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May 14, 2021

Senator Susan Deschambault
Representative Charlotte Warren
Committee on Criminal Justice & Public Safety
100 State House Station Room 436
Augusta, ME 04330

RE: LD 1675 – “An Act to Amend Certain Provisions of Maine’s Drug Laws.”

Dear Senator Deschambault, Representative Warren and Members of the Criminal Justice and Public Safety Committee:

MACDL supports LD 1675.

LD 1675 seeks to eliminate meaningless evidentiary presumptions about furnishing and trafficking drugs based on mere possession and instead relies on the fact-based definitions for furnishing and trafficking already included in Title 17-A.

A paperclip weighs 1 gram. The possession of .2 grams of heroin—a fifth of a paperclip—raises an evidentiary presumption that someone is “furnishing” heroin. This “evidentiary presumption” turns a misdemeanor possession charge into a full-blown felony furnishing charge. The drug weight determination made for purposes of the initial charge and bail—a critical part of any defendant’s case—is based on the gross weight of the drugs (i.e., including the package) meaning that the difference between a felony level cash bail bond and a misdemeanor summons could come to the size of a drug “baggie.”

One fifth of a gram of heroin, moreover, is a useable amount of heroin. A controlled study of heroin use in Switzerland concluded that the average user will consume around .5 grams per day. “Patterns of opiate in a heroin maintenance programme,” *Psychopharmacology* (Berl) 2000 Sep;152(1):7-13. doi: 10.1007/s002130000492. The presumption that possessing 2 grams of heroin is no different than “trafficking” in drugs is likewise not helpful. Trafficking in drugs means selling or producing for sale. If the person addicted to heroin can use .5 or more grams of heroin per day, then the mere possession of 4 days’ worth of drugs does not mean that person must be selling drugs.

Evidentiary presumptions should be based on fact and reality. In the case of heroin use, the simple reality is that drug addicts with no intention of selling drugs may possess 2 grams or more. Possession of .2 or 2 or even 4 grams of heroin or fentanyl by a person addicted to those drugs is simply proof of possession and nothing more.

LD 1675 also recommends doing away with the antiquated treatment of crack cocaine on a nearly 4:1 basis with powder cocaine. The Fair Sentencing Act of 2010 and the more recent First Step Act of 2018 eliminated sentencing disparities between crack cocaine and powder cocaine and even applied that elimination retroactively given the serious harm from these misguided sentencing laws, particularly in communities of color. The different treatment of crack and powder cocaine makes no more sense here in Maine than it did at the federal level and also appears to have the same disparate racial impacts. A recent study of Maine's criminal justice system performed by the Council on State Governments in fact revealed that nearly half of all Class A arrests in Maine were for Aggravated Drug Trafficking in 2018 and that despite constituting only 1% of Maine's population, black men and women made up 16% of all arrests for Class A offenses in 2018. See attachments A & B.

The felony prosecution of drug addicts for possession of drugs serves no legitimate public interest. People addicted to drugs should be given the benefit of diversionary programs that force them into counseling, but also given the opportunity to avoid felony convictions that will forever affect their future employment and housing prospects.

