



STATE OF MAINE
GOVERNOR'S OFFICE OF POLICY INNOVATION AND THE FUTURE
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GORDON SMITH
DIRECTOR, OPIOID RESPONSE

April 25, 2023

Senator Joseph Baldacci, Chair
Representative Michele Meyer, Chair
Members of the Joint Standing Committee on Health and Human Services

Re: Opposition to L.D. 1159, An Act to Establish a Pilot Project Regarding Harm Reduction Health Centers

Dear Senator Baldacci, Representative Meyer and Members of the Joint Standing Committee on Health and Human Services;

I appreciate the opportunity to submit this letter of behalf of Governor Mills in opposition to L.D. 1159, An Act to Establish a Pilot Project Regarding Harm Reduction Health Centers.

This bill would require the Department of Health and Human Services (DHHS) to establish a two-year pilot program to fund a harm reduction health center, where a person (no age specified) may consume previously obtained controlled substances as well as receive counseling and referral services. The bill also requires municipal approval of the location of the harm reduction center and creates an eleven-member Advisory Board to advise DHHS on the location and operation of the pilot center. While Governor Mills supports the goal of reducing both fatal and non-fatal overdoses and is committed to practical and legal options in this respect, she opposes LD 1159 for the following reasons:

1. Federal law prohibits the operation of such a “safe consumption site.”¹ While two such facilities have operated in New York City for one and one-half years, there has been no statement by the Department of Justice as to its intention regarding such facilities. Even if

¹ 21 U.S.C. § 856 (a) (2) makes it illegal to: “maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance; (2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.” Various DOJ officials have written memoranda (e.g., U.S. Attorney’s Office, District of Vermont, 2017) or op-eds (Lelling, 2019, Rosenstein, 2018) making this argument, and the U.S. Attorney for the Eastern District of Pennsylvania filed a preemptive injunction asking a federal judge to declare that Safehouse – the proposed supervised consumption site in Philadelphia – was in violation of the Controlled Substances Act. Although a federal judge ruled against the government, the case was subsequently overturned by the Court of Appeals (United States v. Safehouse, 2021), and the U.S. Supreme Court declined to hear the appeal. See recent RAND report, p. 227.

there were, this could change with a new administration without a change in the law. The Rhode Island legislature authorized the establishment of such a facility in 2021, but that facility has not opened and it is not scheduled to open until 2024. None of the other 48 states has an authorized safe consumption site operating.

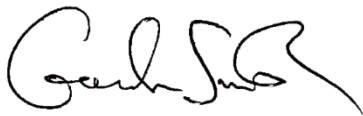
2. While there are many (proponents note at least 200) facilities operating in some other countries, there is no model that we are aware of that has operated in a primarily rural state.
3. While there was testimony at the public hearing stating there would be no cost to the taxpayers, in fact, the operation of the facility would likely be the responsibility of the state as the DHHS would be contracting out the operation and none of the services would be eligible for MaineCare reimbursement or covered by any commercial health insurance. And the operational cost, based upon the facilities we have reviewed in New York City and in Montreal, Canada would be substantial. The medical staffing and security costs alone would be costly. A fiscal note has not yet been developed but, for reference, the budget for the operator of the two sites in NYC is currently \$17.3 million.
4. The other services specified in the bill – specifically health service referrals – are supports we already provide in eighteen recovery community centers across the state. Only two counties, Somerset and Waldo, are presently without such a center and we are actively working with individuals and organizations in each of those counties to look at sites for a potential recovery community center.
5. There is insufficient evidence to date that safe use sites encourage individuals to find a pathway to recovery. Given the lethality of the current drug supply, we should be doing all we can to encourage individuals to find a pathway to recovery, as continuing to use in this environment all too frequently results in a fatal overdose. Eighty percent of Maine’s fatal overdoses last year involved fentanyl, which acts quickly and is 50 to 100 times more lethal than morphine. Only two milligrams of fentanyl is considered a potentially lethal dose. Given that an individual would be unlikely to – and may not be able to – use the facility in every instance (the NYC facilities are open only 12 to 14 hours per day and only 5 days per week), the establishment of such a site may actually increase the risk to users by creating a false sense of security in ongoing use.

In summary, the establishment of such a center, even if only on a pilot basis, would be premature, costly, and would be a violation of federal law. We will continue to review the performance and data associated with any centers that are operating in this country. In 2019, I visited the facilities in Montreal offering safe use and we will continue to review the data associated with these centers. But, in my opinion, there is not yet compelling data to justify any state action that may result in Mainers buying the most lethal substances ever trafficked in this country and putting them at risk. There are many other interventions that we can and do support, short of this type of facility, in order

to protect and care for people who are using drugs. These interventions include our syringe service programs, increasing both out-patient and in-patient treatment capacity and providing more recovery community centers, recovery residences and recovery coaches. And we will continue our robust distribution of the live-saving medication naloxone through the Maine Naloxone Distribution Initiative and expand our OPTIONS behavioral health liaisons program as announced by the Governor earlier this year.

In conclusion, a safe consumption site may be a life-saving option, but it's premature to know and, as designed, could put Mainers at considerable risk. I will make every effort to attend the work session scheduled for later this week.

Sincerely,

A handwritten signature in black ink, appearing to read "Gordon Smith". The signature is fluid and cursive, with a large initial "G" and "S".

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