

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1491

H.P. 1096

House of Representatives, April 14, 2011

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

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative WILLETTE of Mapleton.
Cosponsored by Senator COLLINS of York and
Representatives: CLARK of Easton, DAVIS of Sangerville, MAZUREK of Rockland, RIOUX
of Winterport, THERIAULT of Madawaska.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 29-A MRSA §2401, sub-§2-A** is enacted to read:

3 **2-A. After ingesting drugs.** "After ingesting drugs" means while having a
4 detectable urine-drug level or a detectable blood-drug level with a positive confirmed
5 drug or its metabolite concentration in accordance with the drug reporting rules,
6 standards, procedures and protocols adopted by the Department of Health and Human
7 Services.

8 **Sec. 2. 29-A MRSA §2431, sub-§1,** as amended by PL 2009, c. 447, §44, is
9 further amended to read:

10 **1. Test results.** Test results showing a ~~drug concentration~~ detectable urine-drug
11 level or detectable blood-drug level or alcohol level at the time alleged are admissible in
12 evidence. Failure to comply with the provisions of sections 2521 and 2523 may not, by
13 itself, result in the exclusion of evidence of alcohol level or ~~drug concentration~~ detectable
14 urine-drug level or detectable blood-drug level, unless the evidence is determined to be
15 not sufficiently reliable.

16 **Sec. 3. 29-A MRSA §2431, sub-§2, ¶A-1** is enacted to read:

17 A-1. A person certified in accordance with section 2524 performing an approved
18 immunoassay detection test for urine-drug level may issue a certificate stating the
19 results of the test.

20 **Sec. 4. 29-A MRSA §2431, sub-§2, ¶L** is enacted to read:

21 L. Evidence that materials used in the collection and performance of an approved
22 immunoassay detection test of urine was provided by the Department of Health and
23 Human Services is prima facie evidence that the materials were of the composition
24 and quality stated by the manufacturer and are of a quality appropriate for the
25 purpose of producing reliable test results.

26 **Sec. 5. 29-A MRSA §2431, sub-§2, ¶M** is enacted to read:

27 M. A photograph, digital image or photocopy of an approved immunoassay detection
28 test clearly showing the results of the test is prima facie evidence of the results.

29 **Sec. 6. 29-A MRSA §2431, sub-§2, ¶N** is enacted to read:

30 N. The results of an approved immunoassay test kit are prima facie evidence of
31 urine-drug level.

32 **Sec. 7. 29-A MRSA §2431, sub-§2, ¶O** is enacted to read:

33 O. The prosecution is not required to produce expert testimony regarding the
34 functioning of an approved immunoassay drug test before test results are admissible
35 if sufficient evidence is offered to show that the test kit was an approved test kit
36 provided by the Department of Health and Human Services.

1 **Sec. 8. 29-A MRSA §2432**, as amended by PL 2009, c. 447, §48, is further
2 amended to read:

3 **§2432. Alcohol level; detectable urine-drug level; detectable blood-drug level;**
4 **evidentiary 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 evidence, but not prima facie,
11 indicating whether or not that person is under the influence of intoxicants to be
12 considered with other competent evidence including evidence of a detectable urine-drug
13 level or blood-drug concentration level.

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. Detectable urine-drug level.** If a person has trace amounts of any drug or the
18 metabolites of any drug at detectable concentration levels within the person's urine, it is
19 relevant evidence, but not prima facie, indicating whether or not that person is under the
20 influence of intoxicants, to be considered with other competent evidence, including
21 evidence of alcohol level and detectable blood-drug level.

22 **5. Detectable blood-drug level.** If a person has trace amounts of any drug or the
23 metabolites of any drug at detectable concentration levels within the person's blood, it is
24 relevant evidence, but not prima facie, indicating whether or not that person is under the
25 influence of intoxicants, to be considered with other competent evidence, including
26 evidence of alcohol level and detectable urine-drug level.

