

Mills administration officials oppose bill to decriminalize drug possession

pressherald.com/2021/04/30/mills-administration-officials-oppose-drug-decriminalization-bill/

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May 1, 2021



People in recovery, medical providers, faith groups, legislators and advocates all testified Friday in favor of a bill that would make drug possession a civil violation instead of a crime.

But two top officials in the Mills administration opposed the measure even as they agreed that people with substance use disorder should be diverted from the criminal justice system.

“Do you believe what we’re doing is working?” Rep. Charlotte Warren, a Democrat from Hallowell, asked Maine Attorney General Aaron Frey.

“It is not,” he said.

“I do think that if we’re going to get to an agreement, it may take some level of compromise because of how different groups feel about this,” Frey added later.

The bill, [L.D. 967](#), would follow a model implemented this year in Oregon. Instead of going to jail for possession, a person who has heroin or other substances on them would be required to pay a fine of up to \$100 or get a health assessment, a potential first step to treatment. Selling or distributing drugs would still be illegal, but this bill could mean a dramatic change in the law for people who use them.

The Criminal Justice and Public Safety Committee held a public hearing on the bill Friday with nearly five hours of testimony and more than 45 speakers, nearly all in support. Some talked about their own experiences with substance use disorder and said going to jail cut them off from the connection they needed for their own recovery.

“I cannot tell you how frustrating it is to watch people being incarcerated for their substance use disorder,” Chantel St. Laurent of Lewiston said. “I see people get their foot in the door just to be pulled out by our justice system. They end up in this vicious cycle, never getting the treatment they desperately need and want.”

A half dozen medical providers said arresting people for drug possession fails to treat substance use disorder as a public health issue and creates stigma that prevents people from seeking treatment. They included representatives from the Maine Medical Association and the Northern New England Society of Addiction Medicine, as well as a registered nurse from a detox facility and doctors who provide substance use treatment.

“It’s unrealistic to think that jail time would be a deterrent,” said Dr. Nick Gallagher, an addiction medicine physician in central Maine. “It certainly is not and never has been. We cannot keep doing things because it’s how they’ve always been done, regardless of the outcomes. In medicine, we are expected to practice in an evidence-based manner. Our jobs and licenses are dependent upon that. Why do we continue to support and maintain policies that have never been shown to be beneficial to public health?”

Also among the supporters were representatives from the Maine Prisoners Advocacy Coalition, the Maine Association of Criminal Defense Attorneys, the Maine Council of Churches, the American Civil Liberties Union of Maine, the Health Equity Alliance, the Maine Recovery Advocacy Project, Community Housing of Maine, the Maine People’s Alliance and the Maine Women’s Lobby. Others were drug policy researchers, recovery house managers, and licensed alcohol and drug counselors. Several talked about the disproportionate enforcement of drug laws against people of color and poor people.

“Each time someone goes to jail for possessing a small amount of a scheduled substance, it interrupts the work they’ve been doing to connect to recovery services, case management, health services, housing and more,” said Izzy Ostrowski, the social change advocate at Preble Street, a Portland nonprofit that works with people experiencing homelessness and poverty. “This puts people in an impossible cycle of criminalization and homelessness.”

But the small number of opponents to the bill included key law enforcement leaders. Frey said he does not believe jail is a treatment for substance use disorder, but prosecutors can use deferred dispositions and other strategies to “provide a motivation down the path of recovery.”

Roy McKinney, the director of the Maine Drug Enforcement Agency, said the Mills administration would be open to “reasonable modifications of the unlawful possession of scheduled drugs statute” but would not support decriminalization. Among his concerns was that the bill does not propose any escalating penalty for multiple violations. Gov. Janet Mills is the state’s former attorney general.

District Attorney Natasha Irving, who spoke on behalf of the Maine Prosecutors Association, said her peers across the state have different policies for addressing opioid use disorder. Her testimony did not detail the approach in every district, but she said her office in the Midcoast only prosecutes someone for possession as “the last option” when diversion has failed. She asked legislators to invest in diversion programs, drug courts, treatment options, data collection and other community resources.

“What we do agree on is that we do not have the healthcare infrastructure to keep our communities safe without the ability to criminally prosecute possession of controlled substances, always relying on our discretion as prosecutors,” said Irving, the chief prosecutor for Lincoln, Knox, Waldo and Sagadahoc counties.

At least 1,500 people are charged with drug possession every year in Maine.

Under Maine's drug laws, possessing less than 200 milligrams of most drugs is generally a misdemeanor, and people convicted face up to 364 days in jail. Having more than 200 milligrams is usually a felony on its own and carries a potential sentence of up to five years in state prison. The amount considered "personal use" varies by drug and by person, but advocates and those in recovery have said 200 milligrams is a very small amount, and a person with substance use disorder would likely be using 10 times or more than that in a day.

The charge also can be bumped up to a felony if the person has prior convictions for trafficking, furnishing or operating a meth lab. And people can face more serious furnishing or trafficking charges just for carrying more than 200 milligrams of heroin or fentanyl.

In 2001, Portugal decriminalized small amounts of drugs. People now get a warning, a fine or a treatment referral instead of a jail sentence. Research there has shown that the number of people receiving addiction treatment rose, while overdose deaths and new cases of HIV among drug users dropped. Some other countries, including the Netherlands and Switzerland, have taken similar steps.

Last year, Oregon voters became the first in the United States to decriminalize possession for personal use. The ballot measure took effect this year, so it is still too soon to know its impact. Maine's bill is modeled after that ballot measure. Washington, Vermont and Massachusetts are looking at similar bills.

L.D. 967 will next go to a work session Wednesday.

The same committee is considering two related bills on the state's drug laws. Also on Friday, it voted, 10-1, "ought to pass" during a work session on L.D. 994 that would remove criminal penalties for the possession of hypodermic needles. Assistant House Majority Leader Rachel Talbot Ross, D-Portland, has also said she will introduce a bill that will address the statute related to drug trafficking and furnishing, but the final text was not available Friday.

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