

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 84

S.P. 84

In Senate, February 2, 1989

Reported by Senator ERWIN of Oxford for the Special Commission on Boating pursuant to Resolve 1987, chapter 111.

Reference to the Committee on Legal Affairs suggested and ordered printed pursuant to Joint Rule 18.

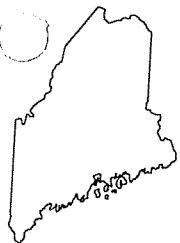
A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Amend the Laws Governing the Operation of a Watercraft While
Under the Influence.



1 **Be it enacted by the People of the State of Maine as follows:**

3 **Sec. 1. 12 MRSA §7801, sub-§9, as amended by PL 1981, c. 698,**
5 **§74, is repealed and the following enacted in its place:**

7 **9. Operating watercraft while under the influence or with**
8 **excessive blood-alcohol level. A person is guilty of a criminal**
9 **violation if that person operates or attempts to operate any**
10 **watercraft:**

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

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

15 **Sec. 2. 12 MRSA §7801, sub-§9-A is enacted to read:**

16 **9-A. Failure to comply with duty to submit. A person is**
17 **guilty of failure to comply with the duty to submit to and**
18 **complete a blood-alcohol test under section 7802 if that person**
19 **refuses to submit to or fails to complete a blood-alcohol test**
20 **when requested to do so by a law enforcement officer:**

21 **A. Who has probable cause to believe that the person**
22 **operated or attempted to operate a watercraft while under**
23 **the influence of intoxicating liquor; or**

24 **B. When the person was the operator of a watercraft**
25 **involved in a watercraft accident which results in the death**
26 **of any person, as provided in section 7912, subsection 11.**

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

28 **§7802. Implied consent to chemical tests**

29 **Any person who operates or attempts to operate a watercraft**
30 **within this State shall have the duty to submit to a test to**
31 **determine that person's blood-alcohol level by analysis of blood**
32 **or breath, if there is probable cause to believe that person has**
33 **operated or attempted to operate a watercraft while under the**
34 **influence of intoxicating liquor. The duty to submit to a**
35 **blood-alcohol test includes the duty to complete either a blood**
36 **or breath test. Tests and procedures applicable in determining**
37 **whether a person is under the influence are governed by section**
38 **7912.**

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

40 **13. Penalties for operating or attempting to operate a**
41 **watercraft while under the influence or with an excessive**
42 **blood-alcohol level. The offense defined in section 7801,**
43

1 subsection 9, is a Class D crime. In determining an appropriate
3 sentence, refusal to submit to a chemical test shall in every
5 case be an aggravating factor. In the following cases the
7 following minimum penalties shall apply.

9 A. Except as provided in paragraph B, in the case of a
11 person having no previous convictions of a violation of
13 section 7801, subsection 9, and having no previous
15 adjudications of failure to comply with the duty to submit
17 to and complete a blood-alcohol test under section 7802,
19 within a 6-year period, the fine shall not be less than
21 \$300. Beginning July 1, 1990, the penalties provided in
23 this paragraph may not be suspended.

25 B. In the case of a person having no previous convictions
27 of a violation of section 7801, subsection 9, and having no
29 previous adjudications of failure to comply with the duty to
31 submit to and complete a blood-alcohol test under section
33 7802, within a 6-year period, the fine shall not be less
35 than \$300 and the sentence shall include a period of
37 incarceration of not less than 48 hours, which penalties may
39 not be suspended, when the person:

41 (1) Was tested as having a blood-alcohol level of
43 0.15% or more;

45 (2) Failed or refused to stop upon request or signal
47 of an officer in uniform, as defined in section 6953 or
49 7060, during the operation which resulted in
51 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, at the request of a
law enforcement officer on the occasion which resulted
in the conviction.

C. In the case of a person having one previous conviction
of a violation of section 7801, subsection 9, or one
previous adjudication of failure to comply with the duty to
submit to and complete a blood-alcohol test under section
7802, within a 6-year period, the fine shall not be less
than \$500 and the sentence shall include a period of
incarceration of not less than 7 days, which penalties may
not be suspended.

D. In the case of a person having 2 or more previous
convictions of violations of section 7801, subsection 9, or
adjudications of failure to comply with the duty to submit
to and complete a blood-alcohol test under section 7802,
within a 6-year period, the fine shall not be less than \$750

1 and the sentence shall include a period of incarceration of
2 not less than 30 days, which penalties may not be suspended.

