

# MAINE STATE LEGISLATURE

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L.D. 904

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DATE: March 14, 1996 (Filing No. S- 477)

**INLAND FISHERIES AND WILDLIFE**

Reported by: The Majority of the Committee.

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE  
SENATE  
117TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A " to S.P. 323, L.D. 904, Bill, "An Act to Increase the Penalties for Certain Crimes Involving Alcohol and Illegal Drugs"

Amend the bill by striking everything after the title and before the statement of fact and inserting in its place the following:

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the use of intoxicating liquor or drugs while hunting or operating a snowmobile, ATV or watercraft is a threat to the public health and welfare; and

**Whereas,** existing penalties for those crimes are not sufficient; and

**Whereas,** the penalties established in the bill must take effect prior to the summer recreational season; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**COMMITTEE AMENDMENT**

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2 Sec. 1. 12 MRSA §7077, sub-§1-A, ¶B, as enacted by PL 1993, c.  
136, §1, is amended to read:

4 B. Hunting while under the influence of ~~alcohol~~  
6 intoxicating liquor or drugs, in violation of section 7406,  
subsection 3;

8 Sec. 2. 12 MRSA §7077-A, sub-§1-A is enacted to read:

10 1-A. Hunting while under the influence of intoxicating  
12 liquor or drugs. Notwithstanding any other provision of this  
14 Part, a person convicted of hunting while under the influence of  
16 intoxicating liquor or drugs in violation of section 7406,  
18 subsection 3 is not eligible to obtain a license to hunt in this  
20 State for a period of 5 years from the date of conviction.

22 Sec. 3. 12 MRSA §7406, sub-§3, as repealed and replaced by PL  
24 1991, c. 443, §21, is amended to read:

26 3. Hunting while under the influence of intoxicating liquor  
28 or drugs. A person ~~is guilty of a Class E crime~~ commits the  
30 crime of hunting while under the influence of intoxicating liquor  
32 or drugs if that person hunts wild animals or wild birds:

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

38 B. While For a person 21 years of age or older, while  
40 having 0.08% or more by weight of alcohol in that person's  
42 blood; or

44 C. For a person less than 21 years of age, while having any  
46 amount of alcohol in the blood.

48 Hunting while under the influence of intoxicating liquor or drugs  
50 is a Class D crime.

Sec. 4. 12 MRSA §7408, as enacted by PL 1991, c. 443, §24, is  
amended to read:

§7408. Implied consent to chemical tests

Any person who hunts wild animals or wild birds within this  
State has a duty to submit to a test to determine that person's  
blood-alcohol level or drug concentration by analysis of blood  
~~or~~ breath or urine if there is probable cause to believe that  
the person is hunting wild animals or wild birds while under the  
influence of intoxicating liquor or drugs. The duty to submit to  
a blood-alcohol or drug concentration test includes the duty to  
complete either a blood ~~or~~ breath or urine test, or any

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2 combination of those tests. Tests and procedures for determining  
whether a person is under the influence of intoxicating liquor or  
3 drugs are governed by section 7912.

4  
5 **Sec. 5. 12 MRSA §7801, sub-§9**, as repealed and replaced by PL  
6 1989, c. 599, §1, is amended to read:

7  
8 **9. Operating watercraft while under the influence of**  
**intoxicating liquor or drugs.** A person ~~is guilty of a criminal~~  
10 violation commits the crime of operating a watercraft while under  
the influence of intoxicating liquor or drugs if that person  
12 operates or attempts to operate any watercraft:

13  
14 A. While under the influence of intoxicating liquor or  
15 drugs or a combination of liquor and drugs; or

16  
17 B. While For a person 21 years of age or older, while  
18 having 0.08% or more by weight of alcohol in that person's  
blood; or

19  
20 C. For a person less than 21 years of age, while having any  
21 amount of alcohol in the blood.

22  
23 Operating a watercraft while under the influence of intoxicating  
24 liquor or drugs is a Class D crime.

25  
26 **Sec. 6. 12 MRSA §7827, sub-§9**, as repealed and replaced by PL  
27 1991, c. 443, §34, is amended to read:

28  
29 **9. Operating a snowmobile while under the influence of**  
**intoxicating liquor or drugs.** A person ~~is guilty of a Class E~~  
31 crime commits the crime of operating a snowmobile while under the  
influence of intoxicating liquor or drugs if that person operates  
33 or attempts to operate any snowmobile:

34  
35 A. While under the influence of intoxicating liquor or  
36 drugs or a combination of liquor and drugs; or

37  
38 B. While For a person 21 years of age or older, while  
39 having 0.08% or more by weight of alcohol in that person's  
blood; or

40  
41 C. For a person less than 21 years of age, while having any  
42 amount of alcohol in the blood.

