

STATE OF MAINE

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**“An Act to Provide Comparable Compensation and Benefits for Deputy and Assistant District Attorneys,
Assistant Attorney Generals and Public Defenders”
Before the Joint Standing Committee on Judiciary
LD 374
Public Hearing Date: February 24, 2025**

Senator Carney, Representative Kuhn and members of the Joint Standing Committee on Judiciary. My name is Neil E. McLean Jr., and I am the District Attorney for Prosecutorial District 3, representing Androscoggin, Franklin and Oxford Counties. I am here on behalf of District 3 to testify in support of LD 374; an Act to Provide Comparable Compensation and Benefits to all salaried attorneys employed by the State of Maine, and involved in the criminal justice system.

We are all well aware of the ongoing crisis involving the lack of attorneys for individuals deemed indigent by the court and facing charges likely to involve incarceration. It is a real issue of constitutional proportions, and prosecutors, along with our colleagues in the defense bar and the courts are called upon to address this crisis daily. The legislature has also been deeply involved in identifying solutions to this problem. We are grateful for those efforts, which include the creation of Public Defender Offices.

We need both the public defenders and prosecutors to satisfy our full range of responsibilities to the criminal justice system, the due process and protection of the rights of the accused, as well as to ensure public safety and justice for our communities. As we continue to work toward solutions to these serious issues, we can ill afford to exacerbate the problem by adding a loss of prosecutors to the ongoing crisis.

In creating the Public Defender Offices, a salary scale is established that attempts to properly compensate those public defenders for the constitutionally important work that they are tasked with accomplishing. Prosecutors serve a different, but equally important constitutional purpose and must be compensated at an equivalent rate of pay, no more, no less. Not only for purposes of fairness but also to avoid unfair competitive advantages in recruiting and hiring due to a clear and significant disparity in pay. This concern is reflected in the public defender job notice for Assistant Public Defender I vacancies. They are offered a base salary of \$102,107.20. I understand that the position requires 5 years of experience; however, a similarly situated prosecutor with approximately 5 years of criminal law experience would likely begin with a salary of around \$86,840. That is an example of the current and significant salary disparities prosecutors are experiencing. LD 374 is simply intended to remedy that salary disparity between salaried state attorneys, both working within the criminal justice system, and the resulting competitive disadvantage prosecutors are facing in recruiting and hiring efforts. This has already directly contributed to hiring difficulties for prosecutors, and to a lesser, but nonetheless extremely concerning extent, has begun to affect retention of prosecutors.

In support of those concerns, I would like to share just a few quick examples from District 3 that highlight these very real issues. As District Attorney, I supervise 3 offices, comprised of 15 prosecutors when fully staffed. I am also responsible for 23 county employees, from 3 different counties. Additionally, I have to run for election every 4 years, something a District Defender does not need to do. I suspect all of you know what a challenge that can be. Last year, according to my W2, I made \$123,932.70. The District Defender salary, for those charged with managing individual public defender offices is between \$141,772.80 and \$147,388.80 annually. That is a difference of \$17,840.10 annually on the low end, or \$23,456.10 on the higher end. In full disclosure, there was a change in the pay scale for prosecutors in July 2024. This year, the difference in pay may be less based on that adjustment, but still significantly in favor of the District Defender pay; an approximate \$11,086.40 advantage in salary for District Defenders on the high end of the pay scale.

Since December of 2023, District 3 has been down as many as 5 prosecutors. With data from the last full years report on court filings, FY 2023 data found at courts.maine.gov, District 3 had 6919 total filings. At full strength, that would be 432 cases per prosecutor. In reality, being down 5 prosecutors, that would be 629 cases per prosecutor. Over the past year, although we have been down as many as 5, the average has been 3 prosecutors down. That is where we remain as of this writing. That would be 532 cases per prosecutor. Prosecutors are salaried for 40 hours per week. With caseload numbers this high, and with all the other responsibilities required of individual prosecutors to manage those caseloads, the average prosecutor in District 3 is regularly working evenings and weekends. They are all working well over 40 hours per week, while only being compensated for only 40 hours, and at a significantly lesser salary. We are only asking that compensation be equivalent to what is offered to other criminal law salaried state employed attorneys.

This information regarding caseload and salary is well known among the limited pool of prospective attorneys we all look to when filling vacancies within our offices. This limited number of available attorneys to recruit from shrinks significantly when one adds in the competitive disadvantage prosecutors are experiencing in salary. In an effort to fill vacancies over the last year, I have made targeted efforts to reach out to attorneys I know have previously shown an interest in prosecution. I met with them over coffee as we discussed possible employment in District 3. Understandably, questions always come back to salary and benefits. I have endeavored this three times, and on each occasion, we have left our discussion to allow time for these attorneys to converse with family and friends and to consider the best options for them. In all three instances, I received the same response. We could not offer enough in salary to make it work for them financially. It is worth noting that one of those individuals now works for one of the Public Defender's Offices.

In closing, I am here to support LD 374 because it is intended to address parity in salary. Prosecutors are equally as vital to the criminal justice system as any other entity within the system, we simply want equal compensation for the work that we do. We need the salary disparity that currently exists to be addressed so that we can be competitive in recruiting and hiring for vacancies, as well as to ensure that we can retain current prosecutors. We are seeking nothing more, or less, than to be treated comparably for the work we contribute to the criminal justice system.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Neil E. McLean Jr.
District Attorney
District 3