

MAINE STATE LEGISLATURE

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L.D. 1167

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DATE: 6/19/95

(Filing No. H-543)

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CRIMINAL JUSTICE

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION**

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COMMITTEE AMENDMENT "A" to H.P. 836, L.D. 1167, Bill, "An
Act to Amend the Operating-under-the-influence Laws"

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

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Sec. 1. 29-A MRSA §105, sub-§1, as enacted by PL 1993, c.
683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

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1. Authority to stop motor vehicle. If a law enforcement
officer has ~~probable-cause~~ reasonable and articulable suspicion
to believe that a violation of law has taken or is taking place,
that officer, if the officer is in uniform, may stop a motor
vehicle for the purpose of:

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- A. Arresting the operator for a criminal violation;
- B. Issuing the appropriate written process for a criminal
or civil violation or a traffic infraction; or
- C. Questioning the operator or occupants.

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Sec. 2. 29-A MRSA §1603, sub-§2, as enacted by PL 1993, c.
683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

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**2. Suspension of license or registration following OUI
convictions.** On receipt of an attested copy of the court record
of an OUI conviction when the person has been previously

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COMMITTEE AMENDMENT

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2 convicted within a 6-year 10-year period of OUI, the Secretary of
3 State may not reinstate the person's license until the person
4 gives proof of financial responsibility. The period of
5 suspension under this subsection may not be less than the
6 original period of suspension imposed for the conviction.

7 **Sec. 3. 29-A MRSA §2401, sub-§3,** as enacted by PL 1993, c.
8 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

10 **3. Chemical test or test.** "Chemical test" or "test" means
11 a test or tests used to determine blood-alcohol level or drug
12 concentration by analysis of blood, breath or urine.

14 **Sec. 4. 29-A MRSA §2401, sub-§5,** as enacted by PL 1993, c.
15 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

16 **5. Failure to submit to a test, fails to submit to a test**
17 **or failed to submit to a test.** "Failure to submit to a test,"
18 "fails to submit to a test" or "failed to submit to a test" means
19 failure to comply with the duty to submit to and complete a
20 chemical testing test under section 2521 or 2525.

22 **Sec. 5. 29-A MRSA §2401, sub-§5-A** is enacted to read:

24 **5-A. Ignition interlock device.** "Ignition interlock
25 device" means a device that connects a breath analyzer to a motor
26 vehicle's ignition system. The analyzer monitors the
27 concentration of alcohol in the breath of any person who attempts
28 to start the motor vehicle by using the ignition system. The
29 device prevents the vehicle from starting unless the person
30 provides a breath sample with a concentration of alcohol that is
31 below a preset level.

34 **Sec. 6. 29-A MRSA §2402,** as enacted by PL 1993, c. 683, Pt.
35 A, §2 and affected by Pt. B, §5, is amended to read:

36 **§2402. Calculating prior convictions**

38 For purposes of this chapter, a prior conviction or action
39 has occurred within the 6-year 10-year period if the date of the
40 action or the date of the docket entry of conviction is 6 10
41 years or less from the date of the new conduct.

44 **Sec. 7. 29-A MRSA §2411, sub-§1,** as enacted by PL 1993, c.
45 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

46 **1. Offense.** A person commits OUI, which is a Class D crime
47 unless otherwise provided, if that person operates a motor
48 vehicle:

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A. While under the influence of intoxicants; or

B. While having a blood-alcohol level of 0.08% or more.

Sec. 8. 29-A MRSA §2411, sub-§5, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is repealed and the following enacted in its place:

5. Penalties. The following minimum penalties apply and may not be suspended:

A. For a person having no previous OUI offenses within a 10-year period:

(1) A fine of not less than \$400, except that if the person failed to submit to a test, a fine of not less than \$500;

(2) A court-ordered suspension of a driver's license for a period of 90 days; and

(3) A period of incarceration as follows:

(a) Not less than 48 hours when the person:

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

(ii) Was exceeding the speed limit by 30 miles per hour or more;

(iii) Eluded or attempted to elude an officer; or

(iv) Was operating with a passenger under 16 years of age; and

(b) Not less than 96 hours when the person failed to submit to a test at the request of a law enforcement officer;

B. For a person having one previous OUI offense within a 10-year period:

(1) A fine of not less than \$600, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than \$800;

