

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1729

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H.P. 1237

House of Representatives, January 16, 2014

### **An Act To Increase the Period of Time for the Calculation of a Prior Conviction for Operating under the Influence**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative MARKS of Pittston.  
Cosponsored by Representatives: FOWLE of Vassalboro, KRUGER of Thomaston,  
MASTRACCIO of Sanford, NADEAU of Winslow, NUTTING of Oakland, ROCHELO of  
Biddeford, WILSON of Augusta.

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

2 **Sec. 1. 29-A MRSA §1603, sub-§2**, as amended by PL 1995, c. 368, Pt. AAA,  
3 §2, is further amended to read:

4 **2. Suspension of license or registration following OUI convictions.** On receipt of  
5 an attested copy of the court record of an OUI conviction when the person has been  
6 previously convicted within a ~~10-year~~ 15-year period of OUI, the Secretary of State may  
7 not reinstate the person's license until the person gives proof of financial responsibility.  
8 The period of suspension under this subsection may not be less than the original period of  
9 suspension imposed for the conviction.

10 **Sec. 2. 29-A MRSA §2303, sub-§1, ¶G**, as amended by PL 1995, c. 645, Pt. B,  
11 §17, is further amended to read:

12 G. Has not received an OUI conviction, as defined in section 2401, subsection 9,  
13 within the preceding ~~10-year~~ 15-year period.

14 **Sec. 3. 29-A MRSA §2402**, as amended by PL 1995, c. 368, Pt. AAA, §6, is  
15 repealed and the following enacted in its place:

16 **§2402. Calculating prior convictions**

17 **1. Prior conviction; action.** For purposes of this chapter, a prior conviction or  
18 action has occurred within the 10-year period if the date of the action or the date of the  
19 docket entry of conviction is 10 years or less from the date of the new conduct.

20 **2. OUI prior conviction; action.** For purposes of this chapter, a prior conviction or  
21 action for OUI has occurred within the 15-year period if the date of the action or the date  
22 of the docket entry of conviction is 15 years or less from the date of the new OUI  
23 conduct.

24 **Sec. 4. 29-A MRSA §2411, sub-§1-A**, as amended by PL 2011, c. 159, §1, is  
25 further amended to read:

26 **1-A. Offense.** A person commits OUI if that person:

27 A. Operates a motor vehicle:

28 (1) While under the influence of intoxicants; or

29 (2) While having an alcohol level of 0.08 grams or more of alcohol per 100  
30 milliliters of blood or 210 liters of breath;

31 B. Violates paragraph A and:

32 (1) Has one previous OUI offense within a ~~10-year~~ 15-year period;

33 (2) Has 2 previous OUI offenses within a ~~10-year~~ 15-year period; or

34 (3) Has 3 or more previous OUI offenses within a ~~10-year~~ 15-year period;

1 C. Violates paragraph A, failed to submit to a test at the request of a law enforcement  
2 officer and:

- 3 (1) Has no previous OUI offenses within a ~~10-year~~ 15-year period;
- 4 (2) Has one previous OUI offense within a ~~10-year~~ 15-year period;
- 5 (3) Has 2 previous OUI offenses within a ~~10-year~~ 15-year period; or
- 6 (4) Has 3 previous OUI offenses within a ~~10-year~~ 15-year period; or

7 D. Violates paragraph A, B or C and:

8 (1) In fact causes serious bodily injury as defined in Title 17-A, section 2,  
9 subsection 23 to another person;

10 (1-A) In fact causes the death of another person; or

11 (2) Has either a prior conviction for a Class B or Class C crime under this  
12 section or former Title 29, section 1312-B or a prior criminal homicide  
13 conviction involving or resulting from the operation of a motor vehicle while  
14 under the influence of intoxicating liquor or drugs or with an alcohol level of  
15 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath.  
16 For purposes of this subparagraph, the ~~10-year~~ 15-year limitation specified in  
17 section 2402 and the 10-year limitation specified in Title 17-A, ~~subsection~~  
18 section 9-A, subsection 3 does not apply to the prior criminal homicide  
19 conviction.

