

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1166

H. P. 934

House of Representatives, March 12, 1979

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Locke of Sebec.

Cosponsors: Mr. Diamond of Windham, Mr. Silsby of Ellsworth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

**AN ACT to Strengthen the Penalties for Operating Under the Influence.**

Be it enacted by the People of the State of Maine, as follows:

**Sec. 1.** 29 MRSA § 1312, sub-§ 8, as repealed and replaced by PL 1971, c. 547, is amended by adding at the end the following new paragraph:

**A certificate issued by the laboratory performing the chemical analysis, that states the results of the analysis and is certified for its authenticity by the Commissioner of Human Services, shall be prima facie evidence that the percentage by weight of alcohol in the defendant's blood at the alleged time was as stated therein; unless, with 10-days' notice to the prosecution, the defendant requests the presence of a qualified witness to testify to those facts.**

**Sec. 2.** 29 MRSA § 1312, sub-§ 10, as last repealed and replaced by PL 1977, c. 626, § 1, is repealed and the following enacted in its place:

**10. Penalties.**

**A. Notwithstanding Title 17-A, section 4-A, any person who, while under the influence of intoxicating liquor or drugs, operates or attempts to operate a motor vehicle within this State shall be punished, on his first conviction, by imprisonment for not less than 24 hours or for not more than 90 days. Any term**

of imprisonment of 24 hours, or the first 24 hours of any term of more than 24 hours, shall be served consecutively. In addition, such a person may be punished by a fine of not more than \$1,000.

**B. Notwithstanding Title 17-A section 4-A, any person who is convicted of a 2nd violation under this section shall be punished by imprisonment for not less than 48 hours or for not more than 6 months. Any term of imprisonment of 48 hours, or the first 48 hours of any term of imprisonment of more than 48 hours, shall be served consecutively. In addition, such a person shall be punished by a fine of not less than \$250 and not more than \$2,000.**

**C. Notwithstanding Title 17-A, section 4-A, any person convicted of a 3rd or subsequent violation of this section shall be punished by imprisonment for not less than 72 hours or for not more than 10 months. Any term of imprisonment of 72 hours, or the first 72 hours of any term of imprisonment of more than 72 hours, shall be served consecutively. In addition, that person shall be punished by a fine of not less than \$250 and not more than \$2,500.**

**D. The minimum terms of imprisonment established by this subsection 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 the mandatory 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. The term may be served in either a county jail or local lockup, as the court shall direct.**

**E. If the court dismisses or files a complaint for a 2nd or subsequent violation under this section or reduces the charge in that complaint, the court shall also set forth in detail in writing the reasons for that action.**

**F. 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 a 6-year period of the date of the most recent conviction.**

**G. The provisions of this subsection requiring a minimum term of imprisonment for 2nd, 3rd or subsequent convictions shall apply only if the State alleges the prior conviction in accordance with Title 15, section 757. After a conviction, 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. On receipt of a copy and 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. The court may be satisfied of the identity of the defendant with the person named if the name and date of birth are the same.**

**Sec. 3. 29 MRSA § 1312, sub-§ 10-A, ¶B, sub-¶ (1), as enacted by PL 1977, c. 626, § 2, is amended to read:**

**(1) In case of a first conviction, the secretary receives written notice that a person has satisfactorily completed the alcohol education program of the Department of Human Services and, if required by the Department of Human Services, has also satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department;**

#### STATEMENT OF FACT

This bill does the following:

1. Allows treatment or rehabilitation for persons convicted for the first time of either operating under the influence or refusing a breath test. This is presently only required on the 2nd and subsequent offenses;
2. Creates a permissible inference of the identity of a person and the records of prior convictions on the basis of the same name and birth date;
3. Allows a certified copy of the results of laboratory tests to be admissible to prove the result without the physical presence of the tester;
4. Requires a judge to give written reasons for dismissing, filing or reducing a charge of a 2nd or subsequent violation; and
5. Revises the minimum penalty provision on the first conviction to a 24-hour term of imprisonment, a 2nd conviction to a 48-hour imprisonment and a 3rd or subsequent conviction to a 72-hour term of imprisonment.