

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

If the court imposes a sentence under this paragraph, the court shall state in writing its reasons for its findings and for imposing a sentence under this paragraph rather than under paragraph A; and

C. If the court imposes a sentence under paragraph B, the minimum sentence of imprisonment, which shall not be suspended, shall be as follows: When the sentencing class is Class A, the minimum term of imprisonment shall be 9 months; when the sentencing is Class B, the minimum term of imprisonment shall be 6 months; and with the exception of trafficking or furnishing marijuana under section 1105, when the sentencing class is Class C, the minimum term of imprisonment shall be 3 months.

Effective September 29, 1987.

CHAPTER 536

H.P. 962 — L.D. 1291

AN ACT to Implement the Recommendations of the Driver Education Evaluation Program Study.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Division of Driver Education Evaluation Programs is funded entirely from client fees for services; and

Whereas, the number of operating under the influence convictions has decreased, the number of Division of Driver Educational Evaluation Programs clients is not increasing as projected and the costs of the programs have increased; and

Whereas, because of this, the Division of Driver Education Evaluation Programs income is inadequate to maintain the quality of services and level of staffing to meet clients' needs; and

Whereas, the revised fee schedule proposed in this legislation is necessary to prevent reduction in staffing and client services which would take effect July 1, 1987, without this legislative action; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 5 MRSA §12004, sub-§8, ¶A, sub-¶(13-A) is enacted to read:

(13-A)	Human Services	Driver Education Evaluation Program Appeals Board	\$75/Day	22 MRSA §7207
--------	----------------	---	----------	------------------

Sec. 2. 22 MRSA c. 1602 is enacted to read:

CHAPTER 1602

DRIVER EDUCATION EVALUATION PROGRAMS

§7201. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Alcohol or drug related motor vehicle offense. "Alcohol or drug related motor vehicle offense" means a conviction or administrative action resulting in the suspension of a motor vehicle operator's license for a violation under Title 29, section 1311-A; 1312-B; former section 1312, subsection 10-A; former section 1312-B; former section 1312-C; or section 2241-G, subsection 2, paragraph B, subparagraph (2).

2. Client. "Client" means a person who is required to complete the alcohol and other drug education, evaluation and treatment program for an alcohol or drug related motor vehicle offense.

3. Completion of treatment. "Completion of treatment," for the purpose of recommendation by the department to the Secretary of State concerning restoration of the driver's license to the client, means that the individual has responded to treatment to the extent that there is a substantial probability that the individual will not be operating under the influence. This substantial probability may be shown by:

A. An acknowledgement by the client of the extent of the client's alcohol or drug problem;

B. A demonstrated ability to abstain from the use of alcohol and drugs; and

C. A willingness to seek continued voluntary treatment or to participate in an appropriate self-help program, or both, as necessary.

4. Multiple offender. "Multiple offender" means a client who has more than one alcohol or drug related motor vehicle offense within a 6-year period.

§7202. Division of Driver Education Evaluation

The Division of Driver Education Evaluation shall administer the alcohol and other drug education, evaluation and treatment program. The division shall certify to the Secretary of State:

1. Administration of Driver Education Evaluation Program. Those individuals who have satisfactorily completed the program prescribed by section 7203; and

2. Administration of non-Driver Education Evaluation Program. Those individuals who have satisfactorily completed the requirements of this chapter by satisfying the requirement for completion of treatment

as defined in section 7201 by means other than the program prescribed by section 7203.

§7203. Program components

1. First offenders; adult. The alcohol and other drug education, evaluation and treatment program required for clients without a previous alcohol or drug related motor vehicle offense consists of education, assessment, evaluation and treatment components. All first offender clients are required to complete the education and assessment component unless otherwise provided by this chapter. The following evaluation and treatment components may be required if necessary:

A. The education component, consisting of at least 9 hours of information utilizing films, lectures and discussion and designed to educate the client about the effects of alcohol and other drugs on his behavior, especially behavior involving the operation of a motor vehicle;

B. The assessment component, utilizing an assessment instrument, the client's driving record for the past 6 years, and up to one hour interview with the instructor and designed to make a preliminary assessment regarding the extent of a client's alcohol or other drug use or abuse or potential for abuse. A client may be referred for further evaluation based on the results of his preliminary assessment;

C. The evaluation component, designed to identify abusers of alcohol and other drugs. If the evaluation indicates that treatment for alcohol or other drug abuse is needed, the client will be referred to the appropriate alcohol or other drug treatment service; and

D. The treatment component, designed to address the client's specific problem with or abuse of alcohol or other drugs.

2. First offenders under 21 years of age. First offenders under 21 years of age shall attend the Driver Education Evaluation Program — Teen program. The Driver Education Evaluation Program — Teen program consists of the following elements.

