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*Testimony of Representative Sophie Warren Presenting*
## L.D. 1706, An Act Regarding Notification of Appointment of Legal Representation for Indigent Clients in Custody
*Before the Joint Standing Committee on Judiciary*

Good morning, Senator Carney, Representative Kuhn, and respected colleagues of the Joint Standing Committee on Judiciary. My name is Sophie Warren, and I represent House district 124. Thank you for the opportunity to present L.D. 1706, An Act Regarding Notification of Appointment of Legal Representation for Indigent Clients in Custody.

A defense attorney who is quite active in public defense here in Maine brought to my attention a minor technical issue in administrative delay between an order appointing counsel and the delay of that order being filed in the docket record of the case that is having serious impacts for indigent incarcerated defendants.

The intention of this bill is to ensure that any appointment of counsel for an indigent client in a criminal matter who is incarcerated at the time of the appointment is **docketed** by the Court within 24 hours of the Court appointment.

The only change here is ensuring the appointment is docketed in a timely manner. It will only implicate the cross over of defendants who are both deemed indigent by the court to be appointed counsel and who are presently incarcerated.

Presently, the Court will appoint counsel to an indigent defendant. In court on the day of appointment, the prosecutor on the case is in the courtroom, and either the defendant or a representative of the department of corrections will be, as well. That appointment is done in line with processes, timelines and availability that is a legitimate question of consideration by the Court and this committee, amongst many others.[1] This bill is simply about what happens when that appointment is made. As it stands today, that signed Order will then be given to Court staff and later filed ("docketed") by the Court. Without clear guidance establishing the need to put this order into the record in an efficient manner, there are unintended consequences for defense counsel and clients alike.

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[1] *Robbins v. State of Maine* (No. CV-22-54):
https://www.aclumaine.org/sites/default/files/aclu_initial_lawsuit_against_state_of_maine_1_march_2022.pdf; United States Constitution Amend. VI, Maine Constitution Art. 1, Sec. 6; M.R.U. Crim. P. 44(a)(1); 4 M.R.S. Sec. 1804(3)(A)(2023); Rule 44 - Right to and Assignment of Counsel:
https://www.courts.maine.gov/rules/text/mru_crim_p_plus_2017-5-3.pdf

The consequences come because while that the prosecutor and client know the name of the attorney assigned, but that counsel themselves may not know for a period of as long as 2 weeks (in at least once case I saw myself) until the court has *docketed* the Order Appointing Counsel.

This discrepancy between the signing of the Order and the recording of that order in the docket record has led to clients calling their defense attorney and saying, "Why haven't you contacted me? It's been two weeks since you were appointed." And the attorney has no record of appointment, because the Order appointing them has not been docketed in the official court record.

This has also led to prosecutors sending sensitive discovery materials[2] to an attorney who has no notice of appointment and may not have completed a conflict check to determine whether they can accept the appointment and provide fair counsel. More than anything, this is a consideration of the Sixth Amendment right to counsel,[3] but there are additional dynamics here that functionally puts defense counsel and incarcerated clients on the wrong foot starting out, doesn't allow defense counsel the same information afforded to the prosecution within the same period of time, and deprives the entire system of seeing that those who can be out on bail, without further and unnecessary financial and crowding burdens on our jails.

This is a small change, but an important one.

Not only is there a question of this delay raising a legitimate question of sixth amendment right to counsel,[4][5][6] the consequences are more dire for an incarcerated defendant. For an incarcerated client, this can be the difference between initiating a *de novo* bond hearing[7] to determine and negotiate the terms of bond and getting out of jail or initiating a competency evaluation if there is an underlying mental health crisis or condition. The reason a *de novo* bond hearing is an automated 24-hour process is there can be obligations of work, family, childcare, or medical needs that can necessitate the recognized urgency of adjudicating the terms of being let out of jail if the court determines they pose no immediate threat to society, etc.

Thank you for your time and consideration. I am happy to answer any questions that you have.

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[2] Protection of information subject to the following statute:
https://www.mainelegislature.org/legis/statutes/4/title4sec1806.html
[3] U.S.Const. amend. VI; Me. Const. Art. 1 sec. 6; M.R.U.Crim. P. 44(a)(I)).
[4] American Bar Association, Ten Principles of a Public Defense Delivery System:
https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/standards-and-policies/ten-principles-pub-def/.
[5] STANDING ORDER ON INITIAL ASSIGNMENT OF COUNSEL dated November 3, 2023,
https://www.courts.maine.gov/adminorders/so-ucd-initial-assignment-of-counsel.pdf.
[6] Rule 88 - Assignment of Counsel: https://www.courts.maine.gov/rules/text/mru_crim_p_plus_2017-5-3.pdf
[7] The language and terminology found in the statute on *de novo* determinations of bail (regarding the 24 hours timeline): https://legislature.maine.gov/statutes/15/title15sec1028.html.