

CLAC MEMORANDUM/TESTIMONY
LD 2240 (Opposed—Section 3)

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 2240, An Act to Implement Protections Against Deed Fraud

DA: March 10, 2024

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony opposed to Section 3 of LD 2240. CLAC is not offering testimony with respect to the remainder of LD 2240.

Section 3 of the bill would create new Class B crimes for fraudulent activities associated with recording deeds and similar instruments. The conduct described is covered by various crimes that are already part of the Criminal Code, including aggravated forgery, suppressing a recordable instrument, and falsely filing a recordable instrument. Depending on the facts, the conduct at issue may also fall within the crimes of unsworn falsification and false swearing. No information was available to CLAC regarding why a new crime is needed for conduct that can be prosecuted under existing laws. In some cases, the proposed Class B designation would be disproportionate as compared to the class of crime applicable to similar conduct under existing statutes. See 17-A MRS §§ 452, 453, 702, 706, 706-A.

CLAC noted two minor drafting issues: Drafting conventions generally call for the culpable mental state to be alleged in decreasing order of the level of intent, e.g., “intentionally or knowingly,” rather than “knowingly or intentionally” (as currently drafted). We also noted that the definition of the crime at proposed § 706-B(1)(A) includes an attempt. It is not necessary to include an attempt in the definition of the crime, as it is already subject to prosecution if the elements of attempt at 17-A MRS § 152 are met. An attempt crime is usually one class lower than the completed object crime. *Id.*

*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.