

**Report of the Working Group
on Marijuana and Driving**

Proposed Legislation Implementing Working Group on Marijuana and Driving Recommendations

Sec. 1. 29-A MRS §2401, sub-§12-A is enacted to read:

12-A. THC. “THC” means delta-9-tetrahydrocannabinol.

Sec. 2. 29-A MRS §2432 is amended to read:

§2432. Alcohol level; THC Level; confirmed positive drug or metabolite test results; evidentiary weight.

Sec. 3. 29-A MRS §2432, sub-§3-A is enacted to read:

3-A. Level of THC in whole blood of 5 nanograms or greater. Proof that a person has a THC level of 5 nanograms or more of THC per milliliter of whole blood gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person is under the influence of intoxicants.

Sec. 4. 29-A MRS §2432, sub-§3-B is enacted to read:

3-B. Level of THC and alcohol in combination. Proof that a person has a THC level of 2 nanograms or more of THC per milliliter of whole blood and an alcohol level of 0.05 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person is under the influence of intoxicants.

Sec. 5. 29-A MRS §2432-A is enacted to read:

§2432-A. Preliminary breath testing devices

1. Use of preliminary breath testing devices permitted. A law enforcement officer who possesses basic certification as a full-time law enforcement officer, pursuant to Title 25, section 2804-C, subsection 1, who reasonably believes that a person has been operating a motor vehicle under the influence of intoxicants, without making an arrest, may request that the person submit to a preliminary breath test to determine the person’s alcohol level, which, in addition to other relevant evidence, the officer may use to determine whether there is probable cause to believe that person was operating a motor vehicle while under the influence of intoxicants.

2. Approved devices; training. A law enforcement officer may only administer a preliminary breath test using a preliminary breath test device that has been approved by the National Highway Traffic Safety Administration and evaluated by the Department of Health and Human Services. Prior to administering a preliminary breath test using an approved device, an officer must be properly trained in the use of the device through a training course approved by the Maine Criminal Justice Academy Board of Trustees.

3. Admissibility of results. Results of a test administered pursuant to this section are admissible in evidence in any court or administrative hearing in determining probable cause for operating a motor vehicle while under the influence.

4. Failure as evidence. Failure of a person to submit to a preliminary breath test is not admissible in evidence on the issue of whether a person was operating under the influence of intoxicants. Any other evidence bearing on the issue of whether the person was operating under the influence of intoxicants is admissible, even if a person fails to submit to a preliminary breath test or the results of such a test are not available for any reason.

5. Preliminary breath test not mandatory; subsequent test for intoxicants permitted. A preliminary breath test is not mandatory and a law enforcement officer's request to submit to such a test may be declined. A person who submits to a preliminary breath test is not relieved of the duty to submit to and complete a further test pursuant to subchapter 4.

Sec. 6. 29-A MRS §2472(1) is amended to read:

1. Licensee not yet 21 years of age. A license issued to a person who has not yet attained the age of 21 years is a provisional license for a period of 2 years following the date of issue or until the holder attains 21 years of age, whichever occurs last. That license remains in force as a nonprovisional license to the next normal expiration date. A license issued by another jurisdiction to a person who has not yet attained the age of 21 years is a provisional license for the purpose of operating a motor vehicle within this State.

A license of a person who has not yet attained 21 years of age includes the condition that the person not operate a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath. When a person who has not yet attained 21 years of age operates a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath, the provisions of section 1251, subsection 1, paragraph B apply.

A license of a person who has not yet attained 21 years of age includes the condition that the person not operate a motor vehicle with a THC level of more than 0.00 nanograms per milliliter of whole blood. When a person who has not yet attained 21 years of age operates a motor vehicle with a THC level of more than 0.00 nanograms per milliliter of whole blood, the provisions of section 1251, subsection 1, paragraph B apply, except that, it is an affirmative defense that the THC level resulted from marijuana use in compliance with Title 22, chapter 558-C, The Maine Medical Use of Marijuana Act.

Sec. 7. 29-A MRSA §2472(3) is amended to read:

3. Suspension for OUI conviction, certain alcohol or THC level or operating under the influence of drugs. The Secretary of State shall suspend, without preliminary hearing, a juvenile provisional license of a person who:

- A. Receives an OUI conviction;
- B. Operates a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath; or
- C. ~~Operates a motor vehicle under the influence of drugs.~~ Operates a motor vehicle with a THC level of more than 0.00 nanograms per milliliter of whole blood unless the person demonstrates that the THC level resulted from marijuana use in compliance with Title 22, chapter 558-C, The Maine Medical Use of Marijuana Act; or
- D. Operates a motor vehicle under the influence of drugs.

Sec. 8. 29-A MRSA §2472(3-A) is amended to read:

3-A. Juvenile provisional license; suspension for OUI conviction or certain alcohol or THC level. Unless a longer period of suspension applies, the Secretary of State shall suspend, without preliminary hearing, a juvenile provisional license pursuant to subsection 3 for the following periods:

- A. One year for a first offense, and
- B. Two years for a 2nd offense.

If the Secretary of State determines that the person operated the motor vehicle at the time of the offense with a passenger under 21 years of age, an additional suspension period of 180 days must be imposed.

Sec. 9. 29-A MRSA §2472(4) is amended to read:

4. Duty to submit to test. A person under 21 years of age who operates a motor vehicle shall submit to a chemical test if there is probable cause to believe that person has operated a motor vehicle with an alcohol level of more and 0.00 grams per 100 milliliter of blood or 210 liters of breath or with a THC level of more than 0.00 nanograms per milliliter of whole blood or while 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. The provisions of subchapter 4 apply, except the suspension is:

- A. Eighteen months for the first refusal; and
- B. Thirty months for a 2nd or subsequent refusal.

If the Secretary of State determines that the person operated the motor vehicle at the time of the offense with a passenger under 21 years of age, an additional suspension period of 180 days must be imposed.

Sec. 10. 29-A MRSA §2472(5) is amended to read:

5. Hearing; stay; issues. If a hearing is requested in accordance with section 2483, the suspension under subsection 3, paragraph B, ~~or C~~ or D is stayed pending the outcome of the hearing. The scope of a hearing must include whether:

- A. There was probable cause to believe that the person was under 21 years of age and operated a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath or with a THC level of more than 0.00 nanograms per milliliter of whole blood or while 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;
- B. The person operated a motor vehicle with an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath or with a THC level of more than 0.00 nanograms per milliliter of whole blood unless the person demonstrates that the THC level resulted from marijuana use in compliance with Title 22, chapter 558-C, The Maine Medical Use of Marijuana Act or with a confirmed positive blood or urine test for a drug or its metabolite and was under the influence of the confirmed drug; and
- C. The person was under 21 years of age.

Sec. 11. 29-A MRSA §2503(1) is amended to read:

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, section 2453-A or section 2472, subsection 3, paragraph B, ~~or C~~ or D 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, ~~or C~~ or D 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 or 2453-A.

