

State DUI Laws: Maine

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: No

Felony Conviction for Repeat Offenses: Yes

Maine Revised Statutes

29-A § 2401. Definitions

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

1. ALCOHOL AND DRUG PROGRAM. "Alcohol and drug program" means the alcohol and other drug education, evaluation and treatment program administered by the Office of Substance Abuse under Title 5, chapter 521, subchapter V.

2. BLOOD-ALCOHOL LEVEL. "Blood-alcohol level" means a stated percentage by weight of alcohol in the blood, based on grams of alcohol per 100 milliliters of blood.

3. CHEMICAL TEST OR TEST. "Chemical test" or "test" means a test or tests used to determine blood-alcohol level or drug concentration by analysis of blood, breath or urine.

4. DRUGS. "Drugs" means scheduled drugs as defined under Title 17-A, section 1101. The term "drugs" includes any natural or artificial chemical substance that, when taken into the human body, can impair the ability of the person to safely operate a motor vehicle.

5. FAILURE TO SUBMIT TO A TEST, FAILS TO SUBMIT TO A TEST OR FAILED TO SUBMIT TO A TEST. "Failure to submit to a test," "fails to submit to a test" or "failed to submit to a test" means failure to comply with the duty to submit to and complete a chemical test under section 2521 or 2525.

5-A. REPEALED. Laws 1999, c. 470, § 27, eff. June 10, 1999.

6. OPERATING. "Operating," in any form, means operating or attempting to operate a motor vehicle.

7. OAS. "OAS" means to operate after the Secretary of State or a court has suspended the driver's license.

8. OUI. "OUI" means operating under the influence of intoxicants or with an excessive blood-alcohol level under section 2411, 2453, 2454, 2456, 2457 or 2472.

9. OUI CONVICTION. "OUI conviction" means a conviction for:

- A. A violation of section 2411;
 - B. A violation of Title 15, section 3103, subsection 1, paragraph F;
 - C. Violation of former Title 29, section 1312, subsection 10 or section 1312-B;
 - D. In a jurisdiction that is a party to the Driver License Compact established in chapter 11, subchapter V, an offense described in the compact, section 1454, subsection 1, paragraph B, or an offense that is similar as provided by section 1454, subsection 3;
 - E. In a tribal court of the Penobscot Nation or the Passamaquoddy Tribe, a court of the United States or a court of a state that is not a party to the compact, an offense for which punishment includes the possibility of incarceration, whether or not actually imposed, and the elements of the offense as provided in the law of that jurisdiction include operation of a motor vehicle while intoxicated, impaired or under the influence of alcohol, intoxicating liquor or drugs or with a level of blood-alcohol sufficient for conviction under the laws of that jurisdiction; or
 - F. An adjudication or other determination made under the juvenile laws of this State or of another jurisdiction for conduct that, if committed by an adult, would have been a conviction included in this subsection, including the conduct under Title 15, section 3103, subsection 1, paragraph F.
10. OUI OFFENDER. "OUI offender" means a person who receives an OUI conviction.
11. OUI OFFENSE. "OUI offense" means an OUI conviction or suspension for failure to submit to a test.
12. OUI SUSPENSION. "OUI suspension" means the suspension of a driver's license for an OUI conviction.
13. UNDER THE INFLUENCE OF INTOXICANTS. "Under the influence of intoxicants" means being under the influence of alcohol, a drug other than alcohol, a combination of drugs or a combination of alcohol and drugs.

29-A § 2403. Period of administrative suspension deducted from court-imposed suspension

Except for a suspension for failure to submit to a test, the period of time of an administrative suspension ordered by the Secretary of State prior to an OUI conviction that arose out of the same occurrence is deducted from the period of time of any court-imposed suspension. If the suspension is for failure to submit to a test, a period of suspension imposed by the court or by the Secretary of State for an OUI conviction is consecutive to the period of suspension imposed for failure to submit to a test.

29-A § 2404. Owner liable for damage by impaired operator

An owner or person having control over a motor vehicle who, having knowledge or reason to know that a person under the influence of intoxicants has a blood-alcohol level of .08% or more by weight of alcohol in the blood, permits that person to operate that motor vehicle is jointly and severally liable with that person for damages caused by the negligence of the person. This section is not in derogation of, does not limit and does not diminish any cause of action or right of recovery that is or may become available under the common law.

29-A § 2405. Optional reporting of drivers operating under the influence of intoxicating liquor or drugs

1. PERSONS WHO MAY REPORT. If, while acting in a professional capacity, a medical or osteopathic physician, resident, intern, emergency medical services person, medical examiner, physician's assistant, dentist, dental hygienist, dental assistant or registered or licensed practical nurse knows or has reasonable cause to believe that a person has been operating a motor vehicle, hunting or operating a snowmobile, all-terrain vehicle or watercraft while under the influence of intoxicants and that motor vehicle, snowmobile, all-terrain vehicle or watercraft or a hunter has been involved in an accident, that person may report those facts to a law enforcement official.

2. IMMUNITY FROM LIABILITY. A person participating in good faith in reporting under this section, or in participating in a related proceeding, is immune from criminal or civil liability for the act of reporting or participating in the proceeding.

Nothing in this section may be construed to bar criminal or civil action regarding perjury.

In a proceeding regarding immunity from liability, there is a rebuttable presumption of good faith.

3. PRIVILEGED OR CONFIDENTIAL COMMUNICATIONS. The physician-patient privileges under the Maine Rules of Evidence and the confidential quality of communication under Title 24-A, section 4224 and Title 32, section 1092-A are abrogated in relation to required reporting or other proceeding.

29-A § 2411. Criminal OUI

1-A. OFFENSE. A person commits OUI if that person:

A. Operates a motor vehicle:

- 1) While under the influence of intoxicants; or
- 2) While having a blood-alcohol level of 0.08% or more;

B. Violates paragraph A and:

- 1) Has one previous OUI offense within a 10-year period;
- 2) Has 2 previous OUI offenses within a 10-year period; or
- 3) Has 3 or more previous OUI offenses within a 10-year period;

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

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

D. Violates paragraph A, B or C and:

- 1) In fact causes serious bodily injury as defined in Title 17-A, section 2, subsection 23 to another person or in fact causes the death of another person; or
- 2) Has either a prior conviction for a Class C crime under this section or a prior criminal homicide conviction involving or resulting from the operation of a motor vehicle while under the influence of intoxicating liquor or drugs or with a blood-alcohol level of 0.08% or greater.

2. PLEADING AND PROOF. The alternatives outlined in subsection 1-A, paragraph A may be pleaded in the alternative. The State is not required to elect between the alternatives prior to submission to the fact finder. In a prosecution under subsection 1-A, paragraph D, the State need not prove that the defendant's condition of being under the influence of intoxicants or having a blood-alcohol level of 0.08% or more caused the serious bodily injury or death alleged. The State must prove only that the defendant's operation caused the serious bodily injury or death. The court shall apply Title 17-A, section 33 in assessing any causation under this section.

