

## OUI on the Front Page Again

### United States Supreme Court Fourth Amendment – Warrant Requirement – Searches Incident to Arrest & Exigent Circumstances Do Breath and Blood Tests Require a Search Warrant in OUI Cases?

The Fourth Amendment categorically permits warrantless breath tests as a search incident to an arrest, but not so with blood tests. In the absence of consent, a warrant is required for a blood draw unless the circumstances permit a warrantless search under exigent circumstances. The metabolization of alcohol in the blood does not by itself constitute exigent circumstances.

This case involved three Fourth Amendment challenges to laws in North Dakota and Minnesota that made it a crime to refuse a breath or blood test to determine BAC. The U.S. Supreme Court decided that the taking of a blood sample or administering a breath test is a search governed by the Fourth Amendment. The Court went on to decide that the Fourth Amendment categorically permits warrantless breath tests under the search incident to an arrest exception to the warrant requirement, but the search incident to arrest exception does not apply to blood tests.



The Court reasoned that the incident-to-arrest exception is a product of assessing and balancing the degree to which a search intrudes upon a person's privacy and the degree to which it promotes or supports legitimate governmental interests. The Court noted that it had previously decided that breath tests do not implicate significant privacy concerns in that the physical intrusion is negligible and the tests involve a minimum of inconvenience. However, that is not the case with blood tests, the Court said, in that blood tests require piercing the skin and extracting a part of the person's body, a process significantly more intrusive than blowing into a tube.

The Court went on to say that motorists may not be criminally punished for refusing to submit to a blood test based on implied consent. The court stated, "It is one thing to approve implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply, but quite another for a State to insist upon an intrusive blood test and then to impose criminal penalties on refusal to submit."

*Birchfield v North Dakota* (June 23, 2016)

[Supreme Court](#)



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Georgia Court holds drunk driver too intoxicated to ...

On July 7, 2016, the Court of Appeals of Georgia decided the State v. Jung, in which the court of appeals upheld a trial court's grant of a motion to ...

[llrmi.com](http://llrmi.com)

[Former space shuttle commander indicted in traffic deaths of 2 Alabama girls.](#)



A grand jury in Alabama has indicted a former NASA space shuttle commander on four felony charges in the traffic deaths of two girls killed on a rural highway in June, a prosecutor said Thursday.

[www.maine.gov/dps/bhs](http://www.maine.gov/dps/bhs)

**MeBHS**

## Stepping Back into Ring in Renewed Fight to End Drunk Driving

Like a wheezing, old engine sputtering to a stop, America's public fight to end drunk driving has stalled.

For 20 years or more, there has been no reduction in the proportion of deaths in crashes involving alcohol. Drivers at or above the 0.08 legal limit have been involved in one-third of fatal crashes. During that time, about 10,000 lives have been lost annually in drunk driving incidents.

In a reaction akin to the late-Peter Finch playing the role of Howard Beale in the motion picture Network, leaders at the National Safety Council in effect are screaming at the top of their lungs, "I'm not going to take it anymore."

In November, NSC publicly will announce it is stepping back in the ring and throwing its support behind a national education campaign to inform Americans that impairment begins with the first drink. With more knowledge, NSC believes people will be able to make safer decisions and reduce crash risks.

For example, research indicates lowering the national standard from 0.08 to 0.05 could save 538 lives each year. There is also evidence that lowering the limit could significantly reduce injury and crashes at high alcohol concentrations.

Why now? Driving requires focus, judgment and quick reflexes. All of these basic behind-the-wheel skills can be jilted by alcohol. Despite the threat, more than 1 in 8 drivers admit to driving in the past year when they thought they were close to or over the legal limit, according to a report from the AAA Foundation for Traffic Safety.

The position of NSC is that a strategy grounded in human behavior theory is needed as a catalyst to change attitudes and beliefs and ultimately influence



widespread culture and behavior change. Texas leads the nation in drunk driving deaths. In 2015, 960 people were killed in crashes where a driver was under the influence of alcohol, according to the Texas Department of Transportation.

