

MAINE STATE LEGISLATURE

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L.D. 1935

(Filing No. H- 708)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1424, L.D. 1935,
Bill, "AN ACT to Strengthen Penalties for Persons
Piloting Boats Under the Influence of Alcohol."

Amend the Bill by striking out everything after
the enacting clause and inserting in its place the
following:

'Sec. 1. 12 MRSA §7801, sub-§9, as amended by PL
1981, c. 698, §74, is repealed and the following
enacted in its place

9. Operating watercraft under the influence or
with excessive blood-alcohol level. A person is
guilty of a criminal violation if that person operates
or attempts to operate any watercraft without a motor
or any watercraft with a motor of 5 horsepower or less:

A. While under the influence of intoxicating
liquor or drugs or a combination of liquor and
drugs; or

B. While having 0.08% or more by weight of
alcohol in that person's blood.

Sec. 2. 12 MRSA §7801, sub-§§9-A and 9-B are
enacted to read:

9-A. Operating watercraft under the influence or
with excessive blood-alcohol level. A person is

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1 guilty of a criminal violation if that person operates
2 or attempts to operate any watercraft with a motor
3 greater than 5 horsepower:

4 A. While under the influence of intoxicating
5 liquor or drugs or a combination of liquor and
6 drugs; or

7 B. While having 0.08% or more by weight of
8 alcohol in that person's blood.

9 9-B. Failure to comply with duty to submit. A
10 person is guilty of failing to comply with the duty to
11 submit to and complete a blood-alcohol test under
12 section 7802 if that person refuses to submit to or
13 fails to complete a blood-alcohol test when requested
14 to do so by a law enforcement officer who has probable
15 cause to believe that the person has operated or
16 attempted to operate a watercraft under the influence
17 of intoxicating liquor.

18 Sec. 3. 12 MRSA §7802 is enacted to read:

19 §7802. Implied consent to chemical tests

20 Any person who operates or attempts to operate a
21 watercraft within this State shall have the duty to
22 submit to a test to determine that person's
23 blood-alcohol level by analysis of blood or breath, if
24 there is probable cause to believe that person has
25 operated or attempted to operate a watercraft while
26 under the influence of intoxicating liquor. The duty
27 to submit to a blood-alcohol test includes the duty to
28 complete either a blood or breath test. Tests and
29 procedures applicable in determining whether a person
30 is under the influence are governed by section 7912.

31 Sec. 4. 12 MRSA §7901, sub-§§12, 13 and 14 are
32 enacted to read:

33 12. Penalties for operating or attempting to
34 operate watercraft under the influence or with
35 excessive blood-alcohol level; nonmotorized or 5
36 horsepower or less. The offense defined in section
37 7801, subsection 9, is a Class E crime.

38 13. Penalties for operating or attempting to

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1 operate a watercraft under the influence or with
2 excessive blood-alcohol level; greater than 5
3 horsepower. The offense defined in section 7801,
4 subsection 9-A, is a Class D crime, provided that, in
5 the following cases, the following minimum penalties
6 apply.

7 A. Except as provided in paragraph B, when a
8 person has no previous convictions of a violation
9 of section 7801, subsection 9-A, and no previous
10 convictions of failure to comply with the duty to
11 submit to and complete a blood-alcohol test under
12 section 7802, within a 6-year period, the fine
13 shall not be less than \$300 and the court shall
14 suspend the defendant's right to operate a
15 motorized watercraft for a period of 90 days.
16 Beginning July 1, 1989, the penalties provided in
17 this paragraph may not be suspended.

18 B. When a person has no previous convictions of a
19 violation of section 7801, subsection 9-A, and no
20 previous convictions of failure to comply with the
21 duty to submit to and complete a blood-alcohol
22 test under section 7802, within a 6-year period,
23 the fine shall not be less than \$300, the sentence
24 shall include a period of incarceration of not
25 less than 48 hours and the court shall suspend the
26 defendant's right to operate a motorized
27 watercraft for a period of 90 days, which
28 penalties may not be suspended, when the person:

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

31 (2) Failed or refused to stop upon request
32 or signal of an officer in uniform, as
33 defined in section 6953 or 7060, during the
34 operation which resulted in prosecution for
35 operating under the influence or with a
36 blood-alcohol level of 0.08% or more.

