



129th MAINE LEGISLATURE

SECOND SPECIAL SESSION-2020

Legislative Document

No. 2171

H.P. 1554

House of Representatives, July 28, 2020

**An Act Concerning Communication between Prosecutors and
Unrepresented Defendants**

Reported by Representative BAILEY of Saco for the Joint Standing Committee on
Judiciary pursuant to Joint Order 2019, H.P. 1541.

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** is enacted to read:

3 **§815. Communication between prosecutor and unrepresented defendant**

4 To ensure that all waivers of the right to counsel are made knowingly, voluntarily and
5 intelligently, a prosecutor may not communicate with an unrepresented defendant unless:

6 **1. Informed of right.** The defendant has been informed of the defendant's right to
7 court-appointed counsel;

8 **2. Statement by the court.** The court has provided to the defendant a statement of:

9 A. The substance of the charges against the defendant;

10 B. The defendant's right to retain counsel, to request the assignment of counsel and
11 to be allowed a reasonable time and opportunity to consult counsel before entering a
12 plea;

13 C. The defendant's right to remain silent and that the defendant is not required to
14 make a statement and that any statement made by the defendant may be used against
15 the defendant;

16 D. The maximum possible sentence and any applicable mandatory minimum
17 sentence; and

18 E. The defendant's right to trial by jury; and

19 **3. Written waiver.** The defendant has executed a written waiver of the right to
20 counsel in each case.

21 **SUMMARY**

22 This bill implements a recommendation of the Sixth Amendment Center. It prohibits
23 prosecutors from communicating with an unrepresented defendant unless the defendant
24 has been informed of the defendant's right to appointed counsel, the court has provided
25 the required statement of rights as specified in Maine Rules of Criminal Procedure, Rule
26 5(b) and the defendant has executed a written waiver of the right to counsel in each case.
27 A defendant's waiver of the right to counsel must be knowing, voluntary and intelligent.
28 Faretta v. California, 422 US 806 (1975).