

CLAC MEMORANDUM/TESTIMONY OPPOSED
LD 1147, An Act Regarding the Required State of Mind Relating to Threatening Display or
Carrying of a Concealed Weapon

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 1147, An Act Regarding the Required State of Mind Relating to Threatening Display or
Carrying of a Concealed Weapon

DA: April 14, 2025

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 1147.

Counterman v Colorado, 600 U.S. 66 (2023) protects speech by requiring that statutes that criminalize communications containing threats (“true threats”) require the Government to prove that the actor was at least reckless with respect to the threatening effect of the communicated speech. As drafted, the bill would require a culpable mental state with respect to conduct that is not a communication-based threat (concealing a weapon is not speech, and nothing is communicated). The change to 25 M.R.S. §2001-A(1)(B) is not required by *Counterman*.

The issue with respect to § 2001-A(1)(A) is whether displaying a “dangerous or deadly weapon” “usually employed in the attack on or defense of a person” in a threatening manner is simply a communication equivalent to a verbal threat, or constitutes conduct that is qualitatively different from speech. While it is not apparent that *Counterman* requires any change with respect to (1)(A), if the Legislature chooses to add a culpable mental state to the conduct of displaying such a weapon “in a threatening manner” on the theory that it is required by *Counterman*, a culpable state of mind of “recklessness” should satisfy any *Counterman* concerns, and is more appropriately placed in paragraph (A), so that it is limited to that provision of the statute.

*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.