

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1167

H.P. 836

House of Representatives, April 4, 1995

An Act to Amend the Operating-under-the-influence Laws.

Submitted by the Department of the Secretary of State pursuant to Joint Rule 24.
Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Speaker GWADOSKY of Fairfield.
Cosponsored by Representatives: AHEARNE of Madawaska, BAILEY of Township 27, BENEDIKT of Brunswick, BIGL of Bucksport, CAMERON of Rumford, CLOUTIER of South Portland, DAVIDSON of Brunswick, DESMOND of Mapleton, ETNIER of Harpswell, FISHER of Brewer, GERRY of Auburn, GIERINGER of Portland, GUERRETTE of Pittston, HARTNETT of Freeport, HATCH of Skowhegan, KEANE of Old Town, KONTOS of Windham, LINDAHL of Northport, LOOK of Jonesboro, MAYO of Bath, McALEVEY of Waterboro, MERES of Norridgewock, MORRISON of Bangor, NADEAU of Saco, O'GARA of Westbrook, O'NEAL of Limestone, PERKINS of Penobscot, POIRIER of Saco, POVICH of Ellsworth, REED of Dexter, RICHARDSON of Portland, SIROIS of Caribou, STEDMAN of Hartland, STROUT of Corinth, TREAT of Gardiner, TRIPP of Topsham, TRUMAN of Biddeford, TUFTS of Stockton Springs, TUTTLE of Sanford, TYLER of Windham, WATSON of Farmingdale, WHEELER of Bridgewater, WINN of Glenburn, Senators: ABROMSON of Cumberland, BENOIT of Franklin, BUTLAND of Cumberland, CASSIDY of Washington, GOLDTHWAIT of Hancock, HARRIMAN of Cumberland, HATHAWAY of York, LAWRENCE of York, O'DEA of Penobscot, PARADIS of Aroostook, PENDEXTER of Cumberland, STEVENS of Androscoggin.

L.D. 1167

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 15 MRSA §1026-A** is enacted to read:

6 **§1026-A. Standards for release for operating-under-the-influence offenses**

8 Notwithstanding any other provision of this chapter, a
10 defendant in custody for a violation of any provision of Title
29-A, chapter 23, may not be released until:

12 1. Defendant no longer under the influence. A
14 determination has been made by an official authorized to release
the defendant that the defendant is no longer under the influence
16 of intoxicants; or

18 2. Third party agrees to take responsibility. A 3rd party
who is not under the influence of intoxicating liquor or drugs
agrees to take responsibility for the defendant.

20 **Sec. 2. 29-A MRSA §2401, sub-§5,** as enacted by PL 1993, c.
22 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

24 **5. Failure to submit to a test, fails to submit to a test**
26 **or failed to submit to a test.** "Failure to submit to a test,"
28 **"fails to submit to a test" or "failed to submit to a test" means**
failure to comply with the duty to submit to and complete
chemical testing under section 2521.

30 **Sec. 3. 29-A MRSA §2402,** as enacted by PL 1993, c. 683, Pt.
32 A, §2 and affected by Pt. B, §5, is amended to read:

34 **§2402. Calculating prior convictions**

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

40 **Sec. 4. 29-A MRSA §2403,** as enacted by PL 1993, c. 683, Pt.
42 A, §2 and affected by Pt. B, §5, is amended to read:

44 **§2403. Period of administrative suspension deducted from**
court-imposed suspension

46 Except for a suspension for failure to submit to a test, the
48 period of time of an administrative suspension ordered by the
Secretary of State prior to an OUI conviction that arose out of
50 the same occurrence is deducted from the period of time of any
court-imposed suspension. If the suspension is for failure to

2 submit to a test, a period of suspension imposed by the court or
by the Secretary of State for an OUI conviction is consecutive to
4 the period of suspension imposed for failure to submit to a
test. Notwithstanding any other provision of this section, if a
6 person's license is suspended under section 2521 and is also
7 suspended for a violation of section 2411, subsection 1,
8 paragraph C, and the violation arose out of the same occurrence
9 resulting in the suspension under section 2521, then the period
10 of time the license has been suspended under section 2521 prior
11 to the conviction under section 2411 must be deducted from the
12 period of time of any court-imposed suspension ordered pursuant
13 to section 2411.