(2) A period of incarceration of not less than 7 days, except that if the person failed to submit to a test at

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COMMITTEE AMENDMENT "A" to H.P. 836, L.D. 1167

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the request of a law enforcement officer, a period of incarceration of not less than 12 days;

(3) A court-ordered suspension of a driver's license for a period of 18 months; and

(4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor vehicle;

C. For a person having 2 previous OUI offenses within a 10-year period:

(1) A fine of not less than \$1,000, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than \$1,300;

(2) A period of incarceration of not less than 30 days, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 40 days;

(3) A court-ordered suspension of a driver's license for a period of 4 years; and

(4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor vehicle;

D. For a person having 3 or more OUI offenses within a 10-year period, which is a Class C crime:

(1) A fine of not less than \$2,000, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than \$2,400;

(2) A period of incarceration of not less than 6 months, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 6 months and 20 days;

(3) A court-ordered suspension of a driver's license for a period of 6 years; and

(4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor vehicle; and

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COMMITTEE AMENDMENT "A" to H.P. 836, L.D. 1167

2 E. If a law enforcement officer failed to provide the
3 warnings required by section 2521, subsection 3, the
4 increase in minimum penalties required because of a refusal
5 to submit to a test is not mandatory.

6 F. For a person sentenced under paragraph B, C or D, the
7 court shall order the defendant to participate in the
8 alcohol and drug program for multiple offenders. The court
9 may waive the multiple offender intervention program under
10 Title 5, section 20073, subsections 4 and 5, if the court
11 finds that the defendant has completed a residential alcohol
12 or drug treatment program, or its equivalent, subsequent to
13 the date of the offense.

14 **Sec. 9. 29-A MRSA §2411, sub-§5-A and 5-B are enacted to read:**

15 **5-A. Notice and custody.** The court shall give notice of a
16 license suspension and shall take physical custody of the
17 driver's license.

18 **5-B. Additional period of suspension.** The Secretary of
19 State may impose an additional period of suspension under section
20 2451, subsection 3 or may extend a period of suspension until
21 satisfaction of any conditions imposed pursuant to chapter 23,
22 subchapter III, article 4.

23 **Sec. 10. 29-A MRSA §2411, sub-§6, as amended by PL 1995, c.**
24 **65, Pt. A, §115 and affected by Pt. A, §153 and Pt. C, §15, is**
25 **further amended to read:**

26 **6. Aggravated punishment category.** If the State pleads and
27 proves that the operator, while operating a motor vehicle in
28 violation of this section, in fact caused serious bodily injury
29 as defined in Title 17-A, section 2, subsection 23 to another
30 person or in fact caused the death of another person, the offense
31 is a Class C crime. ~~The--minimum--penalties--specified--in~~
32 ~~subsection-5-apply,-but-the-minimum-period-of-suspension-must-be~~
33 ~~18-months-unless-a-longer-minimum-period-applies.~~ The sentence
34 must include a period of incarceration of not less than 6 months,
35 a fine of not less than \$2,000 and a court-ordered suspension of
36 a driver's license for a period of 6 years. These penalties may
37 not be suspended.

38 **Sec. 11. 29-A MRSA §2412, as amended by PL 1995, c. 65, Pt.**
39 **A, §116 and affected by Pt. A, §153 and Pt. C, §15, is repealed.**

40 **Sec. 12. 29-A MRSA §2412-A is enacted to read:**

41 **§2412-A. Operating while license suspended or revoked**

2 1. Offense; penalty. A person commits a Class E offense if
3 that person operates a motor vehicle on a public way or in a
4 parking area when that person's license has been suspended or
5 revoked, and that person:

6 A. Has received written notice of a suspension or
7 revocation from the Secretary of State;

8 B. Has been orally informed of the suspension or revocation
9 by a law enforcement officer;

10 C. Has actual knowledge of the suspension or revocation;

11 D. Has been sent written notice in accordance with section
12 2482 or former Title 29, section 2241, subsection 4; or

13 E. Has failed to answer or to appear in court pursuant to a
14 notice or order specified in section 2605 or 2608.

15 2. Exception. This section does not apply to a person
16 whose license has been revoked under the laws in subchapter V
17 governing habitual offenders.

