1703 was debated in the 130th Legislature.¹ These amendments addressed the inequities of the cash bail system for Class E crimes and established a clear and convincing evidence standard to help guide bail commissioners and judges in assessing whether bail should be granted in cases.

Cash Bail Reform for Class E misdemeanors

Prior to the amendments codified in the Bail Code at 15 M.R.S. §1023 and §1026, a bail commissioner would decide whether to let an arrested person to go freely on personal recognizance until their court date, or to give them what we call "bail." Bail can be cash, and often is, but that was actually just one of 19 different bail conditions that a bail commissioner or judge could impose. If a defendant was not able to afford to pay the cash amount that a bail commissioner imposed, or they could not meet one of the other conditions, then they would go before a judge, who had the ability to change the bail.

Bail itself was originally a system designed to keep those awaiting trial out of jail. The right to bail meant the right to be released before trial, not the

¹ See Testimony of American Civil Liberties Union of Maine, available at <https://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=166049>.



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right to have a cash price assigned on one's freedom. Bail was intended to make sure people were not punished until they were convicted of a crime, epitomizing the maxim "innocent until proven guilty."²

Instead, Maine's use of a cash bail system created an inequity between those who could afford to be released and those who could not. In fact, Maine's pretrial detention population has been increasing since 2000, with the most recent state-directed study of pretrial justice occurring in 2019.³ The study found that

The U.S. Supreme Court has consistently, adamantly emphasized that money bail should not become a tool of incarcerating defendants before trial. In *Stack v. Boyle* the Court explained that, "[u]nless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."⁴ And, in *United States v. Salerno*, Chief Justice Rehnquist ended the majority's opinion by stating that "in our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."⁵

The amendments to the Maine Bail Code, made in 2021, addressed the fact that bail is no longer the "carefully limited exception." The presumption of innocence is one of the most foundational principles of our criminal justice system. This simple presumption provides a vital safeguard against tyranny and the arbitrary exercise of state violence. Every person accused of a crime, punishable with incarceration, has a right to a trial and to not be incarcerated unless found guilty. Yet the majority of people in Maine jails have not had a trial and are in fact being punished before any conviction.

Beyond presumption of innocence, another essential principle of our justice system is that every person is equal under the law. Whether a lobsterman or a lawyer, you should be treated the same in our system. But when wealthy people can buy their freedom, those struggling to support themselves and their families are locked up because they can't afford to pay, undermining the promise of equality under the law.

² See Criminal Justice Policy Program, Harvard Law School, *Moving Beyond Money: A Primer on Bail Reform* (2016), 4, <http://cjpp.law.harvard.edu/assets/FINAL-Primer-on-Bail-Reform.pdf> (accessed December 18, 2018).

³ The Report of the Intergovernmental Pretrial Justice Reform Task Force, Dec. 20, 2019, available at <https://www.courts.maine.gov/about/reports/report-pretrial-justice-reform-task-force-dec2019.pdf>.

⁴ *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

⁵ *U.S. v. Salerno*, 481 U.S. 739, 755 (1987).



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Enacting LD 1536 would move us away from the principle of the 2021 amendments, back to an inequitable system for Class E crimes.

Class E crimes are those that our government has decided are the least serious. Money bail, and pretrial incarceration as a result of it, should be reserved for the most serious crimes. That's not what we're talking about here. Class E offenses include littering, unlawful possession of less than 200mg of an illicit drug, trespassing on public beaches, petty theft, and violating a condition of release which often means things like being late for curfew or having a beer in your refrigerator when you're not supposed to possess alcohol or drugs.

In the ACLU's work on pretrial reform, we have come across hardworking Maine fishermen, housepainters, and restaurant servers who lost their jobs because they spent as few as one or two nights in jail, after a bail commissioner set money bail they simply couldn't afford. We have met mothers who lost custody of young children after being held in jail over the weekend because they couldn't afford to pay their bail. Our staff met people experiencing homelessness who lost their beds in shelters, and people with substance use disorder who lost their beds in rehab.

Every single one of those cases was a misdemeanor. These are not crimes for which people should be held in jail before trial at great personal and taxpayer cost.

In the interest of upholding the foundational presumption of innocent until proven guilty, we urge you to oppose LD 1536.