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

16
17 **1. Offense.** A person commits OUI, which is a Class D crime
18 unless provided otherwise, if that person operates a motor
19 vehicle and:

20 A. While Is under the influence of intoxicants; ~~or~~

21
22 B. While--having Has a blood-alcohol level of 0.08% or
23 more; or

24
25 C. Fails to submit to a test at the request of a law
26 enforcement officer who has probable cause to believe the
27 person operated a motor vehicle while under the influence of
28 intoxicants.

29
30 **2. Pleading and proof.** The alternatives outlined in
31 subsection 1, paragraphs A and, B and C may be pleaded in the
32 alternative. The State is not required to elect between the
33 alternatives prior to submission to the fact finder.

34
35 **Sec. 6. 29-A MRSA §2411, sub-§5, ¶¶A to C,** as enacted by PL
36 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, are amended to
37 read:

38
39 A. For a person having no previous OUI offenses within a
40 ~~6-year~~ 10-year period:

41
42 (1) A fine of not less than \$300 ~~\$400~~;

43
44 (2) A court-ordered suspension of a driver's license
45 for a period of 90 days unless the person failed to
46 submit to a test, in which case the court shall suspend
47 the driver's license for a period of 180 days; and

- 2 (3) A period of incarceration of not less than 48
hours, when the defendant:
- 4 (a) Was tested as having a blood-alcohol level of
0.15% or more;
- 6 (b) Was exceeding the speed limit by 30 miles per
8 hour or more;
- 10 (c) Eluded or attempted to elude an officer; or
- 12 ~~(d) -- Failed to submit to a test at the request of
a law enforcement officer; or~~
- 14 (e) Was operating with a passenger under 16 years
16 of age;

18 B. For a person having one previous OUI offense within a
20 ~~6-year~~ 10-year period:

- 22 (1) A fine of not less than ~~\$500~~ \$600;
- 24 (2) A period of incarceration of not less than 7 days;
- 26 (3) A court-ordered suspension of a driver's license
for a period of ~~one-year~~ 18 months; and
- 28 (4) In accordance with section 2416, a court-ordered
30 suspension of the person's right to register a motor
vehicle;

32 C. For a person having 2 previous OUI ~~convictions~~ offenses
34 within a ~~6-year~~ 10-year period:

- 36 (1) A fine of not less than ~~\$750~~ \$1,000;
- 38 (2) A period of incarceration of not less than 30 days;
- 40 (3) A court-ordered suspension of a driver's license
for a period of ~~2~~ 4 years; and
- 42 (4) In accordance with section 2416, a court-ordered
44 suspension of the person's right to register a motor
vehicle;

46 **Sec. 7. 29-A MRSA §2411, sub-§5, ¶D**, as enacted by PL 1993, c.
48 683, Pt. A, §2 and affected by Pt. B, §5, is repealed and the
following enacted in its place:

2 D. For a person having 3 or more OUI offenses within a
3 10-year period the offense is a Class C crime. The
4 following penalties apply:

5 (1) A fine of not less than \$2,000;

6 (2) A period of incarceration of not less than 6
7 months;

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

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

13 **Sec. 8. 29-A MRSA §2411, sub-§6,** as enacted by PL 1993, c.
14 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

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

27 **Sec. 9. 29-A MRSA §2412,** 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 **§2412. Operating while license suspended or revoked**

31 **1. Offense; penalty.** A person commits a Class E offense if
32 that person operates a motor vehicle on a public way or in a
33 parking area when that person's license has been suspended or
34 revoked, and that person:

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

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

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

2 D. Has been sent written notice in accordance with section
3 2482 or former Title 29, section 2241, subsection 4; or

4
5 E. Has failed to answer or to appear in court pursuant to a
6 notice or order specified in section 2605 or 2608.

