

MAINE STATE LEGISLATURE

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MINORITY

CRIMINAL JUSTICE AND PUBLIC SAFETY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 267, L.D. 324, Bill, "An Act to Create a Crime of Refusing an Alcohol Test in Operating-under-the-influence Cases"

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

Sec. 1. 29-A MRSA §2401, sub-§9, ¶A-1 is enacted to read:

A-1. A violation of section 2419:

Sec. 2. 29-A MRSA §2411, sub-§5, as amended by PL 2001, c. 511, §3, is further amended to read:

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:

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(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 21 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 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

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

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

8 (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~~
10 ~~law enforcement officer, a fine of not less than \$2,400;~~

12 (2) A period of incarceration of not less than 6
~~months, except that if the person failed to submit to a~~
14 ~~test at the request of a law enforcement officer, a~~
~~period of incarceration of not less than 6 months and~~
16 ~~20 days;~~

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

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

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

30 F. For a person sentenced under paragraph B, C or D, the
court shall order the defendant to participate in the
32 alcohol and other drug program of the Department of
Behavioral and Developmental Services, Office of Substance
34 Abuse. The court may waive the program pursuant to Title 5,
section 20073-B, if the court finds that the defendant has
36 completed an alcohol or other drug treatment program
subsequent to the date of the offense; and

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

44 Sec. 3. 29-A MRSA §2419 is enacted to read:

46 **§2419. Failure to submit to chemical test**

48 **1. Failure to submit to chemical test. A person commits**
50 **the Class D crime of failure to submit to a chemical test if:**

2 A. A law enforcement officer has probable cause to believe
4 that person has operated a motor vehicle while under the
 influence of intoxicants;

6 B. The law enforcement officer has warned the person of the
 consequences of failing to submit to a chemical test
8 pursuant to section 2521, subsection 3; and

10 C. The person in fact fails to submit to and complete a
12 chemical test pursuant to section 2521 to determine
 blood-alcohol level and drug concentration by analysis of
14 blood, breath or urine.

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

18 A. For a person having no previous OUI offenses within a
20 10-year period:

22 (1) A fine of not less than \$400;

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

26 (3) A period of incarceration of not less than 48
28 hours;

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

32 (1) A fine of not less than \$600;

34 (2) A period of incarceration of not less than 7 days;

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

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

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

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

48 (2) A period of incarceration of not less than 30 days;

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(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 previous OUI offenses within a 10-year period:

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

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

(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;

E. For a person sentenced under paragraph B, C or D, the court shall order the defendant to participate in the alcohol and other drug program of the Department of Behavioral and Developmental Services, Office of Substance Abuse. The court may waive the program pursuant to Title 5, section 20073-B if the court finds that the defendant has completed an alcohol or other drug treatment program subsequent to the date of the offense; and

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

3. Strict liability. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. 4. 29-A MRSA §2521, sub-§3, as amended by PL 1997, c. 357, §1, is further amended to read:

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

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

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

6
8 ~~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
10 subject the person to a mandatory minimum period of
incarceration.~~

12
14 D. Is a crime.

16 **SUMMARY**

18 This amendment replaces the bill and is the minority report
of the Joint Standing Committee on Criminal Justice and Public
20 Safety. The amendment creates a new Class D crime of failure to
submit to a chemical test. A person commits this new crime if a
22 law enforcement officer has probable cause to believe that person
has operated a motor vehicle while under the influence of
24 intoxicants; the law enforcement officer has warned the person of
the consequences of failing to submit to a chemical test pursuant
26 to the Maine Revised Statutes, Title 29-A, section 2521,
subsection 3; and the person in fact fails to submit to and
28 complete a chemical test to determine blood-alcohol level and
drug concentration by analysis of blood, breath or urine. A
30 person who is convicted of failure to submit to a chemical test
is subject to the same mandatory penalties as a person convicted
32 of criminal OUI under Title 29-A, section 2411.

FISCAL NOTE REQUIRED
(See attached)

**121st Maine Legislature
Office of Fiscal and Program Review**



LD 324

**An Act to Create a Crime of Refusing an Alcohol Test in Operating-
under-the-influence Cases**

LR 0460(02)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes a new Class D crime