



Janet T. Mills
Governor

STATE OF MAINE
Department of Public Safety
Bureau of Highway Safety
164 State House Station
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Michael J. Sauschuck
Commissioner

Lauren V. Stewart
Director

Testimony of Director Lauren V. Stewart

IN OPPOSITION TO LD 2247

An Act to Clarify the Minimum Sentencing Standards for a Violation of Operating Under the Influence (AFTER DEADLINE)

Senator Beebe-Center, Representative Salisbury, and Members of the Joint Standing Committee on Criminal Justice and Public Safety. My name is Lauren Stewart, and I am the Director of the Maine Bureau of Highway Safety. I am here today to submit testimony on behalf of the Department of Public Safety and the Bureau of Highway Safety, in Opposition to LD 2247. We believe that LD 2247 is a solution in search of a problem. If enacted, it will *change* longstanding, constitutionally valid law, and unnecessarily complicate the sentencing of every high-BAC OUI case thereby eroding the State's well established substantial interest in protecting the public from drunk drivers.

Current sentencing provisions for a violation of Maine's OUI law mandate a minimum period of incarceration (not less than 48 hours) under certain aggravating circumstances (e.g., when speeding more than 30 MPH over the speed limit, when eluding a police officer, when operating with a passenger under 21 years of age, and when testing with a BAC at or above 0.15 grams of alcohol per 100 milliliters of blood or 210 liters of breath).¹

Our law court has found that "a 0.15% blood alcohol level is indicative of a defendant having consumed such a reckless or unreasonable quantity of alcohol prior to operating a motor vehicle as to warrant a more stringent penalty" in the 1989 case of *State v. Vanassche*. In that case, a defendant unsuccessfully challenged the "test at" language that this bill seeks to change. *Vanassche* also found the provision constitutional "[g]iven the State's substantial interest in protecting the public from drunk drivers."²

The *Vanassche* case in 1989 and the continued longevity of the "Was tested as" language demonstrates that the title of this bill is a misnomer. LD 2247 is not a bill to *clarify* language that was challenged (and made very clear) in the courts approximately 35 years ago. It is a bill that *changes* the law. As it was back during the *Vanassche* case era, there is no reason to do so and every reason to continue supporting the State's substantial interest in keeping our roads safe from

¹ 29-A M.R.S. §2411 (5)(A)(3).

² *State of Maine v. Paula A. Vanassche*, 556 A.2d 1077, 1081.

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those who not only drive drunk but do so recklessly by consuming significantly more alcohol than the legal limit allows. A brief look at BAC levels in recent drunk driving arrests lends support.

In 2023, 36 % of drivers who died in a crash had alcohol in their system (23% at levels between .08 and .23 grams per 100 mL of blood), 30% of fatal crashes involve alcohol (21% over .08), and 65% of alcohol only OUIs involve BACs of over .15. Meanwhile, the BAC numbers for all individuals, passengers, and drivers, who died in crashes are staggering.³ In short, now is not the time to send a message that if someone is “consume[ing] a reckless or unreasonable quantity of alcohol prior to operating a motor vehicle”⁴ they are less likely to face mandatory jail time if convicted of OUI.

LD 2247 directly and significantly erodes the State’s sentencing ability in OUI convictions with high BAC levels. Substituting the language of “Was tested as” to “Operating a motor vehicle while” would essentially require expert testimony and reverse extrapolation to the time of driving in almost every high BAC case. While such testimony is not uncommon in lower BAC cases, it is burdensome on the lab, extends the time of trials, and potentially confuses juries.

Lastly, the change is not necessary because there are already built-in safeguards. First, the OUI must already be proven beyond a reasonable doubt including the BAC *at the time of operation*. Secondly, as the Law Court alludes to in *Vanassche* the test result can certainly be challenged on whether or not it was conducted in a reasonable amount of time after the stop.

For all these reasons and more, we respectfully ask that you vote Ought Not to Pass.

Year	Number of Fatalities	No. Who Had BAC at or Over .08	No. Who Had BAC Over .15	Percentage Of BACs Over .08 That Were Over .15
2023	135	17	14	82%
2022	182	46	31	67%
2021	153	32	24	75%

³ Data from 2023 calendar year. Email Correspondence from Meghan Smoker, Chemist I, to Joshua Saucier, Assistant TSRP, dated March 5, 2024.

⁴ *Vanassche*, 556 A.2d 1077, 1081.

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