7
8 2. Exception. This section does not apply to a person
9 whose license has been revoked under the laws in subchapter V
10 governing habitual offenders.

11
12 3. Minimum mandatory sentences for certain suspension. If
13 the suspension was for OUI, the court shall impose a minimum fine
14 of \$500, a term of imprisonment of 7 consecutive days and a
15 suspension of license of not less than one year nor more than 3
16 years consecutive to the original suspension. The penalties may
17 not be suspended.

18
19 A. If the person has a prior conviction for violating this
20 section within a 10-year period and was subject to the
21 minimum mandatory sentences, then the following minimum
22 penalties, which may not be suspended by the court, apply in
23 the event the suspension was for OUI:

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

29 (2) A minimum fine of \$2,000, a term of imprisonment
30 of 60 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 2 prior convictions; or

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

40
41 B. For all other suspensions, the minimum fine is \$200,
42 which may not be suspended by the court if the person has a
43 prior conviction for violating this section within a 10-year
44 period.

45
46
47
48

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

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

8
9 A. The court shall give notice of the suspension and shall
10 take physical custody of an operator's license or permit as
11 provided in section 2434.

12
13 B. If the court fails to impose a suspension as provided in
14 subsection 3, the Secretary of State shall impose the
15 minimum one-year suspension.

16
17 C. The minimum mandatory sentences of subsection 3 apply
18 only to the original period of suspension imposed by the
19 court or by the Secretary of State or as extended by the
20 Secretary of State. The minimum mandatory sentences of
21 subsection 3 do not apply to any extension of the original
22 suspension imposed to compel a person's compliance with
23 conditions for the restoration of a license or for failure
24 to pay a reinstatement fee for a license.

25
26 **5. Prior convictions.** For purposes of this section, a
27 prior conviction or suspension has occurred within a 10-year
28 period if the date of the suspension or the docket entry by the
29 clerk of a judgment of conviction is 10 years or less from the
30 date of the new conduct that is penalized or for which the new
31 penalty may be enhanced.

32
33 **6. Ignition interlock device.** As a condition of license
34 reinstatement the Secretary of State may require a person subject
35 to the minimum mandatory sentencing provisions of subsection 3 to
36 install, for a period of up to 2 years, an ignition interlock
37 device approved by the Secretary of State in the motor vehicle
38 the person operates.

39 **Sec. 10. 29-A MRSA §2422** is enacted to read:

40
41 **§2422. Impoundment of motor vehicles for OUI**

42
43 A motor vehicle that is used by a person arrested for a
44 violation of section 2411 must be seized and held in secure
45 storage by the seizing agency or at the direction of the
46 arresting law enforcement officer. The motor vehicle may be
47 released, after payment of any towing and storage fees, under the
48 following conditions.

2 1. Release to person arrested. The motor vehicle may be
released upon a determination that the person arrested is no
longer under the influence of intoxicants.

4
6 2. Release to a 3rd party. The motor vehicle may be
released to a 3rd party provided that the 3rd party is not under
the influence of intoxicants and the 3rd party is either the
8 legal owner of the vehicle or is authorized to claim the vehicle
on behalf of the person arrested or on behalf of the legal owner.

10 **Sec. 11. 29-A MRSA §2431, sub-§3,** as enacted by PL 1993, c.
12 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

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

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

22 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
24 available.

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

30 **Sec. 12. 29-A MRSA §2451, sub-§2,** as enacted by PL 1993, c.
32 683, Pt. A, §2 and affected by Pt. B, §5, is repealed.

