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L.D. 1906

DATE: 4/24/06

(Filing No. H-1041)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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STATE OF MAINE HOUSE OF REPRESENTATIVES 122ND LEGISLATURE SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1347, L.D. 1906, Bill, "An Act To Safeguard Maine's Highways"

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

PART A

Sec. A-1. 29-A MRSA §2411, sub-§1-A, ¶D, as amended by PL 2003, c. 633, §8, is further amended to read:

D. Violates paragraph A, B or C and:

(1) In fact causes serious bodily injury as defined in Title 17-A, section 2, subsection 23 to another person ex-in-fact-causes-the-death-of-another-person; or

(1-A) In fact causes the death of another person; or

(2) Has either a prior conviction for a Class C crime under this section or former Title 29, section 1312-B or a prior criminal homicide conviction involving or resulting from the operation of a motor vehicle while under the influence of intoxicating liquor or drugs or with a blood-alcohol level of 0.08% or greater.

Sec. A-2. 29-A MRSA §2411, sub-§5, ¶D-1, as amended by PL 2003, c. 673, Pt. TT, §4, is further amended to read:

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2 D-1. A violation of subsection 1-A, paragraph D,
subparagraph (1) is a Class C crime, which is a strict
4 liability crime as defined in Title 17-A, section 34,
subsection 4-A. The sentence must include a period of
6 incarceration of not less than 6 months, a fine of not less
than \$2,100 and a court-ordered suspension of a driver's
8 license for a period of 6 years. These penalties may not be
suspended;

10 Sec. A-3. 29-A MRSA §2411, sub-§5, ¶D-2 is enacted to read:

12 D-2. A violation of subsection 1-A, paragraph D,
14 subparagraph (1-A) or (2) is a Class B crime, which is a
16 strict liability crime as defined in Title 17-A, section 34,
18 subsection 4-A. The sentence must include a period of
incarceration of not less than 6 months, a fine of not less
than \$2,100 and a court-ordered suspension of a driver's
license for a period of 10 years. These penalties may not be
suspended;

20 Sec. A-4. 29-A MRSA §2411, sub-§5, ¶G, as amended by PL 2003,
22 c. 452, Pt. Q, §82 and affected by Pt. X, §2, is further amended
to read:

24 G. The court shall order an additional period of license
26 suspension of 275 days for a person sentenced under
paragraph A, B, C, D or D-1 or D-2 if the person was
28 operating the motor vehicle at the time of the offense with
a passenger under 21 years of age.

30 Sec. A-5. 29-A MRSA §2464 is enacted to read:

32 §2464. Causing serious bodily injury or death while license is
34 suspended or revoked

36 1. Accident involving injury; penalty. A person who, while
knowingly operating with a suspended or revoked license, in fact
38 causes serious bodily injury as defined in Title 17-A, section 2,
subsection 23 to another person commits a Class C crime.

40 2. Accident involving death; penalty. A person who, while
42 knowingly operating with a suspended or revoked license, in fact
causes the death of another person commits a Class B crime.

44 3. Pleading and proof. The State must prove that the
46 defendant's operation of the motor vehicle caused the serious
bodily injury under subsection 1 or death under subsection 2.
48 The court shall apply Title 17-A, section 33 in assessing any
causation under this section.

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4. License suspension. Upon receipt of notice of conviction, the Secretary of State shall immediately suspend the license of a person who violates subsection 1 or 2. Notwithstanding any provision of law that imposes a period of license suspension shorter than that specified in this subsection, a person who violates this section is subject to the following period of license suspension:

A. For a violation of subsection 1, 5 years; and

B. For a violation of subsection 2, 10 years.

The period of suspension imposed pursuant to this subsection is consecutive to any suspension previously imposed by the Secretary of State or the court pursuant to this chapter.

Sec. A-6. 29-A MRSA §2551, as amended by PL 2001, c. 514, §1, is repealed.

