

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

—
H.P. 1412 - L.D. 1905

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

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 in criminal prosecutions

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 concerning the facts, circumstances, merits or disposition of a pending criminal charge against the defendant unless:

A. The defendant has been informed by the court of the defendant's right to counsel, including court-appointed counsel if the defendant is indigent;

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 in court a written waiver of the right to counsel in each prosecution.

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. to:~~

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

B. Notify the defendant that a pending criminal matter is being dismissed.

3. Application. This section does not apply to:

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

B. Notice by the prosecutor to a person that no charge is being filed.