



130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 1905

H.P. 1412

House of Representatives, January 5, 2022

**An Act To Facilitate Communication between Prosecutors and
Unrepresented Defendants While Protecting the Rights of Those
Defendants**

Reported by Representative HARNETT of Gardiner for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 15 MRSA §815**, as enacted by PL 2021, c. 480, §1, is amended to read:

3 **§815. Communication between prosecutor and unrepresented defendant in criminal**
4 **prosecutions**

5 **1. Requirements for communication.** To ensure that all waivers of the right to
6 counsel are made knowingly, voluntarily and intelligently, a prosecutor may not
7 communicate with an unrepresented defendant concerning the facts, circumstances, merits
8 or disposition of a pending criminal charge against the defendant unless:

9 A. The defendant has been informed by a judicial officer of the defendant's right to
10 counsel, including court-appointed counsel if the defendant is indigent;

11 B. The court has provided to the defendant a statement of:

12 (1) The substance of the charges against the defendant;

13 (2) The defendant's right to retain counsel, to request the assignment of counsel
14 and to be allowed a reasonable time and opportunity to consult counsel before
15 entering a plea;

16 (3) The defendant's right to remain silent and that the defendant is not required to
17 make a statement and that any statement made by the defendant may be used
18 against the defendant;

19 (4) The maximum possible sentence and any applicable mandatory minimum
20 sentence; and

21 (5) The defendant's right to trial by jury; and

22 C. The defendant has ~~executed a written waiver of~~ waived the right to counsel ~~in each~~
23 ~~prosecution pursuant to rules adopted by the Supreme Judicial Court.~~

24 **2. Exception.** Notwithstanding subsection 1, a prosecutor may communicate with an
25 unrepresented defendant ~~who has not executed a written waiver of the right to counsel to~~
26 ~~offer the defendant an opportunity to participate in an established precharge diversion~~
27 ~~program the successful completion of which results in the prosecutor not prosecuting the~~
28 ~~charge or charges against the defendant. to:~~

29 A. Offer the defendant an opportunity to participate in an established precharge
30 diversion program, the successful completion of which would result in the prosecutor
31 not prosecuting the charge or charges against the defendant; or

32 B. Notify the defendant that a pending criminal matter is being dismissed.

33 **3. Application.** This section does not apply to:

34 A. The obligation of the State to provide discovery or other information pursuant to
35 court order, pursuant to rules adopted by the Supreme Judicial Court or as otherwise
36 required by the Constitution of Maine or the United States Constitution; or

37 B. Notice by the prosecutor to a person that no charge is being filed.

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SUMMARY

This bill is submitted by the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2. The bill makes technical changes to the statute enacted in Public Law 2021, chapter 480 to facilitate implementation of the law while continuing to protect a defendant's right to counsel.