

MAINE STATE LEGISLATURE

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(EMERGENCY)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2515

H.P. 1838 House of Representatives, March 14, 1988
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.
Reference to the Committee on Human Resources suggested
and ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative CLARK of Brunswick.
Cosponsored by Speaker MARTIN of Eagle Lake and Senator
BRANNIGAN of Cumberland.

STATE OF MAINE

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

1 **AN ACT to Substantially Revise the Driver**
2 **Education Evaluation Program.**
3

4 **Emergency** preamble. Whereas, Acts of the
5 Legislature do not become effective until 90 days
6 after adjournment unless enacted as emergencies; and

7 Whereas, the Maine Revised Statutes, Title 22,
8 chapter 1602; Title 29, section 1312-B, subsection 2,
9 paragraph D-1; and Title 29, section 1312-D are

1 repealed on July 1, 1988; and

2 Whereas, because of the repeal of these statutes,
3 the Driver Education Evaluation Program which
4 educates, evaluates and treats those who lose their
5 licenses for operating under the influence of alcohol
6 and other drugs will be terminated; and

7 Whereas, termination of the Driver Education
8 Evaluation Program will eliminate state-administered
9 client services designed especially for the first,
10 multiple and youthful offender; and

11 Whereas, in the judgment of the Legislature, these
12 facts create an emergency within the meaning of the
13 Constitution of Maine and require the following
14 legislation as immediately necessary for the
15 preservation of the public peace, health and safety;
16 now, therefore,

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

19 Sec. 1. 22 MRSA §7201, sub-§2-A is enacted to
20 read:

21 2-A. Community-based service provider.
22 "Community-based service provider" means a provider of
23 either the treatment component or the evaluation
24 component, or both, of the alcohol and other drug
25 education, evaluation and treatment program certified
26 under section 7205.

27 Sec. 2. 22 MRSA §7203, sub-§3, ¶B, as enacted by
28 PL 1987, c. 536, §§2 and 11, is amended to read:

29 B. A treatment program provided by a
30 community-based service provider, if indicated,
31 designed to address the client's specific alcohol
32 or other drug problem and abuse, using a treatment
33 plan based on the completion of treatment
34 guidelines adopted by the department.

35 Sec. 3. 22 MRSA §7205, as enacted by PL 1987, c.
36 536, §§2 and 11, is amended by adding at the end a new

1 paragraph to read:

2 The Commissioner of Human Services, in
3 consultation with the Commissioner of Corrections, the
4 Commissioner of Public Safety, the Secretary of State,
5 the Commissioner of Mental Health and Mental
6 Retardation, and at least one representative from a
7 community-based service provider resource and at least
8 one consumer representative, both to be appointed by
9 the Governor, shall formulate standards for the
10 certification of community-based service providers
11 pursuant to this section.

12 Sec. 4. 22 MRSA §7205-A is enacted to read:

13 §7205-A. Immunity

14 Notwithstanding any other provision of law, no
15 community-based service provider that provides
16 services under this chapter may be held liable for
17 damages, unless the damages are the direct result of
18 the gross negligence, recklessness or intentional
19 misconduct of the provider, which allegedly result
20 from:

21 1. Negative findings. Negative findings by that
22 provider at the time of evaluation; or

23 2. Completion of treatment. A determination by
24 the provider that treatment has been completed.

25 Sec. 5. 22 MRSA §7206, sub-§2, ¶C is enacted to
26 read:

27 C. The department may waive all or part of the
28 fee for clients who provide sufficient evidence of
29 inability to pay.

30 Sec. 6. 29 MRSA §1312-B, sub-§2, ¶B-1 is enacted
31 to read:

32 B-1. In addition to the penalties provided under
33 paragraphs A and B, the court may:

34 (1) Order the defendants to participate in

1 the appropriate alcohol and other drug
2 education, evaluation and treatment program
3 for first offenders administered by the
4 Department of Human Services, as defined in
5 Title 22, section 7203, subsections 1 and 2;
6 or

7 (2) Order defendants with a blood-alcohol
8 level of 0.2% or greater to participate in
9 the alcohol and other drug education,
10 evaluation and treatment program for multiple
11 offenders administered by the Department of
12 Human Services, as defined in Title 22,
13 section 7203, subsection 3.

14 **Sec. 7.** 29 MRSA §1312-B, sub-§2, ¶¶A, B and C,
15 as repealed and replaced by PL 1985, c. 412, §4, are
16 amended to read:

17 A. Except as provided in paragraph B, in the case
18 of a person having no previous convictions of a
19 violation of former section 1312, subsection 10,
20 former section 1312-B or this section and having
21 no previous suspension of license or privilege to
22 operate for failure to comply with the duty to
23 submit to and complete a test to determine the
24 level of blood-alcohol under section 1312 within a
25 6-year period, the fine shall not be less than
26 \$300 §350 and the court shall suspend the
27 defendant's license or permit to operate, right to
28 operate a motor vehicle and right to apply for and
29 obtain a license for a period of 90 days, which
30 penalties may not be suspended.

