

Committee: CJPS
Drafter: DCT
File name:
LR (item)#: 1572(02)
New Title?: NO
Add Emergency?: NO
Date: 3/2/22

LD 1721
Proposed amendment – Representative Talbot Ross

Amend the bill by removing section 1.

Sec. 1. ~~22 MRSA §4003, sub-§4~~, as amended by PL 1999, c. 731, Pt. AA, §4, is further amended to read:

4. ~~Permanent plans for care and custody.~~ Promote the early establishment of permanent plans for the care and custody of children who cannot be returned to their family. It is the intent of the Legislature that the department reduce the number of children receiving assistance under the United States Social Security Act, Title IV-E, who have been in foster care more than 24 months, by 10% each year beginning with the federal fiscal year that starts on October 1, 1983; and

Amend the bill in section 2 as follows (changes shaded):

Sec. 2. 22 MRSA §4003, sub-§5, as enacted by PL 1999, c. 731, Pt. AA, §5 and amended by PL 2013, c. 368, Pt. CCC, §7, is further amended to read:

5. Report Status report; children of incarcerated parents or primary caregivers. Require the department to report monthly to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and health and human services matters, beginning in July 2000, on the status of children served by the Office of Child and Family Services. The report must include, at a minimum, information on the department's caseload, the location of the children in the department's custody and the number of cases of abuse and neglect that were not opened for assessment. This information must be identified by program and funding source. The report must also include information on the number of children in the department's care and custody known to have one or more incarcerated parent and information on the number of those children for whom the case goal is reunification.; and

Amend the bill by removing section 3.

Sec. 3. ~~22 MRSA §4003, sub-§6~~ is enacted to read:

6. Children of incarcerated parents or primary caregivers report. Require the department to report annually to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and health and human services matters, beginning in January 2022, on the current number and case specifics of children served by the

~~Office of Child and Family Services. The report must include, at a minimum, data regarding where the department is in the reunification process of children with whom the Office of Child and Family Services is involved and who have parents or primary caregivers who are incarcerated in a jail or correctional facility and the number of cases of abuse and neglect that were not opened for assessment.~~

Amend the bill by adding before section 4 the following additional section:

Sec. ??. 30-A MRSA §1561-A is enacted to read:

§1561-A. Transportation of female prisoners to and from medical appointments

The sheriff of a county jail housing female prisoners shall to the greatest extent possible ensure the presence of a female law enforcement officer during the transportation of a female prisoner to and from a medical appointment and shall ensure that the prisoner is afforded the greatest amount of privacy as possible during the appointment consistent with safety and security considerations.

Amend the bill in section 4 as follows (changes shaded):

Sec. 4. 30-A MRSA §1651, sub-§2, as enacted by PL 2003, c. 482, Pt. A, §1, is amended to read:

2. Appointment. The sheriff for each county shall appoint a board of ~~5~~ 7 visitors for each correctional facility under the sheriff's supervision.

A. Members of the boards of visitors serve for terms of one year ~~except that, of the initial appointments, 2 must be for terms of 3 years, 2 must be for terms of 2 years and one must be for a term of one year.~~

B. Members of the boards of visitors are eligible for reappointment at the expiration of their terms. The boards of visitors must be representative of a broad range of professionals, family members and citizens interested in the well-being of prisoners, including representatives of advocacy groups for human and civil rights, medical and psychiatric professionals, persons who have served in corrections settings and other interested citizens. One member of each board of visitors must be a person with knowledge of issues related to the incarceration of women. One member of each board of visitors must be a woman who has been incarcerated in the State and who has had prior involvement child welfare experience with the Department of Health and Human Services, Office of Child and Family Services.

C. A member of the Legislature may not serve on a board of visitors.

D. The sheriffs of 2 or more counties, at their discretion, may appoint a joint board of visitors of ~~5~~ 7 or more members.