3
4 E. In addition to the penalties provided under paragraphs C
5 and D, the court may order the defendant to participate in
6 the alcohol and other drug education, evaluation and
7 treatment programs for multiple offenders administered by
8 the Department of Human Services, as defined in Title 22,
9 chapter 1602.

10
11 F. The penalties provided under paragraphs B, C, D and,
12 beginning July 1, 1990, paragraph A, shall not be suspended
13 by the court.

14
15 G. If the State pleads and proves that, while operating a
16 watercraft in violation of this section, the actor in fact
17 caused serious bodily injury as defined in Title 17-A,
18 section 2, subsection 23, to another person or in fact
19 caused the death of another person, the sentencing class for
20 the offense in section 7801, subsection 9, is a Class C
21 crime. The minimum penalties specified in this subsection
22 shall apply, but the minimum period of suspension shall be
23 18 months unless a longer minimum period otherwise applies.

24
25 The alternatives defined in section 7801, subsection 9,
26 paragraphs A and B may be pleaded in the alternative. The State
27 may, but shall not be required to, elect prior to submission to
28 the fact finder.

29
30 For purposes of this section, a prior conviction has occurred
31 within the 6-year period if the date of docket entry by the clerk
32 of a judgment of conviction or adjudication is 6 years or less
33 from the date of the new conduct which is penalized or for which
34 the penalty is or may be enhanced.

35
36 In determining the appropriate sentence, the court shall consider
37 the defendant's record of convictions for operating under the
38 influence and for failure to comply with the duty to submit. The
39 court may rely upon oral representations based on records
40 maintained by the courts, by the State Bureau of Identification,
41 by the Secretary of State, including telecommunications of
42 records maintained by the Secretary of State, or by the
43 Department of Inland Fisheries and Wildlife. If the defendant
44 disputes the accuracy of any representation concerning a
45 conviction or adjudication, the court shall grant a continuance
46 for the purposes of determining the accuracy of the record.

47
48 References in this Title to this section shall be determined also
49 to refer to the juvenile crime stated in Title 15, section 3103,
50 subsection 1, paragraph E and to the disposition, including a
51 suspension, for that juvenile crime as provided in Title 15,

1 section 3314, subsection 3, except as otherwise provided or
2 except when the context clearly requires otherwise.

3
4 14. Penalties for failure to comply with duty to submit.
5 The offense defined in section 7801, subsection 9-A, is a civil
6 violation for which a forfeiture of up to \$500 may be adjudged.

7
8 **Sec. 5. 12 MRSA §7912 is enacted to read:**

9
10 **§7912. Tests and procedures for operating under the influence**
11 **or with an excessive blood-alcohol level**

12
13 1. Blood or breath test. If the law enforcement officer
14 has probable cause to believe a person operated or attempted to
15 operate a watercraft while under the influence of intoxicating
16 liquor, then the officer shall inform the person that a breath
17 test will be administered, unless, in the determination of the
18 officer, it is unreasonable for a breath test to be administered,
19 in which case a blood test shall be administered. When a blood
20 test is required, the test may be administered by a physician of
21 the accused's choice, at the request of the accused and if
22 reasonably available. The law enforcement officer may determine
23 which type of breath test, as described in subsection 5, is to be
24 administered.

25
26 2. Prerequisites to tests. Before any test is given, the
27 law enforcement officer shall inform the person to be tested
28 that, if that person fails to comply with the duty to submit to
29 and complete a blood-alcohol test to determine the level of
30 blood-alcohol at the direction of the officer, that person will
31 be committing a civil violation for which the person may be
32 required to pay a civil forfeiture of up to \$500. The officer
33 shall also inform the person that the failure to comply with the
34 duty to submit to a blood-alcohol test shall be admissible in
35 evidence against that person at any trial for operating under the
36 influence of intoxicating liquor.

37
38 No test results may be excluded as evidence in any proceeding
39 before any administrative officer or court of this State as a
40 result of the failure of the law enforcement officer to comply
41 with these prerequisites. The only effects of the failure of the
42 officer to comply with the prerequisites shall be as provided in
43 subsection 7.

