

# 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)

(Governor's Bill)  
FIRST REGULAR SESSION

---

---

ONE HUNDRED AND TENTH LEGISLATURE

---

---

**Legislative Document**

**No. 1541**

H. P. 1351

House of Representatives, April 15, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Mitchell of Vassalboro.

Cosponsors: Senator Clark of Cumberland, Senator O'Rourke of Camden and Senator Hichens of York.

---

---

STATE OF MAINE

---

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

---

**AN ACT to Reform the Statutes Relating to Driving under the Influence of Intoxicating Liquor or Drugs.**

---

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

**Sec. 1.** 22 MRSA § 7106, sub-§ 2, ¶ E, sub-¶ ¶ (5) and (6), as enacted by PL 1973, c. 566, § 1, are amended to read:

(5) The **United States Social Security Act**; and

(6) The **United States Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), Public Law 91-616**, and similar Acts; and

**Sec. 2.** 22 MRSA § 7106, sub-§ 2, ¶ F is enacted to read:

**F. Making a separate written report to the Chief Justice, the Governor and the Legislature not later than March 1st of each year, commencing with 1982, on the enforcement of laws relating to drinking and driving during the preceding calendar year. The report shall contain at least the following information:**

(1) **The number, by county, of arrests for operating under the influence or operating with an excessive blood-alcohol level;**

- (2) The number, by county, of criminal complaints filed for operating under the influence;
- (3) The number, by county, of criminal complaints filed for operating with an excessive blood-alcohol level;
- (4) The number, by county, of complaints filed for the traffic infraction of operating under the influence;
- (5) The number, by county, of complaints filed for the traffic infraction of operating with an excessive blood-alcohol level;
- (6) The number, by county, of revocations of implied consent;
- (7) The number, by county, of operating after suspension and habitual offender arrests;
- (8) Rates of conviction, guilty pleas to lesser charges and dismissals by county for these offenses;
- (9) The rates of successful completion of the Driver Education Evaluation Program and rates of recidivism for individuals completing the Driver Education Program;
- (10) The number, by county, of persons whose licenses were suspended; and
- (11) The average fine, jail sentence and period of license suspension, by county, for each category of offense.

The office may call upon the assistance of the Department of Public Safety, the State Court Administrator, the office of the Secretary of State and the district attorneys in preparing these reports.

Sec. 3. 28 MRSA § 855 is enacted to read:

**§ 855. Posted message for public of penalties for operating under the influence**

1. Sign posted. Each licensee for the sale of liquor to be consumed on the premises, each retail store licensee and each state retail liquor store and state agency store shall post, in a conspicuous place within that portion of the premises where the public is customarily permitted, a sign with lettering not less than 2 inches in height, bearing the following message:

**“R E M I N D E R**

**DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR  
(OUI) IS SUBJECT TO SEVERE PENALTIES IN THE STATE OF MAINE.**

**A FIRST CONVICTION FOR OPERATING UNDER THE INFLUENCE  
WILL RESULT IN A MANDATORY LOSS OF LICENSE FOR 180 DAYS, A  
MANDATORY FINE OF NOT LESS THAN \$350 AND A MANDATORY JAIL  
SENTENCE OF NOT LESS THAN 3 DAYS.**

**DRIVING WITH A BLOOD-ALCOHOL CONTENT OF .10% OR ABOVE IS  
NOW A CRIME IN MAINE.”**

2. **Failure to post sign.** Failure to post or maintain a sign in accordance with subsection 1 is a civil offense for which a forfeiture of \$50 shall be adjudged. Each day of violation constitutes a separate violation.

Sec. 4. 29 MRSA § 540, 2nd ¶, as amended by PL 1973, c. 625, § 188, is repealed.

Sec. 5. 29 MRSA § 540-A is enacted to read:

§ 540-A. Different colored licenses

The Secretary of State shall by regulation provide that licenses shall be printed in different and distinctive colors for:

1. Under 18 years of age. Persons under 18 years of age;
2. Prior convictions. Persons who have been convicted or adjudicated of violating section 1312 or 1312-B within 6 years prior to the effective date of the license; and
3. Certain restricted licenses. Persons whose privileges of operating is limited to certain times or days or traveling to and from a place of employment.

