



MAINE PRESS ASSOCIATION
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Sen. Carney, Rep. Kuhn, members of the Joint Standing Committee on Judiciary, my name is Judith Meyer. I am here today on behalf of the Maine Press Association against LD 1484, An Act Related to Public Access of Records of Certain Disciplinary Actions of Public Employees.

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The Maine Press Association has been part of ongoing discussions as a member of the Right to Know Advisory Committee regarding confidentiality of disciplinary records, and voted in support of a RTK recommendation regarding these records that has been reported out to this committee but not yet come forward as a bill. We urge that this bill and the RTK recommendation already on the table be considered in tandem.

During the last session, at the recommendation of RTK, the Legislature voted to align public access and wording of disciplinary records at the municipal, county and state levels. That update required that, at all government levels, if disciplinary action is taken a final written decision becomes public after the completed decision imposes discipline. The decision must state the conduct "or other facts on the basis of which disciplinary action is imposed and the conclusions of the acting authority as to the reasons for that action" so the public understands the behavior and the consequence.

The proposal before you would substantially narrow public access to final written disciplinary decisions by limiting public access only to discipline that "is of a nature that imposes or results in a financial disadvantage, including, but not limited to, termination, demotion or suspension without pay."

What that means is that any discipline short of demotions that result in loss of salary, and unpaid short- or long-term suspensions or terminations would be confidential. So, censures, letters or warning, paid suspensions of any length, and requirements for employees to undergo additional training to address workplace failures would be confidential.

In 2022, the Maine Freedom of Information Coalition conducted an audit of police disciplinary records, tracking how many were issued to who and for what over a five-year period.

In one department, two officers were disciplined for holding down a 12-year-old boy by his wrists and ankles as the child's mother spanked him. One of the officers was suspended without pay for three days. The second officer was suspended for two days. Under the bill before you, the public could know about the first officer, but not the second.

In many agencies, in cases of discipline, salaried employees are suspended with pay, which means under this bill the public would never have access to those significant disciplinary actions

– even for the highest-ranking officials – including a recent case of a school superintendent who was suspended with pay for months. And, we know from prior reporting of Maine Press members, that law enforcement officers have frequently been disciplined for seemingly major infractions but in ways that stop short of any sort of “financial disadvantage.”

The policy behind existing law is that public employees are sometimes subject to unsubstantiated or even harassing complaints that are meritless and that these sorts of things shouldn't be public. On the other hand, where public employees engage in substantiated misconduct and disciplinary action is imposed the balance tilts in favor of transparency.

And, tilts away from possible mischief.

Last year, the RTK Public Employees Disciplinary Records Subcommittee – which I chaired – was asked to look at the possibility of establishing tiered access to disciplinary records. We met multiple times and heard from a number of government officials, including human resources officers and representatives of teachers and law enforcement.

Several of them pointed out that shielding disciplinary records helps recruitment and retention efforts because employees know that those records can't be accessed by the public or potential future employers, but there were strong words of caution that establishing a tier – particularly if it was tied to financial consequences – “may avoid discipline when a warning or suspension is warranted.”

During RTK discussions last year, there was some support for shielding corrective memoranda or minor written reprimands after a period of time, when the goal of discipline can often be to modify conduct, but there was no consensus on how to define minor versus major discipline, particularly when a series of minor problem behaviors – taken together – can amount to major problem behaviors.

There was consensus around the problem of employees being able to move to a new job without anyone knowing about their disciplinary history if records are removed from personnel files under collective bargaining agreements, and strong support that this problem be addressed in earnest.

In the end, RTK recommended that Judiciary continue consideration of all of these issues, and that it seek stakeholder input beyond law enforcement, municipalities and school administrators before taking action. To that end, the Maine Press Association asks that this bill be sent to the Right to Know Advisory Committee for further consideration.

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The **Maine Press Association**, founded in 1864, is one of the oldest professional news organizations in the nation. Our goals, as spelled out in our charter and by-laws are: To promote and foster high ethical standards and the best interests of the newspapers, journalists, and media organizations of the state of Maine that constitute its membership; to encourage improved business and editorial practices and better media environment in the state; and to improve the conditions of journalism and journalists by promoting and protecting the principles of freedom of speech and of the press and the public's right to know.