

# MAINE STATE LEGISLATURE

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L.D. 1291

(Filing No. H-389 )

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
113TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "<sup>B</sup>" to H.P. 962, L.D. 1291, Bill, "AN ACT to Implement the Recommendations of the Driver Education Evaluation Program Study."

Amend the bill by striking out everything after the enacting clause and inserting in its place the following:

'Sec. 1. 5 MRSA §12004, sub-§8, ¶A, sub-¶(13-A) is enacted to read:

(13-A) Human Services Driver Education \$75/Day 22 MRSA  
Evaluation Program \$7207  
Appeals Board

Sec. 2. 22 MRSA c. 1602 is enacted to read:

CHAPTER 1602

DRIVER EDUCATION EVALUATION PROGRAMS

§7201. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Alcohol or drug related motor vehicle offense. "Alcohol or drug related motor vehicle offense" means a conviction or administrative action resulting in the suspension of a motor vehicle operator's license for a violation under Title 29, section 1311-A; 1312-B; former section 1312, subsection 10-A; former section 1312-B; former section 1312-C; or section 2241-G, subsection 2, paragraph B, subparagraph (2).

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1           2. Client. "Client" means a person who is re-  
2 quired to complete the alcohol and other drug educa-  
3 tion, evaluation and treatment program for an alcohol  
4 or drug related motor vehicle offense.

5           3. Completion of treatment. "Completion of  
6 treatment," for the purpose of recommendation by the  
7 department to the Secretary of State concerning res-  
8 toration of the driver's license to the client, means  
9 that the individual has responded to treatment to the  
10 extent that there is a substantial probability that  
11 the individual will not be operating under the influ-  
12 ence. This substantial probability may be shown by:

13           A. An acknowledgement by the client of the ex-  
14 tent of the client's alcohol or drug problem;

15           B. A demonstrated ability to abstain from the  
16 use of alcohol and drugs; and

17           C. A willingness to seek continued voluntary  
18 treatment or to participate in an appropriate  
19 self-help program, or both, as necessary.

20           4. Multiple offender. "Multiple offender" means  
21 a client who has more than one alcohol or drug relat-  
22 ed motor vehicle offense within a 6-year period.

23 §7202. Division of Driver Education Evaluation

24           The Division of Driver Education Evaluation shall  
25 administer the alcohol and other drug education,  
26 evaluation and treatment program. The division shall  
27 certify to the Secretary of State:

28           1. Administration of Driver Education Evaluation  
29 Program. Those individuals who have satisfactorily  
30 completed the program prescribed by section 7203; and

31           2. Administration of non-Driver Education Evalu-  
32 ation Program. Those individuals who have satisfacto-

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1 rily completed the requirements of this chapter by  
2 satisfying the requirement for completion of treat-  
3 ment as defined in section 7201 by means other than  
4 the program prescribed by section 7203.

5 §7203. Program components

6 1. First offenders; adult. The alcohol and oth-  
7 er drug education, evaluation and treatment program  
8 required for clients without a previous alcohol or  
9 drug related motor vehicle offense consists of educa-  
10 tion, assessment, evaluation and treatment compo-  
11 nents. All first offender clients are required to  
12 complete the education and assessment component un-  
13 less otherwise provided by this chapter. The follow-  
14 ing evaluation and treatment components may be re-  
15 quired if necessary:

16 A. The education component, consisting of at  
17 least 9 hours of information utilizing films,  
18 lectures and discussion and designed to educate  
19 the client about the effects of alcohol and other  
20 drugs on his behavior, especially behavior in-  
21 volving the operation of a motor vehicle;

22 B. The assessment component, utilizing an as-  
23 essment instrument, the client's driving record  
24 for the past 6 years, and up to one hour inter-  
25 view with the instructor and designed to make a  
26 preliminary assessment regarding the extent of a  
27 client's alcohol or other drug use or abuse or  
28 potential for abuse. A client may be referred  
29 for further evaluation based on the results of  
30 his preliminary assessment;

31 C. The evaluation component, designed to identi-  
32 fy abusers of alcohol and other drugs. If the  
33 evaluation indicates that treatment for alcohol  
34 or other drug abuse is needed, the client will be  
35 referred to the appropriate alcohol or other drug  
36 treatment service; and

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1           D. The treatment component, designed to address  
2           the client's specific problem with or abuse of  
3           alcohol or other drugs.

