

# MAINE STATE LEGISLATURE

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New Draft of H. P. 1351, L. D. 1541  
FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1682**

H. P. 1586

House of Representatives, June 2, 1981

Reported by the Minority from the Committee on Judiciary. Printed under  
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EDWIN H. PERT, Clerk

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STATE OF MAINE

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

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

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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 Evaluation 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. 2-A. 29 MRSA § 540, 2nd ¶, as amended by PL 1973, c. 625, § 188, is repealed.

Sec. 3. 29 MRSA § 540-A is enacted to read:

§ 540-A. Coded licenses

1. Under 18 years of age. The Secretary of State shall by regulation provide that licenses for persons under 18 years of age shall be distinctive, either by being printed with a different color than for those issued to persons 18 years of age or older or by some other appropriate distinguishing mark or code.

2. Prior convictions. The Secretary of State shall by regulation provide that the license of a person who has been convicted or adjudicated of violating former section 1312, subsection 10, or section 1312-B or 1312-C within 6 years prior to the effective date of the license shall bear a coded notation indicating that fact.

Sec. 4. 29 MRSA § 1311, as last amended by PL 1973, c. 236, is repealed.

Sec. 5. 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 as to whom there is probable cause and who is arrested or

summonsed 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~~ 180 days ~~or more~~, and the revocation of consent shall be admissible in evidence against him at any trial for operating under the influence of intoxicating liquor.

Sec. 6. 29 MRSA § 1312, sub-§ 2, first ¶, as repealed and replaced by PL 1979, c. 701, § 32, is repealed and the following enacted in its place:

If a person as to whom there is probable cause revokes his implied consent to a chemical test by refusing upon the request of a law enforcement officer to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, no test may be given. The Secretary of State, upon the receipt of a written statement under oath from a law enforcement officer, stating that the officer had probable cause to believe that a person was operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, and that the person had revoked his consent by refusing to submit to a chemical test to determine the blood-alcohol level by analysis of his blood or breath, shall immediately notify the person, in writing, as provided in section 2241, that his license or permit and his privilege to operate have been suspended. The suspension shall be for a period of 180 days. The written statement shall be sent to the Secretary of State within 72 hours of the revocation of consent, excluding Saturdays, Sundays and holidays. If the statement is not sent within this time period, it shall not affect the Secretary of State's authority to suspend a person's license for revoking his prior implied consent by refusing to submit to a test, unless the delay has prejudiced the person's ability to prepare or participate in the hearing described in this subsection.

Sec. 7. 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-B or 1312-C, it shall be presumed that a person was under the influence of intoxicating liquor when he has a blood-alcohol level of 0.10% or more by weight.

Sec. 7-A. 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. 8. 29 MRSA § 1312, sub-§ 10, as last amended by PL 1979, c. 422, §§ 1-3, is repealed.

Sec. 9. 29 MRSA § 1312, sub-§ 10-A, as last amended by PL 1979, c. 695, is repealed.

Sec. 10. 29 MRSA § 1312-B is enacted to read:

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

1. Offense. A person is guilty of a criminal violation under this section if he operates or attempts to operate a motor vehicle while under the influence of intoxicating liquor or drugs or a combination of liquor and drugs. If there was, at the time alleged, 0.10% or more by weight of alcohol in his blood, it is prima facie evidence that he was driving under the influence of intoxicating liquor or drugs or a combination of liquor and drugs within the meaning of this section.

2. Penalties. The offense defined in subsection 1 is a Class D crime, provided that:

A. The fine for any conviction shall not be less than \$350, which fine shall not be suspended;

B. The sentence for any conviction shall include a period of incarceration of not less than 48 consecutive hours, which sentence shall not be suspended, and, unless upon a first conviction, the court sets forth in detail in writing the reasons why, having regard to the nature and circumstances of the violation and history of the defendant, it is of the opinion that exceptional features of the case justify the imposition of a sentence other than imprisonment; and

C. Upon conviction, the court shall suspend the defendant's privilege to operate a motor vehicle for a specified period, which shall not be less than 90 days nor more than one year. The minimum period shall not be suspended.

