

CLAC MEMORANDUM/TESTIMONY
LD 748 (Opposed)

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

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

RE: L.D. 748, An Act to Strengthen Due Process Rights of Persons in Law Enforcement Custody

DA: March 8, 2023

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 748.

LD 748 creates an overly broad mandate for law enforcement to provide what are commonly called “Miranda” warnings to citizens in situations where currently not legally required. For example, it would require law enforcement to advise a person of the right to counsel in situations where such a right has not been legally established. The proposal does not identify the combination of custody and interrogation as prerequisites to the warnings, in contrast to the Maine Law Court and United States Supreme Court caselaw applicable to custodial interrogation in criminal cases. The proposal would likely result in significant confusion for all parties involved in routine law enforcement-citizen encounters, and conflicting decisions from courts addressing parallel civil and criminal proceedings arising out of the same circumstances.

Failure to provide such warnings when required in the context of criminal proceedings results in exclusion of evidence and thus significant incentive to comply with the law. Particularly in light of this exclusionary rule, CLAC does not see the need for an additional requirement that can cause unintended negative consequences.

*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.