

MEMO

TO: Committee on Criminal Justice and Public Safety

FROM: Criminal Law Advisory Commission (CLAC)

RE: L.D. 1408

Date: May 9, 2021

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LD 1408 would create a Class C variant of Domestic Violence Assault if the crime occurs “in the presence of a child who not attained 14 years of age.”

CLAC members noted that proximity of children during an incident of domestic violence (of any kind—e.g., assault, reckless conduct, threatening, terrorizing, stalking, murder), can currently be considered as a factor for sentencing purposes (see, e.g., *State v. Gaston*, 2021 ME 25, ¶ 35, n. 13 (murder)).

In addition, CLAC members pointed out that the new crime should state whether any culpable mental state is required for the presence and age of the child, and more fundamentally, that “presence,” without further definition might be too vague a term to be employed as an element requiring proof beyond a reasonable doubt that elevates the class of crime (e.g.—Same room? Same house? Does the child have to both see and hear the conduct at issue?).

Finally, if the bill moves forward, CLAC suggests that the proposed change is more appropriately placed within domestic violence assault under section 207-A, rather than domestic violence aggravated assault under 208-D, premised as it is on the result element of bodily injury or offensive physical contact, rather than the higher level of injury that is the required result for the crime of aggravated assault.