A. The education component is a program of at least 10 hours during which clients receive education, especially designed for the age group, on substance use, abuse and addiction. Education is provided through a group discussion process which includes segments on values clarification, peer pressure and decision making.

B. The assessment component is designed to make a preliminary assessment regarding the extent of a client's alcohol or other drug use or abuse or potential for abuse. A client may be referred for further evaluation based on the results of his preliminary assessment.

C. The evaluation component is designed to identify abusers of alcohol and other drugs. If the evaluation indicates that treatment for alcohol or other drug abuse is needed, the client will be referred to the appropriate alcohol or other drug treatment service.

D. The treatment component is designed to address the client's specific problem with or abuse of alcohol or other drugs.

3. Multiple offenders; adult. The education, evaluation and treatment program required for adult multiple offenders consists of the following components:

A. A rigorous, highly structured, residential intervention program, consisting of at least 22 hours, utilizing films, lectures, group discussion and individual sessions, designed to educate the client on the effects of substance use, abuse and addiction and an evaluation utilizing assessment instruments, data collection and self assessment, designed to create an acceptance and commitment by the client for treatment; and

B. A treatment program, if indicated, designed to address the client's specific alcohol or other drug problem and abuse, using a treatment plan based on the completion of treatment guidelines adopted by the department.

The division may require completion of the first offender program to satisfy the requirements of the multiple offender program if an approved multiple offender program is unavailable for the client. In such cases, the fee schedule for the first offender program applies.

4. Multiple offenders under 21 years of age. Multiple offenders under 21 years of age shall attend the alcohol and other drug education, evaluation and treatment program for adult multiple offenders under subsection 3.

§7204. Separation of evaluation and treatment functions

1. Prohibition. Individual persons and individual agency entities providing services under this chapter may not provide both treatment services and evaluation services for programs under this chapter.

2. Emergency waiver. The provider may apply to the board of appeals for a temporary emergency waiver of the prohibition in subsection 1. The board may grant a waiver for a period not to exceed 120 days if the board finds a genuine hardship condition exists in which it is impossible for both evaluation and treatment to be provided by separate individual agency entities.

3. Applicability. This section applies to clients who commence the alcohol and other drug education, evaluation and treatment program established by this chapter on or after October 1, 1987.

§7205. Certification; recertification

All providers of the evaluation, intervention and treatment components of the program must be certified by the department. The certification period for individual providers is 3 years and 2 years for agencies. The department shall adopt rules requiring continuing education for recertification.

§7206. Fees

1. First offense program. The department may charge a registration fee, not to exceed \$105, to clients for the education and assessment components of the program. This fee shall be used to defray the cost of the program. The client is responsible for the costs of the evaluation and treatment components. The department may waive all or part of the fee for clients who provide sufficient evidence of inability to pay.

2. Multiple offender program. The fees and costs for the multiple offender program are as follows.

A. The department may charge a registration fee, not to exceed \$300, to clients for the expenses of the intervention program, including the initial evaluation. This fee shall be used to defray the cost of the program.

B. The client is responsible for any costs associated with 2nd and subsequent evaluations or treatment which is not a part of the cost in paragraph A.

§7207. Board of appeals

1. The Driver Education Evaluation Program Appeals Board. The Driver Education Evaluation Appeals Board, established by Title 5, section 12004, subsection 8, shall be referred to as the "board" in this chapter.

2. Qualifications. Each member of the board shall have training, education, experience and demonstrated ability in successfully treating clients with substance abuse problems. Board members may not hold a current certificate to provide driver education evaluation and treatment services during their terms of appointment.

3. Appointment; term; removal. The board shall consist of 3 members appointed by the Governor for 2-year terms, except that, initially, 2 members shall be appointed for 2-year terms and one member for a one-year term. A vacancy occurring prior to the expiration of a term shall be filled by an appointment for the unexpired term. Members may be removed by the Governor for cause.

4. Facilities; staff. The Department of Human Services shall provide adequate facilities for the board and shall provide staff support through the department's fair hearing unit.

5. Chairman; rules. The board shall annually elect a chairman from its members. The department shall adopt rules to carry out the purpose of this section.

6. Compensation. Each member of the board shall be compensated in accordance with Title 5, chapter 379.

7. Appeal from decision. A Driver Education Evaluation Program client may appeal to the board as follows.

A. The client may appeal a failure to certify completion of treatment pursuant to section 7202, subsection 2.

B. The client may appeal an evaluation decision referring a client to treatment or a completion of treatment decision pursuant to section 7203. A client may only appeal under this paragraph after the client has sought a 2nd opinion of the need for treatment or of satisfactory completion of treatment.

