

TESTIMONY OF MICHAEL KEBEDE, ESQ.

Ought Not to Pass – LD 986

**An Act to Ensure Safer Communities by Increasing the
Punishment for Crimes Involving Fentanyl**

JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

April 18, 2023

Senator Beebe-Center, Representative Salisbury, and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Michael Kebede, and I am policy counsel at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I am here to testify today in opposition to this bill, which would worsen Maine’s overdose death crisis and swell our prisons.

Although the public rhetoric around Maine’s drug laws might lead you to believe otherwise, Maine’s trafficking laws are already harsh compared to most other states. More than three-quarters of states require proof beyond a reasonable doubt that a person intends to sell or distribute drugs before they can be convicted of drug trafficking. In Maine, however, possession of “any compound, mixture or preparation”¹ that weighs four grams or more and “contain[s] fentanyl or any derivative of fentanyl...in any quantity” gives rise to a permissible inference that a person is trafficking in drugs.² This bill would make that law even harsher, by allowing someone who possesses four grams of a mixture containing fentanyl to be sentenced to prison for more years than the minimum murder sentence. And, because a very high percentage of street drugs contain fentanyl these days, this bill would condemn the majority of people who are using street drugs in Maine to 30-year sentences for either possessing small amounts of drugs or subsistence selling (selling small amounts of drugs to afford to buy for one’s own use).

The more the state criminalizes substances, the more it incentivizes a poisonous drug supply. Criminalizing drugs makes them more profitable and more potent. The current rise in

¹ 17-A MRS §1101(24).

² 17-A MRS §1103(3)(C-2).

fentanyl-related deaths can be directly tied to punishing possession and sale of heroin more harshly than other drugs. The rise in the use of heroin was directly tied to tamping down on prescriptions of oxycontin. In recent years, policymakers have focused on increasing penalties for fentanyl, and as a result, sellers have begun increasing sales of xylazine. The coming focus on xylazine will only lead to a more unknown and more dangerous drug supply. This is a game of whack-a-mole: increase the penalties for one drug, and another, worse drug pops up in its place.

The number of deaths in Maine because of drug overdoses is staggeringly high: we lost 716 people last year alone. These people included our dear friends and neighbors. The losses are personal, painful, and preventable. But prevention requires a path that is different than this bill takes. To save lives, we need a public health response to drug use. We must create ways for people to test drugs safely and legally, so that they do not unwittingly poison themselves. We must invest in harm reduction organizations that keep people who use drugs safe and provide proven pathways to recovery. We must expand the availability of detox beds, residential treatment, and other recovery supports for everyone including the uninsured. We must expand access to methadone and buprenorphine and other medications that can help people stabilize. We must ensure low-barrier housing and remove obstacles to getting and keeping jobs. None of this would result from sending people to prison for 30 years.

More than fifty years of the war on drugs, and of incarcerating people for selling small amounts of drugs, has not saved our friends and family from overdoses. Instead, it has saddled people with criminal records, making it harder to keep and maintain employment, housing and stability. We urge you to turn away from failed methods of the past and vote ought not to pass.