

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 324

H.P. 267

House of Representatives, January 28, 2003

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

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CARR of Lincoln.
Cosponsored by Senator HATCH of Somerset and
Representatives: FLETCHER of Winslow, GREELEY of Levant, RICHARDSON of
Greenville, Senator: DAVIS of Piscataquis.

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 2001, c.
4 511, §3, is further amended to read:

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

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

12 (1) A fine of not less than \$400, except that if the
14 person failed to submit to a test, a fine of not less
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
34 years of age; and or

36 (v) Failed to submit to a test at the
request of a law enforcement officer;

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

42 B. For a person having one previous OUI offense within a
44 10-year period:

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

50 (2) A period of incarceration of not less than 7 days,
52 ~~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;~~

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~~
14 ~~person failed to submit to a test at the request of a~~
~~law enforcement officer, a fine of not less than \$1,300;~~

16 (2) A period of incarceration of not less than 30
18 ~~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;~~

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~~
32 ~~person failed to submit to a test at the request of a~~
~~law enforcement officer, a fine of not less than \$2,400;~~

34 (2) A period of incarceration of not less than 6
36 ~~months, except that if the person failed to submit to a~~
~~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
3 court shall order the defendant to participate in the
4 alcohol and other drug program of the Department of
5 Behavioral and Developmental Services, Office of Substance
6 Abuse. The court may waive the program pursuant to Title 5,
7 section 20073-B, if the court finds that the defendant has
8 completed an alcohol or other drug treatment program
9 subsequent to the date of the offense; and

10
11 G. The court shall order an additional period of license
12 suspension of 275 days for a person sentenced under
13 paragraph A, B, C or D if the person was operating the motor
14 vehicle at the time of the offense with a passenger under 21
15 years of age.

16 **Sec. 2. 29-A MRSA §2521, sub-§1**, as enacted by PL 1993, c.
17 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

18
19 **1. Mandatory submission to test.** If there is probable
20 cause to believe a person has operated a motor vehicle while
21 under the influence of intoxicants, that person shall submit to
22 and complete a test to determine blood-alcohol level and drug
23 concentration by analysis of blood, breath or urine. Failure to
24 submit to and complete the test is a Class D crime.

25
26 **Sec. 3. 29-A MRSA §2521, sub-§3**, as amended by PL 1997, c.
27 357, §1, is further amended to read:

28
29 **3. Warnings.** Neither a refusal to submit to a test nor a
30 failure to complete a test may be used for any of the purposes
31 specified in paragraph A, A-1, B or C unless the person has first
32 been told that the refusal or failure will:

33
34 A. Result in suspension of that person's driver's license
35 for a period up to 6 years;

36
37 A-1. Be considered a crime and subject the person to a
38 mandatory minimum period of incarceration if convicted;

39
40 B. Be admissible in evidence at a trial for operating under
41 the influence of intoxicants; and

42
43 C. Be considered an aggravating factor at sentencing if the
44 person is convicted of operating under the influence of
45 intoxicants that, in addition to other penalties, will
46 subject the person to a mandatory minimum period of
47 incarceration.

48
49 **Sec. 4. 29-A MRSA §2521, sub-§10** is enacted to read:

