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ACLU OF RI POSITION: OPPOSE OR AMEND

TESTIMONY ON 21-H 6014, RELATING TO OFFICE OF STATE MEDICAL EXAMINERS March 22, 2021

This bill would remove the sunset provision in a law enacted three years ago that established within the Department of Health “a multi-disciplinary team review of drug-related overdose deaths with the goal of reducing the prevalence of such deaths by examining emerging trends in overdose, identifying potential demographic, geographic, and structural points for prevention and other factors.” While the ACLU of Rhode Island fully supported, and continues to support, that goal, we expressed concerns in 2018, and continue to have concerns, about the list of appointees to this team. We therefore urge that the law be allowed to sunset unless the composition of the review team is revised.

Specifically, the team statutorily includes four representatives from law enforcement and corrections, including the Attorney General and a representative from the R.I. Police Chiefs Association. The opioid overdose epidemic is a very serious public health problem and, as the passage of laws like the Good Samaritan Act demonstrates, it is a problem that needs to be addressed from a public health, not law enforcement, perspective. The make-up of this team is not in keeping with that perspective. Law enforcement continues to vigorously prosecute drug users, and in doing so, sometimes ignores the mandates of public health measures like the Good Sam law.¹ This only highlights the conflict between law enforcement and public health in their approach to the issue.

In addition, while the legislation contains some confidentiality restrictions, those restrictions are limited. Although the team’s “work product” is protected, nothing prevents police from using that confidential information to follow leads and come up with independently gathered corroborative information.

For these reasons, we oppose the bill as written, and urge that it be rejected or else amended to limit law enforcement presence on the team and to strengthen confidentiality safeguards so that the team’s efforts remain clearly focused on the public health issue it is designed to address. Our proposed amendments to the bill are attached.

¹ See, e.g., <https://www.providencejournal.com/story/news/courts/2021/02/08/r-i-judge-good-samaritan-protections-dont-shield-gun-charges/4435832001/>

**PROPOSED AMENDMENT TO 21-H 6014,
RELATING TO OFFICE OF MEDICAL EXAMINERS**

Amend the language on Page 2, lines 16-34 as follows:

(11)(~~f~~) For a multi-disciplinary team review of drug-related overdose deaths with the goal of reducing the prevalence of such deaths by examining emerging trends in overdose, identifying potential demographic, geographic, and structural points for prevention and other factors. The multi-disciplinary team for review of drug-related overdose deaths may include, as determined by the director, representatives from the department of health; ~~the department of the attorney general; the Rhode Island state police; the department of corrections;~~ the department of behavioral healthcare, developmental disabilities and hospitals; ~~the Rhode Island Police Chiefs Association;~~ the Hospital Association of Rhode Island; an emergency department physician; a primary care physician; an addiction medicine/treatment provider; a mental health clinician; a toxicologist; a public health scientist; a recovery coach or other representative of the recovery community; a worker in the field of harm reduction; and others as may be determined by the director of the department of health; provided, however:

(a) Representatives from law enforcement shall not serve on the team, but may be asked by the team to participate in the examination of individual cases in which the law enforcement agency was involved; and

(b) The work product of the multi-disciplinary team for review of drug-related overdose deaths shall be confidential and protected under all applicable laws, including the federal Health Insurance Portability and Accountability Act of 1996 and the Rhode Island confidentiality of health care information act (chapter 37.3 of title 5), and shall be exempt from the provisions of chapter 2 of title 38, not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, and not subject to disclosure beyond such team members (except to authorized employees of the department of health as necessary to perform official duties of the department pursuant to § 23-4-3(11); and

(c) No derivative evidence obtained as a result of the team's review shall be admissible in any court proceeding. Provided further, however, nothing contained herein shall be construed to prevent the release of non-identifiable information that would otherwise be available under chapter 2 of title 38.

EXPLANATION: These amendments would remove law enforcement from the overdose review team and add a public health scientist and a worker in the field of harm reduction. Representatives from law enforcement would be permitted to participate in the examination of individual cases in which the law enforcement agency was involved. A second amendment would clarify that derivative evidence obtained during the team's review is inadmissible in any court proceeding, except for non-identifiable information that would otherwise be available under the Access to Public Records Act.