31 B. In the case of a person having no previous
32 convictions of a violation of former section 1312,
33 subsection 10, former section 1312-B, or this
34 section and having no previous suspension of
35 license or privilege to operate for failure to
36 comply with the duty to submit to and complete a
37 test to determine the level of blood-alcohol under
38 section 1312 within a 6-year period, the fine
39 shall not be less than \$300 §350, the sentence
40 shall include a period of incarceration of not
41 less than 48 hours and the court shall suspend the

1 defendant's license or permit to operate, right to
2 operate a motor vehicle and right to apply for and
3 obtain a license for a period of 90 days, which
4 penalties may not be suspended, when the person:

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

7 (2) Was driving in excess of the speed limit
8 by 30 miles an hour or more during the
9 operation which resulted in the prosecution
10 for operating under the influence or with a
11 blood-alcohol level of 0.10% or more; or

12 (3) Eluded or attempted to elude an officer,
13 as defined in section 2501-A, subsection 3,
14 during the operation which resulted in
15 prosecution for operating under the influence
16 or with a blood-alcohol level of 0.10% or
17 more.

18 C. In the case of a person having one previous
19 conviction of a violation of former section 1312,
20 subsection 10, former section 1312-B or this
21 section, or having at least one previous
22 suspension for failure to comply with the duty to
23 submit to and complete a test to determine the
24 level of blood-alcohol under section 1312 within a
25 6-year period, the fine shall not be less than
26 ~~\$500~~ \$700, the sentence shall include a period of
27 incarceration of not less than 7 days and the
28 court shall suspend the defendant's license or
29 permit to operate, right to operate a motor
30 vehicle and right to apply for and obtain a
31 license for a period of one year, which penalties
32 may not be suspended.

33 **Sec. 8.** 29 MRSa §1312-B, sub-§2, ¶D, as enacted
34 by PL 1985, c. 412, §4, is amended to read:

35 D. In the case of a person having 2 or more
36 previous convictions of violations of former
37 section 1312, subsection 10, former section 1312-B
38 or this section, within a 6-year period, the fine
39 shall not be less than ~~\$750~~ \$950, the sentence

1 shall include a period of incarceration of not
2 less than 30 days and the court shall suspend the
3 defendant's license or permit to operate, right to
4 operate a motor vehicle and right to apply for and
5 obtain a license for a period of 2 years, which
6 penalties may not be suspended.

7 Sec. 9. 29 MRSA §1312-B, sub-§2, ¶D-1, as
8 enacted by PL 1987, c. 536, §§4 and 11, is repealed
9 and the following enacted in its place:

10 D-1. In addition to the penalties provided under
11 paragraphs C and D, the court shall place the
12 defendant on probation.

13 (1) A condition of probation shall be
14 participation in and completion of, to the
15 satisfaction of the Division of Probation and
16 Parole, the alcohol and other drug education,
17 evaluation and treatment program for multiple
18 offenders administered by the Department of
19 Human Services, as defined in Title 22,
20 section 7203, subsection 3, paragraphs A and
21 B.

22 (2) The court may waive participation in the
23 multiple offender intervention program under
24 Title 22, section 7203, subsection 3,
25 paragraph A if the court finds that the
26 defendant has completed an appropriate
27 alcohol or substance abuse treatment program
28 subsequent to the date of the offense.

29 (3) Nothing in the laws may be construed to
30 prohibit the commencement of treatment
31 required pursuant to this section while the
32 defendant is incarcerated under a sentence
33 imposed pursuant to this section.

34 Sec. 10. 29 MRSA §1312-B, sub-§3-A is enacted to
35 read:

36 3-A. Instructions at time of sentencing. At the
37 time a defendant is sentenced pursuant to this
38 section, the presiding judge or justice shall provide

1 the defendant with the following written information:

2 A. A thorough explanation of the education,
3 assessment, evaluation and treatment components of
4 the alcohol and other drug education evaluation
5 and treatment program set forth in Title 22,
6 section 7203 and the requirements each component
7 places on the defendant;

8 B. A thorough explanation of the separation
9 between the alcohol and other drug education,
10 evaluation and treatment program itself and the
11 community-based service providers that participate
12 in the alcohol and other drug education,
13 evaluation and treatment system; and

14 C. A thorough explanation of the laws governing
15 issuance and revocation of provisional and
16 restricted drivers' licenses pursuant to section
17 1312-D. In particular, the presiding judge or
18 justice shall clearly explain to the defendant
19 that authority for the restoration of drivers'
20 licenses rests with the Secretary of State.

