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TESTIMONY OF CAROL GARVAN, ESQ.

Ought to Pass

LD 340 – An Act Regarding Speedy Trials

JOINT STANDING COMMITTEE ON JUDICIARY

March 3, 2025

Senator Carney, Representative Moonen and members of the Joint Standing Committee on Judiciary, good afternoon. 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 340.

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, those charged with crimes are presumed innocent, and the burden is on the government to prove guilt beyond a reasonable doubt. The government is not allowed to coerce people into pleading guilty nor are they allowed to trick the accused into confessions. 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"—this is 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." Currently in Maine, people are waiting years for their day in court: 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—for there to be clear timelines and expectations of timeliness with a mechanism for enforcement of this right.

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 seven states that does not have a clear and 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 43 other states, and the federal government, 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*, the Law Court observed that the right to a speedy trial is particularly concerned with preventing three distinct forms of harm: "(1) undue and oppressive incarceration prior to trial; (2) anxiety and concern accompanying public accusation; and (3) impairment of the accused's ability to mount a defense."[1] To prevent these harms, the Law Court looked to four specific 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.[2] But, the Law Court was limited in *Winchester* by its role as the interpreter of the constitution, which rarely contains "bright line rules."[3] In contrast, the Legislature is the appropriate body to enact specific enforceable standards. As the Law Court noted in Winchester, "we agree that specificity can be beneficial when set by the legislature."[4]

[1] *Winchester v. State*, 2023 ME 23, ¶ 30, 291 A.3d 707.
[2] *Id.* at ¶ 13.
[3] *Id.* at ¶ 35.
[4] *Id.* at ¶ 39.

LD 340 aims to prevent the harms identified by the Law Court. This bill incorporates the same concerns that animate the constitutional analysis, while also providing the "bright line" protection that is both appropriate and necessary. Even with the "bright line" protection, the rights outlined allow for judicial oversight and the discretion to dismiss charges with or without prejudice when finding an unreasonable delay in prosecution has occurred.

Subsections 1, 2, and 3 of this bill establish a set of clear default rules, aimed at reducing trial deadlines for Class B, Class C, Class D, and Class E crimes. Beginning January 1, 2027, defendants charged with murder or Class A crimes must be brought to trial within 24 months of arraignment; defendants charged with Class B or Class C crimes must be brought to trial within 15 months of arraignment; defendants charged with Class D or E crimes must be brought to trial within 12 months of arraignment. The timelines change January 1, 2029 with defendants charged with Class B or Class C crimes needing to be brought to trial within 12 months of arraignment and defendants charged with Class D or Class E crimes to be brought to trial within 9 months of arraignment. Finally, beginning January 1, 2031, the timelines change to defendants charged with Class B or Class C crimes needing to be brought to trial within 9 months of arraignment and defendants charged with Class D or Class E crimes to be brought to trial within 6 months of arraignment. Having these rules established ahead of time ensures that the prosecutors, and the courts, are aware of the timing for each defendant. The clock will start running and all parties will be on notice of the consequences for unjustified delay.

These timelines are well within the range set by other state speedy trial acts. This bill requires trial within six to twenty-four months for felonies. Six months is the single most common deadline set 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, New Hampshire requires trial within four months for defendants in custody and six to

[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).

nine months for defendants not in custody; and Hawaii requires trial within six months for all offenses.

Subsection 4 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, this section of 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.

Subsection 5 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. Section 1493 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 Section 1495 provides that remedy here: if a trial does not commence within the time established by statute, the defendant may petition for the case to be dismissed with or without prejudice. The court may also, on its own accord, raise the issue of noncompliance by the State. This is the remedy already required for a violation of the constitutional right to speedy trial. In addition to preserving judicial discretion in determining the remedy available to the defendant, victims retain their voice in the process.

[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).

Failure to follow the rules must result in consequences.[7] 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 the state could fulfill this requirement, it would have already done so.

For these reasons, we urge you to vote that LD 340 ought to pass.

[7] *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.")