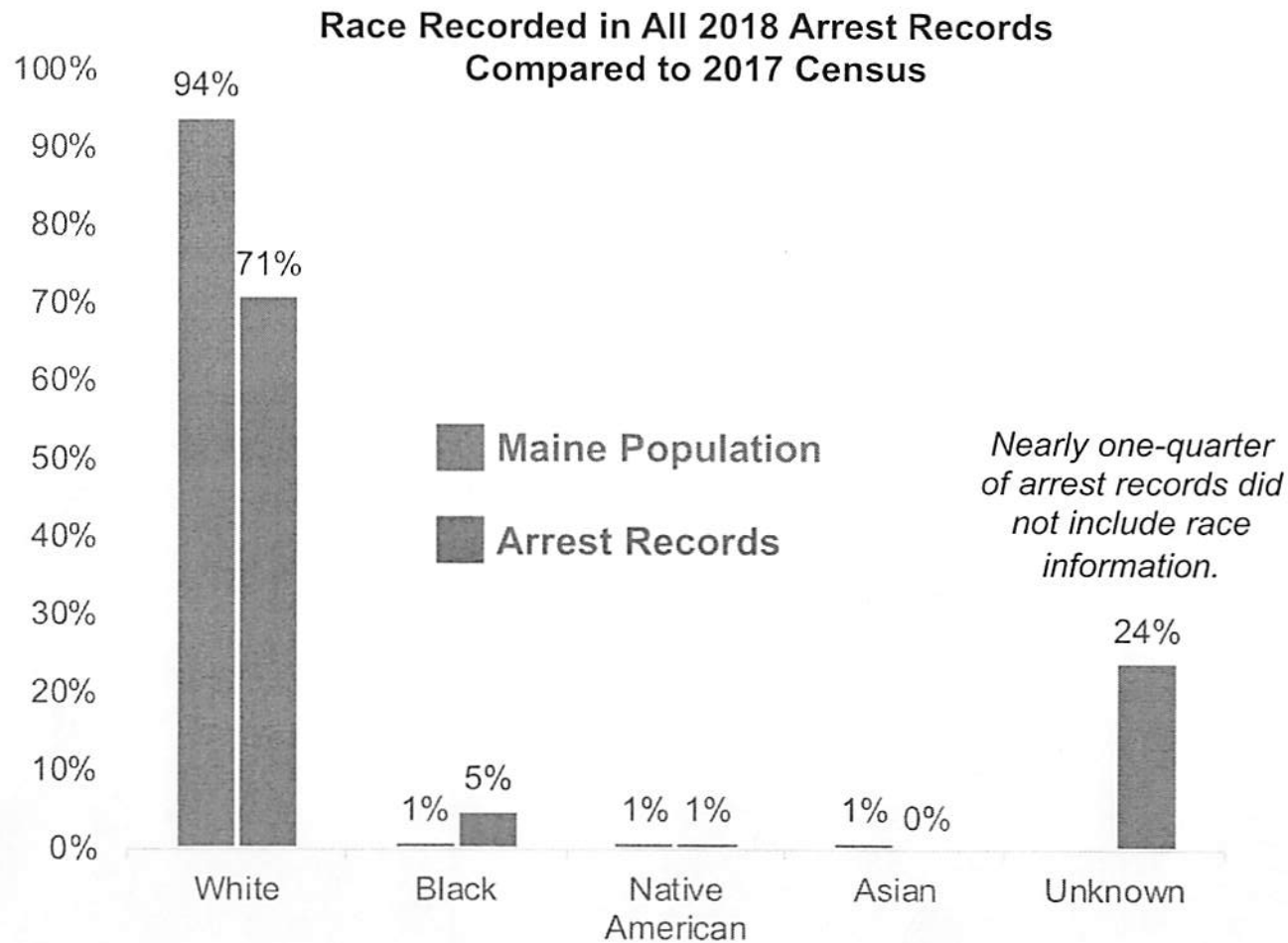
For these reasons, MACDL fully supports LD 1675.

Thank you for the opportunity to address this issue.

Sincerely,
/s/ Matthew D. Morgan

Matthew D. Morgan
Member, Legislative Committee

In 2018, black people made up 1 percent of Maine's population but accounted for 5 percent of arrests.



There is more race information for higher-level felony offenses, where disproportionality becomes even more pronounced.