37 C. When a person has one previous conviction of a
38 violation of section 7801, subsection 9-A, or
39 fails to comply with the duty to submit to and
40 complete a blood-alcohol test under section 7802,
41 within a 6-year period, the fine shall not be less
42 than \$500, the sentence shall include a period of

1 incarceration of not less than 7 days and the
2 court shall suspend the defendant's right to
3 operate a motorized watercraft for a period of one
4 year, which penalties may not be suspended.

5 D. When a person has 2 or more previous
6 convictions of violations of section 7801,
7 subsection 9-A, or fails to comply with the duty
8 to submit to and complete a blood-alcohol test
9 under section 7802, within a 6-year period, the
10 fine shall not be less than \$750, the sentence
11 shall include a period of incarceration of not
12 less than 30 days and the court shall suspend the
13 defendant's right to operate a motorized
14 watercraft for a period of 2 years, which
15 penalties may not be suspended.

16 E. In addition to the penalties provided under
17 paragraphs C and D, the court may order the
18 defendant to participate in the alcohol and other
19 drug education, evaluation and treatment program
20 for multiple offenders administered by the
21 Department of Human Services, as defined in Title
22 22, chapter 1602. The court may waive the
23 multiple offender intervention program under Title
24 22, section 7203, subsection 3, paragraph A, if
25 the court finds that the defendant has completed a
26 residential treatment program, or its equivalent,
27 subsequent to the date of the offense.

28 F. The penalties provided under paragraphs B, C,
29 D and, beginning July 1, 1989, A shall not be
30 suspended by the court.

31 The alternatives defined in section 7801, subsection
32 9-A, paragraphs A and B may be pleaded in the
33 alternative. The State may, but shall not be required
34 to, elect prior to submission of the fact finder.

35 In determining the appropriate sentence, the court
36 shall consider the defendant's record of convictions
37 for operating under the influence and for failure to
38 comply with the duty to submit. The court may rely
39 upon oral representations based on records maintained
40 by the courts, by the State Bureau of Identification,
41 by the Secretary of State, including
42 telecommunications of records maintained by the

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1 Secretary of State, or by the Department of Inland
2 Fisheries and Wildlife. If the defendant disputes the
3 accuracy of any representation concerning a conviction
4 or adjudication, the court shall grant a continuance
5 for the purposes of determining the accuracy of the
6 record.

7 References in this Title to this section shall be
8 deemed also to refer to the juvenile crime stated in
9 Title 15, section 3103, subsection 1, paragraph E, and
10 to the disposition, including a suspension, for that
11 juvenile crime as provided in Title 15, section 3314,
12 subsection 3, except as otherwise provided or when the
13 context clearly requires otherwise.

14 14. Penalties for failure to comply with duty to
15 submit. The offense defined in section 7801,
16 subsection 9-B, is a Class E crime.

17 Sec. 5. 12 MRSA §§7912, 7913 and 7914 are
18 enacted to read:

19 §7912. Tests and procedures for operating under the
20 influence or with excessive blood-alcohol
21 level

22 1. Blood or breath test. The law enforcement
23 officer shall inform the person who there is probable
24 cause to believe has operated or attempted to operate
25 a watercraft while under the influence of intoxicating
26 liquor that a breath test will be administered,
27 unless, in the determination of the law enforcement
28 officer, it is unreasonable for a breath test to be
29 administered, in which case a blood test shall be
30 administered. When a blood test is required, the test
31 may be administered by a physician of the accused's
32 choice at the request of the accused and if reasonably
33 available. The law enforcement officer may determine
34 which type of breath test, as described in subsection
35 5, is to be administered.

