



## Testimony in Opposition of LD 109

### An Act to Improve Safety for Individuals Living in Recovery Residences

January 30, 2023

Dear Senator Beebe-Center, Representative Salisbury, and honorable members of the Joint Standing Committee on Criminal Justice and Public Safety,

My name is Courtney Gary-Allen. I am the Organizing Director of the Maine Recovery Advocacy Project (ME-RAP). I have extensive expertise in recovery policy and have helped to propose, write, and pass countless pieces of legislation on matters relating to criminal justice reform, recovery housing, and increasing access to treatment, prevention, and harm reduction services in Maine. I am here today to testify in opposition to LD 109: An Act to Improve Safety for Individuals Living in Recovery Residences.

As this public hearing progresses, you will hear from Ron Springel, Executive Director of the Maine Association of Recovery Residences, Amanda Ricci who has been working to open a recovery residence in Farmington, from Scott Pardy, an operator working miracles in Bangor who will share his experience with the state fire marshal's office in 2019, Brittany Reichman and Madison Weymouth, MARR inspectors who will detail their stringent fire safety guidelines, MARR board president Alison Webb, author of Recovery Allies, who will share more details about the organization's mission, and from countless other recovery housing operators, recovery housing residents, the greater recovery community, and our allies.

My part in this conversation is to help your committee understand how we got to this point and what LD 109 does.

LD 109 seeks to repeal Sec. 1. 25 MRSA §2452, sub-§4, which classifies recovery residences that are certified by national standards, house no more than 2 people per bedroom, 6 people per bathroom, and follow all other applicable housing codes as a single-family home for the purposes of fire code. This section of the law was proposed by then-Representative Justin Fecteau during the 129th Legislative Session and passed unanimously by the Criminal Justice and Public Safety Committee, flew through the House and Senate, and was signed into law by Governor Janet Mills.

I know this because this law was one of the very first pieces of legislation I ever worked on. At the time, I was the Executive Director of James' Place, a small non-profit recovery residence in Augusta, Maine.



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### **An Act to Improve Safety for Individuals Living in Recovery Residences**

As background, on November 2nd of 2018, I received communications from the Augusta Code Enforcement Office that James' Place would be categorized "into the definition of a lodging or rooming house found within the 2009 NFPA 101, *Life Safety Code*, section 26.1.1.1."

This section of the code defines a Lodging of Rooming House as "a building that provides sleeping accommodations for 16 or fewer persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities for individual occupants." The officer required James' Place to house "no more than 3 outsiders", install a sprinkler system, or face him in court.

I knew these to be discriminatory practices because recovery housing is protected by the Federal Fair Housing Act, and the Americans with Disabilities Act but I was not willing to risk my guests being evicted from their homes. Instead, we enlisted Rep. Justin Fecteau and vowed to bring it to the legislative session.

During the public hearing on LD 353, then Assistant State Fire Marshal, Richard McCarthy, testified neither for nor against the bill and confirmed that "recovery houses and their residents have protection under the Americans with Disabilities Act as a protected class". In his testimony, he states that the issue of if these protections extend to fire and building codes were reviewed by a member of the Maine State Attorney General's Office and that the decision was as follows:

**A failure on the part of the State of Maine to make reasonable accommodations, namely non-enforcement of the sprinkler rules, would likely be found to violate the Fair-Housing Act and the Americans with Disabilities Act.**

The Maine Attorney General's Office advised allowing recovery residences to operate without sprinkle systems that would be otherwise required by law.

This is a long-standing legal opinion, first discussed in a 1993 decision by Maryland's then-Attorney General Joseph Curran, Jr. whose opinion was that:

**The Federal Fair Housing Amendments Act prohibits enforcement of fire safety code requirements in a small private group home for the mentally ill if the requirements are neither imposed on single-family dwellings nor tailored to the unique and specific needs and abilities of the home's residents.**



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These findings continue in caselaw, including in Brockton Fire Department vs. St Mary Broad Street, LLC, Tsombanidis vs. City of West Haven CT, and Oxford house versus H. "Butch" Browning. The bottom line is that for better or worse, the State cannot impose excessive fire code regulations on recovery houses.

During today's hearing, you will hear countless testimonies about the dire impacts of repealing Sec. 1. 25 MRSA §2452, sub-§4 could have on the recovery housing community in Maine, namely the closure of countless houses, which is a valid and important concern in the middle of a housing and overdose crisis. And to be clear, in the State of Maine, not a single person has died in a house fire while living in a recovery residence, yet in 2022 we are expected to lose over 650 people to overdoses.

