

TESTIMONY OF MICHAEL KEBEDE, ESQ.

**LD 1086—Ought to Pass**

**An Act to Define the Term "Solitary Confinement" for the  
Laws Governing a Jail or Correctional Facility**

Joint Standing Committee on  
Criminal Justice and Public Safety

April 24, 2023

Senator Beebe-Center, Representative Salisbury 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 support of LD 1086.

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 end its use. More than a century ago, the United States Supreme Court observed that solitary confinement—even for short periods—causes prisoners to become “violently insane” and “commit[] suicide.” *In re Medley*, 134 U.S. 160, 168 (1890). More recently, a Justice of the Supreme Court has said that solitary confinement imposes an “immense amount of torture and agony” on prisoners. *Apodaca v. Raemisch*, 139 S. Ct. 5, 10 (2018) (Sotomayor, J., respecting denial of certiorari). Legislatures around the country have recognized this issue and become leaders in banning or limiting this harmful practice. Since 2018, seven states have adopted statutory restrictions on the use of

solitary confinement.<sup>1</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>2</sup>

Properly defining solitary confinement is a necessary step toward ending its use. 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 days, as torture.<sup>3</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>4</sup>

If enacted, this bill would define solitary confinement as the isolation of a jail or prison resident from the general population of the jail or prison for 22 hours or more within a 24-hour period. There is no definition of solitary confinement in the Maine Revised Statutes, but the Department of Corrections (“DOC”) can – and has – promulgated rules that define solitary-like conditions.<sup>5</sup> See 34-A M.R.S. §1403(1) (“The commissioner may perform any legal act relating to the care, custody, treatment, relief and improvement of clients”). A DOC policy titled “Disciplinary Segregation Status” defines “restrictive housing” as “housing that separates a resident from the general population and restricts the resident to their cell for up to twenty-two (22) hours per day for the safe and secure operation of the facility.” DOC Policy 15.2 (IV)(“Definitions”). The DOC Commissioner himself has said, “It was obvious that no good

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

<sup>5</sup> Maine Department of Corrections Policy Number 15.2, Effective Feb. 1, 2002, Latest Revision July 1, 2020, available at <https://www.maine.gov/corrections/policies>.

comes of locking people away in a cell for 22 hours a day.”<sup>6</sup> Given its evident opposition to isolated confinement for longer than 22 hours, we hope the DOC welcomes this legislation.

We urge you to vote *ought to pass*.

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<sup>6</sup> Susan Sharon, *VIDEO: Maine State Prison Leading Nationwide Charge to Reduce Solitary Confinement*, April 14, 2017, Maine Public, available at <https://www.mainepublic.org/courts-and-crime/2017-04-14/video-maine-state-prison-leading-nationwide-charge-to-reduce-solitary-confinement>