20 **Sec. 5. 29-A MRSA §2411, sub-§5, ¶A**, as amended by PL 2013, c. 389, §1 and  
21 affected by §7, is further amended to read:

22 A. For a person having no previous OUI offenses within a ~~10-year~~ 15-year period:

23 (1) A fine of not less than \$500, except that if the person failed to submit to a  
24 test, a fine of not less than \$600;

25 (2) A court-ordered suspension of a driver's license for a period of 150 days; and

26 (3) A period of incarceration as follows:

27 (a) Not less than 48 hours when the person:

28 (i) Was tested as having an alcohol level of 0.15 grams or more of  
29 alcohol per 100 milliliters of blood or 210 liters of breath;

30 (ii) Was exceeding the speed limit by 30 miles per hour or more;

31 (iii) Eluded or attempted to elude an officer; or

32 (iv) Was operating with a passenger under 21 years of age; and

33 (b) Not less than 96 hours when the person failed to submit to a test at the  
34 request of a law enforcement officer;

35 **Sec. 6. 29-A MRSA §2411, sub-§5, ¶¶B and C**, as amended by PL 2007, c.  
36 531, §2 and affected by §10, are further amended to read:

37 B. For a person having one previous OUI offense within a ~~10-year~~ 15-year period:

- 1 (1) A fine of not less than \$700, except that if the person failed to submit to a test  
2 at the request of a law enforcement officer, a fine of not less than \$900;
- 3 (2) A period of incarceration of not less than 7 days, except that if the person  
4 failed to submit to a test at the request of a law enforcement officer, a period of  
5 incarceration of not less than 12 days;
- 6 (3) A court-ordered suspension of a driver's license for a period of 3 years; and
- 7 (4) In accordance with section 2416, a court-ordered suspension of the person's  
8 right to register a motor vehicle;

9 C. For a person having 2 previous OUI offenses within a ~~10-year~~ 15-year period,  
10 which is a Class C crime:

- 11 (1) A fine of not less than \$1,100, except that if the person failed to submit to a  
12 test at the request of a law enforcement officer, a fine of not less than \$1,400;
- 13 (2) A period of incarceration of not less than 30 days, except that if the person  
14 failed to submit to a test at the request of a law enforcement officer, a period of  
15 incarceration of not less than 40 days;
- 16 (3) A court-ordered suspension of a driver's license for a period of 6 years; and
- 17 (4) In accordance with section 2416, a court-ordered suspension of the person's  
18 right to register a motor vehicle;

19 **Sec. 7. 29-A MRSA §2411, sub-§5, ¶D**, as amended by PL 2013, c. 187, §1, is  
20 further amended to read:

21 D. For a person having 3 or more previous OUI offenses within a ~~10-year~~ 15-year  
22 period, which is a Class C crime:

- 23 (1) A fine of not less than \$2,100, except that if the person failed to submit to a  
24 test at the request of a law enforcement officer, a fine of not less than \$2,500;
- 25 (2) A period of incarceration of not less than 6 months, except that if the person  
26 failed to submit to a test at the request of a law enforcement officer, a period of  
27 incarceration of not less than 6 months and 20 days;
- 28 (3) A court-ordered suspension of a driver's license for a period of 8 years; and
- 29 (4) In accordance with section 2416, a court-ordered suspension of the person's  
30 right to register a motor vehicle;

31 **Sec. 8. 29-A MRSA §2412-A, sub-§3, ¶A**, as enacted by PL 1995, c. 368, Pt.  
32 AAA, §12, is amended to read:

33 A. If the person has a prior conviction for violating this section within a ~~10-year~~  
34 15-year period and was subject to the minimum mandatory sentences, then the  
35 following minimum penalties, which may not be suspended by the court, apply in the  
36 event the suspension was for OUI:

- 37 (1) A minimum fine of \$1,000, a term of imprisonment of 30 consecutive days  
38 and a suspension of license for not less than one year nor more than 3 years  
39 consecutive to the original suspension in the event of one prior conviction;

1 (2) A minimum fine of \$2,000, a term of imprisonment of 60 consecutive days  
2 and a suspension of license for not less than one year nor more than 3 years  
3 consecutive to the original suspension in the event of 2 prior convictions; or

4 (3) A minimum fine of \$3,000, a term of imprisonment of 6 months and a  
5 suspension of license for not less than one year nor more than 3 years consecutive  
6 to the original suspension in the event of 3 or more prior convictions. The  
7 sentencing class for this offense is a Class C crime.

