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Interim Report on Dangerous Drivers

Addressing the Problem of Perpetual Violators in Maine

Prepared at the request of Governor John E. Baldacci by:

Secretary of State Matthew Dunlap

Department of Transportation Commissioner David A. Cole

Chief of the State Police Col. Craig Poulin

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Working Group Preliminary Report

August 29, 2005

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Executive Summary

As a result of a fatal motor vehicle crash on July 29, 2005, involving a suspended driver with a lengthy history of convictions and suspensions, Governor John E. Baldacci asked Secretary of State Matt Dunlap, Commissioner of Transportation David A. Cole and Chief of the Maine State Police Col. Craig A. Poulin to review the relevant laws and procedures to help determine what changes in law, policy or practices could be implemented to reduce the likelihood of such tragedies and to obtain justice when they occur. The working group convened August 9 and delivered this document to the Governor on Monday, August 29, 2005.

The working group is acutely aware of the tragedy represented by any fatality or motor vehicle crash. At the same time, the working group is seeking meaningful change that is well-considered and likely to be effective. Any changes must be carefully considered as they are being proposed amid the grief, outrage and emotions shared by all reasonable people in the immediate aftermath of a tragedy. While there can be benefits to change, there also likely will be costs and challenges, fiscal and otherwise. The costs of change should not stop this work from proceeding, but neither can the costs, if any, be ignored.

The challenges of altering human behavior are well known. In the context of perpetual violators of motor vehicle laws, the behavior is well established and patterned, and unlikely to change based upon the application of traditional methods of disincentives. In most cases the reality of recidivism already is documented by the driver's record and the likelihood of further recidivism is high. Maine must seek reasonable options of disseminating information to the public to increase motorists ability to participate in this common cause, the public safety community must identify violators who have reached a level of egregious behavior that they should simply lose their privilege to drive a motor vehicle permanently, and the state should establish and enforce sufficiently severe punishment(s) to deter those drivers for whom this may still be effective.

This initial report requires substantial further input from concerned individuals and additional review by stakeholders, including Legislative consideration where changes of law are necessary.

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As a starting point, the working group suggests the following options for action and further consideration.

1. Enhance communication regarding perpetual violators between motor vehicle administrators, law enforcement, the judiciary and the public.
2. Strengthen the Habitual Offender Statute (29-A MRSA §2551-2557)
3. Strengthen the Operating After Suspension Statute (29-A MRSA §2412-A)
4. Create a New Designation Leading to Permanent Revocation of Driver's License and a new crime of Operating After Permanent Revocation
5. Strengthen Vehicle Confiscation/Immobilization Provisions (29-A MRSA §2421)
6. Create a Criminal Offense with minimum mandatory penalties for Contributing to the Cause of an Accident or Fatality While License Is Suspended or Revoked, or for drivers designated as Habitual Offenders.
7. Formally ask Maine's Motor Carrier Review Board, which is comprised of citizen, safety and industry representatives, to assess the current state of safety measures in the industry to determine if any new steps or recommendations should be suggested.
8. Specifically evaluate fiscal and operational impact of any proposed increases in jail time or increases in the volume of criminal violations.
9. Establish a mechanism to follow-up on these possible improvements and to continue this work over the coming months.

DETAILS OF RECOMMENDED AREAS FOR CHANGE OR FURTHER REVIEW

1. Enhance communication regarding perpetual violators between motor vehicle administrators, law enforcement, the judiciary and the public.

Immediately:

- ▶ In addition to the databases already available to law enforcement and the public, the Secretary of State on an interim basis will proactively report the identities and driving records of Maine's 100 worst drivers using the existing communication infrastructure used by local, county and state law enforcement. The Secretary of State also will report this information to Prosecutors and to the Judiciary. This reporting will be quarterly and will begin in September.
- ▶ Encourage all individuals and businesses hiring a commercial driver to check the record of the driver behind the wheel. Driving records can be checked online at

www.informe.org/bmv/drc/. Also, the safety record of motor carrier companies are monitored by federal safety officials and can be checked online at:
<http://ai.volpe.dot.gov/SafeStat/SafeStatMain.asp>

Other Next steps:

- ▶ The Maine State Police, in cooperation with county and local law enforcement officials, will investigate forming a partnership with InforME to develop a web service to publicize a roster of the worst offenders in the state so that neighbors and communities, as well as law enforcement, can readily access this information. Offenders might also be required to register with law enforcement officials. This online service would replace the Secretary of State's interim reporting described above and would be based on publicly available criminal records.
- ▶ Re-establish permanently, by statute, the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners, previously established pursuant to Public Law 2003, chapter 451, part K, section 2, and as modified by Public Law 2003, chapter 707.