Sec. A-7. 29-A MRSA §2551-A is enacted to read:

§2551-A. Habitual offender

1. Habitual offender defined. An habitual offender is a person whose record, as maintained by the Secretary of State, shows that:

A. The person has accumulated 3 or more convictions or adjudications for distinct offenses described below arising out of separate acts committed within a 5-year period:

(1) Homicide resulting from the operation of a motor vehicle;

(2) OUI conviction;

(3) Driving to endanger, in violation of section 2413;

(4) Operating after suspension or revocation, in violation of section 2412-A;

(5) Operating without a license;

(6) Operating after revocation, in violation of former section 2557, section 2557-A or section 2558;

(7) Knowingly making a false affidavit or swearing or affirming falsely in a statement required by this Title or as to information required in the administration of this Title;

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- 2 (8) A Class A, B, C or D offense in which a motor
3 vehicle is used;
- 4 (9) Failure to report an accident involving injury or
5 death, in violation of section 2252;
- 6 (10) Failure to report an accident involving property
7 damage, in violation of section 2253, 2254 or 2255;
- 8 (11) Eluding an officer, in violation of section 2414;
- 9 (12) Passing a roadblock, in violation of section
10 2414, subsection 4; and
- 11 (13) Operating a motor vehicle at a speed that exceeds
12 the maximum speed limit by 30 miles per hour or more; or

13 B. The person has accumulated 10 or more convictions or
14 adjudications for moving violations arising out of separate
15 acts committed within a 5-year period.

16 2. Inclusions. The offenses included in subsection 1
17 include offenses under former Title 29, a federal law, a law of
18 another state and a municipal ordinance substantially conforming
19 to the statutory violations.

20 3. Offenses not included. The following convictions are not
21 included under subsection 1, paragraph A:

22 A. A conviction of operating a motor vehicle without a
23 license if the license had expired and was not suspended or
24 revoked; and

25 B. A conviction of operating after suspension when the
26 suspension is based upon a failure to pay child support.

27 4. Multiple offenses or violations. For the purposes of
28 this section, when more than one offense or violation described
29 in this section arises from the same incident, the offenses or
30 violations are treated as one offense or violation.

31 Sec. A-8. 29-A MRS §2554, sub-§3, as enacted by PL 1993, c.
32 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

33 3. Operating after habitual offender revocation. The
34 Secretary of State may not restore a license if a charge under
35 former section 2557, section 2557-A or section 2558 is pending.
36 If the Secretary of State subsequently determines that a license
37 has been restored when a charge under former section 2557,

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2 section 2557-A or section 2558 was pending, the Secretary of
State shall, without hearing, immediately reinstate the
4 revocation and provide notice of the reinstatement. A license
may not be issued to a person who has been convicted of a
6 violation of former section 2557, section 2557-A or section 2558
for a period of at least one year following the conviction or
longer as provided under former section 2557, section 2557-A or
8 section 2558.

10 **Sec. A-9. 29-A MRSA §2556, sub-§4,** as enacted by PL 1993, c.
683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

12 **4. Ineligibility.** A person is not eligible for a
14 work-restricted license if habitual offender status is based on a
conviction or adjudication under former section 2551, section
16 2551-A, subsection 1, paragraph A, subparagraph (1) or, former
section 2557, section 2557-A or section 2558 or the revocation is
18 issued pursuant to section 2555.

20 **Sec. A-10. 29-A MRSA §2557,** as amended by PL 2003, c. 673,
Pt. TT, §§6 and 7, is repealed.

22 **Sec. A-11. 29-A MRSA §2557-A** is enacted to read:

24 **§2557-A. Operating after habitual offender revocation**

26 **1. Operating after habitual offender revocation.** A person
28 commits operating after habitual offender revocation if that
person:

30 A. Operates a motor vehicle on a public way, as defined in
32 Title 17-A, section 505, subsection 2, when that person's
34 license to operate a motor vehicle has been revoked under
this subchapter or former Title 29, chapter 18-A and that
36 person:

38 (1) Has received written notice of the revocation from
the Secretary of State;

40 (2) Has been orally informed of the revocation by a law
enforcement officer;

42 (3) Has actual knowledge of the revocation; or

44 (4) Is a person to whom written notice was sent in
46 accordance with section 2482 or former Title 29,
48 section 2241, subsection 4; or

50 B. After having one or more prior convictions for violating
former section 2557, this section or section 2558, violates
section 2412-A.

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2. Penalties. The following penalties apply.

A. A person is guilty of a Class D crime if the person violates subsection 1 and:

(1) The person has not been convicted for operating after revocation under this section or under former Title 29, section 2298 within the previous 10 years; and

(2) The person has not been convicted for violating section 2411 or former Title 29, section 1312-B within the previous 10 years.

The minimum fine for a Class D crime under this paragraph is \$500 and the minimum term of imprisonment is 30 days, neither of which may be suspended by the court.

