

## TESTIMONY OF LAURI BOXER-MACOMBER

### Support for LD 821: An Act To Improve the Investigation and Prosecution of Cases That Involve Vulnerable Road Users

Before the Joint Standing Committee on Transportation  
April 6, 2021

---

Good afternoon Senator Diamond, Representative Martin and Members of the Transportation Committee:

My name is Lauri Boxer-Macomber. I live in Portland, Maine. I am here today to testify in support of LD 821 with the proposed amendments circulated to the committee today.

I testify before you today in four capacities.

- First, I am here in my individual capacity.
  - As a resident of this state, I expect my elected officials to be thinking about the nexuses between good transportation policy, public health, and economic development.
  - I am firm believer that if we want to protect the health, environment and economy of our state, we can't just encourage people to engage in active transportation, but we need to make sure we have fair, effective and efficient systems, policies and procedures in place that keep all users of our public ways safe.
- Second, I am here as President of the Maine Trial Lawyers Association testifying on behalf of the organization.
  - Our organization is a firm believer in good public process and access to justice at all levels of government.
  - Many of our members represent victims of traffic trauma.
  - We see LD 821 as legislation that advances consistent and uniform procedures for law enforcement officers and District Attorneys investigating, reviewing, and responding to vulnerable user crashes throughout the state.
- Third, I am here as a board member of the Bicycle Coalition of Maine.
  - The Coalition cannot have success with its mission to make Maine a better place for bicycling and walking without policies and procedures in place that:
    - encourage members of the public to drive vigilantly,

- underscore the importance of comprehensive law enforcement investigation of bicycle and pedestrian crashes, and
  - message to the Maine public that District Attorneys care about the public health epidemic on our roadways and will be reviewing all bicycle and pedestrian crashes for potential charges.
- Fourth, I am here in my capacity as an attorney at Kelly, Remmel & Zimmerman where I chair the pedestrian and bicycle practice group.
  - Over the last two decades, I have reviewed hundreds of bike and pedestrian crashes and have represented victims of traffic trauma in all sixteen of Maine's counties.
  - The people whom I primarily represent are vulnerable users of Maine's roadways and public ways (i.e. people walking, jogging, riding their bicycles on Maine pathways, roadways, crosswalks, sidewalks and other public ways) who have been involved in traffic crashes.
  - Unfortunately, when there is a crash involving a vulnerable road user—there is often extreme physical and emotional trauma. Many of these crashes involve head injuries, loss of consciousness, fractures, crushed internal organs, de-gloving injuries, and sometimes there is even death. The victims of these crashes are usually not in a position to collect or preserve evidence, take photographs, survey the scene or talk to witnesses. Likewise, they are often not in a position to advocate for their rights or to ask for a review of their crash by a District Attorney, and many do not retain attorneys until well after their crashes because their attention, and the attention of their families, is primarily on healing.
  - Another very unfortunate thing about many of these bicycle and pedestrian crashes is that the quality of the investigation and public safety response to these crashes varies widely depending on a number of factors, including:
    - the budget and resources of a responding law enforcement agency,
    - the manner in which bicycle and pedestrian crashes are prioritized (or not prioritized) in relation to other crimes and incidents being handled by a law enforcement agency on any given day,
    - the responding officer's training and familiarity with bicycle and pedestrian laws, rules and standards of care,
    - the responding officer's experience handling and investigating bicycle and pedestrian crashes (which is often little to none),
    - the responding officer's personal biases and opinions about whether bicyclists and pedestrians belong on the roadway and whether they are entitled to the same rights as drivers, and
    - the responding officer's pre-existing relationships with persons involved in the crash.

- Further, the manner in which these crashes is sometimes impacted by factors such as age, level of consciousness, language barriers, and social, cultural and communication issues.
- LD 821 does not solve all of these problems or create a perfect process, but it does put a checks and balance system in place that helps create more uniformity and consistency in place with respect to how these crashes are handled by departments across the state.

### Overview of the Proposed Legislation

This legislation serves the same purpose for victims of motor vehicle operator versus vulnerable road user crashes that LD 1140--which is now a law (25 M.R.S. §3871)--serves for victims of sexual assault. Namely, it accomplishes the goals set forth below.

