

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out the title and substituting the following:

'An Act To Require That Prior OUI Convictions Committed with a Motor Vehicle, Watercraft, Snowmobile or All-terrain Vehicle Are Treated as Previous OUI Convictions for Purposes of Sentencing'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 12 MRSA §10701, sub-§3, as affected by PL 2003, c. 614, §9 and amended by c. 655, Pt. B, §75 and affected by §422 and amended by c. 689, Pt. B, §6, is further amended to read:

3. Penalties. A person who violates this section commits a Class D crime. In determining an appropriate sentence, refusal to submit to a chemical test must in every case be an aggravating factor. In the following cases the following minimum penalties apply.

A. In the case of a person having no previous convictions of a violation of subsection 1-A or Title 29-A, section 2411 within the previous 6-year period, the fine may not be less than \$400. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete a blood-alcohol test under section 10702, subsection 1, the fine may not be less than \$500. A conviction under this paragraph must include a period of incarceration of not less than 48 hours, none of which may be suspended, when the person:

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

(2) Failed or refused to stop upon request or signal of an officer in uniform, pursuant to section 6953 or 10651, during the operation that resulted in prosecution for operating under the influence or with a blood-alcohol level of 0.08% or more; or

(3) Failed to submit to a chemical test to determine that person's blood-alcohol level or drug concentration, requested by a law enforcement officer on the occasion that resulted in the conviction.

B. In the case of a person having one previous conviction of a violation of subsection 1-A or Title 29-A, section 2411 within the previous 6-year period, the fine may not be less than \$600. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete a blood-alcohol or drug concentration test under section 10702, subsection 1, the fine may not be less than \$800. A conviction under this paragraph must include a period of incarceration of not less than 7 days, none of which may be suspended.

C. In the case of a person having 2 or more previous convictions of violations of subsection 1-A or Title 29-A, section 2411 within the previous 6-year period, the fine may not be less than \$1,000. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete a blood-alcohol or drug concentration test under section 10702, subsection 1, the fine may not be less than \$1,300. A conviction under this paragraph must include a period of incarceration of not less than 30 days, none of which may be suspended.

D. In addition to the penalties provided under paragraphs A to C, the court may order the defendant to participate in the alcohol and other drug education, evaluation and treatment programs for multiple offenders administered by the Department of Health and Human Services, Office of Substance Abuse, as established in Title 5, chapter 521.

E. The penalties provided under paragraphs B, C and D may not be suspended by the court.

F. If the State pleads and proves that, while hunting or operating a snowmobile, all-terrain vehicle or watercraft in violation of this section, the defendant in fact caused serious bodily injury as defined in Title 17-A, section 2, subsection 23, to another person or in fact caused the death of another person, the sentencing class for the offenses in subsection 1-A is Class C. The minimum penalties specified in this subsection apply, unless a longer minimum period otherwise applies.

Any alternatives defined in subsection 1-A may be pleaded in the alternative. The State may, but is not required to, elect an alternative prior to submission to the fact finder.

For purposes of this subsection, a prior conviction has occurred within the 6-year period if the date of docket entry by the clerk of a judgment of conviction or adjudication is 6 years or less from the date of the new conduct that is penalized or for which the penalty is or may be enhanced.

In determining the appropriate sentence, the court shall consider the defendant's record of convictions for hunting under the influence or operating a snowmobile, all-terrain vehicle or watercraft while under the influence of intoxicating liquor or drugs ~~and~~, for failure to comply with the duty to submit or for committing OUI pursuant to Title 29-A, section 2411. The court may rely upon oral representations based on records maintained by the courts, by the Department of Public Safety, State Bureau of Identification; by the Secretary of State, including telecommunications of records maintained by the Secretary of State; or by the department. If the defendant disputes the accuracy of any representation concerning a conviction or adjudication, the court shall grant a continuance for the purposes of determining the accuracy of the record.

References in this Title to this subsection are deemed to refer to the juvenile crime stated in Title 15, section 3103, subsection 1, paragraph E and to the disposition, including a suspension, for that juvenile crime as provided in Title 15, section 3314, subsection 3, except as otherwise provided or when the context clearly requires otherwise.

Sec. 2. 29-A MRSA §2411, sub-§5, ¶F, as amended by PL 2001, c. 511, §3 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

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 Health and Human 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

Sec. 3. 29-A MRSA §2411, sub-§5, ¶G, as amended by PL 2005, c. 606, Pt. A, §4, is further amended to read:

G. The court shall order an additional period of license suspension of 275 days for a person sentenced under paragraph A, B, C, D, D-1 or D-2 if the person was operating the motor vehicle at the time of the offense with a passenger under 21 years of age; and

Sec. 4. 29-A MRSA §2411, sub-§5, ¶H is enacted to read:

H. For a person sentenced under this section, the court shall consider a conviction for a violation of Title 12, section 10701, subsection 1-A, paragraph B, C or D as a previous OUI offense.

Sec. 5. Appropriations and allocations. The following appropriations and allocations are made.

CORRECTIONS, DEPARTMENT OF

Correctional Impact Reserve N033

Initiative: Provides funds for the additional correctional costs.

GENERAL FUND	2009-10	2010-11
All Other	\$134,808	\$134,808
GENERAL FUND TOTAL	\$134,808	\$134,808

CORRECTIONS, DEPARTMENT OF		
DEPARTMENT TOTALS	2009-10	2010-11
GENERAL FUND	\$134,808	\$134,808
DEPARTMENT TOTAL - ALL FUNDS	\$134,808	\$134,808

JUDICIAL DEPARTMENT

Courts - Supreme, Superior and District 0063

Initiative: Provides funds for court-appointed counsel.

GENERAL FUND	2009-10	2010-11
All Other	\$1,500	\$2,500
GENERAL FUND TOTAL	\$1,500	\$2,500

JUDICIAL DEPARTMENT		
DEPARTMENT TOTALS	2009-10	2010-11
GENERAL FUND	\$1,500	\$2,500
DEPARTMENT TOTAL - ALL FUNDS	\$1,500	\$2,500

SECTION TOTALS	2009-10	2010-11
GENERAL FUND	\$136,308	\$137,308
SECTION TOTAL - ALL FUNDS	\$136,308	\$137,308

SUMMARY

This amendment is the majority report, replaces the bill and changes the bill's title. The amendment requires a court, when sentencing a person convicted for OUI committed with a motor vehicle, watercraft, snowmobile or all-terrain vehicle, to treat prior convictions for OUI committed with a motor vehicle, watercraft, snowmobile or all-terrain vehicle as a previous conviction. The amendment also adds an appropriations and allocations.

FISCAL NOTE REQUIRED
 (See attached)