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***Testimony in opposition to LD 1780, An Act to Secure Under Authority of a Subpoena
Pretrial Statements from a Witness Other than the Defendant in a Criminal Proceeding***

Senator Carney, Representative Kuhn, members of the Joint Standing Committee on the Judiciary, my name is Kate Bozeman and I am an Assistant Attorney General within the Criminal Division of the Office of the Attorney General. I am here on behalf of the Office of Attorney General to testify in opposition to LD 1780, *An Act to Secure Under Authority of a Subpoena Pretrial Statements from a Witness Other than the Defendant in a Criminal Proceeding*.

This bill is unnecessary to ensure that the defense has all relevant information to prepare for a criminal proceeding. The defendant already has a constitutional right to all witness and victim statements gathered in a criminal investigation—all officers' notes, narrative summaries, audio, video, body camera video, cell phone and digital communications, as well as any information that would raise questions about a witness's credibility. A defendant can conduct further interviews with witnesses and victims through an investigator, a practice that is routinely utilized. The defendant has no need to compel a victim or witness to endure an additional interrogation conducted and controlled by the defendant or defense counsel, outside of a courtroom setting.

The bill would infringe on individual rights. Currently, a witness or victim is not required to talk to anyone. Not to the police. Not to the prosecutor. Not to the defense. This bill would require the victim or witness to attend an interrogation conducted by defense counsel and/or the defendant, without any judge to rule on unfair questions and without any reasonable safeguards for the victim or witness. This bill gives them no choice in agreeing or declining to speak with defense counsel.

This bill would further victimize victims of crime. It is difficult enough for a person who has been victimized to testify in a public courtroom with both sides present and a judge to control the proceeding. Requiring victims to face their alleged abuser's counsel or abuser themselves alone, without their own representation, and without any supervision from the court, would be traumatic.

The bill would provide no protection for victims and witnesses. The defendant has a constitutional right to counsel at every stage of the proceeding, and the State must provide counsel if the defendant cannot afford to hire one. There is no similar right for victims or witnesses as they are not a party to the case. This leaves victims and witnesses without counsel to advise them on whether they have Fifth Amendment rights, whether they have certain privilege or privacy rights, or whether they have a right to terminate the interrogation because it "is being conducted in bad faith or in such a manner as to unreasonable annoy, embarrass or

oppress the person." Should a victim or witness assert this right on their own and a court later disagrees, this bill would bar them from testifying in all future court proceedings and essentially silence them for voicing that they feel attacked or embarrassed by a defendant's counsel.

This bill circumvents protections for sensitive information. M.R.Crim.P 17 and 17-A lay out specific procedures for providing a defendant with access to certain materials, like mental health or medical records of a victim. Through the 17-A procedure, a hospital or a therapist would routinely move to quash a subpoena served on them and it would be up to the court to determine if certain criteria were met that would allow privileged material to be turned over to the defendant. This bill would allow the defendant to demand those items from a victim directly, where they would not have the benefit of an attorney to counsel them on privileges that may protect those private records from disclosure. And again, if a victim or witness knows to assert those rights even without counsel and refuses to turn over requested documents, they could be barred from testifying in all future court proceedings.

In short, this bill makes unnecessary and problematic changes to processes already in place that guarantee defendants access to witness statements and information. It does so at the expense of a victim's or witness' individual rights, without fair process, and through a procedure that would ultimately undermine the factfinder's function of assessing evidence at trial and seeking the truth.

For all of these reasons, I would encourage you to vote ONTP on LD 1780, and I would be happy to answer any questions you may have.