



Administrative Office of the Courts

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Judicial Branch testimony neither for nor against LD 748, An Act to Strengthen the Due Process Rights of Persons in Law Enforcement Custody:

Senator Carney, Representative Moonen, members of the Joint Standing Committee on the Judiciary, my name is Julie Finn and I represent the Judicial Branch. I would like to provide testimony regarding this bill:

The Judicial Branch does not take a position on the bill but would like to comment on the current draft and how it may impact the Judicial Branch.

The U.S. Supreme Court made clear in the 1966 landmark case of *Miranda v. Arizona* that the Fifth Amendment requires law enforcement officials to advise suspects of their rights to remain silent and to obtain an attorney when a person is in police custody **and** is being interrogated by law enforcement. Put another way, the obligation to provide *Miranda* warnings is triggered only if a person is subject to interrogation while in police custody. The Maine Supreme Judicial Court has also long held that ensuring its citizens have freedom from self-incrimination is of utmost importance, and the related case law has reflected this public policy.

The proposed bill creates a civil action for anyone who is arrested **or** in custody **or** under interrogation **or** temporarily detained by law enforcement and is not provided warnings. Thus, it appears to create an obligation to warn in many circumstances to which *Miranda* does not apply, including temporary detention without arrest or custody or interrogation, as well as interrogation without arrest or custody. Obviously this creates a much broader obligation to warn than is currently the law.

Currently civil violations and traffic infractions, which frequently involve temporary detention, do not implicate *Miranda* warnings. The majority of criminal charges also do not implicate *Miranda* as there is either no custody or no interrogation. Because the protections in this bill go beyond what the U.S. and Maine Constitutions require, we are concerned that this will create a civil action for thousands of people not provided warnings, resulting in a substantial

increase in civil cases being filed, significantly impacting court resources. To be clear, if even a small fraction of the people who are currently charged with traffic infractions and crimes without being warned filed suit under this section, the civil caseload in the Superior Court would more than double.¹

Although it is difficult to assess how many cases would be brought by this change and thus the fiscal impact, we will be providing our best estimate.

Thank you for your time.

¹ In FY 2021, there were 49,689 traffic infraction cases filed along with thousands more minor criminal cases. There were 1,872 total tort and “other civil” filings in the Superior Court.