18 3. Minimum mandatory sentences for certain suspension. If
19 the suspension was for OUI, the court shall impose a minimum fine
20 of \$500, a term of imprisonment of 7 consecutive days and a
21 suspension of license of not less than one year nor more than 3
22 years consecutive to the original suspension. The penalties may
23 not be suspended.

24 A. If the person has a prior conviction for violating this
25 section within a 10-year period and was subject to the
26 minimum mandatory sentences, then the following minimum
27 penalties, which may not be suspended by the court, apply in
28 the event the suspension was for OUI:

29 (1) A minimum fine of \$1,000, a term of imprisonment
30 of 30 consecutive days and a suspension of license for
31 not less than one year nor more than 3 years
32 consecutive to the original suspension in the event of
33 one prior conviction;

34 (2) A minimum fine of \$2,000, a term of imprisonment
35 of 60 consecutive days and a suspension of license for
36 not less than one year nor more than 3 years
37 consecutive to the original suspension in the event of
38 2 prior convictions; or

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(3) A minimum fine of \$3,000, a term of imprisonment of 6 months and a suspension of license for not less than one year nor more than 3 years consecutive to the original suspension in the event of 3 or more prior convictions. The sentencing class for this offense is a Class C crime.

B. For all other suspensions, the minimum fine is \$200, which may not be suspended by the court if the person has a prior conviction for violating this section within a 10-year period.

A separate reading of the allegation and a separate trial as required by Title 15, section 757 do not apply to a proceeding under this subsection.

4. Suspension of license. The following provisions apply when a person's license is required to be suspended under this section.

A. The court shall give notice of the suspension and shall take physical custody of an operator's license or permit as provided in section 2434.

B. If the court fails to impose a suspension as provided in subsection 3, the Secretary of State shall impose the minimum one-year suspension.

C. The minimum mandatory sentences of subsection 3 apply only to the original period of suspension imposed by the court or the Secretary of State or as extended by the Secretary of State. The minimum mandatory sentences of subsection 3 do not apply to any extension of the original suspension imposed to compel a person's compliance with conditions for the restoration of a license or for failure to pay a reinstatement fee for a license.

5. Prior convictions. For purposes of this section, a prior conviction or suspension has occurred within a 10-year period if the date of the suspension or the docket entry of a judgment of conviction by the clerk is 10 years or less from the date of the new conduct that is penalized or for which the new penalty may be enhanced.

6. Ignition interlock device. As a condition of license reinstatement the Secretary of State may, pursuant to section 2507, require a person subject to the minimum mandatory sentencing provisions of subsection 3 to install in the motor vehicle the person operates, for a period of up to 2 years, an ignition interlock device approved by the Secretary of State.

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Sec. 13. 29-A MRSA §2416, sub-§1, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

1. Required registration suspension; return of certificate and plates. The court shall suspend the right to register a motor vehicle and all registration certificates and plates issued by the Secretary of State to any person convicted for a violation of section 2411 who has a previous conviction for OUI within the 6-year 10-year period defined by section 2402. The Secretary of State shall return the certificate of registration and plates to the defendant when the defendant's license and registration privileges have been restored.

Sec. 14. 29-A MRSA §2422 is enacted to read:

§2422. Impoundment of motor vehicles for OUI

A motor vehicle that is used by a person arrested for a violation of section 2411 may be seized and held in secure storage by the seizing agency or at the direction of the arresting law enforcement officer. The motor vehicle may be released after at least an 8-hour period and payment of any towing and storage fees.

Sec. 15. 29-A MRSA §2431, sub-§3, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

3. Failure as evidence. Failure of a person to submit to a chemical test is admissible in evidence on the issue of whether that person was under the influence of intoxicants.

If the law enforcement officer fails to give either--of the required warnings, the failure of the person to submit to a chemical test is not admissible, except where when a test was required under section 2522.

If a failure to submit to a chemical test is not admitted into evidence, the court may inform the jury that no test result is available.

If a test result is not available for a reason other than failing to submit to a chemical test, the unavailability and the reason is admissible in evidence.

Sec. 16. 29-A MRSA §2451, sub-§2, as repealed and replaced by PL 1995, c. 65, Pt. B, §22 and affected by Pt. A, §153 and Pt. C, §15, is repealed.