4           2. First offenders under 21 years of age. First  
5           offenders under 21 years of age shall attend the  
6           Driver Education Evaluation Program - Teen program.  
7           The Driver Education Evaluation Program - Teen pro-  
8           gram consists of the following elements.

9           A. The education component is a program of at  
10           least 10 hours during which clients receive edu-  
11           cation, especially designed for the age group, on  
12           substance use, abuse and addiction. Education is  
13           provided through a group discussion process which  
14           includes segments on values clarification, peer  
15           pressure and decision making.

16           B. The assessment component is designed to make  
17           a preliminary assessment regarding the extent of  
18           a client's alcohol or other drug use or abuse or  
19           potential for abuse. A client may be referred  
20           for further evaluation based on the results of  
21           his preliminary assessment.

22           C. The evaluation component is designed to iden-  
23           tify abusers of alcohol and other drugs. If the  
24           evaluation indicates that treatment for alcohol  
25           or other drug abuse is needed, the client will be  
26           referred to the appropriate alcohol or other drug  
27           treatment service.

28           D. The treatment component is designed to ad-  
29           dress the client's specific problem with or abuse  
30           of alcohol or other drugs.

31           3. Multiple offenders; adult. The education,  
32           evaluation and treatment program required for adult  
33           multiple offenders consists of the following compo-  
34           nents:

35           A. A rigorous, highly structured, residential

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1 intervention program, consisting of at least 22  
2 hours, utilizing films, lectures, group discus-  
3 sion and individual sessions, designed to educate  
4 the client on the effects of substance use, abuse  
5 and addiction and an evaluation utilizing assess-  
6 ment instruments, data collection and self as-  
7 essment, designed to create an acceptance and  
8 commitment by the client for treatment; and

9 B. A treatment program, if indicated, designed  
10 to address the client's specific alcohol or other  
11 drug problem and abuse, using a treatment plan  
12 based on the completion of treatment guidelines  
13 adopted by the department.

14 4. Multiple offenders under 21 years of age.  
15 Multiple offenders under 21 years of age shall attend  
16 the alcohol and other drug education, evaluation and  
17 treatment program for adult multiple offenders under  
18 subsection 3.

19 §7204. Separation of evaluation and treatment func-  
20 tions

21 1. Prohibition. Individual persons and individ-  
22 ual agency entities providing services under this  
23 chapter may not provide both treatment services and  
24 evaluation services for programs under this chapter.

25 2. Emergency waiver. The provider may apply to  
26 the board of appeals for a temporary emergency waiver  
27 of the prohibition in subsection 1. The board may  
28 grant a waiver for a period not to exceed 120 days if  
29 the board finds a genuine hardship condition exists  
30 in which it is impossible for both evaluation and  
31 treatment to be provided by separate individual agen-  
32 cy entities.

33 3. Applicability. This section applies to cli-  
34 ents who commence the alcohol and other drug educa-  
35 tion, evaluation and treatment program established by  
36 this chapter on or after October 1, 1987.

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1 §7205. Certification; recertification

2 All providers of the evaluation, intervention and  
3 treatment components of the program must be certified  
4 by the department. The certification period for in-  
5 dividual providers is 3 years and 2 years for agen-  
6 cies. The department shall adopt rules requiring  
7 continuing education for recertification.

