

TESTIMONY OF MICHAEL KEBEDE, ESQ.

Ought to Pass - LD 178

An Act to Support Reentry and Reintegration into the Community

JOINT STANDING COMMITTEE ON
CRIMINAL JUSTICE & PUBLIC SAFETY

March 13, 2023

Senator Beebe-Center, Representative Salisbury, and distinguished members of the Joint Standing Committee on Criminal Justice & Public Safety, greetings. My name is Michael Kebede, and I am the Policy Counsel at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we urge you to support LD 178 because it will make Maine safer and more just.

Judges routinely sentence people to incarceration for a wide range of offenses and Maine law often gives them discretion over how long those sentences should be. Those individuals were committed to terms of confinement pursuant to a judge's estimation of the punishment that was justified under the facts of the case. Although we would hope that similar conduct would be treated equally, in practice we fail to attain our goal of treating people fairly under the law. Putting aside the statistically undeniable biases in how a person will be treated in our criminal justice system based upon that person's race or class,¹ social psychologists have also conclusively demonstrated that irrelevant factors such as a person's level of attractiveness² will drastically affect the real number of years that they will be condemned to suffer behind bars.

¹ See, e.g., Bishop, et al., *Racial Disparities in the Massachusetts Criminal System*, HARVARD LAW SCHOOL (2020) (exhaustively documenting disparities in the Massachusetts criminal justice system at every stage of the pretrial process), <https://hls.harvard.edu/content/uploads/2020/11/Massachusetts-Racial-Disparity-Report-FINAL.pdf>.

² See George Lowery, *Study Uncovers Why Jurors Reward the Good-Looking, Penalize the Unbeautiful*, CORNELL CHRONICLE (reporting on a Cornell University study which indicated that physically attractive people receive more lenient sentences), <https://news.cornell.edu/stories/2010/05/unattractive-people-pay-price-court>; see also Rod Hollier, *Physical Attractiveness Bias in the Legal System*, THE LAW PROJ. (presenting a number of studies which reached the same conclusion), <https://www.thelawproject.com.au/insights/attractiveness-bias-in-the-legal-system>.

Pulitzer Prize winning researcher Daniel Kahneman oversaw experiments which suggested that a criminal defendant sentenced before lunchtime might get a longer sentence, because hungry judges tend to be more irritable and less forgiving.³ Moreover, we all know that attitudes about punishment can change over time. Maine's experience with cannabis laws demonstrates that people can be sentenced to serve decades in prison for offenses which, later on, might not even be considered a crime. Judges sentence thousands of people throughout their careers. It is inevitable that from time to time they will fail to accurately estimate the sentence that will serve the state's rehabilitative goals.

Parole serves the purpose of evening out these disparities by allowing people to show that they are prepared to re-enter society. If a person can prove that they are ready to start participating in day-to-day life outside of prison, the fact that their sentence has not concluded should pose no impediment to their re-entry. Allowing them a chance at parole will permit them to begin working, seeing friends, and participating in the normal conduct of their lives, which will make them better prepared for their eventual release. Moreover, paroling incarcerated persons will save the state money that it otherwise would have spent on confinement.

Finally, pursuant to a parole study bill enacted last year, a diverse group of Maine stakeholders studied this issue in painstaking detail. That group of law enforcement officers, corrections officials, prosecutors, legislators and others made six recommendations, one of which was, "reestablish parole in Maine."⁴ Approved by a supermajority of that commission, the recommendation followed extensive public comment and expert testimony. We urge you to honor that commission's work and vote *ought to pass*.

³ See Danziger, et al., *Extraneous Factors in Judicial Decisions*, 108 NAT'L. ACAD. OF SCI. 6689 (Kahneman ed. 2011), <https://www.pnas.org/content/pnas/108/17/6889.full.pdf>.

⁴ Report of the Commission to Examine Reestablishing Parole, State of Maine, 130th Legislature, at iii, 24-25, December 2022, available at <https://legislature.maine.gov/doc/9574>.