

MAINE STATE LEGISLATURE

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Majority

CRIMINAL JUSTICE AND PUBLIC SAFETY

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STATE OF MAINE

HOUSE OF REPRESENTATIVES

124TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 495, L.D. 712, Bill, "An Act To Suspend Driver's Licenses of Persons Operating All-terrain Vehicles, Watercraft and Snowmobiles while Intoxicated"

Amend the bill by striking out the title and substituting the following:

'An Act To Require That Prior OUI Convictions Committed with a Motor Vehicle, Watercraft, Snowmobile or All-terrain Vehicle Are Treated as Previous OUI Convictions for Purposes of Sentencing'

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

'Sec. 1. 12 MRSA §10701, sub-§3, as affected by PL 2003, c. 614, §9 and amended by c. 655, Pt. B, §75 and affected by §422 and amended by c. 689, Pt. B, §6, is further amended to read:

3. Penalties. A person who violates this section commits a Class D crime. In determining an appropriate sentence, refusal to submit to a chemical test must in every case be an aggravating factor. In the following cases the following minimum penalties apply.

A. In the case of a person having no previous convictions of a violation of subsection 1-A or Title 29-A, section 2411 within the previous 6-year period, the fine may not be less than \$400. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete a blood-alcohol test under section 10702, subsection 1, the fine may not be less than \$500. A conviction under this paragraph must include a period of incarceration of not less than 48 hours, none of which may be suspended, when the person:

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

(2) Failed or refused to stop upon request or signal of an officer in uniform, pursuant to section 6953 or 10651, during the operation that resulted in

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1 prosecution for operating under the influence or with a blood-alcohol level of
2 0.08% or more; or

3 (3) Failed to submit to a chemical test to determine that person's blood-alcohol
4 level or drug concentration, requested by a law enforcement officer on the
5 occasion that resulted in the conviction.

6 B. In the case of a person having one previous conviction of a violation of
7 subsection 1-A or Title 29-A, section 2411 within the previous 6-year period, the fine
8 may not be less than \$600. If that person was adjudicated within the previous 6-year
9 period for failure to comply with the duty to submit to and complete a blood-alcohol
10 or drug concentration test under section 10702, subsection 1, the fine may not be less
11 than \$800. A conviction under this paragraph must include a period of incarceration
12 of not less than 7 days, none of which may be suspended.

13 C. In the case of a person having 2 or more previous convictions of violations of
14 subsection 1-A or Title 29-A, section 2411 within the previous 6-year period, the fine
15 may not be less than \$1,000. If that person was adjudicated within the previous 6-
16 year period for failure to comply with the duty to submit to and complete a blood-
17 alcohol or drug concentration test under section 10702, subsection 1, the fine may not
18 be less than \$1,300. A conviction under this paragraph must include a period of
19 incarceration of not less than 30 days, none of which may be suspended.

20 D. In addition to the penalties provided under paragraphs A to C, the court may
21 order the defendant to participate in the alcohol and other drug education, evaluation
22 and treatment programs for multiple offenders administered by the Department of
23 Health and Human Services, Office of Substance Abuse, as established in Title 5,
24 chapter 521.

25 E. The penalties provided under paragraphs B, C and D may not be suspended by
26 the court.

27 F. If the State pleads and proves that, while hunting or operating a snowmobile, all-
28 terrain vehicle or watercraft in violation of this section, the defendant in fact caused
29 serious bodily injury as defined in Title 17-A, section 2, subsection 23, to another
30 person or in fact caused the death of another person, the sentencing class for the
31 offenses in subsection 1-A is Class C. The minimum penalties specified in this
32 subsection apply, unless a longer minimum period otherwise applies.

33 Any alternatives defined in subsection 1-A may be pleaded in the alternative. The State
34 may, but is not required to, elect an alternative prior to submission to the fact finder.

35 For purposes of this subsection, a prior conviction has occurred within the 6-year period
36 if the date of docket entry by the clerk of a judgment of conviction or adjudication is 6
37 years or less from the date of the new conduct that is penalized or for which the penalty is
38 or may be enhanced.

39 In determining the appropriate sentence, the court shall consider the defendant's record of
40 convictions for hunting under the influence or operating a snowmobile, all-terrain vehicle
41 or watercraft while under the influence of intoxicating liquor or drugs and, for failure to
42 comply with the duty to submit or for committing OUI pursuant to Title 29-A, section
43 2411. The court may rely upon oral representations based on records maintained by the

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1 courts, by the Department of Public Safety, State Bureau of Identification; by the
2 Secretary of State, including telecommunications of records maintained by the Secretary
3 of State; or by the department. If the defendant disputes the accuracy of any
4 representation concerning a conviction or adjudication, the court shall grant a continuance
5 for the purposes of determining the accuracy of the record.