8 §7206. Fees

9 1. First offense program. The department may  
10 charge a registration fee, not to exceed \$105, to  
11 clients for the education and assessment components  
12 of the program. This fee shall be used to defray the  
13 cost of the program. The client is responsible for  
14 the costs of the evaluation and treatment components.  
15 The department may waive all or part of the fee for  
16 clients who provide sufficient evidence of inability  
17 to pay.

18 2. Multiple offender program. The fees and  
19 costs for the multiple offender program are as fol-  
20 lows.

21 A. The department may charge a registration fee,  
22 not to exceed \$300, to clients for the expenses  
23 of the intervention program. This fee shall be  
24 used to defray the cost of the program.

25 B. The client is responsible for any costs asso-  
26 ciated with evaluation or treatment which is not  
27 a part of the cost in paragraph A.

28 §7207. Board of appeals

29 1. The Driver Education Evaluation Program Ap-  
30 peals Board. The Driver Education Evaluation Appeals  
31 Board, established by Title 5, section 12004, subsec-  
32 tion 8, shall be referred to as the "board" in this  
33 chapter.

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1           2. Qualifications. Each member of the board  
2 shall have training, education, experience and demon-  
3 strated ability in successfully treating clients with  
4 substance abuse problems. Board members may not hold  
5 valid driver education evaluation certificates during  
6 their terms of appointment.

7           3. Appointment; term; removal. The board shall  
8 consist of 3 members appointed by the Governor for  
9 2-year terms, except that, initially, 2 members shall  
10 be appointed for 2-year terms and one member for a  
11 one-year term. A vacancy occurring prior to the ex-  
12 piration of a term shall be filled by an appointment  
13 for the unexpired term. Members may be removed by  
14 the Governor for cause.

15           4. Facilities; staff. The Department of Human  
16 Services shall provide adequate facilities for the  
17 board and shall provide staff support through the de-  
18 partment's fair hearing unit.

19           5. Chairman; rules. The board shall annually  
20 elect a chairman from its members. The department  
21 shall adopt rules to carry out the purpose of this  
22 section.

23           6. Compensation. Each member of the board shall  
24 be compensated in accordance with Title 5, chapter  
25 379.

26           7. Appeal from decision. A Driver Education  
27 Evaluation Program client may appeal to the board as  
28 follows.

29           A. The client may appeal a failure to certify  
30 completion of treatment pursuant to section 7202,  
31 subsection 2.

32           B. The client may appeal an evaluation decision  
33 referring a client to treatment or a completion  
34 of treatment decision pursuant to section 7203.



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1 A client may only appeal under this paragraph af-  
2 ter the client has sought a 2nd opinion of the  
3 need for treatment or of satisfactory completion  
4 of treatment.

5 8. Appeal procedure and action. An appeal shall  
6 be heard and decided by one board member. The board  
7 may affirm or reverse the decision of the treatment  
8 provider or agency, require further evaluation, make  
9 a finding of completion of treatment or make an al-  
10 ternate recommendation. The board, after due consid-  
11 eration, shall make a written decision and transmit  
12 that decision to the Division of Driver Education  
13 Evaluation and the client who appealed the case. The  
14 decision of the board is final agency action for pur-  
15 poses of judicial review pursuant to Title 5, chapter  
16 375, subchapter VII.

17 9. Request for emergency waiver. The board may  
18 hear requests for emergency waivers under section  
19 7204, subsection 2. A majority of the full board  
20 shall grant or deny the request within 2 business  
21 days of receipt of the request. The board may meet  
22 by teleconference, as necessary, to rule on the re-  
23 quest.

24 **Sec. 3. 29 MRSA §1311-A, sub-§2, ¶E is enacted**  
25 **to read:**

26 E. The Secretary of State may not suspend a li-  
27 cence or permit to operate, the right to operate  
28 a motor vehicle and the right to apply for or ob-  
29 tain a license solely because a person has not  
30 satisfactorily completed an alcohol or other drug  
31 education, evaluation and treatment program ad-  
32 ministered by the Department of Human Services,  
33 as defined in Title 22, chapter 1602. This limi-  
34 tation shall not affect the authority on restora-  
35 tion provided under section 1312-D, subsections  
36 2, 3 and 4.

