



## MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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Senator Anne Carney, Chair  
Representative Amy Kuhn, Chair  
Joint Committee on Judiciary  
5 State House Station, Room 438  
Augusta, ME 04333

### **RE: LD 1484: An Act Related to Public Access of Records of Certain Disciplinary Actions of Public Employees**

Dear Senator Carney, Representative Kuhn, and Honorable Members of the Judiciary Committee:

The Maine Association of Criminal Defense Lawyers is a non-profit organization that has nearly 300 member attorneys who practice criminal defense across the state. Since 1992, MACDL has advocated for its members and the people we are fortunate to represent in courtrooms throughout Maine and at the State House.

MACDL presents this testimony **in opposition** of LD 1484.

“Sunlight is said to be the best of disinfectants; electric light the most effective policeman.”<sup>1</sup>

What this bill proposes would cast more darkness over the disciplinary actions against State actors—which comes with a host of problems.

This bill would further limit the public disclosure of disciplinary information regarding public officials. For our clients who are accused of crimes by State actors, this would have great impact on our ability to access such information regarding law enforcement officials and similar State actors.

Disciplinary information can be essential in investigating the credibility of law enforcement witnesses. This includes even “low-level” discipline like a reprimand for things like fudging a timecard, making inappropriate statements to co-workers, or not following department policy. Such discipline, under this proposal, would no longer be available for public disclosure if it did not result in the loss of wages.

It was just a few years ago that the [Bangor Daily News](#) exposed the labyrinth around police disciplinary records and how difficult it was even for other law enforcement agencies to access such information when evaluating a potential job candidate. The

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<sup>1</sup> Louis Brandeis, [What Publicity Can Do](#), Harper’s Weekly (1913). Brandeis was sworn in as an Associate Justice of the United States Supreme Court just three years later.

investigation also uncovered how departments were redacting essential—and ostensibly public—information from the disciplinary records they actually produced. Protecting even more disciplinary action does not keep us safer and it does not give law enforcement agencies the information they need to make informed decisions regarding hiring and promoting officers.

In a criminal trial, the credibility of all witnesses is a central concern. On the ground, I can represent that both District Attorney's Offices and law enforcement agencies remain either confused or ignorant of the obligation to disclose disciplinary action of officers involved in prosecutions as a matter of course. When prosecutors charge a person with a crime, they have a constitutional obligation to turn over any information that could cast doubt on the credibility of police who might serve as a witness in court, referred to as *Giglio material*. Litigation around what information must be disclosed to criminal defendants under the constitution is contentious and unnecessarily protracted.

Last session, this Committee was instrumental in the ultimate passage of [LD 1397](#), which required that the basis for discipline—including the factual background and the reasons for discipline—be included in the final disciplinary action. That was a step forward towards transparency of disciplinary records for State actors. This current bill would be a step backwards.

We currently have enough issues with getting any disciplinary information from these law enforcement agencies—we do not need this Legislature to create any loopholes for State agencies to further exploit to protect the disciplinary records of State employees.

Thank you for your consideration, for your attention to these important matters, and for allowing me to present this testimony on this bill to you all today.

Sincerely,



Tina Heather Nadeau, Esq.  
MACDL Executive Director