43  
44 Operating a snowmobile while under the influence of intoxicating  
45 liquor or drugs is a Class D crime.

46  
47 **Sec. 7. 12 MRSA §7827, sub-§9-A**, as enacted by PL 1991, c.  
48 443, §35, is amended to read:

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2           **9-A. Failure to comply with duty to submit.** A person is  
3 guilty of failure to comply with the duty to submit to and  
4 complete a blood-alcohol or drug concentration test under section  
5 7828 if that person refuses to submit to or fails to complete a  
6 blood-alcohol or drug concentration test, or both, when requested  
7 to do so by a law enforcement officer who has probable cause to  
8 believe that the person operated or attempted to operate a  
9 snowmobile while under the influence of intoxicating liquor or  
10 drugs.

12           **Sec. 8. 12 MRSA §7828**, as enacted by PL 1991, c. 443, §36, is  
13 amended to read:

14           **§7828. Implied consent to chemical tests**

15           Any person who operates or attempts to operate a snowmobile  
16 within this State has a duty to submit to a test to determine  
17 that person's blood-alcohol level or drug concentration by  
18 analysis of blood ~~or~~, breath or urine if there is probable cause  
19 to believe that the person has operated or attempted to operate a  
20 snowmobile while under the influence of intoxicating liquor or  
21 drugs. The duty to submit to a blood-alcohol or drug  
22 concentration test includes the duty to complete ~~either~~ a blood  
23 ~~or~~, breath or urine test or any combination of those tests.  
24 Tests and procedures applicable in determining whether a person  
25 is under the influence of intoxicating liquor or drugs are  
26 governed by section 7912.

28           **Sec. 9. 12 MRSA §7857, sub-§10**, as repealed and replaced by PL  
29 1991, c. 443, §37, is amended to read:

30           **10. Operating an ATV while under the influence of**  
31 **intoxicating liquor or drugs.** A person ~~is guilty of a Class E~~  
32 ~~crime~~ commits the crime of operating an ATV while under the  
33 influence of intoxicating liquor or drugs if that person operates  
34 or attempts to operate any ATV:

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

37           B. While For a person 21 years of age or older, while  
38 having 0.08% or more by weight of alcohol in that person's  
39 blood; or

40           C. For a person less than 21 years of age, while having any  
41 amount of alcohol in the blood.

42           Operating an ATV while under the influence of intoxicating liquor  
43 or drugs is a Class D crime.

2           Sec. 10. 12 MRSA §7857, sub-§10-A, as enacted by PL 1991, c.  
443, §38, is amended to read:

4           10-A. Failure to comply with duty to submit. A person is  
6 guilty of failure to comply with the duty to submit to and  
complete a blood-alcohol or drug concentration test under section  
8 7860 if that person refuses to submit to or fails to complete a  
10 blood-alcohol or drug concentration test, or both, when requested  
to do so by a law enforcement officer who has probable cause to  
12 believe that the person operated or attempted to operate an ATV  
while under the influence of intoxicating liquor or drugs.

14           Sec. 11. 12 MRSA §7860, as enacted by PL 1991, c. 443, §39,  
is amended to read:

16           **§7860. Implied consent to chemical tests**

18           Any person who operates or attempts to operate an ATV within  
20 in this State has the duty to submit to a test to determine that  
person's blood-alcohol or drug concentration level by analysis of  
22 blood ~~or~~, breath or urine if there is probable cause to believe  
that the person has operated or attempted to operate an ATV while  
24 under the influence of intoxicating liquor or drugs. The duty to  
submit to a blood-alcohol or drug concentration test includes the  
26 duty to complete either a blood ~~or~~, breath or urine test or any  
combination of those tests. Tests and procedures applicable in  
28 determining whether a person is under the influence of  
intoxicating liquor or drugs are governed by section 7912.

