

MAINE STATE LEGISLATURE

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Date: 6/6/11

L.D. 1491

(Filing No. H-535)

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CRIMINAL JUSTICE AND PUBLIC SAFETY

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STATE OF MAINE

6

HOUSE OF REPRESENTATIVES

7

125TH LEGISLATURE

8

FIRST REGULAR SESSION

9

COMMITTEE AMENDMENT "A" to H.P. 1096, L.D. 1491, Bill, "An Act To
10 Strengthen the Laws against Driving under the Influence of Drugs"

11

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

13

'Sec. 1. 16 MRSA §357, last ¶, as amended by PL 2009, c. 447, §17, is further
14 amended to read:

15

Notwithstanding this section, the result of a laboratory or any other test kept by a
16 hospital or other medical facility that reflects an alcohol level, a detectable urine-drug
17 level ~~and~~ a detectable blood-drug level or a drug concentration of either blood or urine
18 may not be excluded as evidence in a criminal or civil proceeding by reason of any claim
19 of confidentiality or privilege and may be admitted as long as the result is relevant and
20 reliable evidence if the proceeding is one in which the operator of a motor vehicle,
21 snowmobile, all-terrain vehicle or watercraft is alleged to have operated under the
22 influence of intoxicating liquor or drugs and the court is satisfied that probable cause
23 exists to believe that the operator committed the offense charged.

24

Sec. 2. 29-A MRSA §2401, sub-§8, as amended by PL 2009, c. 447, §34, is
25 further amended to read:

26

8. OUI. "OUI" means operating under the influence of intoxicants or with an
27 excessive alcohol level under section 2411, 2453, 2453-A, 2454, 2456, 2457 or 2472.

28

Sec. 3. 29-A MRSA §2431, sub-§1, as amended by PL 2009, c. 447, §44, is
29 further amended to read:

30

1. Test results. Test results showing a confirmed positive drug concentration or
31 metabolite presence in blood or urine or alcohol level at the time alleged are admissible in
32 evidence. Failure to comply with the provisions of sections 2521 and 2523 may not, by
33 itself, result in the exclusion of evidence of alcohol level or confirmed positive drug
34 concentration or metabolite presence, unless the evidence is determined to be not
35 sufficiently reliable.

COMMITTEE AMENDMENT

1 **Sec. 4. 29-A MRSA §2432**, as amended by PL 2009, c. 447, §48, is further
2 amended to read:

3 **§2432. Alcohol level; confirmed positive drug or metabolite test results; evidentiary**
4 **weight**

5 1. **Level less than 0.05 grams.** If a person has an alcohol level of 0.05 grams or less
6 of alcohol per 100 milliliters of blood or 210 liters of breath, it is prima facie evidence
7 that that person is not under the influence of alcohol.

8 2. **Level greater than 0.05 grams and less than 0.08 grams.** If a person has an
9 alcohol level in excess of 0.05 grams of alcohol but less than 0.08 grams of alcohol per
10 100 milliliters of blood or 210 liters of breath, it is ~~relevant~~ admissible evidence, but not
11 prima facie, indicating whether or not that person is under the influence of intoxicants to
12 be considered with other competent evidence, including evidence of a confirmed positive
13 drug or metabolite test result.

14 3. **Level of 0.08 grams or greater.** In proceedings other than under section 2411, a
15 person is presumed to be under the influence of intoxicants if that person has an alcohol
16 level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath.

17 4. **Confirmed positive drug or metabolite concentration level.** If a person has a
18 trace amount of any drug or the metabolites of any drug at detectable concentration levels
19 within the person's blood or urine in accordance with the drug reporting rules, standards,
20 procedures and protocols adopted by the Department of Health and Human Services, it is
21 admissible evidence, but not prima facie, indicating whether that person is under the
22 influence of intoxicants to be considered with other competent evidence, including
23 evidence of alcohol level.

24 **Sec. 5. 29-A MRSA §2453-A** is enacted to read:

25 **§2453-A. Suspension on administrative determination; operating under the**
26 **influence of drugs**

27 1. **Purpose.** The purpose of this section is:

28 A. To provide maximum safety for all persons who travel on or otherwise use the
29 public ways; and

30 B. To remove quickly from public ways those persons who have shown themselves
31 to be a safety hazard by operating a motor vehicle while under the influence of drugs.

