

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTH LEGISLATURE

FIRST REGULAR SESSION

January 5, 1977 to July 25, 1977

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
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TITLE 3, SECTION 164, SUBSECTION 6.

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PUBLIC LAWS
OF THE
STATE OF MAINE
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§ 8402-A. Rules and regulations

The department shall establish rules and regulations for the administration of medication in nursery schools.

Sec. 10. 32 MRSA § 2102, sub-§ 2, ¶ F, as repealed and replaced by PL 1977, c. 395, § 1, is further amended by adding at the end the following new sentence.

Nothing in this section shall be construed as limiting the administration of medication by licensed or unlicensed personnel as provided in other statutes.

Sec. 11. 32 MRSA § 2258-A, as amended by PL 1975, c. 698, § 5, is further amended to read:

§ 2258-A. Administration of medication

Any employee of any institution under the control of the Department of Mental Health and Corrections or of an institution licensed by the State as a hospital, nursing home, extended care facility or boarding home who, in the exercise of due care, is authorized by the head of such institution or his designee to perform selected activities in the administration of medications and any person who, in the exercise of due care, is delegated such functions by a licensed allopathic or osteopathic physician shall be immune from criminal prosecution and civil liability for any such administration of medication prior to ~~July 1, 1977~~ January 1, 1978, but not thereafter.

Sec. 12. 34 MRSA § 7-A is enacted to read:

§ 7-A. Administration of medication

The administration of medication in facilities operated by the Department of Mental Health and Corrections shall be in accordance with rules and regulations established by the State Board of Nursing. In establishing rules and regulations for each type of facility, the State Board of Nursing shall consider, among other factors, the general health of the persons likely to receive medication, the number of persons served by the facility and the number of persons employed at the facility. Rules and regulations for the administration of medication shall be established in accordance with the administrative code as provided in Title 5.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective July 14, 1977

CHAPTER 498

AN ACT Concerning Penalties for Operating a Motor Vehicle Under the Influence of Intoxicating Liquor or Drugs.

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

Sec. 1. 29 MRSA § 1312, sub-§ 10, as last amended by PL 1977, c. 117, § 1, is repealed and the following enacted in its place:

10. Penalties

A. Notwithstanding the provisions of Title 17-A, section 4-A, any person who, while under the influence of intoxicating liquor or drugs, shall operate or attempt to operate a motor vehicle within this State shall, upon his first conviction for a violation of this section, be punished by a fine of not more than \$1,000 and by imprisonment for not more than 90 days, or by both.

Upon receipt of an attested copy of the court record of such conviction, the Secretary of State shall immediately suspend such a person's license or permit and privilege to operate a motor vehicle in this State.

In the case of a first conviction for a violation of this section, the Secretary of State shall not reinstate the convicted person's license or permit and privilege to operate prior to 30 days from the date of suspension and until such time as the Secretary of State has received written notice that the person has satisfactorily completed an educational program under the auspices of the Department of Human Services. In such a case, the Secretary of State shall have the authority to issue a restricted license or permit to such a person.

A person whose license or permit and privilege to operate have been suspended for such a first conviction and who has not completed such an educational program may petition, after 60 days after the date of the conviction, the Secretary of State for a hearing. If, after hearing, the Secretary of State determines that the public safety will not be endangered by the issuance of a new license or permit or by the restoration of privilege to operate, the Secretary of State may, after 4 months, restore the license or permit and privilege to operate a motor vehicle, with or without conditions or restrictions and under such terms as he may deem advisable, having in mind the safety of the public and the welfare of the petitioner.

The Secretary of State shall also have the authority to issue a restricted license or permit and privilege to any person whose license or permit and privilege to operate a motor vehicle in this State has been suspended for a first refusal under subsection 2, provided such person has satisfactorily completed the educational program referred to in this subsection. Such license or permit and privilege shall not be issued prior to 30 days from the date of suspension.

The department is authorized to charge a registration fee not to exceed \$40 to participants in the educational program which it shall apply to defray the expenses of the program.

B. Notwithstanding the provisions of Title 17-A, section 4-A, any person who is convicted of a 2nd violation under this section shall be punished by imprisonment for not less than either 24 or 48 consecutive hours or for not more than 6 months. In addition, such a person shall be punished by a fine of not less than \$250 and not more than \$2,000.