Additional discussion:

- ▶ Any public disclosure of information must be crafted and carefully monitored to ensure compliance with federal and state laws which prohibit the release of personal information from motor vehicle records. While a driver's safety record is public information, the Bureau is prohibited by state and federal law from releasing certain personal information such as a driver's name and date of birth.
- ▶ The sentencing commission has proven to be a valuable forum for discussion of appropriate sentences, plea bargains, judicial resources, probation resources, jail resources and other related issues. If re-established, the Sentencing Commission also could be asked or tasked with periodically reviewing the actual sanctions applied to OAS/OAR offenders, as compared to allowed sanctions, to allow multi-agency multi-branch review of the application of existing and future sentencing laws.

2. Strengthen Habitual Offender Statute (29-A MRSA §2551-2557)

Immediately:

- ▶ Document the impact of the proposed changes in the Habitual Offender law so policy-makers can consider the costs, challenges and benefits of these changes.

Other Next steps:

- ▶ Formulate draft legislation for consideration by the 2nd session of the 122nd Legislature. The thrust of the legislation would a) lower the threshold for becoming a habitual offender, b) would revoke habitual offender's licenses for a longer period of time, c) would make it more difficult for a habitual offender to have a revoked license reinstated, and d) would impose minimum mandatory jail sentences for conviction of operating after a license is revoked, so-called "OAR" violations or operating after revocation.

Additional discussion:

- ▶ Consider replicating the grant programs used for OUI and seatbelt enforcement to apply to OAS or OAR enforcement.
- ▶ Specific changes that could be considered in the general description provided above include:
 - ▶ Adding additional offenses leading to HO designation such as: criminal speeding, operating a vehicle with a suspended or revoked registration, illegal attachment of plates, displaying or possessing a suspended or altered drivers license, passing a stopped school bus, failure to stop for a police officer and the offenses listed in §2463.
 - ▶ Eliminating the exceptions listed in §2551 (3) and 2551 (4) and perhaps §2551 (5) which exclude certain violations from the calculation of whether a person is designated as a habitual offender.
 - ▶ Increasing the period of revocation, which is currently 3 years.
 - ▶ Increasing the length of the look-back period used for calculating how many offenses a driver has accumulated. The look-back period is currently five years. [Section 2554 (1) and 2551 (1)].
 - ▶ Eliminate Work License Provision in §2556.
 - ▶ Define OAR as a Class C crime with minimum mandatory fine, jail and license revocation (§2557)
 - ▶ Consider revoking vehicle registrations and privileges in addition to driving privileges.

3. Strengthen the Operating After Suspension Statute (29-A MRSA §2412-A)*Immediately:*

- ▶ Determine the details of what the proposed minimum mandatory penalties should be – including fines and suspension period - for operating after suspension.

Other Next Steps:

- ▶ Draft legislation to increase the minimum mandatory penalties for operating after suspension, possibly focusing particularly on those suspensions which are imposed for driving offenses, rather than non-driving offenses (such as suspension by a court for failure to pay a fine unrelated to driving). [§2412-A (3) (B)].

Additional discussion:

- ▶ Maine also could consider strengthening the vicarious liability provisions of the law [§2101-A (1) and (2)] that make the owner of a vehicle responsible for its misuse.

4. Create a New Designation Leading to Permanent Revocation of License and establish a new crime of Operating After Permanent Revocation*Immediately:*

- ▶ Determine the criteria for permanent revocation and the appropriate classification for the proposed crime of OAPR.

Other Next Steps:

- ▶ Draft legislation to be considered by the 2nd session of the 122nd Legislature.