Amend the bill in section 6 as follows (changes shaded):

Sec. 6. 34-A MRS §3001-A, sub-§1-A is enacted to read:

1-A. Board of visitors for women's services; membership. The Governor shall appoint a board of visitors for women's services to inspect correctional facilities used for housing female clients and, with regard to female clients, perform the duties assigned to facility boards of visitors. The board of visitors for women's services shall ensure that the incarceration of and services provided to female clients are designed to meet their gender identity needs and reflect best practices established for such incarceration and services. The board Boards of visitors for women's services are otherwise subject to the same requirements and responsibilities under this section as a facility board of visitors, except that, in addition to the member described in subsection 1, paragraph D, a board of visitors for women's services must include one member who was formerly incarcerated in the custody of the Department of Corrections department and who has had prior child welfare experience with the Department of Health and Human Services, Office of Child and Family Services, one member who represents a health care provider that provides sexual and reproductive health care and education, one member who is a health care practitioner who provides sexual and reproductive health care and education to women and one member who has an understanding of or experience with domestic violence.

Amend the bill in section 7 as follows (changes shaded):

Sec. 7. 34-A MRS §3031, sub-§8, as amended by PL 2019, c. 139, §2, is further amended to read:

8. Visitation. A reasonable opportunity to visit with relatives and friends, in accordance with departmental policies and institutional procedures, provided except that the department may restrict or prohibit visits when the restriction or prohibition is necessary for the security of the institution. Departmental policies and institutional procedures must be sufficient to provide to a person in a correctional or detention facility opportunities and conditions for visits with the child of the person that provide time together in a manner that meets the standards of Title 22, section 4041, subsection 1-A, paragraph A, subparagraph (1), division (c) and that provide in settings that allow for as positive a parent-child interaction as can practicably be achieved while ensuring protecting the emotional and physical well-being of the child, provided that such visits are not prohibited by court order, prohibited by department policies due to the child being a victim of the person, contrary to the wishes of the child's other parent or guardian or inconsistent with the security of the institution; and

Amend the bill in section 9 as follows (changes shaded):

Sec. 9. 34-A MRS §3050 is enacted to read:

§3050. Report regarding juveniles in custody

By February 1, 2022 2023 and annually thereafter, the department shall report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety

matters on the number of juveniles in the custody of the department as juvenile detainees or juvenile clients or under department supervision on probation whose parents or primary caregivers are known to the department to be in the custody of the department or under the supervision of the department.

Amend the bill by striking section 10 and inserting the following in its place:

Sec. 10. 34-A MRS §3051 is enacted to read:

§3051. Transportation of female clients to and from medical appointments

A correctional or detention facility housing female clients shall to the greatest extent possible ensure the presence of a female corrections officer during the transportation of a female client to and from a medical appointment and shall ensure that the client is afforded the greatest amount of privacy as possible during the appointment consistent with safety and security considerations.

Amend the bill by adding after section 11 the following additional section:

Sec. ??. **Provision of certain information regarding persons incarcerated at county jails to Department of Health and Human Services, Office of Child and Family Services; report.** Each county sheriff, individually or through a statewide association of sheriffs, shall on a voluntary basis work with the Department of Health and Human Services, Office of Child and Family Services, referred to in this section as “the office,” to establish a system for the provision to the office of publicly available information regarding persons incarcerated at county jail facilities. By January 31, 2024, the office shall submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters regarding the progress made by the office in obtaining the information and any findings or recommendations based on the information received. After reviewing the report, the joint standing committee may report out legislation related to the report to the 131st Legislature in 2024.

SUMMARY

This amendment makes the following changes to the bill.

1. It removes from the bill the provision that requires the Department of Health and Human Services to report annually on the current number and case specifics of children served by the department's Office of Child and Family Services. It instead amends an existing legislative reporting requirement by that office regarding the status of children in the department's custody to include in that report information on the number of children in the department's care and custody known to have one or more incarcerated parent and information on the number of those children for whom the case goal is reunification.

2. It amends the provisions of the bill that add additional persons to the board of visitors of each county jail to clarify that one additional person must be a person who has had prior child welfare experience with the Office of Child and Family Services.

3. It amends the provisions of the bill that establish a board of visitors for women's services in certain correctional facilities to clarify for those boards the applicability of the general requirements and responsibilities of facility boards of visitors and to clarify the membership of boards of visitors for women's services.

