

# STATE OF MAINE

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DISTRICT VIII

## **MAINE PROSECUTORS ASSOCIATION** **SHIRA BURNS, EXECUTIVE DIRECTOR**

“An Act to Clarify the Minimum Sentencing Standards for a  
Violation of Operating Under the Influence”  
Before the Joint Standing Committee on Criminal Justice and Public Safety  
Public Hearing Date: March 7, 2024  
Testimony in Opposition of LD 2247

Senator Beebe-Center, Representative Salisbury and members of the Joint Standing Committee on Criminal Justice and Public Safety. My name is Shira Burns and I represent the Maine Prosecutors Association. I am here to testify in opposition of LD 2247.

This bill would not clarify any statute, but actually substantially change the law making it harder to prosecute. The language of this statute was analyzed by the Maine Supreme Court in *State v. Vanassche*, 566 A.2d 1077 (Me. 1989). In that case, the Maine Supreme Court stated that the statute “clearly provides that the criminal time is ‘when the person **was tested** as having a blood alcohol level of 0.15% or more.’ This language demonstrates that a 0.15% blood alcohol level is indicative of a defendant having consumed such a reckless or unreasonable quantity of alcohol prior to operating a motor vehicle as to warrant a more stringent penalty. Given the State’s substantial interest in protecting the public from drunk drivers, the penalty is sufficiently proportional to the crime.”

This shows that the Maine Supreme Court is of the opinion that a person testing at 0.15% blood alcohol level after driving is such a risk to public safety that the minimum mandatory sentence is proportional to the crime at hand. If the language was changed to mandate the prosecutor prove beyond a reasonable doubt that the person was operating a motor vehicle at 0.15% blood alcohol level, an expert witness would be required in every Operating Under the Influence crime where the allegation is a 0.15% blood alcohol level or more. Parties cannot argue to the fact finder facts that are not in evidence. The average juror does not know how bodies metabolize alcohol, the rate it happens, and what other factors are considered to estimate a person’s blood alcohol level at a certain point in time. The State would need to call a chemist from the Health and Environmental Testing Laboratory (HETL) as an expert in all of these cases. Currently, HETL is very backed up in testing of urine and drug samples. This delays cases in our court system. The more we take the chemists out of the lab to testify in all of these cases, that backlog will only grow and our criminal justice system will be directly affected by that delay.

Operating under the Influence is strongly tied to public safety. This crime can literally kill anyone at any time. We should be looking at ways to keep these people from getting behind the wheel and, when they do, how to strengthen the criminal justice system to hold them accountable for their actions. This bill will give a technical out from the mandatory minimum sentence of 48 hours in jail to the people that have “consumed such a reckless or unreasonable quantity of alcohol prior to operating a motor vehicle.”

For these reasons, the Maine Prosecutors Association is in opposition to LD 2247.