Additional discussion:

- ▶ Samples of criteria that could be considered in establishing the new designation include individuals who have repeat habitual offender revocations, repeat convictions for operating after revocation or operating after suspension, simply a threshold number of suspensions, or the accumulation of administrative points.

5. Strengthen Vehicle Confiscation/Immobilization Provisions (29-A MRSA §2421)

Immediately:

- ▶ Research the costs of establishing and administering such a program – possibly by using a wheel “boot” approach to avoid the costs and complications of forfeiture or impoundment - and review a possible fine structure for offenders to fund the initiative.

Other Next Steps:

- ▶ Draft legislation to be considered by the 2nd session of the 122nd Legislature.

Additional discussion:

- ▶ Immobilization using a wheel boot such as those used for parking violations has administrative and implementation challenges, but also may have substantial advantages over other more complicated, costly and time consuming methods of separating a perpetual offender from the ability to drive a vehicle. Other options include forfeiture or impoundment.

6. Create A Criminal Offense with minimum mandatory penalties for Contributing to the Cause of An Accident or Fatality While License Is Suspended or Revoked, or for drivers designated as Habitual Offenders.

Immediately:

- ▶ Determine the details of such an approach, including a suggested level of penalties.

Other Next Steps:

- ▶ Draft legislation to be considered by the 2nd session of the 122nd Legislature.

Additional discussion:

- ▶ Maine also could consider making operating after suspension or revocation and aggravating factor with increased penalties in a wide range of moving violations.

7. Formally ask Maine's Motor Carrier Review Board, which is comprised of citizen, safety and industry representatives, to assess the current state of safety measures in the industry to determine if any new steps or recommendations should be suggested.

Immediately:

- ▶ The Secretary of State will request the Motor Carrier Review Board to review its mandate, to identify potential methods for enhancing the safety system, and to recommend any additional steps, actions or authority that Board believes will improve motor carrier safety.

Additional discussion:

- ▶ Regulation of interstate motor carrier is highly regulated and involves extensive cooperation with multiple state agencies in Maine, federal safety officials as well as other states and provinces. Any changes will need to be mindful of these issues.
- ▶ This area of consideration will deal with Motor Carrier privileges, which is a distinct area of enforcement and regulation from driver licensing. Suspending a motor carrier and suspending a commercial driver's license does not mean the same thing, which may not be well understood outside the industry.
- ▶ The Secretary of State will ask the Motor Carrier Review Board to begin this review in September and to conclude it by year's end. The board is an advisory panel of safety, citizen and industry representatives appointed by the Governor that is responsible for making sanction recommendations to the Secretary of State against motor carriers it identifies as having troubling safety records. The Motor Carrier Review Board will specifically be asked to include the issue of broker responsibility/liability in its review.

8. Specifically evaluate fiscal and operational impact of any proposed increases in jail time or increases in the volume of criminal violations.

Immediately:

- ▶ Request for the Maine Department of Corrections and County Sheriffs, working with the Judiciary and others, to prepare analysis concurrent with policy and legislative discussion of recommendations above.

9. Establish a mechanism to follow-up on these possible improvements and to continue this work over the coming months.

HISTORY OF THE HABITUAL OFFENDER STATUTE

I. THE 1970's: JUDICIAL AND ADMINISTRATIVE ADJUDICATION

A. Enactment of the Original Statute: Public Law 1971, Chapter 410.

In 1971, the original habitual offender (HO) law was enacted to “provide maximum safety” to users of the public highways, to deny the “privilege of operating motor vehicles” to those drivers whom have demonstrated “indifference” and “disrespect for the laws”, court orders and administrative agency determinations, “to discourage repetition of criminal actions” effecting the public “peace” and “dignity” and “to impose increased and added deprivation of the privilege to operate motor vehicles upon habitual offenders who have been convicted repeatedly of violations of traffic laws”. Public Law 1971, Chapter 410; codified at 29 MRSA § 2271 et. seq.