8. Appeal procedure and action. An appeal shall be heard and decided by one board member. The board may affirm or reverse the decision of the treatment provider or agency, require further evaluation, make a finding of completion of treatment or make an alternate recommendation. The board, after due consideration, shall make a written decision and transmit that decision to the Division of Driver Education Evaluation and the client who appealed the case. The decision of the board is final agency action for purposes of judicial review pursuant to Title 5, chapter 375, subchapter VII.

9. Request for emergency waiver. The board may hear requests for emergency waivers under section 7204, subsection 2. A majority of the full board shall grant or deny the request within 2 business days of receipt of the request. The board may meet by teleconference, as necessary, to rule on the request.

Sec. 3. 29 MRSA §1311-A, sub-§2, ¶E is enacted to read:

E. The Secretary of State may not suspend a license or permit to operate, the right to operate a motor vehicle and the right to apply for or obtain a license solely because a person has not satisfactorily completed an alcohol or other drug education, evaluation and treatment program administered by the Department of Human Services, as defined in Title 22, chapter 1602. This limitation shall not affect the authority on restoration provided under section 1312-D, subsections 2, 3 and 4.

Sec. 4. 29 MRSA §1312-B, sub-§2, ¶D-1 is enacted to read:

D-1. In addition to the penalties provided under paragraphs C and D, the court shall order the defendant to participate in the alcohol and other drug education, evaluation and treatment program for multiple offenders administered by the Department of Human Services, as defined in Title 22, chapter 1602. The court may waive the multiple offender intervention program under Title 22, section 7203, subsection 3, paragraph A, if the court finds that the defendant has completed a residential treatment program, or its

equivalent, subsequent to the date of the offense.

Sec. 5. 29 MRSA §1312-D, sub-§§2, 3 and 4, as amended by PL 1985, c. 412, §6, are further amended to read:

2. Education and treatment programs. Following the expiration of 2/3 of the total period of suspension imposed on a first time offender pursuant to subsection subsections 1 and 1-A, section 1312-B, former section 1312-B, subsection 2, or Title 15, section 3314, the Secretary of State may issue a license or permit to the person if he receives written notice that the person has satisfactorily completed the alcohol and other drug education, evaluation and treatment program of administered by the Department of Human Services and, when required, has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department, as defined in Title 22, chapter 1602. A license or permit may not be issued under this subsection to 2nd and subsequent offenders.

3. Restricted licenses. After certification under subsection 2, the Secretary of State may issue the license or permit to a first time offender with whatever conditions, restrictions or terms he deems advisable, having in mind the safety of the public and the welfare of the petitioner. Following the expiration of the total period of suspension imposed pursuant to subsections 1 and 1-A, section 1312-B or Title 15, section 3314, the Secretary of State may issue a license or permit, subject to the conditions, restrictions or terms he deems advisable, to the person if the Secretary of State has received or when he receives written notice that the person has satisfactorily completed the alcohol ~~educational~~ and other drug education, evaluation and treatment program of administered by the Department of Human Services ~~and, when required, has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the department,~~ as defined in Title 22, chapter 1602. The license or permit may contain the condition that the person abstain from the use of intoxicating liquor or drugs. Any license or permit issued under subsection 2 or under this subsection shall be restricted to use for travel to an alcohol and other drug education or treatment program or to employment if the amount of the total period of suspension which has expired is less than 90 days. Any such license or permit issued shall remain restricted until the amount of time the license or permit was actually suspended plus the amount of time the restricted license or permit has been issued equals a minimum of 90 days.

4. Special restricted licenses for participation in programs. Notwithstanding any other provision of law, the Secretary of State may issue a temporary restricted license to a person suspended under section 1312-B for the purpose of allowing that person to participate in the alcohol and other drug education, evaluation and treatment program of administered by the Department of Human Services, as defined in Title 22, chapter 1602, or in any other program under subsection 2 or 3.

Sec. 6. 29 MRSA §1312-D, sub-§6, as amended by PL 1983, c. 718, is repealed.

Sec. 7. 29 MRSA §1312-D, sub-§10 is enacted to read:

10. Work-restricted license. Upon the recommendation of a treating counselor that a person whose license or right to operate a motor vehicle has been suspended under section 1312-B, subsection 2, paragraph A or B, be issued a restricted license for employment purposes, the Secretary of State, to the extent not in conflict with federal law or federal grant criteria for highway safety programs, may stay the suspension during the statutory period and issue a work-restricted license, subject to whatever conditions, restrictions or terms which the treating counselor recommends and the Secretary of State deems advisable. Any restricted license or permit issued under this subsection shall be restricted to use for travel to and from employment.