Sec. 6. 29 MRSA § 1311, as last amended by PL 1973, c. 236, is repealed and the following enacted in its place:

§ 1311. Operating with criminal negligence

1. **Criminal negligence defined.** A person is guilty of operating with criminal negligence if he operates a motor vehicle in any place with criminal negligence and thereby creates a risk that bodily injury may occur to any person, including the operator or passenger in the motor vehicle so operated, or that damage could occur to the property of another. It is not necessary to prove that a person or property was actually placed in danger of bodily injury or of being damaged.

2. **Allegation of facts constituting criminally negligent operation.** In pleading under this section, it is not necessary to allege specifically the facts which constitute criminally negligent operation.

3. **Penalties.** Operating with criminal negligence is a Class E crime. In addition, any person found guilty shall receive a mandatory suspension of license or permit to operate a motor vehicle for not less than 30 days nor more than 180 days, which minimum shall not be suspended.

Sec. 7. 29 MRSA § 1312, sub-§ 1, first sentence, as last repealed and replaced by PL 1979, c. 701, § 32, is amended to read:

Before any test specified is given, the law enforcement officer shall inform the ~~arrested~~ person to be tested that, if he revokes his implied consent to a chemical test by refusing to permit a test at the direction of the law enforcement officer, his license will be suspended for ~~90 days or more~~ not less than one year, and the revocation of consent shall be admissible in evidence against him at any trial for operating under the influence of intoxicating liquor.

Sec. 8. 29 MRSA § 1312, sub-§ 2, first ¶, 3rd sentence, as repealed and replaced by PL 1979, c. 701, § 32, is repealed and the following enacted in its place:

**The suspension shall be for a period of one year.**

Sec. 9. 29 MRSA § 1312, sub-§ 2, first ¶, 4th sentence, as repealed and replaced by PL 1979, c. 701, § 32, is repealed and the following enacted in its place:

**Upon receipt of a written statement under oath, the Secretary of State shall immediately notify the person, in writing, as provided in section 2241, that his license or permit and privilege to operate have been suspended.**

Sec. 10. 29 MRSA § 1312, sub-§ 5, ¶ C, as repealed and replaced by PL 1971, c. 547, is repealed and the following enacted in its place:

**C. For purposes of evidence in proceedings other than those arising under section 1312 or 1312-B, it shall be presumed that a person was under the influence of intoxicating liquor when he has a blood-alcohol level in excess of 0.10%.**

Sec. 11. 29 MRSA § 1312, sub-§ 8-A is enacted to read:

**8-A. Statements by accused. Any statement by a defendant that he was the operator of a motor vehicle, which he is accused of operating in violation of this section or section 1312-B, shall be admissible in a proceeding under this section, section 1311 or 1312-B, if it was made voluntarily and is otherwise admissible under the United States Constitution or the Constitution of Maine. The statement may constitute sufficient proof by itself, without further proof of corpus delicti, that the motor vehicle was operated and was operated by the defendant.**

Sec. 12. 29 MRSA § 1312, sub-§ 10, ¶ A, as repealed and replaced by PL 1979, c. 422, § 2, is repealed and the following enacted in its place:

**A. Any person is guilty of operating under the influence or with an excessive blood-alcohol level if he operates or attempts to operate a motor vehicle:**

- (1) While under the influence of intoxicating liquor or drugs or a combination thereof; or**
- (2) While having 0.10% or more by weight of alcohol in his blood.**

Sec. 13. 29 MRSA § 1312, sub-§ 10, ¶ B, as repealed and replaced by PL 1977, c. 626, § 1, is repealed and the following enacted in its place:

**B. The offense defined in paragraph A is a Class D crime, provided that:**

- (1) The fine for any conviction shall not be less than \$350, which fine shall not be suspended;**
- (2) The sentence for any conviction shall include a period of incarceration of not less than 72 consecutive hours, which sentence shall not be suspended; and**

(3) Upon conviction, the court shall order suspension of the defendant's privilege to operate a motor vehicle for a period of not less than 180 days, nor more than 2 years, provided that the Secretary of State may extend the period until satisfaction of any condition imposed by him pursuant subsection 10-A, paragraph B or C. The minimum period shall not be suspended.