36 2. Prerequisites to tests. Before any test
37 specified is given, the law enforcement officer shall
38 inform the person who there is probable cause to
39 believe has operated or attempted to operate a
40 watercraft while under the influence of intoxicating
41 liquor that, if the person fails to comply with the

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1 duty to submit to and complete a blood-alcohol test to
2 determine the level of blood-alcohol at the direction
3 of the law enforcement officer, the person will be
4 committing a Class E crime for which, if convicted,
5 that person may be sentenced to a period of
6 imprisonment not to exceed 6 months, fined up to \$500
7 or both. The officer shall also inform the person
8 that the failure to comply with the duty to submit to
9 a blood-alcohol test shall be admissible in evidence
10 at any trial for operating under the influence of
11 intoxicating liquor.

12 No test results may be excluded as evidence in any
13 proceeding before any administrative officer or court
14 of this State as a result of the failure of the law
15 enforcement officer to comply with this prerequisite.
16 The only effects of the failure of the officer to
17 comply with the prerequisite shall be as provided in
18 subsection 7.

19 3. Results of test. Upon the request of the
20 person who shall submit to a chemical test or tests at
21 the request of a law enforcement officer, full
22 information concerning the test or tests shall be made
23 available to that person or the person's attorney by
24 the law enforcement officer.

25 4. Blood-alcohol level. The use of blood-alcohol
26 level information is governed by the following.

27 A. If there was, at the time alleged, 0.05% or
28 less by weight of alcohol in the defendant's
29 blood, it is prima facie evidence that the
30 defendant was not under the influence of
31 intoxicating liquor.

32 B. If there was, at the time alleged, in excess
33 of 0.05%, but less than 0.08% by weight of alcohol
34 in the defendant's blood, it is relevant evidence,
35 but it is not to be given prima facie effect in
36 indicating whether or not the defendant was under
37 the influence of intoxicating liquor within the
38 meaning of this section, but such fact may be
39 considered with other competent evidence in
40 determining whether or not the defendant was under
41 the influence of intoxicating liquor.

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1 C. For purposes of evidence in proceedings other
2 than those arising under section 7801, subsection
3 9 or 9-A, it shall be presumed that a person was
4 under the influence of intoxicating liquor when
5 that person had a blood-alcohol level of 0.08% or
6 more by weight.

7 D. Percent by weight of alcohol in the blood
8 shall be based upon grams of alcohol per one
9 hundred milliliters of blood.

10 5. Administration of tests. Persons conducting
11 analysis of blood or breath for the purpose of
12 determining the blood-alcohol level shall be certified
13 for this purpose by the Department of Human Services
14 under certification standards to be set by that
15 department.

16 Only a duly licensed physician, registered physician's
17 assistant, registered nurse or a person certified by
18 the Department of Human Services under certification
19 standards to be set by that department, acting at the
20 request of a law enforcement officer, may draw a
21 specimen of blood for the purpose of determining the
22 blood-alcohol level of a person who is complying with
23 the duty to submit to a blood-alcohol test. This
24 limitation shall not apply to the taking of breath
25 specimens.

26 A law enforcement officer may take a sample specimen
27 of the breath of any person whom the officer has
28 probable cause to believe has operated or attempted to
29 operate a watercraft while under the influence of
30 intoxicating liquor and who is complying with the duty
31 to submit to and complete a blood-alcohol test. The
32 sample specimen shall be submitted to the Department
33 of Human Services or a person certified by the
34 Department of Human Services for the purpose of
35 conducting chemical tests of the sample specimen to
36 determine the blood-alcohol level thereof.

