



The Maine Coalition
to End Domestic Violence

101 Western Ave.
P.O. Box 5188
Augusta, ME 04332-5188
207.430.8334

Testimony of Andrea Mancuso

**Neither For Nor Against LD 1780: "An Act to Secure Under Authority of a Subpoena Pretrial
Statements from a Witness Other than the Defendant in a Criminal Proceeding"
Thursday, May 1, 2025**

Senator Carney, Representative Kuhn, and members of the Joint Standing Committee on Judiciary, I am writing on behalf of the Maine Coalition to End Domestic Violence (MCEDV)¹ to offer our support for the sponsor's offered amendment to LD 1780 to exclude domestic violence and sexual assault cases and to provide perspective as to why this amended language would be essential to have in place if the Committee were to move forward with the rest of the bill.

Without this amendment, this bill would be more appropriately titled "An Act to Permit the Deposition of Uncounseled, Unrepresented Victims of Domestic Violence to Coerce the Dismissal of Domestic Violence Cases in Maine's Criminal Courts." There are several reasons this would be the likely result in most cases.

The best data available has consistently determined that only about half of all victims of domestic violence will ever intersect with the criminal legal system as the crime victims they are. Crime victim needs and perspectives exist on a broad spectrum. Many do not see the criminal legal system as likely to be a safe and helpful response for them. For those that do experience the criminal legal system response as a crime victim, most victims find that it actually was not very helpful; and many report that they would hesitate before engaging with the criminal system response again.

Crime victims are not parties in criminal legal cases; they must rely on prosecutors, system based victim witness advocates, county corrections, bail commissioners, and judges to be appropriately responsive to their individual circumstances and needs. Oftentimes, one or more of these responses fails to sufficiently take their needs and perspective into account. Without the offered amendment, the process outlined in this bill would double down on that reality, causing more victims to question whether seeking help from law enforcement is the right way to address what's happening to them. They would be right to do so.

¹ MCEDV serves and supports a membership of Maine's eight regional domestic violence resource centers as well as two culturally specific service providers. Together, these programs served more than 12,000 victims of domestic violence in Maine last year.

In discussions about this proposed new process, it has been asserted that prosecutors are forcing the forward movement of domestic violence cases over the objections of crime victims, and that this process would allow defense attorneys to right that wrong. It may be true in some cases, that prosecution continues beyond when a crime victim wants it to. However, it is not true in many cases – even in cases where defense attorneys have a legitimate reason to believe it is. Our statutes allow victims of domestic violence to confidentially offer the prosecutor's office their perspective on their needs and what they'd like to see have happen with the case, specifically through system based victim witness advocates. As a result, there are cases where a crime victim may, in fact, say to a third party connected to a defendant (attorney, mother, common friend, etc.) that they don't want the defendant to be prosecuted. And yet, at the same time, they might be telling the system based victim witness advocate an entirely different thing. There are many reasons for this to happen, particularly where there are common children involved and/or where the parties' financial resources are tied together. In those cases, in particular, understanding the criminal legal system process will eventually end, victims are constantly engaging in an assessment of how whatever they might say or do will affect their long term safety and wellbeing. The process outlined in this bill would not be likely to address the inconsistent articulation of perspective by these crime victims. Instead, what it would do is force a victim to choose between articulating what they really want to have happen in a way that they've already assessed is not in their best interest, or refusing to cooperate and letting the case essentially dissolve as a result. Either way, that's not a result that policy makers should support.

Since the passage of the Violence Against Women Act in the 1990's, much has been written and developed about what we should expect of prosecutors in domestic violence cases. While their responses should be victim-centered and victim-informed, they should not always be victim driven. The state has an independent interest in these cases. Prosecuting these cases, even in the face of a victim who is not able to cooperate, utilizing evidence-based prosecution strategies, is sometimes the right thing to do.

Additionally, when domestic violence is charged in our criminal courts, it is rarely the only type of legal proceeding the victim and the defendant are going to be engaged in, especially when there are children involved. The frequency of collateral proceedings is unique to domestic violence cases. Frequently, the parties will also be involved in either or both a protection from abuse proceeding or a family matter, and sometimes also a child welfare proceeding or some level of other proceeding to address common property. In none of these types of proceedings is a crime victim entitled to legal representation or even legal consultation. In at least one of them,² the defendant is. Given that reality, not exempting

² Defendants in criminal cases will often also be represented by their criminal defense attorney in protection from abuse cases that are based, at least in part, on the same incident for which the defendant is charged. Approximately 10 years ago, the Maine Commission on Public Defense Services began paying criminal defense attorneys to do this civil court work on behalf of charged defendants.



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domestic violence cases from this compulsory process, would result in the defendant having an advantage in all of these proceedings. It would put the defendant in a situation where their state appointed and state paid for attorney has the ability to conduct a comprehensive deposition of the victim that the defendant can thereafter use, not only in the pending criminal matter, but also in collateral legal proceedings. On the other hand, the crime victim would be subject to this process without legal representation and without even having an opportunity to have obtained basic legal advice about whether it is in their best interest to participate, the potential consequences, their rights to decline to answer questions in such a deposition, the ability to seek a court order to limit the scope, etc.

If this process were to be enacted without excluding domestic violence cases, there is a likelihood that many victims of domestic violence will just determine that it is not worth putting themselves through yet another interview about their experience, this time with a clearly adversarial person, in a manner that could jeopardize their ability to see to their long term safety and wellbeing in collateral proceedings. This would result in domestic violence cases being dismissed when the cases would otherwise not have been dismissed, based solely on a manufactured procedural defect and not on the merit of the prosecution or the strength of the case.

MCEDV thanks Representative Sinclair for being open to hearing our concerns on the initial proposal and putting forward an amendment that addresses these concerns for the crime victims that we work with. If the Committee is going to move forward with creating this new process, we urge you to do so only with the amended language around excluded case types in place.

Thank you for the opportunity to participate in this important conversation.

Contact Information:

Andrea Mancuso, Public Policy Director

Ph: (207) 430-3569

Email: andrea@mcedv.org