

§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; [PL 2021, c. 668, §1 (AMD).]
- 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 [PL 2021, c. 480, §1 (NEW).]
- C. [PL 2023, c. 340, §1 (RP).]

D. Either the defendant initiates the communication or the communication takes place at a dispositional conference and is required by Rule 18(b) of the Maine Rules of Unified Criminal Procedure. [PL 2023, c. 340, §2 (NEW).]

[PL 2023, c. 340, §§1, 2 (AMD).]

2. Exception. Notwithstanding subsection 1, a prosecutor may communicate with an unrepresented defendant at any time to:

- A. Offer the defendant an opportunity to participate in a diversion program or explain steps that the defendant can take, including obtaining reinstatement of the defendant's driver's license or registration or engaging in a certain amount and type of community service, the successful completion of which would result in the prosecutor not prosecuting the charge or charges against the defendant or recommending a dismissal of or filing of the charge or charges. A defendant's failure to successfully complete a diversion program or to successfully undertake any other steps that the prosecutor informed the defendant of under this subsection may not form the basis for imposing any term of imprisonment, suspended or unsuspended, on that defendant if that defendant is later convicted of the charge or charges that were the subject of the discussion; [PL 2023, c. 340, §3 (AMD).]
- B. Notify the defendant that a pending criminal matter is being dismissed; [PL 2023, c. 340, §3 (AMD).]
- C. Notify the defendant in writing of a plea offer; or [PL 2023, c. 340, §3 (NEW).]
- D. Request the defendant's position on a motion to continue or a motion to correct a typographical error in a document filed with the court. [PL 2023, c. 340, §3 (NEW).]

[PL 2023, c. 340, §3 (AMD).]

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 [PL 2021, c. 668, §1 (NEW).]

B. Notice by the prosecutor to a person that no charge is being filed. [PL 2021, c. 668, §1 (NEW).]
[PL 2021, c. 668, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 480, §1 (NEW). PL 2021, c. 668, §1 (AMD). PL 2023, c. 340, §§1-3 (AMD).

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