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May 2, 2023

Senator Anne Beebe-Center  
Representative Suzanne Salisbury  
Committee on Criminal Justice and Public Safety  
100 State House Station, Room 436  
Augusta, ME 04333

**RE: LD 1625– An Act to Update Criminal Indictment Procedures and Expand the Provision of Counsel to Certain Indigent Defendants**

Dear Senator Beebe-Center, Representative Salisbury, and Members of the Committee on Criminal Justice and Public Safety:

MACDL provides this testimony in support of LD 1625.

The current law provides that, “[b]efore arraignment, competent defense counsel shall be assigned by the Superior or District Court, unless waived by the accused after being fully advised of his rights by the court, in all criminal cases charging a felony, when it appears to the court that the accused has not sufficient means to employ counsel.” 15 M.R.S. § 810. *See also* Maine Rule of Unified Criminal Procedure 44, which additionally requires the court to assign counsel for indigent persons accused of murder, Class A, B, or C offenses (felonies), and in Class D and E offenses (misdemeanors) unless there is no risk of jail upon conviction.

The goal of LD 1625 is to provide competent defense counsel not only to those indigent persons who are charged with felonies or have a risk of jail, but *also* to those indigent persons charged with *non-felony offenses where there is no risk of jail* and who have a physical, mental, or emotional disability preventing them from fairly participating in the criminal justice system without counsel, and noncitizens who may face a risk of adverse immigration consequences.

Under LD 1625, those persons would be entitled to counsel regardless of whether they are charged with a felony or misdemeanor and whether there is any risk of jail. In current practice, there are times when the court does appoint counsel to an individual charged with a misdemeanor who has a disability or is a noncitizen, even though there is no risk of jail. However, the benefit of counsel should not be left to the discretion of an individual Judge or Justice, resulting in inconsistent practices throughout the State.

Instead, the Legislature should require that the court *always* provide competent defense counsel to these cohorts of defendants. Assignment of counsel to those persons with disabilities is a reasonable accommodation that is not unduly burdensome to the State of Maine. Moreover, assignment of counsel would aid the

courts in facilitating resolution of cases in a more efficient manner.

Regarding noncitizens, oftentimes those persons face very real, harsh, immigration consequences if they plead guilty or are convicted of a misdemeanor crime, e.g., theft crimes and drug possession crimes, even if there is no risk of jail.

Currently Maine Rule of Unified Criminal Procedure 11(h), states:

**(h) Potential Adverse Immigration Consequences to Noncitizens of the Plea to Any Crime.** Before accepting a plea of guilty or nolo contendere for any crime, the court shall inquire whether the defendant was born in the United States. If, based on the defendant's answer, it appears that the defendant is not a United States citizen, the court shall ascertain from defense counsel whether the defendant has been advised of the risk under federal law of adverse immigration consequences, including deportation, as a result of the plea. If no such advice has been provided, or if the defendant is unrepresented, the court shall notify the defendant that the plea can create a risk of adverse immigration consequences, including deportation, and may continue the proceeding in order for counsel to provide the required advice or, in the case of an unrepresented defendant, for investigation and consideration of the consequences by the defendant. The court is not required or expected to inform the defendant of the nature of any adverse immigration consequences.

Practically speaking, if an indigent defendant has no counsel because they have no risk of jail, then it is unlikely that they would be able to do much in the way of investigation and consideration of any immigration consequences prior to entering a plea. In contrast, if that same indigent defendant had the benefit of assigned competent defense counsel, that attorney would have the benefit and advice from a competent immigration attorney that contracts with the Maine Commission on Indigent Legal Services to assist and advise its rostered attorneys on potential immigration consequences. Moreover, this advice should not come at the end of case proceedings when there is a plea agreement reached, but instead at the beginning of the process when counsel is in a better position to gather information and use that information in negotiations and provide the necessary advice to their client.

To ensure that all indigent accused in Maine receive the due process to which they are entitled and to ensure that everyone is being treated fairly and equally under the law so that all noncitizens have the benefit of the same competent legal advice concerning consequences of any guilty plea or criminal conviction, MACDL supports LD 1625.

Thank you for allowing MACDL to address this important issue.

Sincerely,

*/s/ Amber L. Tucker*  
Amber L. Tucker  
President