



Maine Municipal Association

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Testimony of the Maine Municipal Association

In Opposition to

LD 748- *An Act to Strengthen the Due Process Rights of Persons in Law Enforcement Custody*

March 6, 2023

Sen. Carney, Rep. Moonen and distinguished members of the Judiciary Committee, my name is Rebecca Graham, and I am testifying in opposition to LD 748, *An Act to Strengthen the Due Process Rights of Persons in Law Enforcement Custody*, as drafted on behalf of the Maine Municipal Association, which represents the interests of municipal government before the Legislature. The positions of the Association are established by our 70 member Legislative Policy Committee (LPC), who are elected by the councils and selectboards of municipalities in each of Maine's 35 Senate districts.

Municipal officials support Maine's civil rights acts and due process rights for all individuals, including municipal employees. As drafted, this bill seems to insert portions of the Miranda decision for simply interacting with an individual whether they are a complainant, witness or bystander. Miranda warnings inform individuals of their rights under constitutional law, ability to request council, and remain silent when questioned about elements of a crime when they are under arrest for a suspected violation. For evidence received when under arrest to be usable in court proceedings, frequently, but not always, is evaluated in balance with the facts of a case as to whether or not an individual has received notification of their rights. Depending on the nature of the disclosure, evidence received without notification can be suppressed from any subsequent criminal proceedings. Spontaneous disclosures can be admissible as evidence and also trigger the need for a Miranda warning. For this reason, courts consider the notification an important guard against possible violations, not in and of itself a right, or a full disclosure of possible rights the suspect may possess.

The trigger for an individual to be made aware of their due process rights is when they are the subject of a criminal investigation, questioned or interrogated regarding that criminal investigation, and the individual who is going to be charged in relationship to that criminal act. Failure to make the individual aware of their due process rights is evaluated by the court and have been consistently acknowledge by the courts as prophylactic in nature and weighed against legal cost-benefit analysis to define their scope within each case. While notice of rights is constitutionally based procedure, the court consistently maintains they are a set of rules to designed to protect an individual's right not an explanation of the meaning of an individual's constitutional rights. The courts are the best arbiters of when rights have been violated, and better able to examine the individual facts related to case. Because of this it is standard practice, in Maine as well as federal law, for municipal police to always provide the warning upon arrest.

Municipalities play an important role in the scope of liability for the behavior of municipal police officers. Municipalities have a relationship of control, and responsibility for tortious acts by all public safety officials in their employment, including law enforcement. The drafted language seems to pivot that responsibility onto the individual officer for doing what can be the responsibility of municipalities to direct, train, and provide appropriate policy guidelines to the employee. The provision of “equitable relief against the law enforcement officer” places the potential for undo harm on a law enforcement employee for municipal leadership training and discipline responsibilities and will make it hard to hire for such roles communities are already struggling to fill.

Additionally, some of the language in the bill makes that removal of vicarious liability and shift to individual liability even more harmful. For instance, “temporary detention” as included in the bill, can be broadly interpreted, is subjective to the individual’s feeling as established in case law, and can be applied to individuals that would not be subject to criminal proceedings. This is exactly why the court is the best arbiter of the application of Miranda warnings because the facts of the case are inseparable from the notification necessity and the detention of the individual.

Individuals who are temporarily detained can be detained for their own safety, public safety, or to collect evidence for an ongoing investigation for which the individual subject is not a party to beyond witness. These individuals do not have any rights associated with federal and state Miranda procedures because they are not subject to a criminal arrest. They have no right to council because they have committed no crime. Temporarily detained individuals can be complainants, a passerby, a passenger in an accident who may be placed in a police vehicle to remove them from harm from at an incident scene or a variety of daily necessary duties asked of municipal police, including evacuation from a public building to evaluate a perceived threat.

An individual in the midst of a mental health crisis can be placed in police custody temporarily until they can be taken to a medical facility. These are not individuals who have committed any crime, but detention is a reality for their own safety and done so at the request of their medical care team to move from one facility to another when they pose a high risk of physical harm to their care takers. They have no rights to council for that purpose, and such appeal rights for that continued detention are granted by the court who directed the order and the hospital in relationship to a provider’s determination for such involuntary commitment. In this case, the police are acting on request of a court approved medical order. The application of the language in the draft of the bill does not distinguish between all of the non-criminal detention needs for an officer to effect public safety.

If the committee choses to move forward with this bill, the language around custody and temporary detention should be removed or clarified to reflect only when such action is necessary for an individual is a suspect in a criminal investigation and the court of jurisdiction evaluating that case deems such notification was necessary based on the facts of the case, and affirmatively determines there was a failure to do so. Additionally, the language around equitable relief against an individual officer should be changed to reflect agency or governmental agency in direct control of the employee, which is the way the rest of this statute is applied.

However, since this is already well enshrined practice, protected in federal and state law and incorporated into law enforcement certification and standard operating practices of all agencies, municipal officials see no reason for the legislation.

Possible replacement language:

A person who was placed under arrest by a law enforcement officer, and later affirmatively determined by a court with jurisdiction for that case that their due process rights were violated because the individual was not warned by the law enforcement officer of the person's privilege against self-incrimination and the person's right to the assistance of legal counsel may institute and prosecute in the person's name and on the person's behalf a civil action for legal or equitable relief against the employing agency of that law enforcement officer for failure to provide such warnings.