

CLAC MEMORANDUM/TESTIMONY NFNA LD 1126
LD 1126, An Act Requiring Serial Numbers on Firearms and
Prohibiting Undetectable Firearms

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

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

RE: LD 1126, An Act Requiring Serial Numbers on Firearms and
Prohibiting Undetectable Firearms

DA: March 26, 2025

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony neither for nor against LD 1126. Our observations pertain primarily to drafting issues.

There are references to federal statutes throughout the bill. Although this is done in other Maine firearms statutes, it would be helpful for the reader to include the actual language, particularly where the legislation incorporates a definition, as opposed to a process (e.g., “security exemplar”).

The culpable mental state for various violations throughout the bill is identified as “knowingly.” This culpable mental state necessarily includes the higher state of mind of “intentionally.” This could be included, and would be correctly drafted as “intentionally or knowingly.”

There appears to be no culpable mental state associated with the prohibited conduct (“purchase”) outlined in Section 6 at proposed § 2037(1)(C) or (F). If the Legislature does not intend to create a strict liability statute, a culpable mental state should be identified (perhaps “intentionally or knowingly,” to be consistent with the rest of the draft).

Assuming the weapon meets the current 17-A M.R.S. § 2(12-A) definition of firearm, whether it is detectable or not, it is already prohibited in certain locations, i.e., courthouses, posted establishments (this location is not listed in LD 1126), correctional facilities and jails, and school property. 17-A M.R.S. §§ 1057-59; 20-A M.R.S. § 6552. Instead of creating separate statutes in a different Title, the Legislature could amend the existing statutes as needed. For example, if the possession of undetectable firearms at these locations is considered more serious (Class C, as proposed) than the current Class D classification that applies to possession of other firearms in the present statutes, that can be indicated within the existing statutory framework.

The proposed prohibition against possession of undetectable firearms at voting places and where municipal, county and State business is conducted does not currently apply by statute to all firearms (though Capitol Area Security Rules cover State-controlled locations within Augusta). It may be that the Legislature views possession of undetectable firearms in such sensitive places as

qualitatively different/presenting a different safety issue than possession of firearms that can be readily identified, though we are not presuming that intent. Consideration should be given to whether to place such a prohibition in Title 25 or in Title 17-A, Chapter 43, Weapons, alongside other location-based restrictions. If the Legislature were to prohibit possession of unfinished frames, receivers, or component parts that do not meet the definition of firearm at 17-A M.R.S. § 2(12-A), there does have to be new language prohibiting possession of these components, for example, as in Section 6 of the bill.

The language in Section 5 at proposed § 2017(3)(D) and in Section 6 at proposed § 2038(3) is confusing and likely to result in unintended consequences. Undetectable firearms and firearms without serial numbers can be considered “firearms” and “dangerous weapons” within the meaning of current statutes that require minimum sentences or elevate the class of a crime. 17-A M.R.S. § 1604(3) (minimum sentence for certain crimes involving use of firearm against an individual), § 1604 (5)(A) (use of dangerous weapon to elevate class of crime). As drafted, the proposed language could reduce the class of some crimes, single out reckless conduct from other crimes committed with the use of dangerous weapons, and result in inconsistent classifications. The proposed language does not appear to be needed to accomplish the intent of the bill.

Placement of the new provisions regarding undetectable firearms may logically fit in the Criminal Code at Title 17-A, Chapter 43, Weapons, rather than in Title 25.

The proposed increase from civil violation for first offense to Class C crime for subsequent offenses in Section 6 at proposed § 2039(2) is disproportionate, both in terms of the jump in classification and in the assignment of Class C liability to a record-keeping offense. The violation should also more specifically identify the conduct that is prohibited, rather than refer generally to § 2039(1).

For context as to how the Legislature has previously treated conduct involving alternation of serial numbers on firearms, see 17-A M.R.S. § 705(1)(E), Criminal simulation involving firearms (Class C). This statute criminalizes conduct of altering, removing or obscuring serial numbers, or possessing or transporting such altered firearms, with a particular intent.

*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.