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April 14, 2025

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

RE: LD 1572: An Act Regarding Prosecution Standards for Nonfatal Strangulation or Suffocation in Domestic Violence Cases

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 1572.

The number of disastrous issues with this proposed legislation make it hard to know how to begin this testimony.

Although we have no doubt that this proposal comes from a place of people wanting to help alleged victims of domestic violence, it simply would not do so and, in the process of trying, turn essential parts of our criminal legal system on their heads.

Section 1: This would prohibit any family member—not just the alleged victim—from posting bail for the accused in a domestic violence aggravated assault case. Our jails are full of people awaiting trial—not allowing the most available and accessible person to post cash bail for the accused would do nothing to promote public safety and do everything to further obliterate the presumption of innocence that is supposed to attach when someone is accused of crime—they will languish in jail because of this proposal.

Section 2: This proposal would eviscerate Confrontation Clause protections afforded to the criminally accused pursuant to the Sixth Amendment. It would allow unsworn, unreliable hearsay to be introduced into evidence—even at trial—without the witness having to take the stand, swear to tell the truth, and be subject to cross-examination. This Committee should not adopt such blatantly unconstitutional legislation, particularly as it has been concerned with the rights of the accused for so many years.

Section 3: Prohibiting courts and prosecutors from dismissing or reducing the charge

for any reason whatsoever is a blatant violation of the well-established and necessary Constitutional separation of powers. This Legislature cannot govern how prosecutors and judges use their authority to dismiss or dispose of cases. Additionally, it would prioritize these particular cases above all others pending in the system—including homicide and child sex cases. How does this make any sense? Prosecutors are also bound by ethical considerations to dismiss charges that they know they cannot prove—this bill would force prosecutors to engage in unethical conduct as a matter of course.

It would further prohibit any person who has been convicted of a domestic violence offense in the past from receiving a plea agreement—if we want to see the backlog of cases truly explode, then by all means, let's force all these cases to trial and keep the numbers up. This also makes no sense.

The commandment that all prosecutors, judges, law enforcement officers, defense attorneys, and dispatchers complete certified training on nonfatal strangulation or suffocation every two years may appear admirable, but it would be expensive, and, again, it would prioritize the funding regarding this particular crime above all others—without any sufficient justification for why this would be so.

Section 4: It is unnecessary to add "suffocation" to the definition of "circumstances manifesting extreme indifference to the value of human life," because the current definition has within it the non-exclusive language of "[s]uch circumstances include, but are not limited to . . . the manner or method inflicted." Suffocation is already, therefore, included in the definition.

Sections 5, 6, 7: This bill proposes that the current Class B crime of Domestic Violence Aggravated Assault be elevated to a Class A felony. It defines "traumatic condition" as a "wound or external or internal injury caused by physical force"—this is a definition that is already reflected in the current law under "bodily injury," which is also an essential element of even misdemeanor assault. It adds nothing.

There is no pressing or established need to further elevate this crime from Class B (maximum of 10 years imprisonment) to Class A (maximum of 30 years imprisonment). For the most serious attempted strangulations, prosecutors have and are currently pursuing Attempted Murder charges against the accused—which is a Class A offense. Elevating every alleged instance of Domestic Violence Aggravated Assault Class B to Class A felonies is too much.

This bill would not protect victims of domestic violence. It would trample constitutional protections of the criminally accused. It would trample the separation of powers in mandating the actions of judges and prosecutors. It would create unnecessary definitions to an already complicated area of the criminal law. It would elevate the charge to a crime punishable by up to 30 years in prison, without demonstrating any need for it to be elevated. It would irreparably harm so much for no good reason.

For all these reasons, we ask that this Committee vote resoundingly ought **not to pass** on LD 1572.

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