

CLAC MEMORANDUM/TESTIMONY NFNA
LD 42, An Act Regarding the Bind-over and Detention of Juveniles

TO: Senator Anne Beebe-Center
Representative Tavis Hasenfus
Joint Standing Committee on Criminal Justice and Public Safety

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

RE: LD 42, An Act Regarding the Bind-over and Detention of Juveniles

DA: January 27, 2025

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony neither for nor against LD 42 as currently drafted.

CLAC supports the aim of the bill, which is to give the Juvenile Court discretion with respect to a juvenile's placement during a potentially narrow time period after a bind-over order, before the juvenile turns 18 or is indicted, and pending any appeal of a bind-over order. CLAC's testimony is neither for nor against, because members identified a number of implementation questions that the Legislature may wish to address.

Members noted that there was no indication of the standard of proof or type of factors to be taken into consideration by the court, and that some of these factors may overlap with those already considered in the bind-over decision itself. See 15 M.R.S. § 3101(4)(D)[factors], (E)[standard of proof]. Accordingly, it may be helpful for the two issues (bind-over and placement pending appeal of bind-over) to be considered as part of the same proceeding, and by the same judge.

The bill appears to contemplate that the issue would be placed before the court by means of a motion or request by the Dept. of Corrections; the timing of such a request is not articulated, as well as the requirement of notice and opportunity to be heard by both the State's and the juvenile's attorneys.

It is logical that a juvenile would remain in a juvenile facility pending the court's consideration of the request, to avoid moving the person between facilities; if this is the intent, it may be helpful to specify this explicitly.

It is not apparent in the bill whether there is an appeal from a decision denying a request to retain a person in a juvenile facility; the Legislature may wish to specify whether or not there is such an appeal. However, the language does provide that the Dept. may subsequently request the court to rescind such an order after it has been granted. Presumably such a request might be made by the Dept. if the juvenile's circumstances or needs change significantly and can no longer be met in the juvenile facility, but the standard and factors are not articulated. The Legislature may wish to consider when it is appropriate to bring forward a request to rescind the prior order.

*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 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.