

TESTIMONY OF MICHAEL KEBEDE, ESQ.

LD 576 – Ought Not To Pass

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

Joint Standing Committee on Judiciary

March 8, 2023

Senator Carney, Representative Moonen and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Michael Kebede, and I am Policy Counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I urge you to oppose LD 576, legislation that would erode the constitutional rights of people accused of crimes.

The protections that this bill seeks to repeal were enacted less than two years ago to protect the rights of people accused of crimes.¹ Under current law, enacted in 2021, a prosecutor can only speak to an unrepresented defendant if three conditions are met. First, “[t]he defendant has been informed by the court of the defendant’s right to counsel, including court-appointed counsel if the defendant is indigent.” 15 MRS §815(1)(A). Second, the court must explain to the defendant the pending charges, the defendant’s right to remain silent, any applicable maximum and mandatory minimum sentences, and the right to a trial by jury. 15 MRS §815(1)(B). Finally, the defendant has to complete a written waiver of the right to counsel. 15 MRS §815(1)(C). Two exceptions apply. Prosecutors may speak to unrepresented defendants to offer them a chance to take part in a diversion program, or to inform them that the charges against them have been dismissed. 15 MRS §815(2)(A)-(B).

These protections are necessary to ensure that people accused of crimes have time and space to stop and consider the ramifications of proceeding without a lawyer, and perhaps to avoid a criminal conviction all together. The stakes of an ill-considered plea are simply too high.

¹ LD 1685, 130th Legislature, Maine House of Representatives, *available at* <https://legislature.maine.gov/bills/getPDF.asp?paper=HP1254&item=3&num=130>.

Misdemeanors, which can carry up to one year of jail time, make up approximately 80 percent of state criminal court dockets.² The increase in misdemeanor cases over the past few decades has created an increasing administrative burden on courts and prosecutors. Most misdemeanor charges are resolved by plea deals. First appearance days are thus incredibly busy, harried affairs, where prosecutors, judges and defendants are all corralled into rapid decision-making to get through the docket as quickly as possible.

But these first-appearance-day decisions can have enormous, life-altering effects. A criminal record can prevent a person from getting housing or employment or sometimes even education. The collateral consequences of a conviction, although serious and far-reaching, are not often at the forefront of people's minds as they are trying to get through a long and trying docket call as efficiently as possible

Indeed, the Sixth Amendment Center, which the legislature hired to investigate this and other related issues, found that "although the courts' advice of rights by video has many admirable qualities, few courts follow up with a colloquy to ensure that defendants saw the video and comprehend their rights before waiving counsel. Some prosecutors in some jurisdictions engage in plea discussions with uncounseled defendants, and some courts actively encourage such negotiations."³

This bill proposes to return Maine to that inadequate past. We urge you to stand by our Sixth Amendment protections. Please protect the progress Maine has made and vote *ought not to pass*.

² American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Opinion 486, May 9, 2019, at 3 *available at* https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_486.pdf

³ *The Right to Counsel in Maine: Evaluation of Services Provided by the Maine Commission on Indigent Legal Services*, Sixth Amendment Center, at V, Apr. 2019, *available at* <https://legislature.maine.gov/doc/2905>.