1. **Increases Prosecutor Awareness.** This bill addresses the desire to ensure that prosecutors are aware of vulnerable user crashes and investigations in a timely manner. Such increased awareness keeps prosecutors abreast of the public health epidemic occurring on Maine roadways, as well as allows them to act or decline to act on the crashes in an efficient and effective manner.
2. **Improvement of Information Exchange Between LEOs and Prosecutors During Investigation.** This legislation promotes strong communication and coordination between investigators and prosecutors, achieving better information exchanges, understanding of applicable laws, and transparency throughout the investigative process.
3. **Protection of Vulnerable Persons.** LD 821 ensures that vulnerable user victims who are most likely already suffering and/or physically or mentally compromised by traffic trauma get a heightened level of review of their cases because they are often not in a position to speak up or advocate for themselves.
4. **Promotion of Consistent and Uniform Practices.** This legislation promotes consistency across counties and throughout the state with respect to how vulnerable road user cases are handled by law enforcement agencies. Victims will no longer be treated differently based on where they are hit, which officer responds to their crash, and whether that law enforcement officer has the time, training and experience to make a discretionary call on whether charges will be brought./
5. **Reducing the Likelihood of Re-Victimization.** This bill reduces the likelihood of people who have already suffered traffic trauma being re-victimized and re-traumatized in the legal decision-making process. It does this by creating an extra layer of review and protection whereby cases are not only reviewed by a law enforcement officer (whose legal training and experience may vary) but are also reviewed by an attorney who has passed the Maine Bar and has, at a minimum, at least three years of law school, training, and experience.

### Responses to Opposing Submissions

While this legislation has been opposed by certain entities, the opposition does not appear to be well founded. In response to those oppositions, I offer the following replies:

- **Qualifications for Weighing In On This Problem.** First, I will note that those who have vocalized opposition have not shared any regular experience interacting or working with vulnerable user victims of traffic trauma. While the opponents' overall qualifications are not questioned by the undersigned, it does not appear as if opponents have spent significant time reviewing these specific types of cases or studying the best ways to address the lack of consistency as to how these crashes are handled across the state. It also does not appear as if they have talked to victims of these crashes or their attorneys to gather an understanding of what is regularly taking place on the ground, as opposed to what may be written in a law enforcement guide or manual.
- **The Time Period for Reporting *Is Not* The Time Period for Completing an Investigation.** Some opponents believe that a five-day, or even sixty-day, period for reporting these cases to the DA is unrealistic or will create logistical problems. To the contrary. As discussed above, early reporting to a District Attorney is efficient and logical—not a waste of time and resources as suggested by some of the legislation's opponents. When a prosecutor with legal training is alerted to a crash early on, the prosecutor can ask that law enforcement officers further investigate certain aspects of the crash that may be relevant to whether a prosecutor will be able to meet the State's burden of proof. Similarly, when appropriate, a prosecutor can make a decision early on that the crash is not one that rises to the level of a criminal or civil violation.
- **Minimal Fiscal Impact.** Just as it was determined that additional costs to the Department of Public Safety, if any, associated with LD 1140 could be absorbed within existing budgeted resources, it is believed that costs associated with implementing LD 821, if any, could be shifted or absorbed within the Department of Public Safety. This legislation may also save law enforcement agencies money by allowing them to transfer cases to prosecutors for review and analysis instead of internally grappling with complex cases that present difficult and nuanced issues.
- **The Opposition Overlooks the Potential Positive Health, Economic and Other Impacts of the Legislation.** The opponents have overlooked the fact that this legislation promotes safer roadways for Maine residents and visitors. When roads are safer, there are likely to be fewer crashes and fewer public dollars being spent on emergency response, law enforcement, and MaineCare and other public benefits for victims. In addition, as a state that prides itself on an outdoor tourism industry, we cannot afford not to have a good system in place for reviewing vulnerable user crashes.

In sum, I urge you to vote in favor of supporting LD 821 and am available to answer any questions you may have.