B. Superior Court Responsibility For Habitual Offender Determination.

An HO was defined as a person who was convicted of committing three major or 10 minor violations, which included any major violation, within a five year period. To be included as a minor violation, a license suspension or revocation for at least 30 days had to be authorized on conviction. The Secretary of State (SOS) provided the abstracts of conviction for those persons who committed the requisite offenses to the Attorney General, who was responsible for filing a complaint with the Superior Court. The court determined, based on the abstracts of conviction, whether the person was the same person named in the abstracts and whether the person is an HO. If the court found the person is an HO, the court was required to enter an order prohibiting the person from driving for a period of at least one year. The order was then transmitted to the SOS who made the order part of the person's permanent driving record. After one year, the HO could petition the court for license reinstatement. If the court granted the petition, the HO was mandated by the statute to file proof of financial responsibility – insurance - with the SOS. The penalty established for operating after being declared an HO was a term of incarceration for not more than two years.

C. Administrative Adjudication by the SOS.

In 1979, the HO statute was repealed and a new statute, reflective of a national trend, was enacted to provide for administrative determination and adjudication of HO status. Public Law 1979, Chapter 10; codified at 29 MRSA § 2291 et. seq. A considerable body of federal and state constitutional, statutory and case law had developed over the previous 15 – 20 years sanctioning administrative adjudication of entitlement benefits, privileges and licenses so it became acceptable politically and legally to transfer primary jurisdiction for driver license suspension and revocation from the courts to the SOS. Both the Maine Law Court [see Opinion of the Justices (1969) 255 A.2d 643 approving driver license suspension for implied consent violations following administrative determination and adjudication] and the Legislature (the Administrative Procedure Act, which establishes the procedural requirements governing adjudicatory due process hearings conducted by State Agencies, was enacted in 1977 by Public Law 1977, Chapter 551) approved and authorized so-called “administrative justice” for the grant and denial of entitlement benefits, privileges and licenses.

The new statute removed the Superior Court's jurisdiction for HO determinations. The SOS became solely responsible for determining HO status and for conducting adjudicatory hearings requested by those persons wishing to challenge the SOS administrative determination. The SOS was also responsible for deciding whether to reinstate an HO's driver's license.

The SOS was required to revoke, without preliminary hearing, the license of any person defined as an HO. A person was an HO when the person was convicted or adjudicated for committing three major or 10 minor violations within five years. Major offenses included vehicular homicide (VH), operating under the influence (OUI), reckless driving, what we now call driving to endanger (DTE),

operating after suspension or revocation (OAS, OAR), operating without a license (OWL) and leaving the scene of an accident (LSA). Minor violations included both criminal and civil (what are now defined as traffic infractions) offenses. The requirement that a license suspension or revocation for a minimum of 30 days be an authorized punishment for a minor violation to be included as an HO offense was eliminated. The new law created an exception, i.e., prevented a person from being deemed an HO, when all of the person's major convictions were OAS and the original suspension was based on the failure to file or maintain proof of automobile insurance.

The period of license revocation was at least one year and the person whose license was revoked was entitled to an administrative hearing before the SOS. A hearing request stayed the revocation pending the hearing determination. The hearing issues remained limited to identity – whether the person was convicted of the designated offenses and whether those offenses established the person as an HO. The HO was allowed to petition the SOS for license reinstatement after one year. The SOS had discretionary authority to grant the petition “upon such terms and conditions he may prescribe” provided the person files proof of insurance. OAR was designated a Class C crime.

II. THE 1980's: A Period Of Transition

The Legislature made substantive changes throughout the decade of the 1980s in what may be described as the search for policy balance. In 1981, 1983 and 1985, the legislature weighed the need to employ sufficiently severe criminal penalties and administrative remedial licensing actions to protect the public safety against the individual's ability to be a productive, responsible member of society.

A. The 1981 Amendments.

The HO statute was amended twice in 1981 by the enactment of Public Law 1981, Chapter 468 and Public Law 1981, Chapter 471.

