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THE MAINE SENATE

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*Testimony of Senator Anne Carney introducing*  
**LD 2085, An Act to Update Maine's Domestic Violence and Stalking Laws**  
*Before the Joint Standing Committee on Judiciary*  
January 24, 2024

Representative Moonen and Esteemed colleagues on the Joint Standing Committee on Judiciary, as you know, I am Anne Carney, proudly representing Senate District 29, which includes South Portland, Cape Elizabeth, and part of Scarborough. Today I am pleased to introduce LD 2085, An Act to Update Maine's Domestic Violence and Stalking Laws.

This legislation addresses an urgent issue related to Maine's domestic violence statutes, caused by a, June 27, 2023 United States Supreme decision, Counterman v. Colorado. The Counterman case involved a conviction of stalking in Colorado and raised a constitutional issue as to whether the State must prove intent on the part of the defendant. The Supreme Court held that for prosecutions where a defendant's speech alone is the basis of the charge, the State must prove that the defendant consciously disregarded the impact of that speech on the crime victim. Importantly, the Court did not find the Colorado statute facially unconstitutional, but reversed the conviction and remanded the case back to the Colorado courts.

Maine's stalking statute is substantially similar to Colorado: although it requires the actor to have intentionally or knowingly have engaged in the conduct that is the basis for the conviction, it does not require the State to prove that a defendant had a separate mental state with regard to the impact of that conduct on the crime victim if that conduct would have caused a reasonable person to experience the same effect.

The Counterman decision creates concerns around the constitutionality of Maine's terrorizing statute (including domestic violence terrorizing) and raises potential issues for both the stalking statute (including domestic violence stalking) and harassment statutes. These laws are critical to the State's public safety response to domestic violence. Perpetrators of homicides engaged in prior stalking behavior in at least half of all domestic abuse homicide cases in Maine over the last 20 years, and therefore appropriately responding to stalking behavior is an essential component of homicide prevention in Maine.

Within the first 24 hours after the decision was issued by the Supreme Court, Maine’s criminal courts began to experience the effect of *Counterman*. Motions to dismiss felony stalking charges were filed and litigated in Kennebec County and Aroostook County. *Counterman* has also caused District Attorneys in some of the other counties to either dismiss or not to charge certain crimes until the uncertainty around these statutes is resolved.

In short, the *Counterman* decision has created uncertainty for victims of terrorizing, stalking and harassment in Maine; for defendants charged with these crimes; and for prosecutors, defense counsel and our courts.

Resolution of this uncertainty is necessary to maintain a constitutionally sound criminal and civil justice system response to domestic violence. Maine statutes that are potentially implicated by the *Counterman* decision were charged more than 800 times in 2022 in our criminal courts by Maine prosecutors (see below). Failure to promptly resolve these questions will prolong public safety concerns and result in unnecessary litigation in Maine’s already overburdened state court system.

**Charging Data from the Maine Prosecutors Association (1/22 – 12/22)**

<b>Statute</b>	<b>Crime</b>	<b>Adults Charged</b>	<b>Juveniles Charged</b>
17-A MRS 210-B	DV Terrorizing	361	4
17-A MRS 210	Terrorizing	413	56
17-A MRS 210-C	DV Stalking	124	0
17-A MRS 210-A	Stalking	22	0
17-A MRS 506	Harassment by Telephone	103	8

This proposed legislation is based on extensive work over the last few months by Maine and national experts on prevention of domestic violence, including Maine Coalition to End Domestic Violence, Maine Coalition Against Sexual Assault and the Maine Prosecutors Association. All agree that immediate legislative action is needed to resolve the uncertainty and ensure that Maine’s statutes are unquestionably constitutionally sound.

In addition, I am presenting a Sponsor’s Amendment today. This Amendment inserts the word “substantially” into the bill to better align the proposed bill with the holding in *Counterman*. I urge you to vote Ought To Pass As Amended on LD 2085, An Act to Update Maine's Domestic Violence and Stalking Laws.

Thank you for your consideration. I am happy to answer your questions.

**Anne Carney**

State Senator, Senate District 29

*South Portland, Cape Elizabeth, and part of Scarborough*