32 2. **Report of drug recognition expert.** A drug recognition expert certified in
33 accordance with section 2526 who has probable cause to believe that a person was
34 operating a motor vehicle under the influence of a specific category of drug, a
35 combination of specific categories of drugs or a combination of alcohol and one or more
36 specific categories of drugs shall send to the Secretary of State a report, under oath on a
37 form approved by the Secretary of State, of all relevant information, including, but not
38 limited to, the following:

39 A. Information adequately identifying the person who is the subject of the report;
40 and

- 1 B. The grounds the drug recognition expert had for probable cause to believe the
2 person operated a motor vehicle while under the influence of drugs.
- 3 Section 2481, subsections 2 and 3 apply to the report submitted by the drug recognition
4 expert.
- 5 3. Drug test. The person who analyzed the drug or its metabolite in the blood or
6 urine of the person who is the subject of the drug recognition expert's report under
7 subsection 2 shall send a copy of a confirmed positive test result certificate to the
8 Secretary of State.
- 9 4. Suspension. The Secretary of State shall immediately suspend a license of a
10 person determined to have operated a motor vehicle under the influence of drugs.
- 11 5. Period of suspension. The following periods of suspension apply.
- 12 A. The same suspension period applies as if the person were convicted for OUI.
- 13 B. If a person's license is also suspended for an OUI conviction arising out of the
14 same occurrence, the period of time the license has been suspended pursuant to this
15 section prior to the conviction must be deducted from the period of time of a court-
16 imposed suspension.
- 17 6. Stay of suspension. If, within 10 days from the effective date of the suspension,
18 the Secretary of State receives a request in writing for a hearing in accordance with
19 section 2483, the suspension is stayed until a hearing is held and a decision is issued.
- 20 7. Hearing. The scope of the hearing must include whether:
- 21 A. The person operated a motor vehicle with a confirmed positive blood or urine test
22 for a drug or its metabolite;
- 23 B. There was probable cause to believe that the person was operating a motor vehicle
24 while under the influence of a specific category of drug, a combination of specific
25 categories of drugs or a combination of alcohol and one or more specific categories
26 of drugs; and
- 27 C. The person operated a motor vehicle under the influence of the confirmed drug.
- 28 8. Restoration of license. Restoration of any license or permit to operate, right to
29 operate a motor vehicle and right to apply for or obtain a license suspended under this
30 section must be in accordance with sections 2502 to 2506.
- 31 -**Sec. 6. 29-A MRSA §2472, sub-§3**, as amended by PL 2009, c. 447, §58, is
32 further amended to read:
- 33 **3. Suspension for OUI conviction, certain alcohol level or operating under the**
34 **influence of drugs.** The Secretary of State shall suspend, without preliminary hearing, a
35 juvenile provisional license of a person who:
- 36 A. Receives an OUI conviction; or
- 37 B. Operates a motor vehicle with an alcohol level of more than 0.00 grams per 100
38 milliliters of blood or 210 liters of breath; or
- 39 C. Operates a motor vehicle under the influence of drugs.

1 **Sec. 7. 29-A MRSA §2472, sub-§4**, as amended by PL 2009, c. 447, §60, is
2 further amended to read:

3 **4. Duty to submit to test.** A person under 21 years of age who operates a motor
4 vehicle shall submit to a chemical test if there is probable cause to believe that person has
5 operated a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters
6 of blood or 210 liters of breath or while under the influence of a specific category of drug,
7 a combination of specific categories of drugs or a combination of alcohol and one or
8 more specific categories of drugs. The provisions of subchapter 4 apply, except the
9 suspension is:

10 A. Eighteen months for the first refusal; and

11 B. Thirty months for a 2nd or subsequent refusal.

12 If the Secretary of State determines that the person operated the motor vehicle at the time
13 of the offense with a passenger under 21 years of age, an additional suspension period of
14 180 days must be imposed.