30           Sec. 12. 12 MRSA §7901, sub-§13, as corrected by RR 1991, c.  
32 2, §39, is amended to read:

34           13. Penalties for hunting or attempting to hunt and  
operating or attempting to operate a watercraft, snowmobile or  
36 all-terrain vehicle while under the influence of intoxicating  
liquor or drugs. The ~~offense~~ offenses defined in section 7406,  
38 subsection 3; section 7801, subsection 9, --is-a; section 7827,  
subsection 9; and section 7857, subsection 10 are Class D ~~crime~~  
40 crimes. In determining an appropriate sentence, refusal to  
submit to a chemical test shall must in every case be an  
42 aggravating factor. In the following cases the following minimum  
penalties shall apply.

44           A. Except as provided in paragraph B, in the case of a  
46 person having no previous convictions of a violation of  
section 7406, subsection 3; section 7801, subsection 9,;  
48 section 7827, subsection 9; or section 7857, subsection 10  
and having no previous adjudications of failure to comply  
50 with the duty to submit to and complete a blood-alcohol test

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2 under section 7802, 7408, 7805, 7828 or 7860 within a 6-year  
3 period, the fine shall ~~may~~ not be less than \$300. Beginning  
4 July 1, 1990, the penalties provided in this paragraph may  
not be suspended.

6 B. In the case of a person having no previous convictions  
7 of a violation of section 7406, subsection 3; section 7801,  
8 subsection 9,; section 7827, subsection 9; or section 7857,  
9 subsection 10 and having no previous adjudications of  
10 failure to comply with the duty to submit to and complete a  
11 blood-alcohol test under section 7802, 7805, 7828 or 7860  
12 within a 6-year period, the fine shall ~~may~~ not be less than  
13 \$300 and the sentence shall ~~must~~ include a period of  
14 incarceration of not less than 48 hours, which penalties may  
not be suspended, when the person:

16 (1) Was tested as having a blood-alcohol level of  
17 0.15% or more;

20 (2) Failed or refused to stop upon request or signal  
21 of an officer in uniform, as defined in section 6953 or  
22 7060, during the operation which that resulted in  
23 prosecution for operating under the influence or with a  
24 blood-alcohol level of 0.08% or more; or

26 (3) Failed to submit to a chemical test to determine  
27 that person's blood-alcohol level or drug  
28 concentration, at the request of a law enforcement  
29 officer on the occasion which that resulted in the  
30 conviction.

32 C. In the case of a person having one previous conviction  
33 of a violation of section 7406, subsection 3; section 7801,  
34 subsection 9,; section 7827, subsection 9; or section 7857,  
35 subsection 10 or one previous adjudication of failure to  
36 comply with the duty to submit to and complete a  
37 blood-alcohol or drug concentration test under section 7802  
38 7408, 7805, 7828 or 7860 within a 6-year period, the fine  
39 shall ~~may~~ not be less than \$500 and the sentence shall ~~must~~  
40 include a period of incarceration of not less than 7 days,  
41 which penalties may not be suspended.

42 D. In the case of a person having 2 or more previous  
43 convictions of violations of section 7406, subsection 3;  
44 section 7801, subsection 9,; section 7827, subsection 9; and  
45 section 7857, subsection 10 or adjudications of failure to  
46 comply with the duty to submit to and complete a  
47 blood-alcohol or drug concentration test under section 7802  
48 7408, 7805, 7828 or 7860 within a 6-year period, the fine  
49 shall ~~may~~ not be less than \$750 and the sentence shall ~~must~~  
50

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2 include a period of incarceration of not less than 30 days,  
which penalties may not be suspended.

4 E. In addition to the penalties provided under paragraphs C  
and D, the court may order the defendant to participate in  
6 the alcohol and other drug education, evaluation and  
treatment programs for multiple offenders administered by  
8 the ~~Department of Human Services~~ Office of Substance Abuse,  
as defined in Title 22 5, chapter ~~1602~~ 521.

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

14 G. If the State pleads and proves that, while hunting or  
16 operating a snowmobile, ATV or watercraft in violation of  
this section, the ~~actor~~ defendant in fact caused serious  
18 bodily injury as defined in Title 17-A, section 2,  
subsection 23, to another person or in fact caused the death  
20 of another person, the sentencing class for the ~~offense~~  
offenses in section 7406, subsection 3; section 7801,  
22 subsection 9, -is-a; section 7827, subsection 9; and section  
7857, subsection 10 are Class C ~~crime~~ crimes. The minimum  
24 penalties specified in this subsection shall ~~apply, but the~~  
~~minimum period of suspension shall be 18 months~~ unless a  
26 longer minimum period otherwise applies.

