



## TESTIMONY OF MICHAEL KEBEDE, ESQ.

LD 449– Ought to Pass

### **An Act to Authorize a Court to Conditionally Discharge Certain Criminal Defendants**

Joint Standing Committee on Judiciary

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Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Michael Kebede, and I am Policy Director for the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we urge you to support this bill because it would help solve our Sixth Amendment crisis, reduce our costly reliance on incarceration, and assist the courts in reducing the backlog of cases.

If enacted, LD 449 would allow judges to release some criminal defendants and suspend the charges against them on the condition that they refrain from violating the law for six months. If the eligible defendants successfully abide by the conditions of their release, then the charges against them would disappear.

This bill only applies to a limited group of people: those who have never been convicted of murder or a Class A, Class B or Class C crime; are currently charged with only one or more Class B drug crimes or Class C, Class D or Class E crimes; have not previously been subject to a conditional discharge; and consent in writing to the conditional discharge. Importantly, even people who would be entitled to a conditional discharge could be denied its benefits – the decision to grant or deny such a request would always be up to the judge.

This bill would tackle at least three major problems at once.

First, it would help solve our Sixth Amendment crisis. Last month, a judge found that the State of Maine has routinely violated hundreds of people's Sixth Amendment right to effective assistance of counsel. When the Superior Court issued that ruling, there were nearly 1,000 cases without representation. Over the past year, hundreds of people have remained behind bars while being denied their right to an attorney. This bill would reduce the number of people who need attorneys by creating a commonsense diversion system.

Second, it would help reduce the enormous backlog of cases in the courts. Two years ago, a judicial branch employee estimated "that state courts won't begin to address their backlog of cases until 2028, even with the



anticipated hiring of” new judges.<sup>1</sup> LD 449 would give judges a new tool to rapidly resolve cases, reducing the number of new cases that linger in the system.

Finally, this bill promises to increase public safety by reducing recidivism. Numerous studies have concluded that “Overall, imprisonment does not appear very effective at reducing crime and decreasing the risk of reoffending; it may even have an opposite effect.”<sup>2</sup> By diverting people away from the criminal legal system and giving them a strong reason to avoid re-arrest, this bill would help the criminal legal system itself achieve its goals – and do so at a far lower expense than incarceration.

For these reasons, we urge you to support LD 449.

Thank you for your time and consideration.

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<sup>1</sup> Samantha Hogan, *Maine courts may take until 2028 to touch backlog of cases*, The Maine Monitor, March 23, 2023, available at <https://themaine-monitor.org/maine-courts-may-take-until-2028-to-touch-backlog-of-cases/>

<sup>2</sup> van Ginneken, E. F. J. C., & Palmen, H. (2022). Is There a Relationship Between Prison Conditions and Recidivism? *Justice Quarterly*, 40(1), 106–128. <https://doi.org/10.1080/07418825.2022.2040576>; Bales, W. D., & Piquero, A. R. (2012). Assessing the impact of imprisonment on recidivism. *Journal of Experimental Criminology*, 8(1), 71–101. <https://doi.org/10.1007/s11292-011-9139-3>; Durlauf, S. N., & Nagin, D. S. (2011). Imprisonment and crime: Can both be reduced? *Criminology & Public Policy*, 10(1), 13–54. <https://doi.org/10.1111/j.1745-9133.2010.00680.x>; Loeffler, C. E., & Nagin, D. S. (2021). The impact of incarceration on recidivism. *Annual Review of Criminology*, 5, 133–152. <https://doi.org/10.1146/annurev-criminol-030920-112506>; Nagin, D. S., Cullen, F. T., & Jonson, C. L. (2009). Imprisonment and reoffending. *Crime and Justice*, 38(1), 115–200. <https://doi.org/10.1086/599202>.