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TESTIMONY OF OAMSHRI AMARASINGHAM, ESQ.

LD 1554 – Ought Not to Pass

Joint Standing Committee on Criminal Justice and Public Safety

February 3, 2015

Senator Rosen, Representative Fowle, and members of the Committee on Criminal Justice and Public Safety, greetings. My name is Oamshri Amarasingham, and I am Advocacy 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, we ask you to reject LD 1554 as written.

The ACLU of Maine has long been an advocate for drug policy reform. We are thrilled that over the last several months the Legislature has enacted multiple pieces of bipartisan legislation to address Maine's drug addiction crisis. Each of these policies recognized that Mainers who suffer from substance use disorders need treatment, not jail. LD 1554 is a big step away from this tenet, resurrecting felony penalties for first time simple possession offenses.

The failed policies of the 50-year "War on Drugs" have wreaked havoc on our communities. The explosion in the U.S. prison population since the War on Drugs began is unprecedented. The United States has become the world's largest jailer – both in absolute numbers and by the percentage of the population that we imprison. That translates into 1 in 99 adults behind bars and over one million children growing up with incarcerated parents.

We cannot ignore that the War on Drugs has locked up young men of color at disproportionately high rates. Despite the fact that white people and people of color use drugs at similar rates, people of color are arrested and locked up at much higher rates. Black men and women account for only 13% of the American population, but make up 35% of all drug arrests,¹ 44% of all drug convictions,² and 51% of state drug prisoners.³ Here in Maine, non-whites account for only 5% of the general population, yet minorities make up 11% of people incarcerated for drug offenses.⁴

It is abundantly clear that harsh penalties for low-level drug crimes have done little to curb the drug problem. While drug arrests in Maine have gone up 240 percent since the mid-80s, drug use and addiction rates have continued to skyrocket.⁵ Incarcerating people for low-level drug offenses fails to address the complex root causes of addiction and contributes to a revolving door

1 Jamie Fellner, "Decades of Disparity," Human Rights Watch (March 2009).

2 "Sourcebook of Criminal Justice Statistics," State University of New York at Albany available at <http://www.albany.edu/sourcebook/pdf/t5452006.pdf>. Last accessed March 16, 2014.

3 Bureau of Justice Statistics: "Prisoners in 2010," U.S. Dept. of Justice (February 2012).

4 Maine Statistical Analysis Center: "Drug Offense Trends and Drug Offender Recidivism in Maine," U.S.M. Muskie School of Public Service (January 2013).

5 Maine Statistical Analysis Center at USM Muskie School of Public Service, *Drug Offense Trends and Drug Offender Recidivism*. January 2013.

in and out of our criminal justice system. More than half of the people incarcerated for drug offenses in Maine will be re-incarcerated within three years of release.⁶

We are alarmed by the suggestion that felony-level penalties will help people get treatment for substance use disorders. Treatment programs in Maine continue to be few and far between. A felony record undermines treatment and recovery by creating insurmountable barriers to employment, education, housing, and health care. Moreover, people with substance use disorders cannot be coerced into recovery. To the extent that someone who is ill can succeed in treatment that is forced upon them, the threat of a year in prison is certainly serious enough for that kind of coercion. A felony conviction for first time simple possession is disproportionately harsh and contrary to this Legislature's policy on drug addiction.

We appreciate that the Committee needs to craft legislation to resolve the conflict in section 1107-A created when LDs 113 and 1246 were enacted last session. However, LD 1554 goes far beyond resolving the conflict in statute. LD 1554 essentially repeals the progress made by the Legislature to defelonize first time simple possession offenses. The Committee should not ratchet up penalties unless and until proponents of this bill present evidence that longer sentences and felony records can remedy substance use disorders.

Longer sentences do not get drugs off the street. Longer sentences do not reduce substance use. Longer sentences do not help people access treatment.

Felony records do make Mainers unemployable. Felony records do bar Mainers from stable housing. Felony records do harm Maine families.

Too often there is a conflation between the moral mandate to take harm seriously, and the solution of imposing a criminal penalty. On the contrary, a sound criminal justice policy will respond to social harms in a way that addresses underlying problems, fosters safe and healthy communities, serves the needs of victims, and imposes real accountability on those who commit harm. A sound policy does not reflexively assume that imposing more criminal penalties signifies a more serious engagement with the problem. We have tried to arrest our way out of a public health crisis, and it has not worked.

LD 1554 as written cannot be characterized as a housekeeping measure that simply resolves a conflict in statute. The proposal before you rolls back significant progress made to Maine's drug policies just months ago and will do real harm to Mainers with substance use disorders. In fact, the proposal as written is identical to a proposal that was overwhelmingly rejected by the House last session with a vote of 122-22. We urge the Committee to amend LD 1554 to resolve the conflict in statute in keeping with the Legislature's policy goals in enacting LD 113.

⁶ *Id.*