27 **Sec. 9. 29-A MRSA §2453**, as amended by PL 2009, c. 447, §49, is further
28 amended to read:

29 **§2453. Suspension on administrative determination; operating motor vehicle with**
30 **excessive alcohol level under influence of intoxicants or after ingesting drugs**

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

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

34 B. To remove quickly from public ways those persons who have shown themselves
35 to be a safety hazard by operating a motor vehicle ~~with an excessive alcohol level;~~

36 (1) With an excessive alcohol level;

37 (2) Under the influence of intoxicants; or

38 (3) After ingesting drugs.

1 **2. Definition.** For the purposes of this section, "operating a motor vehicle with an
2 excessive alcohol level" means operating a motor vehicle with an alcohol level of 0.08
3 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath.

4 **3. Suspension.** The Secretary of State shall immediately suspend a license of a
5 person determined to have operated a motor vehicle with an excessive alcohol level,
6 under the influence of intoxicants, or after ingesting drugs.

7 **4. Drug and alcohol program.** The Secretary of State may not suspend a license
8 solely because a person has not satisfactorily completed an alcohol and drug program, as
9 defined in subchapter 1. This limitation does not affect statutory restoration authority.

10 **5. Stay.** If, within 10 days from the effective date of the suspension, the Secretary of
11 State receives a request in writing for a hearing in accordance with section 2483, the
12 suspension is stayed until a hearing is held and a decision is issued.

13 **6. Period of suspension.** The following periods of suspension apply.

14 A. The same suspension period applies as if the person were convicted of OUI.

15 C. If a person's license is also suspended for an OUI conviction arising out of the
16 same occurrence, the period of time the license has been suspended under this section
17 prior to the conviction must be deducted from the period of time of a court-imposed
18 suspension.

19 D. The period of suspension is a minimum and the Secretary of State may suspend
20 the license for an additional period under section 2451, subsection 3.

21 **7. Restoration of license.** The Secretary of State may issue a license or permit as
22 follows.

23 A. Restoration of any license or permit to operate, right to operate a motor vehicle
24 and right to apply for or obtain a license suspended under this section must be in
25 accordance with sections 2502 to 2506.

26 **8. Hearing.** The scope of the hearing must include whether:

27 A. The person operated a motor vehicle with an excessive alcohol level, under the
28 influence of intoxicants or after ingesting drugs; and

29 B. There was probable cause to believe that the person was operating a motor
30 vehicle with an excessive alcohol level, under the influence of intoxicants or after
31 ingesting drugs.

32 **Sec. 10. 29-A MRSA §2456, sub-§1, ¶B,** as amended by PL 2009, c. 447, §51,
33 is further amended to read:

34 B. While having an alcohol level of more than 0.08 grams per 100 milliliters of
35 blood or 210 liters of breath or after ingesting drugs; or

36 **Sec. 11. 29-A MRSA §2456, sub-§3, ¶B,** as amended by PL 2009, c. 447, §52,
37 is further amended to read:

1 B. The person, at that time, had an excessive alcohol level, was operating after
2 ingesting drugs or was under the influence of intoxicants or may be penalized for
3 failure to submit to required chemical testing; and

4 **Sec. 12. 29-A MRSA §2472**, as amended by PL 2009, c. 447, §§57 to 62, is
5 further amended to read:

6 **§2472. Juvenile provisional license**

7 **1. Licensee not yet 21 years of age.** A license issued to a person who has not yet
8 attained the age of 21 years is a provisional license for a period of 2 years following the
9 date of issue or until the holder attains 21 years of age, whichever occurs last. That
10 license remains in force as a nonprovisional license to the next normal expiration date. A
11 license issued by another jurisdiction to a person who has not yet attained the age of 21
12 years is a provisional license for the purpose of operating a motor vehicle within this
13 State.

