

TESTIMONY OF MEAGAN SWAY

LD 967 – Ought To Pass

An Act To Make Possession of Scheduled Drugs for Personal Use a Civil Penalty

Joint Standing Committee on Criminal Justice and Public Safety

April 30, 2021

Senator Deschambault, Representative Warren and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Meagan Sway, and I am Policy Director of the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I am here to testify in favor of LD 967.

The ACLU of Maine has long advocated for drug policy reform and we strongly support this initiative, that would connect people who possess a personal-use amount of drugs with potential treatment instead of burdening them with a criminal charge, conviction or record. This bill would move our drug policy away from incarceration and punishment and toward a public-health informed model, one that is centered on seeing the whole person, one that offers people care, compassion and grace.

The failed policies of the so-called “War on Drugs” have wreaked havoc on our communities. Since President Nixon declared a war on drugs in 1971, the United States has become the world’s largest jailer—both in absolute numbers and by the percentage of the population that we imprison.¹ While overall arrests in Maine have decreased by 30 percent over the past decade, drug arrests during that time increased.² Drug use was the fourth most frequent reason for arrest in Maine in

¹ Although Maine itself has lower rates of incarceration than other states, we still have higher incarceration rates than the United Kingdom, Portugal, Canada, France, Italy, and many other western nations. See Prison Policy Initiative, *Maine and NATO incarceration comparison*, available at <https://www.prisonpolicy.org/graphs/NATO2018/ME.html>.

² Ben Shelor, et al., *Justice Reinvestment in Maine Second Presentation to the Maine Commission to Improve the Sentencing, Supervision, Incarceration and Management of Prisoners*, Nov. 12, 2019, pp. 15, 20, available at <https://csgjusticecenter.org/wp-content/uploads/2020/10/JR-in-Maine-second-presentation1.pdf>.

2017.³ Approximately 1 out of every 10 arrests in Maine is for drugs,⁴ and in 2018, 1,720 arrests were made for drug possession alone.⁵

Maine's drug laws are exceptionally harsh compared to other states. Possession of very small quantities of drugs – similar in weight as two dollar bills – is defined in the criminal code as drug trafficking, even if the person is possessing drugs only for personal use. These small amounts can land a person in prison with a felony for 10 to 30 years. Our severe drug laws have funneled thousands of Mainers into permanent second-class citizenship because of the adverse housing, employment, educational, parenting, and immigration consequences that accompany criminal arrests and convictions.

Enforcement of our harsh drug laws disproportionately falls on people of color and poor people. Although Black people are disproportionately arrested for most crimes, the numbers are worse when it comes to drugs. Black people make up approximately 1.6 percent of our population but account for four percent of Class C, 15 percent of Class B, and 21 percent of Class A drug arrests.⁶ These disparities are not explained by differences in drug use. To the contrary, numerous studies have documented that black people and white people use drugs at approximately the same rate—some studies actually show higher rates of usage by white people.⁷

Our attempt to arrest our way out of drug use has not worked: drugs are still readily available throughout the state, substance use disorder rates remain high, and the death toll is unprecedented. More than 500 people died last year from drug overdoses in our state. These were our friends, our family, and our neighbors. We owe it to those we love who use drugs to try a new way in order to save lives. LD 967 represents a new, compassionate, and smart approach to drug use that Mainers deserve. We urge you to vote ought to pass.

³ Ben Shelor & Jessica Gonzalez-Bricker, *Presentation to the L.D. 1492 Working Group*, Dec. 11, 2019 at p.7, available upon request.

⁴ *Justice Reinvestment in Maine Second Presentation*

⁵ *Id.* at 20.

⁶ *Id.* at 23.

⁷ American Civil Liberties Union & Human Rights Watch, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States* (Oct. 12, 2016), available at <https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states>.