130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document **No. 1905**

H.P. 1412 House of Representatives, January 5, 2022

An Act To Facilitate Communication between Prosecutors and Unrepresented Defendants While Protecting the Rights of Those Defendants

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Reported by Representative HARNETT of Gardiner for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

ROBERT B. HUNT
Clerk

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 15 MRSA §815, as enacted by PL 2021, c. 480, §1, is amended to read:

§815. Communication between prosecutor and unrepresented defendant <u>in criminal prosecutions</u>

1. Requirements for communication. To ensure that all waivers of the right to counsel are made knowingly, voluntarily and intelligently, a prosecutor may not communicate with an unrepresented defendant <u>concerning the facts, circumstances, merits or disposition of a pending criminal charge against the defendant</u> unless:

A. The defendant has been informed <u>by a judicial officer</u> of the defendant's right to <u>counsel, including</u> court-appointed counsel <u>if the defendant is indigent</u>;

B. The court has provided to the defendant a statement of:

(1) The substance of the charges against the defendant;

(2) The defendant's right to retain counsel, to request the assignment of counsel and to be allowed a reasonable time and opportunity to consult counsel before entering a plea;

(3) The defendant's right to remain silent and that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant;

(4) The maximum possible sentence and any applicable mandatory minimum sentence; and

(5) The defendant's right to trial by jury; and

C. The defendant has ~~executed a written waiver of~~ <u>waived</u> the right to counsel ~~in each prosecution~~ <u>pursuant to rules adopted by the Supreme Judicial Court</u>.

2. Exception. Notwithstanding subsection 1, a prosecutor may communicate with an unrepresented defendant ~~who has not executed a written waiver of the right to counsel to offer the defendant an opportunity to participate in an established precharge diversion program the successful completion of which results in the prosecutor not prosecuting the charge or charges against the defendant.~~ <u>to:</u>

<u>A. Offer the defendant an opportunity to participate in an established precharge diversion program, the successful completion of which would result in the prosecutor not prosecuting the charge or charges against the defendant; or</u>

<u>B. Notify the defendant that a pending criminal matter is being dismissed.</u>

<u>**3. Application.** This section does not apply to:</u>

<u>A. The obligation of the State to provide discovery or other information pursuant to court order, pursuant to rules adopted by the Supreme Judicial Court or as otherwise required by the Constitution of Maine or the United States Constitution; or</u>

<u>B. Notice by the prosecutor to a person that no charge is being filed.</u>

SUMMARY

This bill is submitted by the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2. The bill makes technical changes to the statute enacted in Public Law 2021, chapter 480 to facilitate implementation of the law while continuing to protect a defendant's right to counsel.