

CLAC MEMORANDUM/TESTIMONY
LD 22 (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 22, An Act to Impede the Transfer of Firearms to Prohibited Persons

DA: April 3, 2023

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 22.

Enactment of a new crime is not necessary to criminalize the conduct described in the bill. The conduct at issue may be prosecuted under section 15 M.R.S. § 393 using an accomplice theory, in which case the accomplice would be charged with the same crime as the principal actor. 17-A M.R.S. § 57. <https://legislature.maine.gov/legis/statutes/17-A/title17-Asec57.html>. Under appropriate circumstances, transferring or selling a firearm to a prohibited person may be considered a part of a conspiracy to violate the law, and charged as conspiracy to violate 15 M.R.S. § 393, which would be one class lower than the section 393 violation at issue. 17-A M.R.S. § 151. <https://legislature.maine.gov/legis/statutes/17-A/title17-Asec151.html>.

Should the Legislature go forward with this proposal, sub-section 2 of proposed section 394 should be revised as follows to eliminate an unnecessary reference to the permit and more clearly identify the applicable culpable mental states:

A person is guilty of prohibited sale or transfer of a firearm if that person intentionally or knowingly sells or transfers a firearm to another person, knowing or believing that other person to be prohibited from possessing a firearm, and that other person is in fact prohibited from possessing a firearm pursuant to Title 15, section 393.

Violation of this section is a Class D crime.

*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.