37 Only such equipment as is approved by the Department
38 of Human Services shall be used by a law enforcement
39 officer to take a sample specimen of the defendant's
40 breath for submission to the Department of Human
41 Services or a person certified by the Department of
42 Human Services for the purpose of conducting tests of

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1 the sample specimen to determine the blood-alcohol
2 level of the sample specimen. Approved equipment
3 shall have a stamp of approval affixed by the
4 Department of Human Services. Evidence that the
5 equipment was in a sealed carton bearing the stamp of
6 approval shall be accepted in court as prima facie
7 evidence that the equipment was approved by the
8 Department of Human Services for use by the law
9 enforcement officer to take the sample specimen of the
10 defendant's breath.

11 As an alternative to the method of breath testing
12 described in this subsection, a law enforcement
13 officer may test the breath of any person who there is
14 probable cause to believe has operated or attempted to
15 operate a watercraft while under the influence of
16 intoxicating liquor by use of a self-contained
17 breath-alcohol testing apparatus to determine the
18 blood-alcohol level, provided that the testing
19 apparatus is reasonably available. The procedures
20 for the operation and testing of self-contained
21 breath-alcohol testing apparatuses shall be as
22 provided by rule adopted by the Department of Human
23 Services. The result of any such test shall be
24 accepted as prima facie evidence of the blood-alcohol
25 level in any court.

26 Each approved self-contained breath-alcohol testing
27 apparatus shall have a stamp of approval affixed by
28 the Department of Human Services after periodic
29 testing. That stamp of approval shall be valid for a
30 limited period of no more than 1 year. Testimony or
31 other evidence that the equipment was bearing the
32 stamp of approval shall be accepted in court as prima
33 facie evidence that the equipment was approved by the
34 Department of Human Services for use by the law
35 enforcement officer to collect and analyze a sample
36 specimen of the defendant's breath.

37 Failure to comply with any provisions of this
38 subsection or with any rules adopted under this
39 subsection shall not, by itself, result in the
40 exclusion of evidence of blood-alcohol level, unless
41 the evidence is determined to be not sufficiently
42 reliable.

43 Testimony or other evidence that any materials used in
44 operating or checking the operation of the equipment
45 were bearing a statement of the manufacturer or of the

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1 Department of Human Services shall be accepted in
2 court as prima facie evidence that the materials were
3 of a composition and quality as stated.

4 A person certified by the Maine Criminal Justice
5 Academy, under certification standards to be set by
6 the academy, as qualified to operate approved
7 self-contained breath-alcohol testing apparatuses may
8 operate those apparatuses for the purpose of
9 collecting and analyzing a sample specimen of the
10 defendants' breath.

11 6. Liability. No physician, physician's
12 assistant, registered nurse, person certified by the
13 Department of Human Services or hospital or other
14 health care provider in the exercise of due care may
15 be liable in damages or otherwise for any act done or
16 omitted in performing the act of collecting or
17 withdrawing specimens of blood at the request of a law
18 enforcement officer pursuant to this section.

19 7. Evidence. The percentage by weight of alcohol
20 in the defendant's blood at the time alleged, as shown
21 by the chemical analysis of blood or breath or by
22 results of a self-contained breath-alcohol testing
23 apparatus authorized by subsection 5, shall be
24 admissible in evidence.

25 When a person, certified under subsection 5, conducts
26 a chemical analysis of blood or breath for the purpose
27 of determining blood-alcohol level, that person may
28 issue a certificate stating the results of the
29 analysis. That certificate, when duly signed and
30 sworn to by the certified person, shall be admissible
31 in evidence in any court of the State. It shall be
32 prima facie evidence that the person taking a specimen
33 of blood was a person authorized by subsection 5; the
34 equipment, chemicals and other materials used in the
35 taking of the blood specimen or a breath sample were
36 of a quality appropriate for the purpose of producing
37 reliable test results; any equipment, chemicals or
38 materials required by subsection 5 to be approved by
39 the Department of Human Services were approved; the
40 sample tested by the person certified under subsection
41 5 was the same sample taken from the defendant; and
42 that the percentage by weight of alcohol in the blood
43 of the defendant was, at the time the blood or breath

1 sample was taken, as stated in the certificate, unless
2 with 10-days' written notice to the prosecution the
3 defendant requests that a qualified witness testify as
4 to any of the matters to which the certificate
5 constitutes prima facie evidence. The notice shall
6 specify those matters concerning which the defendant
7 requests testimony.

