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**“An Act to Facilitate Communication Between Pro Se Defendants and
Assistant District Attorneys”**

Before the Joint Standing Committee on Judiciary

Public Hearing Date: March 8, 2023

Testimony in Support of LD 576

To the Honorable Members of the Joint Standing Committee on the Judiciary:

Thank you for the privilege of presenting testimony before you today. My name is Christopher Smith, and I am an Assistant District Attorney for Penobscot County. I have practiced law in various capacities since 1993, including work as a defense attorney for many years.

I respectfully urge you to support LD 576, as 15 M.R.S. Sec. 815, although well-meaning, has proven to be ineffective and frustrating for pro se defendants, for judges, and for prosecutors. It is my understanding that one purpose of prohibiting prosecutor-defendant communication was to prevent defendants from resolving their cases prematurely, before getting legal advice. However, the statute does not accomplish that goal. Seeking legal advice is a personal decision, and a defendant is not more likely to obtain legal advice because of the statute. Legal advice is freely available from the Lawyer of the Day, and from lawyers who provide an initial consultation. Before a judge will accept a plea of any kind, each defendant must watch a video that was created by the Judicial Branch, which explains their rights and options.

It is important to compare the effect of 15 M.R.S. Sec. 815 with regard to misdemeanors and felonies. Defendants with felonies are almost invariably facing a jail sentence, and are thus entitled to a court-appointed attorney if they cannot afford to hire counsel. As the case cannot be resolved at initial appearance because indictment is required, and a defense attorney is assigned at that time, there is little point in prosecutor-defendant communication.

The vast majority of defendants with a misdemeanor charge are not facing a jail sentence, and thus are not entitled to court-appointed counsel. Those defendants are usually very intent on having a discussion with the prosecutor, and often want to resolve their cases at arraignment. They do not want to return to court for disposition conferences, and have obtained all the legal advice that they desire to obtain.

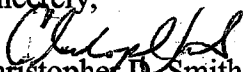
From the defendant's perspective, it is important to understand that for many years, defendants had come to expect to receive an offer letter from the D.A.'s office, well before arraignment. When this practice stopped because of the statute, defendants reacted with anxiety and suspicion, as if the prosecutor were "up to something", and as if their "right to an offer letter" had been violated. They also felt patronized by the idea that they somehow needed to be protected from speaking to a prosecutor. They continue to be frustrated when they call the D.A.'s office in hopes of discussing their case, but are told that the prosecutor cannot talk to them.

There is no benefit in preventing communication between a pro se defendant and the prosecutor. It actually puts the pro se defendant at a disadvantage, as there can be no discussion of scheduling issues, discovery issues, a deferred disposition for a lesser charge, and the like. Defendants with counsel can negotiate with the prosecutor, through counsel. Instead of working out an agreement well before the date of trial, the pro se defendant often has to attempt communication through the judge on the date of trial, after witnesses, victims, and officers have taken the day off to come to court, and faced the stress of a trial date.

Finally, 15 M.R.S. Sec. 815 is a violation of a defendant's right of self-representation, and stands in contradiction to Rule 11A(a) of the Maine Rules of Criminal Procedure, which provides that an unrepresented defendant may engage in plea negotiations.

Thank you for your time and consideration.

Sincerely,


Christopher D. Smith, ADA