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March 31, 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 962: An Act to Establish the Offense of Aggravated Operating Under the Influence Resulting in the Death of a Pet

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

The Maine Association of Criminal Defense Lawyers is a non-profit organization that has nearly 300 member attorneys who practice criminal defense across the state. Since 1992, MACDL has advocated for its members and the people we are fortunate to represent in courtrooms throughout Maine and at the State House.

MACDL presents this testimony in **opposition** to LD 962.

The crime for first-offense criminal [Operating Under the Influence](#) is currently a Class D misdemeanor offense, the mandatory minimums for which are a \$500 fine and a 150-day loss of driving privileges. If a person is convicted of OUI with a blood alcohol content of more than 0.15, driving more than 30 miles over the speed limit, driving with a passenger under the age of 21, or eluding or attempting to elude an officer, the additional penalty is two days in jail. If a person is convicted of OUI and having refused a chemical test, then the mandatory minimum penalty is four days in jail, a \$600 fine, and a 150-day license suspension (plus an additional 275-day license suspension from the BMV).

The maximum penalty for a Class D misdemeanor is 364 days in jail, a \$2,000 fine, and one year of probation. It is extremely rare for someone to receive anywhere close to the maximum penalties—barring some aggravating (but old) history or other circumstances. The statutory maximums for a Class D conviction for OUI have not been inadequate in all the years they have existed.

Even for a second-offense OUI, the mandatory minimum jail penalty is seven days in jail—and the maximum penalties remain within those for any other Class D misdemeanor—364 days in jail, a \$2,000 fine, and a year of probation. Prosecutors can ask for and judges can sentence people convicted of such crimes to more time if the situation, in their views, warrant it.

Pursuant to [Title 17 M.R.S. § 1031](#), “Cruelty to Animals,” even causing the intentional death of animal or pet is a Class D offense—whereas if someone has two or more prior convictions for similar behavior, that conduct could be elevated to a Class C crime. This current proposal would make the reckless killing of a pet a felony—punishable far more harshly than the

intentional killing of someone's pet. Even the depraved and intentional crime of bestiality under this section is treated as a misdemeanor Class D offense. Elevating the OUI offense to felony-level conduct as proposed would be inconsistent with our Criminal Code.

The penalties proposed here, in addition to some of them (the fine of \$7,000 leaps to mind) being against current law even for Class C felony convictions, are excessive and out of step with the Criminal Code. The loss of a driver's license for three years for a first-offense OUI conviction would be devastating to that person's ability to earn a living and attend to the necessities of daily life, particularly in a state as rural as Maine.

The mandatory restitution is also out of step with Maine's code regarding the accused's ability to pay—and in criminal prosecutions, "emotional distress" is not recognized as compensable as restitution. This issue is best solved through civil litigation—not through the criminal court. Painting a person as a felon can also derail their lives in innumerable ways—again, the current penalties are more than adequate to address the criminal conduct of operating a motor vehicle under the influence and recklessly causing the death of a pet.

There is *nothing* currently that prevents a judge (or prosecutor) from taking into consideration any aggravating information when deviating upwards from the mandatory minimum penalties in place. For example, if a judge were to find that someone was guilty of OUI and they ran over a neighbor's poor dog or cat in the process, that judge could impose jail time above and beyond what the statutory minimums are. There is no doubt that this unfortunate scenario has happened in the past and that the driver was punished appropriately by a judge for that additional harmful fact.

Creating additional felony crimes does not keep us safer—particularly when the current statutory scheme is already well-suited to handle more serious first-offense OUIs. The current law can sufficiently address the harm caused when a pet is killed in the course of an OUI offense. There is no evidence or data that exists that would establish that over the past several years there have been so many pets killed by drunk drivers that the current penalties are insufficient.

This Committee needs to put a stop to efforts towards the felonization of more and more crimes. Over the past several sessions, this Committee has expressed concern about this very issue, but nonetheless, each year, there are bills like this one that attempt to make more crimes felonies—and thus more people felons. This is a dangerous precedent, and one that needs to be pushed back on.

Thank you for your consideration, for your attention to this important matter, and for allowing me to present this testimony to you all today.

Sincerely,



Tina H. Nadeau, Esq.
MACDL Executive Director