

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 1126

H.P. 814

House of Representatives, April 11, 1989

Reference to the Committee on Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PARADIS of Augusta.

Cosponsored by Representative MAYO of Thomaston, Representative PRIEST of Brunswick and Senator MATTHEWS of Kennebec.

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STATE OF MAINE

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

---

An Act to Enhance Enforcement of the Driving Under the Influence of  
Alcohol and Drug Laws.

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

3 Sec. 1. 29 MRSA §1311-A, sub-§5-A, ¶A, as enacted by PL 1987,  
5 c. 791, §7, is amended to read:

7 A. For failing to comply with the duty to submit to and  
9 complete a chemical test ~~to determine blood-alcohol level;~~

11 Sec. 2. 29 MRSA §1312, as amended by PL 1987, c. 791, §§10 to  
13 17, is further amended to read:

15 **§1312. Implied consent to chemical tests; general provisions  
17 applicable to prosecution for operating under the  
19 influence of intoxicating liquor or drugs or with  
21 excessive blood-alcohol**

23 Any person who operates or attempts to operate a motor  
25 vehicle within this State shall have the duty to submit to a  
27 chemical test to determine his the person's blood-alcohol level  
and drug concentration by analysis of his blood ~~or~~, breath or  
urine, if there is probable cause to believe he the person has  
operated or attempted to operate a motor vehicle while under the  
influence of intoxicating liquor or drugs or a combination of  
both. The duty to submit to a ~~blood-alcohol~~ chemical test  
includes the duty to complete either a blood ~~or~~, breath or urine  
test.

29 He The person shall be informed by a law enforcement officer  
31 that to determine blood-alcohol level, a breath test will be  
administered, unless, in the determination of the law enforcement  
33 officer, it is unreasonable for a breath test to be administered,  
in which case a blood test shall be administered. When a blood  
35 test is required, the test may be administered by a physician of  
the accused's choice, at the request of the accused and if  
reasonably available. The law enforcement officer may determine  
37 which type of breath test, as described in subsection 6, is to be  
administered.

39 For the purposes of this chapter, "chemical test" means any  
41 test used to determine the blood-alcohol level or drug  
concentration by analysis of blood, breath or urine.

43 For the purposes of this chapter, "drug" means any drug, as  
45 defined in Title 32, section 2805, subsection 4; any scheduled  
drug, as defined in Title 17-A, section 1101, subsection 11; or  
any of their metabolites.

47  
49 1. Prerequisites to tests. Before any test specified is  
51 given, the law enforcement officer shall inform the person as to  
whom there is probable cause that, if he the person fails to  
53 comply with the duty to submit to and complete a chemical test to  
determine the level of blood-alcohol or drug concentration at the  
direction of the law enforcement officer, his that person's

1 license or permit to operate, his right to operate or his right  
2 to apply for or obtain a license will be suspended and the period  
3 of suspension shall be a minimum of 6 months and may be as long  
4 as 3 years. The officer should also inform the person that the  
5 failure to comply with the duty to submit to a ~~bleed-aleehel~~  
chemical test shall be admissible in evidence against ~~him~~ that  
6 person at any trial for operating under the influence of  
7 intoxicating liquor or drugs or a combination of both.

8  
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10  
11 No test results may be excluded as evidence in any proceeding  
12 before any administrative officer or court of this State as a  
13 result of the failure of the law enforcement officer to comply  
14 with this prerequisite. The only effects of the failure of the  
15 officer to comply with this prerequisite shall be as provided in  
16 subsections 2 and 8.

17       2. Hearing. The Secretary of State, upon the receipt of a  
18 written statement under oath from a law enforcement officer,  
19 stating that the officer had probable cause to believe that a  
20 person was operating or attempting to operate a motor vehicle  
21 while under the influence of intoxicating liquor or drugs or a  
combination of both, and that the person failed to comply with  
22 the duty to submit to a chemical test ~~to--determine--the~~  
~~bleed-aleehel-level-by-analysis-of-his-blood-or-breath~~, shall  
23 immediately notify the person, in writing, as provided in section  
24 2241, that ~~his~~ the person's license or permit, his right to  
25 operate and his right to apply for or obtain a license have been  
26 suspended. The suspension shall be for a period of 180 days the  
27 first time the person fails to comply with the duty to submit to  
28 the test and one year for each subsequent failure to comply with  
29 the duty to submit to the test within a 6-year period. The  
30 written statement shall be sent to the Secretary of State within  
31 72 hours of the failure to comply with the duty to submit to the  
32 ~~bleed-aleehel~~ chemical test, excluding Saturdays, Sundays and  
33 holidays. If the statement is not sent within this time period,  
34 the Secretary of State shall nevertheless impose the suspension  
35 for failing to comply with the duty to submit to a chemical test,  
36 unless the delay has prejudiced the person's ability to prepare  
37 or participate in the hearing described in this subsection.