That being said, I specifically think it's important to underscore that if you repeal this section of the law, you will be opening the State of Maine to a lawsuit for a violation of the Americans with Disabilities Act and the Federal Fair Housing Act.

Thank you for your time. I am happy to answer any questions. I will also be available to you during the work session on the bill.

Sincerely,  
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STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND NINETEEN

H.P. 279 - L.D. 353

**An Act Regarding the Safety of Recovery Residences**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 25 MRSA §2452, sub-§4** is enacted to read:

**4. Exception. Notwithstanding chapter 314 and Title 10, chapter 1103, a recovery residence must be treated as a residence for a family if the recovery residence meets the following requirements:**

- A. The recovery residence must be certified based on criteria developed by a nationally recognized organization that supports persons recovering from substance use disorder;**
- B. The recovery residence must have no more than 2 residents per bedroom;**
- C. The recovery residence must have at least one full bathroom for every 6 residents;**
- D. The recovery residence must meet the requirements of all adopted building codes and sections 2464 and 2468 applicable to a one-family or 2-family residence with regard to smoke detectors, carbon monoxide detectors and fire extinguishers; and**
- E. If the recovery residence is located in a multiunit apartment building, the recovery residence must meet all state and local code requirements for the type of building in which the recovery residence is located.**

**For the purposes of this subsection, "recovery residence" means a shared living residence for persons recovering from substance use disorder that is focused on peer support, provides to its residents an environment free of alcohol and illegal drugs and assists its residents by connecting the residents to support services or resources in the community that are available to persons recovering from substance use disorder.**



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April 26, 2019

**Testimony in Support of LD 353:  
An Act To Classify Recovery Residences as One-family Dwellings  
for the Purposes of the Fire Code**

Good morning Senator Deschambault, Representative Warren, and my esteemed colleagues on the Joint Standing Committee on Criminal Justice and Public Safety. I am Representative Justin Fecteau. I am a German teacher currently on leave from Maranacook Community High School in Readfield to serve the fine people of District 86, which is West and North Augusta.

I am proud to support our recovery community. I am sure I don't need to tell anyone on this committee how much substance abuse has affected our state - or how many times we have tried searching for the right answers and have come back with nothing.

We are blessed with a ready and willing group of recovery leaders in our state. They are opening up recovery residences and getting our friends, family, and neighbors back on track. In my area, we have a non-profit called James' Place and they are doing exactly that; and with the evidence-based guidance from organizations like the Maine Association for Recovery Residences (MARR), the safe and reputable establishments can be clearly identified.

But they've reached out to me for some help. Access to safe and effective recovery housing is not equitable in our state. That's why I submitted LD 353: An Act To Classify Recovery Residences as One-Family Dwellings for the Purposes of the Fire Code.

I want to be clear. I have no interest in diminishing public safety or reverse-discriminating against our neighbors recovering from substance use by providing them living spaces that are less safe from those who are not recovering. I am trying to recognize these alcohol and illegal substance free homes as single family homes.

These residents live together, shop together, cook together, go to meetings together, and are all active in the community and with employment and post-secondary education. If we were to allow these families to be burdened with tens-of-thousands of dollars worth of sprinkler systems they would never open - and they may never find their way back to normal.

This bill restricts these residences to a house, lists the number of people that can live within each of these single family residences, and applies a smoke detector and fire extinguisher code that is beyond the requirements of a normal single family home. Furthermore, it provides a sound definition of a "recovery residence" to keep them all honest.

It is my understanding there will be groups to address subsection 4b of my bill. Apparently the number 6 should read "6 occupants per sink, toilet, and shower." The way it was briefed to me, it may be an important provision the committee considers. It may actually prevent some unsafe practices happening in some recovery residences throughout the state that don't have the National Association of Recovery Residences certification. I looked through the list this past weekend and it's quite thorough and extensive.

While I'd love to be able to answer all of your questions, I have brought plenty of back up to help us through this process.

I sincerely appreciate your time. Thank you.

Respectfully,



Rep. Justin Fecteau

TESTIMONY OF RICHARD MCCARTHY  
DEPARTMENT OF PUBLIC SAFETY  
OFFICE OF STATE FIRE MARSHAL

(Neither for Nor Against) L.D. 353

**"An Act to CLASSIFY RECOVERY HOUSES AS ONE AND TWO  
FAMILY DWELLINGS"**

Presented by: *Representative Fecteau*

**BEFORE THE JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE  
AND PUBLIC SAFETY**

**Hearing Date: Friday, April 26<sup>st</sup> , 2019 at 9:00 AM in Room 436, State House**

Good morning Senator Deschambault, Representative Warren, and members of the Joint Standing Committee on Criminal Justice and Public Safety.