14 A license of a person who has not yet attained 21 years of age includes the condition that
15 the person not operate a motor vehicle with an alcohol level of more than 0.00 grams per
16 100 milliliters of blood or 210 liters of breath or after ingesting drugs. When a person
17 who has not yet attained 21 years of age operates a motor vehicle with an alcohol level of
18 more than 0.00 grams per 100 milliliters of blood or 210 liters of breath or after ingesting
19 drugs, the provisions of section 1251, subsection 1, paragraph B apply.

20 **2. Suspension terms for moving violations.** If a person who has not yet attained
21 the age of 21 years is convicted or adjudicated of a moving motor vehicle violation that
22 occurred within 2 years from the date of issue of a juvenile provisional license, the
23 Secretary of State shall suspend the license without right to hearing:

- 24 A. For 30 days on the 1st offense;
- 25 B. For 60 days on the 2nd offense; and
- 26 C. For 90 days on the 3rd or subsequent offense.

27 **3. Suspension for OUI conviction or certain alcohol or drug concentration level.**
28 The Secretary of State shall suspend, without preliminary hearing, a juvenile provisional
29 license of a person who:

- 30 A. Receives an OUI conviction; ~~or~~
- 31 B. Operates a motor vehicle with an alcohol level of more than 0.00 grams per 100
32 milliliters of blood or 210 liters of breath; or
- 33 C. Operates a motor vehicle after ingesting drugs.

34 **3-A. Juvenile provisional license; suspension for OUI conviction or certain**
35 **alcohol or drug concentration level.** Unless a longer period of suspension applies, the
36 Secretary of State shall suspend, without a preliminary hearing, a juvenile provisional
37 license pursuant to subsection 3 for the following periods:

- 38 A. One year for a first offense; and

1 B. Two years for a 2nd offense.

2 If the Secretary of State determines that the person operated the motor vehicle at the time
3 of the offense with a passenger under 21 years of age, an additional suspension period of
4 180 days must be imposed.

5 **4. Duty to submit to test.** A person under 21 years of age who operates a motor
6 vehicle shall submit to a chemical test if there is probable cause to believe that person has
7 operated a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters
8 of blood or 210 liters of breath or after ingesting drugs. The provisions of subchapter 4
9 apply, except the 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 **5. Hearing; stay; issues.** If a hearing is requested in accordance with section 2483,
16 the suspension under subsection 3, paragraph B or C is stayed pending the outcome of the
17 hearing. The scope of a hearing must include whether:

18 A. There was probable cause to believe that the person was under 21 years of age
19 and operated a motor vehicle with an alcohol level of more than 0.00 grams per 100
20 milliliters of blood or 210 liters of breath or after ingesting drugs;

21 B. The person operated a motor vehicle with an alcohol level of more than 0.00
22 grams per 100 milliliters of blood or 210 liters of breath or after ingesting drugs; and

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

24 **6. Restoration of license.** If a person's license has been suspended under subsection
25 3 for a first offense, the Secretary of State may issue a license if:

26 A. One half of the suspension period has expired; and

27 B. The Secretary of State has received notice that the person has completed the
28 alcohol and other drug program of the Office of Substance Abuse.

29 A 2nd or subsequent offender may be issued a license following the completion of the
30 period of suspension provided the Secretary of State has received notice that the person
31 has completed the alcohol and other drug program of the Office of Substance Abuse.

32 **Sec. 13. 29-A MRSA §2481, sub-§1-A** is enacted to read:

33 **1-A. Report of drug recognition expert.** A drug recognition expert certified in
34 accordance with section 2526 who has probable cause to believe that a person operated a
35 motor vehicle while under the influence of intoxicants or after ingesting drugs shall send
36 to the Secretary of State a report, completed under oath on a form approved by the
37 Secretary of State, of all information relevant to that belief, including, but not limited to:

1 A. Information adequately identifying the person who is the subject of the report;
2 and

3 B. The drug recognition expert's grounds for probable cause to believe that the
4 person operated a motor vehicle while under the influence of intoxicants or after
5 ingesting drugs.