Sec. 11. 29 MRSA § 1312-C is enacted to read:

§ 1312-C. Traffic infraction of operating under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level; fine and suspension

1. Election of charge. When a person has been arrested or summonsed under section 1312 for a violation of section 1312-B, 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 under this section. The determination of the attorney for the State, under provisions of subsections 5 and 7, that a person should be prosecuted under either this section or under section 1312-B shall not be subject to review.

2. Traffic infraction defined. A person commits a traffic infraction under this section if he operates or attempts to operate a motor vehicle while under the influence of intoxicating liquor or drugs or a combination of liquor and drugs. If there was, at the time alleged, 0.10% or more by weight of alcohol in his blood, it

is prima facie evidence that he was under the influence of liquor or drugs or a combination of liquor and drugs within the meaning of this section.

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

4. **Suspension.** The privilege to operate a motor vehicle of any person adjudicated guilty of violating subsection 2 shall be suspended by the court for a specified period, which shall not be less than 45 days nor more than 180 days, provided that the Secretary of State may extend the period until satisfaction of any conditions imposed by him pursuant to section 1312-D, subsection 3.

5. **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 under section 1312-B with respect to any defendant who:

- A. Was tested as having a blood-alcohol level in excess of 0.20%;
- B. Was driving more than 30 miles an hour in excess of the speed limit during the operation which resulted in the prosecution for operating under the influence;
- C. Attempted to elude an officer, as defined in section 2501-A, subsection 3, during the operation which resulted in the prosecution for operating under the influence; or
- D. Had been convicted of a violation of former section 1312, subsection 10, paragraph A, convicted of a violation of section 1312-B, or adjudicated guilty of a traffic infraction under this section within the 6 years immediately preceding the date of the commission of the new offense.

6. **Construction.** The matters set out in subsections 5 and 7 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-B.

7. **Other circumstances.** The attorney for the State may elect to charge a violation of section 1312-B, in lieu of civil prosecution under this section, in any other circumstances. These circumstances include, but are not limited to, when the defendant, during the course of the operation which resulted in the prosecution for operating under the influence:

- A. Was operating between one and 30 miles an hour in excess of the speed limit;
- B. Failed to stop for an officer, as defined in section 2501-A, subsection 2;
- C. Was involved in a traffic accident; or
- D. Committed any other moving violation which the attorney for the State believes warrants criminal prosecution.

The discretion of the attorney for the state under this subsection shall not be subject to review.

Sec. 12. 29 MRSA § 1312-D is enacted to read:

§ 1312-D. Provisions regarding suspension imposed pursuant to conviction or adjudication under sections 1312-B and 1312-C

1. **Recording and notice by Secretary of State.** On receipt of an attested copy of the court record of a suspension or revocation of the privilege of operating a motor vehicle under section 1312-B or 1312-C, the Secretary of State shall immediately record the suspension of the person's license or permit and privilege to operate a motor vehicle and shall send written notice of the suspension of the court to the person suspended.

2. **Education and treatment programs.** Following the expiration of 2/3 of the suspension ordered by the court under section 1312-B, subsection 2, paragraph C, or section 1312-C, subsection 4, 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.

3. **Restricted licenses.** After certification under subsection 2 or after completion of the suspension imposed by the court, 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, successful completion of the alcohol education program of the Department of Human Services, if the petitioner has not already done so under subsection 2. The license or permit may contain the condition that the person abstain from the use of intoxicating liquor or drugs.

4. **Special restricted licenses for participation in programs.** Notwithstanding any other provision of law, the Secretary of State may issue a temporary restricted license to a person suspended under section 1312-B or 1312-C for the purpose of allowing that person to participate in the alcohol education program of the Department of Human Services or in any other program under subsection 2 or 3, or for the purpose of allowing the person to operate a motor vehicle to and from his place of employment or for purposes of his employment.

5. **Restricted licenses for revocation of implied consent suspension.** The Secretary of State may issue a restricted license or permit to any person whose license or permit has been suspended for a first revocation of implied consent by refusing to submit to a test under section 1312, subsection 2, if the conditions of issuing after conviction are met by the person or for the purpose of allowing the person to operate a motor vehicle to and from his place of employment or for purposes of his employment, and a period of suspension of not less than 90 days has elapsed.

6. **Fee.** The Department of Human Services may charge a registration fee, not to exceed \$50, to participants in the education program, which shall be applied to defraying the expenses of the program.