Sec. 14. 29 MRSA § 1312, sub-§ 10, ¶ B, as repealed and replaced by PL 1977, c. 626, § 1, is repealed and the following enacted in its place:

**B.** The offense defined in paragraph A is a Class D crime, provided that:

(1) The fine for any conviction shall not be less than \$350, which fine shall not be suspended; and

(2) Upon conviction, the court shall order suspension of the defendant's privilege to operate a motor vehicle for a period of not less than 180 days, nor more than 2 years, provided that the Secretary of State may extend the period until satisfaction of any conditions imposed by him pursuant to subsection 10-A, paragraph B or C. The minimum period shall not be suspended.

Sec. 14-A. **Effective date.** Section 14 of this Act shall take effect September 30, 1983, unless repealed by the Legislature.

Sec. 15. 29 MRSA § 1312, sub-§ 10, ¶ C, as repealed and replaced by PL 1977, c. 626, § 1, is repealed.

Sec. 16. 29 MRSA § 1312, sub-§ 10, ¶ E, as amended by PL 1979, c. 422, § 3, is repealed.

Sec. 17. 29 MRSA § 1312, sub-§ 10-A, ¶ A, as amended by PL 1979, c. 422, § 4, is further amended to read:

**A.** On receipt of an attested copy of the court record of a ~~conviction suspension or revocation of the privilege of operating a motor vehicle~~, the Secretary of State shall immediately ~~suspend record the suspension of the person's license or permit and privilege to operate a motor vehicle. The suspension shall be for the following minimum periods from the date of suspension:~~

~~(1) In case of a first conviction, 30 days;~~

~~(1-A) In the case of a first conviction when that operation involved an accident causing personal injury to another person, 6 months;~~

~~(2) In case of a 2nd conviction, 6 months; and~~

~~(3) In case of a 3rd or subsequent conviction, 2 years.~~

Sec. 18. 29 MRSA § 1312, sub-§ 10-A, ¶ B, as amended by PL 1979, c. 422, § 6, is repealed and the following enacted in its place:

**B.** After the minimum suspension for violation of section 1312 or 1312-B, the Secretary of State may issue a license or permit to the person if he receives written notice that the person has satisfactorily completed the alcohol

education program of the Department of Human Services or has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department.

Sec. 19. 29 MRSA § 1312, sub-§ 10-A, ¶ C, as enacted by PL 1977, c. 626, § 2, is repealed and the following enacted in its place:

C. The Secretary of State may issue the license or permit with whatever conditions, restrictions or terms he deems advisable, having in mind the safety of the public and the welfare of the petitioner, including, but not limited to, requiring the petitioner to successfully pass the written and road tests required for initial licensing or to successfully complete the alcohol education program of the Department of Human Services. The license or permit may contain the condition that the person abstain from the use of intoxicating liquor or drugs.

Sec. 20. 29 MRSA § 1312, sub-§ 10-A, ¶ D, as enacted by PL 1977, c. 626, § 2, is amended to read:

D. The Secretary of State may also issue a restricted license or permit to any person whose license or permit has been suspended for a first ~~refusal~~ revocation of implied consent by refusing to submit to a test under subsection 2, if the conditions of issuing after a ~~first~~ conviction are met by the person and a period of suspension of not less than 180 days has elapsed.

Sec. 21. 29 MRSA § 1312-B is enacted to read:

§ 1312-B. Traffic infraction of operation under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level; penalties

1. Charge. When a person has been arrested or summonsed for violation of section 1312, subsection 10, paragraph A, the attorney for the State may elect to charge the defendant with the traffic infraction of operating under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level. The decision of the attorney for the State to prosecute under this section shall not be subject to review.

