



The Maine Coalition
to End Domestic Violence

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Testimony of Andrea Mancuso
Neither For Nor Against LD 1572: "An Act Regarding Prosecution Standards for Nonfatal Strangulation or Suffocation in Domestic Violence Cases"
Monday, April 14, 2025

Senator Carney, Representative Kuhn, and members of the Joint Standing Committee on Judiciary, I am writing on behalf of the Maine Coalition to End Domestic Violence (MCEDV)¹ to offer our perspective on aspects of LD 1572, AAR Prosecution Standards for Nonfatal Strangulation or Suffocation in Domestic Violence Cases.

MCEDV deeply appreciates the intent of this bill – to respond more effectively to cases involving one of the most statistically significant predictors of femicide. Attached to this testimony is a data summary sheet from a report given to the Criminal Justice and Public Safety Committee by the Maine Commission on Domestic and Sexual Abuse more than a decade ago. This report supported the effort to add language around strangulation to Maine’s aggravated assault statute. Strangulation is a serious crime, and it warrants a specialized response. Maine could do better than it currently is. However, we have identified a number of issues with several of the proposals laid out in LD 1572, which we have noted below, together with some suggestions as to alternatives that the Committee may want to consider that we hope are aligned with the goals.

Section 1. Limitations on Posting Bail for Domestic Assault Crimes

MCEDV anticipates others will point out the due process and implementation issues that this section presents. Policymakers should also understand the complicated implications that this policy proposal has for crime victims. Victim perspective exists on a spectrum, particularly when it comes to a criminal legal system response they have absolutely no control over. A one size fits all approach is rarely going to be responsive to that reality. This proposal would eliminate the ability of a crime victim to make their own decisions about what is right for them. For that reason, we cannot support it.

While some victims see the criminal legal system response as added value to their safety and stability, other crime victims do not. There are cases in which the victim of a DV assault

¹ MCEDV serves and supports a membership of Maine’s eight regional domestic violence resource centers as well as two culturally specific service providers. Together, these programs served more than 12,000 victims of domestic violence in Maine last year.

is not the one who involved law enforcement or launched the criminal legal response. There are cases in which the victim may see value in the person who harmed them being prosecuted, but they don't see that person's incarceration as contributing to their safety. Keep in mind that the economic stability of victims of domestic abuse and violence is often intertwined with that of the person who is causing them harm (as is the economic stability of common children). While some victims know that the time their partner spends in jail pre-trial is the only window of peace they will have to try and accomplish tasks necessary to support separation, other victims know that their ability to successfully separate depends on the ability of their partner to pay child support, continue to cover the rent, make the utilities payment on time, etc.

We also note that sometimes crime victims are arrested for domestic violence assault in cases where they have been reacting to or resisting violence directed toward themselves. It would not be good public policy to create barriers to those victims being supported by their own family members.

Address The Use of Victim Assets: One issue connected to bail in domestic violence cases that we hear frequently from victims about is the fact that, given the frequency that a victim and a defendant have comingled or joint finances, defendants use victim financial resources/assets to post bail, up to and including using the jointly owned home as collateral. MCEDV suggests policymakers could explore the possibility of prohibiting a defendant posting bail using a financial resource that is co-owned by the crime victim, perhaps by requiring a bail officer or judicial officer to make an inquiry of the defendant and/or requiring a defendant in domestic violence cases to give a sworn statement to that effect.

It is also unclear why any reform of bail practices in domestic violence cases would be limited to only domestic assault crimes. In terms of understanding risk and impact, Class D domestic violence assault is not necessarily always the crime to be most concerned about. Crime types like stalking, threatening, or violations of protection orders or conditions of release would also be crime types of significant concern.

Section 2. Evidence from Victims of Domestic Abuse and Violence in Criminal Matters

There are many legitimate and understandable reasons why a victim of domestic violence would refuse to testify in a criminal proceeding. No crime victim should have to risk their safety and wellbeing to help prove a case that they have no right to make any decisions about. However, there are likely real constitutional or due process concerns with the breadth of the proposal set out in Section 2 of LD 1547. And yet, if policymakers are interested in exploring testimonial and/or evidentiary issues that our member programs hear about from victims across the state, there are two alternative things that we think you could look at to make progress in advancing the intent of the proposal.

