

AARON M. FREY
ATTORNEY GENERAL



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

125 PRESUMPSCOT ST., SUITE 26
PORTLAND, MAINE 04103
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

**Testimony of Attorney General Aaron Frey
In Support of L.D. 1899**

March 1, 2022

Senator Carney, Representative Harnett, Members of the Judiciary Committee, I am Attorney General Aaron M. Frey, and I am here to testify in support of L.D. 1899, *An Act to Ensure Safe Entry and Access for People Seeking Health Care and Other Constitutional Rights*.

In 1995, my Office drafted and submitted a bill to amend the Maine Civil Rights Act to provide Additional Protections for health care facilities. L.D. 1216 (117th Legis. 1995). While the bill arose from concerns over an increase in violence directed at reproductive health clinics in Massachusetts, the bill, as amended, applied broadly to conduct that interfered with the exercise of a person's rights. Among other things, it prohibited individuals from intentionally making noise that can be heard within a building with the intent to interfere with the safe and effective delivery of health care services.

The bill was supported by a diverse group of stakeholders, including the Maine Life Coalition, the Maine Pro-Choice Coalition, the ACLU of Maine, and the Christian Civic League. Its purpose was to protect all Maine people accessing health care to ensure the safe and effective delivery of services, while balancing the First Amendment rights of persons who might wish to express opinions about those services and influence prospective patients in their health care decisions.

My Office has filed enforcement actions under the Civil Rights Act to protect both patients and protesters.¹ In 2015, we filed our first enforcement action under the noise provisions that had been added in 1995. Our action was against a protester who yelled so loudly outside the Planned Parenthood clinic in Portland that he could be heard in the counselling rooms, disrupting the patients' right to receive vital information about their medical procedures, including information about any risks or serious side effects. My Office defended the noise provisions in both State and Federal Court and prevailed in both forums. *March v. Mills*, 867 F.3d 46 (2017); *State v. Ingalls*, No. CV-15-497 (Me. Super. Ct., Cum. Cnty, Apr. 14, 2020).

Despite the jury verdict finding that the protester's yelling had violated the noise provisions of the Civil Rights Act, protesters have continued to engage in that and other conduct to disrupt

¹ In addition to our action alleging violations of the noise provisions, we have filed 10 actions to protect the First Amendment rights of anti-abortion protesters from threats and acts of violence and property damage, and two actions against individuals who threatened violence and engaged in vandalism against reproductive health facilities.

the clinic's services and have employed strategies to evade enforcement. For example, the noise provisions require that a protester first be warned that his or her volume can be heard in the facility before enforcement action may be taken. To prevent enforcement against that protester, other protesters who have not received a warning have acted in coordination to resume the noise at the same volume used by the person who had been ordered to cease the noise. In addition, even though we are all aware that in a pandemic, a six-foot distance is warranted to protect the health of all people, we have received reports of protesters coming so close to the patients that they have interfered with the patients' ability to access the clinic.

We believe that this bill will improve our ability to protect patients accessing services at all health care facilities. The bill proposes an eight-foot "medical safety zone" from a facility entrance to ensure that patients can safely access the building and enter a confidential access code, if necessary. Federal Courts have concluded that buffer zones of up to 15 feet meet constitutional muster. *Brown v. City of Pittsburgh*, 586 F.3d 263 (3rd Cir. 2009).

The bill also clarifies that the noise provisions only apply during operating hours and that a person who resumes making noise at the same volume that the person used before receiving a warning or order from a law enforcement officer "to cease such noise" may be sanctioned "at any time after the order." The person's resumption of noise at the same volume on a subsequent day would qualify as a violation, without requiring that a law enforcement officer issue a new warning or order.

Finally, the bill will better deter conduct that violates the rights of patients, by making intentional and knowing violations a Class E crime. Previously, the State's remedy was a civil injunctive action, typically requesting that the offender merely stay away from the facility or victim, and a civil penalty. Those civil remedies have proven ineffective in terminating the continued cycle of violations directed at reproductive health facilities.

The heightened passion of the national debate and the risk of violence at health care facilities have not abated since the enactment of the Additional Protections over 20 years ago. As additional restrictions on reproductive rights emerge nationwide, we anticipate that pressure will only increase on facilities in Maine that provide reproductive health services. We need effective tools to protect the rights of all Maine people to access health care without harassment, intimidation, or threats of violence. I urge the committee to vote Ought to Pass on this bill.