Revised

2 **Sec. 17. 29-A MRSA §2451, sub-§3**, as enacted by PL 1993, c.
3 683, Pt. A, §2 and affected by Pt. B, §5, is repealed and the
4 following enacted in its place:

5 **3. Suspension period.** Unless a longer period of suspension
6 is otherwise provided by law and imposed by the court, the
7 Secretary of State shall suspend the license of a person
8 convicted of OUI for the following minimum periods:

9 A. Ninety days, if the person has one OUI conviction within
10 a 10-year period;

11 B. Eighteen months, if the person has 2 OUI offenses within
12 a 10-year period;

13 C. Four years, if the person has 3 OUI offenses within a
14 10-year period; or

15 D. Six years, if the person has 4 or more OUI offenses
16 within a 10-year period.

17 For the purposes of this subsection, a conviction or suspension
18 has occurred within a 10-year period if the date of the new
19 conduct is within 10 years of a date of suspension or a docket
20 entry of judgment of conviction.

21 **Sec. 18. 29-A MRSA §2452, sub-§3**, as enacted by PL 1993, c.
22 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

23 **3. Suspend for at least 6 years.** Suspend for a period of
24 at least 6 years the school bus operator endorsement of any
25 person convicted of a 2nd or subsequent OUI violation within a
26 6-year 10-year period as defined by section 2402.

27 **Sec. 19. 29-A MRSA §2454**, as enacted by PL 1993, c. 683, Pt.
28 A, §2 and affected by Pt. B, §5, is repealed and the following
29 enacted in its place:

30 **§2454. Homicide; revocation of license**

31 **1. Minimum revocation.** Subject to the longer period of
32 revocation provided in subsection 2, the license of any person
33 who, as a result of the operation of a motor vehicle in such a
34 manner as to cause the death of any person, is convicted of
35 criminal homicide or an attempt of criminal homicide, or who is
36 adjudicated to have committed a juvenile offense of criminal
37 homicide or an attempt of criminal homicide, must be revoked
38 immediately by the Secretary of State upon receipt of an attested
39 copy of the court records, without further hearing, for a period
40 of at least 5 years.

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2 2. While under influence of alcohol or drugs. The license
4 of any person who, as a result of the operation of a motor
6 vehicle in such a manner as to cause the death of any person, is
8 convicted of criminal homicide or an attempt of criminal
10 homicide, or who is adjudicated to have committed a juvenile
12 offense of criminal homicide or an attempt of criminal homicide,
 must be permanently revoked immediately by the Secretary of State
 upon receipt of an attested copy of the court records, without
 further hearing, if the report by the district attorney pursuant
 to section 2455 shows the person was under the influence of
 intoxicants at the time of the offense.

14 3. Appeal. Unless the court orders otherwise, a person's
16 license that is revoked pursuant to this section remains revoked
 during the course of any appeal.

18 4. Pleas. For the purposes of this section and section
20 2411, a person is deemed to have been convicted of criminal
22 homicide or an attempt of criminal homicide if the person pleaded
24 guilty or nolo contendere or was otherwise adjudged or found
26 guilty by a court of competent jurisdiction or, in the case of a
 juvenile offender, the juvenile is deemed to have been
 adjudicated of having committed a juvenile offense of criminal
 homicide or an attempt of criminal homicide if the juvenile
 admits or was otherwise adjudged or found to have committed the
 juvenile offense by a court of competent jurisdiction.

28 5. Petition for license reinstatement. A person whose
30 license is permanently revoked under subsection 2 may petition
32 the Secretary of State for relicensure 10 years after the date
34 the person is no longer incarcerated. The Secretary of State
36 shall make the person's petition for relicensure known to the
 family of any victims of the person's offense and shall consider
 the family's testimony in determining whether to reissue the
 person a driver's license.

38 6. Conviction following license reinstatement. The license
40 of a person whose license is reinstated pursuant to subsection 5
42 who is subsequently convicted for the offense defined in section
 2411 must be revoked permanently by the Secretary of State and
 the Secretary of State may not relicense that person.

44 **Sec. 20. 29-A MRSA §2457, sub-§1, ¶B,** as enacted by PL 1993,
46 c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

48 B. The ~~As~~ Secretary of State determines, has operated a
 motor vehicle while having a ~~blood-alcohol-level-of-0.05%~~ ex-
 ~~ceed~~ ceeded any amount of alcohol in the blood.

