



MAINE PRESS ASSOCIATION

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Sen. Beebe, Rep. Hasenfus, members of the Joint Standing Committee on Criminal Justice and Public Safety, my name is Judith Meyer. I offer testimony on behalf of the Maine Press Association neither for nor against LD 1607, An Act to Require Law Enforcement Agencies to Adopt Written Policies Regarding Compliance with Certain Constitutional Obligations Related to Disclosure of Evidence.

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The Maine Press Association has been part of ongoing discussions as a member of the Right to Know Advisory Committee regarding confidentiality, access to and retention of public employee disciplinary records. Many disciplinary records for law enforcement employees contain Brady-Giglio material, which carry with them constitutional obligations to provide access to these records.

By way of background, the Right to Know Advisory Committee has been tasked for a number of years with considering issues around public access to disciplinary records. Just last session – at the recommendation of RTK – the Legislature aligned public access and wording of final disciplinary records at the municipal, county and state levels to require that all final written disciplinary decisions become public after the completed decision imposes discipline. The decision must state the conduct “or other facts on the basis of which disciplinary action is imposed and the conclusions of the acting authority as to the reasons for that action” so the public understands the behavior *and* the consequence. That would include all Brady-Giglio disclosures that defendants are entitled to access and that prosecuting agencies are required to provide.

Last summer, at the request of Judiciary, a subcommittee of the Right to Know Advisory Committee, which I chaired, considered whether Maine should adopt a tiered system of access to employee disciplinary records. After hearing from law enforcement, municipalities, school superintendents and human resources professionals, that subcommittee came forward with a recommendation that such a system could be considered, but considered very carefully to ensure that Brady-Giglio material does not fall into a tier where records would become confidential. This was a particular concern for the RTK representative of the Attorney General's Office who made it clear that any move to make certain disciplinary records confidential would clash against prosecutors' constitutional disclosures mandate under Brady-Giglio.

Early this month, Judiciary considered LD 1484, which would have set a tier for public access to final disciplinary decisions at the point where discipline had a financial impact on the employee through demotion, suspension without pay and/or termination. So, any discipline that would

negatively impact pay would remain accessible, but discipline that did not have a financial impact would become confidential.

Judiciary voted that bill ONTP with the recommendation that it go back to Right to Know for further work based on a number of issues, including the need to ensure continued access to Brady-Giglio material contained in disciplinary records – no matter of financial impact on an employee.

Right to Know has also asked the Maine State Archives to convene a working group to look at public access to disciplinary records. That group has been formed and is scheduled to meet in June, with instructions to bring its findings and possible recommendations back to Right to Know.

The Maine Press Association brings your attention to this continuing work in the coming months, work that will consider Brady-Giglio obligations, as you consider the bill before you. We ask that you consider drawing the Right to Know Advisory Committee into any consideration to adopt written policies regarding procedures to comply with Brady-Giglio as those policies may touch on ensuring continuing access to mandated disclosures contained in final disciplinary records.

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The **Maine Press Association**, founded in 1864, is one of the oldest professional news organizations in the nation. Our goals, as spelled out in our charter and by-laws are: To promote and foster high ethical standards and the best interests of the newspapers, journalists, and media organizations of the state of Maine that constitute its membership; to encourage improved business and editorial practices and better media environment in the state; and to improve the conditions of journalism and journalists by promoting and protecting the principles of freedom of speech and of the press and the public's right to know.