

CLAC MEMORANDUM/TESTIMONY
LD 1359 (Opposed as Drafted)

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

FR: Criminal Law Advisory Commission (CLAC)
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RE: LD 1359, An Act to Provide an Opportunity for Resentencing for Individuals Who Were Sentenced for Crimes Committed as Juveniles

DA: May 18, 2023

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 1359 as drafted.

To the extent the bill authorizes resentencing (“motion for reduction of sentence”), it would likely be unconstitutional as a violation of the separation of powers clause in the Maine Constitution. The proposed process is effectively a commutation that overlaps with the Governor’s exclusive clemency authority. The Law Court’s opinion in *State v Hunter*, 447 A2d 797 (Me. 1982), likely controls the constitutional question raised by the current draft.

CLAC members were not unanimous with regard to the policy of whether a life sentence should be available for persons under 18 who are bound over and convicted as adults. This is a policy decision squarely within the province of the Legislature, but which all agreed should be addressed with a different drafting approach (see below). For additional context, in Maine, only the crimes of murder and aggravated attempted murder are eligible for life sentences, and then only if the sentencing court finds certain factors. 17-A M.R.S. §§ 152-A, 201, 1603, 1604(2); *State v. Waterman*, 2010 ME 45. The crimes of aggravated attempted murder and gross sexual assault (in certain limited circumstances—“repeat sexual assault offender” and GSA against a child under 12) may also expose a defendant to a sentence of incarceration of “any term of years.” 17-A M.R.S. §§ 152-A, 253, 253-A, 1604(2).

Currently, there are multiple avenues to challenge convictions and sentences, including by direct appeal (legality of sentence), sentence appeal (propriety of sentence), post-conviction review, and Maine Rule of Unified Criminal Procedure 35 (motion to correct sentence within one year).

CLAC noted a number of drafting errors in the proposal, which appears to be based largely on Maryland’s law rather than Maine’s statutory structure. Because juveniles who are “bound over” are treated as adults and prosecuted under Maine’s Criminal Code, any amendments should be made in Title 17-A. Thus if the Legislature wished to exclude such defendants from life sentences, it should do so in Title 17-A, not Title 15, and with any needed cross-references between the substantive crimes in Part 2 that carry life sentences and the sentencing statutes in Part 6. The proposal also refers to parole, not currently a sentencing option, but not supervised community confinement, which is available in Maine.

If sentences other than current mandatory minimum sentences are authorized for juveniles who are bound over (who engaged in the conduct while under 18 but whom the court has determined should be treated as adults), this language should also be in Title 17-A and not the Juvenile Code. The statutes that define the substantive crimes and those that govern the sentencing process would have to be amended.

*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.