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2 **Sec. 21. 29-A MRSA §2457, sub-§2**, as enacted by PL 1993, c.
683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

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6 **2. Duty to submit to test.** A person who operates a motor
vehicle with a conditional license shall submit to a test if
8 there is probable cause to believe that person holds a
conditional license and operated a motor vehicle ~~while having a~~
10 ~~blood alcohol level of 0.05% or more~~ with any amount of alcohol
in the blood. The other provisions of subchapter IV apply,
12 except the suspension must be for a period of not less than 2
years.

14 **Sec. 22. 29-A MRSA §2457, sub-§4, ¶¶A and B**, as enacted by PL
1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, are amended to
16 read:

18 **A.** The person operated a motor vehicle ~~while having 0.05%~~
~~or more by weight~~ with any amount of alcohol in the blood;

20 **B.** There was probable cause to believe that the person was
22 operating ~~while having 0.05% or more by weight~~ with any
amount of alcohol in the blood; and

24 **Sec. 23. 29-A MRSA §2487**, as enacted by PL 1993, c. 683, Pt.
26 A, §2 and affected by Pt. B, §5, is amended to read:

28 **§2487. Proof of financial responsibility**

30 A person with an OUI conviction within the ~~6-year~~ 10-year
32 period as defined by section 2402, may not have a license
reinstated until that person has complied with the financial
responsibility provisions of section 1605.

34 **Sec. 24. 29-A MRSA §2501, sub-§3**, as enacted by PL 1993, c.
36 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

38 **3. Failure to submit to test.** The Secretary of State may
40 issue a restricted license to a person whose license was
suspended for a first failure to submit to a test, if the
42 condition of subsection 1, paragraph B is met and at least 90 180
days have elapsed since the date of suspension. This subsection
44 does not apply to a commercial driver's license, provisional
license or conditional license.

46 **Sec. 25. 29-A MRSA §2503, sub-§1, ¶C**, as enacted by PL 1993,
c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

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C. The petitioner has not, within 6 10 years, been under suspension for an OUI offense or pursuant to section 2453.

Sec. 26. 29-A MRSA §2506, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

§2506. Conditional license

A license issued by the Secretary of State to a person with an OUI conviction must be issued on the condition that the person not operate a motor vehicle after having consumed intoxicating liquor for the following periods from the license reinstatement date: on first conviction, one year; and on a 2nd or subsequent conviction, 6 10 years. The provisions of section 2457 apply.

Sec. 27. 29-A MRSA §2507 is enacted to read:

§2507. Ignition interlock device

1. Installation of ignition interlock device. The Secretary of State may reinstate the license of a person convicted of more than one violation of section 2411 prior to the expiration of the total period of suspension if the person satisfies all other conditions for license reinstatement and installs an ignition interlock device approved by the Secretary of State in the motor vehicle the person operates under the following conditions.

A. A 2nd-time offender's license may be reinstated after one year if the person installs, for a period of 6 months, an ignition interlock device approved by the Secretary of State in the motor vehicle the person operates.

B. A 3rd-time offender's license may be reinstated after 2 years if the person installs, for a period of 2 years, an ignition interlock device approved by the Secretary of State in the motor vehicle the person operates.

C. A 4th-time or subsequent offender's license may be reinstated after 4 years if the person installs, for a period of 4 years, an ignition interlock device approved by the Secretary of State in the motor vehicle the person operates.

2. Restrictions on offender. A person whose license is reinstated pursuant to section 2412-A, subsection 6 or this section may not:

A. Operate a motor vehicle without an ignition interlock device;

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B. Request or solicit another person to blow into or otherwise activate an ignition interlock device for the purpose of providing the person with an operable motor vehicle; or

C. Tamper with or circumvent the operation of an ignition interlock device.

3. Other restrictions. A person may not:

A. Rent, lease or lend a motor vehicle without an ignition interlock device to another person the person knows or should know is restricted to the operation of a motor vehicle with an ignition interlock device;

B. Blow into or otherwise activate an ignition interlock device for the purpose of providing a person restricted to the operation of a motor vehicle with an ignition interlock device with an operable motor vehicle; or

C. Tamper with or circumvent the operation of an ignition interlock device.

4. Penalty. Notwithstanding section 1251, a violation of this section is a traffic infraction. The Secretary of State shall suspend the license of any person reinstated pursuant to section 2412-A, subsection 6 or this section who is adjudicated of the traffic infraction described in this section or whom the Secretary of State determines has violated any condition or restriction of license reinstatement. The periods of license suspension are as follows:

A. For a person reinstated pursuant to section 2412-A, subsection 6, suspension is 6 months; and

B. For a person reinstated pursuant to this section, suspension is 6 months for a 2nd-time OUI offender, 2 years for a 3rd-time OUI offender and 4 years for a 4th-time OUI offender.