28 The Any alternatives defined in section 7406, subsection 3;  
section 7801, subsection 9, paragraphs A and B; section 7827,  
30 subsection 9; and section 7857, subsection 10 may be pleaded in  
the alternative. The State may, but shall is not be required to,  
32 elect prior to submission to the fact finder.

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

40 In determining the appropriate sentence, the court shall consider  
the defendant's record of convictions for hunting or operating a  
42 snowmobile, ATV or watercraft while under the influence of  
intoxicating liquor or drugs and for failure to comply with the  
44 duty to submit. The court may rely upon oral representations  
based on records maintained by the courts, by the State Bureau of  
46 Identification, by the Secretary of State, including  
telecommunications of records maintained by the Secretary of  
48 State, or by the Department of Inland Fisheries and Wildlife. If  
the defendant disputes the accuracy of any representation  
50 concerning a conviction or adjudication, the court

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2 shall grant a continuance for the purposes of determining the accuracy of the record.

4 References in this Title to this subsection are determined also  
6 to refer to the juvenile crime stated in Title 15, section 3103,  
8 subsection 1, paragraph E and to the disposition, including a  
10 suspension, for that juvenile crime as provided in Title 15,  
12 section 3314, subsection 3, except as otherwise provided or  
14 ~~except~~ when the context clearly requires otherwise.

12 **Sec. 13. 12 MRSA §7912, sub-§§2, 4, 5, 7 and 10 to 12,** as amended  
14 by PL 1991, c. 443, §42, are further amended to read:

14 **2. Prerequisites to tests.** Before any test is given, the  
16 law enforcement officer shall inform the person to be tested  
18 ~~that, if that~~ of the consequences of refusing to comply with the  
20 test. If the person fails to comply with the duty to submit to  
22 and complete a blood-alcohol test to determine the level of blood  
24 alcohol the requested chemical tests at the direction of the law  
26 enforcement officer, that person is committing a civil violation  
for which the person may be required to pay a civil forfeiture of  
up to \$500. The officer shall also inform the person that the  
failure to comply with the duty to submit to a blood-alcohol  
chemical test is admissible in evidence against that person at  
any trial for hunting or operating under the influence of  
intoxicating liquor or drugs or a combination of liquor and drugs.

28 ~~No--test~~ Test results may not be excluded as evidence in any  
30 proceeding before any administrative officer or court of this  
32 State as a result of the failure of the law enforcement officer  
34 to comply with these prerequisites. The only effects of the  
failure of the officer to comply with the prerequisites are as  
provided in subsection 7.

36 **4. Blood-alcohol level.** The following percentages by  
38 weight of alcohol in the defendant's blood have the following  
evidentiary effect.

40 A. If there was, at the time alleged, 0.05% or less by  
42 weight of alcohol in the defendant's blood of a defendant  
44 who was 21 years of age or older at the time of arrest, it  
is prima facie evidence that the defendant was not under the  
influence of intoxicating liquor.

46 B. If there was, at the time alleged, in excess of 0.05%  
48 but less than 0.08% by weight of alcohol in the defendant's  
50 blood of a defendant who was 21 years of age or older at the  
time of the arrest, it is relevant evidence, but it is not  
to be given prima facie effect in indicating whether or not  
the defendant was under the influence of intoxicating liquor

within the meaning of this section, but that fact may be considered with other competent evidence in determining whether or not the defendant was under the influence of intoxicating liquor.

C. For purposes of evidence in proceedings other than those arising under section 7406, subsection 3; section 7801, subsection 9; section 7827, subsection 9; or section 7857, subsection 10, it is presumed that a person was under the influence of intoxicating liquor when that person has a ~~blood-alcohol level of 0.08% or more by weight;~~

(1) For a person 21 years of age or older, a blood-alcohol level of 0.08% or more by weight; and

(2) For a person less than 21 years of age, any amount of alcohol in the blood.

D. Percent by weight of alcohol in the blood is based upon grams of alcohol per 100 milliliters of blood.

5. **Administration of tests.** Persons conducting analyses of blood ~~or~~ breath or urine for the purpose of determining the blood-alcohol level or drug concentration must be certified for this each purpose by the Department of Human Services under certification standards set by that department.

