

**OFFICE OF POLICY AND LEGAL ANALYSIS
BILL ANALYSIS**

TO: Members, Joint Standing Committee on Criminal Justice and Public Safety

FROM: Jane Orbeton, Legislative Analyst

DATE: April 7, 2021

LD: 1070 An Act To Make Assault on a Person 50 Years of Age or Older with a Preexisting Serious Medical Condition a Class C Crime

Summary

This bill creates a new variant of assault, a Class C crime for an assault on a person who is 50 years of age or older with a preexisting serious medical condition.

Testimony

Proponents:

1. Senator Cyrway presented the bill and testified in support. He noted that the proposed new Class C variant of the crime of assault requires proof that the actor acted intentionally, knowingly or recklessly when causing bodily injury to a person age 50 or older who has a pre-existing serious medical condition.
2. Maeghan Maloney, District Attorney for District IV Kennebec and Somerset Counties, testified in support and submitted written testimony for the Maine Prosecutors Association. DA Maloney suggested amending the bill to provide an age range of the victim of 65 or older and to eliminate the requirement of a pre-existing serious medical condition. Ms. Maloney noted the problems of proving culpable state of mind with regard to the age of the victim and the existence of the pre-existing serious medical condition. Ms. Maloney discussed with committee members the available of sentencing alternatives for Class D assault.
3. Sandy and Herbert Bradley of Waterville testified in support of the bill and discussed with the committee the attack on them that caused serious personal injuries and the need for emergency medical treatment and that has had a profoundly negative impact on their lives.

Opponents:

1. Walter McKee, representing the Maine Association of Criminal Defense Lawyers (MACDL), testified against the bill and submitted written testimony, noting that courts do not now sentence to the limit provided by statute for assault, that if deferred disposition were sought that Maine Pre-trial Services could offer supervision and that if the goal is to make persons convicted of assault eligible for probation that the probation statute in Title 17-A, section 1802 could be amended.
2. John Pelletier, representing the Criminal Law Advisory Commission (CLAC), testified against the bill and submitted written testimony. Mr. Pelletier noted that the age of the victim can already be taken into consideration at sentencing under Title 17-A, section 1501, sub-§8, and that the probation statute could be amended to provide for probation for assault. Mr. Pelletier

mentioned that CLAC opposes raising the penalties for a crime absent substantial evidence that existing penalties are insufficient. Mr. Pelletier cautioned that imposing an intensive intervention increases the risk of violation by the person subject to the intervention.

3. Janet Drew, of York, testified against the bill.

4. Jan Collins, representing the Maine Prisoner Advocacy Coalition (MPAC) testified against the bill, cautioning about proof of the culpable state of mind of the actor and in favor of restorative justice solutions.

5. Michael Kebede, representing the ACLU, submitted testimony against the bill, citing that passage of the bill will not keep elderly people with serious medical conditions safe.

Neither for nor against:

None