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Testimony of Attorney General Frey in Support and Opposition to LD 1675  
May 14, 2021

Senator Deschambault, Representative Warren and members of the Criminal Justice and Public Safety Committee, I am Aaron M. Frey, I live in Bangor, and I am honored to serve as Maine's Attorney General. My comments today express a mix of support and opposition to LD 1675, *An Act To Amend Certain Provisions of Maine's Drug Laws*.

First, I support the proposal to treat cocaine and cocaine in the form of cocaine base similarly. I am unaware of any legitimate reason for the disparate treatment. I encourage the Committee to vote ought to pass on sections 3-5 of this legislation.

Second, I am opposed to a *complete* removal of the ability for the state to charge trafficking or furnishing of heroin or fentanyl based on either a specified weight or packaged amount. I would, however, support moving the language targeted in sections 1-2 of LD 1675 from the definitions of trafficking and furnishing to the permissible inference paragraphs under their respective statutes.

Presently, possession of heroin or fentanyl with a specified weight or in packaging of a certain amount is enough for the state to prove the crimes of either Unlawful Trafficking in Scheduled Drugs or Unlawful Furnishing Scheduled Drugs. As long as the state has evidence of the weight or amount of packaging, the state does not have to prove what the intent of the defendant was in possessing the heroin or fentanyl.

As the statutory definitions of "traffick" and "furnish" are presently written, a defendant is not able to present evidence at a trial that possession of heroin or fentanyl in the specified amounts was for personal use. Instead, a defendant's only opportunity to prevent the application of these statutory sections is to convince a prosecutor to use their prosecutorial discretion to downgrade the charge.

There is value in defining in statute a specified weight or packaged amount to address the threat of trafficking or furnishing in heroin or fentanyl. It is an important tool in prosecuting the trafficking and furnishing these dangerous drugs. It also ensures equitable treatment of these criminal prosecutions across the state.

At the same time, it may be more appropriate to make these sections permissible inferences of trafficking under 17-A MRS §1103(3) and furnishing under 17-A MRS §1106(3). Doing this

would still allow for the prosecution of trafficking or furnishing these two drugs based on a specified weight or packaged amount, it would promote equitable charging of these crimes across the state, and it would provide an opportunity for a defendant to make their case that the possession was for personal use at trial. Additionally, this move would make sense because possession of a certain weight or packaged amount of other drugs are addressed under §1103(3) and §1106(3).

I want to express my appreciation to the sponsor of LD 1675 for her outreach to my office and availability to discuss this legislation prior to the public hearing. I also want to thank the Committee for its attention and would be happy to answer any questions.