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TESTIMONY OF CAROL GARVAN, ESQ.

Ought to Pass

LD 1771 – An Act Regarding Speedy Trials

JOINT STANDING COMMITTEE ON JUDICIARY

May 10, 2023

Senator Carney, Representative Moonen and members of the Joint Standing Committee on Judiciary, greetings. My name is Carol Garvan, and I am Legal Director for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions through advocacy, education, and litigation. On behalf of our members, we urge you to support LD 1771.

If passed, this legislation would do the following: (1) establish a clear baseline for the timing of criminal trials; (2) recognize that, in some cases, there are reasonable excuses for delay in the commencement of criminal trials beyond the baseline; and (3) provide clear remedies for addressing delays caused by unreasonable excuses.

In our legal system, people are presumed innocent, and the burden is on the government to prove guilt beyond a reasonable doubt. The government is not supposed to be allowed to coerce people into confessing or pleading guilty. The Maine and U.S. Constitutions guarantee a fair process to every person accused of crimes.

A fair process includes a "speedy and public trial" —that's the phrase in the Sixth Amendment to the U.S. Constitution. Article One, section 6 of the Maine Constitution similarly guarantees the

right "to have a speedy, public and impartial trial." But today, in Maine, people are in some cases waiting years for their day in court: that's years before people have a chance to defend their innocence, and years before victims of crimes can see that justice is being done. When criminal trials are unreasonably delayed, everyone loses.

Right now, Maine courts are bogged down with historic backlogs, and people who have been accused of crimes but who are still entitled to the presumption of innocence are paying the price. It is in everyone's interest—the defendants, the prosecutors, victims, and judges—to have clear timelines for when defendants must be brought to trial.

When the government makes the decision to charge a person with a crime, it sets the criminal process in motion, and we all have a responsibility to make sure that this process is fair. Maine is one of only nine states that does not have any clear enforceable timeline for bringing a person to trial. And, not coincidentally, Maine has a backlog of well over 20,000 criminal cases. Maine should join the 41 other states, in adopting a speedy trial law with specific timelines to ensure that the criminal process is fair and efficient.

Forcing people to wait years for their day in court upends their lives. People in jail awaiting trial are separated from their families, they are unable to earn a living, and they are often cut off from necessary medical and mental health care. No person should be separated from their family and community simply because the state cannot carry out its basic responsibilities in a timely manner.

In a recent decision, *Winchester v. State of Maine*,[1] the Law Court recognized that establishing "bright line" speedy trial rules was something the Legislature could and should do. The Court first observed that the right to a speedy trial aims to prevent three distinct forms of harm: "(1) undue and oppressive incarceration prior to trial; (2) anxiety and concern accompanying public

[1] 2023 ME 23.

accusation; and (3) impairment of the accused's ability to mount a defense."[2] To prevent these harms, the Law Court looked to four factors related to the delay of a criminal trial: the length of the delay; the reasons for the delay; the assertion of the right by the accused; and the prejudicial effect of the delay.[3] But, the Law Court was limited in *Winchester* by its role as the interpreter of the constitution, which rarely contains "bright line rules." In contrast, the Legislature can and should enact specific enforceable standards on speedy trial, just as 41 other state legislatures have done. As the Law Court noted in *Winchester*, "While bright lines can be helpful, they are more appropriately set by legislatures, not courts. . . . [W]e agree that specificity can be beneficial when set by the legislature."[4]

LD 1771 aims to prevent the harms identified by the Law Court by incorporating the same set of concerns that animate the constitutional analysis, while also providing the "bright line" protection that is both appropriate and necessary.

Part one of this bill establishes a clear default rule: when an individual is locked up awaiting trial for at least 30 days, they must be brought to trial within 180 days if they are charged with murder or a Class A, B, or C offense; or within 45 days if they are charged with a Class D or E offense. Establishing these rules ahead of time ensures that prosecutors, and the courts, are aware of the timing for each defendant.

Part two of the bill establishes the timeline for individuals who have not been locked up awaiting trial. For people in this situation (who have an important, though diminished, need for speed), a trial must commence within 270 days for people charged with murder or a Class A, B, or C offense; or within 60 days for a Class D or E offense.

These timelines are well within the range set by other state speedy trial acts. This bill requires trial within six to nine months for felonies. Six months is the single most common deadline set

[2] *Winchester*, paragraph 30.
[3] *Winchester*, paragraphs 26, 31.
[4] *Winchester*, paragraph 35, 39.

by other states,[5] and virtually all states' deadlines fall within 2-12 months. And this bill's timelines are aligned with those set by other states comparable in population to Maine: for example, sew Hampshire requires trial within four months for defendants in custody and six to nine months for defendants not in custody; and Hawaii requires trial within six months for all offenses.

Part three of the bill recognizes that no two criminal cases are exactly alike, and adjusts these timelines to take account of these differences. It excludes from the "speedy trial" clock any delay that is attributable to the defendant's actions, such as asking for a continuance or taking an interlocutory appeal. In addition, it excludes time spent on transfer processing, transportation, and medical examinations, as well as time that the court spends (up to 30 days) taking matters under advisement. Finally, the bill excludes time that elapses when the state defers prosecution, delays resulting from a defendant's incompetence to stand trial, and reasonable delays involving co-defendants.

Part four ensures that a mistrial does not result in unjustified delay in re-trial, and part five ensures that prosecutors are not able to dismiss and then refile identical charges in order to re-start the clock. Part six recognizes that the right to a speedy trial belongs to the person accused, and (like other constitutional rights) it may be validly waived if the individual is aware of the effect of waiver.

As the Supreme Court recognized more than 200 years ago, every right must have a remedy,[6] and part seven provides that remedy here: if a trial does not commence within the time

[5] Based on our review, the following 13 states require trial of felonies within 6 months (180 days): Colorado, Hawaii, Idaho, Indiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, South Dakota, and Wyoming. Another 15 states require trial within even shorter timeframes: Alaska (120 days); Arizona (150-180 days); California (60 days); Florida (175 days); Illinois (120-160 days); Kansas (150-180 days); Minnesota (60-120 days); Nevada (60 days); New Hampshire (4-9 months); North Dakota (90 days post-demand); Oregon (90 days post-demand); Vermont (60 days post-demand); Virginia (5 months); Washington (60-90 days); and Wisconsin (90 days post-demand).

[6] "It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress." *Marbury v. Madison*, 5 U.S. 137, 147 (1803).

established by statute, the case shall be dismissed with prejudice. [7] This is the remedy already required for a violation of the constitutional right to speedy trial. Failure to follow the rules must result in consequences.[8]Without an effective enforcement mechanism, it is unlikely that the state will find the motivation to ensure that criminal matters are resolved in a timely manner; if it could, it would have already.

For these reasons, we urge you to vote ought to pass LD 1771.

[7] M.R.Crim. P. 48(b).

[8] *See Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) ("Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime.")