8 A person certified under subsection 5, as qualified to
9 operate a self-contained breath-alcohol testing
10 apparatus for the purpose of determining blood-alcohol
11 level, may issue a certificate stating the results of
12 the analysis. That certificate, when duly signed and
13 sworn to by the certified person, shall be admissible
14 in evidence in any court of the State. It shall be
15 prima facie evidence that the percentage by weight of
16 alcohol in the blood of the defendant was, at the time
17 the breath sample was taken, as stated in the
18 certificate, unless, with 10-days' written notice to
19 the prosecution, the defendant requests that the
20 operator or other qualified witness testify as to the
21 results of the analysis.

22 Transfer of sample specimens to and from a laboratory
23 for purposes of analysis may be by certified or
24 registered mail and, when so made, shall be deemed to
25 comply with all requirements regarding the continuity
26 of custody of physical evidence.

27 The failure of a person to comply with the duty to
28 submit to and complete a blood-alcohol test under
29 section 7802 shall be admissible in evidence on the
30 issue of whether that person was under the influence
31 of intoxicating liquor. If the law enforcement
32 officer having probable cause to believe that the
33 person operated or attempted to operate a watercraft
34 under the influence of intoxicating liquor fails to
35 give either of the warnings required under subsection
36 2, the failure of the person to comply with the duty
37 to submit to a blood-alcohol test shall not be
38 admissible. If a failure to submit to and complete a
39 blood-alcohol test is not admitted into evidence, the
40 court may inform the jury of the fact that no test
41 result is available. If a test result is not
42 available for a reason other than failing to comply
43 with the duty to submit to and complete a
44 blood-alcohol test, the unavailability and the reason

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1 shall be admissible in evidence.

2 8. Statements by accused. Any statement by a
3 defendant that the defendant was the operator of a
4 watercraft, which the defendant is accused of
5 operating in violation of section 7801, subsection 9
6 or 9-A, shall be admissible if it was made voluntarily
7 and is otherwise admissible under the United States
8 Constitution or the Constitution of Maine. The
9 statement may constitute sufficient proof by itself,
10 without further proof of corpus delicti, that the
11 watercraft was operated and was operated by the
12 defendant.

13 9. Payment for tests. Persons authorized to take
14 specimens of blood at the direction of a law
15 enforcement officer and persons authorized to perform
16 chemical tests of specimens of blood or breath shall
17 be paid from the General Fund.

18 10. Accidents and officer's duties. A law
19 enforcement officer has the following duties in the
20 event of an accident.

21 A. After a person has been charged with operating
22 or attempting to operate a watercraft under the
23 influence of intoxicating liquor or drugs or with
24 an excessive blood-alcohol level, the
25 investigating or arresting officer shall
26 investigate to determine whether the charged
27 person has any previous convictions of a violation
28 of section 7801, subsection 9 or 9-A, or of
29 failure to comply with the duty to submit to and
30 complete a blood-alcohol test under section 7802.
31 As part of the investigation, the officer shall
32 review the records maintained by the courts, by
33 the State Bureau of Identification, by the
34 Secretary of State, including telecommunications
35 of records maintained by the Secretary of State,
36 or by the Department of Inland Fisheries and
37 Wildlife.

38 B. A law enforcement officer may arrest, without
39 a warrant, any person who the officer has probable
40 cause to believe has operated or attempted to
41 operate a watercraft while under the influence of
42 intoxicating liquor or drugs if the arrest occurs

1 within a period following the offense reasonably,
2 likely to result in the obtaining of probative
3 evidence of blood-alcohol level.

