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*Testimony of Rep. Tavis Hasenfus in support of*  
**LD 748, An Act to Strengthen the Due Process Rights of Persons in Law  
Enforcement Custody**  
*Before the Judiciary Committee*

Good afternoon, Senator Carney, Representative Moonen and members of the Judiciary Committee. My name is Tavis Hasenfus, and I represent House District 57, which is the communities of Readfield and Winthrop. I am here before you today in support of **LD 748, An Act to Strengthen the Due Process Rights of Persons in Law Enforcement Custody.**

The Fourth, Fifth and Sixth Amendments of our Federal Constitution expressly grant certain protections to individuals detained by the state. These protections are fundamental to our system of justice. The Fifth Amendment of the United States provides “no person shall be compelled in any criminal case to be a witness against himself.” The Sixth Amendment provides for a person “to be informed of the nature and cause of the accusation...and to have assistance of counsel for his defense.” These rights, along with the others enumerated in the Fourth Fifth and Sixth Amendments, as well as Maine’s Sec 6 of are not only fundamental to the criminal justice system but are fundamental to the relationship we expect between state law enforcement and its citizenry and basic human decency.

These rights, first enumerated in the constitution, have been interpreted over the years by the courts with perhaps the most important coming through United States v. Miranda. Miranda in 1966 held “the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogations of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.” It reasoned “the Fifth Amendment is ...fundamental to our system of constitutional rule and the expedient of giving adequate warning as to the availability of the privilege is simple.”

This has evolved to be known simply as Miranda, the warnings now woven into society itself as the right to remain silent. Taken together, these rights are the foundation of our legal system and must be held in the highest of priority.

The typical remedy when the rights protected by Miranda are violated is to file a motion to suppress evidence or to overturn a criminal conviction through an appeal. However, this remedy is only available for those individuals whose rights have been violated and are prosecuted.

This bill enhances these protections by explicitly authorizing a civil cause of action if one's right to be informed of the charges he or she is held on, the right to remain silent or the right to have counsel, have been violated. This ensures that all citizens will have a legal remedy to address violations of their constitutional rights and not just those individuals who are being prosecuted in a criminal case.

This bill is not intended to redefine what it means to be in custody. The current court analysis used in criminal proceedings to determine whether evidence should be excluded is the same analysis that would be used in any civil case brought under this statute. Maine courts have through a history of cases reviewed the question of whether one was in custody and therefore entitled to Miranda time and time again. Though there is no one-size-fits-all analysis in general, the Law Court has developed its own objective test to determine whether a suspect is in custody. The basis of the test is that "an interrogation is custodial if 'a reasonable person standing in the shoes of [the defendant] would have felt he or she was not at liberty to terminate the interrogation and leave.'"

Though this bill does not precisely match the protections offered under federal law prior to the recent U.S. Supreme Court case in the *Vega v. Tekoh* decision, it is worth noting that prior to its decision being overturned by a 6-3 decision, the ninth circuit court of appeals ruled one could maintain a civil action under 1942 U. S. C. §1983 for not being given Miranda. However, that decision was limited in scope, as the plaintiff, without being given Miranda, was coerced into giving a false confession, subsequently charged and prosecuted using the evidence obtained through coercion and later acquitted. Nevertheless, as noted in Kegan's dissent, "*The point of § 1983 is to provide such redress—because a remedy 'is a vital component of any scheme for vindicating cherished constitutional guarantees.' The majority here, as elsewhere, injures the right by denying the remedy.*"

In conclusion, the rights Miranda was developed to protect are so fundamental that policy should be implemented to uphold these rights where possible. The requirement that every individual placed in custody be told that they have a right to remain silent and the right to an attorney is an incredibly easy way to uphold critically important rights. I ask this committee to consider this bill as a tool to make sure we keep these fundamental protections from slowly eroding away. I am happy to answer any questions you have of me.