34 **Sec. 13. 29-A MRSA §2451, sub-§3,** as enacted by PL 1993, c.
683, Pt. A, §2 and affected by Pt. B, §5, is repealed and the
36 following enacted in its place:

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

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

46 B. Eighteen months, if the person has 2 OUI convictions
48 within a 10-year period;

50 C. Four years, if the person has 3 OUI convictions within a
10-year period; or

2 D. Six years, if the person has 4 or more OUI convictions
3 within a 10-year period.

4
5 For the purposes of this subsection, a conviction or suspension
6 has occurred within a 10-year period if the date of the new
7 conduct is within 10 years of a date of suspension or a docket
8 entry of judgment of conviction.

10 **Sec. 14. 29-A MRSA §2454**, as enacted by PL 1993, c. 683, Pt.
11 A, §2 and affected by Pt. B, §5, is repealed and the following
12 enacted in its place:

14 **§2454. Homicide; revocation of license**

16 **1. Minimum revocation.** Subject to the longer period of
17 revocation provided in subsection 2, the license of any person
18 who, as a result of the operation of a motor vehicle in such a
19 manner as to cause the death of any person, is convicted of
20 criminal homicide or an attempt of criminal homicide, or who is
21 adjudicated to have committed a juvenile offense of criminal
22 homicide or an attempt of criminal homicide, must be revoked
23 immediately by the Secretary of State upon receipt of an attested
24 copy of the court records, without further hearing, for a period
25 of at least 5 years.

26
27 **2. While under the influence of alcohol or drugs.** The
28 license of any person who, as a result of the operation of a
29 motor vehicle in such a manner as to cause the death of any
30 person, is convicted of criminal homicide or an attempt of
31 criminal homicide, or who is adjudicated to have committed a
32 juvenile offense of criminal homicide or an attempt of criminal
33 homicide, must be permanently revoked immediately by the
34 Secretary of State upon receipt of an attested copy of the court
35 records, without further hearing, if the report by the district
36 attorney pursuant to section 2455 shows the person was under the
37 influence of intoxicants at the time of the offense.

38
39 **3. Appeal.** Unless the court orders otherwise, the person's
40 license must be revoked during the course of any appeal.

41
42 **4. Pleas.** For the purposes of this section and section
43 2411, a person is deemed to have been convicted if the person
44 pleaded guilty or nolo contendere or was otherwise adjudged or
45 found guilty by a court of competent jurisdiction or, in the case
46 of a juvenile offender, a juvenile is deemed to have been
47 adjudicated if the juvenile admits or was otherwise adjudged or
48 found to have committed the juvenile offense by a court of
49 competent jurisdiction.

50

2 **5. Petition for license reinstatement.** A person whose
3 license is permanently revoked under subsection 4 may petition
4 the Secretary of State for relicensure after 10 years from the
5 date the person is no longer incarcerated. The Secretary of
6 State shall make the person's petition for relicensure known to
7 the family of any victims of the person's offense and shall
8 consider their testimony in determining whether to reissue the
9 person a driver's license.

10 **6. Conviction following license reinstatement.** The license
11 of a person whose license is reinstated pursuant to subsection 5
12 who is subsequently convicted for the offense defined in section
13 2411 must be revoked permanently by the Secretary of State and
14 the Secretary of State may not relicense that person.

15 **Sec. 15. 29-A MRSA §2457, sub-§1, ¶B,** as enacted by PL 1993,
16 c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

17 B. The As the Secretary of State determines, has operated a
18 motor vehicle while having ~~a blood alcohol level of 0.05% or~~
19 ~~more~~ any amount of alcohol in the blood.

