

CLAC MEMORANDUM/TESTIMONY
LD 2247 (Opposed)

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 2247, An Act to Clarify the Minimum Sentencing Standards for a Violation of Operating Under the Influence

DA: March 12, 2024

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 2247.

CLAC members concluded that a change in the statute is not needed to resolve any ambiguity. The current .15 test result listed in the statute represents the Legislature's determination that a test at this level, indicating consumption of a higher amount of alcohol, warrants a certain minimum sentence as a penalty. The test result for purposes of sentencing is not the element of the crime required for proof of the crime itself—that a person operated “under the influence,” or with a certain blood alcohol level. The .15 test is an aggravating factor that goes beyond the proof needed to establish the basic elements of the crime of operating under the influence.

*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.