[TexasDrivingConcern.org](http://TexasDrivingConcern.org)

## Keep Maine Safe. Keep Drunk Drivers Off the Road

This fact sheet provides a snapshot of alcohol-involved deaths and drunk driving and an overview of proven strategies to reduce or prevent drunk driving. The information can help local public health decision makers and community partners see gaps and identify relevant strategies to address the problem of drunk driving.

[Maine CDC](#)

## Maine Supreme Judicial Court Sitting as the Law Court Fourth Amendment – Seizure – Consensual Encounter

Was the Officer's Interaction with the Driver a Seizure?

Whether a Fourth Amendment seizure has occurred in an interaction between an officer and a citizen is an objective determination that focuses on what a reasonable person would feel under the circumstances. The defendant's contention that he felt unable to leave when the officer identified himself, and the officer's testimony that he would have found a reason to stop the defendant if he had driven away, are irrelevant to whether a seizure occurred.



Arrested and charged with criminal OUI, Bryant Ciomei moved to suppress all evidence derived from his interaction with a game warden, arguing that the game warden unconstitutionally seized him when the warden first encountered him. The game warden was on an early morning patrol for night hunting. He saw a vehicle with illuminated headlights parked in a manner consistent with night hunting. As the warden drew nearer, he saw two people urinating outside of the vehicle. The warden pulled up behind the vehicle in a way that did not prevent it from driving away. He did not turn on his vehicle's flashing lights or siren and there was nothing impeding the vehicle from traveling forward onto the roadway. The warden got out of his vehicle and said, "Hi, game warden." The warden engaged in conversation with Ciomei, who was the driver and owner of the vehicle. The warden asked "what was going on," and Ciomei replied that he was giving his friends a ride home. The warden smelled alcohol on Ciomei's breath, observed that Ciomei's eyes were bloodshot and

that his balance was unsteady. After Ciomei admitted to consuming alcohol, the warden administered field sobriety tests. The District Court found that up to the point that the warden observed signs of intoxication, there was no seizure within the meaning of the Fourth Amendment and that the encounter was a consensual one. Ciomei appealed after the District Court denied his motion to suppress.

The Law Court noted that there is no implication of the Fourth Amendment where an officer merely approaches a person on the street or in another public place to ask questions or engage in consensual conversation. It is only when an officer in some way restrains the liberty of a citizen – such as physical force and a show of authority – that a seizure occurs. Some of the factors considered in such an analysis include (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person; (4) the use of language or tone of voice indicating that compliance with the request might be compelled; (5) whether the officer was blocking the defendant's path to leave; (6) the use of sirens, lights, or a loudspeaker; (7) the display of a badge or wearing of a uniform; (8) the location of the encounter; (9) whether there was a chase; and (10) whether the officer approached on foot or in a vehicle.

[State v. Ciomei](#) (November 17, 2015)

### Use of Warrants to Reduce Breath Test Refusals: Experiences From North Carolina

Many States experience high rates of breath test refusals among DWI suspects. The objective of this study was to examine one possible strategy to decrease refusals rates—the use of a search warrant to obtain blood samples from a driver who refuses to provide a breath sample. Three counties in North Carolina established the use of warrants in cases of breath test refusals and were research sites. This report presents case study information on their experiences with the implementation and use of warrants. The program evaluation examined whether the use of warrants reduced refusal rates in the participating counties. However, many of the counties were unable to implement a program during the timeframe of the study, and others did not achieve much program strength. This report includes data from the evaluation effort. However, given the various methodological issues that occurred during this study, it is not possible to determine whether observed decreases in refusal rates were a result of the warrants program. In general, police officers in these participating counties report that the 15 to 60 minutes of added processing time needed to obtain a warrant and draw.



## An Act to Clarify the Authority of County Sheriffs to Grant Law Enforcement Powers

(Effective March 31, 2016)

This bill provides a process by which a trained fulltime municipal police officer may be appointed as a deputy sheriff. The provision requires an agreement between the municipality and the county that specifies the time period and purpose for which authorization is granted and liability between the sheriff's office and the municipal law enforcement agency.