The use of 10 minor offenses to define a person as an HO was eliminated but two new major offenses were added: passing a roadblock (PRB) and eluding an officer (EPO). A new section was added to render an HO continually liable for committing another major offense following restoration. If, within five years of license reinstatement pursuant to the HO statute, the person committed another major offense, the person's license was again subject to license revocation as an HO. The law was revised to mandate the SOS to “extend” the HO revocation of a person convicted of OAR for one year, starting on the date of conviction, if none of the major offenses defining the person an HO was an OUI, or for three years when one of the major offenses was OUI. Since three year extension relates back the one year eligibility date on the original HO revocation, the law provided that the one year extension, starting on the date of conviction, applied, if the one year extension was longer. Further, the changes established a minimum period of incarceration not less than 60 days and a maximum \$5,000 fine for a person convicted for OAR when one of the offenses defining the person as an HO was OUI. Finally, the amendments required a law enforcement officer to report to the SOS a person charged with OAR. The SOS was prohibited from relicensing a person against whom an OAR was pending and, if the SOS had restored the license of a person charged with OAR, the SOS was required to immediately reinstate the revocation.

B. The 1983 Amendments.

The first change in 1983 created two additional exceptions to the major offenses used to define a person as an HO. Public Law 1983, Chapter 455. One exception prohibited the inclusion of an OWL conviction, if the license had expired and was not suspended or revoked. The second exclusion was for an OAS conviction when the suspension was based upon a person's failure to appear in court or to pay a court fine.

The second modification allowed HOs to petition the SOS for a work restricted license during the revocation provided none of the underlying major offenses carried a mandatory penalty of suspension or revocation of license. HOs with convictions for VH, OUI, DTE and OAR were ineligible to petition for a work restricted license. Public Law 1983, Chapter 503.

The final revision made the mandatory stay of revocation pending the determination made at an adjudicatory hearing discretionary. Public Law 1983, Chapter 455.

C. The 1985 Amendment.

The 1985 amendment changed the work restricted license eligibility provision to allow an HO to petition for a work restricted license unless one of the major offenses was VH. Public Law 1985, Chapter 308.

III. THE 1990's: Reconsidering Work Restricted Licenses And Criminal Penalties

The policy debates during the 1990s focused primarily on the development of comprehensive penal, remedial, educational and treatment measures and programs designed to deal with hardcore repeat offenders, particularly in the area of drunk driving. The legislature enacted or amended various OUI statutes during the decade, which substantially increased the sanctions applied to repeat OUI offenders. While there were numerous legislative proposals to amend the HO law, most of the proposals were rejected because they were viewed as weakening the existing statute and, therefore, inconsistent with the efforts to deal effectively with repeat OUI offenders. However, significant revisions were made to the HO statute in 1991 and 1999 dealing with work restricted licenses and criminal penalties.

A. Work Restricted Licenses

In 1991, the eligibility for work restricted drivers' licenses for HOs, which had been expanded in 1985, was once again limited by the enactment of Public Law 1991, Chapter 497. Only those HOs whose revocations were based on the commission of three major violations were entitled to petition the SOS for the issuance of work restricted licenses. HOs who were convicted for OAR and those whose licenses were revoked in accordance with the continued liability section became ineligible for a work restricted license. In 1999, the work-restricted license provision was revised further to require an HO, who was otherwise eligible to petition for a work-restricted license, to suffer eight months of the one year revocation before filing a petition. Public Law 1999, Chapter 641.

B. Criminal Penalties.

Since 1979, OAR had been designated a Class C Crime. In 1991, OAR became a bifurcated offense. Public Law 1991, Chapter 293. OAR remained a Class C crime if the person had an OUI or OAR conviction within the previous five years. OAR was reduced to a Class D crime if the person had not been convicted for OUI or OAR within the past five years. The Class D offense required the one year extension of the HO revocation and the Class C offense mandated the three year extension. In 1997, the five year look back period referenced above was increased to 10 years. Public Law 1997, Chapter 476.

IV. The 2000's: Substantial Increase in Suspension Period for Habitual Offenders

In 2002, the HO revocation was increased from a minimum of one year to three years and an HO, who was otherwise eligible to petition for a work restricted license, was required to serve 18 months of the three year revocation before filing a petition. Public Law 2001, Chapter 514. Also, in 2002, an OAS conviction was excluded in the HO determination when the suspension was based on the person's failure to pay child support. Public Law 2001, Chapter 514.