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Testimony of Rep. Victoria Morales presenting

LD 476, An Act To Provide Licensed Assisted Living and Nursing Facilities Levels of Care for Incarcerated Persons

Before the Joint Standing Committee on Criminal Justice and Public Safety

Senator Deschambault, Representative Warren, and esteemed colleagues of the Joint Standing Committee on Criminal Justice and Public Safety, my name is Victoria Morales, and I represent House District 33 in South Portland. I am proud to sponsor **LD 476, An Act To Provide Licensed Assisted Living and Nursing Facilities Levels of Care for Incarcerated Persons**.

In the last few weeks we have considered several core issues in corrections - the cost of health care, staffing and supervised community confinement. This bill addresses all three.

In 1976, Maine was the first state to eliminate parole. Although several other states have since eliminated or severely curtailed parole, Maine is the only state that has not only eliminated parole but also rejected indeterminacy in sentencing. All other states without parole allow inmates to earn time off from their sentences by completing programming, learning job skills, and/or earning educational degrees.

In Maine our crime rates are declining, arrests are down, yet our prison population continues to trend upward (with the exception of this year of COVID when many courts were closed for extended periods). Longer sentences mean our prisons have a disproportionate number of the aged.

Aging in prison has been the subject of extensive study in recent years. Adults age 55 years and older grew from 3% to 10% of the total state prison population between 1993 and 2013, representing a 400% increase in number, while the median age of incarcerated adults grew from 30 to 36 years old. It is increasingly costly for correctional systems to respond to the needs of their geriatric populations, including their need for medical and mental health care.

Aging inmates experience chronic illness and disability at younger ages than the general population, beginning around age 55. The estimate for the additional costs of keeping aging inmates in prison varies. One study estimated for federal inmates that cost is doubled. A study of

Louisiana's costs estimated a fivefold increase from $20,000/inmate/year to over $100,000 per year in 2012. Using the cost per inmate provided by Maine's DOC in hearings last week of $74,000/year the cost to maintain aging inmates doubled would be $148,000/year or if multiplied by five $370,000/year.

But we have an alternative. Aging is strongly correlated with desistance from criminal behavior as seen in MDOC's recidivism rates by age. Current MDOC policy 27.2 Supervised Community Confinement Procedure I: Supervised Community Confinement for a Terminally Ill or Severely Incapacitated Prisoner allows for the confinement of terminally ill inmates or inmates with a severely incapacitating medical condition in a community setting like a nursing home or long term care facility or a private home. While this provision was widely used in the past, it has rarely been used in the last four years.

This policy was meant to mitigate, even if only slightly, the effects of Maine's elimination of parole.

What are the savings to the state of placing the dying and incapacitated in Community Confinement in nursing homes, assisted living or hospice care?

1. Nursing home care is covered by MaineCare (see MaineCare Benefits Manual: 10-144 C.M.R ch. 101, Chapter I Section 1.04(B). That same care provided in a MDOC facility is not covered by MaineCare.
2. It would reduce transport costs. The elderly require transport to medical appointments outside the facility for specialized care including cancer treatment, dialysis, surgery, cardiac and endocrine problems, etc.
3. Each transport means at least two officers must accompany the inmate, significantly contributing to staff shortages and overtime costs.

Under this policy, the patient remains in the custody of the Maine Department of Corrections and can be returned to prison either at the request of the long term care facility or the Department of Corrections.

The language in LD 476 would utilize an objective standard used by MaineCare and licensed long term care facilities both in Maine and nationally to determine whether a person qualifies for long term care.

The MDOC facility referred to as the Mountain View Assisted Living Unit, does not meet the community standards for long term care, is not licensed and is in violation of Maine Department of Health and Human Services Division of Licensing and Regulatory Services Regulations Governing the Licensing and Functioning of Assisted Housing Programs: Assisted Living Programs, Part of 10-144 Chapter 11.

A study funded by the National institute of Health and published in the International Journal of Prison Health, noted: "These increased medical risks (associated with aging) are often particularly difficult to manage in the prison setting… They often go undetected and undertreated in correctional facilities, or may be unnecessarily exacerbated by conditions of

confinement like shackling for transport or long-term isolation. Incarcerated elders have difficulty independently performing daily activities like eating, bathing, toileting, dressing, continence, and walking and often have higher rates of depression."

I ask you to support LD 476 as a means of addressing health care costs and staffing shortages. Doing so will improve the care of those who are dying or incapacitated and diminish the legal exposure of the department regarding the current unlicensed facility.

Thank you for your consideration. I would be happy to answer any questions.