



**LD 696—Ought to Pass**  
**An Act To Prohibit Solitary Confinement in Maine's Corrections System**  
Joint Standing Committee on Criminal Justice and Public Safety  
April 5, 2021

Senator Deschambault, Representative Warren and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. GLBTQ Legal Advocates & Defenders (GLAD), MaineTrans.Net, and the ACLU of Maine offer the following testimony in support of LD 696, which can solidify best practices and bring Maine's criminal justice practices in line with human rights standards.

As background, it is worth noting that the Maine Department of Corrections has been a leader in reducing the use of solitary confinement. Eleven years ago, when this committee last considered substantial legislation to reduce the use of solitary confinement and improve conditions in the "Special Management Unit" at the Maine State Prison, solitary confinement was used much more frequently with much less attention to the debilitating effects of long-term isolation. Since then, the MDOC has taken it upon itself to adopt new policies and change its practices, so that far fewer people are subjected to solitary confinement. As a result of these changes, over the past ten years, when states around the country have wanted to explore ways to reduce the use of solitary confinement, and to improve conditions in special management units or supermax facilities, they have often looked to Maine as an example. Commissioner Liberty, Deputy Commissioner Thornell, and many other current and past leaders at the MDOC have devoted extensive time speaking with their colleagues around the county about ways to reduce the use of solitary confinement in ways that protect human rights as well as safety. The Department of Corrections, and the staff in Maine's correctional facilities, deserve credit for devising and implementing those reforms.

But fortunately or unfortunately, other states have now surpassed Maine in their restriction of the use of solitary confinement, and it is time for Maine to regain its position as a leader on this issue. That leadership requires involvement from the Maine legislature; it cannot

be a question that is left solely to the discretion of the Executive branch. More people will be more likely to know about, and to rely upon, good policies and practices if they have been codified in statute. That's where you all come in.

Legislatures around the country have become leaders on this issue. Since 2018, seven states have adopted statutory restrictions on the use of solitary confinement.<sup>1</sup> Most recently, the New York state legislature adopted the most sweeping legislative reform of the use of solitary confinement in the country, and Governor Cuomo signed this bill—the HALT Solitary Act—into law on March 31, 2021.<sup>2</sup> The Maine legislature can build upon these successes.

The need to reduce, and ultimately to eliminate, the use of solitary confinement cannot be overstated. Prolonged deliberate isolation is inhumane and degrading. It can cause permanent damage to anyone who experiences it, and it is especially dangerous for people with serious mental illness. International human rights and health organizations, as well as the former U.N. Special Rapporteur, have roundly denounced the use of prolonged isolation--which they have defined as isolation for longer than 15 days--as torture.<sup>3</sup> Among people subjected to solitary confinement, the following problems have been observed: obsessive ruminations, confused thought processes, oversensitivity to stimuli (a strong startle reaction), irrational anger and social withdrawal.<sup>4</sup> It is important to note that 15 days was not chosen because it is a safe amount of time to be isolated, but rather because after 15 days it is more likely that the negative health effects of isolation will be irreversible. One judge observed, in considering the constitutionality

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<sup>1</sup> 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); New York Senate Bill 2836 (enacted April 2021); Virginia Senate Bill 1777, House Bill 1642, 2020 Virginia Legislative Session (enacted March 2019).

<sup>2</sup> See Press Release: Governor Cuomo Signs the HALT Solitary Confinement Act into Law (April 2, 2021), <https://www.governor.ny.gov/news/governor-cuomo-signs-halt-solitary-confinement-act-law>

<sup>3</sup> Solitary confinement should be banned in most cases, UN expert says, UNNEWS(Oct. 18, 2011), <https://news.un.org/en/story/2011/10/392012-solitary-confinement-should-be-banned-most-cases-un-expert-says>(defining solitary in excess of 15 days as a form of torture)

<sup>4</sup> Haney, Craig. "Mental Health Issues in Long-Term Solitary and Supermax Confinement," *Crime & Delinquency* 49 (2003).

of solitary confinement, that conditions of isolation “hover on the edge of what is humanly tolerable for those with normal resilience,” but for prisoners with serious mental illness, it is “the mental equivalent of putting an asthmatic in a place with little or no air to breathe.”<sup>5</sup>

