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**MAINE PROSECUTORS ASSOCIATION  
SHIRA BURNS, EXECUTIVE DIRECTOR**

“An Act to Amend the Maine Bail Code to Eliminate the Class E Crime  
of Violation of Condition of Release” LD 179  
Before the Joint Standing Committee on Criminal Justice and Public Safety  
Public Hearing Date: February 3, 2025  
Testimony in OPPOSITION of LD 179

Senator Beebe-Center, Representative Hasenfus and members of the Joint Standing Committee on Criminal Justice and Public Safety. My name is Shira Burns and I represent the Maine Prosecutors Association. I am here to testify in opposition of LD 179.

The elimination of the Class E crime of Violation of Conditions of Release, commonly referred to as VCR, will affect public safety in each of your communities. This proposal eliminates a crime that holds offenders accountable for violating a court order without looking at Maine’s specific bail system as a whole and how we can protect our communities without it. This is also taking a tool away from prosecutors to help resolve cases that can be favorable to the defendant. During plea negotiations, defendants may have their underlying case dismissed that may have collateral consequences the defendant is trying to avoid in return for a plea on the Violation of Conditions of Release that does not come with the same collateral consequences.

First, it is very important to know how bail and bail conditions are set within our bail code. The default bail in our statute is to release a defendant on personal recognizance or upon execution of an unsecured appearance bond.<sup>1</sup> Only if a judicial officer determines that release on just personal recognizance or unsecured appearance bond will not reasonably ensure the appearance of the defendant as required, would not reasonably ensure that the defendant would refrain from any new criminal conduct, would not reasonably ensure the integrity of the judicial process or would not ensure the safety of others in the community are judicial officers authorized in statute to set conditions of release.<sup>2</sup> Those conditions have to be the least restrictive to reasonably ensure the appearance of the defendant, reasonably ensure that the defendant would refrain from any new criminal conduct, reasonably ensure the integrity of the judicial process or ensure the safety of others in the community.<sup>3</sup> Even in these circumstances, judicial officers are limited in imposing certain conditions without specific facts demonstrating the need.<sup>4</sup> Furthermore, judicial officers are now barred from ordering random search and testing for alcohol, cannabis, or illegal drugs.<sup>5</sup> This is

<sup>1</sup> 15 M.R.S. § 1026(2-A).

<sup>2</sup> 15 M.R.S. § 1026(3)(A).

<sup>3</sup> *Id.*

<sup>4</sup> A judicial officer can only impose a condition of no possession, use or excessive use of alcohol or cannabis and from any use of illegal drugs if there is a presentation to the judicial officer of specific facts demonstrating the need for such condition. 15 M.R.S. § 1026(3)(A)(9).

<sup>5</sup> 15 M.R.S. § 1026(3)(A)(9-A).

all to say that our bail code is very refined to make sure bail conditions placed on a defendant are specific to that defendant for the purpose of reasonably ensuring the defendant's appearance, reasonably ensuring the defendant will refrain from any new criminal conduct, reasonably ensuring the integrity of the judicial process, or ensuring the safety of others in the community.

The bail code is designed to depend on the crime of Violation of Condition of Release when assessing release decisions for defendants. The bail code specifically lists factors to be considered by a judicial officer in their release decision, one of them being "whether the defendant has previously violated conditions of release." 15 M.R.S. § 1026(4)(C)(11). This factor will not be known in many situations without the crime of Violation of Conditions of Release.

It is clear, the crime of Class E Violation of Conditions of Release is not the reason some defendants don't have attorneys, is not the culprit for the backlog, and is not the reason defense attorneys are staying off the specialized rosters to accept domestic violence and sexual assault cases. If you are charged with a Violation of Condition of Release, you are already in the criminal justice system. Prosecutors have greatly reduced the number of criminal filings each year dating back to 2010.<sup>6</sup> Prosecutors are filing less cases and more defendants are going without representation.

