



MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

P.O. Box 17642
Portland, ME 04112-8642
(207) 523-9869
mainemacdl@gmail.com

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February 16, 2021

Senator Susan Deschambault
Representative Charlotte Warren
Committee on Criminal Justice & Public Safety
100 State House Station Room 436
Augusta, ME 04330

RE: LD 369 – An Act to Criminalize Recording an Incident in Progress but
Failing to Report the Incident Immediately to the Appropriate Authority

Dear Senator Deschambault, Representative Warren and Members of the Criminal
Justice and Public Safety Committee:

MACDL opposes LD 369.

It is difficult to understand where this bill is coming from. As it stands now, every person in the United States is freely allowed to record an “incident in progress” that might involve criminal activity, and they are under no obligation to do anything with that recording.

Other than in very limited circumstances, there has never been a requirement in Maine law that affirmatively requires that a person report criminal activity which is just what this bill is trying to do. There is no general “Good Samaritan” requirement in Maine law, and for good reason: forcing individuals to take certain actions that they are otherwise not required to do is a violation of the Maine Constitution as well as the United States Constitution.

This is a very classic “Big Brother” bill. Countries of old who were ruled by dictators who encouraged reporting on one’s neighbors had laws just like this and it created a system of fear that tore through the core of those societies. Indeed, failing to provide information to the State as required in this bill would result in a conviction of a Class E crime which carries with it a sentence of up to 180 days in jail.

The few laws on the books that require people to affirmatively report a crime involve narrow situations where the person is actually involved in the event such as those who are involved in accidents who have to report them by quickest means, or to remain at the scene of an accident and provide information to another person involved. Other affirmative reporting requirements involve those who are mandatory reporters and their obligation to report child abuse.

But this bill is a far cry from the few situations where someone has to report a car accident, or must report child abuse. This bill requires that unless a person immediately reports that they recorded what could be a crime they can be sent to jail

for up to 6 months.

The upshot of this bill is that people will be encouraged to never record an incident that might involve a crime, because they could go to jail unless they report the recording. This bill will result in less recording, which would be an unfortunate result when recording of criminal incidents has so often furthered the pursuit of the truth about what did or did not happen.

Additionally, as this law is written, a person who has a recording of a crime in which they were involved would be forced to provide that recording to law enforcement, even though they had the absolute constitutional right not to do so. This bill requires self-incrimination and would be flatly unconstitutional for that reason alone.

Thank you for the opportunity to address this issue.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Walter F. McKee', with a horizontal line extending to the right.

Walter F. McKee
Chair, Legislative Committee