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39  
40  
41 If ~~such~~ that person desires to have a hearing, ~~he~~ that person  
42 shall notify the Secretary of State within 10 days, in writing,  
43 of ~~such~~ that desire. Any suspension shall remain in effect  
44 pending the outcome of ~~such~~ the hearing, if requested.

45  
46  
47 The scope of such a hearing shall cover whether there was  
48 probable cause to believe that the individual was either  
49 attempting to operate or was operating under the influence of  
50 intoxicating liquor or drugs or a combination of both and whether  
51 he that individual failed to comply with the duty to submit to  
one of the ~~bleed-aleehel~~ chemical tests upon the request of a law  
enforcement officer. Any suspension in effect shall be removed

1 if, after hearing, it is determined that the person who failed to  
3 submit to the test would not have failed to submit but for the  
5 failure of the law enforcement officer to give either or both of  
7 the warnings required by subsection 1.

9 If it is determined, after hearing, that there was not probable  
11 cause to believe that such the person was either attempting to  
13 operate or was operating under the influence of intoxicating  
15 liquor or drugs or a combination of both or that the person did  
17 not fail to comply with the duty to submit to a ~~blood-alcohol~~  
chemical test, any suspension in effect shall be removed  
immediately.

19 If it is determined, after a hearing, that any suspension in  
21 effect should be removed, the Secretary of State shall delete any  
23 record of the suspension and any record of his revocation of  
consent from that person's driving record.

25 For the purposes of this section, a prior refusal or revocation  
27 of consent to submit to a chemical test shall be a prior refusal  
29 or revocation of consent if it occurred within a 6-year period of  
the date of the most recent refusal or revocation of consent.

31 **3. Review.** Any person, whose license, permit or right to  
33 operate or right to apply for or obtain a license is suspended  
35 for failing to comply with the duty to submit to a chemical test  
37 ~~to determine his blood alcohol level by analysis of his blood or~~  
39 ~~breath~~ at the direction of a law enforcement officer claiming to  
41 have had probable cause to believe that the person operated or  
43 attempted to operate while under the influence of intoxicating  
45 liquor or drugs or a combination of both, shall have the right to  
file a petition in the Superior Court in the county where he that  
person resides, or in Kennebec County, to review the order of  
suspension by the Secretary of State by the same procedure as is  
provided in section 2242. If the court rescinds the suspension,  
it shall also order the Secretary of State to delete any record  
of the suspension and any record of the revocation of consent  
from that person's driving record.

47 **4. Results of test.** Upon the request of the person who  
49 shall submit to a chemical test or tests at the request of a law  
51 enforcement officer, full information concerning the test or  
tests shall be made available to ~~him~~ the person or ~~his~~ the  
person's attorney by the law enforcement officer.

**5. Blood-alcohol level.**

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

1 B. If there was, at the time alleged, in excess of 0.05%,  
2 but less than 0.08% by weight of alcohol in the defendant's  
3 blood, it is relevant evidence, but it is not to be given  
4 prima facie effect in indicating whether or not the  
5 defendant was under the influence of intoxicating liquor  
6 within the meaning of this section, but such fact may be  
7 considered with other competent evidence in determining  
8 whether or not the defendant was under the influence of  
9 intoxicating liquor.

11 C. For purposes of evidence in proceedings other than those  
12 arising under section 1312-B ~~or~~-1312-C, it shall be presumed  
13 that a person was under the influence of intoxicating liquor  
14 when he that person has a blood-alcohol level of 0.08% or  
15 more by weight.

17 D. Percent by weight of alcohol in the blood shall be based  
18 upon grams of alcohol per one hundred milliliters of blood.

19  
20 **6. Administration of tests.** Persons conducting analysis of  
21 blood ~~or~~, breath or urine for the purpose of determining the  
22 blood-alcohol level or drug concentration shall be certified for  
23 this purpose by the Department of Human Services under  
24 certification standards to be set by that department.