When looking at numbers, all stakeholders need to use the same data to be able to accurately analyze what the numbers mean. According to the Maine Judicial Branch, in fiscal year 2024, there were 35,946 criminal filings. Of those criminal filings, 8,356 had at least one count of Class E Violation of Conditions of Release. **However, 1,799 included only the charge of Class E Violation of Conditions of Release.** Furthermore, it is important to note that majority of cases that include Class E Violation of Conditions of Release are committed by a small amount of people that consistently violate their bail. In fiscal year 2024, approximately 1/3<sup>rd</sup> of the defendants charged with Class E Violation of Conditions of Release were responsible for approximately 60% of the Violation of Conditions of Release cases.

The proceedings for revocation of pre or post-conviction bail is inadequate to address offenders that repeatedly violate their bail that make up the majority of the Violation of Conditions of Release cases. Prosecutors are filing motions to revoke bail, but defendants are consistently let out and continue to violate. The revocation proceedings do not hold defendants accountable for their actions. Furthermore, without the ability to charge the crime of Violation of Conditions of Release, an officer would have to make contact with a prosecutor before proceeding with arrest. This is not manageable for prosecutors. We would also end up with more prisoners on prisoner day. That is not manageable for prosecutors, the court, or defense attorneys. Right now, defendants are and can be summonsed for Violation of Conditions of Release. Once the prosecutor reviews the case and the underlying case, the prosecutor uses their discretion to determine if the State proceeds with a motion to revoke bail. If Violation of Conditions of Release is eliminated, there would no longer be an option to summons for the conduct.

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<sup>6</sup> Please see attached chart of criminal filings each year showing a reduction of criminal filings by 38.29% from FY2010 to FY2024.

Most Violation of Conditions of Release are a Class E crime. There are two exceptions to that:

- When the underlying crime is a Class C or higher AND the violation is contact with a victim, witness or family or household members of the victim; or
- When the underlying crime is a Class C or higher AND the violation is possessing a firearm or other dangerous weapon.

That means the following conduct would no longer be criminalized:

- When the underlying crime is a Class D domestic violence crime and the defendant has contact with the victim or possesses a firearm against a court order;
- When the underlying crime is a Class D offense against another person (chapter 9 offenses – criminal threatening, assault, terrorizing, stalking, etc.) and the defendant has contact with the victim or possesses a firearm against a court order;
- When the defendant is charged with Class B Domestic Violence Aggravated Assault and shows up at the victim's home when she is not there.

The Maine Prosecutors Association is absolutely supportive of decriminalizing some criminal statutes and making them civil violations that do not affect public safety. This is not one of them.

For these reasons, the Maine Prosecutors Association is in opposition of LD 179.

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	FY10	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	Reduction 2010-2024	Reduction 2019-2024
Region 1	10588	10124	9142	9344	9467	9149	7647	7630	7387	7586	6493	5047	5728	5580	5394	49.06%	28.90%
Region 2	9976	9491	9510	9773	9092	8980	8431	8730	8364	8463	7403	6658	6239	6252	6480	35.04%	23.43%
Region 3	9228	8795	8597	8683	8172	8038	7876	6853	7485	6862	5488	5116	5160	5996	5690	38.34%	17.08%
Region 4	7894	7229	6978	7425	7280	6782	6735	6461	6251	6057	5330	4318	4602	4988	4966	37.09%	18.01%
Region 5	7452	6846	7104	7036	6666	6480	6847	6414	6846	6302	6148	6101	5829	5615	5614	24.66%	10.92%
Region 6	6339	5999	6251	5743	5883	5528	4714	4262	4345	3669	3398	3564	3301	3261	3414	46.14%	6.95%
Region 7	3548	3190	3159	2967	2615	2647	2993	2602	2844	2598	2316	2151	2030	2358	2078	41.43%	20.02%
Region 8	3227	3209	3056	3110	2934	2585	2483	2299	2695	2891	2633	2762	2496	2552	2310	28.42%	20.10%
<b>TOTAL</b>	<b>58252</b>	<b>54883</b>	<b>53797</b>	<b>54081</b>	<b>52109</b>	<b>50189</b>	<b>47726</b>	<b>45251</b>	<b>46217</b>	<b>44428</b>	<b>39209</b>	<b>35717</b>	<b>35385</b>	<b>36602</b>	<b>35946</b>	<b>38.29%</b>	<b>19.10%</b>