



Maine Human Rights Commission

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March 28, 2023

The Honorable Anne Carney, Senate Chair
The Honorable Matthew Moonen, House Chair
Joint Standing Committee on Judiciary
100 State House Station
Augusta, ME 04333

Re: An Act To Protect against Discrimination by Public Entities, LD 279

Dear Senator Carney, Representative Moonen, and Members of the Joint Standing Committee on Judiciary:

The Maine Human Rights Commission ("Commission") is Maine's quasi-independent, neutral, apolitical State agency charged with enforcing our state anti-discrimination law, the Maine Human Rights Act, 5 M.R.S. §§ 4551, *et seq.* ("MHRA"). The Commission's duties include (among others): investigating, conciliating, and at times litigating MHRA discrimination cases; promulgating rules and regulations to effectuate the MHRA; and making recommendations for further legislation or executive action concerning infringements on human rights in Maine. 5 M.R.S. § 4566(7), (11). With those purposes in mind, the Commission is pleased to provide this testimony in favor of LD 279.

The MHRA's purpose is to stop discrimination based on protected-class status.

The MHRA exists to "keep continually in review all practices infringing on the basic human right to a life with dignity, and the causes of these practices, so that corrective measures may, where possible, be promptly recommended and implemented, and to prevent discrimination in employment, housing, education, extension of credit or access to public accommodations on account of an individual's actual or perceived race, color, sex, sexual orientation or gender identity, physical or mental disability, religion, ancestry or national origin and in employment, extension of credit and access to public accommodations on the basis of age". 5 M.R.S. § 4552. That breadth of purpose carries into the Commission's specified powers and duties. The MHRA provides that "[t]he commission has the duty of investigating all conditions and practices within the State which allegedly detract from the enjoyment, by each inhabitant of the State, of full human rights and personal dignity. Without limiting the generality of the foregoing, it has the duty of investigating all forms of invidious discrimination, whether carried out legally or illegally, and whether by public agencies or private persons. Based on its investigations, it has the further duty to recommend measures calculated to promote the full enjoyment of human rights and personal dignity by all the inhabitants of this State." 5 M.R.S. § 4566.

Places of public accommodation, which are privately- or publicly-owned places, privileges or services that are offered or open to the public, may not discriminate against patrons or the public based on race, color, sex, sexual orientation or gender identity, age, physical or mental disability, religion, ancestry or national origin. 5 M.R.S. § 4592(1). The MHRA definition of public accommodation includes (among other things) a "municipal building, courthouse, town hall or other establishment of the State or a local government". 5 M.R.S. § 4553(8)(M). Many publicly-owned places or services have long been recognized in Maine and other states as "public accommodations", including courts, state and municipal offices that offer public services, and public safety services offered by state and local police departments. This makes sense because they do not require membership (as a private club might) in providing services or admission – they serve all comers.

In the MHRA, government-owned services or facilities are also “public entities”, which is defined the State or a local government, or any department, agency, or instrumentality of the same; these entities are covered by the MHRA in a limited fashion, whether or not they are open to the public. While most public entities are also public accommodations, there is one glaring exception: custodial settings within prisons and jails are public entities that are not generally considered places of public accommodation because they mostly are not open to the public and do not provide services to the public.¹ 5 M.R.S. § 4553(8-C). For public entities that are not also public accommodations, the MHRA explicitly prohibits only disability discrimination. *Id.* at § 4592(1)(E).

The MHRA should explicitly prohibit public entity discrimination based on protected class.

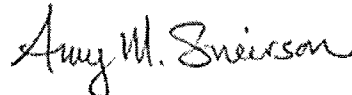
The MHRA’s statutory mandate confirms that the MHRA was intended, from its inception, to protect people in this state from invidious discrimination by the State itself, yet the State has purposely limited the MHRA’s application in those facilities it owns, operates, and controls. As a result, currently it is not considered unlawful MHRA discrimination for Maine’s jails and prisons to subject people in their custody and care to disparate treatment based on their race, age, religion, national origin, sex, color, or sexual orientation or gender identity. This is contrary to the MHRA’s broad remedial purposes. By limiting the MHRA’s applicability in public entities such as prisons and jails, the State has left some of its most vulnerable citizens without the ability even to have the Commission review their concerns. The Commission has received complaints of discrimination from prisoners which, if true, would be disturbing, including complaints of discrimination on the basis of race, national origin, sex, sexual orientation, and gender identity, as well as limitations on inmates’ abilities to practice their religions. In the past ten years, the Commission has dismissed ten complaints related to custodial settings in a State public entity for lack of jurisdiction.

The Commission’s process is intended as a screening mechanism for Maine’s courts, giving individuals a non-binding assessment of their claims and offering individuals an opportunity to be heard and resolve their claims without burdening the courts. The MHRA’s limited scope does not allow this screening function to be performed for prison cases, which leaves prisoners with only the option of filing court claims for alleged constitutional violations. Rather than clogging the court system, or silencing the voices alleging discrimination by the State itself, the Commission should have jurisdiction to review and assess whether to investigate these complaints.

Conclusion.

Thank you for this opportunity to provide testimony in support of LD 279, a bill which would open the Commission’s process to all individuals who believe that a public entity discriminated against them due to protected class status. This is, simply put, the right thing to do and consistent with the MHRA’s purpose. The Commission would be pleased to discuss these issues with you at your convenience, including at the work session on this matter.

Sincerely,



Amy M. Sneirson, Executive Director

cc: Commissioners

¹ Another exception would be the Legislature’s functions that are not open to the public. It is worth noting that Maine’s correctional facilities and Legislature may have some discrete areas/functions that are places of public accommodations and other areas/functions that are solely public entities. For Maine’s correctional facilities, prison/jail visiting facilities and parking lots are places of public accommodation as they serve visitors. The same is true for the Legislature’s hearing rooms, public spaces, online functions, and parking areas.