Preclude Contempt Findings for Non-Testifying Crime Victims. There has been at least one District Attorney in recent history who has had a victim of domestic abuse and violence



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arrested and held in contempt for refusing to participate in the criminal proceeding. This would be about as far away from the best practice approach of victim-centered prosecution as one could possibly get. Though we understand the Maine Prosecutors Association is currently in agreement that this is not an acceptable practice, we would be supportive of a modification to the criminal contempt statute to preclude contempt findings being based on a victim of domestic violence's refusal to cooperate with the local District Attorneys Office to guard against this practice in the future.

Codify Admissibility of Prior Acts of Domestic Abuse and Violence. A wildly inconsistent practice in Maine's Superior Courts is the extent to which judicial officers will admit the history of domestic abuse and violence between the parties in order to contextualize the charges for which a person is being tried. Domestic violence is, at the core, a patterned crime. It is often cyclical. Both the abuse and the reactions and responses of victims are best understood in this context. Other states have explicitly addressed this by codifying that "prior bad acts" are admissible evidence in domestic violence prosecutions. As a respected Maine-based practitioner wrote in 2010, "[T]he best hope victims and prosecutors have for making domestic-violence-related charges "stick" is to allow the introduction of prior acts of violence to contextualize the specified incidents criminalized by the [Maine Criminal Code]."² Policymakers would make an immediate and substantial impact in the ability of prosecutors to conduct evidence-based prosecution and promote accountability in domestic violence cases by following the lead of other jurisdictions on this issue and codifying the admissibility of prior bad acts in domestic violence cases.

Section 3. Court and Prosecutorial Practices and Training in Strangulation Cases

MCEDV has concerns that the codification of absolute prohibitions on certain types of actions that are currently available to courts and attorneys for the state will interfere with the ability of our prosecutors to engage in victim-centered prosecution. The foundational principles of victim-centered prosecution would direct a prosecutor to identify, understand, and take into account a crime victim's perspective when considering what to do with any given domestic violence case. For example, if the victim has common children with the person who has harmed them, and maybe even court orders that require co-parenting, perhaps the best outcome for that victim is not, in fact, a felony conviction, but a criminal

² Tina Nadeau, Opportunity Lost, Opportunity Found: A Proposal to Amend Maine's Rule of Evidence 404 to Admit "Prior Acts" Evidence in Domestic Violence Prosecutions, 62 Me. L. Rev. 351 (2010). Available at: <https://digitalcommons.maine.gov/mlr/vol62/iss1/13>.

legal system response that leverages the pending charges to ensure that the perpetrator access available community resources to support belief and behavior change. Again, victim perspective is not a monolith – it exists on a spectrum. Our criminal legal system responses benefit from a degree of flexibility. We note that flexibility is typically best carried out when all interested parties have the appropriate education and training and resources to be thoughtful.

As to the training proposed in section 3, subsection 4 of the bill, MCEDV offers the following:

- The best practice strangulation training for prosecutors is four hours in duration. We see great benefit in all prosecutors being required to have this training. MCEDV would encourage policymakers to adopt a one-time, four hour training requirement for all prosecutors on strangulation and suffocation.
- Annual training for prosecutors narrowed on strangulation would not be added value to the coordinated community response to domestic violence in our state. If policymakers decided to set an annual training requirement for prosecutors, MCEDV suggests it be set more broadly to require 2 hours of annual training on topics related to domestic abuse and violence. This would allow interested parties to work together to identify current gaps and challenges and appropriately responsive content. MCEDV collaborates with the Maine Prosecutors Association every few years to present updated content related to domestic abuse either through their annual conference or at a separately scheduled time. This is a collaboration that is highly functional, and the introduction of annual requirement would likely not pose considerable problems.
- A few years ago, the Maine Legislature codified a requirement for all judicial officers to have at least 1 hour of annual training on issues related to domestic violence and child maltreatment. MCEDV and the Maine Judicial Branch have worked collaboratively over the last three years to identify and support content for judicial officers that has been determined to be timely, relevant, and of interest. MCEDV does not see a need to amend or add to this requirement at this time.

Policymakers should understand that, in our experience, annual training on a particularly narrow topic tends to wane in utility over time. When constructing annual training requirements, it would be our suggestion that policymakers be guided by the following principles:

- Topic areas should be broad. This allows interested parties flexibility to focus on what is most needed in any given year, including any new laws or policies for which implementation would be best supported through coordinated, multi-disciplinary training.
- If you want particular parties to work together or be involved in the planning or delivery of training content, name them. There is precedent in Maine statutes for “the statewide coalition of domestic violence programs” to be a required partner on domestic violence related content.



