

CLAC MEMORANDUM/TESTIMONY OPPOSED

LD 1805, An Act to Establish a Post-conviction Review Process for Crimes Committed by Victims of Sex Trafficking and Sexual Exploitation

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 1805, An Act to Establish a Post-conviction Review Process for Crimes Committed by Victims of Sex Trafficking and Sexual Exploitation

DA: May 12, 2025

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 1805.

CLAC members acknowledge the importance of recognizing that persons may engage in criminal conduct due to various forms of duress. This concept is captured in the Criminal Code currently in the defense of duress, 17-A M.R.S. § 103-A. This bill essentially recognizes a very different form of and standard for duress applicable to victims of “sex trafficking” and “sexual exploitation,” as those terms are defined in the bill. If the intent of the bill is to provide a complete defense to criminal conduct, the proposal is more appropriately drafted as a defense or affirmative defense, to be used prospectively. If the intent is to seal criminal convictions from the public, the more appropriate remedy is sealing on consideration of a motion made by the convicted person.

The bill’s proposal for a new post-conviction review remedy is problematic in multiple respects. It creates a post-conviction remedy without a statute of limitations. Records and evidentiary proof for any party are likely to be limited. Victims, whom the State must seek to notify, may have long since relocated. The proposal to allow reversal of a conviction based on what is essentially a new defense (in the absence of legal error, and after the case has moved beyond the jurisdiction of the trial court) is tantamount to clemency, and likely to violate constitutional separation of powers requirements. The bill includes numerous provisions governing the nature and admissibility of evidence—these decisions are more appropriately left to the Court, which develops evidentiary and procedural rules to be applied across various judicial proceedings, and to presiding Judges and Justices, who seek to apply such rules consistently and pursuant to established judicial precedent.

*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.