2. Traffic infraction defined. A person commits the traffic infraction of operating under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level if he operates or attempts to operate a motor vehicle:

A. While under the influence of intoxicating liquor or drugs or a combination thereof; or

B. While having .10% or more by weight of alcohol in his blood.

3. Civil violation. The civil violation of operating under the influence of intoxicating liquor or drugs or operating with an excessive blood-alcohol level is a violation for which a forfeiture of not less than \$250 nor more than \$500 may be adjudged. The minimum forfeiture shall not be suspended.

4. Right to operate suspended. The right to operate of any person adjudicated guilty of violating subsection 2 shall be suspended by the court for not less than 90

days nor more than one year, provided that the Secretary of State may extend the period until satisfaction of any conditions imposed by him pursuant to section 1312, subsection 10-A, paragraph B or C.

5. Application. Section 1312, first 2 paragraphs and subsection 1 to 9 and 11 shall apply to prosecutions under this section.

6. In lieu of criminal violation. The attorney for the State shall not elect to charge a violation of subsection 2 in lieu of criminal prosecution with respect to any defendant who:

- A. Was tested as having a blood-alcohol level in excess of 0.20%;
- B. Was involved in a traffic accident occurring in the course of the operation which resulted in the prosecution;
- C. Was driving more than 30 miles per hours in excess of the speed limit in the course of the operation which resulted in the prosecution;
- D. Attempted to elude an officer, as defined by section 2501-A, subsection 3, in the course of the operation which resulted in the prosecution; or
- E. Had been convicted of a violation of section 1312, subsection 10, paragraph A, adjudicated guilty of a traffic offense under this section or revoked his implied consent to take a blood or breath test by refusing to take one within the 6 years immediately preceding the date of the commission of the new offense.

7. Construction. The matters set out in subsection 6 are not elements of the offense and are not subject to proof or disproof as prerequisites or conditions for conviction or adjudication under this section or section 1312.

8. Violation. The attorney for the State may elect to charge a violation of section 1312, subsection 10, in lieu of civil prosecution under this section in any other circumstances, including, but not limited to, operation between one and 30 miles per hour in excess of the speed limit, failing to stop for an officer, as defined in section 2501-A, subsection 2, or committing any other moving violation which he believes warrants criminal prosecution. The discretion of the attorney for the State shall not be subject to review.

Sec. 22. 29 MRSA § 1314, as last amended by PL 1975, c. 731, § 52, is repealed.

Sec. 23. 29 MRSA § 1863 is enacted to read:

**§ 1863. Owner liable for damage by impaired operator**

Every owner or person having control over a motor vehicle who, having knowledge or reason to know that a person under the influence of intoxicating liquor or drugs or a combination thereof or has a blood-alcohol level of .10% or more by weight of alcohol in the blood, permits that person to operate that motor vehicle shall be jointly and severally liable with such person for any damages caused by the negligence of the person operating such vehicle while under the influence or while that person has a blood-alcohol level of .10% or more. This



section shall not be in derogation of nor limit nor diminish any cause of action or right of recovery which is or may become available under the common law of this State.

Sec. 24. 29 MRSA § 2184, sub-§ 1, as enacted by PL 1975, c. 770, § 159, is repealed and the following enacted in its place:

1. **Offense; penalty.** It is a Class D crime for any person to operate a motor vehicle on any public highway of this State at a time when his license, permit or privilege to operate has been suspended or revoked, except for a revocation for a habitual offender pursuant to chapter 18-A or former chapter 18, provided that, notwithstanding Title 17-A, section 1301, the maximum fine shall be \$2,500 and the minimum fine shall be not less than \$350, which minimum shall not be suspended. In the event the suspension was for a conviction for a violation of section 1312 or 1312-B or for a revocation of implied consent by refusing to take a test to test blood-alcohol level under section 1312, subsection 2, there shall also be imposed a term of imprisonment which shall be for not less than 7 consecutive days, which minimum shall not be suspended, and a mandatory additional suspension or revocation of license or permit to operate a motor vehicle of not less than one year nor more than 3 years beyond the original date scheduled for the termination of the original suspension or revocation.