25  
26 Only a duly licensed physician, registered physician's assistant,  
27 registered nurse or a person certified by the Department of Human  
28 Services under certification standards to be set by that  
29 department, acting at the request of a law enforcement officer,  
30 may draw or collect a specimen of blood or urine for the purpose  
31 of determining the blood-alcohol level or drug concentration of a  
32 person who is complying with the duty to submit to a  
33 ~~blood-alcohol~~ chemical test. This limitation shall not apply to  
34 the taking of breath specimens. When a person draws or collects a  
35 specimen of blood or urine at the request of a law enforcement  
36 officer, that person may issue a certificate which states that  
37 the person is in fact a duly licensed or certified person as  
38 required by this paragraph and that the person followed the  
39 proper procedure for drawing or collecting a specimen of blood or  
40 urine for the purpose of determining the blood-alcohol level or  
41 drug concentration. That certificate, when duly signed and sworn  
42 to by the person, shall be admissible in evidence in any court of  
43 the State. It is prima facie evidence that the person was duly  
44 licensed or certified and that the person followed the proper  
45 procedure for drawing or collecting a specimen of blood or urine  
46 for the purpose of determining the blood-alcohol level or drug  
47 concentration, unless, with 10-days' written notice to the  
48 prosecution, the defendant requests that the person testify as to  
49 licensure or certification, or the procedure for drawing or  
50 collecting the specimen of blood or urine.

51  
52 A law enforcement officer may take a sample specimen of the  
53 breath of any person whom he the law enforcement officer has

1 probable cause to believe has operated or attempted to operate a  
2 motor vehicle while under the influence of intoxicating liquor or  
3 drugs or a combination of both and who is complying with the duty  
4 to submit to a ~~bleed-aleekel~~ chemical test, the sample specimen  
5 to be submitted to the Department of Human Services or a person  
6 certified by the Department of Human Services for the purpose of  
7 conducting chemical tests of the sample specimen to determine the  
8 blood-alcohol level or drug concentration thereof.

9  
10 Only such equipment as is approved by the Department of Human  
11 Services shall be used by a law enforcement officer to take a  
12 sample specimen of the defendant's breath for submission to the  
13 Department of Human Services or a person certified by the  
14 Department of Human Services for the purpose of conducting  
15 chemical tests of the sample specimen to determine the  
16 blood-alcohol level thereof. Approved equipment shall have a  
17 stamp of approval affixed by the Department of Human Services.  
18 Evidence that the equipment was in a sealed carton bearing the  
19 stamp of approval shall be accepted in court as prima facie  
20 evidence that the equipment was approved by the Department of  
21 Human Services for use by the law enforcement officer to take the  
22 sample specimen of the defendant's breath.

23  
24 As an alternative to the method of breath testing described in  
25 this subsection, a law enforcement officer may test the breath of  
26 any person whom there is probable cause to believe has operated  
27 or attempted to operate a motor vehicle while under the influence  
28 of intoxicating liquor or drugs or a combination of both by use  
29 of a self-contained, breath-alcohol testing apparatus to  
30 determine the blood-alcohol level, provided the testing apparatus  
31 is reasonably available. The procedures for the operation and  
32 testing of self-contained breath-alcohol testing apparatuses  
33 shall be as provided by regulation promulgated by the Department  
34 of Human Services. The result of any such test shall be accepted  
35 as prima facie evidence of the blood-alcohol level in any court.

36  
37 Approved self-contained, breath-alcohol testing apparatus shall  
38 have a stamp of approval affixed by the Department of Human  
39 Services after periodic testing. That stamp of approval shall be  
40 valid for a limited period of no more than one year. Testimony or  
41 other evidence that the equipment was bearing the stamp of  
42 approval shall be accepted in court as prima facie evidence that  
43 the equipment was approved by the Department of Human Services  
44 for use by the law enforcement officer to collect and analyze a  
45 sample specimen of the defendant's breath.

46  
47 Failure to comply with any provisions of this subsection or with  
48 any regulations promulgated in this subsection shall not, by  
49 itself, result in the exclusion of evidence of blood-alcohol  
50 level or drug concentration, unless the evidence is determined to  
51 be not sufficiently reliable.

1 It is the intent of the Legislature that savings realized through  
2 the use of self-contained breath-alcohol testing equipment shall  
3 be used for programs in the area of highway safety, with priority  
4 to be given to programs involving alcohol education and  
5 rehabilitation. It is also the intent of the Legislature that  
6 local law enforcement departments may be equipped, according to  
7 local needs, with breath-testing equipment, as described in this  
8 section, as provided by the Department of Public Safety and  
9 approved by the Department of Human Services. Testimony or other  
10 evidence that any materials used in operating or checking the  
11 operation of the equipment were bearing a statement of the  
12 manufacturer or of the Department of Human Services shall be  
13 accepted in court as prima facie evidence that the materials were  
14 of a composition and quality as stated.