21 **Sec. 11.** 29 MRSA §1312-D, sub-§10, as enacted by
22 PL 1987, c. 536, §§7 and 11, is repealed and the
23 following enacted in its place:

24 10. Work-restricted license. The Secretary of
25 State, based on the criteria established pursuant to
26 subsection 11 and to the extent not in conflict with
27 federal law or federal grant criteria for highway
28 safety programs, may stay the suspension of a license
29 or right to operate a motor vehicle that has been
30 suspended under section 1312-B, subsection 2,
31 paragraph A or B during the statutory period and issue
32 a work-restricted license, subject to whatever
33 conditions, restrictions or terms the Secretary of
34 State deems advisable. Any restricted license issued
35 under this subsection shall be restricted to use for
36 travel to and from employment.

37 No work-restricted licenses may be granted to persons
38 previously convicted of alcohol-related motor vehicle
39 offenses.

1 Sec. 12. 29 MRSA §1312-D, sub-§11 is enacted to
2 read:

3 11. Standards. The Secretary of State, in
4 consultation with the Maine Council on Alcohol and
5 Drug Abuse Prevention and Treatment, shall formulate
6 standards to guide decisions concerning the issuance
7 and revocation of provisional and restricted licenses
8 pursuant to this section.

9 Sec. 13. PL 1987, c. 536, §11 is repealed.

10 Sec. 14. Appropriation. The following funds are
11 appropriated from the General Fund to carry out the
12 purposes of this Act.

13		<u>1988-89</u>
14	<u>CORRECTIONS,</u>	
15	<u>DEPARTMENT OF</u>	
16	Division of Probation and Parole	
17	Positions	(24)
18	Personal Services	\$588,125
19	All Other	63,900
20	Capital Expenditures	20,000
21		
22	Total	<u>\$672,025</u>

23 Provides funds for 20
24 probation officers,
25 one district
26 supervisor and 3
27 Clerk-Typist II
28 positions to handle an
29 estimated 1400
30 multiple
31 operating-under-the-
32 influence offenders on
33 probation.

34 Emergency clause. In view of the emergency
35 cited in the preamble, this Act shall take effect when
36 approved.

1 STATEMENT OF FACT

2 The purpose of this bill is to improve the system
3 for the management and delivery of services to
4 convicted operating-under-the-influence offenders.

5 Sections 1 to 5 amend the Maine Revised Statutes,
6 Title 22, chapter 1602, the portion that governs
7 Driver Education Evaluation Programs. Sections 1 and
8 2 clarify and apply the definition of community-based
9 service provider.

10 Section 3 requires cooperation among the
11 departments involved in administration of substance
12 abuse programs and with designated members of the
13 public and the provider community in formulating
14 standards for the certification of community-based
15 service providers.

16 Section 4 provides community-based service
17 providers with immunity from liability for damages
18 allegedly resulting from their recommendations
19 regarding the need for or the termination of treatment.

20 Section 5 authorizes a fee waiver for indigent
21 participants in the weekend program for multiple
22 offenders. Under current law, a waiver is available
23 only for participants in the program for first
24 offenders.

25 Sections 6 to 12 amend the portions of Title 29
26 governing penalties for operating-under-the-influence
27 and provisional and restricted drivers' licenses.
28 Section 6 recommends that the courts require first
29 offenders to participate in the Driver Education and
30 Evaluation Program and authorizes the courts to
31 require participation by first offenders with a
32 blood-alcohol level of 0.2% or more in the weekend
33 intervention program currently available only to
34 multiple offenders.

35 Sections 7 and 8 add additional funds to the

1 General Fund by raising the mandatory minimum fines
2 for operating under the influence.

3 Section 9 requires mandatory probation for
4 multiple offenders with satisfactory completion of
5 treatment as a condition of probation.

6 The purpose of section 10 is to make it clear to
7 persons convicted of operating under the influence the
8 process they have to go through to complete the Driver
9 Education and Evaluation Program process; the
10 difference between the Driver Education and Evaluation
11 Program itself and the community-based agencies that
12 provide services to the Driver Education and
13 Evaluation Program system; and the process they have
14 to go through to get their drivers' licenses back.

15 Section 11 makes it clear that authority to issue
16 work-restricted licenses rests with the Secretary of
17 State. It also prohibits the issuance of
18 work-restricted licenses to persons previously
19 convicted of an alcohol-related motor vehicle offense.

20 Section 12 requires the Secretary of State to
21 consult with the Maine Council on Alcohol and Drug
22 Abuse Prevention and Treatment in formulating
23 standards for the issuance and revocation of
24 provisional and restricted licenses.

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