37 **Sec. 4. 29 MRSA §1312-B, sub-§2, ¶D-1 is enacted**

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1 to read:

2 D-1. In addition to the penalties provided under  
3 paragraphs C and D, the court shall order the de-  
4 defendant to participate in the alcohol and other  
5 drug education, evaluation and treatment program  
6 for multiple offenders administered by the De-  
7 partment of Human Services, as defined in Title  
8 22, chapter 1602. The court may waive the multi-  
9 ple offender intervention program under Title 22,  
10 section 7203, subsection 3, paragraph A, if the  
11 court finds that the defendant has completed a  
12 residential treatment program, or its equivalent,  
13 subsequent to the date of the offense.

14 **Sec. 5. 29 MRSA §1312-D, sub-§§2, 3 and 4, as**  
15 **amended by PL 1985, c. 412, §6, are further amended**  
16 **to read:**

17 2. Education and treatment programs. Following  
18 the expiration of 2/3 of the total period of suspen-  
19 sion imposed on a first time offender pursuant to  
20 subsection subsections 1 and 1-A, section 1312-B,  
21 former section 1312-B, subsection 2, or Title 15,  
22 section 3314, the Secretary of State may issue a li-  
23 cence or permit to the person if he receives written  
24 notice that the person has satisfactorily completed  
25 the alcohol and other drug education, evaluation and  
26 treatment program of administered by the Department  
27 of Human Services and, when required, has satisfacto-  
28 rily completed an alcohol treatment or rehabilitation  
29 program approved or licensed by the department, as  
30 defined in Title 22, chapter 1602. A license or per-  
31 mit may not be issued under this subsection to 2nd  
32 and subsequent offenders.

33 3. Restricted licenses. After certification un-  
34 der subsection 2, the Secretary of State may issue  
35 the license or permit to a first time offender with  
36 whatever conditions, restrictions or terms he deems  
37 advisable, having in mind the safety of the public

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1 and the welfare of the petitioner. Following the ex-  
2 piration of the total period of suspension imposed  
3 pursuant to subsections 1 and 1-A, section 1312-B or  
4 Title 15, section 3314, the Secretary of State may  
5 issue a license or permit, subject to the conditions,  
6 restrictions or terms he deems advisable, to the per-  
7 son if the Secretary of State has received or when he  
8 receives written notice that the person has satisfactorily  
9 completed the alcohol ~~educational and other~~  
10 drug education, evaluation and treatment program of  
11 administered by the Department of Human Services and,  
12 ~~when required, has satisfactorily completed an alco-~~  
13 ~~hol--treatment--or-rehabilitation-program-approved-or~~  
14 ~~licensed-by-the-department,~~ as defined in Title 22,  
15 chapter 1602. The license or permit may contain the  
16 condition that the person abstain from the use of in-  
17 toxicating liquor or drugs. Any license or permit  
18 issued under subsection 2 or under this subsection  
19 shall be restricted to use for travel to an alcohol  
20 and other drug education or treatment program or to  
21 employment if the amount of the total period of sus-  
22 pension which has expired is less than 90 days. Any  
23 such license or permit issued shall remain restricted  
24 until the amount of time the license or permit was  
25 actually suspended plus the amount of time the re-  
26 stricted license or permit has been issued equals a  
27 minimum of 90 days.

28 4. Special restricted licenses for participation  
29 in programs. Notwithstanding any other provision of  
30 law, the Secretary of State may issue a temporary re-  
31 stricted license to a person suspended under section  
32 1312-B for the purpose of allowing that person to  
33 participate in the alcohol and other drug education,  
34 evaluation and treatment program of administered by  
35 the Department of Human Services, as defined in Title  
36 22, chapter 1602, or in any other program under sub-  
37 section 2 or 3.

