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TESTIMONY OF

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

Supporting

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

**Before the
Joint Standing Committee on Criminal Justice and Public Safety**

March 24, 2021

Senator Deschambault and Representative Warren and other distinguished members of the Criminal Justice and Public Safety committee, I am Randall A. Liberty, Commissioner of the Maine Department of Corrections providing testimony in support of LD 661 with amendments.

LD 661 addresses an issue of equity between male and female residents interested in initiating rulemaking.

The MDOC agrees with Assistant Majority Leader Talbot Ross that the current process for residents of the MDOC to initiate rulemaking is unfair to female residents due to the currently low numbers of female residents incarcerated in Maine.

Currently 5 MRSA §8055 states that an agency shall initiate rulemaking proceedings when a petition is submitted by 150 or more registered voters of Maine, with those signatures verified by municipal clerks through the voter rolls. While it may be cumbersome for male residents of an MDOC facility to gather 150 such signatures, it is possible. All male MDOC facilities have more than 150 residents, and many MDOC male facilities have more than double that number of residents, whereas there are currently only 126 women throughout MDOC custody.

Individuals incarcerated have a particular interest in MDOC rules because those rules govern many of the issues most important to them, including religious services; disciplinary violations and the disciplinary process; furloughs, work release, and supervised community confinement; and the grievance process.

The bill does not require the individuals signing the petition to be registered voters and proposes allowing for a 25% alternative to the number 150. The addition of the 25% alternative would ensure the female population is able to acquire signatures within their facility and not be disadvantaged by having small numbers of incarcerated women.

The amendment MDOC proposes adds in verification (as reasonable) of signatures of the individuals who sign a petition. It provides that rulemaking is not required if there was an earlier petition about the same rule within the past year, so that the MDOC is not forced into unnecessary repetitive rulemaking. It also separates out into



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two statutory provision the process for those in custody of the jails and those in custody of the MDOC corrections, so that jail residents cannot petition the MDOC for a revision of anything but jail standards, since only those standards govern their confinement.

The following proposed amendment has been shared with the sponsor.

Proposed amendment:

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

4. Petition submitted by persons incarcerated 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 whose name it purports to be and the person was incarcerated in the facility at the time of signing.

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

5. 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 the standards submitted by 150 or more persons incarcerated in a county or municipal detention facility in the State or by 25% or more of the total number of males or females incarcerated in a county or municipal detention facility in the State, whichever is fewer, except that the Department is not required to initiate rulemaking if an earlier petition to adopt or modify the standards 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 whose name it purports to be and the person was incarcerated in the facility at the time of signing.