44
45 3. Results of test. Upon the request of the person who
46 submits to a chemical test or tests at the request of a law
47 enforcement officer, full information concerning the test or
48 tests shall be made available to that person or that person's
49 attorney by the law enforcement officer.

1 4. Blood-alcohol level. The following percentages by
2 weight of alcohol in the defendant's blood shall have the
3 following evidentiary effect.

5 A. If there was, at the time alleged, 0.05% or less by
6 weight of alcohol in the defendant's blood, it is prima
7 facie evidence that the defendant was not under the
8 influence of intoxicating liquor.

9
10 B. If there was, at the time alleged, in excess of 0.05%
11 but less than 0.08% by weight of alcohol in the defendant's
12 blood, it is relevant evidence, but it is not to be given
13 prima facie effect in indicating whether or not the
14 defendant was under the influence of intoxicating liquor
15 within the meaning of this section, but that fact may be
16 considered with other competent evidence in determining
17 whether or not the defendant was under the influence of
18 intoxicating liquor.

19
20 C. For purposes of evidence in proceedings other than those
21 arising under section 7801, subsection 9, it shall be
22 presumed that a person was under the influence of
23 intoxicating liquor when that person has a blood-alcohol
24 level of 0.08% or more by weight.

25 D. Percent by weight of alcohol in the blood shall be based
26 upon grams of alcohol per 100 hundred milliliters of blood.

27
28 5. Administration of tests. Persons conducting analyses of
29 blood or breath for the purpose of determining the blood-alcohol
30 level shall be certified for this purpose by the Department of
31 Human Services under certification standards to be set by that
32 department.

33
34 Only a duly licensed physician, registered physician's assistant,
35 registered nurse or a person certified by the Department of Human
36 Services under certification standards to be set by that
37 department, acting at the request of a law enforcement officer,
38 may draw a specimen of blood to determine the blood-alcohol level
39 of a person who is complying with the duty to submit to a
40 blood-alcohol test. This limitation shall not apply to the
41 taking of breath specimens. When a person draws a specimen of
42 blood at the request of a law enforcement officer, that person
43 may issue a certificate which states that the person is in fact a
44 duly licensed or certified person as required by this paragraph
45 and that the person followed the proper procedure for drawing a
46 specimen of blood to determine the blood-alcohol level. That
47 certificate, when duly signed and sworn to by the person, shall
48 be admissible in evidence in any court of the State. It is prima
49 facie evidence that the person was duly licensed or certified and
50 that the person followed the proper procedure for drawing a
51 specimen of blood to determine the blood-alcohol level, unless,

1 with 10-days' written notice to the prosecution, the defendant
3 requests that the person testify as to licensure or
certification, or the procedure for drawing the specimen of blood.

5 A law enforcement officer may take a sample specimen of the
7 breath of any person whom the officer has probable cause to
9 believe operated or attempted to operate a watercraft while under
11 the influence of intoxicating liquor and who is complying with
13 the duty to submit to and complete a blood-alcohol test. The
sample specimen shall 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 of the
sample specimen to determine the blood-alcohol level of that
sample.

15 Only equipment approved by the Department of Human Services shall
17 be used by a law enforcement officer to take a sample specimen of
19 the defendant's breath for submission to the Department of Human
21 Services or a person certified by the Department of Human
23 Services for the purpose of conducting tests of the sample
specimen to determine the blood-alcohol level of that sample.
Approved equipment shall have a stamp of approval affixed by the
Department of Human Services. Evidence that the equipment was in
a sealed carton bearing the stamp of approval shall be accepted
in court as prima facie evidence that the equipment was approved
by the Department of Human Services for use by the law
enforcement officer to take the sample specimen of the
defendant's breath.

29 As an alternative to the method of breath testing described in
31 this subsection, a law enforcement officer may test the breath of
33 any person, whom the officer has probable cause to believe
35 operated or attempted to operate a watercraft while under the
influence of intoxicating liquor, by use of a self-contained,
breath-alcohol testing apparatus to determine the blood-alcohol
level, provided the testing apparatus is reasonably available.
The procedures for the operation and testing of self-contained,
breath-alcohol testing apparatuses shall be as provided by rule
adopted by the Department of Human Services. The result of any
such test shall be accepted as prima facie evidence of the
blood-alcohol level in any court.

