

CLAC MEMORANDUM/TESTIMONY
LD 1311 (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 1311, An Act to Provide That the Legal Use or Possession of Cannabis Is Not a Violation of Probation, Parole or Pretrial Release

DA: April 10, 2023

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 1311.

CLAC members view the proposal as inappropriately limiting the discretion of the court by abrogating the judge's authority to set conditions related to the charge or crime of conviction. Conditions of release and supervision often include restrictions of otherwise legal conduct when related to the underlying offense (e.g., weapons possession, alcohol use, Internet access, attendance at certain events or locations, contact with certain persons).

CLAC members also noted that the change is not currently needed. In the experience of CLAC members, judges are increasingly aware that legal marijuana use should not be prohibited unless related to the offense, bail commissioners are trained to impose substance restrictions only as related to the case before them, defense attorneys are raising the issue, and prosecutors are not insisting on such conditions when not related to the underlying conduct.

CLAC noted the following drafting issues: corresponding amendments would be required to the Bail Code and probation statutes; other sentencing alternatives include a release component that may be subject to conditions, but have been omitted; parole is not a current sentencing alternative; and it is not clear whether the required finding is to be made at the time the condition is imposed or at the time of adjudication of the alleged violation.

*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.