15  
16 A person certified by the Maine Criminal Justice Academy, under  
17 certification standards to be set by the academy, as qualified to  
18 operate approved self-contained, breath-alcohol testing  
19 apparatuses may operate those apparatuses for the purpose of  
20 collecting and analyzing a sample specimen of defendants' breath.

21 The Department of Human Services shall adopt rules regulating  
22 testing procedures that it finds necessary or desirable to ensure  
23 accurate and reliable testing and to protect the privacy rights  
24 of the person providing the sample. The rules must include  
25 standards for determining whether a sample shall be considered  
26 negative or positive, based on the types of test used and the  
27 sensitivity of each test for each particular drug for which the  
28 test screens.

29  
30 6-A. Drug impairment assessment. If the person's  
31 blood-alcohol concentration is less than 0.08% by weight, a law  
32 enforcement officer certified by the Maine Criminal Justice  
33 Academy as a drug recognition specialist shall conduct a drug  
34 impairment assessment to determine if the person is impaired by  
35 any drugs other than alcohol.

36  
37 The results of a drug impairment assessment conducted by a  
38 certified drug recognition specialist shall be admissible in  
39 court as evidence of operating under the influence of drugs.

40  
41 6-B. Chemical tests for drugs other than alcohol. If the  
42 results of the drug impairment assessment indicate that the  
43 person is impaired by one or more drugs other than alcohol, the  
44 person shall submit a blood or urine sample for testing.

45  
46 A. The person conducting the analysis shall test the sample  
47 for drugs using a drug paneling test which will identify any  
48 drugs present in the sample.

49  
50 (1) If the drug paneling test result is negative, no  
51 further testing may be done.

52  
53



1                   (2) If the drug paneling test result is positive, the  
3                   person conducting the analysis shall conduct a 2nd test  
5                   to attempt to confirm the positive result using gas  
7                   chromatography/mass spectrometry.

9                   B. If the result of the gas chromatography/mass  
11                   spectrometry test is positive, the sample shall be  
13                   considered a positive sample.

15                   7. **Liability.** No physician, physician's assistant,  
17 registered nurse, person certified by the Department of Human  
19 Services or hospital or other health care provider in the  
21 exercise of due care may be liable in damages or otherwise for  
23 any act done or omitted to be done in performing the act of  
25 collecting or withdrawing specimens of blood or urine at the  
27 request of a law enforcement officer pursuant to this section.

29                   8. **Evidence.** The percentage by weight of alcohol in the  
31 defendant's blood at the time alleged, as shown by the chemical  
33 analysis of his the defendant's blood or breath, or by results of  
35 a self-contained, breath-alcohol testing apparatus authorized by  
37 subsection 6, shall be admissible in evidence.

39                   The presence of one or more drugs in the defendant's blood or  
41                   urine at the time alleged, as shown by chemical analysis of the  
43                   defendant's blood or urine under subsection 6, shall be  
45                   admissible in evidence.

47                   When a person, certified under subsection 6, conducts a chemical  
49 analysis of blood or, breath or urine for the purpose of  
51 determining blood-alcohol level or drug concentration, he that  
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 or urine was a person authorized by  
subsection 6, that the equipment, chemicals and other materials  
used in the taking of the blood or urine 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 6 to be approved by the Department of  
Human Services were in fact approved, that the sample tested by  
the person certified under subsection 6 was in fact the same  
sample taken from the defendant and that the percentage by weight  
of alcohol in the blood of the defendant, or the drug  
concentration in the blood or urine of the defendant, was, at the  
time the blood or, breath or urine 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 shall specify those  
matters concerning which the defendant requests testimony.

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A person certified under subsection 6, as qualified to operate a self-contained, breath-alcohol testing apparatus for the purpose of determining blood-alcohol level, 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 percentage by weight of alcohol in the blood of the defendant was, at the time the breath sample was taken, as stated in the certificate, unless, with 10-days' written notice to the prosecution, the defendant requests that the operator or other qualified witness testify as to the results of the analysis.

