

MAINE STATE LEGISLATURE

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1 (After Deadline)
2 (EMERGENCY)
3 FIRST REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 904

9 H.P. 636

House of Representatives, March 1, 1985

10 Approved for introduction by a majority of the Legislative Council
11 pursuant to Joint Rule 27.

12 On motion of Representative Kane of Portland, referred to the
Committee on Legal Affairs. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

13 Presented by Representative Stetson of Damariscotta.

14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-FIVE
18

19 AN ACT to Amend the Motor Vehicle Laws with
20 Reference to Operating Under the
21 Influence to Decriminalize Proceedings
22 under the Traffic Infraction Laws.
23

24 Emergency preamble. Whereas, Acts of the Legis-
25 lature do not become effective until 90 days after
26 adjournment unless enacted as emergencies; and

27 Whereas, the Supreme Court has held the Maine Re-
28 vised Statutes, Title 29, section 1312-C, as uncon-
29 stitutional; and

30 Whereas, the following legislation is urgently
31 needed to correct the problems addressed in that de-
32 cision; and

33 Whereas, in the judgment of the Legislature,
34 these facts create an emergency within the meaning of
35 the Constitution of Maine and require the following

1 legislation as immediately necessary for the preser-
2 vation of the public peace, health and safety; now,
3 therefore,

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

6 Sec. 1. 29 MRSA §1312, sub-§8-A, as amended by
7 PL 1981, c. 679, §26, is further amended to read:

8 8-A. Statements by accused. Any statement by a
9 ~~defendant~~ person that he was the operator of a motor
10 vehicle, which he is accused of operating in viola-
11 tion of former subsection 10, section 1312-B or
12 1312-C, shall be admissible in a proceeding under
13 former subsection 10, section 1312-B or 1312-C, if it
14 was made voluntarily and is otherwise admissible un-
15 der the United States Constitution or the Constitu-
16 tion of Maine. The statement may constitute suffi-
17 cient proof by itself, without further proof of cor-
18 pus delicti, that the motor vehicle was operated and
19 was operated by the defendant.

20 Sec. 2. 29 MRSA §1312-B, sub-§2, ¶C, as amended
21 by PL 1983, c. 501, §3, is further amended to read:

22 C. Upon conviction, the court shall suspend the
23 defendant's license or permit to operate, right
24 to operate a motor vehicle and right to apply for
25 or obtain a license for a period of 90 days for a
26 first offense. In the case of a person previous-
27 ly convicted of violating subsection 10 of former
28 section 1312, or this section ~~or section 1312-C~~
29 within a 6-year period or whose license was sus-
30 pended for failure to comply with the duty to
31 submit to and complete a test to determine the
32 level of blood-alcohol under section 1312 within
33 a 6-year period, the suspension shall be for a
34 period of one year. The period of suspension
35 shall not be suspended by the court. The court
36 shall give notice of the suspension and take
37 physical custody of an operator's license as pro-
38 vided in section 2241-H. The Secretary of State
39 may impose an additional period of suspension as
40 provided in section 1312-D, subsection 1-A, and
41 may extend any period of suspension until satis-

1 faction of any conditions imposed pursuant to
2 section 1312-D, subsection 3.

3 Sec. 3. 29 MRSA §1312-C, sub-§1, as enacted by
4 PL 1981, c. 468, §11, is amended to read:

5 1. Election of charge. When a person has been
6 ~~arrested or~~ summonsed under section 1312 ~~for a viola-~~
7 ~~tion of section 1312-B,~~ the attorney for the State
8 may elect to charge the defendant with ~~the traffic~~
9 ~~infraction of~~ operating under the influence of intox-
10 icating liquor or drugs or with an excessive
11 blood-alcohol level under ~~this~~ section 1312-B. The
12 determination of the attorney for the State, under
13 provisions of subsections 5 and 7, that a person
14 should be prosecuted under ~~either this section or~~
15 ~~under~~ section 1312-B shall not be subject to review.

