

CLAC MEMORANDUM/TESTIMONY
LDs 848, 1550, 1646, 1789
Neither For Nor Against

TO: Senator Anne Carney
Representative Matt Moonen
Joint Standing Committee on Judiciary

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

RE: LD 848, An Act to Expunge Certain Nonviolent Drug Crimes

LD 1550, An Act to Authorize the Expungement of Nonviolent Crimes

LD 1646, An Act to Vacate or Adjust Sentences and Expunge Arrests, Convictions and Adjudications for Cannabis-related Offenses

LD 1789, An Act to Remove All Marijuana-related Provisions from the Maine Criminal code and Expunge All Convictions Involving Marijuana

DA: April 27, 2023

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony neither for nor against LDs 848, 1550, 1646, and 1789.

These bills were not scheduled sufficiently in advance of the hearing date to enable CLAC to conduct a full discussion. Accordingly, our input is limited to the following general observations and recommendations.

Criminal history record information is classified as “public” or “confidential,” and access is governed generally by the Criminal History Record Information Act, 16 M.R.S., Chapter 7, as well as specific statutes that authorize certain persons or entities to have access to confidential criminal history for limited purposes (e.g., 22 M.R.S. § 4021—confidential criminal history available for child abuse, neglect, death investigations), or that limit the ways in which criminal history record information can be used. (e.g., 5 M.R.S. §§ 5301-5304—limiting convictions that can be used to make licensing determinations). The Legislature has considered limiting access to criminal history repeatedly over the past several years, and has done so with respect to both juvenile history (this is done separately, in the Juvenile Code) and adult criminal history. Most recently, the Legislature re-enacted and expanded the sealing process for certain convictions (Post-judgment Motion to Seal Criminal History Record, 15 M.R.S. Ch 310-A; PL 2021, c. 674; sealed convictions are “confidential criminal history record information,” with limited access), and prohibited most employers from inquiring about criminal history on initial employment application forms. 26 M.R.S. § 600-A, PL 2021, c. 404.

Any proposed changes should use the existing processes and terminology for sealing, classification of records, and access rather than creating new systems that overlap and conflict with

existing laws. Proposals that would authorize vacating convictions or resentencing after conviction and sentence have been finalized raise constitutional issues related to the separation of powers (impinging on the Governor's constitutional clemency authority).

*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.