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

The failure of a person to comply with the duty required by this section to submit to a ~~blood-alcohol~~ chemical test shall be admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor or drugs or a combination of both. If the law enforcement officer having probable cause to believe that the person operated or attempted to operate a motor vehicle under the influence of intoxicating liquor or drugs or a combination of both fails to give either of the warnings required under subsection 1, the failure of the person to comply with the duty to submit to a ~~blood-alcohol~~ chemical test shall not be admissible, except where a test was required pursuant to subsection 11, paragraph D. If a failure to submit to a ~~blood-alcohol~~ chemical test is not admitted into evidence, the court may inform the jury of the fact that no test result is available.

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

**8-A. Statements by accused.** Any statement by a defendant that he the defendant was the operator of a motor vehicle, which he the defendant is accused of operating in violation of former subsection 10, or section 1312-B ~~or~~ 1312-C, shall be admissible in a proceeding under former subsection 10, or section 1312-B ~~or~~ 1312-C, if it was made voluntarily and is otherwise admissible under the United States Constitution or the Constitution of Maine. The statement may constitute sufficient proof by itself, without further proof of corpus delicti, that the motor vehicle was operated and was operated by the defendant.

**9. Payment for tests.** Persons authorized to take specimens of blood or urine at the direction of a law enforcement officer

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

3  
4 **11. Accidents and officer's duties.**

5  
6 A. After a person has been charged with operating or  
7 attempting to operate a motor vehicle under the influence of  
8 intoxicating liquor or drugs or a combination of both or  
9 with a blood-alcohol level of 0.08% or more, the  
10 investigating or arresting officer shall investigate to  
11 determine whether the charged person has any prior  
12 convictions under former section 1312, subsection 10, former  
13 section 1312-B or section 1312-B and has any previous  
14 suspensions of license or privilege to operate for failure  
15 to comply with the duty to submit to and complete a chemical  
16 test to determine the level of blood-alcohol or drug  
17 concentration. As part of ~~his~~ the investigation, the  
18 officer shall make the necessary inquiries of the Secretary  
19 of State.

20  
21 B. A law enforcement officer may arrest, without a warrant,  
22 any person the officer has probable cause to believe has  
23 operated or attempted to operate a motor vehicle while under  
24 the influence of intoxicating liquor or drugs or a  
25 combination of both if the arrest occurs within a period  
26 following the offense reasonably likely to result in the  
27 obtaining of probative evidence of blood-alcohol level or  
28 drug concentration.

29  
30 D. Notwithstanding any other provision of this section,  
31 each operator of a motor vehicle involved in a motor vehicle  
32 accident which results in the death of any person shall  
33 submit to and complete a chemical test to determine that  
34 person's blood-alcohol level or drug concentration by  
35 analysis of such blood or, breath or urine. A law  
36 enforcement officer may determine which type of test shall  
37 be administered and shall report any failure of a person to  
38 submit to or complete a test at the officer's request to the  
39 Secretary of State by written statement under oath. The  
40 result of a test taken pursuant to this paragraph is not  
41 admissible at trial unless the court is satisfied that  
42 probable cause exists, independent of such test result, to  
43 believe that the operator was under the influence of  
44 intoxicating liquor or drugs or a combination of both or had  
45 excessive blood-alcohol level.

46  
47 The Secretary of State shall suspend, for a period of one  
48 year, the license or permit to operate, right to operate a  
49 motor vehicle and right to apply for or obtain a license,  
50 pursuant to section 2241, subsection 1, paragraph N, of any  
51 person who fails to submit to or complete a test. The scope  
52 of any hearing the Secretary of State holds pursuant to  
53 section 2241 shall include whether there was probable cause  
54 to believe that the person was the operator of a motor  
55 vehicle involved in a motor vehicle fatality and whether

1 that person failed to submit to or complete a test to  
2 determine the blood-alcohol level or drug concentration. If  
3 the person shows, after hearing, that he the person was not  
4 under the influence of intoxicating liquor or drugs or a  
5 combination of both or that he the person did not  
6 negligently cause the death, then any suspension shall be  
7 removed immediately.

9 **Sec. 3. 29 MRSA §1312-B, sub-§2**, as amended by PL 1987, c.  
10 791, §19, is further amended to read:

11  
12 **2. Penalties.** The offense defined in subsection 1 is a  
13 Class D crime. In the determination of an appropriate sentence,  
14 refusal to submit to a chemical test shall in every case be an  
15 aggravating factor. In the following cases the following minimum  
16 penalties shall apply.

