



Maine

PO Box 7860
Portland, ME 04112
(207) 774-5444
www.aclumaine.org

TESTIMONY OF MICHAEL KEBEDE, ESQ.

Ought Not to Pass - LDs 1545 and 994

**An Act to Reduce Drug Overdoses and Death by Expanding the
Crime of Aggravated Trafficking of Scheduled Drugs by Including
Compounds, Mixtures or Substances**

**An Act to Include Possession of Compounds, Mixtures or Substances Containing a
Detectable Amount of Certain Scheduled Drugs to Prove the Offense of Unlawful
Trafficking of Scheduled Drugs**

JOINT STANDING COMMITTEE ON
CRIMINAL JUSTICE & PUBLIC SAFETY

April 18, 2023

Senator Beebe-Center, Representative Salisbury, and distinguished members of the Joint Standing Committee on Criminal Justice & Public Safety, greetings. My name is Michael Kebede, and I am the 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, we urge you to reject both these bills.

First, these bills are largely duplicative of existing law. Second, to the extent that they are not duplicative, these bills expand the state's already enormous power in prosecuting drug crimes. Under current law, if a prosecutor establishes that someone "intentionally or knowingly possesses [specified quantities of] any scheduled drug," then the law allows "a permissible inference under [Rule 303] of the Maine Rules of Evidence ... that the person is unlawfully trafficking in scheduled drugs." 17-A MRS §1103(3). This law allows prosecutors to cut corners when seeking a drug trafficking conviction by saving them from having to prove to a judge or jury that the accused even sold any drugs. As long as the prosecutor proves that the accused possessed four grams of heroin, or fourteen grams of cocaine, or more than one pound of cannabis, then the accused is assumed – without *any* evidence – to be unlawfully trafficking in that substance. *See id.* Current law is already absurd enough, since it gives the state the power to punish people for things that might have never happened. The bills before you would further

undermine some of the most basic principles of our legal system, including the principle of “innocent until proven guilty,” and enlarge an already enormous state power.

If enacted, these bills would add to the drug trafficking sections of the criminal code what already exists in definitions sections of the criminal code. Maine’s criminal code defines cocaine, heroin, fentanyl, and numerous other drugs as “any compound, mixture or preparation, in granular or powder form, containing [the drug] in any quantity.” See 17-A MRS §§1101(24), 1101(25)(B), 1101(26), 1102(1)(I), 1102(3)(K). For some drugs (i.e., cocaine, heroin, fentanyl, and other narcotics), these bills would merely re-codify the rule under which you are presumed to be trafficking the total weight, not the fractional quantity, of the banned drug. For other drugs (i.e., methamphetamine or amphetamine, 3, 4 - methylenedioxymethamphetamine, MDMA, and thirteen other drugs listed in 17-A MRS 1102(1)(O)), these bills expand the rule that treats fillers that drugs are mixed with (e.g., flour or baking soda) as part of the weight of the drug.

These bills would bring about an unnecessary and harmful expansion of Maine’s drug laws. They would, of course, make prosecutors’ jobs easier, but at a vast cost to jails and prisons and, more importantly, to the lives of people with substance use disorders. The War on Drugs, which these bills would strengthen, has worsened drug-related violence and deaths;¹ made the drug market more violent by driving it underground;² and exacerbated the overdose epidemic by leaving drug users with no guarantee of the safety or purity of drugs.³ People in poverty, especially poor people of color, have been much likelier than the rest of the population to be arrested and convicted for drug use, possession, and sale. As a consequence, people of color shoulder a vastly disproportionate burden of records for drug crimes. In Maine, Black people

¹ See generally, Christopher J. Coyne & Abigail R. Hall, *Four Decades and Counting: The Continued Failure of the War on Drugs*, Cato Inst., Policy Analysis No. 811, Apr. 12, 2017, available at <https://www.cato.org/policy-analysis/four-decades-counting-continued-failure-war-drugs>.

² See Hannah LF Cooper, *War on Drugs Policing and Police Brutality*, 50 (8-9):1188-94 *Subst Use Misuse* (2015) doi: 10.3109/10826084.2015.1007669. PMID: 25775311, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4800748/>.

³ Glen Olives Thompson, *Slowly Learning the Hard Way: U.S. America’s War on Drugs And Implications for Mexico*, 9:2, 59-83 *Norteamérica*, Dec. 2014, <https://doi.org/10.20999/nam.2014.b003>, available at <https://www.sciencedirect.com/science/article/pii/S1870355016300039> (arguing that legalizing drugs would increase drug safety).

make up 1.6 percent of our population, but 21 percent of the people arrested for Class A drug trafficking and 15 percent of those arrested for Class B drug trafficking.⁴

If enacted, these bills would worsen the crisis of drug-related harm and death. They would also undermine the presumption of innocence by enabling convictions for larger drug quantities than the accused possessed or sold. We urge you to vote *ought not to pass*.

⁴ Ben Shelor, Jessica Gonzalez-Bricker, and Carl Reynolds, *Justice Reinvestment in Maine: Second Presentation to the Maine Commission to Improve the Sentencing, Supervision, Incarceration and Management of Prisoners*, THE COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER, at 23 (Nov 19, 2019), available at <https://csgjusticecenter.org/wp-content/uploads/2020/10/JR-in-Maine-second-presentation1.pdf>. See also *A Tale of Two Countries Racially Targeted Arrests in the Era of Marijuana Reform*, ACLU, July 1, 2020, at 68, https://www.aclu.org/sites/default/files/field_document/tale_of_two_countries_racially_targeted_arrests_in_the_era_of_marijuana_reform_revised_7.1.20_0.pdf (finding that Black people in Maine were four times more likely than white people to be arrested for cannabis possession in 2018 – and that in York County, Black people are more than twelve times more likely than white people to be arrested for cannabis possession).