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**Testimony of Kelly O'Connor, on behalf of the Maine Coalition to End Domestic Violence  
In OPPOSITION to LD 449: "An Act to Authorize a Court to Conditionally Discharge Certain Criminal  
Defendants"**

**Before the Joint Standing Committee on Judiciary  
Monday, February 24, 2025**

Senator Carney, Representative Kuhn, and distinguished members of the Joint Standing Committee on Judiciary, I am writing on behalf of the Maine Coalition to End Domestic Violence (MCEDV)<sup>1</sup> in opposition to LD 449.

Maine case law suggests that the approach set out here is unconstitutional in that judicial officers cannot unilaterally exercise prosecutorial discretion. Others today will focus on that issue; MCEDV raises several issues relevant to crime victims for your consideration. Our criminal legal system has a responsibility to crime victims. That responsibility, at a minimum, includes addressing public safety and also seeking some level of accountability for those who have caused harm. This proposal fails on both accounts.

**Conditional Discharge Offers Another False Promise of Supervision and Accountability**

Our criminal legal system already offers those charged with crimes a mechanism to have the charges against them dismissed after having spent a period of time complying with certain conditions placed upon them while the charges are pending without re-offense. That mechanism is deferred disposition. Every prosecutorial district in the state uses this mechanism, including in cases involving domestic violence. The Catherine Cutler Institute did a study<sup>2</sup> on the use of deferred dispositions in 2023, which provides insight into how this mechanism is used in cases involving charges that constitute offenses against a person, this case type includes both domestic violence and sexual assault cases. The use of deferred disposition in these cases ranges from a low of 5% in District 5 (Penobscot and Piscataquis) to a high of 32% in District 6 (Sagadahoc, Lincoln, Knox, and

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<sup>1</sup> MCEDV represents a membership of the eight regional domestic violence resource centers across Maine as well as two culturally specific service providers. Last year, our programs provided services to more than 12,000 survivors of domestic abuse and violence and their children in our state.

<sup>2</sup> See "Prosecutorial Data in Maine: Themes and Trends from 2017-2021," available at: <https://bpb-us-w2.wpmucdn.com/wp sites.maine.edu/dist/2/115/files/2023/10/Prosecutorial-Data-2017-2021-1.pdf>.

Waldo).<sup>3</sup> The degree to which there is accountability to compliance with the deferred disposition requirements is mediocre, at best, because the District Attorneys' Offices are responsible for “supervision” of a person on deferred disposition, and there have never been meaningful resources allocated to these offices to carry that out. Frequently, non-compliance with a condition is not discovered until a defendant on a deferred disposition comes back to court for their resolution date. This bill proposes the state create yet another unfunded façade of supervision in the spirit of expediting case processing and resolution.

### **Victims Must Have a Right to Notification and to Be Heard**

This proposal makes no provision for a victim’s right to be notified of a defendant’s motion for a conditional discharge or their right to be heard on that motion. When a plea agreement is presented and/or when a defendant is being sentenced, victims have both the right to be notified and the right to be heard by the court – and to have their perspective considered as part of the court’s ultimate decision making. Where the court is making a disposition decision, and setting “appropriate” conditions for the conditional discharge period, and where the case will ultimately be dismissed with prejudice, it should be made clear in any statute that creates this new process that victims have a right to be timely notified and be heard by the court prior to the court making a decision to grant a motion for a conditional discharge.

### **Restitution Is Essential to Harm Repair**

Additionally, one harm to crime victims that the criminal legal system has a responsibility to address is economic loss. Without a conviction, though the court is permitted to order restitution in this process, as it is a condition available under Title 17-A, section 1807, paragraph 2, it is unclear that the mandate for the court to inquire as to the victim’s financial loss and to order restitution when appropriate (Title 17-A, section 2003) would attach to the court’s decision making in this process. We note that courts are often disinclined to order restitution. Only 6% of convicted cases ever have

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<sup>3</sup> Use of Deferred Disposition in Personal Offense Cases by District: 2017 to 2021 (from “Prosecutorial Data in Maine: Themes and Trends from 2017-2021”).

District	Personal Offense Cases Filed	Rate of Personal Offense Cases Using Deferred Disposition	Rate of Completed Deferred Cases that Led to Dismissal	Rate of Completed Deferred Cases that Led to a Conviction
1	3,326	26%	54%	46%
2	3,619	18%	52%	48%
3	5,323	24%	55%	45%
4	4,745	23%	69%	31%
5	3,172	5%	11%	89%
6	2,282	32%	34%	66%
7	1,302	15%	41%	59%
8	2,146	19%	27%	73%

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restitution ordered.<sup>4</sup> The proposal requires a conditional discharge to be for no longer than 6 months. Particularly for defendants who are low income, a six month conditional discharge limit would force the court to decide whether or not to ignore the economic harm to a crime victim because a defendant cannot reasonably make appropriate restitution within a six month time period, given their limited economic resources, or would cause the court to grant conditional discharge in cases where there is a legitimate claim for restitution only for those defendants who have an economic ability to pay within the six month time limit.

Nonetheless, given the importance of financial restitution to harm repair and accountability, we urge you to make inquiry as to financial loss of any crime victim a mandatory part of the court's process and also require the court to determine, as a factor in its decision making, whether the time period for conditional discharge and the defendant's ability to pay within that timeframe, allows for an appropriate order of restitution and therefore whether the conditional discharge is in the interests of justice.

We also note that any time a case is resolved by a means other than a conviction, there is a direct impact on the Victims Compensation Fund (VCF), both from the lack of the direct payment due by the convicted defendant (\$40 for a Class D or E crime or \$70 for a Class A, B or C crime) as well as the one to one match from the federal Crime Victims Fund that becomes due to the State of Maine as a result of such payment. Proportionately to however many cases are anticipated to be resolved through a conditional discharge process, an appropriation equivalent to the amount of VCF payments lost as a result should be added to any fiscal note attached to this proposal.

### **Implementation Should Be Monitored and Reported**

If the legislature is to enact such a process, we anticipate that it will, in practice, be deemed particularly appropriate in cases where there are well-represented, wealthy defendants. In domestic violence cases, we already observe that there are challenges in holding this population appropriately accountable. If a conditional discharge process is enacted, we encourage you to require an annual report from the Maine Judicial Branch that shares details about the defendants and cases for which conditional discharge is granted and those for which it is applied for and denied: including: most significant charge in the case, court location, gender, race, household income of the defendant, and whether the motion was granted over the objection of the state. Though the Judicial Branch does

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<sup>4</sup> Of the 36,099 criminal cases filed in 2023, 22,508 resulted in a conviction and only 1,392 of those sentencing orders involved a restitution order.

not currently collect some of this data (i.e., household income), it could be collected as part of the application.

Given the incredibly broad eligibility proposed for this proposed process, the lack of any additional guidance for the courts on factors to consider, the failure to consider how this would impact crime victims, and that it is unconstitutional as drafted, we encourage you to reject this proposal.

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