17  
18 A. Except as provided in paragraph B, in the case of a  
19 person having no previous convictions of a violation of  
20 former section 1312, subsection 10, former section 1312-B or  
21 this section and having no previous suspension of license or  
22 privilege to operate for failure to comply with the duty to  
23 submit to and complete a chemical test ~~to determine the~~  
24 ~~level of blood alcohol~~ under section 1312 within a 6-year  
25 period, the fine shall not be less than \$300 and the court  
26 shall suspend the defendant's license or permit to operate,  
27 right to operate a motor vehicle and right to apply for and  
28 obtain a license for a period of 90 days, which penalties  
29 may not be suspended.

30  
31 B. In the case of a person having no previous convictions  
32 of a violation of former section 1312, subsection 10, former  
33 section 1312-B, or this section and having no previous  
34 suspension of license or privilege to operate for failure to  
35 comply with the duty to submit to and complete a chemical  
36 test ~~to determine the level of blood alcohol~~ under section  
37 1312 within a 6-year period, the fine shall not be less than  
38 \$300, the sentence shall include a period of incarceration  
39 of not less than 48 hours and the court shall suspend the  
40 defendant's license or permit to operate, right to operate a  
41 motor vehicle and right to apply for and obtain a license  
42 for a period of 90 days, which penalties may not be  
43 suspended, when the person:

44 (1) Was tested as having a blood-alcohol level of  
45 0.15% or more;

46  
47 (2) Was driving in excess of the speed limit by 30  
48 miles an hour or more during the operation which  
49 resulted in the prosecution for operating under the  
50 influence or with a blood-alcohol level of 0.08% or  
51 more;

52  
53

1 (3) Eluded or attempted to elude an officer, as  
3 defined in section 2501-A, subsection 3, during the  
5 operation which resulted in prosecution for operating  
under the influence or with a blood-alcohol level of  
0.08% or more; or

7 (4) Failed to submit to a chemical test for the  
9 determination of that person's blood-alcohol level or  
11 drug concentration, at the request of a law enforcement  
officer on the occasion which resulted in the  
conviction.

13 C. In the case of a person having one previous conviction  
15 of a violation of former section 1312, subsection 10, former  
section 1312-B or this section, or having at least one  
17 previous suspension for failure to comply with the duty to  
submit to and complete a chemical test ~~to determine the~~  
19 ~~level of blood-alcohol~~ under section 1312 within a 6-year  
21 period, the fine shall not be less than \$500, the sentence  
shall include a period of incarceration of not less than 7  
23 days and the court shall suspend the defendant's license or  
25 permit to operate, right to operate a motor vehicle and  
right to apply for and obtain a license for a period of one  
year, which penalties may not be suspended.

27 D. In the case of a person having 2 or more previous  
convictions of violations of former section 1312, subsection  
10, former section 1312-B or this section, within a 6-year  
29 period, the fine shall not be less than \$750, the sentence  
shall include a period of incarceration of not less than 30  
31 days and the court shall suspend the defendant's license or  
33 permit to operate, right to operate a motor vehicle and  
right to apply for and obtain a license for a period of 2  
35 years, which penalties may not be suspended.

37 E. The penalties provided under paragraphs A, B, C and D  
shall not be suspended by the court. The court shall give  
39 notice of the suspension and take physical custody of the  
operator's license as provided in section 2241-H. The  
41 Secretary of State may impose an additional period of  
suspension as provided in section 1312-D, subsection 1-A, or  
43 may extend any period of suspension until satisfaction of  
any conditions imposed pursuant to section 1312-D,  
45 subsection 3.

47 F. For purposes of this section, a prior conviction has  
occurred within the 6-year period provided if the date of  
49 docket entry by the clerk of a ~~judge~~ judgment of conviction or  
adjudication is 6 years or less from the date of the new  
51 conduct which is penalized or for which the penalty is or  
may be enhanced.

1 G. For the purposes of this section, a previous suspension  
2 of license of privilege for failure to comply with the duty  
3 to submit to and complete a chemical test ~~to determine the~~  
4 ~~level of blood alcohol~~ under section 1312 has occurred  
5 within the 6-year period if the date of the suspension is 6  
6 years or less from the date of the new conduct which is  
7 penalized or for which the penalty is or may be enhanced.

9 **Sec. 4. 29 MRSA §1312-B, sub-§3**, as amended by PL 1987, c.  
10 791, §21, is further amended to read:

11 **3. Sentencing procedure.** Notwithstanding the provisions of  
12 Title 15, section 757, in determining the appropriate sentence,  
13 the court shall consider the record of convictions for criminal  
14 traffic offenses, adjudications of traffic infractions and  
15 suspensions of license or privilege to operate for failure to  
16 comply with the duty to submit to and complete a chemical test ~~to~~  
17 ~~determine the level of blood alcohol~~ of the defendant. The court  
18 may rely upon oral representations based on records maintained by  
19 the courts, by the State Bureau of Identification or by the  
20 Secretary of State, including telecommunications of records  
21 maintained by the Secretary of State. If the defendant disputes  
22 the accuracy of any representation concerning a conviction or  
23 adjudication, the court shall grant a continuance for the  
24 purposes of determining the accuracy of the record.