4. It amends the provisions of the bill regarding child visitation policies and procedures in correctional or detention facilities to specify the conditions under which such visitation may not be allowed.

5. It amends the provisions of the bill requiring a correctional or detention facility to ensure the presence of a female law enforcement officer during the transportation of a female prisoner to and from medical appointments by providing that a correctional or detention facility shall ensure that presence by a female corrections officer to the greatest extent possible. The amendment also adds similar provisions applicable to county jails.

6. It adds a new provision requiring each county sheriff, individually or through a statewide association of sheriffs, to on a voluntary basis work with the Department of Health and Human Services, Office of Child and Family Services to establish a system for the provision to the office of publicly available information regarding persons incarcerated at county jail facilities. By January 31, 2024, the office must submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters regarding the progress made by the office in obtaining the information and any findings or recommendations based on the information received and the committee may report out related legislation.

7. It makes other technical changes and corrections to the bill.

Office of Policy and Legal Analysis

Date: February 25, 2022

To: Joint Standing Committee on Criminal Justice and Public Safety

From: Dan Tartakoff, Legislative Analyst

Re: LD 1721, An Act Regarding Dignity for Women in Correctional Facilities (Talbot Ross)

Summary of bill

This bill requires the Department of Health and Human Services (DHHS) to report annually on the current number and case specifics of children served by the department's Office of Child and Family Services (OCFS), including where the department is in the reunification process of children with whom the OCFS is involved and who have parents or primary caregivers who are incarcerated in a jail or correctional facility or detention facility and the number of cases of abuse and neglect that were not opened for assessment.

The bill adds a person with knowledge related to the incarceration of women and a woman who has been incarcerated in the State and who has had prior involvement with the OCFS to the board of visitors of each jail. The bill establishes a board of visitors for women's services to serve with regard to women who are incarcerated in Department of Corrections (DOC) correctional and detention facilities and requires the DOC Commissioner to establish a separate grievance process for complaints regarding compliance with standards for county and municipal detention facilities, jails and other detention housing. The bill prohibits a correctional or detention facility from billing an indigent client for future payment of services and medications.

The bill adds to the rights of a person who is incarcerated in the custody of the DOC opportunities and conditions for visitations with the child of the person that parallel those opportunities and conditions for visitation for families receiving family reunification services from the DHHS. The bill requires the DOC to report annually to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters on the number of juveniles in the custody of the department as juvenile detainees or juvenile clients or under department supervision on probation whose parents or primary caregivers are known to the department to be in the custody of the department or under the supervision of the department.

The bill requires that a correctional or detention facility ensure the presence of a female law enforcement officer during the transportation of a female prisoner to and from medical appointments. Finally, the DOC is required to provide all persons residing in a correctional or detention facility in the State with the contact information for the OCFS and information on the relevance of that contact to the family reunification process. Contact with the OCFS must be provided at no cost.

Legislative history – LD 1422

As referenced in the sponsor's hearing testimony, LD 1422, a proposal considered by CJPS during the 129th Legislature, was amended by a majority of that committee to incorporate a number of the same or similar proposals to those in this bill. LD 1422 as amended died in the possession of the House upon the final adjournment of the 129th Legislature in 2020.

List of legislators/entities that submitted written testimony and/or spoke at the hearing

Proponents – Representative Talbot Ross, ACLU of Maine, GLBTQ Legal Advocates and Defenders, Maine Family Planning, Maine Prisoner Advocacy Coalition, Maine Women’s Lobby, Wendy Smith.

Opponents – Maine Sheriffs’ Association.

Neither for nor against – Department of Corrections, Department of Health and Human Services/Office of Child and Family Services, Erica King/USM.