In addition to the penalties prescribed in this subsection, the court may also order the forfeiture of the vehicle owned or operated by the offender for the period of the suspension or revocation of his license, on such terms and conditions as the court may direct with respect to storage costs, insurance and other similar items.

Sec. 25. 29 MRSA § 2184, sub-§ 1, as enacted by PL 1975, c. 770, § 159, is repealed and the following enacted in its place:

1. **Offense; penalty.** It is a Class D crime for any person to operate a motor vehicle on any public highway of this State at a time when his license, permit or privilege to operate has been suspended or revoked, except for a revocation for an habitual offender pursuant to chapter 18-A or former chapter 18, provided that, notwithstanding Title 17-A, section 1301, the maximum fine shall be \$2,500 and the minimum fine shall be for not less than \$350, which minimum shall not be suspended. In the event the suspension was for a conviction for a violation of section 1312 or 1312-B or for a revocation of implied consent by refusing to take a test to test blood-alcohol level under section 1312, subsection 2, a mandatory additional suspension or revocation of license or permit to operate a motor vehicle of not less than one year nor more than 3 years beyond the original date scheduled for the termination of the original suspension or revocation shall be imposed by the court.

In addition to the penalties prescribed in this subsection, the court may also order the forfeiture of the vehicle owned or operated by the offender for the period of the suspension or revocation of his license, on such terms and conditions as the court may direct with respect to storage costs, insurance and other similar items.

**Sec. 25-A. Effective date.** Section 25 of this Act shall take effect September 30, 1983, unless repealed by the Legislature.

**Sec. 26.** 29 MRSA § 2241-H is enacted to read:

**§ 2241-H. Surrender of license to court**

**In the case of any conviction or adjudication under sections 1311, 1312 or 1312-B of an offense for which the suspension of the right to operate a motor vehicle is provided by law, or is ordered by the court, the court as part of its sentence, notwithstanding any appeal, shall take up the license certificate of that person, who shall forthwith surrender the license certificate and forward it by mail to the Secretary of State, together with a copy of the sentence. The period of suspension shall commence upon the day of entry of judgment of conviction, but 2 additional days of suspension shall be added to the period for each day following judgment that the defendant fails to surrender his license to the court.**

**Notwithstanding section 2241-E, the period of suspension shall commence immediately upon the issuance of the order of the court. Two additional days of suspension shall be added to the period for each day following judgment that the defendant fails to surrender his license to the court.**

**Sec. 27.** 29 MRSA § 2241-I is enacted to read:

**§ 2241-I. Surrender of suspended license to law enforcement officer**

**In the event that a law enforcement officer, in the course of stopping or detaining a motor vehicle, obtains from the operator of the motor vehicle a license which is under suspension, the officer shall retain physical custody of the license and shall transmit the license, together with a report stating the circumstances under which it was obtained, to the Secretary of State.**

**Sec. 28.** 29 MRSA § 2295, as enacted by PL 1979, c. 10, § 2, is amended to read:

**§ 2295. Duration of revocation**

**~~No~~ The revocation under section 2293 shall be indefinite, provided that in no event shall a license or permit to operate a motor vehicle ~~shall~~ be issued to an habitual offender for a period of ~~one year~~ 2 years from the date of the revocation.**

**Sec. 29.** 29 MRSA § 2296, first sentence, as enacted by PL 1979, c. 10, § 2, is amended to read:

**At the expiration of ~~one year~~ 2 years from the date of the revocation under this chapter, a person whose license has been so revoked may petition the Secretary of State for relief from his habitual offender status.**

**Sec. 30.** 29 MRSA § 2296, as enacted by PL 1979, c. 10, § 2, is amended by adding at the end a new paragraph to read:

**The Secretary of State shall not issue the privilege to operate a motor vehicle in**

this State to any person whose license has been revoked if a charge against that person under section 2298 is pending.

