

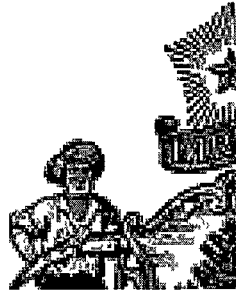
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MAINE PROSECUTORS ASSOCIATION  
SHIRA BURNS, EXECUTIVE DIRECTOR

“An Act Regarding Speedy Trials”  
Before the Joint Standing Committee on Judiciary

Public Hearing Date May 10, 2023  
Testimony in Opposition of LD 1771

Senator Carney, Representative Moonen and members of the Joint Standing Committee on Judiciary My name is Shira Burns and I represent the Maine Prosecutors Association and am testifying in opposition of LD 1771

The proposition of resolving cases in our criminal justice system faster is supported by all It is better for crime victims to have resolution faster and it is better for prosecution to have cases resolved faster Usually, the more time that exists between the crime occurring and the time of the trial works against the successful prosecution of a defendant That being said, the Maine Prosecutors Association cannot support LD 1771 as it does not take into consideration the lack of resources available in the criminal justice system to conform to the specified timelines in the bill Any entity that plays a part in the criminal justice system would have to be greatly expanded to meet any of these time requirements That would include law enforcement, prosecution, victim witness advocates, crime lab, judicial branch, available expert witnesses, indigent legal services, etc Simply put, the timelines proposed are not realistic and will lead to mass dismissal of cases, many that directly impact public safety

The proposed legislation has many procedural collateral consequences First, misdemeanor-level cases will start to be prioritized over felony-level cases which is in complete opposition of current practice Currently, the practice is to go to trial first on cases in which a person is in custody, starting with the felony-level cases However, since there are shorter timelines for misdemeanor-level cases, those would have to be prioritized over any felony-level cases This bill even prioritizes trials for misdemeanor-level cases for defendants NOT in custody over defendants incarcerated that have felony-level cases pending

Second, the proposed legislation incentivizes more motion practice by defendants solely for the purpose of extending the timeline of prosecution to come up against these speedy trial deadlines Currently, the process after arraignment is to attend a dispositional conference and schedule a trial date if the case is not resolved However, if the defendant files a motion to suppress, that needs to get scheduled and heard before the trial happens To be heard on any motion of that sort delays the time to trial

Third, there is no tolling exception for when a jury can't be sat. This happens for many reasons, but it is most common in sexual assault cases or when the victim is a child.

Fourth, there would be mass dismissals come January 1, 2024, the effective date of this bill based on the 27,000 active cases in Maine's criminal justice system. This would include murder, manslaughter, domestic violence, sexual assault and OUI crimes. If it is not intended for this bill to apply to cases that were initiated before January 1, 2024, the current 27,000 cases pending would indefinitely be delayed as the priority would go to the cases that need to meet the strict statutory timelines outlined in this bill.

Fifth, the remedy for noncompliance is dismissal with prejudice, meaning the case cannot be brought back. Many of these cases have victims to the crime and are offered protections through the criminal justice process including no contact orders and weapon restrictions. Those protections would be gone with this remedy. If the language is changed to dismissal without prejudice, there will be an unattended consequence of procedurally clogging our criminal justice system with the refile of cases. If a case is dismissed without prejudice and is worthy of further prosecution, all three parts of the criminal justice system (prosecution, defense, and the court) will be more burdened with the refile of a case instead of letting the pending case continue through the process.

These are just the collateral consequences that prosecutors can predict at this time. We have learned there is always a chance, especially a change of this nature, for unattended collateral consequences. For example, during COVID all parts of the criminal justice system used their own inherent power to keep the system afloat during these trying times. Prosecutors dismissed cases that didn't have an obvious public safety nexus, defense filed motions to amend bail on all their incarcerated clients, and judges granted many of these motions to release prisoners. All parties in the criminal justice system came together to work out solutions without the need for legislation, balancing a defendant's constitutional rights, public safety, and the procedural problems that ensued because of COVID. If this bill was in place before COVID, there would have been mass dismissals when the court could not conduct jury trials. This bill has no leniency for the unpredicted.

A defendant's right to a speedy trial is currently governed by our Constitution, case law and Maine Rules of Unified Criminal Procedure. Our Maine Supreme Judicial Court recently analyzed a defendant's right to a speedy trial in a decision dated March 30, 2023.<sup>1</sup> In that case, the Court went through the history of the constitutional amendment, previous statutory obligations, and the current practice of having a flexible standard of unnecessary delay. Specifically, our Maine Supreme Judicial Court said "precedent supports the use of a flexible, multi-factor test. As an overarching principle, we have repeated many times that the constitutional standard for a speedy trial is flexible, and the application of the standard is dependent on the unique circumstances of each case. There are several factors that we have concluded are relevant to this flexible analysis" *Id.* at 25. The Court went on to name the factors as (1) length of delay, (2) reasons for the delay, (3) assertion of the right, and (4) prejudice.

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<sup>1</sup> Winchester v. State, 2023 ME 23

If the point of this legislation is to move cases faster through the criminal justice process, there are many bills in this session that will help. All three parts of the criminal justice system are asking for more funding, support those bills. There is legislation to reclassify some criminal offenses to civil violations supported by law enforcement and prosecutors, support those bills. In Criminal Law Advisory Committee's (CLAC) memorandum to this committee regarding LD 576, An Act to Facilitate Communication Between Pro Se Defendants and Prosecutors, CLAC noted that the current law preventing defendants and prosecutors speaking has "contributed to slowing the resolution of lower-level cases," repeal that law. The best legislation to get speedier trials is to address why the case isn't being resolved sooner rather than just saying the case has to resolve sooner.

For these reasons, the Maine Prosecutors Association is in opposition of LD 1771.