

# STATE OF MAINE

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**MAINE PROSECUTORS ASSOCIATION**  
**SHIRA BURNS, EXECUTIVE DIRECTOR**

“An Act to Update Maine’s Domestic Violence and Stalking Laws”  
Before the Joint Standing Committee on Judiciary  
Public Hearing Date: January 24, 2024  
Testimony in Support of LD 2085

Senator Carney, Representative Moonen and members of the Joint Standing Committee on Judiciary. My name is Shira Burns and I represent the Maine Prosecutors Association. I am here to testify in support of LD 2085.

The Maine Prosecutors Association has a vested interest in updating our criminal statutes to conform to the precedent set in *Counterman v. Colorado*, 600 U.S. 66 (2023) so we can continue to utilize these statutes while being able to successfully argue their constitutionality in front of the Maine Supreme Court. *Counterman* looked at the balance between a defendant’s First Amendment right and the State’s ability to regulate speech that would constitute a true threat. The United States Supreme Court held that the State must prove that the defendant has some subjective understanding of the statements’ threatening nature, based on a showing of recklessness. To comply with this holding, some of our statutes needs to be updated to add a reckless *mens re*.

This bill adds an element to each of these crimes, in the sense of proving an additional mental state, making it harder for prosecutors to prove each case. However, we are advocating for this change so we can successfully prosecute these crimes.

The Maine Prosecutors Association has met multiple times as a large group, both on a statewide and national level, to discuss the implications of *Counterman* and how we deal with its effects in prosecuting the implicated crimes. All agree the statutes need to be amended so there is no ambiguity in our law and that all fact patterns of stalking and terrorizing are prosecutable. These fact patterns include defendants using technology to stalk their victim which is a very common tactic used by abusers. Until the statutes are amended, the State is continuing to dismiss or not prosecute some fact patterns based on the current precedent. These are crimes that have a real victim.

For these reasons, the Maine Prosecutors Association is in support of LD 2085 as emergency legislation.