3. INVESTIGATION. After a person has been charged with OUI, the officer shall investigate whether the charged person has prior OUI offenses. As part of the investigation, the officer shall make necessary inquiries of the Secretary of State.

4. ARREST. A law enforcement officer may arrest, without a warrant, a person the officer has probable cause to believe has operated a motor vehicle while under the influence of intoxicants if the arrest occurs within a period following the offense reasonably likely to result in the obtaining of probative evidence of blood-alcohol level or drug concentration.

5. PENALTIES. Except as otherwise provided, violation of this section is a Class D crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. The following minimum penalties apply and may not be suspended:

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

- 1) A fine of not less than \$ 400, except that if the person failed to submit to a test, a fine of not less than \$ 500;

2) A court-ordered suspension of a driver's license for a period of 90 days; and

3) A period of incarceration as follows:

a) Not less than 48 hours when the person:

i) Was tested as having a blood-alcohol level of 0.15% or more;

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

iii) Eluded or attempted to elude an officer; or

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

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

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

1) A fine of not less than \$ 600, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than \$ 800;

2) A period of incarceration of not less than 7 days, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 12 days;

3) A court-ordered suspension of a driver's license for a period of 18 months; and

4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor vehicle;

C. For a person having 2 previous OUI offenses within a 10-year period:

1) A fine of not less than \$ 1,000, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than \$ 1,300;

2) A period of incarceration of not less than 30 days, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 40 days;

3) A court-ordered suspension of a driver's license for a period of 4 years; and

4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor vehicle;

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

1) A fine of not less than \$ 2,000, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than \$ 2,400;

2) A period of incarceration of not less than 6 months, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 6 months and 20 days;

3) A court-ordered suspension of a driver's license for a period of 6 years; and

4) In accordance with section 2416, a court-ordered suspension of the person's right to register a motor vehicle;

D-1. A violation of subsection 1-A, paragraph D is a Class C crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. The sentence must include a period of incarceration of not less than 6 months, a fine of not less than \$ 2,000 and a court-ordered suspension of a driver's license for a period of 6 years. These penalties may not be suspended;

E. If a law enforcement officer failed to provide the warnings required by section 2521, subsection 3, the increase in minimum penalties required because of a refusal to submit to a test is not mandatory;

F. For a person sentenced under paragraph B, C or D, the court shall order the defendant to participate in the alcohol and other drug program of the Department of Behavioral and Developmental Services, Office of Substance Abuse. The court may waive the program pursuant to Title 5, section 20073-B, if the court finds that the defendant

has completed an alcohol or other drug treatment program subsequent to the date of the offense; and

G. The court shall order an additional period of license suspension of 275 days for a person sentenced under paragraph A, B, C, D or D-1 if the person was operating the motor vehicle at the time of the offense with a passenger under 21 years of age.

5-A. NOTICE AND CUSTODY. The court shall give notice of a license suspension and shall take physical custody of the driver's license.

5-B. ADDITIONAL PERIOD OF SUSPENSION. The Secretary of State may impose an additional period of suspension under section 2451, subsection 3 or may extend a period of suspension until satisfaction of any conditions imposed pursuant to chapter 23, subchapter III, article 4.

7. SURCHARGE. A surcharge must be charged for a conviction under this section. The surcharge is \$ 30, except that, when the person operated or attempted to operate a motor vehicle while under the influence of drugs or a combination of liquor and drugs, the surcharge is \$ 125. For the purposes of collection procedures, the surcharge is considered a fine. Notwithstanding section 2602, this surcharge accrues to the Highway Fund for the purpose of covering the costs associated with the administration and analysis of blood-alcohol tests.

8. JUVENILE CRIME. References in this Title to this section include the juvenile crime in Title 15, section 3103, subsection 1, paragraph F, and the disposition, including a suspension, for that juvenile crime in Title 15, section 3314, subsection 3, except as otherwise provided or except where the context clearly requires otherwise.

1-A. OFFENSE; PENALTY. A person commits operating while license suspended or revoked if that person:

A. Operates a motor vehicle on a public way or in a parking area when that person's license has been suspended or revoked, and that person:

- 1) Has received written notice of a suspension or revocation from the Secretary of State or a court;
- 2) Has been orally informed of the suspension or revocation by a law enforcement officer or a court;
- 3) Has actual knowledge of the suspension or revocation;
- 4) Has been sent written notice in accordance with section 2482 or former Title 29, section 2241, subsection 4; or
- 5) Has failed to answer or to appear in court pursuant to a notice or order specified in section 2605 or 2608;

B. Violates paragraph A and the suspension was for OUI or an OUI offense;

C. Violates paragraph A and the suspension was for OUI or an OUI offense, the person was subject to the mandatory minimum sentence and the person:

- 1) Has one prior conviction for violating this section;
- 2) Has 2 prior convictions for violating this section; or
- 3) Has 3 or more prior convictions for violating this section;
or

D. Violates paragraph A, the suspension was not for OUI or an OUI offense and the person has one or more prior convictions for violating this section.

Except as otherwise provided, operating while license suspended or revoked is a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

2. EXCEPTION. This section does not apply to a person whose license has been revoked under the laws in subchapter V governing habitual offenders.

3. MINIMUM MANDATORY SENTENCES FOR CERTAIN SUSPENSION. If the suspension was for OUI or an OUI offense, the court shall impose a minimum fine of \$ 500, a term of imprisonment of 7 consecutive days and a suspension of license of not less than one year nor more than 3 years consecutive to the original suspension. The penalties may not be suspended.

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

- 1) A minimum fine of \$ 1,000, a term of imprisonment of 30 consecutive days and a suspension of license for not less than one year nor more than 3 years consecutive to the original suspension in the event of one prior conviction;
- 2) A minimum fine of \$ 2,000, a term of imprisonment of 60 consecutive days and a suspension of license for not less than one year nor more than 3 years consecutive to the original suspension in the event of 2 prior convictions; or
- 3) A minimum fine of \$ 3,000, a term of imprisonment of 6 months and a suspension of license for not less than one year nor more than 3 years consecutive to the original suspension in the event

of 3 or more prior convictions. The sentencing class for this offense is a Class C crime.

B. For all other suspensions, the minimum fine is \$ 200, which may not be suspended by the court if the person has a prior conviction for violating this section within a 10-year period.

A separate reading of the allegation and a separate trial are not required under this subsection.

4. SUSPENSION OF LICENSE. The following provisions apply when a person's license is required to be suspended under this section.

A. The court shall give notice of the suspension and shall take physical custody of an operator's license or permit as provided in section 2434.

B. If the court fails to impose a suspension as provided in subsection 3, the Secretary of State shall impose the minimum one-year suspension.

C. The minimum mandatory sentences of subsection 3 apply only to the original period of suspension imposed by the court or the Secretary of State or as extended by the Secretary of State. The minimum mandatory sentences of subsection 3 do not apply to any extension of the original suspension imposed to compel a person's compliance with conditions for the restoration of a license or for failure to pay a reinstatement fee for a license.