7. **Suspension in effect during appeal.** If any person convicted or adjudicated of a violation of section 1312-B or 1312-C appeals the judgment or adjudication, the license or permit and privilege to operate a motor vehicle shall be suspended during the time an appeal is pending, unless the court orders otherwise, or unless the Secretary of State restores the license, permit or privilege to operate pending decision on the appeal.

8. **Consecutive suspensions.** Any suspension under section 1312-B or 1312-C shall run consecutively with any suspension imposed under section 1312, subsection 2, for revocation of implied consent by refusing to submit to a chemical test to determine blood-alcohol level by analysis of blood or breath.

Sec. 13. 29 MRSA § 1314, as last amended by PL 1975, c. 731, § 52, is repealed and the following enacted in its place:

§ 1314. **Driving to endanger**

1. **Definition.** A person is guilty of driving to endanger if, with criminal negligence, as defined in Title 17-A, he drives a motor vehicle in any place in such a manner that a person, including the driver or passenger in the motor vehicle being driven, or the property of another, is endangered.

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

3. **Penalties.** Driving to endanger is a Class E crime. In addition, any person found guilty shall as part of the sentence 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. 13-A. 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. 14. 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 under 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.

Sec. 15. 29 MRSA § 2241-H is enacted to read:

§ 2241-H. Notice of suspension by court; surrender of license to court

In the case of any conviction or adjudication under sections 1312-B, 1312-C, 1314 or for any offense for which the suspension of the right to operate a motor vehicle is required by law or in any case in which the court suspends a license under section 2305, the court shall inform the defendant of the suspension and the defendant shall acknowledge this notice in writing on a form to be provided by the court. The court, as part of its sentence, notwithstanding any appeal, shall take the license certificate of the person convicted or adjudicated. The court shall forward the license certificate, a copy of the sentence and the acknowledgment of notice by mail to the Secretary of State.

The court, upon reasonable cause shown, may allow the convicted or adjudicated person up to 96 hours to surrender his license certificate.

Notwithstanding section 2241-E, the period of suspension shall commence immediately upon announcement of sentence. Two additional days of suspension shall be added to the period for each day beyond any extension granted that the convicted or adjudicated person fails to surrender his license to the court.

Refusal to sign the acknowledgment of notice or unexcused failure to surrender a license certificate within any period of extension shall be a misdemeanor.

Sec. 15-A. 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. 16. 29 MRSA § 2295, as enacted by PL 1979, c. 10, § 2, is repealed and the following enacted in its place:

**§ 2295. Duration of revocation**

The revocation under section 2293 shall be indefinite, provided that in no event shall a license or permit to operate a motor vehicle be issued to a habitual offender until the minimum periods specified in section 2296.

Sec. 17. 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. 17-A. 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, subsections 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 that 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. 18. 29 MRSA § 2298, as amended by PL 1979, c. 541, Pt. B, § 34, is further amended by adding after the first paragraph a new paragraph to read:

If the person is defined as a habitual offender under section 2292, subsection 1, paragraph B, the following mandatory minimum penalties, which shall not be suspended, shall be imposed: A minimum fine of not less than \$1,000 and a minimum term of imprisonment of not less than 60 days. Notwithstanding Title 17-A, section 1301, the maximum fine shall be \$5,000. In addition, the Secretary of State shall not grant relief from habitual offender status pursuant to section 2296 until a period of not less than 3 years beyond the original date scheduled for eligibility to apply for relief of that status.

Sec. 19. 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.**

Sec. 20. 29 MRSA § 2301, first sentence, as amended by PL 1975, c. 731, § 76-A is amended to read:

Whoever is arrested for violation of any provisions of this Title, except those of sections ~~1312~~ 1312-A, 1312-B, 2181 and 2185, shall be given an immediate trial if he shall so demand of the officer making the arrest, but if for any reason it is impracticable to do so, the officer making the arrest shall immediately take the prisoner before some bail commissioner, who before admitting him to bail, shall require him to give his name, his place of residence, the number of his license to operate a motor vehicle and the registration number of the motor vehicle operated at the time of his arrest, and shall make a record thereof on the bail bond, and may take his personal recognizance for his appearance in court in a specified day, not less than 2 days thereafter if requested by the person arrested; or such officer in like cases may accept the personal recognizance of such person for his appearance.