The minimum term of imprisonment, of either 24 or 48 consecutive hours, as the court shall determine, shall not be suspended unless the court sets forth in detail in writing the reasons why, having regard to the nature and circumstances of the violation and the history and character of the defendant, it is of the opinion that exceptional features of the case justify the imposition of a sentence other than imprisonment.

The court shall order such a minimum term of imprisonment to be served at a time that will cause the least disruption to the convicted person's employment and other personal affairs, but that is within 30 days of the date of conviction. Such a minimum term of imprisonment may be served in either a county jail or local lockup, as the court shall direct. The provisions of this paragraph regarding the minimum term of imprisonment for a 2nd conviction shall apply only if the State alleges the prior conviction in accordance with Title 15, section 757; provided that the certified copy of the prior conviction from the office of the Secretary of State shall be admitted in evidence as proof of the prior conviction.

Upon receipt of an attested copy of the court record of such a conviction, the Secretary of State shall immediately suspend for a period of one year such a person's license or permit and privilege to operate a motor vehicle. Such a person's license or permit and privilege to operate shall not be reinstated by the Secretary of State prior to 6 months from the date of suspension and until such time as the Secretary of State has received written notice that the person has satisfactorily completed the education program conducted by the Department of Human Services and where required by the Department of Human Services, has also satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the Department of Human Services. In such a case, the Secretary of State shall have the authority to issue a restricted license or permit to such a person.

C. Notwithstanding the provisions of Title 17-A, section 4-A, any person convicted of a 3rd or subsequent violation of this section shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than 6 months, or by both.

Upon receipt of an attested copy of the court record of such a conviction, the Secretary of State shall immediately suspend permanently such a person's license or permit and privilege to operate a motor vehicle in this State. However, such a person may, after 2 years from the date of suspension, petition the Secretary of State for such a license or permit and privilege to operate. If, at a hearing, such a person presents clear and convincing evidence that he has satisfactorily completed an alcohol or drug treatment program approved or licensed by the Department of Human Services and that he has abstained from the use of intoxicating liquor or drugs for a period of 2 years next preceding the date of the hearing, the Secretary of State may restore the person's license or permit and privilege to operate a motor vehicle, with the condition that the person continue to abstain from the use of intoxicating liquor or drugs and with such other conditions, restrictions or terms as the Secretary of State deems advisable, having in mind the safety of the public and the welfare of the petitioner.

D. Any suspension of a license or permit and privilege to operate for conviction under this section shall run consecutively to any such suspen-

sion imposed for refusal to submit to a chemical test to determine blood-alcohol level by analysis of blood or breath, except where the conviction is the result of a plea of guilty in the District Court prior to trial or a waiver of trial and finding of guilty by the court.

E. For the purposes of this section, a prior conviction of operating or attempting to operate while under the influence of intoxicating liquor or drugs shall be considered a prior conviction if it occurred within 10 years of the date of the most recent conviction under this section.

F. After making an arrest for a violation of this section, the arresting officer shall investigate to determine whether the arrested person has any prior convictions under this section. As part of his investigation, the arresting officer shall make the necessary inquiries of the Secretary of State. If the arresting officer determines that the arrested person has a prior conviction, he shall cause to be issued a complaint for a 2nd violation in accordance with paragraph B.

G. Except for the purpose specified in paragraph B, it shall not be necessary to comply with the procedures set out in Title 15, section 757, to establish prior convictions under this section. After a conviction for violation of this section, the court shall conduct an inquiry to determine whether or not the defendant has been convicted of any offenses which are considered to be prior offenses for the purposes of this section. Certified copies of the record of prior conviction or convictions from the Secretary of State or any court of record shall be admissible, and upon receipt of any such copy and upon being satisfied that the defendant is the person named in that certified copy, the court shall treat the present conviction as a subsequent conviction and sentence the defendant accordingly.

Sec. 2. 29 MRSA § 1312, sub-§ 11, is enacted to read:

11. Accidents. Every person operating a motor vehicle which has been involved in an accident shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If the test indicates that the operator has consumed alcohol, the police officer may require such operator to submit to a chemical test in the manner set forth in this section.

Effective October 24, 1977

CHAPTER 499

AN ACT Relating to Habitual Truants and School Dropouts.

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

Sec. 1. 20 MRSA § 911, as last amended by PL 1975, c. 510, § 21, is repealed and the following enacted in its place: