

CLAC MEMORANDUM/TESTIMONY  
LD 761 (Support Sections 1-4; Oppose Section 5)

TO: Senator Anne Beebe-Center  
Representative Suzanne Salisbury  
Joint Standing Committee on Criminal Justice and Public Safety

FR: Criminal Law Advisory Commission (CLAC)  
c/o [laura.yustak@maine.gov](mailto:laura.yustak@maine.gov)

RE: LD 761, An Act to Amend the Laws Governing the Crimes of Endangering the Welfare of a Child and to Create the Crime of Aggravated Endangering the Welfare of Child

DA: March 27, 2023

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The Criminal Law Advisory Commission (CLAC)\* respectfully submits the following testimony regarding LD 761.

CLAC supports Sections 1-4 of the bill. The current § 554(1)(C) classifies certain conduct that endangers the health, safety or welfare of a child as a Class D crime. The proposal in sections 2 and 3 recognizes that conduct endangering the health, safety or welfare of a child and resulting in a more serious outcome—serious bodily injury or death of a child—should be classified as a more serious crime. This approach is similar to that employed across the criminal statutes, most obviously in the assault and aggravated assault statutes, where a more serious result element leads to a higher classification for aggravated assault. Compare 17-A M.R.S. § 207(1)(A) (Class D assault—result element of offensive physical contact or bodily injury) with § 208(1)(A), (A-1) (Class B and A aggravated assault, result elements based on forms of serious bodily injury).

CLAC supports the proposed placement of the term “recklessly” in sections 2-4 to clarify that the culpable mental state applies to the actor’s violation of a duty of care or protection.

CLAC opposes section 5 of the bill as unnecessary in light of sections 2-4. Section 5 would create a Class B form of endangering if the result is “bodily injury to the child that creates a substantial risk of death or extended convalescence necessary for the recovery of physical health.” This result is already covered by proposed section 3, which identifies a result element of “serious bodily injury to the child.” The Criminal Code definition of “serious bodily injury” is “bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ, or extended convalescence necessary for the recovery of physical health.” 17-A M.R.S. § 2(23).

Isolating and repeating just a portion of the “serious bodily injury” definition in section 5 would also make the two proposed statutes internally inconsistent, because the same conduct and result could be charged as Class C under proposed section 3 (endangering with serious bodily injury), but as a Class B crime under proposed section 5 (aggravated endangering with subset of serious bodily injury—substantial risk of death or extended convalescence).

Section 5 of the bill also omits the portion of the “serious bodily injury” definition that the Legislature previously recognized as more serious in aggravated assault, 17-A M.R.S. § 208(1)(A-1)—the sub-category of serious bodily injury where the victim has suffered “serious, permanent disfigurement or loss or substantial impairment of the function of any bodily member or organ.”

\*CLAC is an advisory body established by the Legislature. 17-A M.R.S. §§ 1351-1357. It consists of 9 members appointed by the Attorney General. Our current members include current defense attorneys, prosecutors, Maine Bar Counsel, and a retired practitioner with experience as defense counsel, prosecutor and in court administration. In addition, three sitting judges and one retired practitioner, appointed by the Chief Justice of the Supreme Judicial Court, and, by statute, the Co-Chairs of the Legislature’s Committee on Criminal Justice and Public Safety, serve as consultants. The Supreme Judicial Court’s Criminal Process Manager serves as liaison from the Court to CLAC. CLAC advises the Legislature on matters relating to crimes in the Criminal Code and in other Titles, the Bail and Juvenile Codes, and with respect to other statutes related to criminal justice processes.