

CLAC MEMORANDUM/TESTIMONY
LD 986 (Opposed)

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 986, An Act to Ensure Safer Communities by Increasing the Punishment for Crimes Involving Fentanyl

DA: April 18, 2023

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 986.

CLAC members recognize the seriousness of the crime of trafficking fentanyl, a particularly potent and addictive drug. After review of the existing drug statutes and consultation with a prosecutor with significant experience prosecuting drug crimes, however, CLAC members concluded that the changes proposed by LD 986 would not have a significant impact on drug prosecutions or public safety.

Current sentences for Class B trafficking cases typically do not approach the ten-year maximum available for Class B crimes. Trafficking in 6 grams or more, or more than 270 individual packages of fentanyl, is already a Class A crime, subject to a 30-year maximum sentence. The bill, as drafted, does not trigger imposition of any mandatory minimum sentence.

Section 2 of the bill, which would create a new crime of “unlawful use of electronic communication device in furtherance of fentanyl trafficking,” likewise does not enhance public safety. In order to prove this new crime, in addition to the use of the electronic communications device, the State would have to prove the elements of trafficking, or the intent to traffick and what is in essence a substantial step and/or agreement in furtherance of the crime, which also could form the basis under current law of charges of attempted trafficking or conspiracy to traffick. 17-A M.R.S. §§ 151, 152. Thus the conduct sought to be captured by the proposed new crime is already actionable within existing statutes.

Section 2 would also introduce an element of inconsistency into the criminal drug statutes, in that it would criminalize use of an electronic communication device to facilitate fentanyl trafficking, but not other drug crimes.

*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.