Issues, proposed amendments and additional information

1. **Sponsor’s proposed amendment** – at the hearing, the sponsor expressed an interest in continuing to work with stakeholders to develop an amendment to the bill that:

- Addresses concerns raised by OCFS (see below);
- Updates section 10 of the bill to encourage facilities to make every effort to provide gender-responsive transportation (see also analyst note below); and
- Updates section 6 of the bill to add two additional members, one with knowledge of issues related to the incarceration of women and one representing the lived experience of a formerly incarcerated women who has had involvement with OCFS;

2. **Proposed amendment, ACLU of Maine** – ACLU of Maine recommended that section 8 of the bill be amended to provide that a correctional or detention facility may not bill any client, whether or not indigent, for future payment of services and medications (i.e., on page 2, line 39 of the bill, replace “an indigent client” with “a client”).

3. **OCFS concerns/proposed amendments** – OCFS expressed concerns primarily with sections 3 and 11 of the bill, specifically:

- Section 3’s requirement that the report include “case specifics” of children served by OCFS could raise confidentiality concerns as case-specific information on child welfare is designated confidential under state and federal law. OCFS did note that it could provide aggregate data regarding the children served by OCFS in a manner that would not raise the same issues;
- Section 3’s description of “children served by the [OCFS]” should instead refer to “children served by child protective services” (see page 1, lines 24-25);
- Section 3’s description of “the number of *cases* of abuse and neglect” should instead refer to “the number of *reports* of abuse and neglect” as “case” generally refers to a more intensive action following completion of an assessment or investigation (see page 1, lines 28-29);

- Section 11’s description of “the relevance of that contact to the family reunification provisions of the Maine Revised Statutes, Title 22, section 4041” (page 3, lines 17-18) may need clarification as to the intent of this rulemaking requirement.

4. Maine Sheriffs’ Association concerns – Maine Sheriffs’ Association expressed concerns primarily with section 10 of the bill, which requires a female law enforcement officer to be present during the transportation of a female prisoner to a medical appointment, noting that with current staffing shortages, compliance with that requirement would be unattainable (see also analyst note below).

5. Miscellaneous analyst notes

- Section 3 establishes a new reporting requirement to begin January 2022 (recall bill was carried over). This should be pushed to a later date, perhaps January 2023.
- Section 6 provides for the appointment of boards of visitors for women’s services. Under that section, if a correctional facility is used for female clients, an appointed board of visitors for women’s services will perform the duties assigned to the facility board of visitors with respect to female clients at that facility.
 - Should this provision be amended to clarify that these boards of visitors for women’s services are subject to the same or similar general provisions as facility boards of visitors under 3001-A(1) (e.g., terms of membership, reappointment, compensation, appointment of chair)?
 - The bill provides that a board of visitors for women’s services must include 4 specific members that meet certain background requirements. Is the intent that these boards consist of those 4 total members or 5 total members like the facility boards of visitors? If it’s the latter, is the fifth member intended to be the member described in 3001-A(1)(D) who is a person licensed in the State to provide mental health services? Note that the sponsor has described a proposed amendment that would add 2 additional members to the boards of visitors for women’s services.
- Section 9 establishes another new reporting requirement to begin February 1, 2022 (again, recall bill was carried over). This should also be pushed to a later date, perhaps February 1, 2023.
- Section 10, described at some length above, requires that a female law enforcement officer be present during the transportation of a female prisoner at a correctional or detention facility to a medical appointment. Based on submitted testimony and discussion during the hearing, it is unclear whether the intent of the bill was to have this requirement apply to both DOC and county/municipal facilities.
 - Per Title 34-A, section 1001 (“Definitions”), “correctional facility” means any facility that falls under the jurisdiction of the DOC, but does not include any facility for which the department is required to establish

standards pursuant to section 1208 or 1208-A (i.e., county and municipal detention facilities and other facilities used to house county prisoners). “Detention facility” is defined in the same section to mean the Long Creek Youth Development Center and, to the extent it houses juveniles, the Mountain View Correctional Facility.

- It accordingly appears that Section 10, as presented in the bill, would not apply to county jails or other non-DOC facilities. The committee may want to consider, perhaps with input from the sponsor, which categories of facilities this requirement should apply to (e.g., State, county, municipal).