A person whose license is suspended pursuant to this section is not entitled to the issuance of any type of license until the suspension period has expired.

Sec. 28. 29-A MRSA §2521, sub-§3, ¶¶A and B, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, are amended to read:

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A. Result in suspension of that person's driver's license for a period up to 3 6 years; and

B. Be admissible in evidence at a trial for operating under the influence of intoxicants; and

Sec. 29. 29-A MRSA §2521, sub-§3, ¶C is enacted to read:

C. Be considered an aggravating factor at sentencing if the person is convicted of operating under the influence of intoxicants that, in addition to other penalties, will subject the person to a mandatory minimum period of incarceration.

Sec. 30. 29-A MRSA §2521, sub-§6, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

6. **Period of suspension.** Except where when a longer period of suspension is otherwise provided by law, the suspension is for a period of 180 days for the first refusal ~~and one year for each subsequent refusal~~, 18 months for a 2nd refusal, 4 years for a 3rd refusal and 6 years for a 4th refusal.

Sec. 31. 29-A MRSA §2521, sub-§7, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

7. **Decision.** A suspension must be removed if, after hearing pursuant to section 2483, it is determined that the person would not have failed to submit but for the failure of the law enforcement officer to give ~~either of~~ the warnings required by subsection 3.

Sec. 32. 29-A MRSA §2551, sub-§1, ¶D, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

D. Operating after suspension, in violation of section 2412 ~~2412-A;~~

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

	1995-96	1996-97
REVENUES		
General Fund	\$300,000	\$400,000

COMMITTEE AMENDMENT

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2 This bill increases minimum mandatory incarceration periods
3 affecting both the state correctional facilities and the county
4 jail system and may also increase prosecutions for Class C and
5 Class D crimes.

6 Sentences of more than 12 months imposed for Class C crimes
7 must be served in a state correctional institution. The cost to
8 the State per sentence is \$48,584 based upon an average length of
9 stay of one year and 9 months. The State also must reimburse
10 counties for sentences served in county jails of 12 months or
11 less for Class C crimes.

12 If a jail sentence is imposed for violation of a Class D
13 crime, the additional costs to the counties are estimated to be
14 \$83.22 per day per prisoner. These costs are not reimbursed by
15 the State. The number of prosecutions that may result in a jail
16 sentence and the resulting costs to the county jail system are
17 expected to be insignificant.

18 The Judicial Department may require additional General Fund
19 appropriations to cover increased indigent defense costs related
20 to those cases affected by the higher minimum mandatory
21 incarceration periods and those additional cases affected by the
22 consideration of prior convictions. The amounts can not be
23 estimated at this time.

24 The collection of additional fines as a result of the
25 increases in the mandatory minimum fines will increase General
26 Fund revenue by an estimated \$300,000 in fiscal year 1995-96 and
27 \$400,000 in fiscal year 1996-97. The additional fines will also
28 result in additional dedicated revenue to the Government
29 Operations Surcharge Fund from surcharges imposed on fines and
30 additional transfers to General Fund undedicated revenue. The
31 effect on the budgeted amounts in the Government Operations
32 Surcharge Fund and the transfers to the General Fund can not be
33 estimated at this time.

34 The additional costs to administer these changes to the OUI
35 laws, including the approval of the use of ignition interlock
36 devices, can be absorbed by the Bureau of Motor Vehicles within
37 the Department of the Secretary of State utilizing existing
38 budgeted resources.

39 This bill may also result in net reductions of Highway Fund
40 revenue from license reinstatement fees. The amounts are not
41 expected to be significant.'

R. W. S.

STATEMENT OF FACT

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This amendment replaces the bill. It replaces the term "probable cause" with "reasonable and articulable suspicion" as the standard for when a law enforcement officer may stop a motor vehicle.