38 **Sec. 6. 29 MRSA §1312-D, sub-§6,** as amended by  
39 PL 1983, c. 718, is repealed.

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1                   Sec. 7. 29 MRSA §1312-D, sub-§10 is enacted  
2 to read:

3           10. Work-restricted license. Upon the recommen-  
4 dation of a treating counselor that a person whose  
5 license or right to operate a motor vehicle has been  
6 suspended under section 1312-B, subsection 2, para-  
7 graph A or B, be issued a restricted license for em-  
8 ployment purposes, the Secretary of State, to the ex-  
9 tent not in conflict with federal law, may stay the  
10 suspension during the statutory period and issue a  
11 work-restricted license, subject to whatever condi-  
12 tions, restrictions or terms which the treating coun-  
13 selor recommends and the Secretary of State deems ad-  
14 visable. Any restricted license or permit issued un-  
15 der this subsection shall be restricted to use for  
16 travel to and from employment.

17 The treating counselor may recommend that the Secre-  
18 tary of State revoke a restricted license or permit  
19 issued under this subsection if the counselor be-  
20 lieves that the revocation is advisable, having in  
21 mind the safety of the public and the welfare of the  
22 person.

23 For the purposes of this subsection, "treating coun-  
24 selor" means a person licensed under Title 32 as a  
25 registered substance abuse counselor, psychiatrist,  
26 psychologist or social worker who is providing alco-  
27 hol or drug treatment services to the person.

28                   Sec. 8. 29 MRSA §1318 is enacted to read:

29 §1318. Legislative intent concerning use of educa-  
30 tion, evaluation and treatment programs for  
31 operating under the influence offenders

32 Education, evaluation and treatment are essential  
33 in responding to the problems created by people oper-  
34 ating under the influence of alcohol or other drugs.  
35 It is the policy of the State to use approved educa-  
36 tion, evaluation and treatment programs to the maxi-

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1 imum extent possible as an appropriate sentence compo-  
 2 nent for persons convicted of operating under the in-  
 3 fluence. The programs shall be coordinated with the  
 4 alcohol and other drug education, evaluation and  
 5 treatment programs required in section 1312-D.

6 **Sec. 9. Report to Legislature.** The Division of  
 7 Driver Education Evaluation shall submit a report to  
 8 the joint standing committee of the Legislature hav-  
 9 ing jurisdiction over human resources no later than  
 10 February 1, 1988, concerning the implementation of  
 11 this Act, including, but not limited to, the appeal  
 12 process, the separation of evaluation and treatment  
 13 functions and the availability of services to clients  
 14 of the program.

15 **Sec. 10. Allocation.** There is allocated from  
 16 the Other Special Revenue Fund accruing to the Divi-  
 17 sion of Driver Education Evaluation Program for the  
 18 fiscal years ending June 30, 1988, and June 30, 1989,  
 19 the following funds.

	<u>1987-88</u>	<u>1988-89</u>
21 <u>HUMAN SERVICES, DEPARTMENT</u>		
22 <u>OF</u>		
23 Office of Alcoholism and		
24 Drug Abuse Prevention		
25 Division of Driver Edu-		
26 cation Evaluation Pro-		
27 grams		
28 First Offender Program		
29 Positions	(5)	(6)
30 Personal Services	\$130,301	\$162,684
31 Capital Expenditures	11,550	6,450
32		
33 Total	<u>\$141,851</u>	<u>\$169,134</u>

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1 This allocation is  
 2 made solely to re-  
 3 place positions and  
 4 funds eliminated by  
 5 the Department of  
 6 Human Services in  
 7 its Part I Budget  
 8 request and only to  
 9 the extent that rev-  
 10 enues are available  
 11 from the increase in  
 12 fees established in  
 13 the Maine Revised  
 14 Statutes, Title 22,  
 15 section 7203, sub-  
 16 section 1. The to-  
 17 tal position count  
 18 for this program  
 19 shall not exceed  
 20 that in existence as  
 21 of January 1, 1987.