My name is Richard McCarthy and I am the Assistant State Fire Marshal Inspections and Prevention Division for The Office of the State Fire Marshal. I am here today representing the Department of Public Safety and the Office of State Fire Marshal to testify neither for nor against this bill.

A single family home as defined within State adopted Life safety Codes is a "dwelling unit that is occupied by members of a single family with not more than three outsiders if any in rented rooms". Since there is no definition of family within the Code it is left up to the Authority Having Jurisdiction (AHJ) to interpret whether the occupants of a home are to be considered a single family. If a building does not qualify as single family the next level would be rooming and lodging where up to 16 people in rented rooms. Placing Sober Houses in this category would require more restrictive Fire Safety measures to be added to the building such as sprinklers and fire alarms.

Our office inspects substance abuse recovery facilities that are licensed by DHHS, these facilities by statute are considered small residential care facilities if housing under 16 residents. This Bill if it passes will create 2 distinct levels of protection for the residents of recovery facilities, licensed facilities providing a higher level of Fire safety and unlicensed providing what would be required for your home.

Recovery Houses and their residents have protection under the Americans with Disabilities Act as a protected class as to not prohibit or restrict where these recovery houses are located. It is less clear whether this protection extends to the Fire and Building Codes. This issue was reviewed by a member of the Maine State Attorney General's Office and the decision was as follows." A failure on the part of the State of Maine to make reasonable accommodation, namely non-enforcement of the sprinkler rules, would

likely be found to violate the Fair-Housing Act and the Americans with Disabilities Act. Our office was advised to allow these substance recovery homes to operate without the sprinklers that would be otherwise be required by law.

1. I would be happy to answer any questions you may have at this time or during the work session.



April 26<sup>th</sup>, 2019

Good morning Senator Deschambault, Representative Warren and other distinguished members of the Criminal Justice and Public Safety Committee,

My name is Courtney Allen. I am the Founder and Executive Director of James' Place; a nonprofit recovery residence here in Augusta and a certified alcohol and drug counselor. I serve on the committee for Maine Association of Recovery Residences and as Chapter Leader for Young People in Recovery. I am here today to testify in favor of LD 353; An Act to Classify a Small Recovery Residence as a Single-Family Home for the purpose of Fire Code.

On November 2<sup>nd</sup> of 2018, I received communication from the Augusta Code Enforcement Office that James' Place would be categorized "into the definition of a lodging or Rooming house found within the 2009 NFPA 101, *Life Safety Code*, section 26.1.1.1." This section of the code defines a Lodging or Rooming House as "a building that provides sleeping accommodations for 16 or fewer persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities for individuals occupants." The officer required James' Place to house "no more than 3 outsiders" or face him in court.

I knew these to be discriminatory practices because recovery housing is protected by the Federal Fair Housing Act, the American with Disabilities Act and the precedent created by Oxford house versus H. "Butch" Browning but I was not willing to chance my guests being evicted from their home. Because of these discriminatory practices I was forced to open the houses as single occupancy rooms and vowed to bring it to this legislative session.

Operating a recovery residence with only three people living in it has presented many challenges. We operate as a low-barrier, low-cost house. What that means is that 72% of our guests in 2018 received either a scholarship from James' Place, a church or general assistance to pay for their first week of rent. It means that when someone comes to us without the ability to pay, we do not turn them away. It is not economically viable to continue operating this way – we have no paid staff members and barely keep the doors open month to month.

There is no governmental funding being directed towards recovery housing, yet. Grant writing takes exactly what we do not have; time. There are more than 1 person dying a day on the streets of Maine and I have a 20-person waitlist. That is 20 people that tonight will sleep in subpar environment for their recoveries. That is 20 people who tonight I will go to bed worried about. This bill will double our ability to get people off the streets and into safe housing, as well as create a precedent going forward for recovery houses across the state.

Beyond financial hardships, single occupancy rooms present serious safety concerns in the population we are serving. In the state of Maine, not a single person has died in a house fire while living in a recovery residence, yet overall 418 people died last year as a result of overdose. Substance Use Disorder is a chronic relapsing condition and the reason recovery housing works is because of the added accountability between house mates.



