



# Administrative Office of the Courts

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## **Judicial Branch testimony neither for nor against LD 1805, An Act to Establish a Post-conviction Review Process for Crimes Committed by Victims of Sex Trafficking and Sexual Exploitation:**

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 provide some testimony neither for nor against this bill.

The bill provides a new “post-conviction review process” for criminal convictions of victims of sex trafficking or sexual exploitation. While the Judicial Branch takes no position on the policy issues set forth in LD 1805, we offer the following comments regarding certain specific provisions.

First, it appears that although the bill borrows some definitions from the Post-Conviction Review process found in Title 15, chapter 305-A, it is actually very different procedurally and substantively. The traditional post-conviction review process derives from the constitutional right to seek habeas corpus relief. The process proposed has nothing to do with habeas corpus relief. We suggest that a different title would be helpful to avoid the inevitable confusion and to make clear that it will not be governed by any of the procedural rules applicable to Post-Conviction Review under chapter 305-A. *See* Rules 65 – 75A of the Maine Rules of Unified Criminal Procedure.

Second, we suggest that § 2402(2) of the statute proposed in the bill should be deleted. The authority of jurists from each of Maine’s courts to sit in other courts is already thoroughly addressed in 4 M.R.S. §§ 2-a, 120, and 157-C and should not be duplicated or limited in this statute.

Third, §2403(3) directs an individual jurist in each case to “determine which representative of the State must be served”, “how service of the motion is to be made”, to “enter an order in this regard” and to “direct the appropriate representative of the State to make all reasonable attempts to notify all victims in the underlying matter.” These are not judicial functions. Moreover, the next subsection directs that the prosecutorial office that represented the

State in the underlying matter would represent the State in the new proceeding, so it is unclear what the judge is supposed to determine. It would seem these are issues that should be contained in either procedural rules (how service is made) or statute (notice to victims).

Fourth, especially in light of recent disagreements as to who is responsible to pay appointed counsel in different kinds of cases, we ask that § 2403(5) specify whether it is the Judicial Branch or the Maine Commission on Public Defense Services that is responsible to pay counsel so that appropriate fiscal notes may be submitted.

Fifth, section 2403(6) purports to instruct the Judicial Branch when to permit remote testimony, something which is not within the Legislative power to determine. As we have testified extensively in response to LD 267 and 921, the decision when, either in an individual case or through a general rule, a court proceeding should be held remotely is a core function of the Judicial Branch and lies within the *exclusive* authority of the Judicial Branch.

Next, in new § 2404 regarding “relief,” the bill states that, if the petitioner’s burden of proof has been met, “the assigned judge or justice shall issue a written order reversing the judgment of conviction.” There are two issues raised by this passage. First, the proposed statute mandates that the judge “shall issue” an order. The role of the judge in any proceeding is to evaluate the evidence, apply the burden of proof, and rule accordingly using judicial discretion. We suggest that “may issue” would be more appropriate.

In addition, the proposed statute mandates reversal, rather than vacatur, of the judgment of conviction. Reversal of a judgment usually occurs when an error is made by the lower court and leads to further proceedings in the underlying criminal matter. Vacating a judgment, however, generally means that the judgment would no longer be in effect. It seems likely that vacating the judgment comports with the intent behind the bill.

Finally, by purporting to give a court the authority to relieve a person from a criminal conviction after it has become final for reasons other than those cognizable under habeas corpus review, we suggest the Legislature may want to consider whether it risks violating the separation of powers contained in Maine’s Constitution, which allocates to the Governor the exclusive power to “grant reprieves, commutations and pardons.” Me. Const. art. 5, § 11.

The Judicial Branch is working on assessing the fiscal impact of this bill. In order to do so, we must estimate the number of petitions that would be filed under this new chapter. In undergoing this analysis, it will be necessary to consider the fact that the pending legislation allows petitions to be filed “at any time after a final criminal judgment has been entered.”

Thank you for your consideration.