

CLAC MEMORANDUM/TESTIMONY (OPPOSED)
LD 1572, An Act Regarding Prosecution Standards for
Nonfatal Strangulation or Suffocation in Domestic Violence Cases

TO: Senator Anne Carney
Representative Amy Kuhn
Joint Standing Committee on Judiciary

FR: Criminal Law Advisory Commission (CLAC)
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RE: LD 1572, An Act Regarding Prosecution Standards for Nonfatal Strangulation or
Suffocation in Domestic Violence Cases

DA: April 14, 2025

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 1527.

CLAC members condemn domestic violence and support efforts to hold offenders accountable. However, CLAC members noted a number of constitutional, drafting, and enforcement issues in LD 1527.

Section 1: There is no indication as to who would make the determination regarding whether the person posting bail is a family or household member of the alleged victim, or who is charged with making that determination.

Section 2: The proposal that alleged victims not be compelled to testify interferes with the ability of the State to present a case, the right to and ability of a defendant to present a defense, and the authority of the court to conduct the trial. Coupled with the blanket proposal to admit out-of-court statements, this section presents both confrontation clause and separation of powers issues.

Section 3: This section usurps the court's authority to control its docket and interferes with the court's ability to make appropriate legal decisions. Cases may require dismissal for any number of legal or factual reasons, including but not limited to lack of jurisdiction, double jeopardy, discovery violations, pleading insufficiencies, expiration of a statute of limitations, or incompetence of the defendant. By restricting the prosecutor's discretionary authority and defendant's right to enter plea negotiations, it deprives both the State and defendant of the ability to achieve a just result without trial, and interferes with the defendant's right to conduct a defense as the defendant sees fit. Restriction of a prosecutor's discretionary authority to dismiss or plead cases to other charges can place the prosecutor in a position that conflicts with ethical obligation to pursue only appropriate charges supported by sufficient and admissible evidence. These restrictions could also result in unintended consequences of prosecutors bringing charges outside those identified in the bill to avoid the restrictions proposed. Because of the extent to which Section 3 would interfere with both judicial and executive authority, we anticipate constitutional separation of powers challenges.

CLAC supports training for persons with roles in the criminal justice system and is aware that training on domestic violence issues is routinely provided to the judiciary, law enforcement, and prosecutors, but notes that the Court controls continuing education requirements for lawyers, and the Criminal Justice Academy sets training and continuing education requirements for law enforcement.

Section 4: This section introduces a definition of suffocation as a circumstance “manifesting extreme indifference to the value of human life.” Because the current statute sets out a non-exclusive list of examples (“circumstances include, but are not limited to”), suffocation is arguably already such a circumstance, and facts that include suffocation of a victim could be alleged in appropriate circumstances as aggravated assault under the current statute. With respect to the definition of suffocation that is proposed, our understanding is that suffocation may also result from compression of a person’s chest, but defer to and recommend inquiry of qualified medical providers regarding any such definition.

Section 7: The proposal singles out the manner in which injury is caused (by suffocation or strangulation) for enhanced treatment. CLAC cautions against such increasingly specialized treatment of the manner of causing certain results, as there are innumerable ways of causing injury. It is impossible to anticipate and appropriately categorize all such possible wrongdoing. Certain variations in the manner in which crimes are committed are better left to the sentencing process. See, e.g., 17-A M.R.S. 1602(1). Section 7 also proposes proof, in addition to whatever injury was proved as an element of the underlying aggravated assault, of a “traumatic condition,” which appears to be a form of “bodily injury.” It is not clear whether the “traumatic condition” is in addition to whatever other injury is also required to be proved, or whether the same injury can serve both proof requirements.

*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.