4 §7913. Provisions regarding suspension imposed for
5 operating under the influence or with
6 excessive blood-alcohol level

7 1. Recording and notice by Commissioner of Inland
8 Fisheries and Wildlife. On receipt of an attested
9 copy of the court record of a suspension of a person's
10 right to operate a motorized watercraft, the
11 commissioner shall immediately record the suspension
12 and shall send written notice of the suspension of the
13 court to the person suspended.

14 2. Suspension in effect during appeal. If any
15 person whose right to operate a motorized watercraft
16 is suspended under section 7901, subsection 12,
17 appeals the judgment, the suspension imposed shall
18 remain in effect during the time an appeal is pending,
19 unless the court orders otherwise.

20 §7914. Report

21 The Commissioner of Inland Fisheries and Wildlife
22 shall report to the Legislature on the effectiveness
23 of the law governing operating a watercraft under the
24 influence by February 1, 1989.

25 Sec. 6. 15 MRSA §3103, sub-§1, ¶E, as amended
26 by PL 1985, c. 214, §1, is repealed and the following
27 enacted in its place:

28 E. Offenses involving the operation of a
29 watercraft or snowmobile while under the influence
30 of intoxicating liquor or drugs, as defined in
31 Title 12, section 7801, subsections 9 and 9-A and
32 section 7827, subsection 9, respectively, and
33 offenses involving failing to aid an injured
34 person or to report a hunting accident as defined
35 in Title 12, section 7406, subsection 15; and

36 Sec. 7. 15 MRSA §3301, sub-§7, as amended by PL
37 1985, c. 737, Pt. A, §38, is further amended to read:

38 7. Nonapplication of section. The provisions of

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1 this section do not apply to a juvenile charged with
2 either of the juvenile ~~crime~~ crimes defined in
3 section 3103, subsection 1, paragraph E or F, and a
4 petition may be filed without recommendation by a
5 juvenile caseworker. The provisions of section 3203-A
6 apply in the case of a juvenile charged with either of
7 the juvenile ~~crime~~ crimes defined in section 3103,
8 subsection 1, paragraph E or F.

9 **Sec. 8.** 15 MRSA §3314, sub-§3, as enacted by PL
10 1981, c. 679, §9, is repealed and the following
11 enacted in its place:

12 3. Disposition for violation of section 3103,
13 subsection 1, paragraph E or F. When a juvenile has
14 been adjudicated as having committed the juvenile
15 crime under section 3103, subsection 1, paragraph E or
16 F, the court may impose any of the dispositional
17 alternatives contained in subsection 1. Any
18 incarceration which is imposed may be part of a
19 disposition pursuant to subsection 1, paragraph F or
20 H. Any incarceration in a county jail shall be in a
21 county jail designated by the Department of
22 Corrections as a place for the secure detention of
23 juveniles.

24 A. In addition, for an adjudication under section
25 3103, subsection 1, paragraph E, the juvenile's
26 right to operate a motorized watercraft shall be
27 suspended by the court for a period of 180 days.
28 The period of suspension shall not be suspended by
29 the court. The court shall give notice of the
30 suspension. The court shall immediately transmit
31 a certified abstract of the suspension to the
32 Commissioner of Inland Fisheries and Wildlife.

33 B. In addition, for an adjudication under section
34 3103, subsection 1, paragraph F, the juvenile's
35 license or permit to operate a motor vehicle,
36 right to operate a motor vehicle or right to apply
37 for or obtain a license shall be suspended by the
38 court for a period of 180 days. The period of
39 suspension shall not be suspended by the court.
40 The court shall give notice of the suspension and
41 take physical custody of an operator's license or
42 permit as provided in Title 29, section 2241-H.

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1 operate a watercraft under the influence of
2 intoxicating liquor.

3 "Probable cause" as used in this amendment is the
4 same as for all other crimes, including the motor
5 vehicle offense of operating under the influence. The
6 law enforcement officer must have, based on
7 observations, sufficient evidence to believe the
8 operator is in violation of the law.

