CLAC MEMORANDUM/TESTIMONY
OPPOSING SECTIONS 3-18
LD 975, An Act to Repeal Laws Allowing Abortion and to Criminalize Abortion

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

FR: Criminal Law Advisory Commission (CLAC)
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RE: LD 975, An Act to Repeal Laws Allowing Abortion and to Criminalize Abortion

DA: March 28, 2025

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony opposing Sections 3-18 of LD 975. The legislation would result in uncertainty in the criminal and juvenile justice systems, litigation over the application of definitions, and have unforeseen consequences with respect to Title 17-A as well as to crimes outside the Criminal Code. CLAC is not addressing the balance of the bill, which is outside CLAC's purview.

Amending the definitions of "human being" and "person" in the Criminal Code (Sections 4-5 of the bill) has ramifications beyond the specific crimes identified in the LD. The definitions in Part 1, Chapter 1, apply across the entirety of Title 17-A, and thus affect every crime committed against a human "person," "another," or "human being," whether or not it is a crime specifically listed in the bill, from arson and drug crimes to robbery and theft. (We do not attempt to offer an exhaustive list.) The definitions section of the Criminal Code, 17-A M.R.S. § 2, includes language providing that the definitions apply across the entirety of 17-A "unless a different meaning is plainly required." Accordingly, we anticipate that there would be uncertainty and litigation over the definition of "person" and "human being" in the context of criminal prosecutions where it is not clear whether a different definition applies.

The Criminal Code provides the basis for juvenile offenses. "Juvenile crime" includes "conduct that, if committed by an adult, would be defined as criminal" by the Criminal Code—thus any change to the 17-A crimes necessarily changes the Juvenile Code. 15 M.R.S. § 3103(1).

Similarly, the definitions of crimes over which the Tribal Courts have jurisdiction incorporate Criminal Code definitions—thus this LD has the potential to affect criminal prosecutions in the Tribal Courts. 30 M.R.S. §§ 6209-A(2), 6209-B(2), 6210-C(2).

Because the provisions of Part 1 of the Criminal Code apply to crimes outside the Criminal Code, these definitional changes would also have application to crimes defined outside Title 17-A. 17-A M.R.S. § 6. For example, Title 29-A, the Motor Vehicle Code, includes crimes against persons (e.g., OUI resulting in death or serious bodily injury; driving to endanger). Because 17-A M.R.S. § 6 provides that these provisions apply "unless the context of the crime clearly requires otherwise," we again anticipate uncertainty and litigation over the applicability of the definitions to statutes outside the Code, and across the Maine statutes, beyond the limited examples cited above.

The definitional change would also affect restitution, since the definition of "victim" within the restitution statutes includes "a person who suffers personal injury, death or economic loss as a result of a crime..." 17-A M.R.S. § 2002(7). We note that in limited circumstances, the Criminal Code currently authorizes restitution to a child born after a victim's death. Restitution may be authorized for the "dependent" of a deceased victim, § 2004(1), and "dependent" means "an individual who is wholly or partially dependent upon the victim for care or support and includes a child of the victim born after the victim's death." 17-A M.R.S. § 2002(2).

Repealing the crimes of elevated aggravated assault on a pregnant person and the domestic violence variant, 17-A M.R.S. §§ 208-C & 208-F (Sections 8-9 of the bill), and removing them from statutes related to protecting victims of abuse (Sections 3, related to protective orders; 18, related to mandatory arrest), is logically inconsistent with the apparent intention of the bill. Such a repeal minimizes the severity of violent conduct knowingly committed against pregnant persons, which is a separate issue from criminalizing abortion or criminalizing conduct against victims prior to live birth. In addition, eliminating these crimes from the category of offenses for the purposes of elevating the sentencing class of subsequent criminal conduct (Sections 6-7, 10-17) would mean that persons already convicted of these crimes would no longer be exposed to enhanced sentences as a result of conduct or convictions occurring prior to the effective date of the legislation.

*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 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.