



MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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March 3, 2023

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

RE: LD 765 – An Act to Permit Recordings of a Protected Person to be Admissible in Evidence

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

MACDL opposes LD 765.

LD 765 takes the radical step of allowing for the admission in evidence of a recording of a witness interview in a criminal case. These types of recordings are considered 100% hearsay and are inadmissible under the Maine Rules of Evidence. It would be unheard of to have a recorded witness interview admitted in evidence, and it is especially concerning when the recording at issue here would be of an essential witness, presumably the alleged victim in a case. The Maine Rules of Evidence as they relate to hearsay are in place for good reason and have been part of our common law for hundreds of years. Playing a recording of an interview is always considered to be prohibited by the rules, and yet this bill turns the rules on their head and allows for hearsay evidence to be introduced at trial.

Proponents of the bill made note that the person who was the subject of the recording must be available for testimony. But that is cold comfort to the accused in a criminal case who will have admitted in evidence the full recording of the alleged victim and then testimony as well. This kind of testimony would be “buttressing” testimony that would allow the alleged victim to basically be testifying twice.

This bill also forces a defendant to potentially call the alleged victim and thereby places a defendant with a burden of proof that a defendant never has. This is because in order for the recording to be admissible the alleged victim must be “available to testify or be cross-examined by any party in a criminal matter.” If the State simply plays a recording and leaves it at that, then a defendant will have to call, in the defendant’s case, the alleged victim and cross-examine the alleged victim at that time. Forcing a defendant to put on evidence is constitutionally barred, and this is a basic foundation of our criminal justice system.

Thank you for the opportunity to address this important bill. Indeed, it is one of the most significant bills as it relates to the criminal justice system this session. If this bill is passed, it will uproot centuries of jurisprudence as it relates to hearsay evidence and would also undermine the constitutional foundation as it relates to a defendant and a defendant's burden of proof.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter F. McKee", enclosed in a thin black rectangular border.

Walter F. McKee
Chair, Legislative Committee