9 Section 4 of the amendment creates 3 new
10 subsections in the penalty section concerning
11 watercraft. New subsection 12 makes operating a
12 watercraft without a motor or with a motor of 5
13 horsepower or less while under the influence of
14 intoxicating liquor or drugs, or both, a Class E
15 crime. New subsection 13 makes operating a watercraft
16 with a motor of greater than 5 horsepower while under
17 the influence of intoxicating liquor or drugs, or
18 both, a Class D crime and imposes the same minimum
19 mandatory penalties as the current law imposes for
20 operating a motor vehicle under the influence, with a
21 few exceptions. Although there is no watercraft
22 operator's license to suspend, the court shall suspend
23 the person's right to operate a motorized watercraft
24 for the same period of time that a driver's license
25 would be suspended. The penalty for a first offender
26 will not be mandatory until July 1, 1989. This will
27 provide sufficient time for all persons to realize the
28 seriousness of the offense and to understand the
29 penalty which may be imposed. This will also provide
30 sufficient time to notify out-of-state visitors who
31 otherwise may not know in advance about the
32 seriousness of the offense and its penalties. By
33 delaying the mandatory nature of the penalties for a
34 first offense, this amendment is not impinging on a
35 judge's discretion to impose any penalty available for
36 a Class D crime. There are 2 aggravating
37 circumstances which will require the imposition of
38 mandatory minimum penalties for a first offense:
39 Operating with a blood-alcohol level of 0.15% or more;
40 and failing or refusing to stop for a uniformed law
41 enforcement officer when requested to do so, which is
42 already an offense.

43 For second and subsequent offenders, this
44 amendment specifically authorizes judges to order the

1 operator to participate in education, evaluation and
2 treatment for multiple offenders administered by the
3 Department of Human Services. Because the programs
4 are supported by the fees paid by participants, there
5 should be no appreciable cost to the State no matter
6 how many multiple offenders the judges choose to order
7 through the programs.

8 The amendment requires the court to consider the
9 operator's record concerning all operating-under-the
10 influence convictions and convictions for failing to
11 comply with the duty to submit. These records will
12 include court records and the records of the State
13 Bureau of Investigation, the Secretary of State and
14 the Department of Inland Fisheries and Wildlife.

15 The new subsection 14 makes failure to comply with
16 the duty to submit to a chemical test a Class E
17 crime. This is necessary because there is no
18 watercraft operator's license to suspend for failing
19 to take a test, so the only incentive for an operator
20 to take a test is make it a crime to fail to take the
21 chemical test.

22 Section 5 inserts all the same provisions and
23 procedures governing motor vehicle tests into the law
24 governing operating a watercraft under the influence.
25 When a law enforcement officer has probable cause to
26 believe a person is operating a watercraft under the
27 influence, the officer must warn the person that
28 failure to comply with the duty to submit to and
29 complete a test is a Class E crime, and that the
30 penalties for the violation may be up to a \$500 fine,
31 a jail term of 6 months, or both. If the warning is
32 not given, evidence that the operator failed to take
33 the test will not be admissible in the
34 operating-under-the-influence trial.

35 Section 5 also requires the Department of Inland
36 Fisheries and Wildlife to report to the Legislature
37 next year on the effect of this new law.

38 Sections 6, 7 and 8 make the adjudication
39 procedure of the juvenile crime of operating a
40 watercraft under the influence the same as for the
41 juvenile crime concerning motor vehicles. This
42 eliminates the necessity of going through the informal

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1 adjustment process, and the arresting officer may go
2 directly to the district attorney for a juvenile
3 petition. Section 6 corrects references in the
4 juvenile code to operating a watercraft while under
5 the influence.

6 This amendment is not intended to change the law
7 regarding persons who are on watercraft which are not
8 in public areas or on open water, such as boats tied
9 up to a rented boat slip. These changes do not apply
10 to persons who are not operating or attempting to
11 operate watercraft. This amendment will not affect
12 the public drinking laws.

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