

TESTIMONY OF EMMA BOND, ESQ.

Ought to Pass – LD 663

An Act To Make Comprehensive Substance Use Disorder Treatment Available to Maine's Incarcerated Population

Submitted to the

JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

April 21, 2021

Senator Deschambault, Representative Warren, and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Emma Bond, and I am the Legal 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 663 because it would codify important protections for people with substance use disorder who are incarcerated.

People who are incarcerated have the legal right to adequate medical care.¹ Just like people with other chronic disease such as diabetes or heart disease, people with substance use disorder are entitled to evidence-based treatment while incarcerated. Indeed, courts have held that denying access to Medication for Opioid Use Disorder (“MOUD”) to prisoners and detainees who suffer from opioid use disorder is unlawful.²

The Maine Department of Corrections has taken steps to make MOUD available to people in its custody. In rules issued in January 2021, the Department of Corrections has also required that county jails provide for “[t]he clinical management of chemically dependent inmates with a substance use disorder.”³ Enshrining these protections in statute would codify these important developments and protect against future cost-cutting or policy change within the Department.⁴

¹ See, e.g., 34- M.R.S. § 3031(2); 30-A M.R.S. § 1561; see also *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (providing that “deliberate indifference to [an incarcerated person’s] serious medical needs” violates the Eighth Amendment’s prohibition against cruel and unusual punishment).

² See, e.g., *Smith v. Aroostook County*, 376 F.Supp.3d 146 (2019), *aff’d* 922 F.3d 41 (2019).

³ Me. Standards for Cty. & Municipal Detention Facilities at K.19, Me. Dep’t of Corrections (Jan. 20, 2021), available at <https://www.maine.gov/sos/cec/rules/03/201/201c001.pdf>.

⁴ Notably, both prisons and county jails should be interpreted as “correctional facilities” covered by the bill, or the language should be changed to reflect that both jails and prisons are required to provide this medical care.

Lest there is any question about the need for this bill, last year, at least 502 people died in Maine as a result of drug overdoses.⁵ Decades of criminalizing addiction have led to disproportionate shares of people with substance use disorder being incarcerated in Maine prisons and jails. Our jails have become default depositories in lieu of sufficient mental health or substance-use-treatment.⁶ To truly combat the opioid epidemic that has devastated our communities, we must decriminalize addiction, ensure meaningful access to community-based treatment, and, as provided in LD 663, require evidence-based care for substance use disorder in jails and prisons.

⁵ Gillian Graham and Joe Lawlor, *Maine overdose deaths set new record in 2020, and 2021 started even worse*, Press Herald, Feb. 18, 2021, <https://www.pressherald.com/2021/02/18/maine-reports-501-drug-overdose-deaths-in-2020-worst-year-on-record/#:~:text=Maine%20recorded%20its%20worst%20year,during%20the%20COVID-19%20pandemic>.

⁶ See *Justice Reinvestment in Maine*, Justice Center: Council of State Governments, at 3, Dec. 2019, available at <https://csgjusticecenter.org/wp-content/uploads/2019/12/JR-in-Maine-Overview.pdf>.