

TESTIMONY OF MEAGAN SWAY, ESQ.

LD 1862 – Ought to Pass

An Act To Strengthen Maine’s Good Samaritan Laws Concerning Drug-related Medical Assistance

Joint Standing Committee on
Criminal Justice and Public Safety

February 9, 2022

Senator Deschambault, Representative Warren and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, greetings. My name is Meagan Sway and I am policy director for 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 1862, a bill that has the potential to save lives and orient our policy away from failed methods of addressing problematic drug use.

Our state continues to struggle with the question of how to address problematic drug use. Despite herculean efforts from harm reductionists, an increased availability of naloxone, and state-funded education campaigns, people are still dying from drug overdoses at unprecedented rates. We must do more to stem this tide of death. While the ACLU of Maine believes that in order to truly turn the corner on drug overdose deaths we must decriminalize drugs, we support this bill’s middle ground.

LD 1862 attempts to rectify some of the problems in our current Good Samaritan law, by extending greater protection to people in a location where a drug overdose happens. These increased protections are necessary to make the law effective. Indeed, three years ago, when the ACLU of Maine testified in support of the bill that became the current Good Samaritan law, we warned that, because of the severe penalties facing people who called 911 that were not covered by the bill, the law would be of limited effect.¹ Three years later, we see that it is indeed fear of punishment that keeps people from calling 911 to report an overdose, and that the current law does not go far enough to save lives.

¹ Specifically, we wrote: “While we are appreciative of this bill and the sponsor’s intent, [it] does not go far enough to save lives of people suffering with serious substance use disorder. Last session the legislature created several Class A and B crimes for providing drugs to a person that result in a person’s death. This was, we think, an effort to target traffickers, but instead only traps drug users. Until those sections of the criminal code are repealed, LD 329, while it should undoubtedly be passed, will have limited effect. We must recognize—and our laws must reflect—the full realities of problematic drug use: people who have substance use disorder often pool their resources and share drugs with other people with substance use disorder; people who use drugs try but are not always effective in buying unadulterated drugs; and without supervised consumption sites, drug overdoses will happen. Until our laws catch up to

At all times, but particularly when we're losing more than 12 of our friends and neighbors a week to drug overdoses, our laws and policies should do everything they can to remove barriers to saving lives. In this all-hands-on-deck moment, this means exempting people from legal liability for actions that are otherwise illegal. Criminal punishment cannot and has not ended or even put a dent in problematic drug use or increasingly strong street drugs. Over the past nearly two decades, we have seen that expanding criminal penalties for drug possession, sharing and sale has done nothing to reduce drug use, dependence, or availability. Instead, expanded criminalization has directed valuable resources away from drug treatment and social supports into the criminal legal system. Moreover, we punish some people who save lives—we punish some Good Samaritans.

We must change our laws to save lives. We urge you to pass LD 1862.

these realities, Maine will continue to see overdoses that could have been prevented and will continue penalizing people with substance use disorder for engaging in typical behavior of someone with that disorder.” Testimony of Oamshri Amarasingham on behalf of the ACLU of Maine in support of LD 329, Feb. 20, 2019, available at <http://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=93352>.