

MEMO

TO: Committee on Criminal Justice and Public Safety

FROM: Criminal Law Advisory Commission (CLAC)

RE: L.D. 477

Date: March 18, 2021

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CLAC members are divided with respect to the merits of LD 477. The bill would eliminate the provision of current law that allows a court to impose a restitution obligation for “the cost of analysis of suspected illegal drugs.”

Members who support this proposal believe that the cost of investigating and proving crimes is an expense that should be borne by the public and that criminal defendants should not be made to pay the cost of their own prosecution. They also point out that current law allows restitution for investigation expenses in very narrow circumstances, see 17-A M.R.S.A. §2002 (3), and that there is nothing special about the cost of drug analysis to distinguish those costs from other ordinary costs of investigation. Finally, they point out that defendants in drug cases are often indigent to start with and often receive long prison sentences, making the collection of restitution difficult if not unlikely.

Other CLAC members do not support the bill as drafted but suggest a modification of the current provision. These members believe that the court should be able to impose the cost of drug analysis upon defendants who profit from the drug trade. This could be accomplished by limiting the imposition of restitution for drug analysis to trafficking cases where the sentencing court makes a finding that the conduct underlying the conviction was motivated by profit as opposed to an attempt pay for a drug habit.