B. A person is guilty of a Class C crime if the person violates subsection 1 and:

(1) The person has one conviction for operating after revocation under this section or under former Title 29, section 2298 within the previous 10 years; or

(2) The person has one conviction for violating section 2411 or former Title 29, section 1312-B within the previous 10 years.

The minimum fine for a Class C crime under this paragraph is \$1,000 and the minimum term of imprisonment is 6 months, neither of which may be suspended by the court.

C. A person is guilty of a Class C crime if the person violates subsection 1 and:

(1) The person has 2 convictions for operating after revocation under this section or under former Title 29, section 2298 within the previous 10 years; or

(2) The person has 2 convictions for violating section 2411 or former Title 29, section 1312-B within the previous 10 years.

The minimum fine for a Class C crime under this paragraph is \$1,000 and the minimum term of imprisonment is 9 months plus a day, neither of which may be suspended by the court.

D. A person is guilty of a Class C crime if the person violates subsection 1 and:

2 (1) The person has 3 or more convictions for operating
4 after revocation under this section or under former
Title 29, section 2298 within the previous 10 years; or

6 (2) The person has 3 or more convictions for violating
8 section 2411 or former Title 29, section 1312-B within
the previous 10 years.

10 The minimum fine for a Class C crime under this paragraph is
12 \$1,000 and the minimum term of imprisonment is 2 years,
neither of which may be suspended by the court.

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

18 4. Relief from habitual offender status. The Secretary of
20 State may not grant relief from habitual offender status under
section 2554 until at least 3 years have passed after the
22 original date scheduled for eligibility to apply for relief of
that status.

24 5. Presumption of identity. If the name and date of birth of
26 a person being prosecuted are the same as those of the habitual
offender whose privilege to operate has been suspended, it is
28 prima facie evidence that it is the same person.

30 6. Notice to Secretary of State. A law enforcement officer
32 who has arrested a person for or charged a person with violating
this section shall notify the Secretary of State of that action.

34 **Sec. A-12. 29-A MRSA §2558 is enacted to read:**

36 **§2558. Aggravated operating after habitual offender revocation**

38 1. Crime. A person is guilty of aggravated operating after
40 habitual offender revocation if that person violates section
2557-A and at the time of the violation the person commits one or
more of the following:

42 A. OUI in violation of section 2411;

44 B. Driving to endanger in violation of section 2413;

46 C. Eluding an officer in violation of section 2414;

48 D. Passing a roadblock in violation of section 2414,
50 subsection 4; and

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E. Operating a motor vehicle at a speed that exceeds the maximum speed limit by 30 miles per hour or more.

2. Penalties. The following penalties apply.

A. A person who violates subsection 1 commits a Class D crime for which a minimum fine of \$500 and a minimum term of imprisonment of 6 months must be imposed, neither of which may be suspended by the court.

B. A person who violates subsection 1 and at the time has one conviction for violating this section, section 2411, former section 2557 or section 2557-A within the previous 10 years commits a Class C crime for which a minimum fine of \$1,000 and a minimum term of imprisonment of one year must be imposed, neither of which may be suspended by the court.

C. A person who violates subsection 1 and at the time has 2 convictions for violating this section, former section 2557 or section 2557-A within the previous 10 years commits a Class C crime for which a minimum fine of \$2,000 and a minimum term of imprisonment of 2 years must be imposed, neither of which may be suspended by the court.

D. A person who violates subsection 1 and at the time has 3 or more convictions for violating this section, former section 2557 or section 2557-A within the previous 10 years commits a Class C crime for which a minimum fine of \$3,000 and a term of imprisonment of 5 years must be imposed, neither of which may be suspended by the court.

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

4. Relief from habitual offender status. The Secretary of State may not grant relief from habitual offender status under section 2554 until at least 3 years have passed after the original date scheduled for eligibility to apply for relief of that status.

5. Presumption of identity. If the name and date of birth of a person being prosecuted are the same as those of the habitual offender whose privilege to operate has been suspended, it is prima facie evidence that it is the same person.

6. Notice to Secretary of State. A law enforcement officer who has arrested a person for or charged a person with violating this section shall notify the Secretary of State of that action.

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Sec. A-13. 29-A MRSA §2606, sub-§3 is enacted to read:

3. Confiscation of suspended licenses. The Secretary of State shall take reasonable actions to confiscate suspended licenses.