22 Multiple Offender Pro-  
 23 gram

24	Positions	(4)	(4)
25	Personal Services	\$ 81,230	\$ 88,743
26	All Other	241,500	250,000
27	Capital Expenditures	11,850	
28			
29	Total	<u>\$334,580</u>	<u>\$338,743</u>

30 This allocation is  
 31 made from revenues  
 32 obtained by the fee  
 33 established in the  
 34 Maine Revised Stat-  
 35 utes, Title 22, sec-  
 36 tion 7203, subsec-  
 37 tion 2. The Multi-  
 38 ple Offender Program  
 39 shall be considered

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1 separate and dis-  
2 tinct from the First  
3 Offender Program.

4 Driver Education Evalua-  
5 tion Program Appeals  
6 Board

7	Personal Services	\$11,250	\$15,000
8	All Other	9,375	12,500
9			
10	Total	<u>\$20,625</u>	<u>\$27,500</u>

11 Provides funds for  
12 board member per di-  
13 em and contractual  
14 secretarial support.  
15 Due to the effective  
16 date of October 1,  
17 1987, only 75% of  
18 the required funding  
19 is provided in fis-  
20 cal year 1987-88.

21 **Sec. 11. Sunset provision.** This Act is repealed  
22 on July 1, 1988.

23 **Emergency clause.** In view of the emergency cited  
24 in the preamble, this Act shall take effect when ap-  
25 proved, except that the Maine Revised Statutes, Title  
26 22, section 7207, as enacted in this Act, shall take  
27 effect on October 1, 1987.'

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1

STATEMENT OF FACT

2           The original bill and the amendment concern the  
3 Driver Education Evaluation Program. The amendment  
4 replaces the original bill and incorporates the fol-  
5 lowing changes into the original bill:

6           1. Amends the definition of alcohol or drug re-  
7 lated motor vehicle offense to clarify the references  
8 and to delete illegal transportation of liquor as a  
9 related offense for purposes of determining multiple  
10 offenders;

11           2. Adds a definition for completion of treat-  
12 ment;

13           3. Adds a provision which allows the Division of  
14 Driver Education Evaluation Program to certify satis-  
15 factory completion of the Driver Education Evaluation  
16 Program requirements by successfully completing  
17 treatment elsewhere;

18           4. Provides more detailed discussion of the pro-  
19 grams available under Driver Education Evaluation  
20 Program;

21           5. Prohibits any provider from performing both  
22 evaluations and treatment under the Driver Education  
23 Evaluation Program, but establishes a temporary emer-  
24 gency waiver;

25           6. Reduces the fee for the education and assess-  
26 ment aspect of the first offender program to \$105 and  
27 deletes the \$25 reduction in fee for early completion  
28 of the program;

29           7. Establishes a board of appeals for Driver Ed-  
30 ucation Evaluation Program related decisions;

31           8. Limits the Secretary of State's authority to  
32 suspend a license based only on failure to success-



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- 1 fully complete the Driver Education Evaluation Pro-  
2 gram. Further action, such as an adjudicated oper-  
3 ating under the influence offense is necessary;
- 4 9. Makes the residential multiple offender pro-  
5 gram mandatory as a part of the sentence unless the  
6 judge waives participation in that program for com-  
7 pletion of a residential treatment program;
- 8 10. Conforms the administrative reinstatement of  
9 license provisions for 2nd and subsequent operating  
10 under the influence offenders to federal require-  
11 ments;
- 12 11. Deletes the coordinated supervision program;
- 13 12. Adds a provision which allows treating coun-  
14 selors to make recommendations to the Secretary of  
15 State concerning issuance of a work-restricted li-  
16 cense;
- 17 13. Amends the allocation section; and
- 18 14. Repeals the Driver Education Evaluation Pro-  
19 gram on July 1, 1988.
- 20 3569061687

Reported by the Committee on Human Resources  
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