



# MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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February 10, 2025

Senator Anne Beebe-Center, Chair  
Representative Tavis Hasenfus, Chair  
Committee on Criminal Justice and Public Safety  
5 State House Station, Room 436  
Augusta, ME 04333

### **RE: LD 96: An Act to Amend the Motor Vehicles and Traffic Law Governing Mandatory Driver's License Suspension for Refusing Testing for Drugs or a Combination of Drugs and Alcohol**

Dear Senator Beebe-Center, Representative Hasenfus, and Members of the Committee on Criminal Justice and Public Safety:

MACDL **opposes** LD 96.

The Maine Bureau of Highway Safety (MBHS) and Maine Criminal Justice Academy (MCJA) oversee Maine's Drug Recognition Expert (DRE) program. "Drug Recognition Expert," State of Maine Department of Public Safety, <https://www.maine.gov/dps/bhs/law-enforcement/drug-recognition-expert> (last visited Feb. 5., 2025). According to MBHS's website, the DRE program was approved by the Association of Chiefs of Police in 1995. Forty-seven states, the District of Columbia, and three branches of the military participate in the DRE program. MBHS reports that Maine has approximately 100 active DREs and 17 DRE instructors state-wide.

DREs are required to undergo a 7-day training course and then maintain recertification every 2 years through additional training and a required number of DRE investigations. The 7-day training includes training on administration of a series of tests. Some of those tests are documented on the State of Maine Drug Influence Evaluation sheet attached hereto. This training is highly specialized and requires administration of tests and understanding of how results from those tests may or may not be indicative of impairment by a variety of drugs, including many lawfully prescribed medications taken by thousands of Mainers every day.

LD 96 seeks to do away with the DRE system used by Maine and many other states for years and allows any law enforcement officer—without this specialized

training—to act as DRE. LD 96 would impose a requirement to submit to blood or urine testing when an untrained law enforcement officer has probable cause to believe someone is under the influence of a drug or drugs. LD 96 rejects the years of training the National Traffic Highway Safety Administration (NTSHA), MBHS, MCJA, and their nationwide counterparts have undertaken in creating and implementing the drug recognition expert program.

LD 96 moreover seeks to impose a mandatory and immediate license suspension—without the benefit of due process and an administrative hearing prior to suspension—on any person who refuses to submit to a blood or urine test when an untrained law enforcement officer has ordered them to submit to blood or urine testing. A license suspension is one of the most severe punishments imposed as part of an OUI case and the immediate imposition of such a suspension without specialized training supporting the suspension is unfair to Maine motorists. Such a suspension is also contrary to our existing suspension system for OUIs arising from alcohol consumption. In those cases, law enforcement officers are required to undergo specialized NTSHA training to identify impairment through administration of standardized field sobriety testing. If specialized training is needed for identifying impairment by alcohol, then it certainly is needed for identifying impairment from illegal drugs and lawfully prescribed medications.

It is also important to note that rejecting LD 96 does not prohibit the State from presenting evidence of alleged impairment through non-DRE law enforcement at any trial. In *State v. Atkins*, the Law Court permitted law enforcement to testify at trial about observations of possible impairment by drugs without this training so long as the State was not offering the testimony as expert testimony, 129 A.3d 952 (2015). Instead, this is a question about making sure that the requirement for highly invasive blood or urine tests and the immediate 275-day license suspension for failing to submit to such tests is based on a trained and experienced judgment.

For these reasons, MACDL opposes LD 96.

Sincerely,

/s/ Matthew D. Morgan  
Matthew D. Morgan, Esq.  
MACDL President Elect

# STATE OF MAINE DRUG INFLUENCE EVALUATION



Evaluator:	DRE#:	Rolling Log#:	Evaluator's Agency:	Case #
Recorder/Witness:	Crash: <input type="checkbox"/> None <input type="checkbox"/> Fatal <input type="checkbox"/> Injury <input type="checkbox"/> Property		Arresting Officer's Agency:	

