

April 27, 2023

Senator Pinny Beebe-Center, Chair  
Representative Suzanne Salisbury, Chair  
Members of the Committee on Criminal Justice and Public Safety  
100 State House Station Room 436  
Augusta, ME 04330

**Re: Support of L.D. 1364, An Act to Prevent Opioid Overdose Deaths by Establishing Safe Consumption Sites.**

Dear Senator Beebe-Center, Representative Salisbury, and Members of the Committee on Criminal Justice and Public Safety:

I appreciate the opportunity to submit this letter in support of L.D. 1364. I am a third year law student at Maine Law and a member of the *Maine Law Review*. Last year, an article I wrote on the legality of supervised consumption sites was published in the *Maine Law Review*.<sup>1</sup>

Director of the Opioid Response Gordon Smith, submitted testimony on behalf of Governor Mills in opposition to this bill explaining that the Governor opposes supervised consumption sites because: “Federal law prohibits the operation of such a ‘safe consumption site.’” I believe that Director Smith, Governor Mills, and others who oppose supervised consumption sites are simplifying a complicated and unclear legal question.

First, there is no federal law that explicitly bans supervised consumption sites. When the Governor claims that supervised consumption sites violate federal law, she is claiming that the sites violate 21 U.S.C. § 856(a)(2). This statute is known as the “crack house statute” because it was designed to target so-called crack houses.

Second, whether supervised consumption sites violate the crack house statute is unclear because the statute is ambiguous at best. So far there has only been one court case on this issue. That case, *United States v. Safehouse*, 985 F.3d 225 (3d Cir. 2021), is from the Third Circuit and is not binding on any Maine court. In *Safehouse*, four federal judges applied the crack house statute to supervised consumption sites – two said that the site would violate the law<sup>2</sup> and two said that the site would not.<sup>3</sup> Therefore, any suggestion that the law on this issue is

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<sup>1</sup> Jeff Sherman, *United States v. Safehouse: The Future of Supervised Consumption Sites in Maine and Beyond*, 74 ME. L. REV. 303 (2022), <https://digitalcommons.minelaw.maine.edu/mlr/vol74/iss2/7/>.

<sup>2</sup> See *United States v. Safehouse*, 985 F.3d 225 (3d Cir. 2021).

<sup>3</sup> See *id.* (Roth, J., dissenting); *United States v. Safehouse*, 408 F. Supp. 3d 583, 595-613 (E.D. Pa. 2019).

settled and that a supervised consumption site in Maine would violate federal law is not accurate.

I hope that this letter begins to clear up any confusion regarding the question of whether supervised consumption sites violate federal law. I would be happy to talk with anyone about this very important issue. If you have any questions, please do not hesitate to contact me.

Sincerely,

Jeff Sherman  
J.D. Candidate, 2023  
University of Maine School of Law  
[jeffrey.p.sherman@maine.edu](mailto:jeffrey.p.sherman@maine.edu)