

MAINE STATE LEGISLATURE

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Motor Vehicle's Breathalyzer Use
Operating Under The Influence! Breathalyzers

29 M.R.S.A. §1312

STATE OF MAINE

Inter-Departmental Memorandum Date June 2, 1977

To Robert C. Ericson, Asst. Dir., Dept. Human Services
Public Health Laboratory

From Michael D. Seitzinger, Dept. Attorney General
Assistant Attorney General

Subject Use of Breathalyzers in O.U.I. Cases

FACTS:

When an individual is arrested for operating or attempting to operate while under the influence of intoxicating liquor and the individual consents to a taking of a sample of his breath, the arresting officer administers the test and forwards the sample to the Department of Human Services (or a person certified by the Department) for chemical analysis. The breath collection device currently used in this procedure requires independent laboratory analysis. Breath collection devices (known by such trade names as Breathalyzer, Intoxilyzer and Intoximeter) used elsewhere throughout the country but not currently used in Maine provide an immediate analysis and test result for the officer and consequently obviate independent laboratory analysis. Whereas the present cost of analysis of a breath specimen is approximately \$18 per test, the cost of analysis by direct breath testing devices, after the initial investment for the devices themselves, would likely be less than \$2 per test. The Department of Human Services is prepared to certify such equipment as acceptable for use and to certify law enforcement officers for the purpose of using the equipment in the administration of breath tests.

QUESTION:

Is the use by law enforcement officers of breath collection devices which provide immediate chemical analysis and test results rather than the submission of the breath specimen to the Department of Human Services for chemical analysis authorized by 29 M.R.S.A. §1312?

ANSWER:

The use by law enforcement officers of breath collection devices which provide immediate chemical analysis and test results rather than the submission of the breath specimen to the Department of Human Services for chemical analysis is not authorized by 29 M.R.S.A. §1312.

REASONING:

29 M.R.S.A. §1312(6) provides in pertinent part:

"A law enforcement officer, with the consent of the person from whom the sample is to be taken, may take a sample specimen of the breath of any person arrested for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, said sample specimen to be submitted to the Department of Health and Welfare or a person certified by the Department of Health and Welfare for the purpose of conducting chemical tests of the sample specimen to determine the blood-alcohol level thereof." (Emphasis added.)

The underscored language of the statute mandates that custody of the breath specimen is to be transferred by the arresting officer to either the Department or to a person other than the arresting officer for the purpose of chemical analysis to be conducted by the transferee. Thus, the statute anticipates independent chemical analysis of the specimen. Because use of the proposed breath collection device would provide immediate, on-the-spot chemical analysis by the device itself, either with or without the assistance of the arresting officer depending upon the type of device used, their use would not be authorized under §1312.

MICHAEL D. SEITZINGER
Assistant Attorney General

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