

TESTIMONY OF MEAGAN SWAY, ESQ.

**LD 696—Ought to Pass As Amended**

**An Act To Prohibit Solitary Confinement in Maine's Corrections System**

Joint Standing Committee on  
Criminal Justice and Public Safety

February 9, 2021

Senator Deschambault, Representative Warren and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Meagan Sway, and I am policy director at 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 support of LD 696, which would define and prohibit solitary confinement.

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

If enacted, this bill would define solitary confinement as isolation in a cell for 20 hours per day, and prohibit that practice; it would regulate the use of segregation, which is defined as isolation of between 17 and 20 hours per day; it would prohibit the Department of Corrections from segregating people under 21 or over 65 years old, pregnant and post-partum people, and people with disabilities;<sup>1</sup> and it would create an ombudsperson to oversee the Department's compliance with this bill.

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<sup>1</sup> Many courts have found that it is unconstitutional to isolate people with disabilities. *See, e.g., Disability Rights Montana, Inc. v. Batista*, 930 F.3d 1090 (9th Cir. 2019); *Scarver v. Litscher*, 371 F. Supp. 2d 986 (W.D. Wis. 2005), *aff'd*, 434 F.3d 972 (7th Cir. 2006); *Ind. Protection & Advocacy Services Comm'n v. Comm'r*, No. 1:08-cv01317-TWP-MJD, 2012 WL 6738517 (S.D.Ind., Dec. 31, 2012); *Ruiz v. Johnson*, 37 F.Supp.2d 855, 915 (S.D.Tex.1999).

More than a 130 years ago, the United States Supreme Court observed that solitary confinement—even for short periods— can cause people to exhibit signs of severe mental illness and can even lead them to “commit[] suicide.” *In re Medley*, 134 U.S. 160, 168 (1890). U.S. Supreme Court Justices have begun to raise the alarm about the constitutionality of extended solitary confinement. Most recently, Justice Sotomayor noted that “solitary confinement imprints on those that it clutches a wide range of psychological scars.” *Apodaca v. Raemisch*, 139 S. Ct. 5, 9 (2018) (Sotomayor, J., respecting denial of certiorari). Justices Breyer and Kennedy have also weighed in on the “human toll” that solitary confinement takes. *See Ruiz v. Texas*, 137 S. Ct. 1246, 1247 (2017) (Breyer, J., dissenting in denial of certiorari); *Davis v. Ayala*, 576 U.S. 257, 287 (Kennedy, J., concurring).

Maine’s legislature moved on this issue and was an early leader in limiting the practice. In 2010, the Criminal Justice and Public Safety Committee considered substantial legislation to reduce the use of solitary confinement and improve conditions in the “Special Management Unit” at the Maine State Prison. The Maine Department of Corrections (MDOC) has taken it upon itself to adopt new policies and change its practices over the years, so that far fewer people are subjected to solitary confinement than twelve years ago. Heeding Maine’s motto, other states have followed our lead. Since 2018, seven states have adopted statutory restrictions on the use of solitary confinement.<sup>2</sup> Most recently, New York enacted the HALT Solitary Act, the most sweeping legislative reform of the use of solitary confinement in the country.<sup>3</sup>

It is now time to finally finish the work that this committee and the MDOC embarked upon over a decade ago. The need to end the use of solitary confinement once and for all cannot be overstated. Prolonged deliberate isolation can cause permanent damage to anyone who experiences it. 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 denounced the use of prolonged isolation, which they have defined as isolation for longer than 15

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<sup>2</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>3</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>

days, as torture.<sup>4</sup> People subjected to solitary confinement have a higher chance of developing obsessive ruminations, confused thought processes, oversensitivity to stimuli (a strong startle reaction), irrational anger and social withdrawal.<sup>5</sup> And, because most people in Maine's prisons are released eventually, using solitary confinement means we send vulnerable and damaged people back into our communities, with devastating results for both survivors and their friends and family.

LD 696 gives Maine a chance to once again lead the nation in solving this problem. We urge you to vote *ought to pass*.

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<sup>4</sup> Solitary confinement should be banned in most cases, UN expert says, UNNEWS (Oct. 18, 2011), available at <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>5</sup> Haney, Craig. "Mental Health Issues in Long-Term Solitary and Supermax Confinement," Crime & Delinquency 49 (2003).