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Judicial Branch testimony neither for nor against LD 1865, An Act Establishing the Maine Sentencing Guidelines Commission:

Senator Carney, Representative Moonen, members of the Joint Standing Committee on Judiciary, my name is Julie Finn and I represent the Judicial Branch. I would like to provide testimony and comments regarding this bill.

The Judicial Branch does not take a position on the merits of this bill but would like to offer the following comments, because some important details seem to be lacking in the proposed legislation.

There are constitutional separation of powers issues in the proposed legislation. The Judicial Branch cannot be part of a commission that reports out legislation, or alternatively would have to serve as advisory members. *See* proposed section 1505(7).

Another example occurs in subsection 12, which reads, in pertinent part: "Any modification of the sentencing guidelines regarding severity levels and offender characteristics or that results in the reduction of any sentence or in the early release of any inmate..." Under the Maine Constitution, the power to grant reprieves, commutations and pardons lies with the Governor.

In section 1505, subsection 5, the following sentence appears:

The sentencing guidelines are advisory and a court is encouraged to follow the sentencing guidelines when sentencing a defendant, but a court shall follow the procedures of the sentencing guidelines when pronouncing a sentence in a proceeding to which the sentencing guidelines apply by operation of statute.

It is unclear from this passage whether or not the guidelines are advisory.

Proposed section 1505, subsection 6, in the development of sentencing guidelines, states that:

... the primary considerations of the commission are public safety and equal application of sentences under the law. The commission shall also consider current sentencing and release practices, correctional resources, including the capacities of state and local correctional facilities, and the long-term negative impact of the crime on the community. The sentencing guidelines must be based on reasonable offense and offender characteristics for murder and Class A, B and C crimes.

Existing law in 17-A MRS §§ 1501 and 1602 contain different considerations and procedures for sentencing and seem to conflict with the proposed bill.

In addition, we have several questions regarding the structure, resources and staffing that would be necessary to support the commission. The bill provides for a research director position, as well as clerical help and other employees as approved by the commission. The bill only definitively creates one position although it seems clear that additional positions will be necessary given the scope of work of the commission to include an impact study every two years and service as a clearinghouse and information center. Would the position(s) be created within the Judicial Branch or the Executive Branch? Both branches are mentioned in the bill. *See* proposed section 1505(9). The Judicial Branch does not have the capacity to absorb additional work within existing resources.

Section 1505 subsection 9 of the bill states that: "The judiciary shall provide adequate office space, resources and administrative support for the commission." As stated above, this language is problematic due to its lack of specificity and the Judicial Branch's lack of resource capacity.

The Judicial Branch has concerns about potentially housing the commission. While public space may be provided for meetings from time to time as available, housing an unknown number of employees of a commission is another matter and would require separation given the nature of the work and the confidentiality with which court records and information must be maintained.

Finally, I would like to point out that the Judicial Branch is not opposed to the establishment of a sentencing commission. To that end, we have asked a law clerk to look into statutes and commissions in other states to examine how they are organized. Our concerns are structural, rather than substantive.

Thank you for your consideration.