

CLAC MEMORANDUM/TESTIMONY
LD 1903 (NFNA)

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 1903, Resolve, to Create an Advisory Council to Oversee the Review and Revision of the Maine Criminal Code and Other Statutes Establishing Criminal Offenses

DA: May 23, 2023

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony neither for nor against LD 1903.

CLAC recommends that the bill be clarified to reflect whether the goal is a technical reorganization or policy-based revision. Recent examples of technical reorganizations include PL 2019, c. 113, which revised and reorganized Part 3 of the Criminal Code into Parts 6 and 7, and PL 2021, c. 647, which reorganized Maine's protection from abuse statutes. A technical review could have as some of its goals to identify unused and obsolete provisions; clarify confusing language; eliminate inconsistencies; consolidate redundant provisions, and to organize or re-order the structure of sections or chapters.

The advisory council for such a technical, as opposed to policy-based, review could be small. CLAC recommends that it consist of legal professionals with substantial experience with Maine's criminal statutes and court rules. CLAC strongly recommends that the consultant and members of the advisory council be Maine-licensed attorneys, that the legal educator also be a Maine attorney and recommended by the Dean of the Maine Law School.

An unintended consequence of including policy advocates at the stage of a technical review would likely be policy debates that significantly delay the much-needed technical review. Instead, if a small advisory council makes recommendations to the Legislature for technical reorganization, and does not advocate for substantive changes, policy-based discussions could be deferred initially. Indeed, a technical review that eliminates redundancies and inconsistencies without making substantive changes might leave the remaining substantive provisions more accessible for purposes of meaningful policy review at a later stage. See, e.g., 17-A M.R.S. § 1757, enacted as part of the Criminal Code reorganization accomplished by PL 2019, c. 113—without changing the substantive law, this section consolidates and provides signposts to fees and assessments authorized outside the Criminal Code but applicable to criminal convictions. Section 1757 enables practitioners and policymakers to easily identify the financial consequences of criminal convictions. In any event, input from policy advocates would certainly be provided after the technical group does its initial work, and be considered as appropriate when any recommended changes are before the Committee of jurisdiction.

If this project is instead meant to be a policy-based review and rewrite of all criminal statutes, then it would be appropriate to include additional policy advocates representing other stakeholders and interest groups, and the scope of the project may well require a significant expansion.

*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.