LD 696 gives this committee, and the Maine legislature as a whole, an opportunity to put restrictions on the use of solitary confinement in statute where they belong. While the MDOC’s own internal reforms are significant, we are not willing to accept that there is no role for the legislature to play in restricting the use of solitary confinement as much as possible and in ensuring that careful procedural protections are enforced. In considering the final form of this legislation, we urge the committee to focus on a few key areas, consistent with successful legislation from other states:

#### **Clear Definitions and Time Limits.**

The HALT Solitary Confinement Act recently enacted in New York strictly prohibits prisoners from being placed in solitary confinement for more than 15 consecutive days, or for 20 total days within any 60-day period. And, it limits the duration of disciplinary segregation to three consecutive days, and no more than six days over the course of a 30-day period. Limits of this nature belong in statute because regulations, and customs, are too easily altered or ignored. The New York law also requires a minimum of four hours of out-of-cell programming each day, including one hour for recreation, which will go a long way towards mitigating some of the most harmful effects of long-term isolation. Maine currently permits, by policy, most prisoners in the solitary confinement unit to access programming both inside and outside their cells, and this policy should be codified in statute.

#### **Prohibit “Protective” Solitary.**

The legislature should strictly prohibit the use of solitary confinement as a form of protective custody. For many years, prisoners were sometimes subjected to solitary confinement “for their own protection” or while the details of an incident were being reviewed by security staff. LGBTQ+ prisoners were especially vulnerable to the dangers of this “protective” custody,

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<sup>5</sup> *Madrid v. Gomez*, 889 F. Supp 1146, 1265 (N.D. Cal. 1995).

in situations where prison officials could not figure out a way to keep a person safe, or could not identify an appropriate housing assignment for the person.<sup>6</sup> Nobody should be subjected to inhumane treatment simply because prison officials are not able to keep them safe.

### **Strict Prohibitions and Periodic Reviews.**

Subjecting prisoners with serious mental illness to long-term isolation violates the Constitution's prohibition on cruel and unusual punishment.<sup>7</sup> Prisoners who are pregnant, or who recently gave birth, are also especially vulnerable to the dangerous effects of long-term isolation. Finally, juveniles can suffer long-term developmental damage if they are subjected to long-term isolation. The legislature should enact strict prohibitions on the imposition of solitary confinement on people who have serious mental illness, who are pregnant or who recently gave birth, or who are juveniles. And, all prisoners who are subjected to long-term isolation should be given periodic reviews, where they are provided with an advocate to assist in evaluating and communicating any concerns.

Human beings were not meant to be alone. Whether you approach this issue from the perspective of the law and the Constitution, or international human rights conventions, or medicine and psychology, or philosophy, or religion, the conclusion is clear: solitary confinement is wrong, and we all have an obligation to work towards the day when it is eliminated.

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<sup>6</sup> The Department of Justice has found that lesbian, gay, and bisexual prisoners are substantially more likely to be subjected to solitary confinement or segregation than heterosexual prisoners, with more than a quarter (28%) of LGB people in prisons being placed in solitary confinement compared to 18% of heterosexual people in prisons in the time period evaluated. Bureau of Justice Statistics. (2015). Use of Restrictive Housing in U.S. Prisons and Jails, 2011–12 (p. 4), at <https://www.bjs.gov/content/pub/pdf/urhuspj1112.pdf>; Jason Lydon. Coming Out of Concrete Closets, A Report on Black & Pink's National LGBTQ Prisoner Survey (2015), at 35-36 (confirming experience of LGBTQ people placed in solitary confinement for their protection despite clear statement in Prison Rape Elimination Act that isolation should be used only when there is no other possible alternative to prevent abuse, and documenting racial disparities), at <https://www.issuelab.org/resources/23129/23129.pdf>

<sup>7</sup> See, e.g., *Jones "El v. Berge*, 164 F. Supp. 2d 1096 (W.D. Wis. 2001); *Scarver v. Litscher*, 371 F. Supp. 2d 986 (W.D. Wis. 2005), *aff'd*, 434 F.3d 972 (7th Cir. 2006); *Disability Rights Montana, Inc. v. Batista*, 930 F.3d 1090 (9th Cir. 2019).