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LD 1771: An Act to Establish the Maine Speedy Trial Act

Testimony of Rep Matt Moonen, Portland

Good morning Senator Carney and honorable members of the Joint Standing Committee on Judiciary I am here today to present LD 1771 An Act to Establish the Maine Speedy Trial Act, and to ask for your support

The 6th Amendment to the US Constitution reads as follows

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence

This committee has been very focused on efforts to fulfill that last clause in the 6th Amendment, which obligates us to provide an attorney to those who can't afford one, and rightly so But I would argue that we are consistently failing to meet our obligation in the first clause providing for a speedy trial

The right to a speedy trial is in our constitution because our nation's founders recognized the fundamental harms caused by long delays awaiting trial, including

- harms that come with long incarceration and loss of liberty - breakdown of families, ability to support self, self-worth and self-determination,
- anxiety/reputational harm of unresolved charges, even if not incarcerated,
- impairment of ability to present defense, including fading of witness memories
- impairment of prosecution due to passage of time, which can impact their ability to present their case

The Maine Constitution mirrors the federal constitution by guaranteeing that everyone accused of a crime will "have a speedy, public and impartial trial " Unfortunately, the reality is that this is a right on paper but not in practice because until recently our state courts had not found a violation of the speedy trial right since 1960 In fact, our courts have found delays of even multiple years did not violate the speedy trial right This is likely because the constitutional right to a speedy trial has no specific or enforceable timelines for trial As a result, no one is sure exactly what "speedy" means, which makes it hard to prove that the state is failing to provide for a speedy trial

In order to make sure this constitutional right is more than just words, we need to pass a statute that makes it real The federal government has done this by enacting the federal Speedy Trial Act 41 other

states have also enacted their own state speedy trial acts, which of course means that Maine is an outlier as one of just 9 states with no statute defining what constitutes a speedy trial. We should correct this and provide for enforceable timelines, specific exceptions, and bright-line rules for prosecutors and defendants to follow.

While this bill was filed before cloture, I do want to call your attention to a decision issued just a few weeks ago by the Maine Supreme Judicial Court on the right to a speedy trial, *Winchester v State of Maine*, in which they invited the legislature to adopt specific guidelines to protect the right to a speedy trial. I believe that our system of government, with its strong separation of powers, only works when the branches of government are in conversation with one another about the most pressing topics.

The specifics of this bill are based on the best features of bills from other states, as well as the federal speedy trial law. For people who are in jail awaiting trial, this law gives prosecutors 6 months to bring a person to trial for the most serious offenses, and 45 days for less serious offenses. For people who are not locked up, a trial must commence within 9 months for the most serious offenses, or within 60 days for a lower level offenses. The purpose of these timelines is to ensure that the government does not delay trial, but the bill also recognizes that a defendant may seek delays in order to prepare their defense and does not count that time against the government. The bill also prohibits the government from dismissing and refile charges to avoid the time limits.

I have already received constructive feedback from the Attorney General's office. They were specifically concerned that the timelines in the bill are too tight to be workable for their more complex cases, such as homicides, and they pointed out that not all counties have monthly grand juries. I really appreciate their concerns and would be happy to amend the bill to address them.

Finally, I want to address what might be at the top of mind for many of us, which is how to deal with something like this when we are already facing a historic backlog of cases. Despite their best efforts, the courts haven't been able to make a meaningful dent in the backlog. I am hopeful that the additional resources we have supported in our report-back on the budget will help, but I would also argue that the backlog is exactly why we should be legislating on this issue.

People in Maine are waiting years to go to trial, and that is unfair, unconstitutional, and unacceptable. The State bears the responsibility of bringing the people it charges to trial speedily, and if it can't do that it has to re-prioritize and reallocate resources. That could mean exercising prosecutorial discretion differently, or it could mean putting more resources into the prosecution, the courts, and criminal defense. But it cannot mean forcing people accused of crimes to wait years until they're adjudicated.

A speedy trial act with concrete timelines will help with the backlog. Prosecutors, defense attorneys, and the courts will know the required timelines for trial, will know what kinds of delays are excusable, and will know the remedy for not meeting those deadlines. This will incentivize courts and prosecutors to prioritize and devote resources to those cases that must be moved, and ultimately might result in the dismissal of lower-level cases that are not prioritized. You may hear from prosecutors who would be unhappy about that, but I would point you to Justice Souter's opinion in *Doggett v United States*, which explained that the government's "persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an accused to justice."

As things stand now, people are waiting years for their day in court. That's not fair for anyone - not just defendants, but also victims and their families who have to wait years to see that justice is done. I urge all of us to work together to get something done here, and I thank you for your time and attention.