

CLAC MEMORANDUM/TESTIMONY OPPOSED AS DRAFTED  
LD 268, An Act to Restore Sentencing Discretion to the Judiciary by Removing Mandatory  
Minimum Sentences of Incarceration

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

FR: Criminal Law Advisory Commission (CLAC)  
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RE: LD 268, An Act to Restore Sentencing Discretion to the Judiciary by Removing Mandatory  
Minimum Sentences of Incarceration

DA: February 10, 2025

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The Criminal Law Advisory Commission (CLAC)\* respectfully submits the following testimony opposing LD 268.

As a general matter, CLAC members do not support mandatory sentences. The Criminal Code gives judges broad discretion, within parameters set by the Legislature, to address the conduct of each individual offender and to tailor sentences to the circumstances of each case, including the harm to the victim and the history and circumstances of the offender, while taking into consideration the purposes of sentencing. 17-A M.R.S. §§ 1501, 1602, 1702.

While CLAC supports a review of mandatory sentencing statutes, the approach of the current draft is to repeal sentences without opportunity for meaningful assessment of the policy behind each such legislatively-created requirement. CLAC recommends that a list of mandatory sentences be compiled as a preliminary step, so that both the public and policymakers have sufficient notice and opportunity to review the current sentences, take into account the reasons they were enacted, and consider whether the mandatory sentence serves an appropriate purpose. Although the current bill addresses sentences of imprisonment, the Legislature might also wish to examine mandatory fines.

Such a considered review would also give the Legislature an opportunity to evaluate options other than complete repeal. For example, some mandatory sentencing statutes already have “escape valves.” Such provisions are found alongside the mandatory minimum periods of imprisonment and fines for certain drug offenses. The law authorizes the sentencing court to deviate from the “mandatory” if it finds that certain circumstances exist. 17-A M.R.S. § 1125(2) (Finding by court necessary to impose other than mandatory minimum term of imprisonment); 17-A M.R.S. § 1126 (Finding by court necessary to impose other than minimum fine).

CLAC questioned the wording of the unallocated language in Section 2 of the bill regarding changing the “mandatory term of imprisonment into a maximum term of imprisonment in the discretion of the court.” Certain OUI crimes, for one example, carry a mandatory minimum term of imprisonment of 48 hours. 29-A M.R.S. § (5)(A)(3)(a). The bill’s language would convert that

minimum sentence to a maximum 48 hours for a Class D crime, which otherwise carries a maximum of 364 days. This appears disproportionate, and would upend the current sentencing structure, pursuant to which the authorized sentence is linked to the class of the crime (Murder; A-E). 17-A M.R.S. §§ 4, 4-A, 1604 (imprisonment), 1704-05 (fines).

CLAC respectfully requests the opportunity to work in conjunction with the Committee's analyst and/or legislative staff to compile the information and report for the Committee's review, as CLAC itself has no staff.

\*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.