43 Approved self-contained, breath-alcohol testing apparatuses shall
45 have a stamp of approval affixed by the Department of Human
Services after periodic testing. That stamp of approval shall be
valid for a limited period of no more than one year. Testimony
or other evidence that the equipment was bearing the stamp of
approval shall be accepted in court as prima facie evidence that
the equipment was approved by the Department of Human Services
for use by the law enforcement officer to collect and analyze a
sample specimen of the defendant's breath.

1 Failure to comply with any provision of this subsection or with
3 any rule adopted under this subsection shall not, by itself,
5 result in the exclusion of evidence of blood-alcohol level,
7 unless the evidence is determined to be not sufficiently reliable.

9 Testimony or other evidence that any materials used in operating
11 or checking the operation of the equipment were bearing a
13 statement of the manufacturer or of the Department of Human
15 Services shall be accepted in court as prima facie evidence that
17 the materials were of a composition and quality as stated.

19 A person certified by the Maine Criminal Justice Academy, under
21 certification standards to be set by the academy, as qualified to
23 operate approved self-contained, breath-alcohol testing
25 apparatuses may operate those apparatuses to collect and analyze
27 a sample specimen of a defendant's breath.

29 6. Liability. No physician, physician's assistant,
31 registered nurse, person certified by the Department of Human
33 Services or hospital or other health care provider in the
35 exercise of due care may be liable in damages or otherwise for
37 any act done or omitted in performing the act of collecting or
39 withdrawing specimens of blood at the request of a law
41 enforcement officer pursuant to this section.

43 7. Evidence. The percentage by weight of alcohol in the
45 defendant's blood at the time alleged, as shown by the chemical
47 analysis of the defendant's blood or breath or by results of a
49 self-contained, breath-alcohol testing apparatus authorized by
51 subsection 5, shall be admissible in evidence.

When a person, certified under subsection 5, conducts a chemical
analysis of blood or breath to determine blood-alcohol level, the
person may issue a certificate stating the results of the
analysis. That certificate, when duly signed and sworn to by the
certified person, shall be admissible in evidence in any court of
the State. It shall be prima facie evidence that the person
taking a specimen of blood was a person authorized by subsection
5; that the equipment, chemicals and other materials used in the
taking of the blood specimen or a breath sample were of a quality
appropriate for the purpose of producing reliable test results;
that any equipment, chemicals or materials required by subsection
5 to be approved by the Department of Human Services were in fact
approved; that the sample tested by the person certified under
subsection 5 was in fact the same sample taken from the
defendant; and that the percentage by weight of alcohol in the
defendant's blood was, at the time the blood or breath sample was
taken, as stated in the certificate, unless with 10-days' written
notice to the prosecution, the defendant requests that a
qualified witness testify as to any of the matters as to which
the certificate constitutes prima facie evidence. The notice

1 shall specify those matters concerning which the defendant
2 requests testimony.

3

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

15

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

20 The failure of a person to comply with the duty to submit to and
21 complete a blood-alcohol test under section 7802 shall be
22 admissible in evidence on the issue of whether that person was
23 under the influence of intoxicating liquor. If the law
24 enforcement officer having probable cause to believe that the
25 person operated or attempted to operate a watercraft under the
26 influence of intoxicating liquor fails to give either of the
27 warnings required under subsection 2, the failure of the person
28 to comply with the duty to submit to a blood-alcohol test shall
29 not be admissible, except when a test was required pursuant to
30 subsection 11. If a failure to submit to and complete a
31 blood-alcohol test is not admitted into evidence, the court may
32 inform the jury of the fact that no test result is available.

33 If a test result is not available for a reason other than failing
34 to comply with the duty to submit to and complete a blood-alcohol
35 test, the unavailability and the reason shall be admissible in
36 evidence.

37

38 8. Statements by accused. Any statement by a defendant
39 that the defendant was the operator of a watercraft, which the
40 defendant is accused of operating in violation of section 7801,
41 subsection 9, shall be admissible if it was made voluntarily and
42 is otherwise admissible under the United States Constitution or
43 the Constitution of Maine. The statement may constitute
44 sufficient proof by itself, without further proof of corpus
45 delicti, that the watercraft was operated and was operated by the
46 defendant.

47

48 9. Payment for tests. Persons authorized to take specimens
49 of blood at the direction of a law enforcement officer and
50 of blood at the direction of a law enforcement officer and
51 of blood at the direction of a law enforcement officer and

1 persons authorized to perform chemical tests of specimens of
2 blood or breath shall be paid from the General Fund.

