

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



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April 27, 2023

Senator Anne Carney, Chair
Representative Matt Moonen, Chair
Members, Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333-0100

Senator Carney, Representative Moonen, and Members of the Joint Standing Committee on Judiciary:

This letter is to provide information regarding LD 1550, *An Act to Authorize the Expungement of Records of Nonviolent Crimes*. This bill would allow for a person convicted of a Class C, D, and E crime to petition the court where the person was convicted to expunge all records of the crime 5 years after the completion of the person's sentence. Expungement would not be available for persons who have subsequently been convicted of a crime or has pending criminal charges or for crimes involving violence, domestic violence, sexual offenses, bribery corrupt practices, or any crime where the victim was a minor or age 65 or older.

OCFS does not have a position on expungement generally but does have concerns about the unintended consequences of this bill, specifically the possibility it could limit the information available to the Department as it seeks to understand an individual's criminal history.

OCFS' access to criminal history information is important for two significant reasons related to child safety. First, OCFS uses criminal history information to inform child welfare investigations as our staff seek to make decisions regarding child safety and well-being. Second, OCFS is tasked with completing federally required background checks on individuals working in child care programs and children's residential care facilities (CRCFs). The parameters of these background checks and what could exclude someone from holding certain positions with these types of providers are specified in regulation and OCFS is concerned that this bill has the potential to put OCFS out of compliance with those regulations. If this bill passes, OCFS will have to seek technical assistance around expungement from federal regulators to fully determine the impact.

OCFS believes there are crimes that would qualify for expungement under this bill that would be relevant to child safety. For example, a parent with a history of multiple OUIs or drug charges. OCFS' investigations are highly case-specific, and it would be difficult to make any broad assumptions about what criminal history information may or may not be relevant to individual investigations into child safety and well-being.

The language of this bill leaves room for interpretation which is concerning when attempting to determine what could be expunged pursuant to this bill. For example, OCFS needs additional information to understand what would constitute a "crime of violence"? Would stalking be considered violent?

OCFS has attempted to develop a list of crimes that are likely to qualify for expungement but would be of concern from the child welfare perspective. They include:

Class C

- Aggravated criminal mischief
- Aggravated OUI (depending on whether or not this is considered a violent offense)
- Criminal mischief
- Trafficking/furnishing counterfeit drugs
- Various scheduled drug crimes

Class D

- OUI
- Criminal restraint
- Criminal use of disabling chemicals
- Aggravated criminal invasion of computer privacy
- Various drug crimes

Class E

- Disorderly conduct
- Various drug crimes

OCFS believes that the more information staff have available in assessing a family's situation to determine child safety the better the decisions they make will be. Criminal behavior is extremely relevant in some cases and OCFS wanted to make sure you had this information to consider the full implications of this proposed bill.

We wanted you to be aware of the above information as you consider this bill going forward. If you have any further questions, please feel free to contact me.

Sincerely,



Dr. Todd A. Landry
Director
Office of Child and Family Services