Sec. 31. 29 MRSA § 2296-A is enacted to read:

**§ 2296-A. Revocation following restoration**

The Secretary of State shall revoke, as provided in sections 2293 and 2294, the license, permit or privilege to operate a motor vehicle of any person whose privilege to operate a motor vehicle in this State has been restored pursuant to section 2296 when:

1. **New convictions.** Within a 5-year period following the restoration pursuant to section 2296, the person has committed one offense described in section 2292, subsection 1, or 3 or more offenses described in section 2292, subsection 2, or the equivalent number of offenses described in section 2292, subsection 3, for which there is one or more convictions or adjudications; or

2. **Continued liability.** The person has committed an offense, described in section 2292, subsection 1, 2 or 3, at any time following restoration, for which there is a conviction or adjudication and, within 5 years preceding the date of the commission of the offense, the person's record shows accumulated convictions or adjudications, including the latest conviction or adjudication, which result in that person being defined as a habitual offender pursuant to section 2292.

Sec. 32. 29 MRSA § 2298, first ¶, as amended by PL 1979, c. 541, Pt. B, § 34, is further amended to read:

It shall be unlawful for any person to operate any motor vehicle in this State while the revocation prohibiting its operation remains in effect. Any person found to be an habitual offender under this chapter, or former chapter 18, who is thereafter convicted of operating a motor vehicle in this State while the revocation prohibiting operation is in effect shall ~~have committed a Class C crime~~ be punished by a mandatory fine of not less than \$1,000 nor more than \$5,000, which minimum fine shall be suspended; a mandatory term of imprisonment of not less than 60 days nor more than 364 days, which minimum shall not be suspended; and a mandatory additional period, during which such revocation shall be in effect, of not less than 3 years nor more than 10 years beyond the original date scheduled for the termination of such revocation, which minimum period shall not be suspended. Any sentence imposed under this paragraph shall be notwithstanding Title 17-A, section 4-A. In addition to the penalties prescribed in this paragraph, the court may also order the forfeiture of the vehicle owned or operated by the offender for the period of the revocation of his license, on such terms and conditions as the court may direct with respect to storage costs, insurance and other similar items.

Sec. 33. 29 MRSA § 2298, first ¶, as amended by PL 1979, c. 541, Pt. B, § 34, is further amended to read:

It shall be unlawful for any person to operate any motor vehicle in this State

while the revocation prohibiting its operation remains in effect. Any person found to be an habitual offender under this chapter, or former chapter 18, who is thereafter convicted of operating a motor vehicle in this State while the revocation prohibiting operation is in effect shall ~~have committed a Class C crime~~ be punished by a mandatory fine of not less than \$1,000 nor more than \$5,000, which minimum fine shall not be suspended; and a mandatory additional period, during which such revocation shall be in effect, of not less than 3 years nor more than 10 years beyond the original date scheduled for the termination of such revocation, which minimum period shall not be suspended. Any sentence imposed under this paragraph shall be notwithstanding Title 17-A, section 4-A. In addition to the penalties prescribed in this paragraph, the court may also order the forfeiture of the vehicle owned or operated by the offender for the period of the revocation of his license, on such terms and conditions as the court may direct with respect to storage costs, insurance and other similar items.

**Sec. 33-A. Effective date.** Section 33 of this Act shall take effect September 30, 1983, unless repealed by the Legislature.

**Sec. 34.** 29 MRSA § 2298-A is enacted to read:

**§ 2298-A. Notice to Secretary of State of criminal proceeding under section 2298**

**A law enforcement officer, who has arrested or charged a person under section 2298 with having operated a motor vehicle in this State while the revocation prohibiting operation is in effect, shall cause notice of the arrest or proceeding to be given to the Secretary of State.**

#### STATEMENT OF FACT

This bill is intended to reform Maine's laws for apprehending, prosecuting and punishing drunk drivers to effectively deter the commission of this potentially lethal offense, and to uniformly punish those who violate this law and endanger or take the lives of innocent people on our highways.

