

TESTIMONY OF MICHAEL KEBEDE, ESQ.

**LD 769—Ought Not to Pass**

**An Act To Increase the Availability of Mental Health Services for a Defendant Who Has Been Found Incompetent To Stand Trial**

Joint Standing Committee on Criminal Justice and Public Safety

April 9, 2021

Senator Deschambault, Representative Warren and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Michael Kebede, and I am Policy 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 769 because it would threaten the constitutional rights of people in Maine and would undermine the fundamental principles of our criminal justice system.

The framers of our constitution were profoundly aware that unchecked governmental authority was a threat to individual liberty. Our republic was founded on the bedrock principle that the government should not be able to reach out and strip the liberty of those who are merely accused of wrongdoing. The framers wrote the Bill of Rights to protect each individual from the full force of the state. Accordingly, the rights of the criminal defendant are protected by more constitutional amendments than any almost any other right. The Fourth Amendment protects the individual from unwarranted search and seizure; the Fifth Amendment guarantees due process and guards against double jeopardy; the Sixth Amendment provides for legal counsel; the Eighth Amendment prohibits excessive, cruel and unusual punishment; and Fourteenth Amendment provides substantive and procedural due process, and ensures that everyone is equal in the eyes of the law.

In this country, we have a criminal legal system to determine who goes to prison. It has its own set of constitutional protections, and its own process: arrest, arraignment, discovery, a

trial before a jury of peers, a conviction based on the "beyond a reasonable doubt" standard, and sentencing by a judge. That is the way – the only way – that someone should ever go to prison.

If someone is determined to be Incompetent to Stand Trial (IST), that person has not been convicted of a crime. That person is not a prisoner. In other words, someone who is determined to be IST is *legally innocent*. They may find themselves civilly committed, if a judge determines that they pose a serious risk of harm to themselves or others, but they are not a prisoner and they may not be sent to prison.

Prisons are not hospitals. Prison cells are not therapeutic spaces. Prisoners have a right to only “adequate” health care – a low standard that only requires that prisons are not deliberately indifferent to a prisoner’s health. We are enormously skeptical that a prison could provide better health care than a state hospital. If that is the case, we encourage this legislature to focus on improving health care at Maine’s hospitals instead of transferring patients to prison.

The Department of Health and Human Services is charged with improving the health and well-being of Maine residents, treating consumers with respect and dignity, and delivering evidence-based services.<sup>1</sup> Putting patients in prison flies in the face of these goals.

This is not the first time that the idea of imprisoning innocent people has been proposed in the Maine legislature. Past legislatures wisely rejected similar proposals because they correctly understood it to be inconsistent with our fundamental constitutional values. We urge the committee to reaffirm its commitment to those values by rejecting LD 769.

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<sup>1</sup> 22-A M.R.S.A. § 202 Mission; guiding principles.