

TESTIMONY OF MEAGAN SWAY

LD 1975 – Ought to Pass

An Act to Implement a Statewide Public Health Response to Substance Use and Amend the Laws Governing Scheduled Drugs

Joint Standing Committee on Health and Human Services

January 17, 2024

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 Policy Director of the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, I am here to testify in favor of LD 1975.

The ACLU and the ACLU of Maine have supported decriminalizing drugs—and opposed the failed policies of the failed War on Drugs—since the 1970s. We strongly support this initiative to connect individuals who need it with support and resources in their communities. Instead of responding to drug use with punishment, which does not work, LD 1975 would begin to transition our drug policy away from incarceration and punishment and toward a public-health informed framework—a model that is centered on seeing the whole person and one that offers care, compassion, and grace.

Overdose deaths began to rise in Maine during the early 2000s, and began to skyrocket approximately ten years later. Maine policymakers chose to face the growing public health crisis with increased criminal penalties, attempting to arrest and incarcerate our way out of fatal overdoses. We are still living with those policy decisions. Approximately one in eleven arrests in Maine is for a drug-related offense, and about 58% of those arrests were for possession of drugs or syringes.¹ This response has cost lives. In 2023, over 550 individuals died from a drug overdose.² The year before that, over 700 individuals died.³ We continue to lose our friends, family and neighbors to preventable deaths. We must chart a new way.

¹ American Civil Liberties Union of Maine and Maine Center for Economic Policy, *A Better Path for Maine: The Case for Decriminalizing Drugs* (2022) 27, https://www.aclumaine.org/sites/default/files/field_documents/a_better_path_for_maine_aclu_mecep_drug_decriminalization_report.pdf (hereinafter referred to as “*A Better Path for Maine*”).

² Marcella H. Sorg, Daniel S. Soucier, and Yimin Wang, *Maine Monthly Overdose Report for November 2023* (2023) 1, 2 (https://mainedrugdata.org/wp-content/uploads/2024/01/2023-11-ME_OD_Report-Final.pdf).

³ Sorg, Soucier, and Wang, *supra* note 3, at 2.

Criminalizing people who use drugs have adverse economic and social costs.⁴ It costs taxpayers money and ruins the hopes of stable housing and gainful employment, not to mention the trauma associated with incarceration and criminal convictions.⁵ Additionally, criminalizing drug use has a disproportionate impact on people of color. Black people, who use drugs at the same rate as their white counterparts, are more than three-and-a-half times as likely to be arrested for drug possession than similarly situated white people.⁶ Black people in Maine also face harsher sentences. In 2019, Black people facing drug possession charges received twice the median sentence of incarceration than white individuals with the same charges.⁷ People living in poverty and with low income, regardless of their race, are also bear the brunt of these criminal laws.⁸ People with low income often cannot afford treatment, private defense lawyers, or the fines associated with criminal convictions, while people with money can. This perpetuates a two-tiered system of justice that is an anathema to our ideals of equal protection and due process of law.

Finally, jail mostly exacerbates problems of mental health, neglect, and trauma that often lead to substance misuse.⁹ Incarceration is a devastating experience, especially for those with serious mental health and medical needs.¹⁰ Incarceration itself greatly increases an individual's chances of experiencing an overdose upon release.¹¹ It separates families and can significantly harm the children of those incarcerated.¹² Years of research also demonstrate that criminal convictions create significant barriers to employment, making it harder for people to find financial stability that is helpful for long-term recovery. Aside from employment, having a criminal conviction also limits access to housing, financial support, and education.¹³

The evidence is clear: utilizing a punitive response to drug use does not solve the problem. It does not decrease the availability of drugs. It does not facilitate recovery. It does not make communities safer. It does not save lives. We owe it to those we care about who use drugs to try a new path. LD 1975 represents a health-based, compassionate, and smart approach to drug use that Mainers deserve. For these reasons, we urge you to vote ought to pass.

⁴ *Id.*, at 6.

⁵ *Id.*, at 6 and 12.

⁶ *Id.*, at 7.

⁷ *Id.*, at 34 (“While the median sentence of incarceration for all drug possession cases in 2019 was 90-days jail time, it was twice as long for Black defendants”).

⁸ *Id.*, at 37.

⁹ *Id.*, at 8 (citing Editorial Board, *Our View: Maine Drug Laws Only Making Bad Situation Worse*, PORTLAND PRESS HERALD (June 9, 2021), <https://www.pressherald.com/2021/06/09/our-view-maine-drug-laws-only-make-bad-situation-worse/>).

¹⁰ *Id.*, at 35 (quoting Alexi Jones and Wendy Sawyer, *Arrest, Release, Repeat: How Police and Jails are Misused to Respond to Social Problems*, PRISON POLICY INITIATIVE (2019)).

¹¹ *Id.* (“[w]ithin the first two weeks after release, the risk of death from drug overdose is 12.7 times higher than the general population, with the risk significantly higher for women.”).

¹² *Id.* (reviewing research that suggests the incarceration of a parent or caregiver can lead to psychological distress and increase the risk of substance use among youth).

¹³ *Id.*, at 35-36.