This amendment changes the definition of "chemical test" to mean one or more tests to determine blood-alcohol level or drug concentration by analysis of blood, breath or urine.

This amendment clarifies that a person must submit to a chemical test or tests to determine blood-alcohol level and drug concentration if a law enforcement officer has probable cause to believe the person operated a motor vehicle while under the influence of intoxicants. The license of a person who fails to submit to a test or tests to determine blood-alcohol level or drug concentration must be suspended by the Secretary of State.

It eliminates the provision that as a mandatory condition of bail a person arrested for operating under the influence may not be released until the person is no longer under the influence of alcohol or drugs or until a 3rd party who is not under the influence of alcohol or drugs agrees to take responsibility for that person.

The amendment changes the time period used to calculate first and subsequent OUI offenses from 6 years to 10 years.

The amendment eliminates the provisions that changed the implied consent warnings and classified a refusal to submit to a test as a crime.

The amendment increases the penalties for persons who refuse to submit to a test and for offenders of the operating-under-the-influence laws and establishes new provisions that increase the criminal penalties for persons who drive after their licenses have been suspended for operating under the influence.

The amendment allows for the impoundment of a motor vehicle of a person arrested for OUI for at least 8 hours and until all towing and storage charges have been paid.

The amendment makes actions on administrative license suspension taken by the Secretary of State consistent with the enhanced criminal penalty provisions of the bill relating to OUIs.

The amendment requires the Secretary of State to revoke permanently the license of any person convicted of homicide using

2 a vehicle if the person was under the influence of liquor or
3 drugs at the time of the offense, grants the Secretary of State
4 discretionary authority to relicense a person whose license has
5 been permanently revoked 10 years after the person is no longer
6 incarcerated and requires the Secretary of State to revoke the
7 license permanently if a person subsequently relicensed is
8 convicted of another OUI offense.

9
10 The amendment subjects conditional and provisional license
11 holders to administrative license suspension for operating a
12 motor vehicle with any amount of alcohol in the blood.

13
14 The amendment grants the Secretary of State discretionary
15 authority to reinstate the license of a repeat offender of
16 operating under the influence prior to the expiration of the
17 total period of license suspension if the offender installs an
18 approved ignition interlock device in the motor vehicle the
19 offender operates.

20 This amendment changes the implied consent law to require
21 law enforcement officers to inform persons for whom the officers
22 have probable cause to believe have operated a motor vehicle
23 while under the influence of intoxicants that a refusal to comply
24 with the duty to submit to a chemical test or tests will be
25 considered an aggravating factor at sentencing and will subject
26 the person to, in addition to other penalties, a mandatory
27 minimum period of incarceration. This amendment is intended to
28 comply with the requirements of the United States Court of
29 Appeals for the First Circuit's decision in Alan D. Roberts v.
30 State of Maine, No. 93-2392.

31
32 The amendment also adds a fiscal note to the bill.

33
34 The Department of Corrections has prepared the following
35 correctional impact statement of the original bill pursuant to
36 the Maine Revised Statutes, Title 34-A, section 1402: "L.D. 1167,
37 An Act to Amend the Operating-under-the-influence Laws, would
38 expand the use of existing Class C and Class D penalties and
39 increase minimum mandatory incarceration from 30 days to 6 months
40 in the case of a 3rd-time offender or in cases where the offender
41 caused the death of another person. In addition, L.D. 1167
42 proposes 30-day, 60-day and 6-month minimum mandatory consecutive
43 sentences pursuant to section 9 of this bill.

44
45 Sentences imposed for Class C offenses involving
46 incarceration of more than 9 months must be served in a state
47 correctional facility. Looking at sentences served for Class C
48 offenses, the average length of stay was found to be about one
49 year and 9 months. The projected average cost per sentence for a
50 Class C offense is \$48,584.

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COMMITTEE AMENDMENT "A" to H.P. 836, L.D. 1167

2 Sentences imposed for Class D offenses involving
incarceration must be served in a county jail. Looking at
4 sentences served for Class D offenses, the average length of stay
was found to be about 119 days. The projected average cost per
6 county jail sentence for a Class D offense is \$9,903.

8 The cost of a 6-month sentence in a county is projected to
be \$14,980 as compared to \$2,497 for a 30-day sentence. A 60-day
10 sentence is projected to cost about \$4,994."

COMMITTEE AMENDMENT