

Written Testimony of Mary Price
General Counsel of FAMM
In Support of L.D. 1863
May 9, 2023

I thank Senator Beebe-Center, Representative Salisbury, and members of the Criminal Justice and Public Safety Committee for the opportunity to provide testimony today **in support of L.D. 1863**, a bill that enhances and improves Supervised Community Confinement to provide medically appropriate levels of care for qualified incarcerated individuals. I am here on behalf of FAMM, a national sentencing and corrections reform organization. We unite currently and formerly incarcerated people, their families and loved ones, and diverse people working for reform.

FAMM supports L.D. 1863 and urges this committee to advance it because the bill

- Refines eligibility criteria;
- Improves notice and assistance to incarcerated people who have increased medical needs;
- Directs the corrections Commissioner to ensure provision of licensed assisted living and nursing care to those who need it; and
- Creates data collection and reporting requirements to increase transparency.

Since 2018, FAMM has conducted comprehensive research into state compassionate, medical, and supervised community confinement programs. We maintain a set of memos on our website that document every medically based program in the 50 states and the District of Columbia.¹ For each jurisdiction, we describe eligibility criteria, application requirements, documentation, and decision-making, as well as post-decision and post-release issues. Our most disturbing finding was that while nearly every state has some form of medical release or supervised community program, it is too seldom used. To understand why that is so, we examined and reported on the policies and practices that pose barriers.²

Last year, we issued report cards on the relevant policies in all 50 states and the District of Columbia. We graded key components of a well-crafted program. They include: eligibility criteria, a way to request or refer eligible individuals for assessment, agency policy design, procedures, release planning support, data collection and public reporting, and a right to counsel and appeals. Based on this grading rubric, **Maine received a failing grade** of 13 - the lowest score in the country.³ Only Iowa scored lower because it has no program whatsoever.

¹ FAMM, Compassionate Release: State Memos (Dec. 2021), <https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos>.

² Everywhere and Nowhere, Executive Summary, <https://famm.org/wp-content/uploads/Exec-Summary-2-page.pdf>.

³ FAMM, Compassionate Release, Maine State Report Card, Early Medical Release (Oct. 2022), https://famm.org/wp-content/uploads/Maine_Final.pdf.



That research and analysis informs our support of L.D. 1863. **FAMM found a number of barriers impeding the performance of Maine’s Supervised Community Confinement program** for severely incapacitated and terminal individuals. They include undefined eligibility criteria, incomplete or missing policies and procedures, minimal planning support, and no publicly available data reporting.⁴ The reforms L.D. 1863 would make are sorely needed.

Features of L.D. 1863 will address some of the barriers that exist in current law. We think the legislation is an important first step because we believe it will make possible the more efficient and humane use of Supervised Community Confinement.

In many states, undefined **eligibility criteria** limit the number of people who can apply. Poorly defined criteria frustrate program objectives because corrections and parole authorities are left to supply their own definitions of qualifying conditions. Without sufficient guidance, the people who assess incarcerated people for eligibility and those who make the final decision whether to transfer them cannot be confident they are identifying the right people at the right time. They may fail to act on deserving individuals.

FAMM gave Maine a failing grade for eligibility criteria. Maine provides eligibility to those who are terminally ill or severely debilitated, but it does not define those terms. This bill would take an important first step in fixing the problem by considering as eligible people who need long-term care, such as in an assisted living, nursing, or hospice facility. This appears to add to existing eligibility criteria. While we think this is an important reform, FAMM maintains that legislation is best when terms are defined. **FAMM recommends** that lawmakers consider revisiting eligibility criteria at the next opportunity. In the alternative, lawmakers can direct the agency to provide clarity to the criteria by defining eligibility terms.

FAMM also found that **initiating requests** takes many forms nationwide. Some states, such as Maine, make applications very difficult by not providing a straightforward way for incarcerated people or their advocates to apply or by not providing that corrections personnel can initiate the process. Others rely entirely on corrections personnel to begin the process without imposing a duty on them. With L.D. 1863, **Maine would ensure that potentially qualified individuals would be assessed for Supervised Community Confinement.** It would oblige the Commissioner to provide information to incarcerated people and their advocates about available services. Moreover, it would direct the Commissioner to assist individuals upon request or as medically indicated in applying for long-term medical care using the existing Medicaid eligibility assessment process provided in Title 22 § 3174-I. Assistance can be essential for medically compromised individuals who may find navigating the application process daunting.

We note that it is not clear from the legislation what standards corrections staff would use to identify “medically indicated” clients for assessment referral. **We recommend** that lawmakers

⁴ *Id.*

address this in future legislation or direct the Commissioner to do so in rulemaking or policy design.

The strongest feature of L.D. 1863 is its clear direction to the Commissioner that **medically eligible individuals be provided licensed assisted living and nursing care**, either within corrections facilities, or barring that, in the community. This feature is both humane and forward thinking. It dignifies aging and medically vulnerable individuals by ensuring they have an appropriate placement and the care they require.

Finally, **transparency is critical to ensuring programs work as legislatures intend**. One of the most difficult challenges scholars and advocates such as FAMM encounter is the lack of information about how and whether corrections systems use these programs. When FAMM was seeking information for Maine's report card, we could not locate any information about how many of the people under Supervised Community Confinement had been transferred due to medical concerns. Stakeholders and policy makers cannot hope to understand whether reforms work or are needed if they cannot access information about outcomes. L.D. 1863 would add a thorough **data gathering and reporting requirement**. It would require the department to collect data and report weekly on applications for medical evaluations and placement, whether they were accepted or denied, the kind and number of placements, and demographic data. Every year, the data are compiled and included in the department's annual report to the Legislature. **This is a best practice followed by some jurisdictions.**

Conclusion

L.D. 1863 is an important and commendable reform that would go a long way to improve the Supervised Community Confinement program, by clarifying the steps necessary to utilizing the current community confinement policy for medically qualified individuals.

FAMM urges the committee to support this legislation.