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MAINE PROSECUTORS ASSOCIATION

“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” 96
Before the Joint Standing Committee on Criminal Justice and Public Safety
Public Hearing Date: February 10, 2025
Testimony in SUPPORT of LD 96 as amended

Senator Beebe-Center, Representative Hasenfus and members of the Joint Standing Committee on Criminal Justice and Public Safety. My name is Patricia Mador and I am representing the Maine Prosecutors Association today to testify in support of LD 96 as amended.

I have been a prosecutor in the State of Maine since 1986 and in the course of my duties, I have reviewed several hundred impaired driving cases and have tried many to a jury. My current responsibilities involve the prosecution of impaired driving cases in Androscoggin County, the prosecution of all vehicular manslaughter and serious bodily injury crash cases for Androscoggin, Oxford, and Franklin counties. I have attended many training courses on topics related to impaired driving and teach on the topic at both the basic police academy and the Drug Recognition Expert (DRE) program at the Maine Criminal Justice Academy. In 2023 I was recognized by the National Association of Prosecutor Coordinators as the National Traffic Safety Prosecutor of the year.

It is with this background that the Maine Prosecutors Association is asking you to support LD 96, as amended. Since the early 1980’s, Maine has been a leader in addressing impaired driving by enacting reasonable laws to hold impaired drivers accountable and to safeguard public safety by removing the impaired driver from the road as soon as possible.

It is important to remember that impairment can be caused by alcohol, drugs, or a combination of alcohol and drugs. This policy, as it relates to impairment by alcohol, is clearly stated in 29-A M.R.S. § 2453:

§2453. Suspension on administrative determination; excessive alcohol level

1. Purpose. The purpose of this section is:

- A. To provide maximum safety for all persons who travel on or otherwise use the public ways; and
- B. To remove quickly from public ways those persons who have shown themselves to be a safety hazard by operating a motor vehicle with an excessive alcohol level.

And is identical for impairment by drugs:

§2453-A. Suspension on administrative determination; operating under the influence of drugs

1. Purpose. The purpose of this section is:

- A. To provide maximum safety for all persons who travel on or otherwise use the public ways; and
- B. To remove quickly from public ways those persons who have shown themselves to be a safety hazard by operating a motor vehicle while under the influence of drugs.

The legislature has also vested in the Office of the Secretary of State the duty to impose administrative suspension of operating privileges on those for whom there is probable cause to believe the person operated with an excessive alcohol level or those who are under the influence of drugs, with any level of drugs or drug metabolites who refuse to submit to either a breath test or a blood test, upon request of a law enforcement officer.

29-A §2521. Implied consent to chemical tests

1. Mandatory submission to test. If there is probable cause to believe a person has operated a motor vehicle while under the influence of intoxicants, that person shall submit to and complete a test to determine an alcohol level and the presence of a drug or drug metabolite by analysis of blood, breath or urine.

2. Type of test. A law enforcement officer shall administer a breath test unless, in that officer's determination, a breath test is unreasonable.

If a breath test is determined to be unreasonable, another chemical test must be administered in place of a breath test. For a blood test the operator may choose a physician, if reasonably available.

3. Warnings. Neither a refusal to submit to a test nor a failure to complete a test may be used for any of the purposes specified in paragraph A, B or C unless the person has first been told that the refusal or failure will:

A. Result in suspension of that person's driver's license for a period up to 6 years;

B. Be admissible in evidence at a trial for operating under the influence of intoxicants; and

C. Be considered an aggravating factor at sentencing if the person is convicted of operating under the influence of intoxicants that, in addition to other penalties, will subject the person to a mandatory minimum period of incarceration.

4. Exclusion as evidence. A test result may not be excluded as evidence in a proceeding before an administrative officer or court solely as a result of the failure of the law enforcement officer to comply with the notice of subsection 3.

5. Suspension for refusal. The Secretary of State shall immediately suspend the license of a person who fails to submit to and complete a test.

This has been their responsibility, as related to impairment by alcohol, including the refusal to submit to a test, since approximately 1981 and was extended to impairment by drugs, and the refusal to submit to a test, in 2011.¹ The current position of the Office of the Secretary of State is to only impose a suspension for a refusal of a drug impaired driver to submit to a test, if a drug recognition expert requests the test.

The Maine Criminal Justice Academy dedicates many hours, both in the classroom and in the field, to properly train officers to detect impairment, regardless of the source. Training does not end at graduation; every impaired person an officer interacts with enhances their ability to recognize and detect impairment. As the Maine Supreme Judicial Court stated in *State v. Adkins*, 2015 ME 167, you do not need a drug recognition expert to prove impairment beyond a reasonable doubt at trial. If drug recognition expert is not needed to meet the beyond a reasonable doubt standard of guilt, surely one is not needed to meet the probable cause standard for administrative suspensions.

This administrative suspension, including the suspension for refusing to submit to a test, fulfills the legislative intent expressed in §2453, §2453-A and §2521(5).

¹ PL 2011, ch. 335.

As Director Stewart has stated, the legalization of cannabis has exacerbated the danger drug impaired drivers pose to the public. Simply stated, the number of drivers who are operating with alcohol, drugs, including cannabis, or a combination of alcohol and drugs, including cannabis has dramatically increased since 2020.

The goal of this bill is to remove any ambiguity that may exist as to the authority of the Office of the Secretary of State to immediately administratively suspend the operating privileges of any driver for whom there is probable cause to believe they operated while under the influence of drugs, drug metabolites, or a combination of alcohol and drugs or drug metabolite, who refuses to submit to a test at the request of a law enforcement officer. This bill reinforces the long-standing policy of the State of Maine that impaired drivers, including those who refuse to submit to a test, must have their driving privileges immediately suspended.

For these reasons, the Maine Prosecutors Association is in support of LD 96 as amended.

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