6. Information requests, Maine Sheriffs’ Association – as described below, committee members made a number of information requests for the work session from the Maine Sheriffs’ Association:

- Across the county jail system, how many incarcerated women are classified so as to require a corrections officer to provide transportation to medical appointments?
- Are there any facilities within the county jail system that do not allow incarcerated women to have some sort of visitation with family members and children? How are those visitation policies structured within various facilities?

Responses to these requests were provided by the Maine Sheriffs’ Association and have been distributed separate from this analysis.

7. Information request, Department of Corrections – a committee member requested related information from the DOC regarding its visitation policy and how it provides for visitation between incarcerated women and their family members and children.

Anna Black (DOC) provided the following information in response:

The MDOC supports and encourages residents to visit with family, friends and professionals. Visitation is afforded to residents in accordance with Departmental policies at specified times during the week in a variety of methods including in-person, zoom and video. In the case of in-person visits policy allows for minor children to visit with incarcerated women, accompanied by an approved adult visitor. In the case of a minor in the legal custody of DHHS, a DHHS caseworker may accompany the minor. If the minor is a victim of the resident, there are additional approval procedures in place to support visitation in a safe manner. The MDOC allows bonding visits in the case of a resident with an infant, during which the infant may be breastfed or bottle fed by the parent. There are designated visitation spaces at the women’s facilities that are warm, inviting and child friendly. The MDOC also offers off grounds passes and furloughs, when custody levels allow, to further improve the mother/ child/ family connection.

Fiscal information

Not available from OFPR at this time.

Tartakoff, Daniel

From: Mary-Anne LaMarre <mlamarre@mainesheriffs.org>
Sent: Wednesday, February 23, 2022 12:58 PM
To: Tartakoff, Daniel
Subject: RE: LD 1721 info requests

This message originates from outside the Maine Legislature.

Dan, good afternoon.

The answer to Representative Warren's questions are below. Please note, this snapshot includes three women identified as 'in holding'. This simply means they're new intakes who have not yet been transported or bailed out. These numbers offer a snapshot of the jails when the question was posed on Friday, February 18.

JAIL	FEMALE TRANSPORT Officers	FEMALE MINIMUM Security	FEMALE MEDIUM Security	Female Inmates in HOLDING
ANDROSCOGGIN	1	6	7	2
AROOSTOOK	2	2	9	0
CUMBERLAND	0	0	28	0
FRANKLIN	0	1	0	0
HANCOCK	0	4	1	0
KENNEBEC	1	12	5	0
KNOX	0	0	9	0
OXFORD	8	3	0	0
PENOBSCOT	1	13	16	0
PISCATAQUIS	0	0	4	0
SOMERSET	6	2	7	0
TWO BRIDGES	2	7	8	0
WALDO	1	0	0	1
WASHINGTON	7	2	4	0
YORK	0	0	0	0
Totals	29	52	98	3

I have been unable to identify a single jail that does not allow family visitation, to answer Representative Pickett's question. One caveat is the ongoing pandemic, which has forced some jails to prohibit in-person visitation. I gathered information for pre-Covid visitation practices only.

Please let me know if you need additional information.

Thank you,
Mary-Anne

Mary-Anne LaMarre
Executive Director

From: Tartakoff, Daniel <Daniel.Tartakoff@legislature.maine.gov>
Sent: Wednesday, February 23, 2022 10:41 AM
To: mlarre@mainesheriffs.org
Subject: LD 1721 info requests

Hi Mary-Anne –

I'm sure you were listening to the LD 1721 hearing where committee members made a number of information requests of the MSA during Sheriff Trafton's testimony. Based on my notes, the info requests I intend to highlight in my analysis are as follows. Let me know if you had a different understanding of those requests.

1. Across the county jail system, how many incarcerated women are classified so as to require a corrections officer to provide transportation to medical appointments?
2. Are there any facilities within the county jail system that do not allow incarcerated women to have some sort of visitation with family members and children? How are those visitation policies structured within various facilities?

Thanks,

Dan Tartakoff, Esq.
Legislative Analyst
Maine State Legislature
Office of Policy and Legal Analysis
(207) 287-1319