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Michael J. Sauschuck
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STATE OF MAINE
Department of Public Safety
MAINE STATE POLICE

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Testimony of Lieutenant Michael Johnston
Maine State Police

In Opposition of (748)

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

Sponsored by Senator Hickman
Judiciary Committee

Senator Carney, Representative Moonen and other distinguished members of the joint standing committee on Judiciary. My name is Lieutenant Michael Johnston and I am here to represent the Maine State Police and the Maine Department of Public Safety to testify in opposition of LD 748, "An Act to Strengthen the Due Process Rights of Persons in Law Enforcement Custody".

Based on our understanding this bill is in response to a 2022 United State Supreme Court Decision, *Vega vs. Tekoh (2022)* which held in a 6-3 majority opinion that officers who fail to administer *Miranda* warnings as required by law, cannot be civilly sued in a federal lawsuit under Section 1983. This ruling reinforced the fact that *Miranda* is the law of the land in Maine. It does not change the fundamental law that police are still required to provide *Miranda* warnings when there is a custodial interrogation. That ruling did not change the fact that statements obtained in violation of *Miranda* are inadmissible in the State's case. The ruling does not prevent the exclusion of out-of-court statements obtained by coercive, compulsive, or other forced means. This decision does not prevent a person from bringing suit under Section 1983 against the police for misconduct for using violence, threats, or other coercive methods to extract a confession. In the words of Chief Justice William Rehnquist in the *Dickerson* USSC opinion, "Miranda has become embedded in routine police practice to the point where the warnings have become part of our national culture." This decision does not change that.

Currently, *Miranda* warnings are required only when the police are conducting a custodial interrogation. This bill provides a State civil remedy for failing to provide *Miranda* warnings when they are required under the bill. If the language of the bill simply stopped there, we would still have concerns about the adverse impact on criminal investigations and public safety. However, the bill would expose a police officer to civil liability for conduct the criminal courts would not prohibit. This bill would expose an officer to civil liability if the officer did not provide *Miranda* warnings to anyone "under arrest, in custody, under interrogation, or

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temporarily detained". This would greatly expand when *Miranda* warnings are required to be administered to almost all police-citizen encounters.

For example, if this bill were to become law a police officer conducting a routine traffic stop for a seatbelt violation or speeding would have to administer *Miranda* warnings to the operator. Traffic stops are considered a temporary detention under the law but are generally not considered custodial. This bill would also require *Miranda* warnings to be given **anytime** police question a subject about a crime that is likely to elicit an incriminating response regardless of whether that person is in custody. If a police officer went to the home of a domestic violence or homicide suspect to conduct an investigation, they would immediately have to read them *Miranda*. Generally, these situations are also considered non-custodial and *Miranda* warnings are not required.

Questions about custody and interrogation are a complicated and a mixed question of both fact and law which law enforcement, courts and prosecutors have to navigate. This is demonstrated in the *Vega* case history itself where two trial judges and the prosecutors in the criminal case decided that *Miranda* warnings were not required to be given and allowed the evidence to be admitted. We are concerned that if this bill were to become law it creates an uncertain legal playing field that would be difficult for the public safety community to traverse. The result would be a chilling effect on police officers' efforts which would only serve to frustrate criminal investigations and thereby prevent closure for victims and effect public safety overall. We also have concerns about procedural issues created by this law that would result in a criminal process and collateral civil proceeding occurring simultaneously.

We also have questions about the definition of "custody" as used in this bill. Would this apply to protective custody situations within the meaning of 34 MRS § 3863? Effective communication on these types of calls is an important and essential tool in trying to deescalate and resolve these tense situations.

Long-standing case law precedent and jurisprudence from both the Maine Supreme Judicial Court and the United States Supreme Court provides sufficient procedural safeguards and protections for the accused that adequately address the harms this bill is seeking to prevent. The application of the exclusionary rule requiring the suppression of evidence obtained in violation of *Miranda* is the appropriate remedy in these situations. While officers should always be cognizant of potential civil liability when performing their jobs, their primary concern when conducting criminal investigations is to promote public safety by ensuring the fair and lawful admissibility of evidence in court while protecting the defendants' rights. We believe that current laws and police practice protect both the rights of the accused and victim while preserving the quality and fundamental fairness of the criminal justice system by preventing objectionable police practices

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I would like to speak further about what some of those legal safeguards are. The Maine privilege against self-incrimination under the Maine Constitution and Maine Case Law provides even more protection than its federal counterpart. Police must not only prove that *Miranda* Warnings were given when conducting a custodial interrogation but also the voluntariness of statements made to police. In federal prosecutions voluntariness must be proven by a preponderance of the evidence. In Maine the State must prove voluntariness beyond a reasonable doubt, the highest legal evidentiary standard. In federal courts you must show police coercion to render a statement involuntary. Maine has a strict three-part test where the following requirements must be met to be able to use the statement as evidence in court. The statement is a result of a free choice and rational mind, it is not a product of coercive police conduct and under all circumstances its admission would be fundamentally fair. We believe that Maine's high constitutional threshold works to address the harms that this bill is seeking to prevent.

The Maine law enforcement community has demonstrated a strong commitment to the hiring and training of its police officers as well as a willingness to review and update policies and procedures in an effort to foster a culture of professionalism, transparency, and accountability. One such example is the statutorily mandated policy requirement in State law requiring that digital, electronic, audio, video, or other recording of suspects by law enforcement when investigating serious crimes and the preservation of records in such investigations. 25 MRS Section 2803-B(1)(K). This law provides additional accountability and transparency of police actions by ensuring these critical interviews and interactions are appropriately documented for review.

On behalf of the State Police and the Department of Public Safety we appreciate your careful consideration of these issues. Thank you for your time and I would be happy to answer any questions you might have.

Respectfully,
Lt. Michael P. Johnston
Lieutenant Michael Johnston



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