

CLAC MEMORANDUM/TESTIMONY
LD 2085 (Support)

TO: Senator Anne Carney
Representative Matt Moonen
Joint Standing Committee on Judiciary

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

RE: LD 2085, An Act to Update Maine's Domestic Violence and Stalking Laws

DA: January 27, 2024

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in support of LD 2085.

CLAC supports bringing Maine's criminal statutes into line with the recently articulated constitutional standard articulated in *Counterman v. Colorado*, 600 U.S. 66 (2023), in order to protect First Amendment rights while allowing appropriate prosecution of harmful communications. The Sponsor's proposed amendment to LD 2085 appears to do so, while also remaining consistent with Maine Criminal Code drafting conventions related to the culpable mental state of the accused.

CLAC notes that the Maine Law Court recently requested amicus submissions and heard oral argument on an appeal, *State v. Labbe*, Law Docket No. AND-22-317, arising out of a stalking conviction. It is possible that this case may address the application of the *Counterman v Colorado* standard to Maine's stalking statute. As this case is still pending, it is not known how or even whether the Court may apply *Counterman*. CLAC does not suggest that the Legislature wait for the Law Court to decide *Labbe*. The Law Court may or may not reach the constitutional issue, and the *Labbe* case concerns only one of the five statutory provisions being amended by LD 2085. The Legislature can resolve any constitutional cloud going forward, without affecting the pending appeal.

Sections 4 and 5 of the bill involve changes to the civil protection from abuse statutes, beyond CLAC's purview. Accordingly, CLAC offers no substantive comment with respect to those provisions.

*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.