

**The Maine Heritage Policy Center  
Testimony to Oppose LD 264  
“An Act Regarding the Taking of a Blood Sample from  
an Operator of a Motor Vehicle Involved in a Fatal  
Accident ”**

Senator Deschambault, Representative Warren, and distinguished members of the Committee On Criminal Justice and Public Safety, my name is Adam Crepeau and I serve as the policy analyst for The Maine Heritage Policy Center. Thank you for the opportunity to provide testimony regarding LD 264, “An Act Regarding the Taking of a Blood Sample from an Operator of a Motor Vehicle Involved in a Fatal Accident.”

LD 264 would further exacerbate the government’s infringement on Maine citizens’ 4th Amendment protections under the United States Constitution. When an individual obtains a driver’s license in Maine, they already give “implied consent” to have chemical tests performed on them if a police officer has probable cause to believe they operated a motor vehicle while under the influence of intoxicants. Urine, blood, and breath tests are all accepted chemical tests under Title 29-A, Chapter 23. If a death is believed to have occurred or will occur due to an accident, the operator of the motor vehicle involved is mandated to be submitted to a chemical test. If the individual refuses to be submitted to a chemical test, their license is immediately suspended by the Secretary of State.

As the law stands now, only physicians, physician’s assistants, registered nurses, or a person with an occupational license or training has the authority to obtain blood in determining an individual’s blood-alcohol level or the presence of drugs or drug metabolite. The Maine Heritage Policy Center believes implied consent to draw blood, even if the officer believes they have probable cause, is a government overreach and a violation of an individual’s 4th Amendment protections without a warrant from a judge. Extending mandatory implied consent in the case of fatal accidents to give law enforcement and EMS personnel the ability to draw blood would certainly be another government overreach.

In *Birchfield v. North Dakota*, the Supreme Court of the United States said blood tests require a warrant while breath tests are not considered an invasion of privacy due to their non-invasive nature. According to the Court, since blood tests involve the piercing of the skin, they are considered an encroachment of privacy under the 4th Amendment and are not covered under the implied consent law when criminal penalties could be levied for refusal. If an individual refuses, Maine statute allows their refusal to be admissible at a trial for operating under the influence of intoxicants, leaving the potential for additional criminal penalties to be levied for failure to submit to the test.<sup>1</sup> The Maine Heritage Policy Center believes the individual’s refusal should not be admissible in court because it undermines their constitutional right to refuse the test based on the 4th Amendment. In addition, the Court mentioned that

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<sup>1</sup> [https://www.supremecourt.gov/opinions/15pdf/14-1468\\_8n59.pdf](https://www.supremecourt.gov/opinions/15pdf/14-1468_8n59.pdf)

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blood can only be drawn without a warrant under exigent circumstances, which does not apply to the natural dissipation rate of blood-alcohol evidence from the bloodstream alone. To be clear, passage of this bill as is could be subject to constitutional issues if a law enforcement officer administers or orders blood to be drawn without a warrant where no exigent circumstances exist and the individual did not consent. In addition, we believe additional criminal penalties levied on the individual at their OUI trial could be of concern since it is their right to refuse the test if no warrant was acquired.

It is The Maine Heritage Policy Center's prerogative that, to avoid potential constitutional issues, law enforcement should be required to acquire a warrant from a judge before administering or ordering a blood test. Since probable cause is already required by Maine statute, requiring a warrant to draw blood would protect law enforcement and other professionals from infringing on others' constitutional rights.

I urge the committee to vote "Ought Not To Pass" on this bill. Thank you.