



MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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March 8, 2023

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Senator Anne Carney, Chair
Representative Matt Moonen, Chair
Committee on Judiciary
5 State House Station, Room 438
Augusta, ME 04333

RE: LD 576 "An Act to Facilitate Communication Between Pro Se Defendants and Assistant District Attorneys."

Dear Senator Carney, Representative Moonen, and Members of the Committee on Judiciary:

MACDL **opposes** LD 576.

In April of 2019, the Sixth Amendment Center, a nationally recognized nonprofit supporting the 6th Amendment's promise of an accused person's right to an attorney, issued a comprehensive assessment of the right to counsel in Maine. It made a number of recommendations that were considered by this committee as well as the committee on criminal justice at the time. Among its many recommendations, the 6th Amendment Center recommend that

"The State of Maine should statutorily bar communication between prosecutors and unrepresented defendants, unless and until defendants have been informed of their right to appointed counsel, a judge has conducted the legally required colloquy, and a defendant has executed a written waiver of the right to counsel in each case to ensure that all waivers of the right to counsel are made knowingly and voluntarily."

The reasoning behind that recommendation was sound and simple: it is a violation of the 6th Amendment when a prosecutor communicates with an unrepresented person about charges that could possibly send that person to jail without that person knowing and waiving his or her 6th Amendment rights. *See Lafler v. Cooper*, 132 S. Ct. 1376 (2012) and *Missouri v. Frye*, 132 S. Ct. 1399 (2012).

The Legislature accepted this recommendation and passed 15 M.R.S. § 815. Section 815 recognized the need to protect an accused person's constitutional rights while also balancing concerns voiced by prosecutors at the time of its consideration. Section 815 specifically includes exceptions allowing prosecutors to make offers to unrepresented persons in easily resolvable cases where precharge diversion programs are appropriate without the need for a waiver of rights.

Section 815 further provides a simple process for advising an unrepresented person of his or her rights and execution of a waiver of those rights to allow any unrepresented person who wishes to speak with the prosecutor to do so. This process happens regularly in court and takes mere minutes to complete for a judge. The Court created a form to streamline this process, which is attached here. Waiver of Counsel Form, CR-034.

Section 815 assures Maine's compliance with federal law by protecting an accused person's right to counsel while providing an easy process for waiver when unrepresented persons wish to speak with prosecutors about their case. There is no reason to repeal Section 815.

For these reasons, MACDL opposes LD 576.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MDM', is positioned above the printed name.

Matthew D. Morgan, Esq.
MACDL Vice President

MAINE JUDICIAL BRANCH

STATE OF MAINE

V.

"X" the court for filing:☐ Superior Court ☐ District Court☐ Unified Criminal Docket

County: _____

Location (Town): _____

Docket No.: _____

Defendant**WAIVER OF COUNSEL**

M.R.U. Crim. P. 44(a)

I am the person charged in this criminal proceeding with:

I have been arraigned and I am aware of all the rights described to me by the Court. I am fully aware of my right to be represented by an attorney of my own choosing or, if I am unable to afford an attorney, to have an attorney appointed by the court at public expense if the charges I am facing involve a risk of jail.

I waive my right to an attorney and agree that there can be communications between the prosecutor and me.

PLEASE NOTE: This waiver of counsel may be withdrawn at any time. If you decide you would like to be represented by counsel you can hire an attorney or, if you cannot afford an attorney and are facing a risk of jail, you may ask the court to appoint an attorney for you while the case is pending.

TO BE SIGNED IN OPEN COURT

Date (mm/dd/yyyy): _____

_____
Defendant

Present residential address: _____

If different, mailing address: _____

Telephone number: _____

Email address: _____

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