Section 1 makes a technical change specifying references to federal law.

Section 2 requires an annual report which will bring together in one place, for the use of policymakers and the public, the data relevant to assessing the state's performance in combating drunk driving.

Section 3 is intended to serve notice to consumers of intoxicating beverages, at the point of purchase, of some of the legal consequences of drinking and driving in this State.

Sections 4 and 5 recodify the existing law requiring a different color license for operators under 18 years of age, and adds similar requirements for persons with OUI convictions or adjudications and those with restricted licenses. The first addition will make it easier for officers and prosecutors to ascertain whether there has been a prior conviction which is necessary to the prosecutor's decision

to charge civil or criminal operation. The 2nd addition will ease the difficult enforcement problems associated with prosecuting persons who abuse the privilege of a limited license for work purposes. It also assists the motorist who will be certain to advise the Secretary of State when a restriction runs out if a new license has not been delivered, thus reducing the possibilities of computer error and an unjust apprehension for driving outside of the restricted license.

Section 6 is intended to create a motor vehicle offense less serious than reckless conduct with a dangerous weapon, such as a motor vehicle, pursuant to Title 17-A, section 211, and to replace the offenses of reckless driving and driving to endanger, both of which grew out of the same statute. The reason for merger of reckless driving and driving to endanger arises out of the confusion as to the possible requirement of an injury under current Title 29, section 1311, and the otherwise murky distinction between these 2 offenses. In *State v. Davis*, Me. 398 A.2d 1218 (1979) the Law Court held that a culpable state of mind for driving to endanger must exist, and that state of mind must be one of the criminal negligence.

The penalty section is made stiffer, with a mandatory 30-day license suspension period, to provide increased sanctions when an OUI case in plea bargaining down to this offense so as to provide continued relative symmetry in our traffic laws.

Sections 7, 8, 9 and 20 revise the penalties for a driver revoking his implied consent to submit to a blood or breath test to determine blood-alcohol level. These penalties must be increased or defendants will rely even more heavily on this option in view of the higher penalties for conviction provided elsewhere in the bill. The one-year requirement is twice the minimum period for conviction of criminal OUI. Moreover, with a .10% statute by itself, the usefulness of breath tests will become even greater.

Section 10 revises Title 29, section 1312, subsection 5, paragraph C, as presently written, because it will become obsolete upon enactment of the section providing that operating with a blood-alcohol level in excess of 0.10% is a crime in itself.

The replacement language is provided for use in other litigation relating to intoxication when the issue of a party's sobriety is relevant.

Section 11 makes admissible in evidence otherwise constitutional admissions by a defendant that he in fact operated a vehicle in violation of sections 1311, 1312 and 1312-B, even if he was not in the vehicle at the time of his apprehension.

Sections 12 to 16 make several important changes:

1. They make operating a motor vehicle with a blood-alcohol level of .10% or above a crime in itself, rather than mere evidence of a crime. The .10% level is one at which medical and safety authorities agree that the ability of a driver to operate safely is unquestionably seriously diminished;
2. They impose a mandatory minimum fine and a mandatory period of incarceration for conviction of criminal OUI or criminal operation with an

excessive blood-alcohol level, both of which penalties must be imposed in each case; and

3. They abolish the unnecessary complexity of more severe sanctions for successive crimes. The judges can continue to consider the defendant's prior record in imposing sentences higher than the minimum, but relieve the prosecutor of the need to prove prior offenses and to prove that the defendant is the same person.

These measures are all intended to reduce the complexity of trials for drunken driving and to impose sentences which will be applied uniformly statewide and which will be sufficiently serious to constitute a deterrent to drunken driving.

Section 17 is necessary for internal consistency in the statutes in view of the abolition of different penalties for subsequent offenses, and also to make it clear that the court, rather than the Secretary of State, imposes sentences of license suspension under Title 29, sections 1312 and 1312-B.

