

CLAC MEMORANDUM/TESTIMONY  
LD 2224 (NFNA)

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

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

RE: LD 2224, An Act to Strengthen Public Safety by Improving Maine's Firearm Laws and  
Mental Health System

DA: March 7, 2024

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The Criminal Law Advisory Commission (CLAC)\* respectfully submits the following testimony neither for nor against LD 2224. CLAC offers the following drafting observations and recommendations.

**Section 2**

The placement of the language addressing culpable mental state could be adjusted to more clearly identify the State's burden with respect to the seller/transferor's knowledge of the prohibited status of the person acquiring the firearm. For example, "A person may not sell or transfer a firearm to another [insert culpable mental state] that the other person is prohibited from owning, possessing or having under that person's control..."

Criminal Code drafting conventions generally list the order of culpable mental state in descending order of intentionality, e.g., "intentionally, knowingly, or recklessly."

Use of the culpable mental state of recklessly/recklessness necessarily means that the State may also establish the culpable mental state element of the crime by proving that the person acted knowingly or intentionally. In other words, the two higher culpable mental states would not have to be included in the statutory language if the statute is amended to require that the seller/transferor is reckless with respect to the other person's prohibited status. *See* 17-A M.R.S. § 34(3).

**Section 3**

Page 2, lines 26-27: Is there a culpable mental state associated with the proposed new crime, or is this intended to be a strict liability crime?

**Section 15**

Page 6, line 32: Notice of hearing should also be provided to the State.

**Section 19 (see also Section 1)**

Section 19 would elevate the class of the crime (possession of a dangerous weapon by a restricted person) from Class D to Class C. The same conduct, if charged under 15 M.R.S. § 393(1)(E-1), would remain a Class D crime. We did not know if this was intended.

## **Possible Typographical Errors**

### **Section 1**

Page 1, line 5: The reference to subsection 2 in the current law, 15 MRS § 393(1)(E-1), and in the bill at line 5, may be a typographical error. It may more accurately be to section 3862-A, subsection 4, which outlines the initial restrictions applicable to the individual.

### **Section 18**

Page 7, line 25: “order’s” should be “order.”

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