

CLAC MEMORANDUM/TESTIMONY
LD 168 (NFNA)

TO: Senator Anne Beebe-Center
Representative Suzanne Salisbury
Joint Standing Committee on Criminal Justice and Public Safety

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

RE: LD 168, An Act Regarding Criminal Background checks for the Sale, Transfer or Exchange of Firearms

DA: April 3, 2023

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in neither for nor against LD 168. Without taking a position on the policy regarding background checks, CLAC notes that the bill presents significant drafting issues. Among them:

1) “Buyer” and “Seller” are defined in such a way that the obligation to coordinate with a federally licensed firearms dealer to conduct a background check does not attach until after the transaction is completed. 2) There is no need to include “unless the context otherwise indicates” in the definitions introduction, as the definitions apply only to the proposed section, and it is not clear what other context is being referenced. 3) “Sell” and “transfer” are defined in 17-A M.R.S. § 554-A and § 554-B, governing the transfer of firearms and handguns to minors. The Legislature may wish to consult those definitions to determine if the definitions in the proposed legislation should be consistent with existing terms applicable to firearms transactions. 4) The definitions of the terms describing transfers do not include a requirement of consideration—is the bill meant to apply to transfers without consideration? 5) The “Requirement” in proposed sub-section 2 applies to persons who are not licensed dealers, but the “Limitations” section references licensed dealers transferring firearms. 6) In proposed sub-section 5, “Violations,” there is no time limit on the look-back for priors. This may require a reference to 17-A M.R.S. § 9-A. 7) In proposed paragraph (5)(B), the language concerning prior offenses should refer to both convictions and adjudications (to capture prior civil violations), and to convictions or adjudications “for conduct substantially similar to that contained in this section in another jurisdiction.”

*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.