Section 18 is necessary for conformity with the abolition of formal graduation of OUI offenses and to bring license suspensions adjudicated for driving while impaired under the Secretary of State's restoration system.

Section 19 makes it clear that the Secretary of State can require a person whose license has been suspended to retake and pass the driver's license examination. The Secretary of State is already authorized to require reexamination for drivers he believes to be incompetent under Title 29, section 2241-A. Likewise, he can require a petitioner to abstain from using alcohol as a condition of the license or to successfully complete the alcohol rehabilitation program operated by the Department of Human Services.

Section 21 gives prosecutors a new option for prosecution of drunk drivers. In appropriate cases, the prosecutor may elect to handle these violations as civil traffic offenses.

This route offers the advantages of precluding a jury trial, and permitting adjudication of a violation by a preponderance of the evidence, both of which should lead to speedier, simpler trials.

Adjudication will result in a mandatory minimum fine of \$250, but there is no provision for a penalty of incarceration. Licenses would be suspended for not less than 90 days.

The discretion of prosecutors to proceed under this section is limited by subsection 5 which specifies certain conditions under which he must initiate a criminal prosecution.

In all other cases, he may make an election based on the circumstances of the case, in the exercise of prosecutorial discretion.

The provision that the election is to be made by the prosecutor at or before arraignment to assure (1) that the prosecutor and not the law enforcement officer

makes the choice; (2) that sufficient time has passed to allow the prosecutor to make an informed decision; and (3) that the apprehending officer will have the power to remove the driver from the road and secure an appropriate test.

Section 22 is intended to abolish the redundant offense of reckless driving.

Section 23 imposes civil liability on the owner of a vehicle who permits its use by a person who causes injury to another while driving while intoxicated. It should encourage owners to exercise more care in lending their vehicles to others who cause injury to innocent people while driving drunk.

Section 24 makes changes in the penalties for operating after suspension. Many of the most serious OUI law enforcement problems arise when persons continue to operate after the original conviction despite the penalty of loss of license. It is necessary to stiffen the penalties for such operation to provide a real deterrent to continue defiance of the law and to give creditability to the penalties society imposes for this offense.

By providing higher minimum penalties for this crime than for an original OUI conviction, the principle of graduated and more severe penalties for repeated violations will be applied.

Section 26 is intended to prevent continued, illegal use of suspended drivers' licenses. It will make the physical surrender of a driver's license automatic upon the suspension of his right to drive. Currently this is done in only about 2/3 of the cases coming before the courts. If it is done in all cases, it will reduce the incidence of persons displaying an apparently valid license when they are, in fact, operating after suspension.

A similar provision already exists in the case of a suspension ordered in connection with a traffic infraction under Title 29, section 2305.

If the defendant fails to produce his license upon court order, his right to operate will be further suspended for a period twice that of his delay, and if he refuses without good reason to obey the order of a court, then he may be held in contempt.

Section 27 is also intended to prevent continued, illegal use of suspended drivers' licenses. Under Title 29, section 2182, it is already a crime to display an invalid license. This section will permit officer to take possession of such licenses for use in evidence and to inform the Secretary of State of the prohibited conduct.

Section 28 makes it clear the period of license revocation for habitual offenders of the motor vehicle laws is indefinite, with a minimum period of 2 years. It also will make it clear the burden of proof is on the petitioner for restoration.

Section 29 is necessary for consistency with section 25.

Section 30 delays a scheduled restoration until any pending relevant charges are resolved.

Section 31 permits revocation for a continued term when a habitual offender commits more offenses in the 5 years following restoration of his license.

Section 32 imposes mandatory penalties for a person who operates a motor vehicle while his license is revoked for habitual offender status. This is necessary to provide for increasingly serious penalties for continued violation of motor vehicle laws.

Section 34 requires the officer who apprehends an habitual offender to notify the Secretary of State.

Sections 14-A, 25-A and 33-A provide "sunsets" for mandatory sentences of incarceration for operating under the influence, operating after suspension and habitual offender violation to give an adequate period of time to assess the efficacy of these sentences for deterring drunk driving.