3
4 10. Accidents and officer's duties. The law enforcement
5 officer shall have the following duties.

6
7 A. After a person has been charged with operating or
8 attempting to operate a watercraft under the influence of
9 intoxicating liquor or drugs or with an excessive
10 blood-alcohol level, the investigating or arresting officer
11 shall investigate to determine whether the charged person
12 has any previous convictions of a violation of section 7801,
13 subsection 9, or adjudications for failure to comply with
14 the duty to submit to and complete a blood-alcohol test
15 under section 7802. As part of that investigation, the
16 officer shall review the records maintained by the courts,
17 the State Bureau of Identification, the Secretary of State,
18 including telecommunications of records maintained by the
19 Secretary of State, or the Department of Inland Fisheries
20 and Wildlife.

21
22 B. A law enforcement officer may arrest, without a warrant,
23 any person whom the officer has probable cause to believe
24 operated or attempted to operate a watercraft while under
25 the influence of intoxicating liquor or drugs if the arrest
26 occurs within a period following the offense reasonably
27 likely to result in the obtaining of probative evidence of
28 blood-alcohol level.

29
30 11. Watercraft fatality. Notwithstanding any other
31 provision of this section, each operator of a watercraft involved
32 in a watercraft accident which results in the death of any person
33 shall submit to and complete a test to determine that person's
34 blood-alcohol level by analysis of blood or breath. A law
35 enforcement officer may determine which type of test shall be
36 administered. The result of a test taken pursuant to this
37 paragraph is not admissible at trial unless the court is
38 satisfied that probable cause exists, independent of the test
39 result, to believe that the operator was under the influence of
40 intoxicating liquor or drugs or had an excessive blood-alcohol
41 level.

42
43 Sec. 6. 15 MRSA §3103, sub-§1, ¶E, as amended by PL 1985, c.
44 214, §1, is further amended to read:

45
46 E. Offenses involving the operation or attempted operation
47 of a snowmobile-~~or~~ watercraft or snowmobile while under the
48 influence of intoxicating liquor or drugs, as defined in
49 Title 12, section 7801, subsection 9, and section 7827,
50 subsection 9, respectively, and offenses involving failing
51 to aid an injured person or to report a hunting accident as
defined in Title 12, section 7406, subsection 15; and

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

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

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

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

27 A. For an adjudication under section 3103, subsection 1,
29 paragraph F, the juvenile's license or permit to operate a
31 motor vehicle, right to operate a motor vehicle or right to
33 apply for or obtain a license shall be suspended by the
35 court for a period of 180 days. The period of suspension
37 shall not be suspended by the court. The court shall give
39 notice of the suspension and take physical custody of an
operator's license or permit as provided in Title 29,
section 2241-H. The court shall immediately transmit a
certified abstract of the suspension to the Secretary of
State. A further suspension may be imposed by the Secretary
of State pursuant to Title 29, section 1312-D, subsection
1-A.

41 **Sec. 9. Report.** The Commissioner of Inland Fisheries and
43 Wildlife shall report to the Legislature on the effectiveness of
45 the law governing the operation of a watercraft while under the
influence by February 1, 1991.

47
49 **STATEMENT OF FACT**

51 This bill contains recommendations of the Maine Special
Commission of Boating, created by Resolve 1987, chapter 111.

1 This bill amends the offense of operating a watercraft while
2 under the influence of liquor or drugs. Operating a watercraft
3 under the influence, regardless of whether or not it is
4 motorized, is raised from a Class E crime to a Class D crime,
5 tracking the motor vehicle operating-under-the-influence laws.

7 Section 1 of the bill repeals and replaces the current
8 offense by making it the same as the motor vehicle offense. It
9 is a 2-prong offense, making it illegal to operate or attempt to
10 operate under the influence or with a blood-alcohol level of
11 0.08% or more, as was recently enacted by the Legislature for
12 motor vehicles.

