



STATE OF MAINE
GOVERNOR'S OFFICE OF POLICY INNOVATION AND THE FUTURE
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GORDON SMITH
DIRECTOR, OPIOID RESPONSE

April 27, 2023

Senator Pinny Beebe-Center, Chair
Rep. Suzanne Salisbury, Chair
Members of the Joint Standing Committee on Criminal Justice and Public Safety

Re: Opposition to L.D. 1364, An Act to Prevent Opioid Overdose Deaths by Establishing Safe Consumption Sites

Dear Senator Beebe-Center, Rep. Salisbury and Members of the Joint Standing Committee on Criminal Justice and Public Safety.

I appreciate the opportunity to submit this letter of behalf of Governor Mills in opposition to L.D. 1364, An Act to Prevent Opioid Overdose Deaths by Establishing Safe Consumption Sites

L.D. 1364 authorizes municipalities to approve safe consumption sites where individuals could self-administer drugs they previously had obtained. Such facilities would also have to provide an array of other harm-reduction services and appropriate referrals. The bill provides immunity from arrest or prosecution for clients and staff members acting in accordance with the provisions of the bill. Any municipality operating or authorizing such a facility would be responsible for participating in a peer-reviewed study conducted by a private, non-profit and nonpartisan research organization or a research university in the United States. The municipality and selected research entity are required to fund the study through private donations, grants or local funds. The entity doing the research would be selected by the Department of Health and Human Services and the department would submit the reports of the study of each approved site to the Legislature and the Governor's office.

While Governor Mills supports the goal of reducing both fatal and non-fatal overdoses and is committed to practical and legal options in this respect, she opposes LD 1364 for the following reasons:

1. Federal law prohibits the operation of such a "safe consumption site."¹ While two such facilities have operated in New York City for one and one-half years, there has been no statement by the Department of Justice as to its intention regarding such facilities. Even if there were, this could change with a new administration without a change in the law. The Rhode Island legislature authorized the establishment of such a facility in 2021, but that facility has not opened and it is not scheduled to open until 2024. None of the other 48 states has an authorized safe consumption site operating.

¹ 21 U.S.C. § 856 (a) (2) makes it illegal to: "maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance; (2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance." Various DOJ officials have written memoranda (e.g., U.S. Attorney's Office, District of Vermont, 2017) or op-eds (Lelling, 2019, Rosenstein, 2018) making this argument, and the U.S. Attorney for the Eastern District of Pennsylvania filed a preemptive injunction asking a federal judge to declare that Safehouse – the proposed supervised consumption site in Philadelphia – was in violation of the Controlled Substances Act. Although a federal judge ruled against the government, the case was subsequently overturned by the Court of Appeals (United States v. Safehouse, 2021), and the U.S. Supreme Court declined to hear the appeal. See recent RAND report, p. 227.

2. While there are many (proponents note at least 200) facilities operating in some other countries, there is no model that we are aware of that has operated in a primarily rural state.
3. The other services specified in the bill – specifically health service referrals – are supports already provided in eighteen recovery community centers across the state and in fifteen Syringe Service Programs. Only two counties, Somerset and Waldo, are presently without such recovery community centers and we are actively working with individuals and organizations in each of those counties to look at sites for a potential recovery community center.
4. There is insufficient evidence to date that safe use sites encourage individuals to find a pathway to recovery. Given the lethality of the current drug supply, we should be doing all we can to encourage individuals to find a pathway to recovery, as continuing to use in this environment all too frequently results in a fatal overdose. Eighty percent of Maine’s fatal overdoses last year involved fentanyl, which acts quickly and is 50 to 100 times more lethal than morphine. Only two milligrams of fentanyl is considered a potentially lethal dose. Given that an individual would be unlikely to – and may not be able to – use the facility in every instance (the NYC facilities are open only 12 to 14 hours per day and only 5 days per week), the establishment of such a site may actually increase the risk to users by creating a false sense of security in ongoing use.

In summary, the establishment of such a center would be premature and a violation of federal law. We will continue to review the performance and data associated with any centers that are operating in this country. In 2019, I visited the facilities in Montreal offering safe use and we will continue to review the data associated with these centers, as well.

But, in my opinion, there is not yet compelling data to justify any state action that may result in Mainers buying the most lethal substances ever trafficked in this country and putting them at risk. There are many other interventions that we can and do support, short of this type of facility, in order

to protect and care for people who are using drugs. These interventions include our syringe service programs, increasing both out-patient and in-patient treatment capacity and providing more recovery community centers, recovery residences and recovery coaches. And we will continue our robust distribution of the life-saving medication naloxone through the Maine Naloxone Distribution Initiative and expand our OPTIONS behavioral health liaisons program as announced by the Governor earlier this year.

In conclusion, a safe consumption site may be a life-saving option, but it’s premature to know and, as designed, could put Mainers at considerable risk. I will make every effort to attend the work session on this bill.

Sincerely,



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