

STATE OF MAINE

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MAINE PROSECUTORS ASSOCIATION SHIRA BURNS, EXECUTIVE DIRECTOR

“An Act to Authorize a Court to Conditionally Discharge Certain Criminal Defendants”
Before the Joint Standing Committee on Judiciary
Public Hearing Date: February 24, 2025
Testimony in Opposition of LD 449

Senator Carney, Representative Kuhn and members of the Joint Standing Committee on Judiciary. My name is Shira Burns and I represent the Maine Prosecutors Association. I am here to testify in opposition of LD 449.

First, it is the opinion of the Maine Prosecutors Association that if enacted, LD 449 would be unconstitutional pursuant to the ruling in *State v. Fixaris*, 327 A.2d 850 (Me. 1974). “A statute which purports to give the judicial branch of government the right to determine on its own motion when prosecution of a criminal case will be had and when it will not, is of doubtful constitutional validity.” *Id.* at 852.

Second, this bill gives the Court broad discretion to negotiate cases with defendants without doing the due diligence prosecutors perform when formulating plea offers. One of those duties is to check with the victim witness advocate, who have statutory confidentiality, regarding any safety concerns the victim may have and what conditions may be helpful to address those safety concerns. This is confidential so that victims can accurately and safely express their feelings without the threat of retaliation or harm. This new process would discard the systems in place that address victim safety.

Third, our criminal justice system does have processes that allow a defendant to avoid a conviction after completing certain terms or conditions that is used regularly. Maine Rule of Unified Criminal Procedure 11B allow for Filing Agreements between the State and defendant without any plea being taken from the defendant. This is a contract between the State and defendant where a case will be dismissed after a certain period of time, not to exceed one year, if the defendant follows all the conditions set out in the agreement. 17-A M.R.S. § 1902 also allows a defendant the opportunity to enter into a deferred disposition to avoid a criminal conviction. Even though a defendant would plead guilty at the beginning of a deferred disposition, that plea can be withdrawn if the defendant completes all of the terms of the agreement.

Lastly, the language outlined in this legislation is out of line with current statutes. For example, it gives the person a right to be represented by counsel during certain hearing processes when the person does not have a right to counsel pursuant to our Constitution. This language exempts a person from the crime of Violation of Conditions of Release. This is problematic for many reasons, but it is unclear how law enforcement would know if it is a chargeable offense when they are on scene and only have access to the conditions of release.

There are many other nuances to the bill that is objectionable to the MPA (the eligibility requirements do not factor convictions or pending charges from other states, no ability for the State to file a motion to modify conditions, etc.) that we can address at the work session if needed.

For all these reasons, the Maine Prosecutors Association objects to LD 449.