Sec. 21. 29 MRSA § 2306, as enacted by PL 1975, c. 430, § 60, is amended to read:

**§ 2306. Execution of suspension stayed during appeal**

If any person adjudicated to have committed a traffic infraction, **except for a violation of section 1312-C**, shall appeal from the judgment and sentence of the trial court, the execution of any suspension imposed on his license and right to operate a motor vehicle shall be stayed until adjudication on appeal or withdrawal of the appeal, unless good cause is shown why he should not be allowed to retain his license and right to operate.

### STATEMENT OF FACT

Section 3. The changes to section 3 respond to concerns by members of the committee that a different colored license for prior operating under the influence offenders will be too conspicuous. The license may contain a code letter or the like to indicate convictions or adjudications within the past 6 years.

The Secretary of State may use color, as at present, or other appropriate code to indicate that the licensee is under 18 years of age. This flexibility is introduced because of the substantial possibility that the Legislature will enact the "photo license" bill.

The original bill would have replaced the present crime of "reckless driving" with new offense of "operating with criminal negligence," under section 22 of the amendments to be called "driving to endanger." The appropriate place for the new offense is at the present driving to endanger statute, Title 29, section 1314, which it more nearly resembles. Under this new draft "reckless driving" is repealed. Conduct covered by that section is adequately covered in the motor vehicle area by either present or proposed section 1314, a crime carrying virtually the same penalty for slightly lesser conduct, and by the crime of "reckless conduct" in the Maine Criminal Code, Title 17-A, section 211.

The changes in section 5 of this new draft make clear:

1. That there must be probable cause both in order to demand a blood or breath test and as a prerequisite for suspension of license if a person revokes his implied consent by refusing to take a test; and
2. That, consistent with proposed changes in L. D. 635, arrest is not a precondition to demanding a test and the person may be either arrested or summonsed to court.

Section 6 replaces sections 8 and 9 of the bill. It also incorporates the changes, contained in L. D. 727, in the amount of time within which an officer must send in a refusal, but makes certain technical changes, such as substituting "probable cause" for "arrest" and "revocation of consent by refusing" for "refusal." The new draft also makes clear that the failure of the law enforcement officer to send the refusal in within 72 hours should not result in a "windfall" to the person who revoked his implied consent that his license would not be suspended, unless he is actually prejudiced by the delay.

Section 7. This change conforms this provision to all others in the bill by making clear that the presumptive blood-alcohol level is 0.10% or more rather than more than 0.10%.

The new draft transfers the subject matter of sections 12, 13, 15 and 16 of the original bill. The present Title 29, section 1312, subsection 10, has become extremely lengthy and cumbersome. It is also a poor place to include the definition of the crime. The reader must go through 9 subsections before finding the definition of the crime. Thus, the content of the present subsection 10 of section 1312, containing both the definition and the penalties for criminal operating under the influence or operating with excessive blood-alcohol, would be transferred in its entirety to a new section, 1312-B of Title 29.

Sections 14 and 14-A of the original bill are stricken out in light of comments by members of the committee that the sunset provisions might not be advisable. If the Legislature at any future time wishes to repeal mandatory sentencing provisions, it may do so.

Title 29, section 1312, subsection 10-A, had become quite long and cumbersome. All of its provisions would, under the new draft, be transferred to a new section,

Title 29, section 1312-D. Proposed section 1312-D would contain all the provisions relating to the administration of license suspension pursuant to criminal convictions under proposed Title 29, section 1312-B, and pursuant traffic infraction adjudications under proposed section 1312-C.

Section 10 of the new draft enacts Title 29, section 1312-B. The new section would take its subject matter entirely from present section 1312, subsection 10, as modified by the proposals originally contained in sections 12, 13, 15 and 16 of the original bill. The suspension periods set out in the original bill have been reduced by 1/2. The period of incarceration set out in the original bill has been reduced.

The new draft also makes it clear that 0.10% blood alcohol is not per se operating under the influence, but remains prima facie evidence of operating under the influence.

Under this new draft, the 48-hour prison sentence may be suspended, on first conviction only, if the court is of the opinion that circumstances justify the suspension.

Section 11 of the new draft, which under both the original version and these proposed amendments, would enact the traffic infraction of operation under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level, is amended to change the number of the proposed Title 29, section 1312-B, of the original bill to Title 29, section 1312-C. Subsection 5, which in the original bill made clear that the general provisions of Title 29, section 1312, applied to prosecutions under this section, was eliminated as unnecessary.

