

CLAC MEMORANDUM/TESTIMONY
LD 332 (Opposed)

TO: Senator Anne Carney
Representative Amy Kuhn
Joint Standing Committee on Judiciary

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

RE: LD 332, An Act to Establish Mandatory Minimum Sentences for Gross Sexual Assaults
Against Children and Aggravated Sex Trafficking of Children

DA: February 13, 2025

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 332.

As a general matter, CLAC does not endorse mandatory sentences. The Criminal Code gives judges broad discretion, within parameters set by the Legislature, to address the conduct of each individual offender and to tailor sentences to the circumstances of each case, including the harm to the victim and the history and circumstances of the offender, while taking into consideration the purposes of sentencing. 17-A M.R.S. §§ 1501(Purposes), 1602 (Sentencing procedure), 1807 (Conditions of probation).

Mandatory sentences can have unintended consequences, which may diminish respect for the criminal justice system. A mandatory sentence may not be the appropriate sanction in a particular case, because it does not account for the many different circumstances and situations of each defendant and victim. As a result, to avoid an unduly harsh result, prosecutors may charge a different crime, or the prosecution and defense may negotiate pleas to charges other than those that require a certain sentence. Mandatory sentences can also force more trials, to the detriment of victims, because a defendant willing to accept responsibility, when faced with a non-negotiable mandatory sentence, may opt to go to trial in the hope of acquittal.

CLAC's testimony should not be interpreted as a lack of appreciation for the gravity of the heinous conduct associated with crimes of gross sexual assault and trafficking of children. The Legislature has recognized the enormity of these crimes in the current sentencing scheme, which gives judges authority to impose a sentence of "any term of years" on conviction of gross sexual assault against a child under 12. This means that there is no statutory maximum on the length of the sentence. However, by striking the "any term of years" option in Section 1 and Section 4, LD 332 would expose the defendant to a statutory maximum of 30 years, which is the limit that applies to other Class A crimes, and thus actually would decrease the potential maximum sentence.

The current sentencing structure for gross sexual assault against a child under 12 requires the court to set the basic sentence (the first step in the sentencing process) at a minimum of 20 years. This is the starting point from which the judge can then increase or decrease a sentence, depending on aggravating and mitigating circumstances, and reflects the approach taken by the

Legislature in response to a previous proposal to establish mandatory minimum sentences. The Legislature has identified aggravating factors that the court must consider as part of this process. 17-A M.R.S. §§ 253-A(2),(3), 1602(1). In addition, a sentence for gross sexual assault against a child under 12 must include a period of supervised release following release from incarceration; this supervision may be for up to life for the offender. 17-A M.R.S. §§ 1602(3), 1881(1).

The proposal of a mandatory life sentence for repeat sexual assault offenders who are currently exposed to sentences of “any term of years” would be the only such provision in the Criminal Code. In contrast, life sentences for crimes of aggravated attempted murder and murder are subject to both statutory and judicially-created factors that must be considered and found before a court can impose a life sentence. 17-A M.R.S. § 152-A (aggravated attempted murder); *State v Lord*, 208 A.3d 781 (discussing factors applicable to life sentences and difference between life and “any term of years”). In light of the existing caselaw regarding factors that must be considered before a court can impose a life sentence, a statutory mandatory life sentence is likely to result in litigation challenging such sentences. Mandatory life sentences for any juvenile bound over and prosecuted as an adult are not constitutionally permitted, and any statutory change mandating a life sentence should exclude such a sentencing requirement. *Montgomery v. Louisiana*, 577 U.S. 190 (2016); *Miller v. Alabama*, 567 U.S. 460 (2012).

If the Legislature proposes to make changes to the sentencing structure for aggravated sex trafficking, such a change should be reflected in section 852 as well as the general sentencing provisions in section 1604. (The current proposal places the change only in section 1604.) *See, e.g.*, 17-A M.R.S. § 253-A, Special sentencing provisions for gross sexual assault. These cross-referencing provisions provide notice to the public, the court and practitioners regarding the applicable laws, and would reflect a consistent approach to drafting specialized sentencing requirements.

*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.