6 References in this Title to this subsection are deemed to refer to the juvenile crime stated
7 in Title 15, section 3103, subsection 1, paragraph E and to the disposition, including a
8 suspension, for that juvenile crime as provided in Title 15, section 3314, subsection 3,
9 except as otherwise provided or when the context clearly requires otherwise.

10 **Sec. 2. 29-A MRSA §2411, sub-§5, ¶F**, as amended by PL 2001, c. 511, §3 and
11 PL 2003, c. 689, Pt. B, §6, is further amended to read:

12 F. For a person sentenced under paragraph B, C or D, the court shall order the
13 defendant to participate in the alcohol and other drug program of the Department of
14 Health and Human Services, Office of Substance Abuse. The court may waive the
15 program pursuant to Title 5, section 20073-B, if the court finds that the defendant has
16 completed an alcohol or other drug treatment program subsequent to the date of the
17 offense; ~~and~~

18 **Sec. 3. 29-A MRSA §2411, sub-§5, ¶G**, as amended by PL 2005, c. 606, Pt. A,
19 §4, is further amended to read:

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

24 **Sec. 4. 29-A MRSA §2411, sub-§5, ¶H** is enacted to read:

25 H. For a person sentenced under this section, the court shall consider a conviction for
26 a violation of Title 12, section 10701, subsection 1-A, paragraph B, C or D as a
27 previous OUI offense.

28 **Sec. 5. Appropriations and allocations.** The following appropriations and
29 allocations are made.

30 **CORRECTIONS, DEPARTMENT OF**
31 **Correctional Impact Reserve N033**

32 Initiative: Provides funds for the additional correctional costs.

33	GENERAL FUND	2009-10	2010-11
34	All Other	\$134,808	\$134,808
35			
36	GENERAL FUND TOTAL	<u>\$134,808</u>	<u>\$134,808</u>

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1	CORRECTIONS, DEPARTMENT OF		
2	DEPARTMENT TOTALS	2009-10	2010-11
3			
4	GENERAL FUND	\$134,808	\$134,808
5			
6	DEPARTMENT TOTAL - ALL FUNDS	\$134,808	\$134,808

7 **JUDICIAL DEPARTMENT**
 8 **Courts - Supreme, Superior and District 0063**
 9 Initiative: Provides funds for court-appointed counsel.

10	GENERAL FUND	2009-10	2010-11
11	All Other	\$1,500	\$2,500
12			
13	GENERAL FUND TOTAL	\$1,500	\$2,500

14	JUDICIAL DEPARTMENT		
15	DEPARTMENT TOTALS	2009-10	2010-11
16			
17	GENERAL FUND	\$1,500	\$2,500
18			
19	DEPARTMENT TOTAL - ALL FUNDS	\$1,500	\$2,500

20	SECTION TOTALS	2009-10	2010-11
21			
22	GENERAL FUND	\$136,308	\$137,308
23			
24	SECTION TOTAL - ALL FUNDS	\$136,308	\$137,308
25			

26 **SUMMARY**

27 This amendment is the majority report, replaces the bill and changes the bill's title.
 28 The amendment requires a court, when sentencing a person convicted for OUI committed
 29 with a motor vehicle, watercraft, snowmobile or all-terrain vehicle, to treat prior
 30 convictions for OUI committed with a motor vehicle, watercraft, snowmobile or all-
 31 terrain vehicle as a previous conviction. The amendment also adds an appropriations and
 32 allocations.

FISCAL NOTE REQUIRED
 (See attached)

COMMITTEE AMENDMENT



124th MAINE LEGISLATURE

LD 712

LR 1743(02)

An Act To Suspend Driver's Licenses of Persons Operating All-terrain Vehicles, Watercraft and Snowmobiles while Intoxicated

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

Fiscal Note

	2009-10	2010-11	Projections 2011-12	Projections 2012-13
Net Cost (Savings)				
General Fund	\$136,308	\$137,308	\$137,308	\$137,308
Appropriations/Allocations				
General Fund	\$136,308	\$137,308	\$137,308	\$137,308

Fiscal Detail and Notes

Correctional Cost Detail	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Class D Crime	\$134,808	\$134,808	\$134,808	\$134,808	\$134,808
Total Cost - All Convictions	\$134,808	\$134,808	\$134,808	\$134,808	\$134,808

This bill includes a General Fund appropriation of \$134,808 in fiscal years 2009-10 and 2010-11 for the additional cost to correctional facilities. This estimate assumes 82 Class D convictions per year.

This bill also includes a General Fund appropriation of \$1,500 in fiscal year 2009-10 and \$2,500 in fiscal year 2010-11 for the Judicial Branch for court-appointed counsel costs.