

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 600

H.P. 447 House of Representatives, March 3, 1987  
Reference to the Committee on Legal Affairs suggested and  
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative HUSSEY of Milo.

Cosponsored by President PRAY of Penobscot and  
Representative GOULD of Greenville.

STATE OF MAINE

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

1 AN ACT Making it a Class C Crime to Cause  
2 Serious Bodily Injury while Operating  
3 under the Influence.  
4

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

7 Sec. 1. 29 MRSA §1312-B, sub-§2, as repealed and  
8 replaced by PL 1985, c. 412, §4, is amended to read:

9 2. Penalties. The Except as provided in subsec-  
10 tion 2-A, the offense defined in subsection 1 is a  
11 Class D crime, provided that in the following cases  
12 the following minimum penalties shall apply.

13 A. Except as provided in paragraph B, in the  
14 case of a person having no previous convictions  
15 of a violation of former section 1312, subsection

1 10, former section 1312-B or this section and  
2 having no previous suspension of license or priv-  
3 ilege to operate for failure to comply with the  
4 duty to submit to and complete a test to deter-  
5 mine the level of blood-alcohol under section  
6 1312 within a 6-year period, the fine shall not  
7 be less than \$300 and the court shall suspend the  
8 defendant's license or permit to operate, right  
9 to operate a motor vehicle and right to apply for  
10 and obtain a license for a period of 90 days,  
11 which penalties may not be suspended.

12 B. In the case of a person having no previous  
13 convictions of a violation of former section  
14 1312, subsection 10, former section 1312-B, or  
15 this section and having no previous suspension of  
16 license or privilege to operate for failure to  
17 comply with the duty to submit to and complete a  
18 test to determine the level of blood-alcohol un-  
19 der section 1312 within a 6-year period, the fine  
20 shall not be less than \$300, the sentence shall  
21 include a period of incarceration of not less  
22 than 48 hours and the court shall suspend the de-  
23 fendant's license or permit to operate, right to  
24 operate a motor vehicle and right to apply for  
25 and obtain a license for a period of 90 days,  
26 which penalties may not be suspended, when the  
27 person:

28 (1) Was tested as having a blood-alcohol  
29 level of 0.15% or more;

30 (2) Was driving in excess of the speed lim-  
31 it by 30 miles an hour or more during the  
32 operation which resulted in the prosecution  
33 for operating under the influence or with a  
34 blood-alcohol level of 0.10% or more; or

35 (3) Eluded or attempted to elude an offi-  
36 cer, as defined in section 2501-A, subsec-  
37 tion 3, during the operation which resulted  
38 in prosecution for operating under the in-  
39 fluence or with a blood-alcohol level of  
40 0.10% or more.

41 C. In the case of a person having one previous  
42 conviction of a violation of former section 1312,

1 subsection 10, former section 1312-B or this sec-  
2 tion, or having at least one previous suspension  
3 for failure to comply with the duty to submit to  
4 and complete a test to determine the level of  
5 blood-alcohol under section 1312 within a 6-year  
6 period, the fine shall not be less than \$500, the  
7 sentence shall include a period of incarceration  
8 of not less than 7 days and the court shall sus-  
9 pend the defendant's license or permit to oper-  
10 ate, right to operate a motor vehicle and right  
11 to apply for and obtain a license for a period of  
12 one year, which penalties may not be suspended.

13 D. In the case of a person having 2 or more pre-  
14 vious convictions of violations of former section  
15 1312, subsection 10, former section 1312-B or  
16 this section, within a 6-year period, the fine  
17 shall not be less than \$750, the sentence shall  
18 include a period of incarceration of not less  
19 than 30 days and the court shall suspend the de-  
20 fendant's license or permit to operate, right to  
21 operate a motor vehicle and right to apply for  
22 and obtain a license for a period of 2 years,  
23 which penalties may not be suspended.

24 E. The penalties provided under paragraphs A, B,  
25 C and D shall not be suspended by the court. The  
26 court shall give notice of the suspension and  
27 take physical custody of the operator's license  
28 as provided in section 2241-H. The Secretary of  
29 State may impose an additional period of suspen-  
30 sion as provided in section 1312-D, subsection  
31 1-A, or may extend any period of suspension until  
32 satisfaction of any conditions imposed pursuant  
33 to section 1312-D, subsection 3.

34 Sec. 2. 29 MRSAs §1312-B, sub-§2-A is enacted to  
35 read:

36 2-A. Aggravated penalty. If any person suffers  
37 serious bodily injury as defined in Title 17-A, sec-  
38 tion 2, subsection 23, that is in fact a result of a  
39 violation of subsection 1, then the offense defined  
40 in subsection 1 is a Class C crime.

1

STATEMENT OF FACT

2           This amendment to the implied consent law, the  
3 Maine Revised Statutes, Title 29, section 1312,  
4 solves a problem in the difference in proofs between  
5 the felony charges of vehicular manslaughter, Title  
6 17-A, section 203, subsection 3, and reckless conduct  
7 with a deadly weapon, automobile, Title 17-A, section  
8 211, by enhancing an operating under the influence  
9 charge to a Class C crime if "any person suffers se-  
10 rious bodily injury," as defined in Title 17-A, sec-  
11 tion 2, subsection 23, that is in fact a result of a  
12 violation of our operating under the influence law.  
13 To sustain a conviction for vehicular manslaughter,  
14 the State need only show that the defendant operated  
15 a motor vehicle with criminal negligence. To sustain  
16 a conviction for reckless conduct, the State must  
17 show that the defendant operated a motor vehicle  
18 recklessly. A showing of criminally negligent opera-  
19 tion will not support a charge of reckless conduct.  
20 Thus, a drunken driver who paralyzes, rather than  
21 kills, his victim escapes a felony conviction if the  
22 State cannot prove recklessness beyond a reasonable  
23 doubt. The distinction between causing death and  
24 causing serious bodily injury, such as permanent pa-  
25 ralysis, is not so great as to justify the different  
26 proofs. This bill enhances the offense of operating  
27 under the influence to a Class C crime if anyone suf-  
28 fers serious bodily injury regardless of whether the  
29 State can show that the defendant operated the motor  
30 vehicle recklessly. Although operating a motor vehi-  
31 cle while under the influence is not per se criminal-  
32 ly negligent, State v Longley, 483 A2d 725 (Me 1984),  
33 it is illegal, which justifies the imposition of an  
34 enhanced criminal penalty to those situations in  
35 which a victim suffers serious bodily injury.

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