5. PRIOR CONVICTIONS. For purposes of this section, a prior conviction or suspension has occurred within a 10-year period if the date of the suspension or the docket entry of a judgment of conviction by the clerk is 10 years or less from the date of the new conduct that is penalized or for which the new penalty may be enhanced.

29-A § 2412-A. Operating while license suspended or revoked

1. REPEALED. Laws 2003, c. 452, § Q-84, eff. July 1, 2004.

1-A. OFFENSE; PENALTY. A person commits operating while license suspended or revoked if that person:

A. Operates a motor vehicle on a public way or in a parking area when that person's license has been suspended or revoked, and that person:

- 1) Has received written notice of a suspension or revocation from the Secretary of State or a court;
- 2) Has been orally informed of the suspension or revocation by a law enforcement officer or a court;

- 3) Has actual knowledge of the suspension or revocation;
- 4) Has been sent written notice in accordance with section 2482 or former Title 29, section 2241, subsection 4; or
- 5) Has failed to answer or to appear in court pursuant to a notice or order specified in section 2605 or 2608;

B. Violates paragraph A and the suspension was for OUI or an OUI offense;

C. Violates paragraph A and the suspension was for OUI or an OUI offense, the person was subject to the mandatory minimum sentence and the person:

- 1) Has one prior conviction for violating this section;
- 2) Has 2 prior convictions for violating this section; or
- 3) Has 3 or more prior convictions for violating this section;
or

D. Violates paragraph A, the suspension was not for OUI or an OUI offense and the person has one or more prior convictions for violating this section.

Except as otherwise provided, operating while license suspended or revoked is a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

2. EXCEPTION. This section does not apply to a person whose license has been revoked under the laws in subchapter V governing habitual offenders.

3. MINIMUM MANDATORY SENTENCES FOR CERTAIN SUSPENSION. If the suspension was for OUI or an OUI offense, the court shall impose a minimum fine of \$ 600, a term of imprisonment of 7 consecutive days and a suspension of license of not less than one year nor more than 3 years consecutive to the original suspension. The penalties may not be suspended.

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

- 1) A minimum fine of \$ 1,000, a term of imprisonment of 30 consecutive days and a suspension of license for not less than

one year nor more than 3 years consecutive to the original suspension in the event of one prior conviction;

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

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

B. For all other suspensions, the minimum fine for a first offense is \$ 250, which may not be suspended by the court. The minimum fine for 2nd and subsequent offenses is \$ 500, which may not be suspended by the court.

A separate reading of the allegation and a separate trial are not required under this subsection.

4. SUSPENSION OF LICENSE. The following provisions apply when a person's license is required to be suspended under this section.

A. The court shall give notice of the suspension and shall take physical custody of an operator's license or permit as provided in section 2434.

B. If the court fails to impose a suspension as provided in subsection 3, the Secretary of State shall impose the minimum one-year suspension.

C. The minimum mandatory sentences of subsection 3 apply only to the original period of suspension imposed by the court or the Secretary of State or as extended by the Secretary of State. The minimum mandatory sentences of subsection 3 do not apply to any extension of the original suspension imposed to compel a person's compliance with conditions for the restoration of a license or for failure to pay a reinstatement fee for a license.

5. PRIOR CONVICTIONS. For purposes of this section, a prior conviction or suspension has occurred within a 10-year period if the date of the suspension or the docket entry of a judgment of conviction by the clerk is 10 years or less from the date of the new conduct that is penalized or for which the new penalty may be enhanced.

29-A § 2416. Registration suspension by court

1. REQUIRED REGISTRATION SUSPENSION; RETURN OF CERTIFICATE AND PLATES. The court shall suspend the right to register a motor vehicle and all registration certificates and plates issued by the Secretary of State to any person convicted for a violation of section 2411 who has a previous conviction for OUI within the 10-year period defined by section 2402. The Secretary of State shall return the certificate of registration and plates to the defendant when the defendant's license and registration privileges have been restored.

2. EXCEPTION FOR HARDSHIP. Notwithstanding subsection 1, if a spouse or other family member regularly using a vehicle subject to suspension of registration establishes to the satisfaction of the court that hardship will result from that suspension, the court need not suspend the registration certificates and plates or the right to register that vehicle.

3. REISSUANCE OF REGISTRATION. Notwithstanding a court order suspending a registration, the Secretary of State may restore a registration certificate and plates without fee during the remaining term of the registration to a spouse or other family member upon receipt of an affidavit authorizing the spouse or other family member to register the vehicle.

29-A § 2421. Forfeiture of motor vehicles for OUI

1. FORFEITURE. After notice and hearing, a motor vehicle must be forfeited to the State when a defendant is:

A. The sole owner-operator of that vehicle; and

B. Convicted of:

1) OUI; and

2) A simultaneous offense of operating after suspension when the underlying suspension was imposed for a prior OUI conviction.

The court shall order the forfeiture unless another person satisfies the court prior to the judgment and by a preponderance of the evidence that the other person had a right to possess that motor vehicle, to the exclusion of the defendant, at the time of the offense.

2. SEIZURE OF VEHICLE OF OWNER-OPERATOR. A motor vehicle operated by a sole owner is subject to seizure by a law enforcement officer when:

A. The owner-operator operates or attempts to operate that motor vehicle under the influence of intoxicating liquor or drugs or while having 0.08% of alcohol by weight in the blood; and

B. The owner-operator is under suspension or revocation as a result of a previous conviction of operating under influence of alcohol or drugs or while having 0.08% of alcohol by weight in the blood.

3. LIENHOLDERS. A forfeiture of a motor vehicle encumbered by a perfected bona fide security interest is subject to the interest of the secured party if the party did not have knowledge of the act on which the forfeiture is based.

4. PRELIMINARY ORDER. At the request of the State, the court may issue, ex parte, a preliminary order to seize or

secure a motor vehicle subject to forfeiture and to provide for custody.

That order may include an order to a financial institution or to any fiduciary or bailee to impound the vehicle in its possession or control and to release the vehicle only on further order of the court.

The court may issue an order only on a showing of probable cause and after criminal complaints of OUI and OAS have been filed against the owner-operator.

The application, issuance, execution and return of an order are subject to applicable state law.

A law enforcement officer may seize a motor vehicle without court order when:

A. The seizure is incident to an arrest with probable cause for an OUI by the sole owner and the officer has probable cause to believe the vehicle is subject to forfeiture; or

B. The vehicle has been subject of a prior judgment in favor of the State in a forfeiture proceeding under this section or any other provision of law.

5. REPORTS. An officer, department or agency seizing a vehicle shall file a report of seizure with the Attorney General or a district attorney having jurisdiction over the vehicle. The report must be:

A. Filed within 21 days of the date of seizure; and

B. Labeled "Vehicle Report" and include, without limitation:

1) A description of the vehicle;

2) The place and date of seizure;

3) The name and address of the owner or operator of the vehicle at the time of seizure; and

4) The name and address of any other person who appears to have an ownership interest in the vehicle.

6. STORAGE OF SEIZED MOTOR VEHICLES. A seized motor vehicle must be held in secure storage by the seizing agency or at the direction of the prosecuting official until disposition of the underlying criminal charges. The State shall assume all costs of storage of a vehicle not forfeited.

