Senator Susan Deschambault, Senate Chair
Representative Rachel Talbot Ross, House Chair
Commission to Improve the Sentencing, Supervision, Management and
        Incarceration of Prisoners

December 20, 2019

Senator Susan Deschambault, Senate Chair, Joint Standing Committee on Criminal Justice and Public
        Safety
Representative Charlotte Warren, House Chair, Joint Standing Committee on Criminal Justice and Public
        Safety
Senator Michael Carpenter, Senate Chair, Joint Standing Committee on Judiciary
Representative Donna Bailey, House Chair, Joint Standing Committee on Judiciary

Dear Senator Deschambault, Representative Warren, Senator Carpenter and Representative Bailey:

The Commission To Improve the Sentencing, Supervision, Management and Incarceration of Prisoners
("the commission") was established through Resolve 2019, chapter 104, which became effective
September 19, 2019. The commission is composed of 20 state leaders and criminal justice system
stakeholders from the Legislative, Executive and Judicial branches of Maine government with
appointments to the commission made by Senate President Troy Jackson, Speaker of the House of
Representatives Sara Gideon, Governor Janet Mills, and Chief Justice of the Maine Supreme Judicial
Court Leigh Saufley. Membership of the commission is as follows:

- Senator Susan Deschambault, Senate co-chair
- Representative Rachel Talbot Ross, House co-chair
- Senator Kimberly Rosen
- Representative Pinny Beebe-Center
- Commissioner Randall Liberty, Maine Department of Corrections
- Susan Gagnon, Director of Adult Community Corrections, Maine Department of Corrections
- Dr. Jessica Pollard, Director of Substance Abuse and Mental Health Services, Maine Department
  of Health and Human Services
- Alisa Ross, Office of the Maine Attorney General
- Justice William Stokes, Maine Superior Court
- Judge E. Mary Kelly, Maine District Court
- Anne Jordan, Maine Administrative Office of the Courts
- Maeghan Maloney, Maine Prosecutors Association
- Matthew Morgan, Maine Association of Criminal Defense Lawyers
- Michael Cote, Maine County Commissioners Association
- Jeffrey Trafton, Maine Sheriffs Association
- Elizabeth Ward Saxl, Maine Coalition Against Sexual Assault
- Francine Garland Stark, Maine Coalition to End Domestic Violence

- Jenna Mehnert, National Alliance on Mental Illness (NAMI) Maine
- Denise Altavater, member of a Federally recognized tribe
- Joseph Hanslip, Member of the public

Staffing for the commission was provided by the Maine Department of Corrections. Technical assistance for the commission was provided by The Council of State Governments (CSG) Justice Center, which facilitated the use of a data-driven process called "Justice Reinvestment." The commission is required to submit its final report to the Joint Standing Committee on Criminal Justice and Public Safety and to the Joint Standing Committee on Judiciary.

The commission convened on three occasions: October 3, November 25, and December 11, 2019. During each meeting of the commission, data analyses were presented by staff from the CSG Justice Center. Commission members then reviewed and discussed those analyses. In October, analysis and discussion centered on recent trends and dynamics in Maine's criminal justice system based on publicly available data from national and state sources.[1] In November, discussion focused on analyses of case-level arrest and criminal history data (provided by the Maine Department of Public Safety) and criminal case filing and disposition data (provided by the Maine Administrative Office of the Courts conducted by staff from the CSG Justice Center.[2] The commission also heard from Brian Pottle, who is currently on probation, about his experience with the criminal justice system in Maine and his recommendations for improvements to the system. In December, the commission reviewed further analyses of criminal case filing and disposition data as well as prison and probation data (provided by the Maine Department of Corrections) from CSG Justice Center staff.[3]

The commission endorsed a set of high-level policy objectives resulting from data analysis (attached) and voted unanimously to recommend the following actions:

1. Introduction of an emergency bill by either the Joint Standing Committee on Criminal Justice and Public Safety, or the Joint Standing Committee on Judiciary, in the 2020 legislative session to reconstitute the commission and allow the commission to continue its work. The bill should include an expansion of the commission's membership to allow for more direct participation of people directly impacted by the criminal justice system. The bill should be introduced as early as possible in the session.
2. A public convening in early 2020 centering on criminal justice and related policy in Maine that aims to bring together state leaders from all three branches, associations and interested parties, and members of the public to hone the state's vision and short- and long-term objectives for reform. Leaders and members of other commissions, task forces, or study groups (including groups working on issues of mental health, jail funding, pretrial justice, and juvenile justice) are highly encouraged to participate and share their policy ideas.