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- The hours required each year need to reasonably account for the variety of topics that might require training in any given year. Practitioners have only so much time to allocate to training. The requirement should be meaningful, but not overburdensome.

We also note that it would be rare that training does not come with a cost to either or both the host of the training or the organization providing the content. Policymakers should keep the burden of unfunded training mandates in mind when codifying training requirements.

If policymakers are going to advance the policy approach proposed in this section, in subsection 2 or 3 specifically, MCEDV encourages you not to limit the application to just domestic violence cases. Strangulation and suffocation represent serious violence, regardless of the nature of the relationship between the parties. At a minimum, any mandated statutory response should also apply to strangulation and suffocation acts that occur incident to a sexual assault – there is a striking prevalence for these two crimes to go hand in hand.

Section 4. Defining Suffocation in Maine’s Aggravated Assault Statute

MCEDV takes no position on the merit of adding types of conduct into Maine’s aggravated assault statute. However, if policymakers proceed with defining suffocation, it should not be limited to applying pressure to the person’s “nose or mouth.” In domestic violence cases, **suffocation most frequently is caused by the perpetrator holding down a victim by sitting on their chest or upper back.** It would be important to ensure that application of pressure to a person’s torso is included.

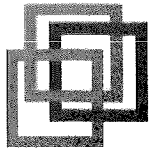
Additionally, **one of the most challenging aspects of Maine’s strangulation response within the criminal legal system is actually the lack of available data on prevalence and case results.** Maine’s aggravated assault statute lumps strangulation into a long narrative paragraph. It is not separated out, and so it does not have its own sequencing number. As a result, there is no way to determine what proportion of aggravated assault or even DV aggravated assaults are a result of strangulation. This bill could be used as an opportunity to address that barrier. Better data would support all interested parties in their ability to identify gaps, quantify the impact (or sometimes geographic disparity) and tailor appropriate responses.

In summary, many aspects of this bill need significant additional work. However, the intent behind the bill is one we strongly support, and we would be happy to work with interested parties to put a quality policy package together to advance Maine's response to these serious cases. Thank you for the opportunity to participate in this important conversation.

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Strangulation Data Summary

FROM: "REPORT TO THE JOINT STANDING COMMITTEE
ON CRIMINAL JUSTICE AND PUBLIC SAFETY"
(FEBRUARY 2012)*

The Maine Coalition to End Domestic Violence (MCEDV) and the Maine Association of Batterer Intervention Programs (MABIPS) conducted a survey based study over a three month period in the fall of 2011. 151 survivors of domestic violence in Maine completed the survey with MCEDV advocates. 125 batterers completed the survey with MABIPS program facilitators.

The following is a summary of the survey results:

- Of the 151 survivors who completed the survey, **72.8%** (110) disclosed that they had experienced a form of strangulation. Many had never disclosed this before because no one had ever asked.
- Of those 110 survivors who disclosed strangulation, **80%** (88) indicated it happened on more than one occasion, and **34.5%** (38) indicated that they lost consciousness.
- The strangulation was part of an assault that included other violent and/or abusive behaviors for **86.3%** of survivors.
- Of 125 men attending batterer intervention programs who participated in the survey, **28%** (35) admitted to strangling an intimate partner.
- Of those 35 men who admitted strangling their partner, **31%** admitted to strangling multiple partners and more than once with a single partner, and a full **83%** noted that the strangulation was part of other violent behaviors.

In addition to conducting the survey, the Report provides the following additional data:

- **10%** of violence deaths in the U.S. are attributable to strangulation. (Turket, 2007).
- Strangulation is a gendered crime - **virtually all perpetrators are men.** (Strack & Gwinn, On the Edge of Homicide: Strangulation as a Prelude, 2011).
- A 2011 study completed by the Maine Coalition Against Sexual Assault indicated that strangulation occurred nearly **100%** of the time in conjunction with attempted or completed sexual assault.
- A 2006 clinical trial of 1,000 pregnant women found that **34%** of abused pregnant women reported being "choked." (Bullock et. al, 2006).

See "Report to the Joint Standing Committee on Criminal Justice and Public Safety: Pursuant to Resolve 2011, Chapter 76 (LD 1027)," by the Maine Commission on Domestic and Sexual Abuse (February 2012) (available at: <https://www.mcedv.org/learn-about-abuse/publications-reports-additional-resources/>).