Amends 30-A MRSA §2674

<http://legislature.maine.gov/>

## RIDE Teams

Maine will have an additional regional impaired driving team this year. The **SPIDRE Team** is made up of Maine State Police Troopers for increased impaired driving enforcement efforts all over the state. The team is available to assist other agencies with their enforcement efforts with saturation patrols, OUI checkpoints and training. Please contact the MeBHS for information.

**SPIDRE Team**

## Creative Solution to the Problem of Distracted Driving

More than 100,000 crashes in Texas every year are the result of distracted driving, and the Texas Department of Transportation is using social media as a way to address this concern, according to a report from ABC 13 Houston.

TxDOT suggests you set your family as phone wallpaper to curb distracted driving. One of TxDOT's Twitter followers, Ben Taylor, shared how he designed his iPhone wallpaper with the words "It Can Wait" over a family photo. "I've literally not swiped my phone since putting this on there," Taylor said in a follow-up Tweet.

ABC 13 reports a variety of apps can help users superimpose text over a photo, including Snapchat and the latest update to the Facebook app.

<http://txdrivingconcern.org/>

## Fourth Amendment – Exigent Circumstances for Blood Draw Did the OUI Blood Draw Require a Warrant?

The burden is on the State to prove by a preponderance of the evidence that exigent circumstances existed. However, exigent circumstances do not operate as an exception to the requirement for a search warrant when they arise out of unreasonable delay by law enforcement in obtaining a warrant. In *McNeely*, the U.S. Supreme Court held that although the natural metabolism of alcohol does not create per se exigent circumstances, it may do so on a case-by-case basis. Here, the deputy's actions were reasonable under the circumstances.

The defendant was convicted of OUI and violating a condition of release. On appeal, he argued that the trial court was wrong in admitting evidence of his blood-alcohol level derived from a sample of his blood seized without a search warrant. The Law Court disagreed, holding that the trial court was not wrong in denying the motion to suppress based on exigent circumstances.

On April 11, 2014, shortly after 5:00 p.m., a deputy of the Sagadahoc County Sheriff's Department determined that there was probable cause to believe that John Arndt was driving under the influence of alcohol. The deputy transported Arndt to the Bath PD to administer a breath-alcohol test using an Intoxilyzer machine. The deputy took Arndt to Bath PD, rather than the closer Topsham PD, because he had after-hours access to the Bath police station. The deputy would have had to call for a Topsham officer to meet him at Topsham PD to gain access to the Topsham police station. Based on these logistics, the officer believed that using Topsham PD would have caused an undue delay in administering the test.

At Bath PD, the deputy discovered problems with the Intoxilyzer equipment. The deputy made four unsuccessful attempts, starting at 6:02 p.m. and ending at 6:24 p.m., to obtain a breath-alcohol level using the Intoxilyzer. Fearing that further delay would result in the deterioration of evidence the deputy contacted the Bath Fire & Rescue Department to draw a sample of Arndt's blood. The deputy did not get a search warrant and at 6:45 p.m., a paramedic conducted the blood draw. Arndt never objected to any of the tests and although he signed a consent form he was not informed that he could request that a physician draw his blood. Arndt's blood-alcohol level was above 0.15%.

Arndt argued that because the deputy did not have a warrant, there needed to be exigent circumstances present in order to justify the warrantless seizure of a sample of his blood and that the controlling U.S. Supreme Court case, of *Missouri v. McNeely* (2013), stated that metabolism of alcohol by the body does not per se constitute exigent circumstances. He also argued that any exigent circumstances resulting from a delay in the administration of the Intoxilyzer test was created by the deputy's decision to transport him to Bath PD for the breath test, rather than to a nearer Topsham PD. He added that the Law Court's holding in an earlier case barred considering any delay caused by law enforcement in determining the existence of exigent circumstances. The State argued that the earlier Law Court case only excludes consideration of an unreasonable delay by law enforcement as exigent circumstances, and that the deputy's actions here were reasonable under the circumstances.

