

TESTIMONY OF MEAGAN SWAY, ESQ.

**LD 1159 – Ought to Pass**

**An Act to Establish a Pilot Program Regarding Harm Reduction Health Centers**

Joint Standing Committee on Health and Human Services

April 10, 2023

Senator Baldacci, Representative Meyer, and distinguished members of the Joint Standing Committee on Health and Human Services, greetings. My name is Meagan Sway, and I am the policy director 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, we urge you to support LD 1159, which would save lives.

More than four years ago, I stood before this committee in support of LD 949, An Act To Prevent Overdose Deaths, a bill that would have authorized harm reduction health centers, also known as overdose prevention centers. In 2019, when I testified about the “long, brutal opioid epidemic,” Maine had just lost 307 of its people to preventable drug overdoses. It felt unimaginable to lose that many. Last year alone, we lost 716 people, more than double the number of preventable deaths. The lethal drug overdose epidemic, like all health epidemics, requires a comprehensive evidence-based strategy. One part of such a strategy is to meet people where they are, including reaching people who have not sought treatment by connecting them with facilities like harm reduction health centers.

Overdose prevention programs like the pilot project established in this bill, have been operating across Australia, Canada, and Europe for decades. These centers have successfully prevented overdose deaths and disease transmission, and have connected people to treatment. There have also been two similar centers established in New York City. Over 2,000 people went in their first year of operation and staff intervened in more than 600 overdoses, stopping them before they became deadly.<sup>1</sup> Rhode Island passed a similar bill to LD 1159 and will open harm reduction health

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<sup>1</sup> Dan Krauth, *7 On Your Side: 1 year later, NYC's overdose prevention centers have saved hundreds of lives*, ABC 7 NY, Nov. 22, 2022, available at <https://abc7ny.com/7-on-your-side-investigates-nyc-overdose-prevention-center-drug-addiction/12511336/>.

centers this year. The evidence shows that overdose prevention sites work, and this is an opportunity for Maine to lead the nation to healthier future.<sup>2</sup>

Maine has a proud history of doing what is best for Mainers, even when there is tension between state and federal law. While the consumption of scheduled drugs remains illegal under the federal Controlled Substances Act (CSA),<sup>3</sup> and LD 1159 cannot change that, the Maine legislature should nevertheless support this bill. Despite the fact that cannabis consumption is illegal under federal law, the state of Maine has allowed cannabis consumption for medicinal purposes since 1999.<sup>4</sup> Voters approved consumption and possession for recreational purposes in 2016. The state legalized cannabis initially because the legislature took a patient-centered approach, and found that the benefits of cannabis to patients suffering from pain and illness outweighed the state's interest in criminalizing the drug. Maine has continued with legalization despite the federal opposition and the direct conflict between Maine's laws and outdated, unscientific federal drug laws.<sup>5</sup>

In addition to Maine's history of doing what's best for its people, even if it contradicts federal law, it is also well-established that the state and federal governments can adopt different laws addressing the same activities and separately enforce each within the boundaries of the state under the 'dual sovereignty' doctrine.<sup>6</sup> Under the principle of dual sovereignty, state-sanctioned harm reduction health centers will not shield individuals acting in compliance with state law from arrest, indictment, or conviction under the federal CSA. Rather, like Maine's medical and recreational cannabis laws, LD 1159 would establish immunity under state law, but offer no legal protection from possible punishment by the federal government under the CSA.

LD 1159 asks us: how does Maine as a state want to use its own resources to tackle overdose deaths and save lives? The United States Supreme Court has determined that the 10<sup>th</sup> Amendment restrains Congress both from requiring a state to enact or keep on its books any law requiring or prohibiting certain acts,<sup>7</sup> and also from commandeering state actors to enforce federal laws.<sup>8</sup> Since the federal government cannot, as a constitutional matter, count on state resources to enforce its

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<sup>2</sup> See, e.g., Potier C., Laprévotte V., Dubois-Arber F., et al., *Supervised injection services: What has been demonstrated? A systemic literature review*, Drug and Alcohol Dependence, 2014; 145:48-68 (review of 75 articles regarding supervised consumption sites found that these sites were associated with better health outcomes for intravenous drug users and fewer overdose deaths).

<sup>3</sup> 21 U.S.C. §801 et. seq.

<sup>4</sup> 22 M.R.S. §2383-B

<sup>5</sup> See, e.g., 21 U.S.C. §§841(a)(1), 844(a) (criminalizing drug possession).

<sup>6</sup> See *Moore v. Illinois*, 55 U.S. 13, 20 (1852).

<sup>7</sup> *New York v. U.S.*, 505 U.S. 144, 166 (1992)

<sup>8</sup> *Printz v. U.S.*, 521 U.S. 898, 935 (1997)

laws, a state's decision to create harm reduction health centers is within the purview of the state legislature.

As Supreme Court Justice Louis Brandeis famously wrote, “[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”<sup>9</sup> The laboratory of democracy, at its best, is a system in which communities and states can develop community-based solutions to the unique problems they face. And, in our federalist system of government, public health is a core state power, which is to be granted great deference by the federal government.<sup>10</sup> Because harm reduction health centers, and preventing overdose deaths, is a matter of public health concern, it is especially fitting that the state would participate in the laboratory of democracy in this area specifically.

The ACLU of Maine has pushed, and will continue to push, for evidence-based health responses to support Mainers with substance use disorder in an effort to save lives, protect civil liberties, and end the failed war on drugs. We urge the legislature to prioritize the health and well-being of Maine's people over fear of conflict with the federal government. We urge you to support LD 1159, which is one piece of the comprehensive response needed to tackle our overdose death epidemic. Please vote “ought to pass” on this important legislation.

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<sup>9</sup> *New State Ice Co. v. Liebman*, 285 U.S. 262, 311 (1932).

<sup>10</sup> *See Jacobson v. Massachusetts*, 197 U.S. 11, 24-25 (1905).