ARRESTEE'S NAME (Last, First, Middle)	Date of Birth	Sex	Race	Arresting Officer (Name, ID#)
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Date Examined / Time / Location / /	Breath Test: <input type="checkbox"/> Test Refused Results: Instrument #:	Chemical Test: Urine <input type="checkbox"/> Blood <input type="checkbox"/> Oral Fluid <input type="checkbox"/> Test or tests refused <input type="checkbox"/>
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Miranda Warning Given: Given by: <input type="checkbox"/> Yes <input type="checkbox"/> No	What have you eaten today? When? /	What have you been drinking? /	How much?	Time of last drink?
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Time now/ Actual /	When did you last sleep? How long /	Are you sick or injured? <input type="checkbox"/> Yes <input type="checkbox"/> No	Are you diabetic or epileptic? <input type="checkbox"/> Yes <input type="checkbox"/> No
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Do you take insulin? <input type="checkbox"/> Yes <input type="checkbox"/> No	Do you have any physical defects? <input type="checkbox"/> Yes <input type="checkbox"/> No	Are you under the care of a doctor or dentist? <input type="checkbox"/> Yes <input type="checkbox"/> No
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Are you taking any medication or drugs? <input type="checkbox"/> Yes <input type="checkbox"/> No	Attitude:	Coordination:
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Speech:	Breath Odor:	Face:
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Corrective Lenses: <input type="checkbox"/> None <input type="checkbox"/> Glasses <input type="checkbox"/> Contacts, if so <input type="checkbox"/> Hard <input type="checkbox"/> Soft <input type="checkbox"/> Colored	Eyes: <input type="checkbox"/> Normal <input type="checkbox"/> Bloodshot <input type="checkbox"/> Watery	Blindness: <input type="checkbox"/> None <input type="checkbox"/> Left <input type="checkbox"/> Right	Tracking: <input type="checkbox"/> Equal <input type="checkbox"/> Unequal
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Pupil Size: <input type="checkbox"/> Equal <input type="checkbox"/> Unequal (Explain)	Resting Nystagmus <input type="checkbox"/> Yes <input type="checkbox"/> No	Vertical Nystagmus <input type="checkbox"/> Yes <input type="checkbox"/> No	Able to follow stimulus <input type="checkbox"/> Yes <input type="checkbox"/> No	Eyelids <input type="checkbox"/> Normal <input type="checkbox"/> Droopy
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Pulse and time 1. ___ / ___ 2. ___ / ___ 3. ___ / ___	HGN Lack of Smooth Pursuit Maximum Deviation Angle of Onset	Right Eye	Left Eye	Convergence  Right eye      Left eye	/30 ONE LEG STAND /30  L R <input type="checkbox"/> <input type="checkbox"/> Sways while balancing <input type="checkbox"/> <input type="checkbox"/> Uses arms to balance <input type="checkbox"/> <input type="checkbox"/> Hopping <input type="checkbox"/> <input type="checkbox"/> Puts foot down
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Romberg Balance 	Walk and turn test  Cannot keep balance _____ Starts too soon _____ Stops walking _____ Misses heel-toe _____ Steps off line _____ Raises arms _____ Actual steps taken _____
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Time Estimation ___ sec estimated as 30 sec	Describe Turn	Cannot do test (explain)	Type of footwear:
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Draw lines to spots touched  R L 2 1 4 3 5 6	PUPIL SIZE	Room light (2.5 - 5.0)	Darkness (5.0 - 8.5)	Direct (2.0 - 4.5)	Nasal area:
	Left Eye				Oral cavity:
	Right Eye				
Rebound Dilation <input type="checkbox"/> Yes <input type="checkbox"/> No					Reaction to Light:

RIGHT ARM 	LEFT ARM 
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Blood pressure / mmHg	Temperature °F	Muscle tone: <input type="checkbox"/> Normal <input type="checkbox"/> Flaccid <input type="checkbox"/> Rigid			
Comments:					

What drugs or medications have you been using?	How much?	Time of use?	Where were the drugs used? (Location):	<input type="checkbox"/> Subject refused entire evaluation <input type="checkbox"/> Subject stopped participating during evaluation
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Officer's Signature:	Date/ Time of Arrest:	Time DRE was notified:	Evaluation completion time:	Reviewed/approved by / date/DRE#:
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Opinion of Evaluator:	<input type="checkbox"/> Not Impaired <input type="checkbox"/> Medical	<input type="checkbox"/> Alcohol <input type="checkbox"/> CNS Depressant	<input type="checkbox"/> CNS Stimulant <input type="checkbox"/> Hallucinogen	<input type="checkbox"/> Dissociative Anesthetics <input type="checkbox"/> Narcotic Analgesic	<input type="checkbox"/> Inhalant <input type="checkbox"/> Cannabis
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# STATE OF MAINE DRUG INFLUENCE EVALUATION

<b>DRE Case Number:</b>	Page	of	Pages
<b>Arrestee's Name:</b>			
<b>Evaluator:</b>			
<b>Arresting Officer:</b>			

**1. Location:**

On \_\_\_\_\_ at \_\_\_\_\_ hours, a drug influence evaluation was conducted on \_\_\_\_\_ while at \_\_\_\_\_.

**2. Witnesses:**

**3. Breath Test:**

A breath test was conducted with a result of \_\_\_\_\_.

**4. Notification and Interview of Arresting Officer:**

**5. Initial Observation of the Suspect:**

**6. Medical Problems and Treatment:**

**7. Psychophysical Tests:**

- A) Modified Romberg Balance:
- B) Walk and Turn:
- C) One Leg Stand (left leg):
- D) One Leg Stand (right leg):
- E) Finger to Nose:

**8. Major Indicators:**

**9. Signs of Ingestion:**

**10. Suspect's Statements:**

**11. DRE's Opinion:**

It is my opinion as a Certified Drug Recognition Expert, that \_\_\_\_\_ is under the influence of \_\_\_\_\_, and is not able to operate a vehicle safely.

**12. Toxicological Sample:**

The subject consented to a \_\_\_\_\_ sample and was entered into evidence.

**13. Miscellaneous:**

**DRE's Statement of Probable Cause: My basis of probable cause is contained in the attached copy of the DRE report and evaluation, the contents of which, upon knowledge and information that I believe to be true, are incorporated herein by reference and are subject to my undersigned oath.**

**Sworn before me under oath:**

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(Signature of DRE)

Dated: \_\_\_\_\_

\_\_\_\_\_  
(DRE's Name Printed or Typed)

End Commission Date: \_\_\_\_\_

\_\_\_\_\_  
(Department of DRE)

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