

TESTIMONY OF MEAGAN SWAY, ESQ.

**LD 994 – Ought To Pass**

**An Act To Promote Public Health by Eliminating Criminal Penalties for Possession of Hypodermic Apparatuses**

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 Meagan Sway, and I am Policy Director of 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 this afternoon to urge you to support LD 994, a bill that would help turn Maine’s drug policy towards public health and away from punishment. In doing so, more of our fellow Mainers can be safe and have the best chance of leading healthy lives.

LD 994 would repeal a 25-year-old law that has made possessing or exchanging drug paraphernalia a crime, a law based on bad and discredited assumptions, a law that has not saved lives, but has only succeeded in compounding harm.

Currently, Maine law makes exchanging even one syringe for something of value a crime of “trafficking in hypodermic apparatuses” punishable by up to 5 years in jail and a \$5,000 fine. Giving someone 11 or more syringes is the crime of furnishing in needles, punishable by less than a year imprisonment and a \$2,000 fine. 17-A M.R.S.A. §1111. Current law also makes possessing 11 or more syringes a crime punishable by less than a year imprisonment and a \$2,000 fine. 17-A M.R.S.A. §1111. These laws were created in 1997, when Maine was in the midst of its first wave of opioid overdose deaths. At the time, a national public debate was raging about how to deter drug use. Voices such as Robert DuPont’s, one of the original architects of the War on Drugs, was among the loudest and most influential. DuPont argued that zero-tolerance policies and other harsh sanctions were critical to deter drug use and to force people into treatment. (DuPont 1996). In part because of voices like DuPont’s, Maine lawmakers tried to punish their way out of a growing crisis in overdose deaths.

Twenty-five years later, we know better. We have seen that criminalizing substance use, and the tools that people utilize, have not made our friends, families or neighbors safer. More people in Maine died last year from drug overdoses than died from COVID-19, and the numbers in 2021 are on pace to be much worse. We have had these laws on the books for a quarter of a century. Drug arrests continue to rise, yet Maine's overdose numbers also continue to rise. That's because these laws do not work.

But we know what does work, and that is harm reduction. There is consensus among public health leaders that harm reduction is an effective tool to keep people who use drugs safer and more open potential avenues to recovery.<sup>1</sup>

Yet our laws make harm reduction measures – these life-saving practices endorsed by public health – criminal offenses. For example, police in Maine have started handing out fentanyl testing strips so that people can test drugs to ensure they don't overdose from fentanyl.<sup>2</sup> Yet possessing or using fentanyl test strips, a tool that can save people's lives, is a violation of Maine law. 17-A M.R.S.A. §111-A(4-B). Another example in tension with Maine's criminal laws are syringe service programs. People who use those services are more likely to enter treatment for substance use disorder and more likely to report reducing or discontinuing injection compared to those who have never participated in a syringe service program. Syringe service programs are in tension with the laws that criminalize possession of more than 11 syringes at a time or exchanging even one syringe.

Criminalizing drug use presents serious civil liberties concerns, and the enforcement of drug laws have led to widespread violations of civil liberties including those secured by the Fourth, Fifth and Sixth Amendments. Criminalizing drug use is counterproductive, leading people to a revolving door of criminal-legal involvement. Finally, criminalizing drug use is cruel. It disconnects people from their health care, families and place in the community—the very things they need to lead healthy lives. LD 994 takes a meaningful step away from the harmful and failed practices of the past, and moves Maine towards addressing people with substance use with compassion. We urge you to vote ought to pass.

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<sup>1</sup> See, e.g., Pew Charitable Trusts Issue Brief Syringe Distribution Programs Can Improve Public Health During the Opioid Overdose Crisis, Mar. 2, 2021, available at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2021/03/syringe-distribution-programs-can-improve-public-health-during-the-opioid-overdose-crisis>.

<sup>2</sup> See Gillian Graham, Police departments get new tool to reduce overdose deaths: fentanyl test strips, Portland Press Herald, Mar. 9, 2021, available at <https://www.pressherald.com/2021/03/09/police-departments-getting-new-tool-in-fight-against-overdoses-deaths-fentanyl-test-strips/>.