



AMERICAN CIVIL LIBERTIES UNION
Maine

TESTIMONY OF ALICIA REA, ESQ.
LD 717 – Ought Not to Pass

**An Act to Amend the Maine Criminal Code Governing Restitution to
Include the Costs of All Analyses of Suspected Illegal Drugs**

Joint Standing Committee on
Criminal Justice and Public Safety

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Senator Beebe-Center, Representative Hasenfus, and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Alicia Rea, and I am a policy fellow for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I urge you to oppose this bill.

Under the restitution chapter of Maine’s criminal code, a court can order someone convicted of a drug trafficking crime to reimburse the state for its drug analysis expenses as long as the court finds that the conduct underlying the conviction was motivated by profit.¹ If enacted, this bill would remove the requirement that there first be a drug trafficking conviction and a finding that the accused was motivated by profit before the court can charge the accused for the state’s drug analysis expenses. In other words, this bill would enable courts to charge anyone convicted of a crime where drugs are at issue—not just those found to have been motivated by profit and convicted of trafficking—for part of the costs of their own prosecution. Charging the accused for a portion of the state’s prosecution costs will further impoverish people who are already likely to be poor, without any clear rehabilitative benefit.

Inflicting a financial punishment on people who are convicted of crimes does not serve any of the restitution statute’s rehabilitative purposes.² On the contrary, years of study show that more punishment increases a person’s likelihood of future contact with the legal system.³ Adding economic

¹ 17-A M.R.S. §2002(3)(B).

² 17-A M.R.S. §2002 (describing part of the purpose of restitution statute as “to rehabilitate the offender”).

³ See, e.g., Motz, RT, Bames, JC, Caspi, A, et al., *Does contact with the justice system deter or promote future delinquency? Results from a longitudinal study of British adolescent twins*. *Criminology*. 2020; 58: 307– 335. <https://doi.org/10.1111/1745->



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hardship to an arrest and conviction will only increase people's chances of coming into future contact with the system, especially for people with substance use disorder.

Moreover, the Eighth Amendment to the United States Constitution provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."⁴ The second clause of that amendment, the Excessive Fines clause, is one of the most widely flouted provisions of our constitution.

In early 2020, Maine had more than twelve thousand outstanding warrants for "unpaid fines, unpaid restitution, unpaid court-appointed counsel fees, failure to appear for unpaid fine hearings, and any other failure to appear and pay other fees."⁵ Recognizing that it was immoral and potentially illegal to arrest people in the midst of a pandemic, simply because they were too poor to afford a fine, Maine's courts cancelled those warrants. The problem, however, was not given a lasting solution.

Our system of fines and fees, that imposes a set dollar amount without regard to a person's income, often reinforces a two-tiered system of justice. \$250 in restitution for a defendant who earns a six-figure income is a check dashed off quickly, money spent without much thought or likelihood of changing behavior. On the other hand, \$250 in restitution to a person who has children to feed and rent to pay can become a never-ending payment plan with the courts, leading to further arrest and jail time. Over time, our system inflicts vastly different punishments, penalizing poor defendants much more harshly for exactly the same offenses.

By removing important guardrails from our restitution statute, this bill will impose new burdens on already burdened defendants.

We urge you to vote ought not to pass.

9125.12236 (finding that "that contact with the justice system ... promotes delinquency").

⁴ U.S. Const. Amend. VIII.

⁵ Judy Harrison, *Maine courts vacate warrants for unpaid fines and fees*, BDN (Mar. 16, 2020), available at <https://bangordailynews.com/2020/03/16/news/state/maine-courts-vacate-warrants-for-unpaid-fines-and-fees/>.