

## OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 4-13-21  
To: Transportation Committee  
From: Sam Prawer, Legislative Analyst

### **LD 821 – An Act To Improve the Investigation and Prosecution of Cases That Involve Vulnerable Road Users**

#### **SUMMARY:**

This bill requires a law enforcement officer who investigates a reportable accident involving a vulnerable user or an allegation of a criminal violation that endangered a vulnerable user or the property of a vulnerable user to inform a district attorney of relevant jurisdiction about the investigation and any evidence relevant to the potential prosecution of an alleged criminal violation resulting from the investigation within 60 days of the accident.

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**Reportable Accident:** means an accident on a public way or a place where public traffic may reasonably be anticipated, resulting in bodily injury or death to a person or apparent property damage of \$1,000 or more. ([29-A, §2251, sub-§1](#)).

- Apparent property damage must be based upon the market value of the necessary repairs and may not be limited to the current value of the vehicle or property.

**Vulnerable User:** Means a person on a public way who is more vulnerable to injury than a person in an automobile, truck or other similar motor vehicle. ([29-A, §1, sub-§91-A](#)) Including but not limited to a:

- Pedestrian;
- Person riding, guiding or leading an animal or being guided by a service animal; or
- Person who is lawfully operating, riding, using, holding or otherwise on or in: a bicycle; a motorized bicycle or tricycle; a farm tractor or similar vehicle designed primarily for farm use; a skateboard; roller skates; a scooter; a moped; a horse-drawn carriage; an electric personal assistive mobility device; a wheelchair; a segway; or roller skis.

**Investigation:** A law enforcement officer who investigates a reportable accident shall ([29-A, §2251, sub-§4](#)):

- A. Interview participants and witnesses; and
- B. Within 5 days from the time of notification of the accident, transmit an electronic report or the original written report containing all available information to the Chief of the State Police.

Every reported accident must be promptly investigated.

**\*\*See [29-A §2251](#) for full law regarding reportable accidents.**

**\*\*See also, [25 §3871](#) for Maine's sexual assault law with similar language and structure.**

#### **NOTES:**

- **Informing of District Attorney Triggered by Investigation Only.** The language states “A law enforcement officer who investigates a reportable accident involving a vulnerable user or an allegation of a criminal violation involving a vulnerable user or the property of a vulnerable user shall inform a district attorney of relevant jurisdiction about the investigation ...” This means the requirement to inform the district attorney is contingent upon an investigation by a law enforcement officer. For example, if a law enforcement officer decides not to investigate an allegation, the requirement to inform a district attorney is not triggered.

#### **FISCAL IMPACT:**

Preliminary fiscal impact information not yet available.

## TESTIMONY:

**Proponents:** *Sen. Daughtry, AARP, Cumberland County Sheriff's Office, Bicycle Coalition of Maine, Wendall Milliken, Jaja Martin, Sydney M Duck*

- After a crash involving a vulnerable user, the vulnerable user or operator of the vehicle may experience a state of shock, head injuries, or even death. It is important to have built-in supports to protect the parties involved and facilitate the transfer of important information.
- Will create a more consistent response to crashes, provide accurate reporting on accidents involving a vulnerable user, and encourage drivers to drive more carefully.
- Collisions involving bicyclists, pedestrians, and other vulnerable road users are often under reported and under investigated.
- Requiring that these incidents be reviewed by a district attorney, law enforcement can focus on their investigative responsibilities and know that the district attorney will make decisions on what sanctions, if any, are appropriate for the facts of the case.

*\*See testimony from Cumberland County Sheriff's Office for proposed amendment*

**Opponents:** *Criminal Law Advisory Council*

- There are a very small number of crimes, primarily serious sexual assaults, that require law enforcement to submit reports to the District Attorney.
- An investigation may be incomplete after 60 days, so the requirement results in an inefficient use of resources by both the officer and the DA's office. Similar inefficiencies arise when a report is submitted after an investigation that, in fact, fails to uncover evidence that could support a prosecution.
- Concerns about these inefficiencies are compounded by the breadth of the bill, which would require reporting not only when serious injury or property damage occurred, but also whenever a vulnerable user or a vulnerable user's property was "endangered." Any resources expended on such reports takes away resources from the evaluation and prosecution of the myriad other crimes, including the most serious crimes, that fall within a prosecutor's responsibility.

## PROPOSED AMENDMENTS:

- **Sponsor Amendment (from public hearing).**

A law enforcement officer who investigates:

A. A reportable accident involving a vulnerable user; ~~or or an allegation of a criminal violation that endangered a vulnerable user or the property of a vulnerable user~~

B. An incident involving bodily injury or death to a vulnerable user; and

who has probable cause to believe, or believes it is more likely than not, that a motor vehicle operator or other person committed any type of a traffic infraction, civil violation, or criminal violation, shall inform a district attorney of relevant jurisdiction about the investigation and any evidence relevant to the potential prosecution of an alleged criminal or civil violation resulting from the investigation within ~~60~~ 5 days of the accident crash. Failure of a law enforcement officer to inform a district attorney in accordance with this subsection does not affect any authority of a district attorney to take any action nor precludes the ability of a private citizen to notify the district attorney about the case.

The term vulnerable user as defined herein shall have the same meaning as set forth in 29-A § 101 (91-A).

- **Additional Amendment Proposal.** Bicycle Coalition of Maine and other interested parties have worked to put together an amendment proposal that has been distributed to the committee.