

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.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

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
4 **Sec. 1. 29-A MRSA §2411, sub-§5**, as amended by PL 1997, c.
727, §§8 to 11, is 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 (a) Not less than 48 hours when the person:

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

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

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

32 (iv) Was operating with a passenger under 21
years of age; and

34 ~~(b) -- Not less than 96 hours when the person failed~~
36 ~~to submit to a test at the request of a law~~
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~~
~~person failed to submit to a test at the request of a~~
44 ~~law enforcement officer, a fine of not less than \$800;~~

46 (2) A period of incarceration of not less than 7 days,
~~except that if the person failed to submit to a test at~~
48 ~~the request of a law enforcement officer, a period of~~
incarceration of not less than 12 days;

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

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

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

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~~
14 ~~law enforcement officer, a fine of not less than \$1,300;~~

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

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

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

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

30 (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~~
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 ~~test at the request of a law enforcement officer, a~~
38 ~~period of incarceration of not less than 6 months and~~
~~20 days;~~

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

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

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

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

18 G. The court shall order an additional period of license
20 suspension of 275 days for a person sentenced under
22 paragraph A, B, C or D if the person was operating the motor
24 vehicle at the time of the offense with a passenger under 21
26 years of age.

28 **Sec. 2. 29-A MRSA §2521, sub-§1**, as enacted by PL 1993, c.
683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

30 **1. Mandatory submission to test.** If there is probable
32 cause to believe a person has operated a motor vehicle while
24 under the influence of intoxicants, that person shall submit to
26 and complete a test to determine blood-alcohol level and drug
concentration by analysis of blood, breath or urine. Failure to
submit to and complete the test is a Class D crime.

34 **Sec. 3. 29-A MRSA §2521, sub-§3**, as amended by PL 1997, c.
357, §1, is further amended to read:

36 **3. Warnings.** Neither a refusal to submit to a test nor a
38 failure to complete a test may be used for any of the purposes
40 specified in paragraph A, A-1, B or C unless the person has first
42 been told that the refusal or failure will:

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

48 A-1. Be considered a crime and subject the person to a
mandatory minimum period of incarceration if convicted;

50 **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
intoxicants that, in addition to other penalties, will
subject the person to a mandatory minimum period of
incarceration.

Sec. 4. 29-A MRSA §2521, sub-§10 is enacted to read:

2 10. Effect of conviction. A person who is convicted of
3 failure to submit to a test pursuant to subsection 1 is deemed to
4 have been convicted of OUI pursuant to section 2411 and is
5 subject to the same penalties to which a person convicted of
6 criminal OUI pursuant to section 2411 is subject.

8

SUMMARY

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