The Law Court determined that the deputy's actions were reasonable under the circumstances. The deputy's belief that he could more quickly administer a blood-alcohol test in Bath was reasonable. The deputy unsuccessfully made four separate attempts to obtain a blood-alcohol level using the Intoxilyzer and by the time the fourth attempt was completed, nearly one and one-half hours had passed from the time of Arndt's arrest. It was reasonable for the deputy to become concerned that further delay would result in the loss of evidence and, in order to preserve reliable evidence of intoxication, the deputy proceeded with a warrantless blood test.

*State v. Arndt* (February 18, 2016)

[http://www.courts.maine.gov/opinions\\_orders/supremelawcourt/2016/16me31arco.pdf](http://www.courts.maine.gov/opinions_orders/supremelawcourt/2016/16me31arco.pdf)

**THE FOURTH  
AMENDMENT**

## Heroin and Opioids in Maine

- \* Drug overdose deaths increased by 34% from 2011 to 2014.
- \* One in three drug OD's involved Benzodiazepines, one in four involved heroin, and one in five involved fentanyl.
- \* Fentanyl related deaths increased by 377% from 2013 to 2014
- \* From 2013 to 2014, the number of drug overdose deaths involving pharmaceutical drugs increased by 77% while those due to illicit drugs increased by 60%.
- \* Cumberland and York had the highest rates of EMS overdose responses due to drugs/medication.
- \* Majority of EMS naloxone admins were among males between 25 and 54.
- \* Rates of drug related OD's are highest in Washington, Androscoggin, Cumberland, Kennebec, and Somerset counties.
- \* Majority of MDEA heroin and opioid arrests are from Midcoast and Downeast. • The number of drug offense arrests due to heroin more than quadrupled from 2010 to 2014.
- \* [Read more with great graphs](#)



## Carfentanil: A Dangerous New Factor in the U.S. Opioid Crisis

Carfentanil is a synthetic opioid approximately 10,000 times more potent than morphine and 100 times more potent than fentanyl. The presence of carfentanil in illicit U.S. drug markets is cause for concern, as the relative strength of this drug could lead to an increase in overdoses and overdose-related deaths, even among opioid-tolerant users. The presence of carfentanil poses a significant threat to first responders and law enforcement personnel who may come in contact with this substance. In any situation where any fentanyl-related substance, such as carfentanil, might be present, law enforcement should carefully follow safety protocols to avoid accidental exposure.



### Officer & Public Safety Information

Carfentanil and other fentanyl analogues present a serious risk to public safety, first responder, medical, treatment, and laboratory personnel. These substances can come in several forms, including powder, blotter paper, tablets, patch, and spray. Some forms can be absorbed through the skin or accidentally inhaled. [https://www.dea.gov/divisions/hq/2016/hq092216\\_attach.pdf](https://www.dea.gov/divisions/hq/2016/hq092216_attach.pdf)



## Roadside Testing Vehicle

The MeBHS has a new RTV available for your agency's impaired driving efforts. The RTV was purchased with a grant from the NHTSA. This 2017 Freightliner is available for OUI checkpoints or saturation patrols. It contains equipment to safely conduct the checkpoint, an Intoxilyzer and space for a complete DRE evaluation inside.

Do you have a scheduled public safety event coming up? Send me an email to schedule a visit.

The RTV will be stored in Augusta or Bangor and managed through our office. Lets put this to work as often as possible. [thomas.j.reagan@maine.gov](mailto:thomas.j.reagan@maine.gov) . Did I mention it's **free** to your agency???



From 2014 to 2015, the number of arrests in Tennessee for driving under the influence of drugs increased by 26 percent, while the number of alcohol arrests decreased slightly, according to an analysis of Tennessee Bureau of Investigation data. That may understate the arrests because officers aren't always able to detect drugs.