27 **Sec. 5. 29 MRSA §1312-D, sub-§5**, as amended by PL 1985, c.  
28 412, §6, is further amended to read:

29 **5. Restricted licenses for suspension for failure to comply**  
30 **with duty to submit to chemical test.** The Secretary of State may  
31 issue a restricted license or permit to any person whose license  
32 or permit has been suspended for a first failure to comply with  
33 the duty to submit to a ~~blood alcohol~~ chemical test under section  
34 1312, subsection 2, if the conditions of issuance following a  
35 conviction or adjudication under section 1312-B are met by the  
36 person and a period of suspension of not less than 90 days has  
37 elapsed.

39 **Sec. 6. 29 MRSA §1312-D, sub-§8**, as amended by PL 1985, c.  
40 412, §6, is further amended to read:

43 **8. Consecutive suspensions.** Any suspension pursuant to  
44 this section or the former section 1312, subsection 10 or section  
45 1312-B or former section 1312-B, subsection 2 shall be  
46 consecutive to any suspension imposed under section 1312,  
47 subsection 2, for failing to comply with the duty to submit to a  
48 chemical test ~~to determine blood alcohol level by analysis of~~  
49 ~~blood or breath~~ under section 1312.

51 **Sec. 7. 29 MRSA §1313-A, sub-§1, ¶¶C and D**, as enacted by PL  
1985, c. 331, are amended to read:

1  
3 C. There was probable cause to believe that the person was  
operating under the influence of intoxicating liquor or  
5 drugs or a combination of both and failed to comply with his  
that person's duty to submit to and complete a chemical test  
to-determine-his-blood-alcohol-level under section 1312; or

7  
9 D. There was probable cause to believe that the person had  
not attained the legal drinking age and was operating a  
11 motor vehicle while having .02% or more by weight of alcohol  
in his the blood and failed to comply with his that person's  
13 duty to submit to and complete a chemical test to-determine  
his-blood-alcohol-level under section 1312.

15 **Sec. 8. 29 MRSA §1313-A, sub-§2**, as enacted by PL 1985, c.  
331, is amended to read:

17  
19 2. **Content of report.** The report required in subsection 1  
shall contain all relevant facts which formed the basis for the  
conviction of adjudication, including ~~blood-alcohol~~ chemical test  
21 results if available.

23 **Sec. 9. 29 MRSA §1313-B, sub-§3**, as enacted by PL 1987, c.  
791, §24, is amended to read:

25  
27 3. **Notice of suspension; reason and statutory grounds for**  
suspension. The notice of suspension shall clearly specify the  
reason and statutory grounds for the suspension, the effective  
29 date of the suspension, the right of the person to request a  
hearing, the procedure for requesting a hearing and the date by  
31 which that request for hearing shall be made. The notice of  
suspension shall also clearly state that a copy of the report of  
33 the law enforcement officer which formed the basis of the  
decision to suspend and a copy of any ~~blood-alcohol~~ chemical test  
35 certificate submitted will be provided to the person upon request  
to the Secretary of State.

37  
39 **Sec. 10. 29 MRSA §1313-B, sub-§5**, as enacted by PL 1987, c.  
791, §24, is amended to read:

41  
43 5. **Hearing; issues.** The only issues at the hearing are  
whether, by a preponderance of the evidence, the person suspended  
operated a motor vehicle, whether the person's negligent  
45 operation caused the death of another person, and whether on that  
occasion the operator was under the influence of intoxicating  
liquor or drugs or a combination of both, had an excessive  
47 blood-alcohol level or may be penalized for his refusal to submit  
to a chemical test ~~to-determine-his-blood-alcohol-level~~ under  
49 section 1312. The provisions of section 1311-A, subsection 8,  
paragraph C apply.

