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Testimony in Support of Section 3 of LD 2215, An Act to Implement the Recommendations of the Right to Know Advisory Committee Regarding Public Records Exceptions

Senator Carney, Representative Moonen, and Members of the Joint Standing
Committee on Judiciary:

My name is Laura Yustak, and I am an Assistant Attorney General, appearing on behalf of Attorney General Aaron Frey of Bangor. I am testifying in support of Section 3 of LD 2215, which amends the Medical Examiner statute to make clear that confidential documents held by the Office of Chief Medical Examiner should not lose their confidential status merely because they are shared with the Office of Attorney General or other law enforcement agencies.

The need for this amendment was highlighted by a Superior Court decision, *Feltis v. Frey*, No. CV-21-15 (Lincoln Cty. Super. Ct.). In that case, the court determined that graphic photos of an autopsy were public records, in part because the Chief Medical Examiner had provided copies of the photos to Criminal Division of the Office of Attorney General in connection with a criminal investigation. The court interpreted current statutory language in 22 M.R.S. § 3022 limiting confidentiality protections to records "in the possession or custody of a medical examiner or the Office of Chief Medical Examiner" as precluding other law enforcement agencies from denying public records requests based on § 3022, even when the Office of Chief Medical Examiner could properly deny identical requests.

Following the decision in *Feltis*, the Office of Attorney General received a public records request from a producer for an out-of-state media entertainment company seeking copies of the autopsy photos at issue in *Feltis*, among other records. Due to the Superior Court's ruling that the photos were public records, the Office was obliged to release the photos to the entertainment company. This request, however, produced significant concern within the Office, and led to the proposal to the Right to Know Advisory Committee that is incorporated in Section 3 of LD 2215.

Section 3022 is a detailed statutory framework governing disclosure of records obtained or generated by the Office of Chief Medical Examiner in the course of its

statutory duties. It contains a variety of exceptions ensuring that those with sufficient interests in certain medical examiner records, such as family members of the decedent, can access them, while also ensuring that such sensitive records cannot be obtained by the general public. Section 3 of LD 2215 is an effort to ensure that the detailed framework enacted by the Legislature protecting these records cannot be circumvented merely by directing the same public records request to a different agency. Otherwise, the functioning of § 3022, including the ability of prosecutors to disclose medical examiner records to criminal defendants, would remain unchanged.

I urge the Committee to vote ought to pass on Section 3 of the bill. I express no views on the remaining provisions of LD 2215. Thank you for your consideration and attention.