This new draft includes a provision that having revoked your implied consent to take a blood or breath test in the past does not mandate that a present operating-under-the-influence charge be prosecuted as a crime rather than a civil violation and is not listed as a specific circumstance the prosecution may consider in exercising his discretion to treat an operating under the influence as a civil or criminal violation.

The new draft also makes it clear that 0.10% blood alcohol is not "per se" operating under the influence, but remains prima facie evidence of operating under the influence.

Section 12 proposes an entirely new section, Title 29, section 1312-D. The proposed section, in substance, is presently subsection 10-A of Title 29, section 1312, as modified by the proposals originally contained in sections 17 - 20 of the original bill. There are no substantive changes between the original bill and what is contained in this new draft, except as follows:

1. In subsection 2, the new draft allows the issuance of a license after education and rehabilitation programs have been completed provided that 2/3 of the court ordered suspension period has elapsed;
2. In subsection 3 of the proposed Title 29, section 1312-D, the amendment would exclude reference to the requirement that the suspended person pass the

written and road tests, as the Secretary of State believes that he has that authority in any event;

3. Subsection 4, allowing the Secretary of State to issue temporary restricted licenses solely for the purpose of allowing a person to participate in a rehabilitative program, was not in the original bill and is included at the request of the Secretary of State;

In addition to other allowances for restricted licenses, special restricted licenses may be issued during suspension period for operating-under-the-influence conviction for purpose of driving to and from work or for purposes of a person's employment; and

4. Subsection 5 of the proposed Title 29, section 1312-D, would include in substance the proposal of L. D. 727, section 2, that a restricted license would be available after 90 days of the 180-day suspension for revoking implied consent by refusing to submit to a test only in the case of a first revocation of consent.

In addition to other allowances for restricted licenses, special restricted licenses may be issued during suspension period for revoking the implied consent to take a blood or breath test for purposes of driving to and from work or for purposes of a person's employment and if 1/2 of the suspension period, that is, 90 days of the 180 days, has elapsed and if it is the person's first suspension for revoking implied consent.

Section 13 amends the present Title 29, section 1314, driving to endanger, retaining the same title. It is drawn from the proposal contained in section 6 of the original bill, but is similar to the present definition of driving to endanger, essentially only adding the "criminal negligence" requirement which is mandated by *State v. Davis*, 98 A.2d 1218 (Me. 1979) in any event. The last sentence of the first subsection of the original proposal in section 6 of the bill, stating that a person or property need not actually have been placed in danger, would be eliminated by this amendment. Subsections 2 and 3 of the proposed amended Title 29, section 1314, are the same as those contained in original section 6 of the bill.

The new draft strikes the sunset provisions from the bill.

Section 15 makes several changes to the original version of section 26 contained in the original bill. It requires the court to inform the defendant of the suspension and the defendant to acknowledge this notice in writing. The acknowledgment of notice, along with the sentence and surrendered license, as in the original version, must be sent to the Secretary of State.

The court may allow a person up to 96 hours to surrender his license, although the period of suspension itself commences, as in the original bill, upon announcement of sentence. Enforcement of both surrender of license and signing the acknowledgment of notice would be by criminal penalty.

Sec. 16. This section makes no substantive change in current law.

Sec. 18. The amendment to this section of the bill responds to the concerns of members of the committee that a difference in treatment of a habitual offender should result in the status resulting from 10 moving violations rather than 3 major convictions. The present Class C penalty is retained. However, mandatory minimum sentences apply only in the case of habitual offenders who are so defined by virtue of the 3 major convictions.

The sunset provisions contained in sections 33 and 33-A of the original bill are stricken from the bill.

Section 19. This technical amendment would simply conform this provision to a new proposed numbering system for operating-under-the-influence, excessive blood-alcohol offenses.

Sec. 21. This amendment excludes proposed new section 1312-C from the operation of the rule contained in Title 29, section 2306, that suspensions will be stayed when the defendant takes an appeal, on a question of law only, from a traffic infraction adjudication. Present section 1312, subsection 10-A, paragraph F, proposed to be reenacted as section 1312-D, subsection 7, and section 26 of the bill both provide that the suspension shall go into effect immediately, notwithstanding an appeal.