

CLAC MEMORANDUM/TESTIMONY

LD 1103 (Opposed to Sections 1, 3; Drafting Recommendation re Section 2)

TO: Senator Anne Beebe-Center
Representative Suzanne Salisbury
Joint Standing Committee on Criminal Justice and Public Safety

FR: Criminal Law Advisory Commission (CLAC)
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RE: LD 1103, An Act to allow Persons Who Lawfully Use or Possess Cannabis to Own or Possess Firearms or Ammunition

DA: May 8, 2023

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony with respect to LD 1103.

The majority of CLAC members do not oppose the policy proposed by Section 2 of the bill, to repeal the prohibition against possession of firearms based on a person's use of/addiction to cannabis. However, CLAC suggests that the intent of the proposal may be more clear if the proposed additional language follows the reference to federal law, rather than precedes it, or if the exception is drafted as a form of defense. For the difference between "defense" and "affirmative defense," see 17-A M.R.S. § 101. Alternative drafting suggestions for Section 2 of the bill follow.

Option 1:

G. Is an unlawful user of or is addicted to any controlled substance, ~~except cannabis used, possessed or transported in accordance with Title 22, chapter 558-C or Title 28-B,~~ and as a result is prohibited from possession of a firearm under 18 United States Code, Section 922(g)(3). It is a defense [OR an affirmative defense] that the controlled substance is cannabis used, possessed or transported in accordance with Title 22, chapter 558-C or Title 28-B. Violation of this paragraph is a Class D crime;

Option 2:

G. Is an unlawful user of or is addicted to any controlled substance, ~~except cannabis used, possessed or transported in accordance with Title 22, chapter 558-C or Title 28-B,~~ and as a result is prohibited from possession of a firearm under 18 United States Code, Section 922(g)(3). Notwithstanding the federal law, cannabis used, possessed or transported in accordance with Title 22, chapter 558-C or Title 28-B is not a basis for the Maine prohibition against use, possession or control of firearms. Violation of this paragraph is a Class D crime;

CLAC also notes with respect to Section 2 that such a change creates a conflict for issuing authorities acting pursuant to 25 M.R.S. § 2003, Permits to carry concealed handguns, as well as the permittee. A person might be eligible for a permit because that person is not prohibited by 15 M.R.S. § 393, but the same person could be prohibiting from possessing a firearm under federal law. Such a permit would not authorize an individual to carry a firearm in violation of federal law.

CLAC is opposed to Sections 1 and 3 of the bill. First, although Maine's law enforcement officers do not generally have any authority to enforce federal law themselves, Maine's law enforcement officers are sometimes cross-deputized to serve on interagency task forces that may include a combination of officers from multiple jurisdictions. The proposed prohibition could preclude officers from participating in such efforts, including those targeting criminal conduct other than firearms offenses, as it cannot be anticipated what situations officers will encounter. Second, as part of their duties enforcing State law, Maine's officers encounter situations that violate the laws of both State and federal law. The proposed prohibition against cooperation is broad enough to preclude cooperation such as witness duties and information sharing, potentially putting such officers in conflict with requests or demands from the federal courts. Third, federal statutes such as the Bipartisan Safer Communities Act of 2022 require information sharing from state, county, local, and tribal criminal justice agencies and state governments relevant to a person's eligibility to possess firearms. Fourth, Maine, as do other states, contributes criminal history to federal databases that are queried when a federally licensed firearms dealer runs a background check prior to purchase, as required by federal law. These same databases are queried for other criminal justice purposes. It is not clear whether the intent of this proposal is to curtail the provision of that criminal history record information, which has implications beyond firearms possession. (Implications related to grant funding and state-federal or interstate compacts are beyond CLAC's expertise.) Overall, this proposal would appear to put Maine in conflict with federal statutes and requirements, creating potential preemption issues. LD 1451 presents similar conflict of laws issues.

As is LD 1451, the bill is drafted broadly, and would to apply to any state or local employee or official in Maine, thus restricting public agencies and employees outside of law enforcement.

*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.