

TESTIMONY OF MICHAEL KEBEDE, ESQ.

LD 748 – Ought To Pass

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

Joint Standing Committee on Judiciary

March 8, 2023

Senator Carney, Representative Moonen and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Michael Kebede, and I am Policy Counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I urge you to support LD 748, legislation that would strengthen the constitutional rights of people in state custody.

You have the right to remain silent. Anything you say can and may be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be appointed to you by a court of law.

We have all heard these words countless times. You all know that they come from the 1966 Supreme Court case *Miranda v. Arizona*, 384 US 436 (1966), where the Court overturned the conviction of Ernesto Miranda because the police obtained his confession without informing him of his Fifth Amendment right to remain silent and Sixth Amendment right to counsel.

In criminal legal practice today, statements that a person in custody makes during a police interrogation are admissible against that person at trial only if police told the person of the right to remain silent and the right to speak with an attorney before the interrogation started, and the rights were either exercised or waived in a knowing, voluntary, and intelligent manner. In other words, the remedy for violations of your Fifth and Sixth Amendment rights is that a judge might exclude things you said from your criminal trial. This bill would add one more remedy: civil liability for officers who fail to honor these constitutional rights.

If enacted, this bill would allow people whose Fifth and Sixth Amendment rights were violated to sue the violating police officers in civil court for legal or equitable relief. This is an especially important protection for Maine to enshrine, since the

Supreme Court has recently ruled that law enforcement cannot be held liable under federal civil rights law for violating our Miranda rights. *See Vega v. Tekoh*, 142 S.Ct. 2095, 2099 (U.S., 2022) (ruling that a Miranda violation does not constitute the deprivation of a right secured by the Constitution that is enforceable under § 1983).

Enacting this bill will make law enforcement think twice before dishonoring our constitutional rights. Indeed, enacting this bill would continue the longstanding trend of Maine providing stronger constitutional protections than the federal government. *See, e.g., State v. Sklar*, 317 A.2d 160, 171 (Me. 1974) (construing right-to-jury-trial guarantee in section 6 of the Maine Constitution to apply to all criminal prosecutions, even though federal jury-trial right extended only to serious or non-petty crimes); *State v. Fleming*, 2020 ME 120, n. 9, 239 A.3d 648 (“To the extent that the federal counterparts to Maine’s requirement of an impartial jury, found in art. I, § 6 of the Maine Constitution, are deemed not to impose the inquiry we mandate today, we conclude that the Maine Constitution demands more.”).

We urge you to keep Maine true to its motto, *dirigo*, and vote *ought to pass*.