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March 3, 2023

Criminal Justice and Public Safety Committee
Room 436 State House
100 State House Station
Augusta, ME 04333

RE: 15 M.R.S.A §815 communication between a prosecutor and an unrepresented
Defendant in Criminal Prosecutions

To Whom It May Concern:

I am writing as a representative of the criminal defense bar and as an attorney who practices significant amounts of criminal work in both retained and through the court appointment system.

The bill that was passed citing that prosecutors could no longer have communication with unrepresented defendants without the Court informing the defendant of certain rights and signing an open waiver in Court has really become in hindrance and slowed down the Court process at initial appearances and arraignments then continuing to add to the backlog of cases. Particularly this law really hinders how the lawyer of the day interacts with defendants at arraignment days.

Prior to this law going into effect, the District Attorney's Office would mail offers and discovery to Defendants prior to their arraignment date. Additionally, if charges were going to be dismissed and that communication could also happen prior to the arraignment date. A lot of defendants only meet with the lawyer of the day to obtain discovery and offers. Now, none of that communication can occur and it often drags cases out longer than needed due to the fact that the Defendant may want to take the offer, but needs time to think about it and is just receiving the information at the date of arraignment. Thus the defendant gets a new Court date. Additionally, a lot of the State's offers at arraignments have to do with cases that the State would dismiss if defendants would get their license back, register their car, or pay some sort of restitution. None of that can take place prior to arraignment. Thus requiring an additional Court date and more paper work for the already back logged Courts to do.

What does not make sense to me about this bill the unrepresented defendants who come to arraignment dates still have the opportunity to speak to the lawyer of the day, the defense counsel provided at no cost to the defendant, to discuss the offer and/or discovery prior to

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making their decision in front of the Judge. Additionally, some of the more rural counties, I have found as a practitioner, that the defendants do not wish to speak to the lawyer of the day, which is also their right, and they have no other way to get information or negotiate their case with the prosecutor, other than signing the waiver in open court.

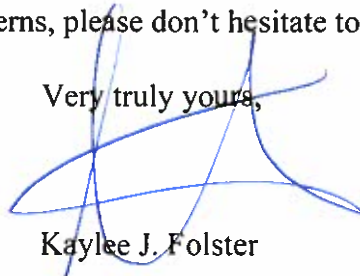
I have been in open court where Judges have informed defendant's of this waiver and have been willing to sign it, but yet the prosecution is still unwilling to communicate with the defendant due to the fact that they have concerns that bar complaints will be filed against them. Additionally, this prevents the pro se defendant, which is the defendant's right to proceed pro se if they wish, from having conversations and providing information with the district attorney for a more favorable outcome of their case after they no longer have a lawyer of the day at initial appearance/arraignments and/or do not qualify for court appointed counsel and can not hire counsel.

This law has substantially lengthened the criminal justice process for misdemeanor cases as well as inhibited defendant's rights if they chose to proceed without an attorney. If this law is going to remain in place, it would be the undersigns position that every defendant, no matter if they are at risk for jail time or not and/or if they have the ability to hire an attorney not to get a court appointed attorney. If the State is going to be limiting the way that they can discuss their case with the District Attorney and require an appearance in Court and a signed waiver in order to do that. Obviously giving everyone an attorney is not realistic.

I would be respectfully requesting that this law be reversed and allow the prosecutors to have conversations with pro se defendants who choose to be pro se and allowed to send them offers and discovery prior to important court dates so that cases can move more efficiently through the Court system.

If you have any questions or concerns, please don't hesitate to contact me.

Very truly yours,



Kaylee J. Folster

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