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MAINE PROSECUTORS ASSOCIATION  
SHIRA BURNS, EXECUTIVE DIRECTOR

“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 Joint Standing Committee on Criminal Justice and Public Safety  
Public Hearing Date: January 17, 2024  
Testimony in Support of LD 2054

Senator Beebe-Center, Representative Salisbury and members of the Joint Standing Committee on Criminal Justice and Public Safety. My name is Shira Burns and I represent the Maine Prosecutors Association. I am here to testify in support of LD 2054. Thank you Representative Hasenfus who was willing to listen to the concerns of the Maine Prosecutors Association and sponsoring this bill.

The Maine Prosecutors Association supports the Good Samaritan law and the proposition that it can save lives. We have no way to formally track when the law has been used but have seen police reports where the Good Samaritan law is cited in declining to charge a criminal offense based on immunity status. Hopefully more 911 calls are being made in effort to save lives.

That being said, the Maine Prosecutors Association supports the addition of our Operating Under the Influence (OUI) laws to the list of exclusionary crimes for immunity in the Good Samaritan law. Anecdotally, this is the most common crime where immunity is offered through the law. Not only are we seeing it as the most common crime where immunity is given, but the person calling 911 was a bystander that would have called 911 despite the law. The two most common 911 callers we are seeing are other drivers on the road that are witnessing the person that is suspected of overdosing while operating a vehicle or someone affiliated with a business, a fast food attendant or gas station employee, where the person suspected of overdosing has driven to and hasn't moved their car for a substantial amount of time. Again, these 911 calls would have been made despite the Good Samaritan law.

Having drivers on the road that are operating while under the influence of intoxicants affects public safety at its core. We want to save lives with the implementation of the Good Samaritan law but that needs to be balanced with the safety of others in our community. This bill is narrowly drafted to address a very specific concern that law enforcement and prosecutors are seeing play out in communities across the State.

In preparing for today's hearing, prosecutors were sending case examples of how the Good Samaritan law is playing out in the field regarding OUI. In Scarborough, a bystander called 911 that a driver was “passed out” behind the wheel of a car that was running, in gear, with the defendant's foot on the brake. When officers responded, the driver was overdosing and Narcan was administered. In that situation, immunity does not apply because law enforcement was responding to a person “passed out” instead of a suspected drug-related overdose. However, if that bystander would have said I think the person is overdosing, immunity would be applied.

In Lebanon, two bystander witnesses in another vehicle called 911 that a car at a stop sign at an intersection entering Route 202 wasn't moving and the driver seemed to have irregular breathing and might be overdosing. Officers responded to this suspected overdose and were able to render the driver conscious and alert. Suspected fentanyl was found within plain view on the floorboard and the driver made admissions to using heroin and fentanyl within the hour. The officer did administer tests on the driver and the driver had displayed a number of clues from field sobriety tests to someone similar to that of a person with a BAC of .20 or higher. This driver was provided immunity to the crime of Operating Under the Influence.

Furthermore, the addition of OUI to the list of excluded crimes from immunity prevents the protection of drunk drivers that could be afforded immunity under the current law. If a person is driving while under the influence of alcohol, falls asleep at the wheel, and the car behind them calls 911 stating they think the person in front of them is overdosing, the drunk driver would be afforded immunity for the crime of OUI even though they are only under the influence of alcohol. This is true even if the person has multiple prior convictions of OUI and would otherwise have committed a felony level crime.

The Good Samaritan law was not meant to protect drunk drivers. Adding OUI to the list of excluded crimes from immunity will keep it from happening.

For these reasons, the Maine Prosecutors Association is in support of LD 2054.