

MEMO

TO: Committee on Criminal Justice and Public Safety

FROM: Criminal Law Advisory Commission (CLAC)

RE: L.D. 1070

Date: April 4, 2021

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CLAC members do not favor passage of LD 1070, which would raise the classification of an assault on a person over age 50 from a Class D crime to a Class C crime if the person assaulted suffered from a “preexisting serious medical condition.”

As a general matter, CLAC members oppose enhancing the classification of an existing crime without substantial evidence that existing penalties are insufficient to address the anti-social conduct at hand. Such evidence would likely involve persistent reports from prosecutors and judges that current law was not adequate to address the conduct before the court.

With specific reference to the proposed language in the bill, CLAC members point out that any assault that causes serious bodily injury is already a Class C Aggravated Assault under current law. Accordingly, if a person’s age or medical condition results in their suffering a serious injury when a person without that condition might not, the law already aggravates the seriousness of the crime. Moreover, CLAC members raised fairness concerns because the person committing the assault would likely be unaware of the preexisting condition, and hence, would lack notice of the potential enhanced penalty. Finally, CLAC members point out that the age and physical condition of an assault victim are always primary considerations at sentencing and, in appropriate circumstances, can persuade a court to impose a significantly enhanced sentence for the crime charged.