



## MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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March 24, 2021

Senator Susan Deschambault  
Representative Charlotte Warren  
Committee on Criminal Justice & Public Safety  
100 State House Station Room 436  
Augusta, ME 04330

RE: LD 476 – “An Act to Provide Licensed Assisted Living and Nursing Facilities Levels of Care for Incarcerated Persons”

Dear Senator Deschambault, Representative Warren and Members of the Criminal Justice and Public Safety Committee:

MACDL supports LD 476 with one recommended addition.

LD 476 seeks to provide the minimum necessary medical care for aging and physically disabled inmates in the care and custody of the Department of Corrections (“DOC”). Not only is this the right thing to do, but it also helps avoid unnecessary federal lawsuits under 42 U.S.C. 1983, which are possible notwithstanding the State’s generalized immunity from suit.

MACDL, however, does recommend the Committee add specific language allowing for prisoners to petition the Court in the event that the DOC Commissioner determines they do not demonstrate a need for long-term care facility and/or nursing facility levels of care. Courts across the country recently dealt with similar petitions for compassionate release on a large scale due to the number of high-risk prisoners in state and federal custody who were exposed to serious risk of death from the COVID-19 pandemic. In those cases, prisoners were required to exhaust all administrative remedies before they were permitted to file a petition with the Court for its independent review. MACDL recommends including a similar petition process in LD 476 so that prisoners and families have a fair and transparent process for appealing any incorrect administrative decisions.

Thank you for the opportunity to address this issue.

Sincerely,  
/s/ Matthew D. Morgan

Matthew D. Morgan  
Member, Legislative Committee