13 Sections 2 and 3 of the bill establish the concept of
14 implied consent to chemical tests and make it a civil violation,
15 with a forfeiture of up to \$500, for a person to fail to comply
16 with the duty to submit to a test. The concept of implied
17 consent is the same as in the motor vehicle laws: Any person who
18 operates or attempts to operate a watercraft within the State
19 implicitly gives their consent to submit to a chemical test to
20 determine if that person is operating under the influence of
21 alcohol or drugs. This implied consent is referred to as the
22 duty to submit to, and complete, a chemical test. Section 2
23 makes it illegal to fail to submit to and complete the test when
24 asked to do so by a law enforcement officer who has probable
25 cause to believe that the person operated or attempted to operate
26 a watercraft while under the influence of intoxicating liquor.

27 "Probable cause" as used in this bill is the same as for all
28 other crimes, including the motor vehicle offense of operating
29 under the influence. The law enforcement officer must have,
30 based on observations, sufficient evidence to believe the
31 operator is in violation of the law.

32 Section 4 of the bill creates 2 new subsections in the
33 penalty section concerning watercraft. New subsection 12 makes
34 operating a watercraft while under the influence of intoxicating
35 liquor or drugs, or both, a Class D crime and imposes the same
36 minimum mandatory penalties as the current law imposes for
37 operating a motor vehicle while under the influence, with a few
38 exceptions. The penalty for a first offender will not be
39 mandatory until July 1, 1990. This will provide sufficient time
40 for all persons to realize the seriousness of the offense and to
41 understand the penalty which may be imposed before July 1990, and
42 which will be imposed after that. This will also provide
43 sufficient time to notify out-of-state visitors who otherwise may
44 not know in advance about the seriousness of the offense and its
45 penalties. By delaying the mandatory nature of the penalties for
46 a first offense, this bill is not impinging on judges' discretion
47 to impose any penalty available for a Class D crime. There are 3
48 aggravating circumstances which will require the imposition of
49 mandatory minimum penalties for a first offense. One is to be
50

1 operating with a blood-alcohol level of 0.15% or more. The 2nd
2 is failing or refusing to stop for a uniformed law enforcement
3 officer when requested to do so, which is already an offense.
4 The 3rd is failing to submit to a chemical test to determine the
5 person's blood-alcohol level at the request of a law enforcement
6 officer.

7
8 For 2nd and subsequent offenders, this bill specifically
9 authorizes judges to order the operator to participate in
10 education, evaluation and treatment for multiple offenders
11 administered by the Department of Human Services. These programs
12 are supported by the fees paid by participants.

13
14 This bill requires the court to consider the operator's
15 record concerning all operating-under-the-influence convictions
16 and adjudications for failing to comply with the duty to submit.
17 These records will include court records and the records of the
18 State Bureau of Investigation, the Secretary of State and the
19 Department of Inland Fisheries and Wildlife.

20
21 New subsection 14 makes failure to comply with the duty to
22 submit to a chemical test a civil violation for which, if
23 adjudicated as having violated the statute, the person may have
24 to pay a forfeiture of up to \$500. This is necessary because
25 there is no watercraft operator's license to suspend for failing
26 to take a test, so the only incentive for an operator to take a
27 test is to make it illegal to fail to take the chemical test.

28
29 Section 5 inserts all the same provisions and procedures
30 governing motor vehicle tests into the law governing operating a
31 watercraft while under the influence. When a law enforcement
32 officer has probable cause to believe a person is operating a
33 watercraft while under the influence, the officer must warn the
34 person that failure to comply with the duty to submit to and
35 complete a chemical test is a civil violation and what the
36 consequences are for failing to comply with that duty. If the
37 warning is not given, evidence that the operator failed to take
38 the test will not be admissible in the
39 operating-under-the-influence trial.

40
41 Sections 6, 7 and 8 make the adjudication procedure of the
42 juvenile crime of operating a watercraft while under the
43 influence the same as for the juvenile crime concerning motor
44 vehicles. This eliminates the necessity of going through the
45 informal adjustment process, and the arresting officer can go
46 directly to the district attorney for a juvenile petition.
47 Section 6 corrects references to operating a watercraft under the
48 influence in the juvenile code.

49
50 Section 9 requires the Department of Inland Fisheries and
51 Wildlife to report to the Legislature next year on the effect of
this new law.

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2 This bill is not intended to change the law regarding
3 persons who are on watercraft which are not in public areas or on
4 open water, such as boats tied up to a rented boat slip. These
5 changes do not apply to persons who are not operating or
6 attempting to operate watercraft. This bill will not affect the
7 public drinking law.