

Dear Senator Deschambault, Representative Warren, and members of the Criminal Justice & Public Safety Committee,

I write to express my support for LD 1313, An Act To Clarify Who Signs and Swears to a Certificate Stating the Results of a Breath-alcohol Test.

As currently written, 29-A M.R.S.A. §2431, sub-§2, ¶B allows for any person who is qualified to operate a self-contained breath-alcohol testing apparatus to issue a certificate stating the results of that analysis. Subsequent sections in §2431 allow that certificate to be admitted as “prima facie evidence” of four facts in both criminal and administrative proceedings. In practice, these certificates are usually issued by a law enforcement officer qualified to operate a breathalyzer (or similar) device that is designed and programed to analyze a breath sample and gauge the blood alcohol content (BAC) of a person. While most law enforcement officers who issue these certificates are the same officers who operate the self-contained breath-alcohol apparatus, as written, 29-A M.R.S.A. §2431, sub-§2 does not require the person who issues the certificate to even be present while the test is being conducted. According to the current law, as long as a person qualified to operate a self-contained breath-alcohol testing apparatus issues the certificate at a later point in time, the certificate can be admitted as prima facie evidence. The certificate can be issued even if the qualified operator was not present for the test or if the test was administered by an unqualified operator and still meet the requirements of the current §2431, sub-§2, ¶B. While most of Maine’s law enforcement officer’s who administer a test with a self-contained breath-alcohol testing apparatus do issue their own certificates, some do not.

I would like to briefly explain the difference between prima facie evidence compared to ‘evidence’ in both criminal and administrative proceeding as this distinction is essential to this bill’s proposed amendment. In a standard tribunal, there are opposing parties and a fact finder. The fact finder may be a judge, administrator, or even a jury depending on both the matter and the tribunal. The opposing parties present evidence in the form of testimony, documents, or other exhibits as they try to prove their respective claims. The fact finder makes findings or decisions based on the evidence they are presented. Two opposing parties may present witness testimony that states conflicting accounts or information. Yet both testimonies, while conflicting, are still ‘evidence.’ It is the duty of the fact finder to determine what evidence, if any, they believe to be credible and true. Prima facie evidence is a type of evidence that, on its own, is enough to establish a fact or raise the required presumption necessary for the fact finder to decide a narrow issue. While prima facie evidence is still rebuttable evidence—the other side can still try to raise an argument that it is not true—it shifts the burden from simply providing credible evidence to a fact finder to disproving the other side’s (prima facie) evidence. As a result, the legal technicality between “evidence” and “prima facie evidence” can have enormous implications.

29-A M.R.S.A. §2431 was written to allow for the admission of duly signed and sworn certificates stating the results of a breath-alcohol test as prima facie evidence of four facts intentionally. The admission of these certificates as prima facie evidence promotes efficiency and streamlines adjudication. This bill does not attempt to remove the efficiency of admitting proper BAC results as prima facie evidence in criminal or administrative settings. Rather, it aims to ensure that certificates admitted as prima facie evidence are properly generated considering the power

they have in a tribunal. As discussed above, prima facie evidence, while sufficient to prove a specific fact, is still rebuttable and the opposing side can attempt to disprove it. In the case of a breath-alcohol test, rebutting a certificate could include questioning if the apparatus was used correctly or what quality of sample was analyzed by the machine; information only the operator would know.

The disconnect caused by prima facie evidence from one person, a breath sample collected by another, and testimony requirements of both to ensure due process is complicated, inefficient, and devoid of logic. This bill proposes a small change to sub-§2, ¶B to clarify who may issue a certificate of results. Not only would this amendment make sub-§2, ¶B consistent with other subsections of 29-A M.R.S.A. §2431 (see sub-2, ¶E), it prevents nuanced due process and evidentiary issues that unfortunately have arisen in tribunals in Maine. From a quick reading of the current law, most would assume the person who runs a test must be both qualified to operate the machine and must certify their own results. Because this is not what the law requires, the few instances where one person has operated a testing apparatus and another person has certified their results has disregarded the legislature's intention of creating efficient avenues for presenting high quality evidence. I strongly recommend amending 29-A M.R.S.A. §2431, sub-§2, ¶B to clarify who may issue a certificate stating the results of a blood-alcohol test to promote not only efficiency but fairness in our tribunals. Thank you for your time.

Sincerely,

Cheryl Saniuk-Heinig  
Rockland, ME