

MEMO

TO: Committee on Criminal Justice and Public Safety

FROM: Criminal Law Advisory Commission (CLAC)

RE: L.D. 696

Date: April 4, 2021

CLAC members take no position on LD 696's proposal to ban the use of solitary confinement in prisons and jails, but members have some concerns about the specific language of the proposal.

The bill defines solitary confinement as circumstances in which "the prisoner has contact with another person less than 3 times per 24-hour period." CLAC members point out that this language may not be sufficient to ban what is commonly understood as solitary confinement.

Because "contact" is not defined, that term could be interpreted to include a guard passing a cell door, calling out the prisoner's name, and sliding a meal tray through the door. Because this would occur three times a day, such housing would be outside the definition of solitary confinement even if the person were not allowed out of the cell during the 24-hour period. Accordingly, CLAC members suggest that the definition of solitary confinement requires changes so that it covers current housing conditions that are commonly understood as solitary confinement.

In addition, the bill inserts the definition of solitary confinement into Title 34-A, the statute governing prisons. In the statute governing jails, Title 30-A, the bill simply inserts a reference to the title 34-A definition. CLAC members suggest that a full definition of solitary confinement, whatever the final language, should also be inserted into Title 30-A. This would allow officials implementing the laws governing jails to find those requirements in one place without having to resort to the law governing prisons as well. A full definition in Title 30-A would also be able to accommodate the distinction that Title 30-A uses the term inmate while Title 34-A uses the term prisoner.