

CLAC MEMORANDUM/TESTIMONY
LD 2224 (NFNA)

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: LD 2224, An Act to Strengthen Public Safety by Improving Maine's Firearm Laws and
Mental Health System

DA: March 7, 2024

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony neither for nor against LD 2224. CLAC offers the following drafting observations and recommendations.

Section 2

The placement of the language addressing culpable mental state could be adjusted to more clearly identify the State's burden with respect to the seller/transferor's knowledge of the prohibited status of the person acquiring the firearm. For example, "A person may not sell or transfer a firearm to another [insert culpable mental state] that the other person is prohibited from owning, possessing or having under that person's control..."

Criminal Code drafting conventions generally list the order of culpable mental state in descending order of intentionality, e.g., "intentionally, knowingly, or recklessly."

Use of the culpable mental state of recklessly/recklessness necessarily means that the State may also establish the culpable mental state element of the crime by proving that the person acted knowingly or intentionally. In other words, the two higher culpable mental states would not have to be included in the statutory language if the statute is amended to require that the seller/transferor is reckless with respect to the other person's prohibited status. See 17-A M.R.S. § 34(3).

Section 3

Page 2, lines 26-27: Is there a culpable mental state associated with the proposed new crime, or is this intended to be a strict liability crime?

Section 15

Page 6, line 32: Notice of hearing should also be provided to the State.

Section 19 (see also Section 1)

Section 19 would elevate the class of the crime (possession of a dangerous weapon by a restricted person) from Class D to Class C. The same conduct, if charged under 15 M.R.S. § 393(1)(E-1), would remain a Class D crime. We did not know if this was intended.

Possible Typographical Errors

Section 1

Page 1, line 5: The reference to subsection 2 in the current law, 15 MRS § 393(1)(E-1), and in the bill at line 5, may be a typographical error. It may more accurately be to section 3862-A, subsection 4, which outlines the initial restrictions applicable to the individual.

Section 18

Page 7, line 25: “order’s” should be “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 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.