

CLAC MEMORANDUM/TESTIMONY (OPPOSED)
LD 425, An Act to Establish a Conviction Integrity Unit
in the Attorney General's Office

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 425, An Act to Establish a Conviction Integrity Unit in the Attorney General's Office

DA: February 24, 2025

The Criminal Law Advisory Commission (CLAC)* respectfully submits the following testimony in opposition to LD 425.

The majority of CLAC members oppose LD 425 as unnecessary. One member supported the bill, positing that evidence of a witness recanting may not meet the standards required for post-conviction review.

A majority of CLAC members believe that current processes are adequate to identify and address potentially problematic convictions, and highlighted that it is a laudable goal to identify and correct errors that might result in wrongful conviction. Accordingly, defendants have a right to direct appeal and post-conviction review. 15 M.R.S., Chapter 305-A. Other mechanisms, including motions for new trial, sentence review (direct and discretionary), post-judgment motions for DNA analysis, and review on federal habeas are available to defendants. These various proceedings allow courts to address assertions of actual innocence, newly discovered evidence, errors in the legal process, constitutional violations, prosecutorial misconduct, and ineffective assistance of counsel. It is not apparent that claims of actual innocence are going unaddressed or why an additional process is needed.

CLAC noted that the work of a Conviction Integrity Unit contemplated by the bill may be susceptible to public or political pressure related to public sentiment rather than legal grounds (an application can be made by "any person"). There appears to be no limit on the number of persons who can apply or the number of times a person can apply for review of the same case.

The bill calls for evidence of prosecutorial misconduct to be reported to the Board of Overseers, but includes no parallel provision regarding the conduct of defense counsel. In any event, the conduct of prosecutors and counsel for defendants is reviewed by the Board of Overseers only for violation of the Rules of Professional Conduct. This type of review does not depend on findings of prosecutorial misconduct or ineffective assistance by the courts.

The exception from requirements to comply with existing post-conviction review processes regarding exhaustion of remedies, waiver, and deadlines means that multiple proceedings concerning the same case could be pending at the same time, and/or that the defendant could forego

established appeal and post-conviction review processes and seek relief by means of this alternative method. The lack of any deadline would mean that criminal judgments against persons subject to any restraint or impediment are not final, even after expiration of other applicable appeal periods.

*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.