

**TESTIMONY OF BREENA BISSELL
Director, Bureau of Human Resources**

TESTIFYING NEITHER FOR NOR AGAINST

**L.D. 573, An Act Concerning Records of the Employment of Law Enforcement
Officers and Corrections Officers**

**Before the Joint Standing Committee on Criminal Justice and Public Safety
Hearing date: March 26, 2021**

Sponsor: Representative Corey

**Cosponsors: Senator Rosen, Representative Bryant, Representative Costain,
Representative Fay, Representative Pickett, and Representative Warren**

Senator Deschambault, Representative Warren, Members of the Committee on Criminal Justice and Public Safety, I am Breena Bissell, Director of Maine's Bureau of Human Resources. I am here today on behalf of the Administration to testify neither for nor against L.D. 573.

L.D. 573 would require applicants for law enforcement or correctional positions who work or within 90 days have worked for a law enforcement or correctional agency to sign a request form and waiver authorizing their current or prior employer to release all performance-related employment records to the hiring agency. The bill would require the current or prior employer to *promptly* provide all employment related records to the hiring agency and would provide *immunity* to the current or prior employers for providing the information and to the hiring agency for receiving the information. In addition, L.D. 573 would require that whenever a polygraph conducted on a law enforcement or corrections officer provides probable cause to believe that the officer is or has been involved in criminal activity, the law enforcement or correctional agency conducting the polygraph must release the results of the examination to the law enforcement or

correctional agency that currently employs the officer. I have a few suggestions and comments about the bill.

First, the bill provides for an applicant to sign a waiver of the applicant's confidentiality rights. It is not clear whether the "employment records" would include pre-employment information, such as applications, letters of reference, working papers, examinations, as well as polygraphs, criminal background checks, and psychological evaluations. Pursuant to 5 M.R.S. § 7070(1), this information pertaining to State employees is confidential, *even to the applicant*. Because the employee is not entitled to this information, the employee does not have the authority to waive its release. If the bill is intended to include these confidential records identified in 5 M.R.S. § 7070(1), then "notwithstanding" language would need to be added to specifically allow the release of those records by the previous agency to the hiring agency. In addition, we would also suggest that the bill be clarified to ensure that the employee will not be provided access to this confidential information.

Second, the bill provides that the law enforcement or correctional agency *providing* the records subject to the waiver is immune from liability for doing so, and the hiring agency for *receiving* the information, but there is no similar immunity for the hiring agency when it *uses* the information to make hiring decisions.

Third, it should be duly noted that this bill would add another step to the hiring process for the State's law enforcement and correctional agencies, requiring additional time for human resources staff, which would extend the time it takes to hire essential law enforcement and correctional officers.

Thank you for allowing me to testify today to provide you with information about L.D. 573.