15 **Sec. 8. 29-A MRSA §2472, sub-§5**, as amended by PL 2009, c. 447, §§61 and
16 62, is further amended to read:

17 **5. Hearing; stay; issues.** If a hearing is requested in accordance with section 2483,
18 the suspension under subsection 3, paragraph B or C is stayed pending the outcome of the
19 hearing. The scope of a hearing must include whether:

20 A. There was probable cause to believe that the person was under 21 years of age
21 and operated a motor vehicle with an alcohol level of more than 0.00 grams per 100
22 milliliters of blood or 210 liters of breath or while under the influence of a specific
23 category of drug, a combination of specific categories of drugs or a combination of
24 alcohol and one or more specific categories of drugs;

25 B. The person operated a motor vehicle with an alcohol level of more than 0.00
26 grams per 100 milliliters of blood or 210 liters of breath or with a confirmed positive
27 blood or urine test for a drug or its metabolite and was under the influence of the
28 confirmed drug; and

29 C. The person was under 21 years of age.

30 **Sec. 9. 29-A MRSA §2482, sub-§2, ¶C**, as amended by PL 2003, c. 434, §34
31 and affected by §37, is further amended to read:

32 C. ~~If the suspension or revocation is imposed by an authority other than a court~~
33 Unless the suspension or revocation is ordered by a court or rests solely upon a
34 conviction or adjudication in court of an offense that is, by statute, expressly made
35 grounds for that suspension or revocation, the right of the person to request a hearing
36 and the procedure for requesting a hearing; and

37 **Sec. 10. 29-A MRSA §2482, sub-§2, ¶F**, as amended by PL 2009, c. 447, §64,
38 is further amended to read:

39 F. If the suspension or revocation is based on a report under section 2453-A or
40 2481, that a copy of the report of the law enforcement officer and any alcohol test
41 certificate and the confirmed positive drug or metabolite test result and the report of

1 the drug recognition expert will be provided to the person upon request to the
2 Secretary of State.

3 **Sec. 11. 29-A MRSA §2502, sub-§1**, as amended by PL 2001, c. 511, §7, is
4 further amended to read:

5 **1. Issuance of special license.** Following the expiration of the total period of
6 suspension imposed on a first-time offender pursuant to Title 15, section 3314 or sections
7 2411, 2453, 2453-A, 2472 and 2521, the Secretary of State shall issue a special license or
8 permit to the person if the Secretary of State receives written notice that the person has
9 completed the assessment components of the alcohol and other drug program pursuant to
10 Title 5, section 20073-B. First offenders who have registered for the completion of
11 treatment programs as described in Title 5, section 20072, subsection 2 are entitled to
12 receive a special license after completion of 3 treatment sessions provided by a counselor
13 or agency approved by the Office of Substance Abuse. A special license or permit may
14 not be issued under this section to 2nd and subsequent offenders.

15 **Sec. 12. 29-A MRSA §2503, sub-§1**, as amended by PL 1997, c. 737, §21, is
16 further amended to read:

17 **1. Administrative suspension; work-restricted license.** On receipt of a petition for
18 a work-restricted license from a person under suspension pursuant to section 2453,
19 section 2453-A or section 2472, subsection 3, paragraph B or C for a first offense, the
20 Secretary of State may stay a suspension during the statutory suspension period and issue
21 a work-restricted license, if the petitioner shows by clear and convincing evidence that:

22 A. As determined by the Secretary of State, a license is necessary to operate a motor
23 vehicle:

24 (1) Between the residence and a place of employment or in the scope of
25 employment, or both; or

26 (2) Between the residence and an educational facility attended by the petitioner
27 if the suspension is under section 2472, subsection 3, paragraph B or C for a first
28 offense;

29 B. No alternative means of transportation is available; and

30 C. The petitioner has not, within 10 years, been under suspension for an OUI offense
31 or pursuant to section 2453 or 2453-A.

32 **Sec. 13. 29-A MRSA §2508, sub-§1**, as amended by PL 2009, c. 482, §1, is
33 further amended to read:

34 **1. Installation of ignition interlock device.** Notwithstanding the periods of
35 suspension pursuant to section 2411 or 2451, subsection 3, the Secretary of State may
36 reinstate the license of a person convicted of more than one violation of section 2411 or
37 whose license is suspended by the Secretary of State pursuant to section 2453 or 2453-A
38 if the person satisfies all other conditions for license reinstatement and installs an ignition
39 interlock device approved by the Secretary of State in the motor vehicle the person
40 operates, under the following conditions.

1 A. The license of a person with 2 OUI offenses may be reinstated after 9 months of
2 the suspension period has run if the person has installed for a period of 2 years an
3 ignition interlock device approved by the Secretary of State in the motor vehicle the
4 person operates.

