

**OFFICE OF POLICY AND LEGAL ANALYSIS
BILL ANALYSIS**

TO: Members, Joint Standing Committee on Criminal Justice and Public Safety

FROM: Jane Orbeton, Legislative Analyst

DATE: April 2, 2021

LD: 661 An Act To Ensure Equity in Petitions for Rulemaking under the Maine Administrative Procedure Act

Summary

This bill requires the Department of Corrections to initiate appropriate rule-making proceedings within 60 days of receiving a petition from 150 inmates or 25% of the total male or female population of a correctional facility or county or municipal detention facility, whichever is fewer.

The bill proposes a new subsection 4 to existing law on rulemaking in 5 MRSA section 8055:

§8055. Petition for adoption or modification of rules

1. Petition. Any person may petition an agency for the adoption or modification of any rule.

2. Form designated. Each agency shall designate the form for such petitions and the procedure for their submission, consideration and disposition.

3. Receipt of petition. Within 60 days after receipt of a petition, the agency shall either notify the petitioner in writing of its denial, stating the reasons therefor, or initiate appropriate rule-making proceedings. Whenever a petition to adopt or modify a rule is submitted by 150 or more registered voters of the State, the agency shall initiate appropriate rulemaking proceedings within 60 days after receipt of the petition. The petition must be verified and certified in the same manner provided in Title 21-A, section 354, subsection 7, prior to its presentation to the agency.

The proposed amendment from DOC, supported by Rep Talbot Ross, reads:

Sec. 1. 5 MRSA §8055, subsection 4 is enacted to read:

4. Petition submitted by persons in a Department of Corrections facility.

Notwithstanding subsection 3, the Department of Corrections shall initiate appropriate rulemaking proceedings within 60 days after receipt of a petition to adopt or modify a rule submitted by 150 or more persons incarcerated in a Department facility or by 25% or more of the total number of males or females incarcerated in a Department facility, whichever is fewer, except that the Department is not required to initiate rulemaking if an earlier petition to adopt or modify the rule pursuant to this subsection was received within the prior year. The Department

may take reasonable steps to ensure that each signature is the signature of the person it purports to be and the person was incarcerated in the facility at the time of signing.

Sec. 2. 5 MRSA §8055, subsection 5 is enacted to read:

4. Petition submitted by persons incarcerated in a county or municipal detention facility. Notwithstanding subsection 3, the Department of Corrections shall initiate appropriate rulemaking proceedings with respect to standards adopted pursuant to Title 34-A, section 1208 or 1208-B within 60 days after receipt of a petition to adopt or modify a rule submitted by 150 or more persons incarcerated in a county or municipal detention facility or by 25% or more of the total number of males or females incarcerated in a county or municipal detention facility, whichever is fewer, except that the Department is not required to initiate rulemaking if an earlier petition to adopt or modify the rule pursuant to this subsection was received within the prior year. The Department may take reasonable steps to ensure that each signature is the signature of the person it purports to be and the person was incarcerated in the facility at the time of signing.

Testimony

Proponents:

1. Representative Talbot Ross sponsored the bill, testified in favor and submitted written testimony. Rep Talbot Ross testified that the purpose of the bill is to provide a fair equitable process for persons in DOC custody to petition for rulemaking. Rep Talbot Ross stated that she supports the amendment being proposed by Commissioner Liberty of DOC.
2. DOC Commissioner Liberty testified and provided written testimony in support of the bill if it is amended as proposed in the written testimony. The DOC amendment provides a process that is fair to female residents in correctional facilities by applying the 25% formula to males or females rather than grouping them together. The proposed amendment does the following with regard to rulemaking petitions from residents of DOC facilities and inmates from county or municipal detention facilities:
 1. It changes the percentage threshold to 25% or more of the total number of males or females in a facility.
 2. It adds an exception if a rulemaking petition was received in the prior year.
 3. It authorizes DOC to take reasonable steps to verify signatures.
 4. It separates rulemaking with respect to DOC facilities from rulemaking with respect to jail standards adopted by DOC.
3. Peter Lehman provided written testimony in favor of the bill from the Maine Prisoner Advocacy Coalition.
4. Suzanne Rudalevige, representing the HopeGateWay United Methodist Church, submitted written testimony in support of the bill.
5. Michael Kebede, representing the ACLU, submitted written testimony and testified in support of the bill.

Opponents:

1. Sheriff Jeff Trafton, Waldo County Sheriff, testified and provided written testimony against the bill on behalf of the Maine Sheriffs' Association. Sheriff Trafton expressed concern from the sheriffs that in smaller jails the 25% threshold would allow just 1 or a few inmates to petition for sweeping and costly changes to the jails. Sheriff Trafton was asked about the involvement of the

Maine Sheriffs' Association in working on the bill. In response to questions Sheriff Trafton confirmed that while the counties operate and maintain the jails the DOC has rulemaking authority to adopt jail standards. See 34-A MRSA §1208, sub-§1: "The commissioner shall establish both mandatory and desirable standards for all county and municipal detention facilities, setting forth requirements for maintaining safe, healthful and secure facilities." For specific authority see 34-A, section 1208-B:

§1208-B. Standards, policies and procedures applicable to jails

1. Establishment. The commissioner shall establish mandatory standards, policies and procedures for jails. The standards, policies and procedures must be established by rule and must be evidence-based and reflect best practices for the administration and operation of jails. The rules must include policies and procedures for assisting jails to achieve compliance and for imposing penalties for noncompliance.

A. The standards, policies and procedures must address record keeping and reporting of financial data, capital improvement planning, jail staffing, administration and management of prisoners, transfer of inmates, notification to prisoners of prohibition on contact with victims and other persons, pretrial assessments and services, evidence-based programming, literacy programs, mental health and substance use disorder programs and correctional officer training.

B. In administering and distributing funding to the jails pursuant to section 1210-D, subsection 4, the commissioner shall:

(1) Require reporting of data that indicates average daily population of prisoners, that excludes federal prisoners, that indicates sending and receiving jails for transferred prisoners and that is useful in calculating the distributions to the counties pursuant to section 1210-D, subsection 4; and

(2) Consider the performance of each jail in meeting the standards established pursuant to this section. The commissioner shall work with the jails to assist them in achieving compliance with the standards. The commissioner shall enforce the standards by imposition of monetary penalties upon a county for noncompliance by the county jail or regional jail. A monetary penalty imposed under this subsection may not in any fiscal year exceed the County Jail Operations Fund distribution payable to a county for a fiscal year pursuant to section 1210-D, subsection 4.

2. Rulemaking. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. Rules adopted pursuant to this section must take effect January 1, 2016.

Neither for nor against:

None