7. RECORDS OF SEIZED MOTOR VEHICLES. An officer, department or agency having custody of a motor vehicle subject to forfeiture or having disposed of the vehicle shall maintain complete records showing:

A. From whom the motor vehicle was received;

B. Under what authority the motor vehicle was held, received or disposed of;

C. To whom the motor vehicle was delivered; and

D. The date and manner of destruction or disposition of the motor vehicle.

8. RULES. The Attorney General shall adopt rules in accordance with Title 5, chapter 375, for the disposition to state, county and municipal agencies of forfeited motor vehicles.

29-A § 2422. Impoundment of motor vehicles for OUI

1. IMPOUNDMENT OF VEHICLE. A motor vehicle may be seized if it is used by a person arrested for a violation of:

A. Section 2411; or

B. Section 2412-A, when the suspension or revocation was for OUI or an OUI offense.

2. STORAGE. If a motor vehicle is seized, it must be held in secure storage by the seizing agency or at the direction of the arresting law enforcement officer.

3. RELEASE OF VEHICLE. The motor vehicle may be released after at least an 8-hour period and payment of any towing and storage fees.

29-A § 2431. Evidentiary rules

1. TEST RESULTS. Test results showing drug concentrations or blood-alcohol level at the time alleged are admissible in evidence. Failure to comply with the provisions of sections 2521 and 2523 may not, by itself, result in the exclusion of evidence of blood-alcohol level or drug concentration, unless the evidence is determined to be not sufficiently reliable.

2. ANALYSIS OF BLOOD, BREATH AND URINE. The following provisions apply to the analysis of blood, breath and urine, and the use of that analysis as evidence.

A. A person certified in accordance with section 2524 conducting a chemical analysis of blood, breath or urine to determine blood-alcohol level or drug concentration may issue a certificate stating the results of the analysis.

B. A person qualified to operate a self-contained, breath-alcohol testing apparatus may issue a certificate stating the results of the analysis.

C. A certificate issued in accordance with paragraph A or B, when duly signed and sworn, is prima facie evidence that:

- 1) The person taking the specimen was authorized to do so;
- 2) Equipment, chemicals and other materials used in the taking of the specimen were of a quality appropriate for the purpose of producing reliable test results;
- 3) Equipment, chemicals or materials required to be approved by the Department of Human Services were in fact approved;
- 4) The sample tested was in fact the same sample taken from the defendant; and
- 5) The blood-alcohol level or drug concentration in the blood of the defendant at the time the sample was taken was as stated in the certificate.

D. With 10 days written notice to the prosecution, the defendant may request that a qualified witness testify to the matters of which the certificate constitutes prima facie evidence. The notice must specify those matters concerning which the defendant requests testimony. The certificate is not prima facie evidence of those matters.

E. A person drawing a specimen of blood may issue a certificate that states that the person is in fact duly licensed or certified and that the proper procedure for drawing a specimen of blood was followed. That certificate, when signed and sworn to by the person, is prima facie evidence of its contents unless, with 10 days' written notice to the prosecution, the defendant requests that the person testify.

F. Evidence that the breath or urine sample was in a sealed carton bearing the Department of Human Services' stamp of approval is prima facie evidence that the equipment was approved by the Department of Human Services.

G. The results of a self-contained breath-alcohol apparatus test is prima facie evidence of blood-alcohol level.

H. Evidence that the self-contained breath-alcohol testing equipment bearing the Department of Human Services' stamp of approval is prima facie evidence that the equipment was approved by the Department of Human Services.

I. Evidence that materials used in operating or checking the operation of the self-contained breath-alcohol testing equipment bore

a statement of the manufacturer or of the Department of Human Services is prima facie evidence that the materials were of the composition and quality stated.

J. Transfer of sample specimens to and from a laboratory for purposes of analysis by certified or registered mail complies with all requirements regarding the continuity of custody of physical evidence.

K. The prosecution is not required to produce expert testimony regarding the functioning of self-contained breath-alcohol testing apparatus before test results are admissible, if sufficient evidence is offered to satisfy paragraphs H and I.

3. FAILURE AS EVIDENCE. Failure of a person to submit to a chemical test is admissible in evidence on the issue of whether that person was under the influence of intoxicants.

If the law enforcement officer fails to give the required warnings, the failure of the person to submit to a chemical test is not admissible, except when a test was required under section 2522.

If a failure to submit to a chemical test is not admitted into evidence, the court may inform the jury that no test result is available.

If a test result is not available for a reason other than failing to submit to a chemical test, the unavailability and the reason is admissible in evidence.

4. STATEMENTS BY ACCUSED. A statement by a person as to name or date of birth, or the name or date of birth contained on a driver's license surrendered by that person, is admissible in a proceeding under this Title.

A statement of the person's name or date of birth constitutes sufficient proof by itself, without further proof of corpus delicti.

A statement by a defendant that the defendant was the operator of a motor vehicle is admissible in a proceeding under sections 2411, 2412-A and 2557, if it is made voluntarily and is otherwise admissible under the United States Constitution or the Constitution of Maine. The statement may constitute sufficient proof by itself, without further proof of corpus delicti, that the motor vehicle was operated by the defendant.

29-A § 2432. Blood-alcohol level; evidentiary weight

1. LEVEL LESS THAN 0.05%. If a person has a blood-alcohol level of 0.05% or less, it is prima facie evidence that that person is not under the influence of alcohol.

2. LEVEL GREATER THAN 0.05% AND LESS THAN 0.08%. If a person has a blood-alcohol level in excess of 0.05%, but less than 0.08%, it is relevant evidence, but not prima facie, indicating whether or not that person is under the influence of intoxicants to be considered with other competent evidence.

3. LEVEL OF 0.08% OR GREATER. In proceedings other than under section 2411, a person is presumed to be under the influence of intoxicants if that person has a blood-alcohol level of 0.08% or more.

29-A § 2434. Notice of suspension by court

The following provisions apply to any conviction for OUI or for any offense for which the court suspends a license or registration.

1. NOTIFICATION BY COURT. The court shall inform the defendant of the suspension.
2. ACKNOWLEDGEMENT OF RECEIPT OF NOTICE. The defendant shall acknowledge this notice in writing on a form provided by the court.
3. PHYSICAL CUSTODY OF LICENSE. Unless the defendant appeals and a stay of execution of the suspension is granted, the court shall take physical custody of a license issued by this State or another state, foreign country or province if that person is residing or employed in this State. The court may take a license issued by another state, foreign country or province if the person is not residing or employed in this State.
4. STAY OF SUSPENSION. The court, on reasonable cause shown, may stay a suspension for a period not to exceed 4 hours from the time of sentencing and issue evidence of that stay.
5. FORWARD DOCUMENTS TO SECRETARY OF STATE. The court shall forward the license, a copy of the sentence and the acknowledgement of notice to the Secretary of State.
6. ORDER RETURN OF CERTIFICATE AND PLATES. The court shall order the return of the suspended registration certificate and plates to the Secretary of State.
7. ADDITIONAL TIME TO SURRENDER LICENSE. On reasonable cause shown, the court may allow a person who does not possess the license at the time of sentencing up to 96 hours to surrender that license.
8. COMMENCEMENT OF SUSPENSION. Notwithstanding section 2482, subsection 4, the period of suspension commences immediately on announcement of sentence. Two additional days of suspension must be added for each day after the license surrender day that a person fails to surrender the license to the court.
9. WAIVER OF REINSTATEMENT FEE. On motion and for good cause shown, the court ordering a suspension under section 2605 or 2608 may waive the reinstatement fee.
10. FAILURE TO SIGN ACKNOWLEDGMENT OF NOTICE OR SURRENDER LICENSE. A person commits a Class E crime if that person:
 - A. Refuses to sign the acknowledgment of notice; or
 - B. Without good cause, fails to surrender a license within the period of suspension.

Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

29-A § 2435. Stay pending appeal

If a person's license is suspended as a result of a conviction of a crime other than under section 2411, or is suspended as a result of an adjudication of a traffic infraction and the person appeals from the conviction or adjudication, the execution of a suspension of the person's license must be stayed until disposition on appeal or withdrawal of the appeal, unless good cause is shown why the person should not be allowed to retain a license or right to operate.

29-A § 2451. Suspensions for OUI

1. RECORDING AND NOTICE BY SECRETARY OF STATE. On receipt of an attested copy of the court record of a suspension of a license for OUI, the Secretary of State shall immediately record the suspension and send written notice of the suspension to the person whose license has been suspended.

2. REPEALED. Laws 1995, c. 368, § AAA-16, eff. June 29, 1995.

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

A. Ninety days, if the person has one OUI conviction within a 10-year period;

B. Eighteen months, if the person has 2 OUI offenses within a 10-year period;

C. Four years, if the person has 3 OUI offenses within a 10-year period; or

D. Six years, if the person has 4 or more OUI offenses within a 10-year period.

For the purposes of this subsection, a conviction or suspension has occurred within a 10-year period if the date of the new conduct is within 10 years of a date of suspension or a docket entry of judgment of conviction.

4. CONSECUTIVE SUSPENSIONS. A suspension under this section is consecutive to a suspension for failure to submit to a test required by this chapter.

5. ADDITIONAL PERIOD OF SUSPENSION FOR TRANSPORTING PASSENGERS UNDER 21 YEARS OF AGE. Unless a court orders an additional period of license suspension of 275 days pursuant to section 2411, subsection 5, paragraph G, the Secretary of State shall impose an additional suspension period of 275 days for any failure to submit to a chemical test or for OUI if the person was operating the motor vehicle at the time of the offense with a passenger under 21 years of age.

29-A § 2453. Suspension on administrative determination; excessive blood-alcohol level

1. PURPOSE. The purpose of this section is:

A. To provide maximum safety for all persons who travel on or

otherwise use the public ways; and

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

2. DEFINITION. For the purposes of this section, "operating a motor vehicle with an excessive blood-alcohol level" means operating a motor vehicle with a blood-alcohol level of 0.08% or more.

3. SUSPENSION. The Secretary of State shall immediately suspend a license of a person determined to have operated a motor vehicle with an excessive blood-alcohol level.

4. DRUG AND ALCOHOL PROGRAM. The Secretary of State may not suspend a license solely because a person has not satisfactorily completed an alcohol and drug program, as defined in subchapter I. This limitation does not affect statutory restoration authority.

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

6. PERIOD OF SUSPENSION. The following periods of suspension apply.

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

B. Repealed. Laws 1997, c. 737, § 13.

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

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

7. RESTORATION OF LICENSE. The Secretary of State may issue a license or permit as follows.

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

8. HEARING. The scope of the hearing must include whether:

A. The person operated a motor vehicle with an excessive

blood-alcohol level; and

B. There was probable cause to believe that the person was operating a motor vehicle with an excessive blood-alcohol level.

29-A § 2455. Provisions regarding revocation when homicide is alcohol or drug related

1. REPORT BY DISTRICT ATTORNEY. The district attorney shall forward a report to the Secretary of State when any person is convicted of a criminal homicide or adjudicated to have committed a juvenile offense of criminal homicide as the result of that person's operation of a motor vehicle when:

A. The person was operating under the influence of intoxicating liquor or drugs, or with a blood-alcohol of 0.08% or greater;

B. The person had not attained the legal drinking age and was operating a motor vehicle with any amount of alcohol in the blood;

C. There was probable cause to believe that the person was operating under the influence of intoxicating liquor or drugs and failed to comply with that person's duty to submit to and complete required chemical testing; or

D. There was probable cause to believe that the person had not attained the legal drinking age and was operating a motor vehicle with any amount of alcohol in the blood and failed to comply with the duty to submit to and complete a test to determine blood-alcohol level.

2. CONTENT OF REPORT. The report required in subsection 1 must contain all relevant facts that formed the basis for the conviction or adjudication, including chemical test results if available.

3. ALCOHOL OR DRUG PROGRAMS. Upon receipt of the report required in subsection 1, the Secretary of State shall require that the following conditions be met before that person may be licensed or permitted to operate a motor vehicle:

A. Satisfactory completion of the Driver Education and Evaluation Programs of the Office of Substance Abuse;

B. When required, satisfactory completion of a substance abuse treatment program or rehabilitation program approved or licensed by the Department of Behavioral and Developmental Services; and

C. When required, attendance at an after-care program arranged by the approved treatment or rehabilitation program.

4. ALCOHOL OR DRUG PROGRAMS FOLLOWING INCARCERATION. Any of the alcohol or drug programs required in subsection 3 may begin only upon release from a county jail or from a facility operated by the Department of Corrections.

29-A § 2456. Negligently causing death; administrative suspension

1. **SUSPENSION.** The Secretary of State shall immediately suspend the license of a person who negligently operates a motor vehicle in a manner as to cause the death of a person:

- A. While under the influence of intoxicants;
- B. While having a blood-alcohol level of 0.08% or more; or
- C. Who subsequently fails to submit to a test subject to penalty under section 2521.

2. **PERIOD OF SUSPENSION.** The period of suspension is 3 years, consecutive to any suspension imposed by the Secretary of State for failure to take a test. If a suspended license is subsequently revoked under section 2454 on charges arising out of the same occurrence, the length of suspension actually served under this section is deducted from the period of revocation imposed pursuant to that section.

3. **HEARING ISSUES.** A person whose license has been suspended under this section may request a hearing pursuant to section 2483. The scope of the hearing must include whether:

- A. The person operated a motor vehicle;
- B. The person, at that time, had an excessive blood-alcohol level, or was under the influence of intoxicants or may be penalized for failure to submit to required chemical testing; and
- C. The person's negligent operation caused the death of another person.

