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STATE OF MAINE
ONE HUNDRED AND THIRTIETH LEGISLATURE
COMMITTEE ON HEALTH AND HUMAN SERVICES

TO: Senator Anne M. Carney, Chair
Representative Thom Harnett, Chair
Joint Standing Committee on Judiciary

FROM: Senator Ned Claxton, Chair *NC (ATB)*
Representative Michele Meyer, Chair *MM (ATB)*
Joint Standing Committee on Health and Human Services

DATE: May 24, 2021

SUBJECT: Public Record Exception Review
LD 1718, An Act To Establish the Accidental Drug Overdose Death Review Panel

The Joint Standing Committee on Health and Human Services is requesting the Joint Standing Committee on Judiciary’s review, pursuant to 1 MRSA §434, of a confidentiality provision included in LD 1718, An Act To Establish the Accidental Drug Overdose Death Review Panel. This bill was submitted by the Governor’s Office. It had a public hearing on May 21, 2021. The bill was worked later the same day. It was voted unanimously OTP. The bill is attached.

LD 1718 establishes the Accidental Drug Overdose Review Panel within the Office of the Attorney General. The bill has been drafted by the Governor’s Office to reflect the same amended version of LD 2153 reported out of the Judiciary Committee in the 129th Legislature. As you know, LD 2153 was heard and worked by your committee in July 2020, after the Legislature had adjourned early for the Covid-19 pandemic. However, there was no session to take up LD 2153. The Health and Human Services Committee made no changes to LD 1718.

LD 1718 proposes to enact Title 5, section 200-M, subsection 6 making the proceedings and records of the Accidental Drug Overdose Review Committee confidential although the Office of the Attorney General shall disclose conclusions of the panel upon request. The information, records or data that are otherwise classified as confidential may not be disclosed. It is this subsection that triggers this review by the Judiciary Committee. We believe, as your committee did last year, that this language is consistent with other similar panels. Other panels that have a similar charge – to identify methods of preventing deaths and recommending changes to laws, rules, policies and procedures – have similarly constructed confidentiality provisions. For example, the Domestic Abuse Homicide Panel; the Maternal, Fetal and Infant Mortality Review Panel; the Child Death and Serious Injury Review Panel; and the Maine Elderly Death Analysis Team, all make proceedings and records confidential with disclosure of conclusions of the

review panel upon request, but may not disclose anything confidential.

The language is as follows:

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6. Confidentiality. The proceedings and records of the panel are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The Office of the Attorney General shall disclose conclusions of the panel upon request, but may not disclose information, records or data that are otherwise classified as confidential.

Reviewing the statutory criteria for the proposed exception to public records, we have the following comment.

A. Need to collect the information. The panel will examine a subset of accidental drug overdose deaths to make recommendations for improvements to laws, rules, policies and procedures. The panel may also examine accidental drug overdoses that were not fatal. The records need to be collected to do this analysis and to combat this crisis. Drug overdoses continue to be a public health crisis that has only worsened during the pandemic.

B. Value in maintaining information. The panel needs to maintain the records to learn more about the increase and circumstances of overdose deaths.

C. Federal and state law. Some of the information collected may include health care information that is protected under the federal Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and state law in 22 MRSA §1711-C.

D. Balancing the individual's privacy rights and the public interest. The proposed exception protects the personal information of those who died from a drug overdose while making that information available to the panel. Such information does not need to be released to the public. Any information that pertains to criminal acts is made public through arrest and prosecution records and the conclusions of the panel may be disclosed upon request.

E. Balancing the effect of disclosure on business competition against the public interest. There is no connection between this information and competitive disadvantages of any business in this State.

F. Interfering in public negotiations. There is no connection between this information and negotiations involving a public body.

G. Balancing the public interest and potential jeopardy to public safety or a member of the public. The purpose of the panel is to improve public safety. It is not in the public interest to disclose this information.

H. Narrowness of the exception. This exception has been narrowly tailored. The Attorney General is required to disclose conclusions of the panel on request without disclosing information that is otherwise classified as confidential.

Thank you for reviewing this proposed public records exception. If you have any questions, please don't hesitate to contact us.



130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1718

H.P. 1273

House of Representatives, May 19, 2021

**An Act To Establish the Accidental Drug Overdose Death Review
Panel**

(EMERGENCY)

Reference to the Committee on Health and Human Services suggested and ordered printed.

Robert B. Hunt

ROBERT B. HUNT
Clerk

Presented by Representative EVANS of Dover-Foxcroft. (GOVERNOR'S BILL)

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the number of individuals residing in Maine who die as the result of an
4 accidental drug overdose is increasing and exceeds the national average on a per capita
5 basis; and

6 **Whereas,** this legislation must take effect before the expiration of the 90-day period
7 to help prevent, as soon as possible, accidental drug overdose deaths; and

8 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
9 the meaning of the Constitution of Maine and require the following legislation as
10 immediately necessary for the preservation of the public peace, health and safety; now,
11 therefore,

12 **Be it enacted by the People of the State of Maine as follows:**

13 **Sec. 1. 5 MRSA §200-M** is enacted to read:

14 **§200-M. Accidental Drug Overdose Death Review Panel**

15 There is created, within the Office of the Attorney General, the Accidental Drug
16 Overdose Death Review Panel, referred to in this section as "the panel," in order to
17 recommend to state, county and local agencies methods of preventing deaths as the result
18 of accidental drug overdoses including modification or enactment of laws, rules, policies
19 and procedures. For purposes of this section, "accidental drug overdoses" means those
20 overdoses that are presumed to be self-administered by an individual and excludes any
21 overdose that occurs within a licensed health care facility.

