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Judicial Branch testimony neither for nor against LD 1625, An Act to Update Criminal Indictment Procedures and Expand the Provision of Counsel to Certain Indigent Defendants:

Senator Beebe-Center, Representative Salisbury, members of the Joint Standing Committee on Criminal Justice and Public Safety, my name is Amanda Doherty and I represent the Judicial Branch. I would like to provide testimony with respect to this bill.

We appreciate the effort to update some of the outmoded language and procedures in the current version of 15 M.R.S. §810. We also appreciate the effort to capture the categories of people who should be entitled to court-appointed counsel, most of whom are already typically provided counsel. We would like to point out some other archaic provisions in the statute and suggest that perhaps it would be helpful to reflect modern practice.

As required by 15 M.R.S. §810, the Maine Rules of Unified Criminal Procedure provide for an indictment to be provided by the court before arraignment begins. The rules also require that other charging instruments be provided. M.R.U. Crim. P. 10.

Both the current version of §810 as well as proposed §810(1) require the clerk to provide “a list of jurors returned and process to obtain witnesses” to a person indicted for a crime punishable by imprisonment for life. You should know that this is not done nor can it be done. The statute does not indicate whether this is referring to grand jurors or traverse (trial) jurors. Lists of grand jurors are confidential. If it is intended to refer to jurors in a trial (traverse jurors), this information would not be known until a trial and accompanying jury selection is scheduled, and even then the information is only provided for viewing at the courthouse by the parties and/or their attorneys. *See* 14 M.R.S. 1454-A.

This same subsection also references the requirement to provide the process to obtain witnesses, to be summoned and paid at the expense of the State, to those indicted for a crime punishable by life. It is unclear what “provide the process” means. If a defendant is deemed indigent, the defendant’s court-appointed attorney, by and through MCILS, arranges for

witnesses to be subpoenaed, and the Maine Rules of Unified Criminal Procedure allow for a process of witnesses being served without a personal cost to a defendant.

The biggest concern is the requirement that defense counsel be assigned "before arraignment" in all of the circumstances outlined in subsection 2. Counsel can be (and typically is) assigned before arraignment upon an indictment for murder or a Class A, B or C crime as required in §810(2)(A). For the remaining categories involving misdemeanors, however, it is procedurally impossible in most circumstances. Generally, the arraignment is the first court appearance a defendant has in the case. The court cannot know before arraignment if the person is indigent, if there is a risk of imprisonment, the person has a disability, or is a noncitizen. It is only upon inquiry of a defendant at the arraignment that such information could be obtained and counsel assigned as a result. Thus, assignment of counsel for misdemeanor charges involving the conditions reflected in §810(2)(B) – (D) can happen at arraignment but not before.

Thank you for your time. I would be happy to answer any questions.