

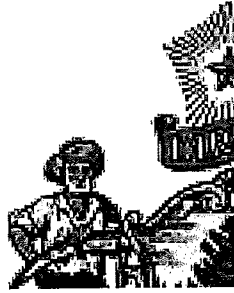
STATE OF MAINE

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MAINE PROSECUTORS ASSOCIATION SHIRA BURNS, EXECUTIVE DIRECTOR

“An Act to Secure Under Authority of a Subpoena Pretrial Statements from a Witness Other than the Defendant in a Criminal Proceeding”
Before the Joint Standing Committee on Judiciary
Public Hearing Date: May 1, 2025
Testimony in Opposition of LD 1780

Senator Carney, Representative Kuhn and members of the Joint Standing Committee on Judiciary. My name is Shira Burns and I represent the Maine Prosecutors Association. I am here testifying in opposition of LD 1780.

The Maine Prosecutors Association has advocated for and continues to advocate to improve court processes in a victim-centered, trauma-informed manner that still upholds defendants' constitutional rights. A victim-centered, trauma-informed approach prioritizes the needs and well-being of survivors of trauma, recognizing that their experience may impact their ability to participate in the justice system and their overall recovery. It involves understanding how trauma can affect individuals, especially in relation to the criminal justice process, and implement strategies to minimize re-traumatization and promote safety. Strategies to minimize re-traumatization and promote safety is exactly things this committee can do to have meaningful impact in the criminal justice system.

I want to make sure it is clear that everyone knows prosecutors represent the State of Maine, not the named victim or any witnesses associated in a criminal case. Prosecutors cannot give any legal advice to a victim or witness. Victims and witnesses have no legal representation in the criminal justice system unless they can afford an attorney themselves or are lucky enough to be one of the few that get legal representation from one of the civil legal service non-profits. The Judicial Branch has been very careful within the Maine Rules of Unified Criminal Procedure to limit what information can be sought when using a subpoena for a non-party to a case. Non-parties are everyone besides the Defendant and the State.

We encourage you to become familiar with Maine Rules of Unified Criminal Procedure 17 and 17A that addresses the subpoenaing of witnesses, production of materials and the safeguards put in place to oversee these processes. These processes are utilized quite regularly by defense counsel and, as you can imagine, involves much litigation especially around protected information defense seeks from a non-party. This includes requests to review a victim's phone including their text messages, their counseling/therapy records, and other inherit private information we all know deserve heightened scrutiny before giving someone access to that information, let alone the person that might have caused them harm. Currently, the Court has to make a determination that the party who is seeking this information has “sufficiently set forth the relevancy, admissibility, and specificity of the requested documents” before it even goes to hearing. M.R.U.C. P. 17-A.

Rule 15 also addresses the limited ways a deposition can be taken and the safeguards around that process. Lastly, it is important to note that there are no safeguards or procedures in this bill around minors who are victims or witnesses in a case.

For all these reasons, the Maine Prosecutors Association is in opposition to LD 1780.