In Tennessee, more officers are being trained to identify drug-impaired drivers. Since 2012, the number of annual training classes for the Drug Recognition Expert Program has doubled, said Richard Holt, law enforcement administrator and state DRE coordinator for the Tennessee Highway Safety Office.  
[Tennessean.com](http://Tennessean.com)



# Maine Law Enforcement Phlebotomy Technician Training



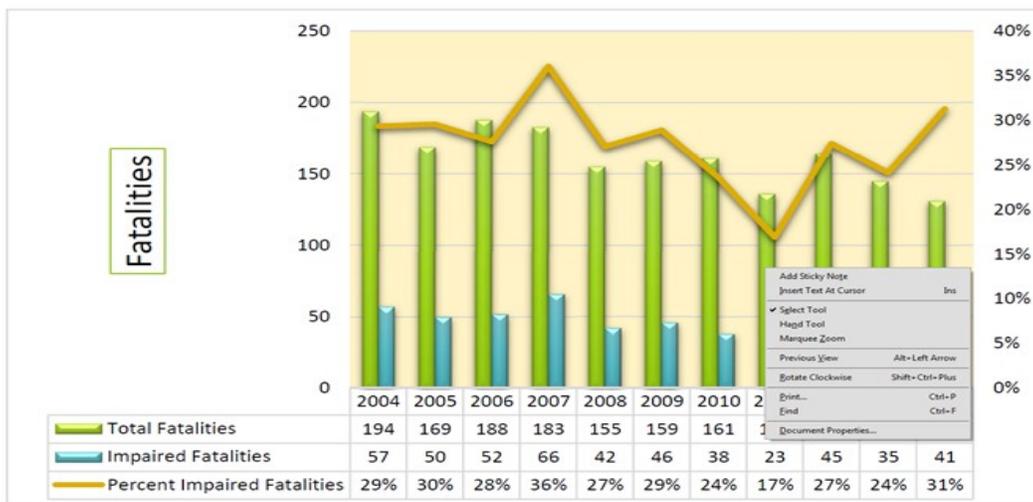
Sponsored by :  
Maine Bureau of Highway Safety

## UPCOMING TRAINING

November 14-15, 2016  
Two-Day Class  
Husson College  
Bangor  
9:00am – 5:00pm



To register: [www.leoblooddraw.com](http://www.leoblooddraw.com)  
Contact Andrea Thompson [Andrea@leoblooddraw.com](mailto:Andrea@leoblooddraw.com)



Over 94% of crashes are caused by human error.

Why do over 90% of our crash reports indicate “no improper action”



# Winslow Police Department Training Notice



## *S.F.S.T / O.U.I REFRESHER*

<p style="text-align: center;"><u>DATE</u></p> <p>Monday, October 17, 2016</p> <p>0800-1200 (Morning Class) 1300-1700 (Afternoon Class)</p>	<p style="text-align: center;"><u>LOCATION</u></p> <p>Winslow Police Department 114 Benton Avenue Winslow, Maine 04901</p>
<p style="text-align: center;"><u>TO REGISTER CONTACT:</u></p> <p>SERGEANT FLEMING 207-872-5215 ext. 5302 <a href="mailto:hflaming@winslow-me.gov">hflaming@winslow-me.gov</a></p>	<p style="text-align: center;"><u>COST</u></p> <p><b>\$25.00</b></p> <p>Check made out to: <u>Winslow Police Department</u></p>

### DISCUSSION TOPICS

#### WHO MAY ATTEND:

Sworn personnel, preference given to full-time L.E.O.s  
Class limit (15) \*\*per class\*\*

#### TRAINING AND TOPIC DISCUSSION:

Students will receive updated S.F.S.T and O.U.I. instruction as well as refresher of S.F.S.T. and O.U.I. practices and procedures. The training will provide all students with updated material and practical exercises; concluding with a test out proficiency. Additionally, students who have “lapsed” out of their training and need to “restart” their (6) month proficiency clock will receive M.C.J.A. recognition for that during this class.

#### EQUIPMENT AND APPAREL REQUIREMENTS:

Dress will be casual. No required equipment.

# MAINE BUREAU OF HIGHWAY SAFETY