

CLAC MEMORANDUM/TESTIMONY
LD 405 (Support)

TO: Senator Anne Beebe-Center
Representative Suzanne Salisbury
Joint Standing Committee on Criminal Justice and Public Safety

FR: Criminal Law Advisory Commission (CLAC)
c/o laura.yustak@maine.gov

RE: LD 405, An Act to Prevent False Reporting Leading to Evacuation, Shutdown or Lockdown

DA: March 6, 2023

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in support of LD 405.

CLAC agrees that there is a gap between the terrorizing and false public alarm or report statutes such that, depending on the situation, some conduct commonly known as “swatting” might not be captured by the current language of those two statutes. Members are aware that such incidents result in significant costs and trauma to both civilians and emergency responders, and as well as create the potential for serious personal injury.

Some CLAC members thought the language might more appropriately fit within the terrorizing statute at 17-A M.R.S. § 210, which includes a variation applicable to threats that result in evacuation of a building, place of assembly or facility of public transport, or that cause the occupants of a building to be moved to or remain in a designated secure area. In contrast to terrorizing, the false public report statute and proposal do not require that the person making the report make a “threat,” so the conduct typically considered to be swatting may also fit within the false public alarm statute as proposed. It is important that new proposal include the requirement that the person knows the information is false (which this proposal does include) so as not to be overly broad or criminalize protected speech.

The language of the LD specifically refers to public square or park as locations to be protected. Depending on the circumstances, these might also be considered as “places of assembly” within the terrorizing statute (thus the terrorizing statute should not be read to exclude such locations). The LD references “shutdown or lockdown”; these terms seem to capture the concepts articulated in the terrorizing statute as well. It may be helpful to use the most inclusive terms in a consistent way in both statutes. CLAC members are happy to assist with or review any proposed revisions as the Committee requests.

*CLAC is an advisory body established by the Legislature. 17-A M.R.S. §§ 1351-1357. It consists of 9 members appointed by the Attorney General. Our current members include current defense attorneys, prosecutors, Maine Bar Counsel, and a retired practitioner with experience as defense counsel, prosecutor and in court administration. In addition, three sitting judges and one retired practitioner, appointed by the Chief Justice of the Supreme Judicial Court, and, by statute,

the Co-Chairs of the Legislature's Committee on Criminal Justice and Public Safety, serve as consultants. The Supreme Judicial Court's Criminal Process Manager serves as liaison from the Court to CLAC. CLAC advises the Legislature on matters relating to crimes in the Criminal Code and in other Titles, the Bail and Juvenile Codes, and with respect to other statutes related to criminal justice processes.