



# HOUSE OF REPRESENTATIVES

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January 17, 2024

*Testimony of Rep. Tavis Hasenfus introducing*

**LD 2054, An Act to Exclude Certain Operating Under the Influence Crimes from the Immunity Provisions That Are Triggered When Law Enforcement Is Called for a Suspected Overdose**

*Before the Criminal Justice and Public Safety Committee*

Good afternoon, Senator Beebe-Center, Representative Salisbury and members of the Criminal Justice and Public Safety Committee. My name is Tavis Hasenfus, and I represent House District 57, which is the communities of Readfield and Winthrop. I am here before you today to introduce **LD 2054, An Act to Exclude Certain Operating Under the Influence Crimes from the Immunity Provisions That Are Triggered When Law Enforcement Is Called for a Suspected Overdose.**

This intent of this bill is to fix an issue with the implementation of the Good Samaritan law. As you know, Good Sam provides an exclusion to prosecution for a number of crimes when a first responder is called to provide aid when a person is suspected of overdosing.

The issue that has come to light involves the crime of operating while under the influence, or OUI. Currently, if an intoxicated person causes an accident and someone, such as their passenger or a bystander, calls 9-1-1 for a suspected overdose, this may prevent prosecution for OUI.

This bill simply removes driving while under the influence from the list of excluded offenses under Good Sam.

I have included with this testimony a memo from the Maine Prosecutors Association outlining the impetus behind this bill.

Thank you for your time, and I am happy to answer any questions you may have.

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September 27, 2023

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Dear Representative Hasenfus,

Thank you for agreeing to sponsor a bill that would amend 17-A M.R.S. § 111-B to add Operating Under the Influence (OUI), 29-A M.R.S. § 2411, as an excluded crime. This exclusion balances the policy reasons behind the Good Samaritan law and the need for public safety.

It is my understanding one of the policy reasons behind 17-A M.R.S. § 111-B is that lives will be saved because more people will call rescue during an overdose if they know they will not be prosecuted for a crime. However, that policy reason does not hold true with OUIs. Almost all OUIs, if not all, are called in by a civilian in another vehicle. These 911 calls are being made regardless of the Good Samaritan law.

On July 14, 2023, a woman was operating her vehicle while impaired by suspected fentanyl in Lebanon, Maine. The woman approached a stop sign before entering onto Route 202 when she passed out. A civilian from another vehicle called 911. Rescue responded and after an investigation learned the woman had used heroin/fentanyl 15 minutes prior. Officer noted she showed signs of being impaired close to someone with a blood alcohol level of .20 or higher. Immunity applied and she was not prosecuted so her license was never suspended.

Many of these OUI cases are litigated in court over the exact wording of a civilian's 911 call to determine if immunity applies. The statute states "when a medical professional or law enforcement officer has been dispatched to the location of a medical emergency in response to a call for assistance for a suspected drug-related overdose" immunity applies. Many OUI 911 calls are multifaceted in nature, calling about erratic driving and a possible overdose.

For example, an off duty police officer observed erratic driving on I-395, after which he saw signs that the driver had used drugs and was experiencing an overdose. The off duty police officer called for rescue. The driver was prosecuted for OUI and immunity was litigated through the criminal court. The Judge found that the witnesses' concerns that the driver was experiencing an overdose were ancillary to the primary reason for the intervention, "that a vehicle was operated on a public way and that the driver was under the influence of intoxicant" so immunity did not apply. However,

this decision would have been reverse if the concerns of the bystander witness would have first discussed the overdose and next discussed the erratic driving.

The statutory language is also problematic as applied to OUIs as the rescue call just needs to be about a *suspected* drug-related overdose, not necessarily a drug-related overdose. For instance, the exact same facts that happened on July 14, 2023 in Lebanon, Maine could have occurred with someone “passing out” at the stop sign from alcohol use. That driver would still be afforded immunity for OUI just because of the wording used in the 911 call of a suspected drug overdose.

This legislation is emergency in nature because of the public safety concern impaired driving has on our community and the limited impact the policy behind the Good Samaritan law has on OUI (since they are almost always called in by a bystander witness). Until OUI is an exempted crime from the Good Samaritan law, impaired drivers are allowed to stay behind the wheel. In 2019, crashes involving impaired driving resulted in 138 serious injuries in Maine.<sup>1</sup> Presently, manslaughter is an exempt crime in the Good Samaritan law, but not OUI with serious injury. An unattended consequence of this law is also applying immunity to drivers impaired by alcohol just because the 911 call mentioned an overdose.

If this law is not addressed in the 2<sup>nd</sup> regular session of the 131<sup>st</sup> legislative session, the follow fact pattern can occur and immunity would apply:

A drunk driver strikes a pedestrian leaving them with serious injury. The drunk driver does not stop and drives miles down the road where they finally pull over and pass out. The front of the car is damaged where the pedestrian was hit. Another vehicle approaches the car that is pulled over and sees the driver slumped over with the engine on. Worried that something is wrong, the operator calls 911 that the driver might have overdosed. Officers respond to this “suspected drug-related overdose” and find that the driver is actually impaired by alcohol and that there is damage to the front of the car. Shortly after, police learn that a pedestrian has been hit and the car fled. The victim has red paint on her consistent with the paint of the car that the drunk driver is in. This drunk driver would be afforded immunity to OUI causing a serious injury.

The Maine Prosecutors Association supports the policy reasons behind the Good Samaritan law but do not think the danger operating under the influence poses on all Maine citizens should allow immunity for that crime.

Please let me know if you have any questions.

Sincerely,

*Shira S. Burns*

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<sup>1</sup> Maine Highway Safety Plan - [https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-10/ME\\_FY22\\_HSP%20FINAL%20V2%20%28002%29.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-10/ME_FY22_HSP%20FINAL%20V2%20%28002%29.pdf)