



Maine County Commissioners Association

4 Gabriel Drive, Suite 2 Augusta, ME 04330, 207-623-4697
www.mainecounties.org

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

March 8, 2023

Senator Carney, Representative Moonen, and Members of the Joint Standing Committee on the Judiciary, my name is Stephen Gorden and in addition to serving as a member of the board of commissioners for Cumberland County, I am writing today in my role as chair of the legislative policy committee of the Maine County Commissioners Association. We appreciate the opportunity to provide testimony to the Committee in opposition to LD 748.

About MCCA. Briefly, the Maine County Commissioners Association was established in 1890 to assist Maine's county government in providing vital services to Maine citizens in a responsive, efficient, and credible manner. The Association is based in Augusta, represents all of Maine's 16 counties, and is governed by a board with representation from each participating county.

About LD 748. This bill amends the Maine Civil Rights Act to provide that a person who is placed under arrest, in custody, under interrogation, or temporarily detained by a law enforcement officer and who is 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 file a lawsuit against such law enforcement officer in the officer's individual capacity for failure to provide such warnings. If adopted, this legislation would limit the protection such officers would otherwise have under the Maine Tort Claims from personal liability related to their employment.

The apparent purpose of the bill is to remove liability protections for law enforcement officers who do not provide several of the elements of a "Miranda Warning." The bill removes such liability protection regardless of whether the officer's conduct was intentional or accidental.

Under current law, a government employee is protected from most tort liability for their conduct in the course of employment. This protection is also referred to as "qualified immunity." However, where a government employee engages in conduct that is "intended" to violate a person's protected rights, that conduct is not protected by the "qualified" immunity doctrine. *Fowles v. Sterns*, 886 F.Supp. 894 (D. Me. 1995). Rather, qualified immunity is limited to instances where a government employee, including a law enforcement officer, engages in conduct that is part of their job but where someone is injured based on conduct that falls short of "intentional" conduct. Negligent or simply accidental conduct by government employees is protected under the qualified immunity doctrine. *Hamlin v. Kennebec County Sheriffs Dept.*, 720 F.Supp. 804 (D. Me. 1990).

The jobs of law enforcement officers are difficult ones, and hiring and retaining qualified people to fill them has become very challenging, particularly for rural counties and communities. Law enforcement officers work under challenging and nuanced circumstances, often with their lives at risk, and the pay they receive is modest compared to many other professions. If LD 748 were to pass, this difficult situation of recruiting qualified law enforcement officers would be further exacerbated as such individuals would now face exposure to lawsuits for accidents or unintentional conduct related to Miranda Warnings that could cause financial and other stress to themselves and their families.

Comments of MCCA re LD 748

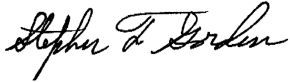
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The bottom line is that the current doctrine of qualified immunity provides sufficient protection to the public in circumstances where a law enforcement officer intentionally fails to provide a Miranda Warning where one is required. This bill, however, goes too far by making officers personally liable in instances where their conduct is accidental.

Conclusion. We appreciate the opportunity to provide testimony in opposition to this bill, and if you have questions or need additional information, please do not hesitate to let us know.

Respectfully submitted,



Stephen Gorden

Chair, Legislative Policy Committee

cc: Commissioner Richard Dutremble, President, MCCA
James I. Cohen, Verrill Dana, LLP, MCCA Legislative Counsel