

TESTIMONY OF ZACHARY L. HEIDEN

LD 521—Ought Not to Pass

An Act To Modify the Rule-making Process for Establishing County and Municipal Jail Standards

Joint Standing Committee on Criminal Justice and Public Safety

March 24, 2021

Senator Deschambault, Representative Warren and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Zachary Heiden, and I am Chief Counsel of 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 am here to testify in opposition to LD 521 because it would undermine the protection of the health and safety of people incarcerated in Maine's jails and because it is unnecessary.

As background, it is worth noting that the Commissioner of the Maine Department of Corrections is obligated to establish both mandatory and desirable standards for all county and municipal detention facilities to ensure that such facilities are "safe, healthful, and secured." 34-A M.R.S. §208(1). But despite the mandatory nature of the statute, previous commissioners have been reluctant to adopt such standards. Commissioner Liberty is to be applauded for his recent efforts to adopt standards governing the use of deadly force, access to medical treatment for substance use disorder, and access to pregnancy-related medical care.

As a result of our communications with incarcerated people, we know all too well that additional regulation and oversight of conditions in our county jails is much needed—both to comply with Maine statutes as well as with basic constitutional requirements. At the ACLU of Maine, we have sometimes needed to resort to litigation to enforce statutory and constitutional

standards of care in jails, as in our landmark lawsuit against the Aroostook County Jail concerning access to medical care for a prisoner with opioid use disorder. In that case, *Smith v. Aroostook County*, the U.S. District Court held that the denial of medication to our client amounted to a violation of the Americans With Disabilities Act, 376 F.Supp.3d 146 (D.Me. 2019), and the U.S. Court of Appeals for the First Circuit affirmed that decision, 922 F.3d 41 (1st Cir. 2019). But the ACLU of Maine cannot file federal lawsuits about every complaint of mistreatment or denial of medical care that comes to our office, and even if we could, we can all agree that regulation by ACLU litigation is not the most efficient way of ensuring that basic human rights standards are met.

Though the Commissioner is required to adopt health and safety standards, he is not permitted to simply impose any standards that he likes. Current Maine law dictates that the standards must be adopted pursuant to the Maine Administrative Procedures Act, which requires that the standards be carefully evaluated for their impact and their legality; that they be published and that the public be given an opportunity to comment on the proposed standards; that the Commissioner review the comments and respond to them; that the final form of the rule be approved by the Attorney General; and that anyone who is impacted by the rule have the opportunity to challenge the rule in court. The Maine Sheriff's Association and the Maine County Commissioners Association both took advantage of the opportunity to comment on the recently adopted jail standards, and in addition the Maine Sheriff's Association has taken advantage of the opportunity to file a legal challenge to the standards governing pregnancy care. Resorting to such procedural avenues of review is entirely appropriate, but the right to provide comments is not the same as the right to have a government body agree with your comments, as this committee is surely aware. The jails may not like the new standards, but that is not a justification for changing the rules for adopting those standards.

Finally, it is worth remembering that most of the people being held in Maine's jails are pretrial detainees. They have not been convicted of a crime or sentenced to a term of incarceration; they are just as entitled to a presumption of innocence as any of us here in the meeting. The government is not obligated to put anyone in jail, but once it decides to do so, it takes on the obligation to see to it that they are treated fairly and that the basic necessities of life,

are provided. It is the state as a whole that prosecutes people, and it pursuant to the state's authority by which individuals are detained. It is, therefore, entirely appropriate that the state should have a say regarding the conditions of that confinement. Because LD 521 would undermine the state's ability to provide that necessary oversight, the ACLU of Maine urges you to vote against its passage.