

**OFFICE OF POLICY AND LEGAL ANALYSIS
BILL ANALYSIS**

TO: Members, Joint Standing Committee on Criminal Justice and Public Safety

FROM: Jane Orbeton, Legislative Analyst

DATE: April 7, 2021

LD: 573 An Act Concerning Records of the Employment of Law Enforcement Officers and Corrections Officers

Summary

This bill requires a law enforcement officer or corrections officer (applicant) who applies for employment with a law enforcement agency, correctional facility or county or regional jail (hiring agency), when the applicant is employed by or within 90 days prior to the application was employed by another law enforcement agency, correctional facility or county or regional jail (current agency), to request that the officer's personnel records, employment records, internal investigation records and any other records pertaining to the applicant's employment and job performance be released to the other agency, facility or jail. The bill requires that the request form be signed and witnessed and waive any rights that the applicant has to the privacy of the records released.

The bill directs the Board of Trustees of the Maine Criminal Justice Academy to adopt routine technical rules for the request and waiver form. The bill requires the current agency to promptly release the information to the hiring agency and provides civil and criminal immunity to both agencies.

The bill requires an agency, facility or jail that performs a polygraph examination on a law enforcement officer or corrections officer to notify the head of the agency, facility or jail that employs the officer if the results indicate probable cause to believe that the officer is or has been involved in criminal activity.

Testimony

Proponents:

1. Representative Corey sponsored, presented the bill and submitted written testimony. Rep Corey explained the provisions of the bill and current law, which requires polygraph examiners to disclose information that is criminal in nature to the board of the Maine Criminal Justice Academy but does not allow release to the chief of the agency that employs the person examined. Rep Corey explained that Sheriff Joyce was unable to attend the public hearing and the committee voted to allow the sheriff to testify at the work session.
2. Todd Collins, District Attorney in district 8, submitted written testimony in general support for LD 539 and 573. DA Collins cited the prosecutor's obligation to turn over exculpatory

evidence to the defense in prosecuting a crime, an obligation referred to be the case names *Brady/Giglio*. DA Collins' letter mentions the 2013 Maine law that allows state, county and municipal government employers to disclose otherwise confidential personnel records to prosecutors when necessary to determine whether a defendant has a right to any of the information in the file. The MPA supports the bill as a vehicle to have a more complete record. But note, does the bill, in its language requiring the applicant to sign a waiver and allowing disclosure by a current agency to a hiring agency provide for disclosure to a prosecutor?

3. NAMI Maine submitted written testimony in support of the bill. NAMI noted the persons with mental health challenges are protected from discrimination under the Americans with Disabilities Act and the Equal Employment Act. NAMI advocates for confidentiality protections for law enforcement officers for records related to substance use and mental health treatment.

4. Stephen Gorden, representing the Maine County Commissioners Association, submitted testimony in favor of the bill as it will provide relevant employment records to hiring law enforcement and corrections agencies so that they may hire the most qualified candidates.

5. Susan D'Alessandro, from Millinocket, submitted testimony in favor of the bill and suggested that the 90-day lookback period related to prior law enforcement employment be increased to 11 years. Ms. D'Alessandro's other suggestions to amend the bill mirror the suggestions of Breana Bissell below.

6. Sheriff Kevin Joyce, Cumberland County, submitted written testimony in support of the bill, stressing the importance of law enforcement executives who have knowledge of potential criminal activity or activity inconsistent with professional performance of law enforcement duties to share information without fear of civil litigation. Current practice calls for a polygraph examiner to report to the Maine Criminal Justice Academy any information that is criminal in nature. The MCJA may report to the applicant's current chief that the applicant had issues with the polygraph but complete information cannot be shared with the current chief.

Opponents:

None

Neither for nor against:

1. The Maine Chiefs of Police submitted testimony regarding the bill, the same testimony as was submitted on LD 539.

- a. State civil service code, 5 MRSA section 7070 providing confidentiality of records of a person employed by state agencies;
- b. Possible chilling effect on future internal investigations if confidentiality is not guaranteed;
- c. The application of the waiver requirement in LD 573 to persons employed as a law enforcement officer within the prior 90 days; and
- d. The application of the bill to employed law enforcement officers, not to those who are not hired.

2. Breena Bissell, Director of the Bureau of Human Resources, testified and provided written testimony neither for nor against the bill. Ms. Bissell raised questions regarding whether “employment records” includes pre-employment information: applications, letters of reference, working papers, examinations and evaluations, criminal background checks, and polygraph examinations, noting that under 5 MRSA section 7070 this information is confidential and not available even to the applicant. Ms. Bissell also noted that the hiring agency is not provided immunity when it uses information in a hiring decision. Ms. Bissell noted that the bill does not have a timeframe for release of waived documents and that the bill will add a step and slow down the hiring process.