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Maine

TESTIMONY OF MEAGAN SWAY, ESQ.

**LD 1364 – Ought To Pass**

**An Act to Prevent Opioid Overdose Deaths by Establishing Safe Consumption Sites**

JOINT STANDING COMMITTEE ON  
CRIMINAL JUSTICE AND PUBLIC SAFETY

April 27, 2023

Senator Beebe-Center, Representative Salisbury, and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, 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 1364, which would save lives.

More than four years ago, I stood before this legislature 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 in a single year to preventable drug overdoses. It felt unimaginable to lose that many. Last year, we lost 716 people. The drug overdose death epidemic, like all health epidemics, requires a comprehensive strategy. One part of such a strategy is to reach people who have not sought treatment, through 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 and have successfully prevented overdose deaths and the transmission of bloodborne disease, and have connected people to treatment. There have also been two set up in New York City, where over 2,000 people have gone in first year of their operation, and where staff have intervened in over 600 overdoses to prevent deaths.<sup>1</sup> Rhode Island passed a similar bill to LD 1159, and will open harm reduction health centers in early 2024. The evidence shows that overdose prevention sites work.<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 1364 cannot change that, the Maine legislature should nevertheless support the bill. Despite the fact that cannabis consumption is illegal under federal law, the state of Maine has allowed cannabis consumption for medicinal

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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/>.

<sup>2</sup> See, e.g., Potier C., Lapr v te 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.

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 direct conflict of Maine's laws with federal drug laws.<sup>5</sup>

It is 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 1364 would establish immunity under state law, but offer no legal protection from possible punishment by the federal government under the CSA.

LD 1364 asks us: how does Maine as a state want to use its own resources to tackle overdose deaths? 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 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, means community-based answers that solve difficult social problems bubble up to the federal level and are eventually ensconced in federal law. 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 problematic substance use, in an effort to save lives and protect civil liberties. We urge the legislature to prioritize the health and well-being of Maine people over fear of conflict with the federal government. We urge you to support LD 1364, which is one piece of a comprehensive response needed to tackle our overdose death epidemic. Please vote *ought to pass* on this important legislation.

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<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)

<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).