20 **Sec. 16. 29-A MRSA §2457, sub-§2,** as enacted by PL 1993, c.
21 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

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

30 **Sec. 17. 29-A MRSA §2457, sub-§4, ¶¶A and B,** as enacted by PL
31 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, are amended to
32 read:

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

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

38 **Sec. 18. 29-A MRSA §2472, sub-§3, ¶B,** as enacted by PL 1993,
39 c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

40

2 B. Operates a motor vehicle with a ~~blood alcohol level of~~
0.02% ~~or more~~ any amount of alcohol in the blood.

4 **Sec. 19. 29-A MRSA §2472, sub-§4**, as enacted by PL 1993, c.
683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

6 **4. Duty to submit to test.** A person under 21 years of age
8 who operates a motor vehicle shall submit to a chemical test if
there is probable cause to believe that person has operated a
10 motor vehicle with a ~~blood alcohol level of 0.02% or more~~ any
12 amount of alcohol in the blood. The provisions of subchapter IV
apply, except the suspension must be for a period of one year.

14 **Sec. 20. 29-A MRSA §2472, sub-§5, ¶¶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. There was probable cause to believe that the person was
under 21 years of age and operated a motor vehicle ~~while~~
20 ~~having 0.02% or more by weight~~ with any amount of alcohol in
the blood;

22 B. The person operated a motor vehicle ~~while having 0.02%~~
24 ~~or more by weight~~ with any amount of alcohol in the blood;
and

26 **Sec. 21. 29-A MRSA §2501, sub-§3**, as enacted by PL 1993, c.
28 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

30 **3. Failure to submit to test.** The Secretary of State may
issue a restricted license to a person whose license was
32 suspended for a first failure to submit to a test, if the
condition of subsection 1, paragraph B is met and at least 90 120
34 days have elapsed since the date of suspension. This subsection
does not apply to a commercial driver's license, provisional
36 license or conditional license.

38 **Sec. 22. 29-A MRSA §2506**, as enacted by PL 1993, c. 683, Pt.
A, §2 and affected by Pt. B, §5, is amended to read:

40 **§2506. Conditional license**

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

50 **Sec. 23. 29-A MRSA §2507** is enacted to read:

2 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.

4

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

8

10 The bill changes the implied consent warnings and the
classification of a refusal as a crime to ensure consistency in
the various OUI laws.

12

14 The bill increases the penalties for offenders of the
operating-under-the-influence laws and established the criminal
penalties for persons who refuse to submit to chemical tests to
determine blood-alcohol and drug concentrations.

16

18 The bill enacts new provisions that increase the criminal
penalties for persons who drive after their licenses have been
suspended for operating under the influence.

20

22 The bill requires the impoundment of a motor vehicle of a
person arrested for OUI until that person is no longer under the
influence of intoxicating liquor or drugs or until a 3rd party
24 who is not under the influence of intoxicating liquor or drugs,
and who is either the legal owner of the vehicle or has been
26 authorized by either the person arrested or the legal owner to
retrieve the vehicle. A vehicle may not be released until all
28 towing and storage charges have been paid.

30

32 The bill 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.

34

36 The bill requires the Secretary of State to revoke
permanently the license of any person convicted of homicide using
a vehicle if the person was under the influence of liquor or
drugs at the time of the offense, grants the Secretary of State
38 discretionary authority to relicense a person whose license has
been permanently revoked 10 years after the person is no longer
40 incarcerated and requires the Secretary of State to revoke the
license permanently if a person subsequently relicensed is
42 convicted of another OUI offense.

44

46 The bill subjects conditional and provisional license
holders to administrative license suspension for operating a
motor vehicle with any amount of alcohol in the blood.

48

The bill grants the Secretary of State discretionary
authority to reinstate the license of a repeat offender of

2 operating under the influence prior to the expiration of the
total period of license suspension if the offender installs an
4 approved ignition interlock device in the motor vehicle the
offender operates.

6 The bill also modifies the warnings a law enforcement
officer must give to a person arrested for operating under the
8 influence before a chemical test is administered. The period of
license suspension for refusing to take a chemical test to
10 determine blood-alcohol or drug concentration levels is increased
from 180 days to 6 years based on the number of prior refusals.