

CLAC MEMORANDUM/TESTIMONY (OPPOSED)
LD 449, An Act to Authorize a Court to
Conditionally Discharge Certain Criminal Defendants

TO: Senator Anne Carney
Representative Amy Kuhn
Joint Standing Committee on Judiciary

FR: Criminal Law Advisory Commission (CLAC)
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RE: LD 449, An Act to Authorize a Court to Conditionally Discharge
Certain Criminal Defendants

DA: February 24, 2025

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 449.

A suspension of prosecution as generally contemplated by this LD, including the possibility of dismissal without conviction, is currently available by means of a filing, governed by Maine Rule of Unified Criminal Procedure 11B. Significantly, Rule 11B requires the consent of the attorney for the State. The procedure outlined in the LD does not. As a result, it blurs the lines between the judicial and executive branches of government, puts the court in the position of prosecutor, and likely violates Maine's constitutional requirement of separation of powers. *See, e.g. State v. Fixaris*, 327 A.2d 850 (Me. 1974).

We note the following additional issues. There appears to be no provision for victim input. The provision ostensibly granting the court authority to order an individual to undergo inpatient psychiatric treatment absent conviction, a finding of not criminally responsible, or separate hearing on dangerousness raises significant due process concerns. Section 4 of the bill would create a new Chapter 6, presumably in Part 1 of the Criminal Code; if such a provision were to be enacted, the appropriate placement would be in Part 6, which contains the Code's sentencing provisions.

*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.