On the ground, single occupancy rooms mean that a guest could resume use in their room and be dead before anyone finds them. James' Place mission is to provide safe housing to people seeking recovery. I cannot fulfill this mission when I am forced to house people in single occupancy rooms.

Recovery housing works as a viable solution to curbing substance use in Maine. At the time of intake, a person averages a recovery capital score of 111.36. After only 30 days at James' Place that score jumps to 138.93 – averaging a 27.57 increase.

The people who live at James' Place are not only working, going to school or volunteering, remain sober and becoming a part of their communities – they are statistically different than the person who first moved in. By passing this bill, the committee will be putting an end to the misunderstandings between recovery residences and fire code officials and granting state wide permission to continue our work. And in a state where so many people are dying, we must continue.

I want to thank the committee for your time and I am willing to answer any questions.

Sincerely,

Courtney Allen

Testimony of Ronald D. Springel, MD

IN FAVOR OF

LD 353 AN ACT TO CLASSIFY A SMALL RECOVERY RESIDENCE AS A SINGLE FAMILY HOME FOR THE PURPOSES OF THE FIRE CODE

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Some notes from our conversation. I forgot to mention GA – talk with GA and clamp down on that. Journey House is the operator in Sanford. Other than them extemporizing to the City Council for half an hour at a City Council meeting and accosting me on the street the morning after the five-building fire last October, they have supposedly set up 2-4 sober houses in Sanford. They have requested GA funds on an individual basis. One person has received GA funds as I learned last week. They are not Oxford House, and expect that they will “cave” to the license requirement. Do whatever you can to keep them away, but in the end there is nothing you can do to keep them away.

Check out how many Oxford House operations there are in Portland. Eventually they will move farther afield.

The rationale behind the license is also to get ahead of the State. There is enough gobbledegook on this topic taking place at the State, to potentially result in something bad because the bottom line is they don't need permission to operate. Oxford House has proceeded with a model where they set up as a family of people two have a disability. (Drug abuse and recovery is not a disability according to the Federal Law; alcoholism is.) I expect that the State would create a carve-out disability related to opioid addiction.

The license I propose is specific to Sanford. Sanford defines a family including a “group home.” Group homes are disability housing for 8 or fewer people.

Where municipalities have run afoul of the Federal Laws regarding family and people with disabilities is equitable application and discrimination. If a group home wants to operate in a single family zone they may and there is nothing the BOA can do to prevent that other than bring on a lawsuit and lose. Here is some serious reading on the matter.

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This email makes clear the contempt applied to recovery houses when it comes to federal protections by city officials. The “license” proposal is just one way towns and cities try to exclude recovery residences. Another is through the code enforcers – they fail to treat a house as a single family home, instead classifying it as a “boarding house” or “group home”, therefore requiring it to install fire doors, expensive sprinkler systems and other equipment. Since the cost is prohibitive to almost all residence operators, they must move on to another town without these types of discriminatory practices. Federal court rulings, both in Louisiana and Connecticut, have affirmed that recovery residences operate as families, not individual boarding residents and they are entitled to the protections of both the Americans With Disabilities Act and the Fair Housing Act.

MARR urges OUGHT TO PASS on LD 353.

For the record, we wish to thank the Office of the State Fire Marshall for their stance on this bill and understanding that many more Mainers are at risk of dying from drug poisoning than from fire hazards in certified recovery residences. Attested and submitted: Ronald D. Springel, MD, Maine Association of Recovery Residences, April 26, 2019

**Testimony of Ronald D. Springel, MD  
IN FAVOR OF  
LD 353 AN ACT TO CLASSIFY A SMALL RECOVERY RESIDENCE AS A SINGLE FAMILY  
HOME FOR THE PURPOSES OF THE FIRE CODE**

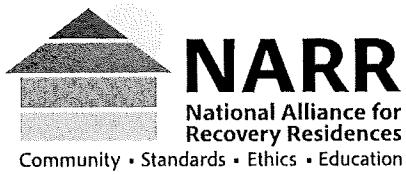
Senator Deschambault and Representative Warren and other distinguished members of Criminal Justice and Public Safety Committee, my name is Dr. Ron Springel and I am a resident of Cape Elizabeth. I am here today as a representative of the Maine Association of Recovery Residences (MARR), a Maine non-profit. MARR is the Maine state affiliate of the National Alliance of Recovery Residences – a group that has developed a national certification program for recovery residences (RR). To date we have certified 26 recovery residence in Maine and are working to certify many more. Separately, I publish and edit the Maine Recovery Residence Directory, a free resource listing all 100 currently known recovery residences in Maine and identifying those that have received certification at the standard of the National Alliance of Recovery Residences (NARR).