22 **1. Composition.** The panel consists of the following members:

23 A. The Chief Medical Examiner, ex officio;

24 B. The Commissioner of Public Safety, ex officio;

25 C. The director of the office of behavioral health within the Department of Health and
26 Human Services, ex officio;

27 D. The Director of the Maine Center for Disease Control and Prevention within the
28 Department of Health and Human Services, ex officio;

29 E. The Chief Justice of the Supreme Judicial Court, ex officio;

30 F. A prosecutor, nominated by a statewide association of prosecutors and appointed
31 by the Attorney General;

32 G. A police chief, nominated by a statewide association of chiefs of police and
33 appointed by the Attorney General;

34 H. A sheriff, nominated by a statewide association of sheriffs and appointed by the
35 Attorney General;

36 I. One or more physicians who treat substance use disorder, appointed by the
37 Governor;

38 J. An emergency medical services representative, appointed by the Commissioner of
39 Public Safety;

- 1 K. An expert in harm reduction strategies, appointed by the Governor;
2 L. An academic research professor with experience in reviewing drug overdose deaths,
3 appointed by the Attorney General;
4 M. A representative of families affected by drug overdose deaths, appointed by the
5 Governor;
6 N. A person in recovery from substance use disorder, appointed by the Governor; and
7 O. The director of opioid response within the Governor's Office of Policy Innovation
8 and the Future, ex officio, who shall chair the panel.

9 In making appointments to the panel, the appointing authorities shall take into
10 consideration the racial and ethnic diversity of the State.

11 2. Designees; terms of office. An ex officio member may appoint a designee to
12 represent the ex officio member on the panel. A designee, once appointed, qualifies as a
13 full voting member of the panel and may hold office and enjoy all the other rights and
14 privileges of full membership on the panel. Appointed members of the panel shall serve
15 for a term of 3 years. Any vacancy on the panel must be filled in the same manner as the
16 original appointment but for the unexpired term.

17 3. Meetings. The panel shall meet at such time or times as may be reasonably
18 necessary to carry out its duties, but it shall meet at least twice per year. The panel's chair
19 shall call the first meeting before July 1, 2021.

20 4. Powers and duties. The panel shall examine a subset of the deaths associated with
21 accidental drug overdoses, taking into consideration the racial and ethnic composition of
22 the population of individuals whose deaths are associated with an accidental drug overdose.
23 The deaths selected for review must be recommended by the Chief Medical Examiner or
24 the Chief Medical Examiner's designee or by an individual with whom the Office of the
25 Attorney General contracts for services. Notwithstanding any provision of law to the
26 contrary, the panel may review information surrounding an accidental drug overdose that
27 was not fatal, as long as review of such a case promotes the purpose of the panel under this
28 section. The panel shall recommend to state, county and local agencies methods of
29 preventing deaths as the result of accidental drug overdoses including modification or
30 enactment of laws, rules, policies and procedures.

31 5. Access to information, records and materials. In any case subject to review by
32 the panel, upon oral or written request of the panel, notwithstanding any provision of law
33 to the contrary, any person that possesses information or records that are necessary and
34 relevant to a panel review shall as soon as practicable provide the panel with the
35 information and records. Persons disclosing or providing information or records upon
36 request of the panel are not criminally or civilly liable for disclosing or providing
37 information or records in compliance with this subsection.

38 6. Confidentiality. The proceedings and records of the panel are confidential and are
39 not subject to subpoena, discovery or introduction into evidence in a civil or criminal
40 action. The Office of the Attorney General shall disclose conclusions of the panel upon
41 request, but may not disclose information, records or data that are otherwise classified as
42 confidential.

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7. Noninterference. A review by the panel under this section is subject to and may not interfere with the authority and responsibility of the Attorney General to investigate and prosecute homicides pursuant to Title 5, section 200-A.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill establishes the Accidental Drug Overdose Death Review Panel to review a subset of deaths caused by accidental drug overdoses and to recommend to state, county and local agencies methods of preventing deaths as the result of accidental drug overdoses including modification or enactment of laws, rules, policies and procedures.

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LD1718
HHS

PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 2/13/12

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)		
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)		
C. Whether federal law requires the record to be confidential		
Does the proposed exception meet one or more of the following (D, E, F, G or I)		
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure		
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records		
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records		
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records		
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception		
H. Whether the proposed exception is as narrowly tailored as possible		
<i>If the proposed exception creates broad confidentiality for an entity: 2-A. Accountability review of agency or official.</i> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		