4. **CIVIL PROCEEDING.** On receipt of a certified copy of the civil tort judgment that the person did not negligently cause the death of the other person, the Secretary of State shall terminate the suspension§ 2456. Negligently causing death; administrative suspension

1. **SUSPENSION.** The Secretary of State shall immediately suspend the license of a person who negligently operates a motor vehicle in a manner as to cause the death of a person:

- A. While under the influence of intoxicants;
- B. While having a blood-alcohol level of 0.08% or more; or
- C. Who subsequently fails to submit to a test subject to penalty under section 2521.

2. **PERIOD OF SUSPENSION.** The period of suspension is 3 years, consecutive to any suspension imposed by the Secretary of State for failure to take a test. If a suspended license is subsequently revoked under section 2454 on charges

arising out of the same occurrence, the length of suspension actually served under this section is deducted from the period of revocation imposed pursuant to that section.

3. HEARING ISSUES. A person whose license has been suspended under this section may request a hearing pursuant to section 2483. The scope of the hearing must include whether:

- A. The person operated a motor vehicle;
- B. The person, at that time, had an excessive blood-alcohol level, or was under the influence of intoxicants or may be penalized for failure to submit to required chemical testing; and
- C. The person's negligent operation caused the death of another person.

4. CIVIL PROCEEDING. On receipt of a certified copy of the civil tort judgment that the person did not negligently cause the death of the other person, the Secretary of State shall terminate the suspension.

29-A § 2457. Conditional license holder; OUI

1. SUSPENSION. The Secretary of State shall suspend for a minimum period of one year, without preliminary hearing, the conditional license issued pursuant to section 2506 of a person who while holding a conditional license:

- A. Receives an OUI conviction; or
- B. As the Secretary of State determines, has operated a motor vehicle while having any amount of alcohol in the blood.

2. DUTY TO SUBMIT TO TEST. A person who operates a motor vehicle with a conditional license shall submit to a test if there is probable cause to believe that person holds a conditional license and operated a motor vehicle with any amount of alcohol in the blood. The other provisions of subchapter IV apply, except the suspension must be for a period of not less than 2 years.

3. PERIOD OF SUSPENSION. The following provisions apply to suspensions of conditional licenses.

- A. When a license is also suspended for an OUI conviction arising out of the same occurrence, the duration of the suspension under this section prior to the conviction is deducted from the period of a court-imposed suspension unless suspension was for failure to submit to a test.
- B. If the suspension is for failure to submit to a test, the period of suspension for an OUI conviction must be consecutive to the period of suspension imposed for refusal.

C. If a person is determined to have operated a motor vehicle with a blood-alcohol level of 0.08% or more and both this section and section 2453 apply, the longer period of suspension applies.

4. HEARING; STAY; ISSUES. If a hearing is requested in accordance with section 2483, the suspension under subsection 1, paragraph B is stayed pending the outcome of the hearing. The scope of the hearing must include whether:

A. The person operated a motor vehicle with any amount of alcohol in the blood;

B. There was probable cause to believe that the person was operating with any amount of alcohol in the blood; and

C. The person held a conditional license.

5. RESTORATION OF LICENSE. Following the expiration of the aggregate periods of suspension imposed pursuant to this section otherwise imposed by the Secretary of State and ordered by any court, the Secretary of State may issue a conditional license to the person, subject to the conditions, restrictions or terms the Secretary of State determines advisable, if the Secretary of State has received written notice that the person has satisfactorily completed the Driver Education and Evaluation Program established in Title 5, section 20072 and, when required, has satisfactorily completed an alcohol treatment or rehabilitation program approved or licensed by the Department of Behavioral and Developmental Services.

29-A § 2481. Administrative procedures for suspension

1. REPORT OF OFFICER. A law enforcement officer who has probable cause to believe a person has violated the terms of a conditional driver's license, commercial driver's license or provisional license or committed an OUI offense shall send to the Secretary of State a report of all relevant information, including, but not limited to, the following:

A. Information adequately identifying the person charged;

B. The ground that the officer had for probable cause to believe that the person violated the terms of a conditional driver's license, commercial driver's license or provisional license or committed an OUI offense;

C. A certificate of the results of blood-alcohol tests conducted on a self-contained breath-alcohol testing apparatus; and

D. If a person fails to submit to a test, the law enforcement officer's report may be limited to a written statement under oath stating that the officer had probable cause to believe that the person violated the terms of a conditional driver's license, commercial driver's license or provisional license, or committed an OUI offense and failed to submit to a test.

The report must be under oath and on a form approved by the Secretary of State.

If the blood-alcohol test was not analyzed by a law enforcement officer, the person who analyzed the results shall send a copy of that certificate to the Secretary of State.

2. TIME. The report must be submitted to the Secretary of State within 72 hours of the offense, excluding Saturdays, Sundays and holidays. If the report is not sent within this time period, the Secretary of State shall impose the suspension, unless the delay has prejudiced the persons' ability to prepare or participate in the hearing.

3. DETERMINATION. The Secretary of State shall make a determination on the basis of the information required in the report.

This determination is final unless a hearing is requested and held.

If a hearing is held, the Secretary of State shall review the matter and make a final determination on the basis of evidence received at the hearing.

29-A § 2482. Notice of suspension or revocation of license

1. NOTIFICATION BY SECRETARY OF STATE. Upon determining that a person is subject to license suspension or revocation, the Secretary of State shall immediately notify the person, in writing, of the license suspension or revocation. The notice:

A. Must be sent to the last name and address provided under section 1407 or, if the person has not applied for a license, on record with the Secretary of State;

B. Must be sent to the address provided in the report of the law enforcement officer if that address differs from the address of record; or

C. May be served in hand.

2. NOTICE CONTENTS. The notice must clearly state:

A. The reason and statutory grounds for the suspension or revocation;

B. The effective date of the suspension or revocation;

C. If the suspension or revocation is imposed by an authority other than a court, the right of the person to request a hearing and the procedure for requesting a hearing; and

D. Deleted. Laws 1997, c. 776, § 50.

E. Deleted. Laws 1997, c. 776, § 50.

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

3. RECEIPT DATE. The notice is deemed received 3 days after mailing, unless returned by postal authorities.

4. EFFECTIVE DATE. A suspension or revocation is effective on the date specified by the Secretary of State on the notice, which may not be less than 10 days after the mailing of the notification of suspension by the Secretary of State.

29-A § 2483. Hearing request

1. REQUEST FOR HEARING. A person may make a written request for a hearing to review the determination of the Secretary of State. The request must be made within 10 days from the effective date of the suspension.

2. ISSUANCE OF DECISION. The Secretary of State shall conduct a hearing and issue a decision within 30 days of receipt of a written request for hearing.

3. DELAYED REQUESTS. If a request is made after the 10-day period and the Secretary of State finds that the person was unable to make a timely request due to lack of actual notice of the suspension or due to factors of physical incapacity, the Secretary of State shall waive the period of limitation, reopen the matter and grant the hearing request, except a stay may not be granted.

4. STAY. Any stay must continue until a decision is issued. Notwithstanding any other provision to the contrary, a stay does not apply during a delay caused or requested by the petitioner, except that, if the petitioner is unable to attend the hearing due to circumstances beyond the petitioner's control, the Secretary of State may continue, one time only, the stay of suspension. The petitioner must submit to the Secretary of State a written request for delay, or an electronically transmitted facsimile of a written request for delay, stating the circumstances, at least 24 hours before the scheduled hearing. A request for a hearing does not stay a suspension unless specifically provided for in this chapter.