6 The person who analyzed a drug or a drug's metabolite concentration pursuant to a drug
7 recognition expert's report shall submit a copy of a confirmed test result certificate to the
8 Secretary of State.

9 **Sec. 14. 29-A MRSA §2482, sub-§2, ¶C**, as amended by PL 2003, c. 434, §34
10 and affected by §37, is further amended to read:

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

16 **Sec. 15. 29-A MRSA §2482, sub-§2, ¶F**, as amended by PL 2009, c. 447, §64,
17 is further amended to read:

18 F. If the suspension or revocation is based on a report under section 2481, that a
19 copy of the report of the law enforcement officer and any alcohol test certificate and
20 drug concentration report will be provided to the person upon request to the Secretary
21 of State.

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

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

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

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

33 (2) Between the residence and an educational facility attended by the petitioner
34 if the suspension is under section 2472, subsection 3, paragraph B for a first
35 offense;

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

37 C. The petitioner has not, within 10 years, been under suspension for an OUI
38 offense or pursuant to section 2453.

39 **Sec. 17. 29-A MRSA §2524, sub-§3-A** is enacted to read:

1 **3-A. Persons qualified to take specimens and perform immunoassay drug**
2 **detection test.** A person certified by the Maine Criminal Justice Academy or the
3 Department of Corrections as qualified to administer an immunoassay drug detection test
4 kit approved by the Department of Health and Human Services may use an approved test
5 kit to collect and analyze a sample specimen of urine.

6 **Sec. 18. 29-A MRSA §2524, sub-§5**, as amended by PL 2009, c. 447, §71, is
7 further amended to read:

8 **5. Equipment for taking specimens.** Only equipment having a stamp of approval
9 affixed by the Department of Health and Human Services may be used to take a sample
10 specimen of breath or urine, except that a self-contained, breath-alcohol testing apparatus
11 if reasonably available may be used to determine the alcohol level and an immunoassay
12 drug detection test kit may be used to determine the detectable urine-drug level.

13 Approved testing apparatus must have a stamp of approval affixed by the Department of
14 Health and Human Services after periodic testing. That stamp is valid for no more than
15 one year. An approved immunoassay drug detection test kit must be one that is provided
16 to a state or local agency through the Department of Health and Human Services.

17 **Sec. 19. 29-A MRSA §2525**, as amended by PL 1995, c. 145, §2, is further
18 amended to read:

19 **§2525. Drug impairment assessment**

20 **1. Submission to test required.** If a drug recognition ~~technician~~ expert has probable
21 cause to believe that a person is under the influence of a specific category of drug, a
22 combination of specific categories of drugs or a combination of alcohol and one or more
23 specific categories of drugs, that person must submit to a blood or urine test selected by
24 the drug recognition ~~technician~~ expert to confirm that person's category of drug use and
25 determine ~~drug concentration~~ detectable urine-drug level or detectable blood-drug level.
26 A drug recognition expert qualified pursuant to section 2524, subsection 3-A may
27 perform an immunoassay drug detection test.

28 **2. Admissibility of evidence.** If a law enforcement officer certified as a drug
29 recognition ~~technician~~ expert by the Maine Criminal Justice Academy conducts a drug
30 impairment assessment, the officer's testimony about that assessment is admissible in
31 court as evidence of operating under the influence of intoxicants. If a drug recognition
32 expert qualified pursuant to section 2524, subsection 3-A performs an immunoassay drug
33 detection test, the results of that test are admissible as evidence of operating under the
34 influence of intoxicants. Failure to comply with any provision of this section does not, by
35 itself, result in the exclusion of evidence of test results, unless the evidence is determined
36 to be not sufficiently reliable.

37 **3. Payment for tests.** A person authorized to take specimens of blood at the
38 direction of a law enforcement officer or to perform tests on specimens of blood or breath
39 must be paid from the Highway Fund.

40 **Sec. 20. 29-A MRSA §2526**, as enacted by PL 1993, c. 683, Pt. A, §2 and
41 affected by Pt. B, §5, is amended to read:

