

TESTIMONY OF MICHAEL KEBEDE, ESQ.

Ought to Pass

**LD 2246, An Act to Establish a Minimum Value Threshold
for the Class C Crime of Theft by a Repeat Offender**

**LD 2247, An Act to Clarify the Minimum Sentencing
Standards for a Violation of Operating Under the Influence**

Joint Standing Committee on Criminal Justice and Public Safety

March 7, 2024

Senator Beebe-Center, Representative Salisbury and members of the Joint Standing Committee on Criminal Justice and Public Safety, good afternoon. My name is Michael Kebede, and I am policy counsel 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 through advocacy, education, and litigation. On behalf of our members, we urge you to support LDs 2246 and 2247 because both bills would ensure that our criminal codes are more proportionate to the conduct they seek to punish.

If enacted, LD 2246 would make Maine's theft statute more proportional to the harms it seeks to remedy. Under current law, it is a Class C felony, punishable by a prison term of up to five years, and a fine of up to \$5,000, for someone to steal three small items, each costing less than \$100. 17-A MRS §353(1)(B)(6). Stealing three loaves of bread on three separate occasions, if each theft was charged and convicted separately, could mean five years in prison *and* a \$5,000 fine. *See id.* LD 2246 would amend this law, ensuring that a person with two or more theft convictions is guilty of new Class C theft only if the total value of the new stolen item exceeds \$500. This change will ensure that Maine does not needlessly punish people who commit crimes of poverty.

Similarly, LD 2247 would fix another absurdity in our criminal laws — in this case, our OUI law. Current law makes it a Class D crime, with a mandatory 2-day jail-stay, for someone who had no OUI conviction within the last ten years to “test[] as having an alcohol level of 0.15 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath.” 29-A MRS §2411(5)(A)(3)(a)(i). This is a strict liability statute. In other words, there is no judicial discretion involved – if you are tested as having the statute's specified blood alcohol level, then you're automatically guilty. The problem with this subsection is that it requires only that the person tests as having an illegal blood alcohol level, omitting the “operating a vehicle” part of an OUI offense. LD 2247 would fix this omission by replacing “Was tested as” with the words “Operated a motor vehicle while.” This change would bring Maine law in closer alignment with

legislative intent, which was almost certainly not to jail people who are drinking but are not operating a vehicle.

It is a waste of the state's resources to incarcerate people for petty offenses. It is absurd for the state to convict and jail someone of an OUI if that person was not operating a vehicle. These two bills will make Maine's criminal laws fairer by reducing disproportionate punishment in our statute books. We urge you to vote *ought to pass*.