5. SUSPENSIONS DURING APPEAL. If a person appeals an OUI conviction or administrative determination, the suspension remains in effect during the appeal, unless the court orders otherwise or the Secretary of State restores the license.

29-A § 2487. Proof of financial responsibility

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

29-A § 2501. Restricted license

1. ELIGIBILITY. Unless otherwise provided, the Secretary of State may issue a restricted license to a first-time OUI offender if:

- A. Two thirds of the suspension period has expired; and
- B. The Secretary of State has received notice that that person has completed the alcohol and drug program.

2. RESTRICTIONS. A restricted license issued pursuant to subsection 1 is subject to the following conditions and restrictions:

- A. Use is limited to travelling to a treatment program or to employment for a minimum of 90 days after the original suspension date; and
- B. Any other conditions or restrictions the Secretary of State considers advisable for the safety of the public and the welfare of the operator.

3. FAILURE TO SUBMIT TO TEST. The Secretary of State may issue a restricted license to a person whose license was suspended for a first failure to submit to a test, if the condition of subsection 1, paragraph B is met and at least 180 days have elapsed since the date of suspension. This subsection does not apply to a commercial driver's license, provisional license or conditional license.

29-A § 2502. Special licenses for driver education evaluation program; suspension

1. ISSUANCE OF SPECIAL LICENSE. Following the expiration of the total period of suspension imposed on a first-time offender pursuant to Title 15, section 3314 or sections 2411, 2453, 2472 and 2521, the Secretary of State shall issue a special license or permit to the person if the Secretary of State receives written notice that the person has completed the assessment components of the alcohol and other drug program pursuant to Title 5, section 20073-B. First offenders who have registered for the completion of treatment programs as described in Title 5, section 20072, subsection 2 are entitled to receive a special license after completion of 3 treatment sessions provided by a counselor or agency approved by the Office of Substance Abuse. A special license or permit may not be issued under this section to 2nd and subsequent offenders.

2. SUSPENSION OF SPECIAL LICENSE. If the person refuses or fails to complete the alcohol and other drug program pursuant to Title 5, section 20073-B within 6 months after receiving a special license, the Secretary of State, following notice of that refusal or failure, shall suspend the special license until the person completes the program. The suspension must continue until the Secretary of State receives written notification from the Office of Substance Abuse that the person has satisfactorily completed all required components of that program. The Secretary of State shall provide notice of suspension and opportunity for hearing pursuant to Title 5, chapter 375, subchapter IV. The sole issue at the hearing is whether the person has written notification from the Office of Substance Abuse establishing that the person has satisfactorily completed all components of that program pursuant to Title 5, section 20073-B.

29-A § 2503. Work-restricted license

1. ADMINISTRATIVE SUSPENSION; WORK-RESTRICTED LICENSE. On receipt of a petition for a work-restricted license from a person under suspension pursuant to section 2453 or section 2472, subsection 3, paragraph B for a first offense,

the Secretary of State may stay a suspension during the statutory suspension period and issue a work-restricted license, if the petitioner shows by clear and convincing evidence that:

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

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

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

B. No alternative means of transportation is available; and

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

2. SUSPENSION. The Secretary of State shall suspend, without preliminary hearing, the work-restricted license of a person who:

A. Is adjudicated or convicted of any violation of the provisions of this Title committed during the period when a work-restricted license has been issued;

B. Violates any restriction or condition of the license; or

C. Has not completed the alcohol and drug program by the end of the statutory suspension period.

29-A § 2504. Conditional or restricted license upon completion of alcohol and drug program

Following the expiration of the total period of suspension and on receipt of written notice that the person has satisfactorily completed the alcohol and drug program required by Title 5, section 20073-B, the Secretary of State may issue a license subject to the conditions, restrictions or terms that the Secretary of State considers advisable for the safety of the public and the welfare of the operator.

29-A § 2505. Special restricted license for participation in education and treatment programs

Notwithstanding other limitations, the Secretary of State may issue a restricted license to a person for the purpose of allowing that person to participate in an alcohol and drug program or other treatment program determined appropriate by the Office of Substance Abuse.

29-A § 2506. Conditional license

A license, including a nonresident's operating privilege, issued to a person with an OUI conviction must be issued on

the condition that the person not operate a motor vehicle with any amount of alcohol in the person's blood for the following periods from the license reinstatement date: on first conviction, one year; and on a 2nd or subsequent conviction, 10 years. The provisions of sections 1251, subsection 1 and 2457 apply.

29-A § 2521. Implied consent to chemical tests

1. MANDATORY SUBMISSION TO TEST. If there is probable cause to believe a person has operated a motor vehicle while under the influence of intoxicants, that person shall submit to and complete a test to determine blood-alcohol level and drug concentration by analysis of blood, breath or urine.

2. TYPE OF TEST. A law enforcement officer shall administer a breath test unless, in that officer's determination, a breath test is unreasonable.

The law enforcement officer may determine which type of breath test is to be administered.

Another chemical test must be administered in place of a breath test.

For a blood test the operator may choose a physician, if reasonably available.

3. WARNINGS. Neither a refusal to submit to a test nor a failure to complete a test may be used for any of the purposes specified in paragraph A, B or C unless the person has first been told that the refusal or failure will:

A. Result in suspension of that person's driver's license for a period up to 6 years;

B. Be admissible in evidence at a trial for operating under the influence of intoxicants; and

C. Be considered an aggravating factor at sentencing if the person is convicted of operating under the influence of intoxicants that, in addition to other penalties, will subject the person to a mandatory minimum period of incarceration.

4. EXCLUSION AS EVIDENCE. A test result may not be excluded as evidence in a proceeding before an administrative officer or court solely as a result of the failure of the law enforcement officer to comply with the notice of subsection 3.

5. SUSPENSION FOR REFUSAL. The Secretary of State shall immediately suspend the license of a person who fails to submit to and complete a test.

6. PERIOD OF SUSPENSION. Except when a longer period of suspension is otherwise provided by law, the suspension is for a period of 275 days for the first refusal, 18 months for a 2nd refusal, 4 years for a 3rd refusal and 6 years for a 4th refusal.

7. DECISION. A suspension must be removed if, after hearing pursuant to section 2483, it is determined that the person would not have failed to submit but for the failure of the law enforcement officer to give the warnings required by subsection 3.

8. ISSUES. If a hearing is requested in accordance with section 2483, in addition to specific issues required by a specific offense, the scope of the hearing must include whether:

- A. There was probable cause to believe the person operated a motor vehicle while under the influence of intoxicants;
- B. The person was informed of the consequences of failing to submit to a test; and
- C. The person failed to submit to a test.

9. RESULTS OF TEST. On request, full information concerning a test must be made available to the person tested or that person's attorney by the law enforcement officer.

