MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1288

S.P. 392

In Senate, February 28, 2001

An Act to Make Refusing a Blood-alcohol Test a Crime.

Reference to the Committee on Criminal Justice suggested and ordered printed.

JOY J. O'BRIEN Secretary of the Senate

Presented by Senator DAVIS of Piscataquis.
Cosponsored by Representative DUNLAP of Old Town and
Senators: FERGUSON of Oxford, SHOREY of Washington, SMALL of Sagadahoc,
Representatives: CLARK of Millinocket, FISHER of Brewer, MURPHY of Kennebunk,
SHERMAN of Hodgdon, USHER of Westbrook.

	Be it enacted by the People of the State of Maine as follows:
2	Sec. 1. 29-A MRSA §2411, sub-§5, as amended by PL 1997, c. 727, §§8 to 11, is further amended to read:
T	727, 330 to 11, 15 further amended to read.
6	5. Penalties. The following minimum penalties apply and may not be suspended:
8	•
10	A. For a person having no previous OUI offenses within a 10-year period:
12	(1) A fine of not less than \$400, except that if the person failed to submit to a test, a fine of not less
14	than \$500;
16	(2) A court-ordered suspension of a driver's license for a period of 90 days; and
18	(3) A period of incarceration as follows:
20	
22	(a) Not less than 48 hours when the person:
24	(i) Was tested as having a blood-alcohol level of 0.15% or more;
26	(ii) Was exceeding the speed limit by 30 miles per hour or more;
28	
30	<pre>(iii) Eluded or attempted to elude an officer; or</pre>
32	(iv) Was operating with a passenger under 21 years of age; and
34	
36	(b)Not-less-than-96-hours-whon-the-person-failed tosubmittoatestattherequestofalaw enforcement-officer;
38	
40	B. For a person having one previous OUI offense within a 10-year period:
42	(1) A fine of not less than \$600,-except-that-if-the
44	<pre>person-failed-to-submit-to-a-tost-at-the-request-of-a law-enforeement-officer,-a-fine-of-not-less-than-\$800;</pre>
46	(2) A period of incarceration of not less than 7 days,
48	<pre>except-that-if-the-person-failed-to-submit-to-a-test-at the-request-of-a-law-enforcement-efficer,-a-period-ef incarceration-of-not-less-than-12-days:</pre>

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2	for a period of 18 months; and
4	(4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor
6	vehicle;
8	C. For a person having 2 previous OUI offenses within a 10-year period:
10	
12	(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;
14	
16	(2) A period of incarceration of not less than 30 days, -except-that-if-the-person-failed-te-submit-to-a test-at-the-request-of-a-law-enforcement-officer, a
18	period-of-incarceration-of-not-less-than-40-days;
20	(3) A court-ordered suspension of a driver's license for a period of 4 years; and
22	
24	(4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor vehicle;
26	D. For a person having 3 or more previous OUI offenses
28	within a 10-year period, which is a Class C crime:
30	(1) A fine of not less than \$2,000,-exeept-that-if-the person-failed-to-submit-to-a-test-at-the-request-of-a
32	law-enforcement-officer,-a-fine-of-not-less-than-\$2,400;
34	(2) A period of incarceration of not less than 6 months,-except-that-if-the-person-failed-to-submit-to-a
36	testattherequestefalawenforcementofficera periedofincarcerationefnotlessthan6monthsand
38	20-days;
40	(3) A court-ordered suspension of a driver's license for a period of 6 years; and
42	-
44	(4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor vehicle;
46	
48	EIf-a-law-enforcement-officer-failed-to-provide-the warnings-required-by-section-2521,subsection-3,the
50	inerease-in-minimum-penalties-required-because-of-a-refusal te-submit-te-a-test-is-net-mandatery;
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alcohol and drug program for multiple offenders. The may waive the multiple offender intervention program Title 5, section 20073, subsections 4 and 5, if the finds that the defendant has completed a residential a or drug treatment program, or its equivalent, subseque the date of the offense; and G. The court shall order an additional period of 1 suspension of 275 days for a person sentenced paragraph A, B, C or D if the person was operating the vehicle at the time of the offense with a passenger une years of age. Sec. 2. 29-A MRSA §2521, sub-§1, as enacted by PL 199 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read 1. Mandatory submission to test. If there is procause to believe a person has operated a motor vehicle under the influence of intoxicants, that person shall subm and complete a test to determine blood-alcohol level and concentration by analysis of blood, breath or urine. Fails submit to and complete the test is a Class D crime. Sec. 3. 29-A MRSA §2521, sub-§3, as amended by PL 199 357, §1, is further amended to read: 3. Warnings. Neither a refusal to submit to a test failure to complete a test may be used for any of the pu specified in paragraph A, A-1, B or C unless the person has been told that the refusal or failure will: A. Result in suspension of that person's driver's 1 for a period up to 6 years; A-1. Be considered a crime and subject the person mandatory minimum period of incarceration if convicted; B. Be admissible in evidence at a trial for operating the influence of intoxicants; and C. Be considered an aggravating factor at sentencing person is convicted of operating under the influen intoxicants that, in addition to other penalties,	_	F. For a person sentenced under paragraph B, C or D, the court shall order the defendant to participate in the
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Sec. 4. 29-A MRSA §2521. sub-§10 is enacted to read:	30 32 34 36 38 40 42 44	failure to complete a test may be used for any of the purposes specified in paragraph A, A-1, B or C unless the person has first been told that the refusal or failure will: A. Result in suspension of that person's driver's license for a period up to 6 years; A-1. Be considered a crime and subject the person to a mandatory minimum period of incarceration if convicted; B. Be admissible in evidence at a trial for operating under the influence of intoxicants; and C. Be considered an aggravating factor at sentencing if the person is convicted of operating under the influence of
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10. Effect of conviction. A person who is convicted of failure to submit to a test pursuant to subsection 1 is deemed to have been convicted of OUI pursuant to section 2411 and is subject to the same penalties to which a person convicted of criminal OUI pursuant to section 2411 is subject.

SUMMARY

This bill subjects a person who fails to submit to mandatory testing to determine whether the person is under the influence of intoxicants to the same penalties as if the person were convicted of operating under the influence. This bill makes a conviction for failure to submit to mandatory testing equivalent to a conviction for operating under the influence of intoxicants. This bill removes the enhanced penalties for refusing to submit to testing since such refusal is now a separate offense.