

TESTIMONY OF RICHARD MCCARTHY

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF STATE FIRE MARSHAL

(Neither for Nor Against) L.D. 109

“An Act to Improve Safety for Individuals Living in Recovery Residences”

Presented by: Representative Landry

BEFORE THE JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

Hearing Date: Monday, January 30th, 2023 at 10:00 AM in Room 436, State House

Good morning Senator Beebe-Center, Representative Salisbury, 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 for the 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.

The Department of Public Safety includes the Maine State Police and the Maine Drug Enforcement Agency who are working to protect the public by disrupting drug trafficking networks. The Department of Public Safety supports recovery as a critical aspect of the State’s comprehensive approach to confronting the opioid crisis that has gripped our state and our nation. The Department of Public Safety also includes the Office of the State Fire Marshal. The mission of the Office of State Fire Marshal is to prevent loss of life and property for those that live, work and visit in the State of Maine. Our goal is to protect against the devastation of fire, explosions and life safety hazards with integrity and fairness through fire prevention, public education, planning, research, investigation and enforcement of enacted laws and rules.

To that end, the State of Maine has adopted the NFPA (National fire Protection Association) Life Safety Code 101, 2018 edition. A single-family home is defined within that as a “dwelling unit that is occupied by members of a single family with not more than three outsiders if any in rented rooms”. This is the occupancy type that many of us live in and are familiar with. 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 is a single-family dwelling, there are safety requirements within the code for that occupancy type. However, if it does not qualify as single family the next level would be rooming and lodging where up to 16 people in rented rooms may reside. If there are more than 16 people in rented rooms the building would be considered a dormitory. Any dwelling in this category would require more comprehensive Fire Safety measures to be added to the building such as sprinklers and fire alarms.

There are currently two kinds of substance use recovery residences in the view of my Office. First, there are those that choose to be licensed by the Department of Health and Human Services as a “Private Non-Medical Institution” (PNMI). There is no statutory requirement that recovery residences be licensed by DHHS. Our office inspects the substance abuse recovery facilities that are licensed by DHHS. These facilities by statute are considered small residential care facilities if housing under 16 residents, or large facilities if over 16. Current law requires this kind of facility to meet certain requirements of the Life Safety Code, including that they have sprinklers and fire alarm systems.

Second is the kind of recovery residence that we do not have any oversight over because they are defined as a single-family dwelling and therefore fall under local jurisdiction, they do not have to meet any specific alarm or sprinkler requirements outside that of a single family home. Under current law these kinds of residences are not included in the definition of a rooming or lodging facility that would require sprinklers and alarm systems, even though they otherwise may meet the definition because it may not be a “dwelling unit that is occupied by members of a single family with not more than three outsiders if any in rented rooms”. If a dwelling is considered a recovery residence, they are exempt from the more comprehensive Life Safety Code requirements because they are defined as a single family dwelling no matter if they house 3 or 30 individuals.

Recovery Houses and their residents have protection under the Americans with Disabilities as to not prohibit or restrict where these recovery houses are located or impose unreasonably burdensome requirements on them. 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, in part, 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. The Attorney General’s Office has recently reviewed its earlier opinion of February 2019 and confirmed that it represents the current state of the law.

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