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[1] October CSG Justice Center analysis available at: https://csgjusticecenter.org/jr/maine/publications/justice-reinvestment-in-maine-first-presentation/
[2] November CSG Justice Center analysis available at: https://csgjusticecenter.org/jr/maine/publications/justice-reinvestment-in-maine-second-presentation/
[3] December CSG Justice Center analysis available at: https://csgjusticecenter.org/jr/maine/publications/justice-reinvestment-in-maine-third-presentation/

Please accept this letter and the attached documentation as the final report of the commission in 2019. We look forward to continuing the work of the commission in 2020.

Sincerely,

Susan Deschambault

Senator Susan Deschambault
Senate Chair

Rachel Talbot Ross

Representative Rachel Talbot Ross
House Chair

cc: Members, Joint Standing Committee on Criminal Justice and Public Safety
       Members, Joint Standing Committee on Judiciary
       Troy D. Jackson, President of the Senate
       Sara Gideon, Speaker of the House of Representatives
       Grant Pennoyer, Executive Director of the Legislative Council
       Marion Hylan Barr, Director, Office of Policy and Legal Analysis
       John Barden, Director, Maine Law and Legislative Library
       James Ritter, State Librarian

Proposed Policy Objectives for Discussion
Wednesday, December 11, 2019

Recap: The Commission to Improve the Sentencing, Supervision, Incarceration and management of Prisoners was legislatively reestablished in mid-2019 via LD829. The 20-member commission convened on three occasions (October 3, November 25, and December 11, 2019) with the goals of identifying factors driving peoples' involvement in Maine's criminal justice system and determining ways in which the state's public safety and public health systems can be strengthened to improve outcomes. The commission utilized a data-driven, Justice Reinvestment approach with technical assistance provided by staff from The Council of State Governments (CSG) Justice Center. LD829 requires that the commission issue a report to the Joint Standing Committee on Criminal Justice and Public Safety, and the Joint Standing Committee on Judiciary, by December 4, 2019; this deadline was extended by the Legislative Council to December 15, 2019.

Case-level data analyzed in 2019 was provided by the Maine Department of Public Safety (criminal history and arrest data), Maine Administrative Office of the Courts (court filing and case processing data), and the Maine Department of Corrections (prison and probation data). Data was also provided by the Maine Prosecutors Association but was not able to be analyzed in 2019 due to time constraints. As part of the analysis, state leaders asked that race and gender dynamics be analyzed at each key decision point in Maine's criminal justice system. Analysis of arrest and court data showed that the vast majority of activity in the criminal justice system involved misdemeanor offenses (Class D and E offenses reflecting relatively low-level criminal acts). Analyses also showed divergent trends by race and gender. Black people are disproportionately overrepresented in arrests, case filings, and in the prison and probation populations. Racial disproportionalities were even more pronounced for higher-level felony offenses. Criminal justice trends also differed by gender: between 2008 and 2018, arrests for women fell less than those of men and drug arrests for women increased by 25 percent. Patterns in arrests and criminal case filings tend to be skewed towards property offenses with theft and drug-related offenses driving up the majority of criminal justice system involvement for women. While the male prison population increased by 2 percent between 2014 and 2019, the female prison population increased by 51 percent. Behavioral health conditions also emerged as an area of focus; both stakeholder engagement and data analysis demonstrated the impact of behaviors associated with substance addiction, mental illness, or coocurring disorders among people in Maine's criminal justice system. Detailed analyses presented to the commission between October and December 2019 are publicly available.[1]

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[1] Comm ss on presentat ons are ava ab e to the pub c v a The Counc of State Governments (CSG) Just ce Center webs te: **csgjusticecenter.org**. Reports are nc uded under the "Just ce Re nvestment" sect on and accessed by c ck ng on the mage Ma ne.