Sec. A-14. Report regarding impact on county jails. The joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters shall request the Maine Sheriff's Association to report by January 30, 2007 to the committee regarding the impact of the increased motor vehicle penalties pursuant to this Act on the county jail population and to provide suggestions for changes, if necessary. The committee may report out a bill regarding these suggested changes to the First Regular Session of the 123rd Legislature.

PART B

Sec. B-1. 17-A MRSA §1349, as amended by PL 2005, c. 265, §15, is further amended to read:

§1349. Eligibility for sentence alternative that includes period of administrative release

1. A person who has been convicted of a Class D or Class E crime or a Class C crime under Title 29-A, former section 2557, section 2557-A or section 2558 may be sentenced to a sentence alternative under section 1152 that includes a period of administrative release, unless:

A. The statute that the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person must be sentenced to the imprisonment and required to pay the fine authorized therein;

B. The court sentences the person to a sentencing alternative under section 1152 that includes a period of probation; or

C. The court finds that such a sentence would diminish the gravity of the crime for which that person was convicted.

Sec. B-2. 17-A MRSA §1349-B, sub-§1, as amended by PL 2005, c. 265, §17, is further amended to read:

1. The court may sentence a person to a term of imprisonment not to exceed the maximum term authorized for the Class D or Class E crime or the Class C crime under Title 29-A,

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2 former section 2557, section 2557-A or section 2558, suspend the
term of imprisonment in whole or in part and accompany the
4 suspension with a period of administrative release not to exceed
the one year authorized under section 1349-A, subsection 1.

6 **Sec. B-3. 29-A MRSA §1357, sub-§2, §A**, as amended by PL 2005,
c. 174, §1, is further amended to read:

8 A. A person may not provide advanced driver education unless
10 licensed by the Secretary of State. An instructor license
is valid for 3 years from the date of issuance. An
12 applicant for an instructor license must meet the following
requirements.

14 (1) The person is at least 21 years of age and has a
16 high school diploma or its equivalent.

18 (2) The person has at least 4 years of driving
experience as a licensed operator and possesses a valid
20 driver's license.

22 (3) The person has not been convicted for a moving
criminal traffic offense within the last 3 years,
24 except for operating without a driver's license if the
license was expired less than 5 years and operating
26 with an expired registration.

28 (4) The person has not been designated as an
accident-prone driver pursuant to section 1308 within
30 the last year.

32 (5) The person has not had a driver's license
suspended or revoked within the last 6 years pursuant
34 to ~~sections~~ section 2411, 2453, 2454, 2456, 2457, 2472,
2521, 2525, 2554, or 2555 or, former section 2557 or
36 section 2557-A or 2558.

38 (6) The person has not been convicted within the last
10 years for any crimes for which more than one year of
40 incarceration may be ordered.

42 (7) The person must have at least one year of
training, education or experience in driver education,
44 driver evaluation, assessment or testing or teaching
defensive driving.

46 **Sec. B-4. 29-A MRSA §1404, sub-§2**, as amended by PL 1997, c.
48 617, §1, is further amended to read:

2. **Prior convictions.** A person convicted of operating under the influence of intoxicating liquor or drugs or with an excessive blood-alcohol level, as defined in section 2453, subsection 2, within 10 years of the date the license is issued, reissued or returned after a period of suspension bears a coded notation of that fact.

The Secretary of State may, at the request of a licensee, remove the coded notation from the license of a person convicted for a first operating-under-the-influence offense as defined in section 2453, subsection 2 after 6 years from the date of the conviction if the person has not been convicted or adjudicated of the offense of speeding more than 15 miles per hour over the maximum speed limit or any offense described under section ~~2551~~ 2551-A, subsection 1, paragraph A or had a license suspended or revoked within that 6-year period.

Sec. B-5. 29-A MRSA §2431, sub-§4, as amended by PL 1997, c. 776, §46, is further amended to read:

4. **Statements by accused.** A statement by a person as to name or date of birth, or the name or date of birth contained on a driver's license surrendered by that person, is admissible in a proceeding under this Title.

A statement of the person's name or date of birth constitutes sufficient proof by itself, without further proof of corpus delicti.

A statement by a defendant that the defendant was the operator of a motor vehicle is admissible in a proceeding under ~~sections~~ section 2411, section 2412-A and, former section 2557, section 2557-A or section 2558, if it is made voluntarily and is otherwise admissible under the United States Constitution or the Constitution of Maine. The statement may constitute sufficient proof by itself, without further proof of corpus delicti, that the motor vehicle was operated by the defendant.

