

CLAC MEMORANDUM/TESTIMONY
LD 1119 (Opposed)

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

RE: LD 1119, An Act to Clarify the Criminal Statutes with Regard to Assaults on Emergency
Medical Services Persons

DA: April 24, 2023

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 1119.

CLAC acknowledges the vulnerable position in which medical providers and hospital personnel may find themselves when called upon to care for an unpredictable or violent patient, or when confronted by a distraught family member. However, the proposed amendments do not increase the likelihood that assaultive conduct in a hospital or emergency care setting will be prosecuted with any greater frequency. The conduct at issue is already subject to prosecution under existing laws. The December 2022 “Report of the Task Force to Study the Process for Bringing Criminal Cases in Situations of Violence Against Health Care Workers” identified a number of other factors that likely affect whether such incidents lead to criminal charges and conviction.

As a general matter, depending on the level of injury to the victim and other circumstances of the crime, assaultive conduct can be prosecuted as assault under section 207 (Class D) or aggravated assault under section 208 (Class A or B), without regard to status of the victim or location of the conduct. Even without new specialty crimes, the circumstances of an assault—for example, the fact that a victim is particularly vulnerable or trying to assist the offender, or that other hospital personnel or procedures are affected—are all factors that can be taken into consideration at the time of sentencing.

Current section 752-C, Assault on an emergency medical care provider (Class C), applies regardless of location—the attendant circumstances that must be proven have to do with whether the victim is providing emergency medical care (which could be anywhere), and whether the victim is an emergency medical care provider (who could be hospital personnel or licensed EMS providers). Thus assaults described as occurring in a hospital’s “designated emergency room” (proposed section 752-F) are already subject to prosecution pursuant to the current version of section 752-C.

If the policy goal is to increase the classification of crime if the victim is a person “employed or contracted by hospital” but not necessarily providing medical care, existing section 752-C could be expanded by including more roles within the defined set of potential victims

without creating a new specialty statute limited to a specific treatment area of a hospital. Thus section 752-C might be expanded so that it applies to an assault against any licensed emergency medical personnel while providing emergency medical care (this would apply in any location), as well as to anyone employed by the hospital who is assaulted while performing their official duties at the hospital (hospital-based, but not limited to licensed personnel).

The very specific location identified in proposed section 752-F would limit whether assault (resulting in bodily injury) on hospital employees or personnel could be prosecuted as a Class C crime, even though emergency medical assistance may be provided to patients throughout the hospital setting, and even though medical providers may be assaulted while providing any type of medical care (i.e., not just emergency care) on any unit. This increasing specialization of criminal statutes rests upon policy decisions that gives certain persons or locations special or different treatment than others

*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.