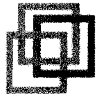 **MCEDV.**

The Maine Coalition
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Testimony of Andrea Mancuso, on behalf of the Maine Coalition to End Domestic Violence In OPPOSITION to LD 179: "An Act to Amend the Bail Code to Eliminate the Class E Crime of Violation of Conditions of Release"

Before the Joint Standing Committee on Criminal Justice and Public Safety Monday, February 3, 2025

Senator Beebe-Center, Representative Hasenfus, and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, I am writing on behalf of the Maine Coalition to End Domestic Violence (MCEDV)[1] in opposition to LD 179 and to put forward an amendment for your consideration.

Most domestic violence charges handled in our criminal courts are Class D crimes. When a person is charged with a domestic violence crime, conditions of release are almost always issued that include a prohibition on the defendant having any contact with the victim, a requirement to staying away from their home, school or place of business, and a restriction on access to weapons. Issuance of these conditions is one of the primary ways our criminal legal system attempts to create safety and space for survivors to start healing. When a defendant then goes on to continue to have contact with that victim or to violate their peace by proximity, under current law they are charged with the Class E crime of violation of conditions of release.

We encourage you to reflect on what this really looks like from the perspective of a domestic violence victim: they have reported either an assault or a threat of harm, often something that is the latest in a long line of patterned abuse. They have gone through a law enforcement interview, sometimes even writing out and signing a sworn statement; and sometimes this will involve having photos taken of their body and/or a hospital visit. They have spoken to a victim witness advocate and likely had a subsequent interview with an assistant district attorney. They have been told that a court has ordered the person who has harmed them not to have any contact with them. They may have even started to feel some distance from the trauma, beginning a process of healing. Then the person who harmed them, who has been court ordered to stay away, contacts them anyway – sometimes from within the correctional facility they are being held at pre-trial.

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[1] MCEDV represents a membership of the eight regional domestic violence resource centers across Maine as well as two culturally specific service providers. Last year, our programs provided services to more than 12,000 survivors of domestic abuse and violence and their children in our state.

To this type of violation, a violation of a clear and unambiguous court order, there should be swift and sure consequences – particularly for those individuals who perpetrate domestic violence, most of whom believe they are privileged to do so, and that the price of any consequence for their behavior will not be more than they are willing to pay. To remove the ability of the criminal legal system to respond swiftly and with a real consequence to a perpetrator's continued refusal to leave their victim alone is a violation of the basic responsibility that our criminal legal system has to the crime victims while criminal cases are pending. Make no mistake – that is what this bill proposes to do. What does that say to a victim about the State's ability to protect them and make the abuse stop? What level of trust should the victim now place in the criminal legal system – the system asking them to continue to participate in the prosecution of the person who has harmed them? What reason would they have to believe that the State will be able to keep them safe from further harm?

Maine may very well be in a minority of states that still preserves the ability to charge a new crime for a violation of condition of release, as opposed to just dealing with a violation through a bail revocation motion. ***Maine is also in a minority of states that does not issue a criminal court protection order in domestic violence cases, violation of which results in a new crime.***[2] Instead of implementing such a process,[3] the state has relied on the ability to charge that conduct as a Violation of Conditions of Release. Conditions of Release in DV cases act, in practice though not in name, as a criminal court issued protection order. To remove this level of protection in DV cases, without similarly implementing a criminal court protection order in DV cases, is out of step with a functional criminal court response to victims in these cases. Keep in mind, the time period following separation of a victim from the person harming them is often the most dangerous.

Several years ago, MCEDV supported a bill that would have removed many of the conditions for which violation could lead to the charging of a new crime. That bill preserved the ability to charge a new crime for contact with a victim, for violating place and proximity restrictions, and unlawful possession of a firearm. We still believe that type of an approach would move the state responsibly forward with reforming the problems that have been identified by this bill's proponents – namely limiting the ways in which violations of conditions of release have had a harmful and disproportionate impact on those defendants who are in Maine's criminal justice system primarily as a result of substance use or untreated mental health challenges – while ensuring reforms are not likely to compromise victim safety in the moment or the willingness of crime victims to continue to engage in the process. Of the many thousands of Class E violations of conditions of release that are charged in our criminal legal system each year, ***the violations charged in response to contact with a victim represent only approximately 500 cases – that's less than 10%.*** There is quite a lot of yardage between current statute and practice and what this bill proposes. MCEDV has attached a suggested amendment that would better attend to the needs of crime victims during the pendency of criminal cases.

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[2] In some states that charge victim-contact-violations as a violation of a criminal court protection order, that is a felony crime, even when the underlying domestic violence charge is a misdemeanor. See Connecticut General Statutes, Section 53a-223.

[3] Maine's criminal code has a provision that would allow Maine's courts to issue a criminal court protection order in family violence cases. See Title 15, section 321. However, Maine's judicial officers are unable to issue such an order, because the statute has never been implemented, and the Maine Judicial Branch lacks the resources to do so without the appropriation of necessary funds. Because it has never been implemented, the statute has not been updated since the 1980's.

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A defendant charged with OUI, released on conditions that include no possession of alcohol, who is then spotted by law enforcement having a drink after having walked to a local bar, presents a very different public safety challenge than a defendant who is charged with assaulting their partner, released on conditions of no contact, who is then texting the victim or repeatedly driving by their home. Our criminal justice system must be structured in a way to ensure that the response to each of these situations is appropriate and focuses appropriate public resources where they are most needed.

Lastly, exclusive reliance on bail revocation as the only response to address safety in domestic violence cases necessarily means that policymakers would be leaning on our judicial officers to, with much greater frequency, hold hundreds more pre-trial defendants each year – defendants who, under the current structure, are mostly awaiting trial in community, even after committing a victim contact or proximity violation. That's the message that you're hearing from the bill's proponents today – that there's no reason to worry about the elimination of this crime because, when a person violates victim related conditions of release, they can be held pre-trial. If that is, in fact, not the outcome that policymakers support (and to be clear, this is not at all a practice we see our courts embracing with any real frequency at present), than we should be honest with ourselves, and with crime victims, that our systems don't really care to have an actual consequence for violations of these court orders, even when they reflect a defendant continuing their pattern of abuse, and even when they raise real questions as to the safety of crime victims.

MCEDV urges you to seek a far less drastic measure to address the policy and practice challenges that the proponents of this bill have laid before you. To do otherwise, continues to send the message to crime victims that the failures of our criminal legal system's current response should continue to rest heavily on their shoulders.

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§1092. Violation of condition of release

1. Violation of condition of release. A defendant who has been granted preconviction or postconviction bail and who, in fact, violates a condition of release is guilty of:

A. A Class E crime if the condition of release violated is one specified in section 1026, subsection 3, paragraph A, subparagraph (4), (5) or (8); or

B. A Class C crime if the underlying crime was punishable by a maximum period of imprisonment of one year or more and the condition of release violated is one specified in section 1026, subsection 3, paragraph A, subparagraph (5) or (8).