29-A § 2522. Accidents

1. MANDATORY SUBMISSION TO TEST. If there is probable cause to believe that death has occurred or will occur as a result of an accident, an operator of a motor vehicle involved in the motor vehicle accident shall submit to a test to determine blood-alcohol level or drug concentration in the same manner as for OUI.

2. ADMINISTRATION OF TEST. The investigating law enforcement officer shall cause a test to be administered as soon as practicable following the accident as provided in section 2521.

3. ADMISSIBILITY OF TEST RESULTS. The result of a test is admissible at trial if the court, after reviewing all the evidence, whether gathered prior to, during or after the test, is satisfied that probable cause exists, independent of the test result, to believe that the operator was under the influence of intoxicants at the time of the accident.

4. SUSPENSION. The Secretary of State shall suspend for a period of one year the license of a person who fails to submit to a test under this section.

5. SCOPE OF HEARING. The scope of any hearing the Secretary of State holds pursuant to section 2483 must include whether there was probable cause to believe that the person was the operator of a motor vehicle involved in a motor vehicle accident in which a death occurred or will occur and whether the person failed to submit to and complete the test. If a person shows, after hearing, that the person was not under the influence of intoxicants or that the person did not negligently cause the accident, then the suspension must be immediately removed.

29-A § 2524. Administration of tests

1. PERSONS QUALIFIED TO DRAW BLOOD FOR BLOOD TESTS. Only a physician, registered physician's assistant, registered nurse, person whose occupational license or training allows that person to draw blood samples or a person certified by the Department of Human Services may draw a specimen of blood for the purpose of determining the blood-alcohol level or drug concentration.

2. PERSONS QUALIFIED TO ANALYZE BLOOD FOR BLOOD TESTS. A person conducting an analysis of blood-alcohol level or drug concentration must be certified by the Department of Human Services.

3. PERSONS QUALIFIED TO OPERATE AND ANALYZE BREATH TESTS. A person certified by the Maine Criminal Justice Academy as qualified to operate an approved self-contained, breath-alcohol testing apparatus may operate an apparatus to collect and analyze a sample specimen of breath.

4. CHEMICAL TESTS ON BREATH AND URINE SPECIMENS. A sample specimen of breath or urine may be submitted to the Department of Human Services or a person certified by the Department of Human Services for the purpose of conducting chemical tests to determine blood-alcohol level or drug concentration.

5. EQUIPMENT FOR TAKING SPECIMENS. Only equipment having a stamp of approval affixed by the Department of Human Services may be used to take a sample specimen of breath or urine, except that a self-contained, breath-alcohol testing apparatus if reasonably available may be used to determine the blood-alcohol level.

Approved testing apparatus must have a stamp of approval affixed by the Department of Human Services after periodic testing. That stamp is valid for no more than one year.

6. PROCEDURES FOR OPERATION AND TESTING OF TESTING APPARATUS. The Department of Human Services shall establish, by rule, the procedures for the operation and testing of testing apparatus.

29-A § 2525. Drug impairment assessment

1. SUBMISSION TO TEST REQUIRED. If a drug recognition technician has probable cause to believe that a person is under the influence of a specific category of drug, a combination of specific categories of drugs or a combination of alcohol and one or more specific categories of drugs, that person must submit to a blood or urine test selected by the drug recognition technician to confirm that person's category of drug use and determine drug concentration.

2. ADMISSIBILITY OF EVIDENCE. If a law enforcement officer certified as a drug recognition technician by the Maine Criminal Justice Academy conducts a drug impairment assessment, the officer's testimony about that assessment is admissible in court as evidence of operating under the influence of intoxicants. Failure to comply with any provision of this section does not, by itself, result in the exclusion of evidence of test results, unless the evidence is determined to be not sufficiently reliable.

3. PAYMENT FOR TESTS. A person authorized to take specimens of blood at the direction of a law enforcement officer or to perform tests on specimens of blood or breath must be paid from the Highway Fund.

29-A § 2527. Rules regulating sample collection and testing procedures

The Department of Human Services shall adopt rules regulating sample collection and testing procedures to ensure accurate and reliable testing and to protect the privacy of the person providing the sample. The rules may include, but are not limited to:

1. STANDARDS. Standards for determining when a sample is to be reported as negative, based upon standards specific to the type and sensitivity of the test and the drug or category of drug screened;

2. URINE SAMPLES. A requirement that only a law enforcement officer or law enforcement agency employee of the same sex as the person providing the sample, or a health care practitioner, may observe the giving of a urine sample,

and that it may be collected only within a law enforcement or health care facility; and

3. SAMPLE FOR DEFENDANT. A requirement that, at the request and expense of the person charged, the department shall segregate a portion of the sample collected for that person's own testing.

The department may establish rules governing the format in which the test results are reported. At the time of adoption, the department shall furnish a copy of these rules to the joint standing committee of the Legislature having jurisdiction over legal affairs for review.

29-A § 2551. Habitual offender

1. HABITUAL OFFENDER DEFINED. An habitual offender is a person whose record, as maintained by the Secretary of State, shows that the person has accumulated 3 or more convictions or adjudications for distinct offenses described below, arising out of separate acts committed within a 5-year period:

- A. Homicide resulting from the operation of a motor vehicle;
- B. OUI conviction;
- C. Driving to endanger, in violation of section 2413;
- D. Operating after suspension, in violation of section 2412-A;
- E. Operating without a license;
- F. Operating after revocation, in violation of section 2557;
- G. Knowingly making a false affidavit or swearing or affirming falsely in a statement required by this Title or as to information required in the administration of this Title;
- H. A Class A, B, C or D offense in which a motor vehicle is used;
- I. Failing to report an accident involving injury or death, in violation of section 2252;
- J. Failure to report an accident involving property damage, in violation of section 2253, 2254 or 2255;
- K. Eluding an officer, in violation of section 2414; or
- L. Passing a roadblock, in violation of section 2414, subsection 4.

2. INCLUSIONS. The offenses included in subsection 1 include offenses under former Title 29, a federal law, law of another state or a municipal ordinance substantially conforming to the statutory violations.

3. EXCEPTIONS. A person is not an habitual offender when all convictions or adjudications are based on the offense of operating a motor vehicle after suspension when the license had been originally suspended for a failure to give or maintain proof of financial responsibility.

4. OFFENSES NOT INCLUDED. The following convictions may not be included under subsection 1:

A. A conviction of operating a motor vehicle without a license if the license had expired, and was not suspended or revoked;

B. A conviction of operating after suspension when the suspension is based upon a failure to appear in court or failure to pay a fine; or

C. A conviction of operating after suspension when the suspension is based upon a failure to pay child support.

5. MULTIPLE OFFENSES ON SAME DATE. When more than one included offense is committed on the same date, these offenses are treated as one offense.

29-A § 2552. Immediate revocation; duration of revocation

Notwithstanding Title 4, section 152, subsection 9 and Title 5, sections 10003 and 10051, the Secretary of State shall immediately revoke, without preliminary hearing, the license to operate a motor vehicle of an habitual offender.

The revocation under this section is indefinite. A license may not be issued to an habitual offender until after the minimum periods specified in section 2554.