



Administrative Office of the Courts

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Judicial Branch testimony neither for nor against LD 1189, An Act to Prohibit Arrest and Detention for Civil Violations and Require an Attorney for the State to Determine Whether to Charge a Class E Offense as a Civil Violation:

Senator Carney, Representative Kuhn, members of the Joint Standing Committee on Judiciary, my name is Julie Finn and I represent the Judicial Branch. I would like to present testimony neither for nor against LD 1189.

By way of background, each offense with which a person is charged has a unique sequence number assigned to it. This is how the Judicial Branch, the Department of Public Safety, and other law enforcement partners enter the data into their systems, and track case disposition/criminal history information. For any Class E crime that is going to have an accompanying civil violation "option," while still retaining the Title and Section numbers as the original Class E offense, an entirely new sequence number may need to not only be assigned but programmed for the appropriate offense to be recorded. Unless the effective date of this bill is delayed, this programming will have to be done in both MEJIS and Enterprise Justice (the Maine eCourts system), and integration will have to be done so that the State Bureau of Identification can recognize these new offenses. Our IT department is exploring other alternatives, and a fiscal note will be submitted regarding this effort.

Civil violations have fewer sentencing options than criminal offenses, and under this bill a fine is the only sentence authorized. We note that, unlike other civil violations in, for example, Title 29-A, license suspension would not be an authorized sentence.

If a person fails to appear on a civil violation, there will be a finding that the offense was committed, and a default sentence of a fine will be entered. Also, as there is no risk of jail in civil violations, defendants are not eligible for court-appointed counsel. In contrast, when someone fails to appear for a criminal offense, judgment cannot be entered by default; instead, a warrant may be issued to bring the person in.

While most Class E crimes receive a summons, in the instances where the defendant is arrested and there is a bail bond, the prosecutor would have to file a dismissal of that criminal case (because the bail bonds are entered into our case management system and given a docket number) so that the bail money could be returned and conditions removed from the METRO Switch. An ensuing filing as a civil violation would necessitate the opening of a new case because civil violations differ from criminal charges. It is the Judicial Branch's understanding that the prosecutors may not intend to use this discretionary process in cases where a person has been arrested to avoid this issue, and if that is correct, the proposed statute should specifically articulate this.

There are also instances where Class E crimes are charged alongside more serious offenses. If a Class E is lowered to a civil violation, that would mean there are two distinct cases open from the same event -- one with criminal charges, and a separate case to track for the civil violations. This could create confusion regarding counsel, court dates, and trials. If the prosecutors do not intend to use this discretionary process when other charges accompany the Class E/civil violation drop-down offense, the proposed statute should specifically articulate this.

Thank you for your time.