51  
53 **Sec. 11. Pilot project.** The law enforcement agencies of  
Lincoln, Sagadahoc, Kennebec and Penobscot counties and the

1 Bureau of the State Police shall hire and train drug recognition  
 2 specialists as required to carry out this Act in those 4  
 3 counties. The Department of Public Safety, with representatives  
 4 of the law enforcement agencies and prosecutors involved, shall  
 5 report to the joint standing committee of the Legislature having  
 6 jurisdiction over judiciary matters no later than January 31,  
 7 1991, the results of this pilot program. The report shall  
 8 include, but not be limited to, the number of persons undergoing  
 9 drug impairment assessments; the number of abused drug paneling  
 10 tests conducted; the number of confirmatory tests by gas  
 11 chromatography/mass spectrometry conducted; the results of all  
 12 tests conducted, including the number of confirmed positive  
 13 results; and the success rate for prosecution under this Act.  
 14 The report shall also include any recommendations concerning the  
 15 offense of operating under the influence of drugs.

17 **Sec. 12. Appropriation.** The following funds are appropriated  
 18 from the General Fund to carry out the purposes of this Act.

	1989-90	1990-91
<b>HUMAN SERVICES, DEPARTMENT OF</b>		
<b>Bureau of Health</b>		
	(1/2)	(1/2)
Positions		
Personal Services	\$ 10,757	\$ 15,646
All Other	10,641	13,000
Capital Expenditures	75,590	
Provides funds for a half-time Chemist II position in the Public Health Laboratory, training costs, supplies, related program costs and equipment necessary to carry out the program.		
<b>DEPARTMENT OF HUMAN SERVICES</b>		
<b>TOTAL</b>	<u>\$96,988</u>	<u>\$28,646</u>

41 **STATEMENT OF FACT**

43  
 44 The purpose of this bill is to implement the recommendations  
 45 of the Alcohol and Drug Abuse Planning Committee made in the  
 46 report OFFENSE OF DRIVING UNDER THE INFLUENCE OF ILLEGAL DRUGS,  
 47 printed November 1988, partly in response to Resolve 1987,  
 48 chapter 21.

49  
 50 This bill, modeled on the Los Angeles Police Department  
 51 program, adds procedures for determining whether a person who is



1 stopped for operating under the influence but does not have a  
2 high blood-alcohol level is actually impaired by other drugs.  
3 The procedure is as follows.

5 Step 1. The law enforcement officer stops a person for  
operating under the influence.  
7

9 Step 2. After conducting field sobriety tests, the officer  
administers a breath test to determine the person's blood-alcohol  
level. If the test result is 0.08% or above, the person is  
11 charged with operating under the influence. If the test result  
is below 0.08%, go on to Step 3.  
13

15 Step 3. The officer calls in a trained and certified drug  
recognition specialist who does additional tests, similar to the  
usual field sobriety tests, to determine if any drugs are  
17 impairing the person. If the drug recognition specialist  
determines that the person is impaired by other drugs, Step 4 is  
19 implemented.

21 Step 4. The person provides blood or urine samples, or  
both, to be tested for the presence of drugs. The first test is  
23 an abused drug paneling test which indicates which drugs are  
present in the sample, but does not necessarily accurately  
25 reflect the amount of drugs in the sample. If any drugs are  
indicated by the drug paneling test, the test in Step 5 is  
27 conducted.

29 Step 5. The abused drug paneling test result is confirmed  
through the use of gas chromatography/mass spectrometry, an  
31 extremely accurate testing method. If the test result indicates  
that one or more drugs were present in the sample, it is evidence  
33 that can be used to support the charge that the person was  
operating under the influence of drugs.  
35

37 Because there are no universally accepted levels of drugs in  
blood or urine linking that concentration to impairment, the  
operating under the influence of drugs case is based on the  
39 officer's probable cause that the person was operating under the  
influence, the person's blood-alcohol test result of below 0.08%  
41 indicating that alcohol alone was not the most likely cause of  
impairment, the report of the drug recognition specialist that  
43 the person was impaired by one or more drugs and the presence of  
drugs in the person's system as indicated by the positive drug  
45 paneling test result as confirmed by gas chromatography/mass  
spectrometry.  
47

49 Language throughout the operating under the influence laws  
is amended to accurately reflect that chemical tests may be  
conducted on breath, blood and urine to determine both alcohol  
51 and other drug concentrations.

1           The new procedures will be implemented on a trial basis in 4  
3 counties. The Department of Public Safety, along with the local  
5 law enforcement agencies and the prosecutors involved, will  
7 report to the Legislature by January 31, 1991, on the success of  
9 the program. The Legislature can then decide whether it should  
11 be funded statewide.

          An appropriation section is included to cover the cost of  
9 new equipment, a new chemist at the Public Health Laboratory,  
11 where the new testing will be conducted, and the training  
necessary to carry out this program.