5 B. The license of a person with 3 OUI offenses may be reinstated after 3 years of the
6 suspension period has run if the person has installed for a period of 3 years an
7 ignition interlock device approved by the Secretary of State in the motor vehicle the
8 person operates.

9 C. The license of a person with 4 or more OUI offenses may be reinstated after the
10 expiration of the period of suspension if the person has installed for a period of 4
11 years an ignition interlock device approved by the Secretary of State in the motor
12 vehicle the person operates. This paragraph applies only to 4th or subsequent
13 offenses committed after August 31, 2008.

14 **Sec. 14. 29-A MRSA §2525, sub-§§1 and 2**, as enacted by PL 1993, c. 683, Pt.
15 A, §2 and affected by Pt. B, §5, are further amended to read:

16 **1. Submission to test required.** If a drug recognition ~~technician~~ expert has probable
17 cause to believe that a person is under the influence of a specific category of drug, a
18 combination of specific categories of drugs or a combination of alcohol and one or more
19 specific categories of drugs, that person must submit to a blood or urine test selected by
20 the drug recognition ~~technician~~ expert to confirm that person's category of drug use and
21 determine the presence of the drug concentration.

22 **2. Admissibility of evidence.** If a law enforcement officer certified as a drug
23 recognition ~~technician~~ expert by the Maine Criminal Justice Academy conducts a drug
24 impairment assessment, the officer's testimony about that assessment is admissible in
25 court as evidence of operating under the influence of intoxicants. Test results showing a
26 confirmed positive drug or metabolite in the blood or urine are admissible as evidence of
27 operating under the influence of intoxicants. Failure to comply with any provision of this
28 section does not, by itself, result in the exclusion of evidence of test results, unless the
29 evidence is determined to be not sufficiently reliable.

30 **Sec. 15. 29-A MRSA §2526**, as enacted by PL 1993, c. 683, Pt. A, §2 and
31 affected by Pt. B, §5, is amended to read:

32 **§2526. Drug recognition experts**

33 **1. Training program.** The board of trustees of the Maine Criminal Justice
34 Academy shall establish:

35 A. A program that meets the National Highway Traffic Safety Administration
36 guidelines for training and certification of drug recognition ~~technicians~~ experts; and

37 B. Eligibility standards for admission of law enforcement officers to the program
38 that are consistent with National Highway Traffic Safety Administration guidelines
39 and that ensure that trainees are:

40 (1) Law enforcement officers who have demonstrated proficiency and
41 experience in standardized field sobriety testing and the ability to complete the
42 training and function as drug recognition ~~technicians~~ experts; and

- 1 (2) Employed by law enforcement agencies that have the facilities, equipment
- 2 and other resources necessary for the effective functioning of drug recognition
- 3 ~~technicians~~ experts.

- 4 **2. Selection of trainees.** The Commissioner of Public Safety shall select for training
- 5 as drug recognition ~~technicians~~ experts members of the State Police and other law
- 6 enforcement officers who meet the eligibility requirements.

- 7 **3. Qualifications.** Only those law enforcement officers who successfully complete
- 8 the training and certification program established under this section may conduct drug
- 9 impairment assessments and offer testimony as drug recognition ~~technicians~~ experts
- 10 under section 2525.'

SUMMARY

12 This amendment replaces the bill and requires the Secretary of State to suspend
13 administratively the driver's license of a person determined to have operated a motor
14 vehicle with a confirmed positive drug test in the same manner and for the same time
15 periods as a person whose license is suspended administratively for operating a motor
16 vehicle with an excessive alcohol level. The amendment also changes the designation
17 "drug recognition technician" to "drug recognition expert."

FISCAL NOTE REQUIRED
(See attached)



125th MAINE LEGISLATURE

LD 1491

LR 967(02)

An Act To Strengthen the Laws against Driving under the Influence of Drugs

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

Fiscal Note

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

Fiscal Detail and Notes

Additional costs to the Department of Secretary of State associated with the provisions of this legislation can be absorbed with existing staff and within existing budgeted resources. Highway Fund and General Fund revenues could increase by minor amounts from additional receipts of suspension fees.

An increase in drug operating under the influence convictions could increase the number of people required to complete a Driver Education and Evaluation Program. The increase in class attendance could generate minor costs and additional fee revenue to the General Fund.