Proposed Policy Objectives for Discussion: The following are areas of proposed policy change based on data analysis and stakeholder engagement conducted in Maine in 2019. Proposed policy objectives are arranged into four categories: community resources, sentencing, corrections, and information collection/utilization.

A. Community Resources

- **Assessment**: For many people, a variety of factors drive continued involvement with Maine's criminal justice system, including behavioral health conditions such as substance addiction or mental illness (or both in the form of co-occurring disorders); everyday barriers such as transportation, stable housing, employment, and more. Stakeholders and state leaders in Maine report a general lack of suitable, accessible community-based services and interventions that can serve to prevent a person from coming into contact with the criminal justice system, serve as an alternative to further involvement in the system, or facilitate successful reentry upon release from prison or jail. Currently, Maine lacks a systematic mechanism to sustainably support and oversee such programs at the local level. A variety of promising programs are operated by organizations in various localities in Maine, but the state lacks an over-arching strategic vision or funding/oversight structure for such programs.

- **Key Policy Objective:** Create a robust mechanism for significant state investment in community-based resources to keep people out of the criminal justice system, provide meaningful alternatives to incarceration, improve the likelihood of successful reentry, and reduce recidivism.

B. Sentencing

- **Assessment:** Maine has one of the nation's lowest rates of incarceration, but the state's prison population hit an all-time high in summer 2018. Maine's female prison population increased by more than 50 percent between 2014 and 2019, a period in which the male prison population increased only 2 percent. Data shows that more than 80 percent of the felony sentences in FY2018 involved a period of incarceration in jail or prison; such stays are generally detrimental (i.e., incarceration tends to make people worse than when they went in). Further analysis of sentencing data shows that the use of "straight" probation (probation without a period of incarceration beforehand) is comparatively rare for all levels of felonies, most remarkably for Class C sentences. Short sentences to prison of less than one year are increasingly common and typically do not allow time for meaningful programmatic intervention, including participation in many MDOC-operated treatment programs. Further, Maine's current mechanism of Supervised Community Confinement Program (SCCP) is underutilized and fails to provide a behavioral incentive for inmates serving long sentences.

- **Key Policy Objective:** Refine the state's approach to sentencing to better utilize probation as an alternative to incarceration, discourage the use of short prison sentences as a means of connecting a person to treatment or programming, and increase options and incentives for release, and improve overall system outcomes.

C. Corrections

- **Assessment:** Analysis of MDOC policy and practice shows a need for increased resources for Adult Community Corrections (probation), which is under-staffed and under-resourced in some areas of the state. High caseloads for Probation Officers contribute to challenges with effective supervision. A number of improvements are needed related to agency policy, though the primary method of improving supervision outcomes is likely to increase the availability and quality of community-based programs and treatment services available to people on probation. The number of women both in prison and on probation has increased significantly in recent years and MDOC has adopted gender-responsive approaches to working with this population; while policy and practice is largely in place, room remains for improvement.

- **Key Policy Objective:** Bolster Maine's corrections system by improving key policies and procedures, infusing staffing and training resources, and creating the necessary array of community-based programs and resources (including behavioral health treatment) for people on probation or who are reentering society after a period of incarceration.

D. Information Collection and Utilization

- **Assessment:** The availability and quality of criminal justice data is inconsistent across Maine state agencies. As in many states, Maine's data systems are siloed, and data is rarely linked, analyzed, or reported across agencies. Some agencies, including the Administrative Office of the Court and the District Attorneys, are preparing to transition to new information management system.

- **Key Policy Objective:** Encourage in the routine collection, analysis, and reporting of high-quality data and information by Maine's criminal justice agencies to better understand and monitor trends and drivers in arrests, sentencing, incarceration, probation supervision, etc. Race and gender should be included in the analysis and subsequent reports.