

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
108TH LEGISLATURE
FIRST REGULAR SESSION

(Filing No. H-717)

COMMITTEE AMENDMENT "A" to H.P. 1362, L.D. 1667, Bill,
"AN ACT Concerning Penalties for Operating a Motor Vehicle
Under the Influence of Intoxicating Liquor or Drugs."

Amend the Bill by striking out everything after the
enacting clause and inserting in its place the following:

¹Sec. 1. 29 MRSA §1312, sub-§10, as last amended by PL 1977, c.
117, ^{§1,} is repealed and the following enacted in its place:

10. Penalties

A. Any person who, while under the influence of intoxicating liquor or drugs, shall operate or attempt to operate a motor vehicle within this State shall, upon his first conviction for a violation of this section, be punished by a fine of not more than \$1,000 and by imprisonment for not more than 90 days, or by both.

Upon receipt of an attested copy of the court record of such conviction, the Secretary of State shall immediately suspend such a person's license or permit and privilege to operate a motor vehicle in this State.

In the case of a first conviction for a violation of this section, the Secretary of State shall not reinstate the convicted person's license or permit and privilege to operate prior to 30 days from the date of suspension and until such time as the Secretary of State has received

written notice that the person has satisfactorily completed an educational program under the auspices of the Department of Human Services. In such a case, the Secretary of State shall have the authority to issue a restricted license or permit to such a person.

A person whose license or permit and privilege to operate have been suspended for such a first conviction and who has not completed such an educational program may petition, after 60 days after the date of the conviction, the Secretary of State for a hearing. If, after hearing, the Secretary of State determines that the public safety will not be endangered by the issuance of a new license or permit or by the restoration of privilege to operate, the Secretary of State may, after 4 months, restore the license or permit and privilege to operate a motor vehicle, with or without conditions or restrictions and under such terms as he may deem advisable, having in mind the safety of the public and the welfare of the petitioner.

The Secretary of State shall also have the authority to issue a restricted license or permit and privilege to any person whose license or permit and privilege to operate a motor vehicle in this State has been suspended for a first refusal under subsection 2, provided such person has satisfactorily completed the educational program referred to in this subsection. Such license or permit and privilege shall not be issued prior to 30 days from the date of suspension.

The Department is authorized to charge a registration fee not to exceed \$40 to participants in the educational program which it shall apply to defray the expenses of the program.

B. Notwithstanding the provisions of Title 17-A, section 4, any person who is convicted of a second violation under this section shall be punished by imprisonment for not less than either 24 or 48 consecutive hours or for not more than 6 months. In addition, such a person may be punished by a fine of not less than \$250 and not more than \$2,000.

The minimum term of imprisonment, of either 24 or 48 consecutive hours, as the court shall determine, shall not be suspended unless the court sets forth in detail in writing the reasons why, having regard to the nature and circumstances of the violation and the history and character of the defendant, it is of the opinion that exceptional features of the case justify the imposition of a sentence other than imprisonment.

The court shall order such a minimum term of imprisonment to be served at a time that will cause the least disruption to the convicted person's employment and other personal affairs, but that is within 30 days of the date of conviction. Such a minimum term of imprisonment may be served in either a county jail or local lockup, as the court shall direct.

Upon receipt of an attested copy of the court record of such a conviction, the Secretary of State shall immediately suspend for a period of one year such a person's

license or permit and privilege to operate a motor vehicle.

K Such a person's license or permit and privilege to operate shall not be reinstated by the Secretary of State prior to 6 months from the date of suspension and until such time as the Secretary of State has received written notice that the person has satisfactorily completed an alcohol treatment or rehabilitation program under the auspices of the Department of Human Services. In such a case, the Secretary of State shall have the authority to issue a restricted license or permit to such a person.

60
c. Any person convicted of a 3rd or subsequent violation of this section shall be punished by a fine of not more than \$2,000 ←→ or by imprisonment for not more than 6 months, or by both.

K Upon receipt of an attested copy of the court record of such a conviction, the Secretary of State shall immediately suspend permanently such a person's license or permit and privilege to operate a motor vehicle in this State. However, such a person may, after 2 years from the date of suspension, petition the Secretary of State for such a license or permit and privilege to operate. If, at a hearing, such a person presents clear and convincing evidence that he has satisfactorily completed an alcohol or drug treatment program and that he has abstained from the use of intoxicating liquor or drugs for a period of 2 years next preceding the date of the hearing, the Secretary of State may restore the person's license or permit and privilege to operate a motor vehicle, with the

condition that the person continue to abstain from the use of intoxicating liquor or drugs and with such other conditions, restrictions or terms as the Secretary of State deems advisable, having in mind the safety of the public and the welfare of the petitioner.

D. Any suspension of a license or permit and privilege to operate for conviction under this section shall run consecutively to any such suspension imposed for refusal to submit to a chemical test to determine blood-alcohol level by analysis of blood or breath, except where the conviction is the result of a plea of guilty in the District Court prior to trial or a waiver of trial and finding of guilty by the court.

E. For the purposes of this section, a prior conviction of operating or attempting to operate while under the influence of intoxicating liquor or drugs shall be considered a prior conviction if it occurred within 10 years of the date of the most recent conviction under this section.

F. In alleging a prior conviction under this section, Title 15, section 757, shall not apply. After a conviction for violation of this section, the court shall conduct an inquiry to determine whether or not the defendant has been convicted of any offenses which are considered to be prior offenses for the purposes of this section. Certified copies of the record of prior conviction or convictions from the Secretary of State or any court of record shall be admissible, and upon receipt of any such copy and upon being satisfied that the defendant is the person named in that certified copy, the court shall treat the present conviction as a subsequent conviction and sentence the defendant accordingly.

Sec. 2. 29 MRSA § 1312, sub-§ 11, is enacted to read:

11. Accidents. Every person operating a motor vehicle which has been involved in an accident shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If the test indicates that the operator has consumed alcohol, the police officer may require such operator to submit to a chemical test in the manner set forth in this section.'

~~STATEMENT OF FACT~~

The amendment applies the minimum sentence of imprisonment only to the (second) offense, not the first, and makes that sentence mandatory, unless the court states in writing the reasons why it should not be imposed upon a person. A person could still, in the court's discretion, be sentenced to imprisonment for a first offense. A person convicted of a (second) offense would have his license suspended until he satisfactorily completes an alcohol treatment program.

A person convicted for a 3rd offense would have his license suspended permanently. However, he could, after 2 years, petition for a conditional license and must show proof of completion of a treatment program and convincing evidence of abstinence from alcohol for 2 years before the hearing.

Reported by the Committee on Judiciary.

Reproduced and distributed under the direction of the Clerk of the House.
6/20/77

(Filing No. H-717)