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LD 1817 – support
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Every statute in Maine’s criminal code has its own sequence number. 9632 is the only one I know by heart, because I’ve entered it into MCILS’s billing database that many more times than any other sequence number. 9632 is the sequence number for class E bail violations, also known as misdemeanor VCR’s. (About a year and a half ago, Maine’s district attorneys got a grant for researchers at USM to process and publish data on all criminal charges in Maine over a five-year period. I will refer to this report’s findings throughout this testimony, with page numbers in parentheses.)

VCR present a massive burden on Maine’s already strained criminal legal system. Quoting from this report: “Violation of condition of release was the **most frequently occurring** case charge at 13%” of all charges during the five-year period studied (16). To be clear, there were 46,479 charges of VCR over this five year period, or an average of 9,295 VCR’s charged per year. And one of this report’s key findings was an increase in violations charges, from 12% to 17% of all charges, from law enforcement agencies during a period in which while every other category of charges decreased (26).

Let’s talk for a bit about some behaviors that become illegal if ordered as a condition of release:

- staying out late
- returning to an alleged victim’s residence, school, or work, including in cases where the defendant has never met the alleged victim and has no idea where they live, study, or work
- returning to a Walmart, Hannaford, or other store that has accused you of theft, no matter how insignificant the value of the item
- responding to your partner when they contact you, if there are pending DV charges with no-contact conditions, even if the victim wants you to be allowed to respond
- returning to the only public bathroom in Rockland, which also has a drinking water fountain, a bicycle repair station, a nice park, and picnic tables, making it an important resource for homeless people who are more likely to be ordered not to return there because of the many ways our criminal code targets the unhoused
- forgetting to check in with your Pretrial case manager, if you were ordered to sign a contract with Maine Pretrial Services

We can take VCR’s off of the list of things that are illegal in Maine, relieve our over-burdened criminal legal system of this unnecessary charge, and learn to rely on the other tools at our disposal. A lot of the arguments against taking VCR’s off the books focus on no contact conditions specifically relating to contact after DV or other personal offenses. Our courts already have a vehicle that restricts or criminalizes contact: protective orders, or PFA/PFH’s. These forms are simple, free, and don’t require an attorney. DV advocacy organizations employ people to assist with filling out this form and guide people through the process, and Maine’s courts have a very informative booklet, free for the taking at the Knox clerks’ window in the courthouse, that tells people everything they need to know about how to get a protective order in place, and what to expect. If this bill passes and VCR’s are no longer a crime, violations of a protective order (PFA or PFH) would still be a misdemeanor crime as it is right now. Of the charges tracked in this study, 14% were VCR’s, while only 1% were violations of protective orders. Are we adequately taking advantage of this protective tool?

If a person is a threat to public safety or the judicial process, that will be addressed by the judicial officer who decides what their conditions of release are, if they are even entitled to bail – some people can be held without bail even before having been found guilty.

I'd also like to add, as a survivor of an assault by a family member that I believe would have been prosecuted as DV aggravated assault, class B, if it had happened in Maine, that PFA's and PFH's are a more respectful tool than conditions of release because they are based on the victim's wishes. Conditions of release can be ordered by a judge against a victim's stated wishes that contact be allowed. Likewise, victims are not empowered to decide if domestic violence or sexual assault charges are pressed – that's up to the prosecutor and the judge. PFA's and PFH's are initiated by the victim, which is closer to actual empowerment than a system that functions without and in spite of victim's consent.

Many other parts of what is criminalized as a bail violation are mirrored in other parts of the many restrictions defendants face, meaning that a given act can end up triggering several legal consequences, and potentially appearing permanently on their record in several different ways. This redundancy adds to the burden our criminal legal system has been trying to dig itself out of for years. Examples of this redundancy include:

- Failure to appear for a court date – permanently recorded on a person's CIS record with or without a related VCR
- Deferred dispositions (10% of cases studied): have their own conditions, which can lead to the bad outcome / conviction if not complied with
- Probation violations, when probation and bail conditions have overlapping conditions
- Maine Pretrial Services violation memo's, as pretrial contract conditions mirror court-ordered conditions of release
- New criminal charges will be permanently recorded on their own if convicted
- Convincing a victim or witness not to collaborate with the courts could be its own charge of tampering

Shifting towards a reliance on these other legal tools will free up prosecutors and the courts to work on justice for the mere 17% of charges that are felony level offenses, and could even lead to higher conviction rates for the remaining more serious charges. This study found that “for most districts the conviction rates decreased as the total number of cases disposed increased” (22) meaning that prosecutorial districts that were handling more cases ended up convicting relatively fewer of them. This could be because prosecutors have limited resources at their disposal, and spreading them thin across too many cases, including these sometimes unnecessary cases, limits their ability to actually focus on serious and/or violent convictions. Taking VCR's off of prosecutors' desks could free up the state to focus on seeking convictions in the rest of their cases.

Our legal system is at a stalemate. Everyone recognizes that we don't have enough defense attorneys, and that that seriously threatens the integrity of our entire judicial system. We can't just make more attorneys out of thin air, and even if we could, a lot of attorneys choose not to focus on indigent criminal defense. Maybe it's time to get more creative with our solutions. When our state's public defender's office asks the legislature to consider a change that would make it easier for more defendants to be represented, I think we should listen to their suggestions and take them seriously. If this bill passes, it will smooth out court backlog for clerks, judges, and prosecutors in every county. County jails would be relieved of people who are incarcerated for lack of representation. No change comes without risk, but in my opinion the risks involved in this change to our criminal code are mitigated by other parts of our criminal code that will not be changed.