My background includes not only being trained as a physician in Emergency Medicine but also working in the field of Addiction Medicine. I have appended some work experience relevant to this testimony at the end of this written document.

Since recovery residences began proliferating in the 1980s' largely under the "Oxford House" model, they have been met with a variety of challenges to their successful operation. Families that desperately seek services for their loved ones at the same time complain, "not in my backyard!" Discrimination against this protected group has been rampant in our own state, OFTEN BY PAID GOVERNMENT EMPLOYEES.

The following is part of an email exchange obtained through a Freedom of Information Act (FOIA) request. I attest to its authenticity as a true original and unedited copy. I have extracted this section and erased identifiers regarding the author's name, position and affiliation. It was part of an email conversation between the City of Sanford and another Maine municipality. It references a phone call that took place between the entities. Highlighting is mine.

**PLEASE GO TO NEXT PAGE**



# **Fire codes and recovery housing**

Summary of recent findings, legal opinions and court rulings,  
and index to source documents

January 2021  
updated April 2021

# Fire codes and recovery housing

## Document index and summary

January 2021  
updated April 2021

This document is an index to a family of related material related to the permissible application of state and local fire codes to residential dwellings – primarily single family residences occupied by households of recovering individuals.

Source documents are available online in a Google Docs folder, and links are included in the descriptions below.

### Life Safety Code 2021 revision

The International Fire Protection Association maintains the *Life Safety Code*, referenced by most local governments in writing and modifying their own fire codes. A proposed 2021 revision supports the intent to treat households of unrelated persons that operate as families in accordance with the regulations applicable to single family dwellings.

#### **References:**

[Current version of the code](#)

[Proposed language related to shared housing](#)

### Maryland Attorney General's opinion on fire codes and shared housing

This ruling was an important element in recent discussions in Maryland about appropriate requirements for sober home providers.

#### **Reference:** [opinion](#)

### Maryland agreement letter – Kim Savage

This memorializes the decision by the Maryland fire marshal that shared occupancy of single family dwellings by recovering individuals operating as single households are exempt from fire inspection requirements and that occupancy is to be treated in the same manner as occupancy by a natural family.

#### **Reference:** [letter](#)

### Case law - Brockton MA federal court decision

Finding in this 2016 case in favor of the defendant recovery residence operator was that the Massachusetts Zoning Act prohibits discrimination against disabled persons in the enforcement of local laws including zoning, health and safety codes, notwithstanding the existence of the state's "sprinkler law" covering boarding/rooming houses.

#### **Reference:** [Brockton Fire Department vs. St. Mary Broad Street LLC](#)

### **Case law – Connecticut and Louisiana federal court decisions**

Findings in both cases were that recovery residence households operating as the equivalent of natural families, i.e. as single households, must be treated in the same way a family would be treated. The Louisiana case specifically addresses the fire code issue while the Connecticut case addresses a wider range of regulatory issues.

#### ***References:***

[Tsombanidis vs. City of West Haven CT](#)

[Oxford House vs. Browning \(Louisiana\)](#)

### **State enforcement action - California Department of Housing and Community Development**

Fair housing protections under California state law roughly parallel federal protections. Nevertheless several cities have enacted zoning and related ordinances that discriminate against recovery residences in various ways. In March 2021 the state issued a cease-and-desist order to the City of Encinitas directing them to rescind their ordinance completely. The order addresses several significant violations of both state and federal law. Fire codes are addressed but most violations cited relate to other aspects of the city's regulations.

***Reference: City of Encinitas Notice of Violation***

### **Supplementary material on fair housing and current oversight of recovery housing**

The documents below don't bear exclusively on the fire code issue, but include important background information of federal fair housing law and on the preferred framework for recovery housing oversight in light of that body of law.

The first item, a joint statement from HUD and DOJ, is one we recommend to anyone in state or local government seeking to understand the requirements under the Fair Housing Act, Americans With Disabilities Act and related federal regulations. The second item is a guide co-produced by the National Council for Behavioral Health and NARR almost three years ago. It includes recommendations for state oversight of recovery housing systems, and also contains a summary table of major regulatory features of representative states as of publication date (March 2018).

#### ***References:***

[Joint statement, HUD and U.S Department of Justice](#)

[Building Recovery: State Policy Guide for Supporting Recovery Housing](#)