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GOVERNOR

STATE OF MAINE
DEPARTMENT OF CORRECTIONS
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04333-0111

RANDALL A. LIBERTY
COMMISSIONER

TESTIMONY OF

**RANDALL A. LIBERTY, COMMISSIONER
DEPARTMENT OF CORRECTIONS**

In Support of:

LD 2250, An Act to Allow the Department of Corrections to Comply with the Federal Prison Rape Elimination Act of 2003

Senator Carney, Representative Moonen and distinguished members of the Joint Standing Committee on Judiciary, I am Randall Liberty, Commissioner of the Maine Department of Corrections (DOC) providing testimony in strong support of our department bill, LD 2250, An Act to Allow the Department of Corrections to Comply with the Federal Prison Rape Elimination Act of 2003. As explained below, this is a critically important bill making a small change to Maine employment law under Title 5, Section 7070 that currently stands in the way of our ability to fully comply with Federal regulations established pursuant to the Prison Rape Elimination Act. The Department thanks Sen. Carney for sponsoring this bill on our behalf and is especially grateful in consideration of the late-session timing.

Background:

The Prison Rape Elimination Act (PREA – [34 U.S.C. Ch 303](#)) is a federal law that requires all correctional facilities to comply with relevant standards established by United States Department of Justice (U.S. DOJ). Under PREA, each of our State’s correctional facilities undergo compliance audits on a two-year cycle. MaineDOC has an excellent record of PREA compliance and has often been ahead of other states in meeting (and sometimes even exceeding) the baseline PREA standards. If you’re interested in learning more, you can find our past reports on our webpage: <https://www.maine.gov/corrections/data/compliance>.

PREA was originally enacted in 2003, but U.S. DOJ didn’t finish developing the standards necessary to implement the law until about 2012. Until recently, U.S. DOJ has been taking an approach focused on assisting states with compliance and has allowed a pathway for corrective action for any standard that falls short. However, U.S. DOJ is now shifting to a stricter regulatory model that will have greater consequences when standards are not met.

The reason we need an after-deadline bill:

It recently came to our attention that, due to certain confidentiality provisions in Maine employment law, we are unable to comply with the PREA standard under [28 CFR §115.73](#) (attached) that requires us to share certain information regarding the outcome of a PREA investigation with the resident who made the allegation. Specifically, the confidentiality provisions in Title 5, section 7070(2)(E) prevent us from being able to comply with the requirement to “inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.” Even if we were to provide this information without using personally identifying information, telling a resident that their complaint was “unsubstantiated” or “unfounded” risks violation of 7070 because it acknowledges that there was a complaint of misconduct against an employee that was investigated and it is obvious to the resident who that employee is. Further, stating that the complaint was “substantiated” also looks like a violation of 7070, as that statement likely constitutes “other information or materials that may result in disciplinary action.”



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In circumstances where final discipline is issued as a result of a substantiated allegation, the final discipline is a public record, so that is the one circumstance where current law doesn't create an issue. The problem arises in circumstances when: (1) no discipline is issued as a result of an investigation; or (2) discipline is issued and then grieved so the discipline does not become final (potentially for years).

Without the minor changes being made by LD 2250 we will not be able to meet the requirements of PREA in our upcoming audits this fall. Failing our audits would result, at a minimum, in a 5% reduction to our Federal grant funding (over \$80,000) and limit our ability to accept residents from other PREA-certified entities, such as county jails, other states, or the Federal system. This would directly affect any resident transfers under interstate compacts and inhibit our ability to take advantage of certain transfer provisions in Maine law, such as 34-A M.R.S. §3069-A, which allows the Commissioner to accept a transfer from a jail to a State correctional facility of an adult resident for the purpose of providing intensive mental health care and treatment.¹

LD 2250 Language:

As printed, LD 2250 has been narrowly drafted to allow our department to comply with the specific PREA standard at issue. However, it's worth noting that the language goes slightly beyond the baseline requirement of the PREA standard in two ways:

- (1) The PREA standard only applies to allegations of "sexual abuse" (for which we use the term "sexual misconduct"). Our draft goes one step further by also including allegations of "sexual harassment." We felt like it made sense to have the same notification process for both, given the nexus that often exists between them and the fact that such investigations often overlap.
- (2) The language in the bill keeps the information "confidential" but allows disclosure of a determination that the allegation was substantiated, unsubstantiated, or unfounded to the alleged victim. The language uses the term "alleged victim" rather than specifying "resident of a correctional facility" because we'd like to be able to have the same notification process for both residents and staff. PREA was designed with a focus on protecting prisoners ("residents" in our system), which makes sense given the context surrounding its enactment, however we take sexual misconduct and sexual harassment amongst our staff just as seriously and we feel that parity in our investigative processes is best practice.

¹ The Intensive Mental Health Unit (IMHU) at the Maine State Prison is the housing unit for residents with serious mental illnesses, persistent disabling personality disorders, or severe cognitive impairments who require structured intensive mental health services. The purpose of the IMHU is to help residents function at their optimal levels, under the least restrictive conditions necessary, while working towards the reduction of criminogenic risk factors. The goal is to improve quality of life, prepare for return to general population housing units, if possible, and, when appropriate, prepare for release back into the community, return to jail, admission to a state mental health institute, or transfer to an out-of-state correctional facility.



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Compliance with PREA matters greatly to Maine Department of Corrections because ensuring the safety and well-being of those within our system is both part of our correctional philosophy under the Maine Model of Corrections and just the right thing to do. The changes implemented in this bill would be important to us even if it were not for the consequences associated with losing PREA certification. For these reasons, we hope that you will support this proposal.

This concludes my testimony.

I am happy to answer questions.

Randall A. Liberty
Commissioner
Maine Department of Corrections