Sec. B-6. 29-A MRSA §2555, sub-§§1 and 2, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, are amended to read:

1. **New convictions.** Within a 5-year period of the restoration, the person commits a new offense under section ~~2551~~ 2551-A, subsection 1, paragraph A; or

2. **Continued liability.** The person commits a new offense under section ~~2551~~ 2551-A, subsection 1, paragraph A and, within 5 years preceding the date of that new offense, the person's record shows accumulated convictions or adjudications, including

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2 the new offense, which results in that ~~person~~ person's being
defined as an habitual offender under section ~~2551~~ 2551-A,
4 subsection 1, paragraph A.

6 **Sec. B-7. 29-A MRSA §2556, sub-§5,** as enacted by PL 1993, c.
683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

8 **5. Eligibility.** If a conviction is based on former section
2551 or section 2551-A, subsection 1, paragraph B, the person
10 must have completed the period of suspension required for the OUI
conviction and the Secretary of State must have received written
12 notice that the person has satisfactorily completed the alcohol
and drug program.'

16 **SUMMARY**

18 This amendment replaces the bill and:

20 1. Amends the OUI law to be consistent with proposed
changes that create the distinct crimes of causing serious bodily
22 injury or death while the driver's license is suspended or
revoked;

24 2. Adds to the list of 3 or more convictions or
adjudications for distinct offenses within a 5-year period for
26 which a person is an habitual offender the offense of operating a
motor vehicle at a speed that exceeds the maximum speed limit by
28 30 miles per hour or more;

30 3. Adds to the list of convictions or adjudications for
distinct offenses within a 5-year period for which a person is an
32 habitual offender the accumulation of 10 or more moving
violations;

34 4. Removes from the exceptions for which a person is not an
habitual offender the case when all convictions or adjudications
36 are based on operating after suspension, or "OAS," when the
license was originally suspended for failure to give or maintain
38 proof of financial responsibility;

40 5. Removes from the convictions for offenses that may not be
included under the habitual offender provision convictions for
42 OAS when the suspension is based upon failure to appear in court
or pay a fine;

44 6. Amends the penalties for operating after habitual
offender revocation and expands the crime to include persons who
46 have one or more prior convictions for operating after habitual
offender revocation or aggravated operating after habitual
48 offender revocation or aggravated operating after habitual
50 offender revocation or aggravated operating after habitual

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2 offender revocation and who then operate after the license is
suspended or revoked;

4 7. Creates the crime of aggravated operating after habitual
6 offender revocation and imposes new penalties. A person is
guilty of aggravated operating after habitual offender revocation
8 if that person operates after habitual offender revocation and at
the time of that violation also commits one or more of the
10 following: OUI, driving to endanger, eluding an officer, passing
a roadblock and operating a motor vehicle at a speed that exceeds
the maximum speed limit by 30 miles per hour or more;

12 8. Directs the Secretary of State to take reasonable
14 actions to confiscate suspended licenses; and

16 9. Instead of amending the home-release monitoring
18 statutes, requests the Maine Sheriff's Association by January 30,
2007 to report to the joint standing committee of the Legislature
22 having jurisdiction over criminal justice and public safety
matters regarding the impact these increased motor vehicle
penalties have on the county jail population and to make any
suggested changes, if necessary.

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FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



122nd MAINE LEGISLATURE

LD 1906

LR 2488(02)

An Act to Safeguard Maine's Highways

Fiscal Note for Bill as Amended by Committee Amendment "A"
Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

Fiscal Note

Current biennium cost increase - General Fund

Future biennium cost increase - General Fund

Minor cost increase - Highway Fund

Correctional and Judicial Impact Statements:

Establishing stricter penalties for operating after license suspension or revocation will result in increased annual admissions to state and county correction facilities and additional future costs to the facilities. The Judicial Department has indicated that requiring substantial minimum sentences that can not be suspended for operating after license suspension or revocation will result in fewer cases being resolved without trial, increasing trial and sentencing costs due to additional time requirements for judges, clerks, law clerks, security, court reporters and indigent defense.

Establishes new Class C and D crimes; increases correctional and judicial costs.

The collection of additional fines may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

The Bureau of Motor Vehicles within the Department of the Secretary of State will work to retrieve suspended licenses within existing budgeted resources.