

CLAC MEMORANDUM/TESTIMONY OPPOSED (Sections 4-7)
LD 1120, An Act to Promote the Secure Storage of Firearms

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

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

RE: LD 1120, An Act to Promote the Secure Storage of Firearms

DA: April 16, 2025

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony opposed to Sections 4-7 of LD 1120 as drafted. CLAC members noted several drafting issues with LD 1120.

The bill proposed to move the substantive crime from Title 17-A to Title 25, but the affirmative defense to the new Title 25 crime remains in Title 17-A. Any affirmative defense specific to a crime should be in the same section that defines the crime.

If the Legislature chooses to remove a prohibition from the endangering statute and expand it to prohibited persons, the crime might more logically remain in Title 17-A, or be placed in Title 15. See 17-A M.R.S. §§ 1051-59 (Chapter 43, Weapons); 15 M.R.S. §§ 393-94 (Chapter 15, Possession of Firearms by Prohibited Persons).

“Exceptions” are a type of defense. As drafted, the crime would be subject to both a specific affirmative defense and the enumerated exceptions/defenses, which are subject to different burdens and standards of proof, resulting in quite a complex statute (and complicated jury instructions). See 17-A M.R.S. § 101. As a practical matter, it would be difficult to reconcile the elements and proof requirements of the locked box affirmative defense with the locked container exception defense. The exception at proposed § 2017(3)(A) may result in an unintended gap (e.g., leaving a firearm under a pillow or on a table may be “in close proximity” for access by the authorized user, but also a child or prohibited person). The exception at proposed § 2017(3)(C) is probably not needed, as it could be presented as a “competing harms” defense. 17-A M.R.S. § 103.

Although the crime is captioned “negligent storage,” the culpable mental state described within the crime requires that the actor is “knowing or has reason to know” that another is likely to gain access. This is a higher culpable mental state than “criminal negligence,” which is defined as failure to be aware of a risk. 17-A M.R.S. § 35(4).

More generally, CLAC noted that the proposed application of a negligent storage concept to prohibited persons could result in criminal liability for an individual that is caused by intervening conduct of an independent adult actor (or minor, who may be prohibited due to a juvenile adjudication). The Criminal Code avoids imposing liability in such circumstances, absent some

affirmative duty (i.e., to protect children). This proposal would thus criminalize conduct that is different from endangering (failing to protect children from accessing inherently dangerous firearms), as captured by 17-A M.R.S. § 554, or acting affirmatively to sell or transfer a firearm to a prohibited person, as codified in 15 M.R.S. § 394.

*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.