



STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
MAINE DRUG ENFORCEMENT AGENCY

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Testimony of Director Roy E McKinney
129th First Regular Session

IN OPPOSITION TO LD329, AN ACT TO EXEMPT FROM CRIMINAL LIABILITY PERSONS REPORTING A
DRUG-RELATED MEDICAL EMERGENCY

Senator Deschambault, Representative Warren, and Members of the Joint Standing Committee on Criminal Justice and Public Safety, my name is Director Roy McKinney and I am here to testify on behalf of the Maine Drug Enforcement Agency and Department of Public Safety in Opposition to LD329, "AN ACT TO EXEMPT FROM CRIMINAL LIABILITY PERSONS REPORTING A DRUG-RELATED MEDICAL EMERGENCY".

The Department is in favor of the concept of providing so-called Good Samaritan legislation. Bystanders witnessing a person in medical distress are to be encouraged to summon immediate medical assistance to prevent death or serious bodily injury. Law enforcement's first duty is to protect and save lives. Arrests for possession in overdose situations by law enforcement are an uncommon occurrence with law enforcement focusing on investigating and going after those responsible for the drug-related deaths using the Maine Attorney General protocol for law enforcement's investigative response to drug overdose incidents.

However, we are concerned that the blanket exemption from arrest or prosecution could have unintended consequences. Outlawing arrest is a concern for the department. With similar legislation proposed in the 128th Legislature, the Criminal Law Advisory Commission (CLAC) reasoned that "Maine's use of force laws governing law enforcement officers and governing self-defense have provisions that rest on the legality of or a person's belief regarding the legality of an arrest. Prohibiting arrest would create substantial ambiguity for law enforcement and citizens about what use of force is or is not permitted."

In addition, "good faith" is an abstract term and difficult to quantify. Could a person simply call 9-1-1, report the medical emergency, not identify themselves, and then leave? The bill does not require that they try to assist the person experiencing the overdose.

Law enforcement and prosecutors have discretion in their enforcement decision making and rely on that daily. When making that decision to arrest or summons a person, the law enforcement officer takes the totality of the circumstances into consideration, as does the prosecutor in

determining whether to move forward with those charges once received by their office. Mitigating factors are always considered.

The Department would be in favor of replacing the bill with language that creates an affirmative defense to prosecution for each of the sections that LD329 seeks to create exemptions for. In fact, three of the four statutes of LD329 already have an affirmative defense to prosecution subsection. CLAC suggested such language in the proposed bill considered by the 128th and which was adopted by amendment.

For these reasons, I urge you to vote Ought Not to Pass on LD329.

On behalf of the Department of Public Safety and the Maine Drug Enforcement Agency, I thank you for your time and will be pleased to answer any questions that you may have.