

CLAC MEMORANDUM/TESTIMONY
LD 2236 (NFNA)

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

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

RE: LD 2236, An Act to Expand the List of Crimes Eligible for a Post-judgment Motion to Seal CHRI to Include Convictions for Possession and Cultivation of Marijuana

DA: March 14, 2024

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony neither for nor against LD 2236. During our discussion of this bill, members made the observations below.

The proposal would add crimes to the list of “eligible criminal convictions” covered by Title 15, Chapter 310-A, which allows persons to apply to seal certain criminal history. Sealing would result in the person’s convictions (previously public criminal history) being treated as “confidential criminal history record information,” with dissemination limited to certain entities for specific purposes. 15 MRS § 2265; 16 MRS § 705. Under the current law, a person whose conviction is sealed may respond to questions about that history by not disclosing the conviction, with no State sanction (exceptions for certain criminal justice purposes and authorized recipients of the confidential information). 15 MRS § 2266.

The proposal in LD 2236 would allow sealing for crimes related to marijuana cultivation and trafficking. The bill would expand the sealing provisions to Class D (for marijuana only) crimes. (The current law applies to Class E crimes, which includes some marijuana crimes.)

If the Legislature’s intent is to seal all Class D and E crimes related to marijuana, inclusion of the January 30, 2017 cutoff date in the bill does not accomplish that, as persons committing Class D marijuana crimes after that date would not be eligible. If the goal is to seal only those crimes based on conduct that is no longer criminal (after legalization of adult recreational and medical use), the proposal is overinclusive, because it includes sealing for conduct that remains criminal, including conduct involving firearms, children, within designated safe zones, and involving numbers of plants beyond that authorized by the medical or recreational use statutes.

*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.