

CLAC MEMORANDUM/TESTIMONY
LD 576 (NFNA)

TO: Senator Anne Carney
Representative Matt Moonen
Joint Standing Committee on Judiciary

FR: Criminal Law Advisory Commission (CLAC)
c/o laura.yustak@maine.gov

RE: LD 576, An Act to Facilitate Communication Between Pro Se Defendants and Assistant District Attorneys

DA: March 8, 2023

The Criminal Law Advisory Commission respectfully submit the following testimony neither for nor against LD 576.

CLAC recognizes that the prohibition against speaking with unrepresented defendants has resulted in confusion and contributed to slowing the resolution of lower-level cases that might otherwise be resolved, in some cases by diversion or dismissal, absent the prohibition. It has had the unintended consequence of limiting information to defendants in some circumstances, as prosecutors indicate that they are prohibited from responding to even routine inquiries made by defendants to their offices prior to arraignment. Although there appears to be no evidence of prosecutors coercing defendants to obtain convictions, some CLAC members are concerned that defendants are not fully aware of collateral consequences of even minor convictions, for example, that specific crimes can be used to enhance subsequent charges or may result in license suspensions. Accordingly, while some CLAC members support wholesale repeal of section 815, others would rather limit the applicability of the prohibition and further streamline the process, and thus welcome the opportunity to discuss modifications of the proposal.

As a technical point, CLAC notes that the bill title refers only to "Assistant District Attorneys." The current law, and thus the repeal of it as well, apply to all Maine prosecutors, including those within the Office of Attorney General and elected District Attorneys.

*CLAC is an advisory body established by the Legislature. 17-A M.R.S. §§ 1351-1357. It consists of 9 members appointed by the Attorney General. Our current members include current defense attorneys, prosecutors, Maine Bar Counsel, and a retired practitioner with experience as defense counsel, prosecutor and in court administration. In addition, three sitting judges and one retired practitioner, appointed by the Chief Justice of the Supreme Judicial Court, and, by statute, the Co-Chairs of the Legislature's Committee on Criminal Justice and Public Safety, serve as consultants. The Supreme Judicial Court's Criminal Process Manager serves as liaison from the Court to CLAC. CLAC advises the Legislature on matters relating to crimes in the Criminal Code and in other Titles, the Bail and Juvenile Codes, and with respect to other statutes related to criminal justice processes.