16 Sec. 4. 29 MRSA §1312-C, sub-§§1-A and 1-B are
17 enacted to read:

18 1-A. Determination by law enforcement officer.
19 In carrying out the purposes set forth in section
20 1311-A, subsection 1, upon stopping or apprehending a
21 vehicle for any traffic violation or for a reasonable
22 belief that the vehicle is being operated in viola-
23 tion of section 1312, the law enforcement officer
24 shall determine, based upon his personal observa-
25 tions, statements made by the vehicle operator or
26 other occupants, or the results of a field sobriety
27 test, whether to arrest the operator for violation of
28 section 1312-B; issue a summons for violation of this
29 section or other traffic infraction; or permit the
30 operator to proceed with or without a warning.

31 1-B. Impoundment of vehicle. If the law en-
32 forcement officer issues a summons for violation of
33 this section, he may forthwith impound the vehicle
34 for a 24-hour period and shall transport the operator
35 to the nearest municipal or county building for ad-
36 ministration of a chemical test under section 1312.

37 Sec. 5. 29 MRSA §2292, sub-§1, as amended by PL
38 1981, c. 679, §§47 to 49, is further amended to read:

39 1. Three or more convictions. Three or more con-
40 ~~victions or adjudications,~~ singularly or in combina-

1 tion, of any of the following separate and distinct
2 offenses arising out of separate acts:

3 A. Homicide resulting from the operation of a
4 motor vehicle;

5 B. Operating or attempting to operate while un-
6 der the influence of intoxicating liquor or drugs
7 or with a blood-alcohol level of 0.10% or more;

8 C. Driving or operating a motor vehicle in a
9 reckless manner or in such a manner as to endan-
10 ger any person or property;

11 D. Operating a motor vehicle when the operator's
12 license, permit or privilege to operate a motor
13 vehicle has been suspended or revoked;

14 E. Operating a motor vehicle without a license
15 to do so;

16 F. Knowingly making any false affidavit or
17 swearing or affirming falsely to any manner or
18 thing required by the motor vehicle laws or as to
19 information required in the administration of
20 these laws;

21 G. Commission of any offense punishable by a
22 maximum term of imprisonment equal to or exceed-
23 ing one year under the motor vehicle laws of
24 Maine or any offense punishable by a maximum term
25 of imprisonment equal to or exceeding one year in
26 the commission of which a motor vehicle is used;

27 H. Failure of the driver of a motor vehicle in-
28 volved in an accident resulting in the death or
29 injury of any person to stop close to the scene
30 of the accident and report his identity;

31 I. Failure of the driver of a motor vehicle in-
32 volved in an accident resulting only in damage to
33 an attended or unattended vehicle or other prop-
34 erty to stop close to the scene of the accident
35 and report his identity or otherwise report the
36 accident;

37 J. Eluding an officer, as defined by section
38 2501-A, subsection 3; or

1 K. Passing a roadblock, as defined by section
2 2501-A, subsection 4.

3 **Emergency clause.** In view of the emergency cited
4 in the preamble, this Act shall take effect when ap-
5 proved.

6 STATEMENT OF FACT

7 This bill seeks to address the constitutional
8 flaws in the Maine Revised Statutes, Title 29, sec-
9 tion 1312-C, pointed out by the Supreme Court in
10 Freeman v. State, and to restore the 2-tiered proce-
11 dure for the apprehension and punishment of drivers
12 operating under the influence of liquor.

13 The Maine Revised Statutes, Title 29, section
14 1312-C, is amended to decriminalize the traffic in-
15 fraction and to provide for the issuance of a summons
16 and transporting the operator to the municipal or
17 county facility for chemical testing and impounding
18 of the vehicle, in appropriate cases, for a period
19 not to exceed 24 hours. Persons charged with the
20 traffic infraction are not booked, photographed or
21 fingerprinted, nor are they subjected to detention or
22 restraint. Persons will be required to accompany the
23 law enforcement officer to the place where the chemi-
24 cal test is available.

25 Upon receipt of the chemical test results or oth-
26 er information, the district attorney may, prior to
27 adjudication under the Maine Revised Statutes, Title
28 29, section 1312-C, proceed under the Maine Revised
29 Statutes, Title 29, section 1312-B.

30 Other sections of the Maine Revised Statutes, Ti-
31 tle 29, are amended to remove the traffic infraction
32 adjudication from the criminal violation provisions
33 respecting punishment.

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