8 **Sec. 9. 29-A MRSA §2412-A, sub-§5-A** is enacted to read:

9 **5-A. Prior OUI convictions.** For purposes of this section, a prior OUI conviction or  
10 suspension has occurred within a 15-year period if the date of the suspension or the  
11 docket entry of a judgment of conviction by the clerk is 15 years or less from the date of  
12 the new OUI conduct that is penalized or for which the new penalty may be enhanced.

13 **Sec. 10. 29-A MRSA §2416, sub-§1**, as amended by PL 1995, c. 368, Pt. AAA,  
14 §13, is further amended to read:

15 **1. Required registration suspension; return of certificate and plates.** The court  
16 shall suspend the right to register a motor vehicle and all registration certificates and  
17 plates issued by the Secretary of State to any person convicted for a violation of section  
18 2411 who has a previous conviction for OUI within the ~~40-year~~ 15-year period defined by  
19 section 2402. The Secretary of State shall return the certificate of registration and plates  
20 to the defendant when the defendant's license and registration privileges have been  
21 restored.

22 **Sec. 11. 29-A MRSA §2451, sub-§3**, as amended by PL 2009, c. 54, §§1 to 3  
23 and affected by c. 415, Pt. C, §§2 and 3, is further amended to read:

24 **3. Suspension period.** Unless a longer period of suspension is otherwise provided  
25 by law and imposed by the court, the Secretary of State shall suspend the license of a  
26 person convicted of OUI for the following minimum periods:

27 A. Ninety days, if the person has one OUI conviction within a ~~40-year~~ 15-year  
28 period;

29 B. Three years, if the person has 2 OUI offenses within a ~~40-year~~ 15-year period; or

30 C. Six years, if the person has 3 or more OUI offenses within a ~~40-year~~ 15-year  
31 period.

32 For the purposes of this subsection, a conviction or suspension has occurred within a  
33 ~~40-year~~ 15-year period if the date of the new conduct is within ~~40~~ 15 years of a date of  
34 suspension or a docket entry of judgment of conviction.

35 **Sec. 12. 29-A MRSA §2452, sub-§3**, as amended by PL 1995, c. 368, Pt. AAA,  
36 §18, is further amended to read:

37 **3. Suspend for at least 6 years.** Suspend for a period of at least 6 years the school  
38 bus operator endorsement of any person convicted of a 2nd or subsequent OUI violation  
39 within a ~~40-year~~ 15-year period as defined by section 2402.

1           **Sec. 13. 29-A MRSA §2487**, as amended by PL 1995, c. 368, Pt. AAA, §23, is  
2 further amended to read:

3           **§2487. Proof of financial responsibility**

4           A person with an OUI conviction within the ~~10-year~~ 15-year period as defined by  
5 section 2402 may not have a license reinstated until that person has complied with the  
6 financial responsibility provisions of section 1605.

7           **Sec. 14. 29-A MRSA §2503, sub-§1, ¶C**, as amended by PL 2011, c. 335, §12,  
8 is further amended to read:

9           C. The petitioner has not, within ~~10~~ 15 years, been under suspension for an OUI  
10 offense or pursuant to section 2453 or 2453-A.

11           **Sec. 15. 29-A MRSA §2506**, as amended by PL 2009, c. 447, §65, is further  
12 amended to read:

13           **§2506. Conditional license**

14           A license, including a nonresident's operating privilege, issued to a person with an  
15 OUI conviction must be issued on the condition that the person not operate a motor  
16 vehicle with an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210  
17 liters of breath for the following periods from the license reinstatement date: on first  
18 conviction, one year; and on a 2nd or subsequent conviction, ~~10~~ 15 years. The provisions  
19 of sections 1251, subsection 1 and 2457 apply.

20           **Sec. 16. 29-A MRSA §2557-A, sub-§2**, as amended by PL 2009, c. 54, §5 and  
21 affected by c. 415, Pt. C, §§2 and 3, is further amended to read:

22           **2. Penalties.** The following penalties apply.

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

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

26                   (2) The person has not received an OUI conviction within the previous ~~10~~ 15  
27 years.

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

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

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

34                   (2) The person has one OUI conviction within the previous ~~10~~ 15 years.

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

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

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

7 (2) The person has 2 OUI convictions within the previous ~~10~~ 15 years.

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

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

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

15 (2) The person has 3 or more OUI convictions within the previous ~~10~~ 15 years.

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

19 **SUMMARY**

20 This bill increases the period of time for calculating a prior conviction for operating  
21 under the influence from 10 years to 15 years.