The treating counselor may recommend that the Secretary of State revoke a restricted license or permit issued under this subsection if the counselor believes that the revocation is advisable, having in mind the safety of the public and the welfare of the person.

For the purposes of this subsection, "treating counselor" means a person licensed under Title 32 as a registered substance abuse counselor, psychiatrist, psychologist or social worker who is providing alcohol or drug treatment services to the person.

Sec. 8. 29 MRSA §1318 is enacted to read:

§1318. Legislative intent concerning use of education, evaluation and treatment programs for operating under the influence offenders

Education, evaluation and treatment are essential in responding to the problems created by people operating under the influence of alcohol or other drugs. It is the policy of the State to use approved education, evaluation and treatment programs to the maximum extent possible as an appropriate sentence component for persons convicted of operating under the influence. The programs shall be coordinated with the alcohol and other drug education, evaluation and treatment programs required in section 1312-D.

Sec. 9. Report to Legislature. The Division of Driver Education Evaluation shall submit a report to the joint standing committee of the Legislature having jurisdiction over human resources no later than February 1, 1988, concerning the implementation of this Act, including, but not limited to, the appeal process, the separation of evaluation and treatment functions and the availability of services to clients of the program.

Sec. 10. Allocation. There is allocated from the Other Special Revenue Fund accruing to the Division of Driver Education Evaluation Program for the fiscal years

ending June 30, 1988, and June 30, 1989, the following funds.

	<u>1987-88</u>	<u>1988-89</u>
<u>HUMAN SERVICES, DEPARTMENT OF</u>		
Office of Alcoholism and Drug Abuse Prevention		
Division of Driver Education Evaluation Programs		
First Offender Program		
Positions	(5)	(6)
Personal Services	\$130,301	\$162,684
Capital Expenditures	11,550	6,450
Total	<u>\$141,851</u>	<u>\$169,134</u>

This allocation is made solely to replace positions and funds eliminated by the Department of Human Services in its Part I Budget request and only to the extent that revenues are available from the increase in fees established in the Maine Revised Statutes, Title 22, section 7203, subsection 1. The total position count for this program shall not exceed that in existence as of January 1, 1987.

Multiple Offender Program		
Positions	(4)	(4)
Personal Services	\$ 81,230	\$ 88,743
All Other	241,500	250,000
Capital Expenditures	11,850	
Total	<u>\$334,580</u>	<u>\$338,743</u>

This allocation is made from revenues obtained by the fee established in the Maine Revised Statutes, Title 22, section 7203, subsection 2. The Multiple Offender Program shall be considered separate and distinct from the First Offender Program.

Driver Education Evaluation Program Appeals Board		
Personal Services	\$11,250	\$15,000
All Other	9,375	12,500
Total	<u>\$20,625</u>	<u>\$27,500</u>

Provides funds for board member per diem and contractual secretarial support. Due to the effective date of October 1, 1987, only 75% of the required funding is provided in fiscal year 1987-88.

Sec. 11. Sunset provision. This Act is repealed on July 1, 1988.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved, except that the Maine Revised Statutes, Title 22, section 7207, and Title 29, section 1312-B, subsection 2, paragraph D-1, as enacted in this Act, shall take effect on October 1, 1987.

Effective July 2, 1987, unless otherwise indicated.

CHAPTER 537

H.P. 1377 — L.D. 1876

AN ACT to Clarify the Applicability of Social Worker Licensure Requirement to State Employees.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a recent interpretation made by the Board of Social Worker Registration could jeopardize the employment status of several hundred state employees and cause a substantial increase in costs to several state agencies; and

Whereas, such costs are not included in the 1987-89 biennial budgets; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

32 MRSA §7054-A, last ¶, as enacted by PL 1985, c. 736, §14, is amended to read:

Any person not eligible for licensure on the effective date of this section, but who is employed in a position in which representation is made to the public as a social worker or the title of social worker is used, shall be entitled to licensure without examination as a "licensed social worker" as long as an application, made pursuant to section 7056, is received by the board by July 1, 1987 February 1, 1988.

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

Effective July 2, 1987.

CHAPTER 538

S.P. 658 — L.D. 1881

AN ACT to Amend a Section of the Motor Vehicle Law.

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

29 MRSA §1111, last ¶, as amended by PL 1987, c. 499, §2, is further amended to read:

Removal of any part or accessory, ~~or any item located in the interior or trunk compartment~~ of such vehicle