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04333-0111

RANDALL A. LIBERTY
COMMISSIONER

TESTIMONY OF

ANTHONY CANTILLO, DEPUTY COMMISSIONER MAINE DEPARTMENT OF CORRECTIONS

March 31, 2025

In Opposition to:

LD 1113, An Act Regarding Fairness in Sentencing for Persons Under 26 Years of Age

Senator Carney, Representative Kuhn and distinguished members of the Joint Standing Committee on Judiciary, I am Tony Cantillo, Deputy Commissioner of the Maine Department of Corrections (DOC) providing testimony today in opposition to LD 1113, An Act Regarding Fairness in Sentencing for Persons Under 26 Years of Age.

The proposal before you today ensures that any person who receives a life sentence for conduct committed before the age of 26 is eligible for supervised release under the Supervised Community Confinement Program (SCCP) after having served at least 15 years of their sentence. The primary role of the Maine Department of Corrections is to serve as the custodial authority responsible for the supervision of individuals committed to state custody for any sentence over 9 months for a felony level offense. Because the department's responsibilities for the adult population are primarily post-adjudication, the department is not weighing in today on the underlying policy goals of this proposal. However, as the agency responsible for administering SCCP, the department has some serious concerns with a few aspects of this bill. These concerns are not addressed by the sponsor's proposed amendment, which would make any person who receives a sentence of over 15 years for conduct committed before the age of 26 eligible for SCCP after having served at least 15 years of their sentence.

As discussed during the orientation we provided this committee in January, SCCP is an early release program administered by the department as a means to help ensure successful reentry for adult clients. While probation is a court ordered term of community supervision determined at the time of sentencing, SCCP is a discretionary program operated by the department. Residents transferred to SCCP are still considered to be in the legal custody of the Department, but the place of confinement is in the community rather than a correctional facility.

By statute, basic eligibility to apply for SCCP begins when a person has no more than 30 months remaining on their sentence.¹ (34-A MRS §3036-A(2)(C-1)). In applying for the program residents work with their case managers to build a reentry plan that addresses their specific needs. Among other things, these plans must address housing, work opportunities, availability of necessary treatment, ability to continue programming needs, community-based risk factors, and community safety, which includes proximity to victims. The requirements of the program are set out explicitly in department rule 27.02 Supervised Community Confinement.

The department's opposition to this bill is primarily related to Section 3, which makes exceptions to the statutory provisions which outline when a person is eligible to apply for SCCP (paragraphs A through D of 34-A MRS §3036-A(2)). While we can understand why the proposal would need to make exceptions to the otherwise generally applicable time-served requirements outlined in paragraphs B, C, and C-1, the provisions

¹ However, there are additional criteria outlined in 34-A MRS §3036-A(2).



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contained in Paragraphs A and D remain important to the overall integrity of the program regardless of when in a person's sentence they become eligible to apply.

Paragraphs A and D read as follows:

A. A transfer to supervised community confinement may be granted only subject to rules adopted by the commissioner.

D. A prisoner may not be transferred to supervised community confinement if the prisoner has a custody classification level higher than minimum.

Taking these provisions in order, first, Paragraph A requires that a transfer to SCCP may only be granted subject to the rules adopted by the Commissioner. This provision is vitally important to the integrity of the program, as the department rules were carefully developed to ensure that those transferred to SCCP have appropriate plans in place to help support their success. The baseline time served criteria merely designates when a person is eligible to apply for SCCP, while the department's rules govern what that application needs to include and how we evaluate whether or not to approve that application. It's important to remember that SCCP is ultimately a discretionary program. When releasing a person to SCCP, the Department of Corrections remains responsible for the safety of both the client and community they are releasing to. We must be able to maintain the ability to make appropriate decisions based on the criteria we've developed. For that reason, we cannot support exempting anyone from the requirements of paragraph A.

Second, Paragraph D represents a policy decision we believe is also crucial to the success and safety of both our clients and the community they would be returning to, that a person may not be transferred to SCCP if they are classified at a custody level higher than minimum. Custody classifications are determined based on a standardized set of criteria used to evaluate each individual resident in our system. Custody levels are reevaluated periodically based on a person's behavior, programs, and progress while in our system and they determine where a resident may be housed and what kinds of activities they may participate in. Minimum custody represents the highest level of privilege for residents within our facilities. Community custody is a step further, which means that a resident is approved to leave facility grounds for the purposes of programs like work release or transfer to SCCP. The requirement that a person transferred to SCCP not be a custody level higher than minimum is in place to ensure that those released on SCCP have reached an appropriate level of safety and trustworthiness to be in the community with periodic, rather than constant, supervision. Our department feels it is crucial that this standard be maintained for the safety of the public and the integrity of the SCCP program. For that reason, we cannot support providing such an exemption from the requirements of paragraph D.

If the committee chooses to move forward with this proposal, we strongly recommend that Section 3 of the bill be amended to ensure that §3036-A(2) paragraphs A and D are applicable to the new category of SCCP eligibility created by this bill. Additionally, the committee should consider whether Sections 1 and 2 of the bill are even necessary to achieve the underlying policy goals. Eligibility for SCCP is not addressed at sentencing the way probation is, and the department is not aware of any instance where a court has issued a sentence "without the possibility of supervised community confinement." Given that SCCP is a broadly available statutory program provided for in 34-A MRS §3036-A and is not included within the courts' available sentencing alternatives under 17-A MRS §1502, such a sentence is not even within the scope of the courts'



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sentencing authority.² From the perspective of the department, Section 3 is all that is needed to create the eligibility sought by this bill, and Sections 1 and 2 are both unnecessary and confusing.

Finally, even if these issues are addressed, we need to be clear that this bill would likely increase the number of people in our system who are eligible for SCCP and put them under the long-term community supervision of the department. Currently, SCCP is limited to a maximum length of 30 months. The proposal before you today could result in the department supervising a person for much longer than that, and potentially for the rest of their lives in the case of a life sentence. While we are still working out how best to project that fiscal impact, it is likely that the department would need additional positions and resources to address that increase in workload for our adult community corrections team.

SCCP is a great program. It creates the ideal opportunity for a "warm handoff" back to the community. It allows individuals to live with their loved ones, to live in recovery housing, or other supportive housing environments. Individuals work in the community, they go to school, they volunteer and engage with their neighbors and friends, creating new healthy routines and prosocial relationships. The success of this program is closely tied to the criteria we have in place for participation and we cannot support any proposal that would bypass that criteria.

For the reasons stated above, the department respectfully presents this testimony in opposition to this proposal as currently drafted.

This concludes my testimony.

I am happy to answer any questions.

Anthony Cantillo
Deputy Commissioner
Maine Department of Corrections

² See also, *Maine Department of Corrections v. Superior Court*, 622 A.2d 1131 (Me. 1993), holding that a sentencing court may only impose sentences set out in statute.