



MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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March 17, 2025

Senator Anne Beebe-Center, Chair
Representative Tavis Hasenfus, Chair
Committee on Criminal Justice and Public Safety
5 State House Station, Room 436
Augusta, ME 04333

RE: LD 534: An Act to Clarify the Rights of Crime Victims and Witnesses Regarding Professional Investigator Communications.

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

MACDL **opposes** LD 534.

LD 534 is an unnecessary bill considering existing regulations governing private investigators and it threatens to violate due process rights of criminal defendants.

The Professional Investigators Act (hereinafter “PIA”) already governs the conduct of professional investigators and their interactions with alleged victims and witnesses. *See generally* 32 M.R.S. § 8101. The PIA establishes a licensing board like those governing law enforcement, nurses, dentists, electricians, and other trades. The Board is made up of two members of the Maine State Police, one member recommended by the Attorney General, three members of the public, and one local or county law enforcement administrator. 32 M.R.S. § 8103-A. The Board is empowered to “to protect the public by improving the standards relative to the practice of private investigation and to protect the public from unqualified practitioners.” 32 M.R.S. § 8103-A.

The PIA sets forth significant qualifications for licensed private investigators, including a criminal background check, questions regarding mental health, and questions regarding use of illegal substances. 32 M.R.S. § 8105.

The PIA also sets forth grounds for suspension or revocation of private investigator licenses through a board complaint process, including for acts of “fraud or deceit,” “[r]epresentation by the licensee that suggests, or that would

reasonably cause another person to believe, that the licensee is a sworn peace officer of this State, any political subdivision of this State, any other state or the Federal Government,” and violations of any rules promulgated by the Chief of the State Police or his designee. In short, private investigators are subject to strict oversight by a Board comprised almost entirely of law enforcement.

In speaking with the sponsor of LD 534, it is MACDL’s understanding there is a concern some private investigators working for the new Defender’s Office are representing they are employees of the State in a way that suggests they are law enforcement officers. MACDL has no information whether this has happened or has not happened. If this did happen, however, then it would be a violation of 32 M.R.S § 8113(1), (8) & (10) of the PIA and grounds for suspension or revocation.

The PIA and similar licensing regulatory laws exist so that qualified boards made up of practitioners in the relevant field are empowered to pass rules and regulations and enforce those rules and regulations based on their practical experience. The legislature has historically created and empowered these regulatory boards to avoid getting into the weeds and micromanaging the diverse professions covered by Title 32. This Committee should not change that historic practice but instead should rely upon the system it has already created.

LD 534 suffers from an even more serious flaw than being unnecessary: it threatens criminal defendants’ due process rights to investigate and defend themselves against criminal allegations. As an initial matter, LD 534 only affects criminal defendants meaning that civil litigants—in cases that do not threaten a person’s liberty—are free to ignore the requirements of LD 534. Law enforcement officers are also not bound by these requirements. There is no requirement that law enforcement tell a witness the purpose of question or that they direct a witness that he or she does not need to answer questions. This would only affect criminal private investigators.

It is not easy to question strangers and it often is the case that the first moments of an interaction are used to establish a rapport. MACDL opposes this bill in its entirety and particularly opposes the requirements that criminal private investigators must explain their purpose and the fact that an alleged victim or witness does not need to speak with them before asking any questions. MACDL does not oppose a requirement that the private investigator identify him or herself and agrees an investigator cannot force or try to force someone to answer questions, but the PIA already requires the private investigator to avoid misrepresentation, fraud, and incompetence. These additional requirements are roadblocks to an investigation not imposed on law enforcement or civil litigators. Instead, these roadblocks are imposed only on criminal investigators and they threaten to violate the due process clause of the Maine and federal constitutions.

The PIA provides significant protections to the public, including alleged victims and witnesses in criminal investigations. If a criminal private investigator has violated the provisions of the PIA, then the complaining alleged victim, witness, or representative of the State should file a Complaint, which can be done easily online. *See* “Private

Investigator Complaint Form,” <https://www.maine.gov/dps/msp/licenses-permits/professional-investigator/complaint>.

LD 534 is unnecessary given the protections in the PIA. LD 534 likewise threatens to violate important due process rights of persons accused of crimes by creating an uneven playing field between law enforcement investigators and criminal private investigators.

For these reasons, MACDL opposes LD 534.

Sincerely,

/s/ Matthew D. Morgan
Matthew D. Morgan, Esq.
MACDL President Elect