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MAINE PROSECUTORS ASSOCIATION

“An Act to Clarify the Rights of Crime Victim and Witnesses Regarding
Professional Investigator Communications”
Before the Joint Standing Committee on Criminal Justice and Public Safety
Public Hearing Date: March 17, 2025
Testimony in SUPPORT of LD 534

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 am representing the Maine Prosecutors Association today to testify in support of LD 534.

As many of you have heard me say before, nothing about the criminal legal system is victim centered or trauma informed. We actually hear from victims all the time on how they were further traumatized by the process. The Maine Prosecutors Association is committed to focus specifically on one bill a session that will make the criminal legal system a tad more bearable for a survivor. Last session the legislature passed, and the Governor signed into law, An Act to Establish an Exception to the Hearsay Rule for Forensic Interviews of a Protected Person that allows a child's forensic interview conducted at a Child Advocacy Center to be introduced into evidence. This trauma informed victim centered law has tremendously helped holding offenders accountable for their actions and leading to better victim safety outcomes. This session, it is this bill in front of you that can help make the criminal legal process a bit more victim centered and trauma informed.

Back when I was a new domestic violence prosecutor in York County I had a strangulation case. Defense counsel was in my office and we were going back and forth negotiating the outcome of the case. Defense counsel made a big deal about how the victim recanted to his professional investigator and actually played me the audio recording of the conversation. I was blown away. The victim had just arrived home and was walking from her car to her house holding loads of groceries. Without any prior warning, the man approached her and started to ask her questions. You could hear the professional investigator repeatedly asking her if the defendant caused her bodily injury under circumstances manifesting extreme indifference to the value of human life. That is part of the legal definition to prove strangulation. English was not her first language. As you can imagine, the victim eventually answered no.

This bill would require that professional investigators disclose to a victim or witness the following:

- A. The purpose of the investigation;
- B. The name of the professional investigator's client;
- C. The name of any defendant known to the professional investigator's client who will benefit from the professional investigator's efforts; and
- D. That the victim or witness is not required to communicate with the professional investigator.

That conversation would look like the following:

The purpose of this investigation is to understand what happened on January 1, 2024. I work for Attorney John Smith. Attorney John Smith is representing Joe Schmo. You are not required to speak with me today. Do you mind if I ask you some questions?

These requirements would carry over to advising a parent of a minor of this information and obtaining their consent before communicating with a minor.

This would be a small change for a professional investigator's practice, but a large change in having victims and witnesses correctly informed about who they are speaking with. This comes up a lot when a professional investigator is not clear on communicating who their client is, and intentionally or not-intentionally, victims believe they are communicating with someone associated with the District Attorney's Office. Many professional investigators that investigate on behalf of a criminal defense attorney are paid by the State through the Maine Commission on Public Defender Services (PDS) and it is not inaccurate for the professional investigator to represent they are contracted through the State to investigate the crime. However, the collateral consequence is that a victim thinks they are speaking to someone associated with the District Attorney's Office and may disclose safety plans that would otherwise be confidential.

Since this bill was drafted, it came to our attention that investigators hired by the Public Defender Offices are not required to be licensed professional investigators. It is the intent of this bill for investigators working for a Public Defender to also follow these requirements. It actually might be most important that this bill apply to them because they are State of Maine employees, meaning they can accurately tell a victim they are employed by the State to investigate this crime which leaves victims to think they are talking to someone associated with the prosecution of the crime, and their conduct is not reportable to the professional investigating licensing board.

This is the first step in rectifying a wrong that victims and witnesses have been dealing with for years. For these reasons, the Maine Prosecutors Association is in support of LD 534.