Arrests for Class A Offenses, 2018	
White	67%
Black	16%
Native American	1%
Asian	1%
Unknown	16%

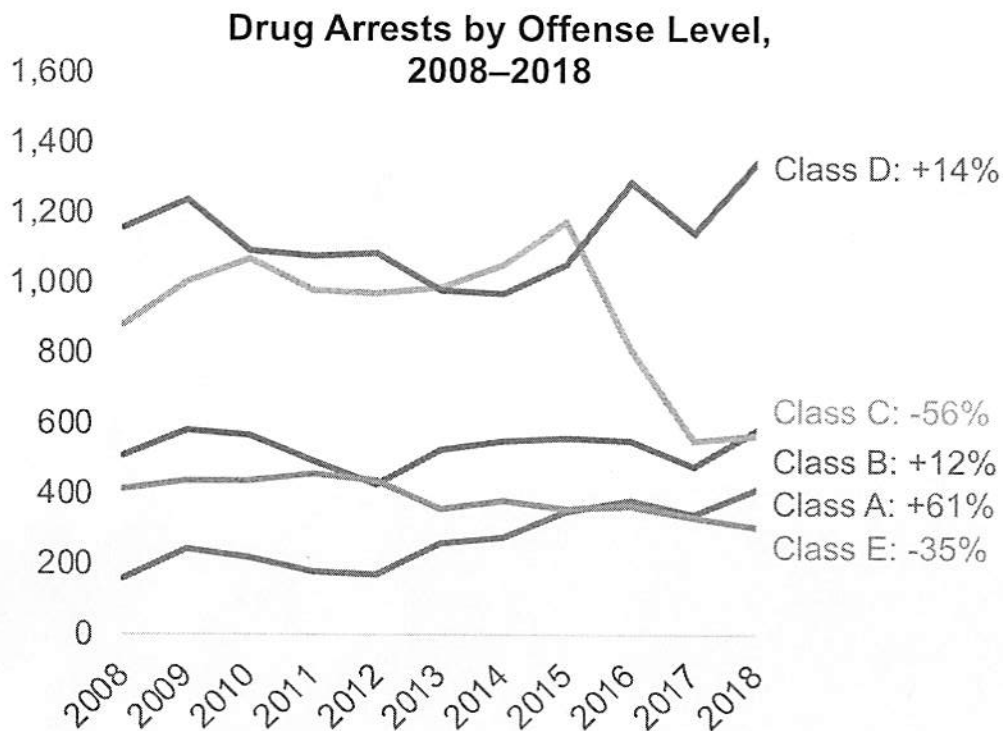
Source: CSG Justice Center analysis of DPS data, 2008–2019; U.S. Census 2017.

EXHIBIT

A

Drug arrests accounted for almost 9 percent of all arrests in Maine in 2018. Arrests for drug trafficking made up over half of all Class A arrests and over one-quarter of Class B arrests that year.

In 2018, 3,214 (8.9 percent) of the 36,069 arrests in Maine were for drug offenses. Drug arrests were divided fairly evenly between felony (48.5 percent) and misdemeanor (51.5 percent) offenses.



Source: CSG Justice Center analysis of DPS data, 2008–2019.

Most Frequent Class A Drug Arrests, 2018 (N = 414)

Aggravated Trafficking of Scheduled Drugs	308	74%
Aggravated Trafficking of Schedule W Drug	95	23%
Aggravated Operation of Meth Laboratory – Residence	5	1%

Most Frequent Class B Drug Arrests, 2018 (N = 582)

Unlawful Trafficking in Scheduled Drugs	503	86%
Operate Meth Laboratory	22	4%
Unlawful Possession of Scheduled Drugs	14	2%

Most Frequent Class C Drug Arrests, 2018 (N = 564)

Unlawful Possession of Heroin	140	25%
Unlawful Possession of Methamphetamine	68	12%
Unlawful Furnishing of Scheduled Drugs	45	8%

Most Frequent Class D Drug Arrests, 2018 (N = 1,348)

Unlawful Possession of Scheduled Drugs	1,209	90%
Poss. of Hypodermic Apparatus	62	5%
Unlawful Furnishing of Scheduled Drug	32	2%

Most Frequent Class E Drug Arrests, 2018 (N = 306)

Unlawful Possession of Scheduled Drugs	272	89%
Marijuana Under 18 Years	17	6%
Use of Drug Paraphernalia	10	3%

EXHIBIT

B