

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

Testimony of Kevin M. Anderson
March 8, 2023

Good Morning Senator Carney, Representative Moonen and distinguished members of the Judiciary Committee,

My name is Kevin Anderson from Eddington Maine, and I represent the Maine Law Enforcement Coalition. I am here to speak in my current capacity as the Executive Director of the Maine State Law Enforcement Association (MSLEA). The MSLEA currently represents approximately 400 full time, state law enforcement officers throughout the state to include Game Wardens, Marine Patrol Officers, Forest Rangers, Probation Officers, Juvenile Corrections Officers, amongst others. MSLEA is also proud to be a founding partner of the Maine Law Enforcement Coalition, which, along with the Maine Association of Police, the Maine State Troopers Association, as well as the Fraternal Order of Police, represents over 90% of the full time certified, state, municipal and county first responders.

I am here to speak in opposition of **LD 748 "An Act to Strengthen the Due Process Rights of Persons in Law Enforcement Custody"**.

It is the concern of the Maine Law Enforcement Coalition that this bill unnecessarily goes far beyond established federal case law and will have an immediate effect on current Maine Laws which have been informed by it.

As has been previously explained by those before me, there are clear pre-established guidelines that law enforcement have to follow when questioning an individual who is in custody and who is being interrogated. The required warnings were established over 50 years ago in the Miranda and Escabedo US Supreme Court decisions and have become the law of the land as it relates to safeguarding the civil rights of those who have found themselves in a custodial situation with law enforcement. The clearly established warning includes the right to counsel and the right against self-incrimination. The determination for when Miranda is required is a two-prong test. 1) Is the person in custody, essentially is the person free to leave or would a reasonable person in the same position believe they are not free to leave, and 2) is the person being interrogated, which is to say that the questioning narrowly focuses on that person as a suspect in a crime.

This bill as written reaches a lot further beyond the pre-established lines of the USSC decisions that dictate when law enforcement officers are required to advise a person of their rights.

For example, a police officer stopping a motor vehicle for a traffic infraction would be required, on every traffic stop, which is a temporary detention, to advise the subject of their right to counsel and right to remain silent, when in fact it most likely would not apply to the brief detention.

A Game Warden tasked with enforcing the hunting and fishing laws of the state of Maine would be required to advise every hunter or fisherman of their right to counsel and right to remain silent prior to any regulatory check of a hunting and or fishing license. Imagine how a check that was once ordinarily cordial and pleasant would feel for a sportsman or woman when the Warden had to start every encounter with "Good morning I am a Game Warden, you have the right to remain silent and the right to an attorney here before any questioning." It is not only not necessary or in accordance with the established law of the land, it creates a far different tone for the encounter than what is currently enjoyed by the outdoors men and woman and the Wardens. It indicates that the person who is subject to the encounter has in some way done something wrong when in fact they may not have.

This scenario would apply to Marine Patrol Officers conducting regulatory boat inspections and commercial fishing licenses on the high seas, probation officers conducting routine meetings with probationers who are required to check in to ensure compliance with conditions of probation, and all other scenarios where law enforcement is conducting pro-active duties that they have been tasked to do by the Maine Legislature.

Current state and federal laws are already established to protect the civil liberties of those who live, work, recreate and visit this great state. LD 748 will severely affect the manner in which investigative efforts, state public safety mandates and court procedures, established by clear state or federal case law, serve to protect the citizens of Maine. As we in public service have committed by oath to protect Maine and its citizens, LD 748 creates an inconsistent barrier to established laws, protections and practices.

This bill places an undo burden on Maine Law Enforcement that will do more to damage the relationship between Maine's citizens and its law enforcement than it will help.

This bill leaves Maine's law enforcement open to civil litigation on nearly every law enforcement contact and will deter proactive law enforcement that currently keeps Maine's communities, roads, waters, trails and woods, safe for all to enjoy.

In many of the rural communities of Maine and the majority of Maine state law enforcement do not currently wear body worn cameras and for those who do, they are not always working when you need them to. Every contact a law enforcement officer has with a citizen can turn in to a he said/she said situation that could lead to law enforcement across the state fighting a nonstop barrage of baseless lawsuits by those who have ill will toward those who protect us every day at their own peril.

In a time where recruitment and retention of law enforcement is at an all time low, this will further exacerbate the issue and drive quality candidates away from the career field.

On behalf of our members and future first responders, I would urge this committee to vote this bill out as written, "Ought Not To Pass".

Thank you for your time and I will be happy to answer any questions at this time.

Sincerely,
Kevin Anderson
Executive Director, Maine State Law Enforcement Association
Maine Law Enforcement Coalition