Only a duly licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Human Services under certification standards set by that department, acting at the request of a law enforcement officer, may draw a specimen of blood to determine the blood-alcohol level or drug concentration of a person who is complying with the duty to submit to a ~~blood-alcohol~~ chemical test. This limitation does not apply to the taking of breath or urine specimens. When a person draws a specimen of blood at the request of a law enforcement officer, that person may issue a certificate that states that the person is in fact a duly licensed or certified person as required by this subsection and that the person followed the proper procedure for drawing a specimen of blood to determine the blood-alcohol level or drug concentration. That certificate, when duly signed and sworn to by the person, is admissible as evidence in any court of the State. It is prima facie evidence that the person was duly licensed or certified and that the person followed the proper procedure for drawing a specimen of blood ~~to determine the blood-alcohol level~~ for chemical testing, unless, with 10 days' written notice to the prosecution, the defendant requests that the person testify as to licensure or certification, or the procedure for drawing the specimen of blood.

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2 A law enforcement officer may take a sample specimen of the  
3 breath or urine of any person whom the officer has probable cause  
4 to believe hunted wild animals or wild birds or operated or  
5 attempted to operate a watercraft, snowmobile or ATV while under  
6 the influence of intoxicating liquor or drugs and who is  
7 complying with the duty to submit to and complete a ~~blood-alcohol~~  
8 chemical test. The sample specimen must be submitted to the  
9 Department of Human Services or a person certified by the  
10 Department of Human Services for the purpose of conducting  
11 chemical tests of the sample specimen to determine the  
12 blood-alcohol level or drug concentration of that sample.

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

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

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

2 Failure to comply with any provision of this subsection or with  
 4 any rule adopted under this subsection does not, by itself,  
 6 result in the exclusion of evidence of blood-alcohol level or  
 drug concentration, unless the evidence is determined to be not  
 sufficiently reliable.

8 Testimony or other evidence that any materials used in operating  
 10 or checking the operation of the equipment were bearing a  
 12 statement of the manufacturer or of the Department of Human  
 Services must be accepted in court as prima facie evidence that  
 the materials were of a composition and quality as stated.

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

20 7. Evidence. The percentage by weight of alcohol in the  
 22 defendant's blood at the time alleged and the concentration of  
 drugs at the time alleged, as shown by the chemical analysis of  
 24 the defendant's blood ~~or, breath or urine or by results-of-a  
 self-contained,--breath-alcohol--testing--apparatus~~ any test  
 authorized by subsection 5 is admissible in evidence.

26 When a person, certified under subsection 5, conducts a chemical  
 28 analysis of blood ~~or, breath or urine~~ to determine blood-alcohol  
 30 level or drug concentration, the person may issue a certificate  
 32 stating the results of the analysis. That certificate, when duly  
 signed and sworn to by the certified person, is admissible in  
 34 evidence in any court of the State. It is prima facie evidence  
 36 that the person taking a specimen of blood or urine was a person  
 authorized by subsection 5; that the equipment, chemicals and  
 38 other materials used in the taking of the blood or urine specimen  
 or a breath sample were of a quality appropriate for the purpose  
 40 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  
 42 sample tested by the person certified under subsection 5 was in  
 fact the same sample taken from the defendant; and that the drug  
 concentration or percentage by weight of alcohol in the  
 44 defendant's blood was, at the time the blood ~~or, breath or urine~~  
 sample was taken, as stated in the certificate, unless with 10  
 46 days' written notice to the prosecution, the defendant requests  
 that a qualified witness testify as to any of the matters as to  
 48 which the certificate constitutes prima facie evidence. The  
 notice must specify those matters concerning which the defendant  
 50 requests testimony.

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

13  
14 Transfer of sample specimens to and from a laboratory for  
15 purposes of analysis is by certified or registered mail and, when  
16 so made, is deemed to comply with all requirements regarding the  
continuity of custody of physical evidence.

17  
18 The failure of a person to comply with the duty to submit to and  
19 complete a ~~blood-alcohol~~ chemical test under section 7408, 7802  
20 7805, 7828 or 7860 is admissible in evidence on the issue of  
21 whether that person was under the influence of intoxicating  
22 liquor or drugs. If the law enforcement officer having probable  
23 cause to believe that the person hunted wild animals or wild  
24 birds or operated or attempted to operate a watercraft,  
25 snowmobile or ATV while under the influence of intoxicating  
26 liquor or drugs fails to give either of the warnings required  
27 under subsection 2, the failure of the person to comply with the  
28 duty to submit to a ~~blood-alcohol~~ chemical test is not  
29 admissible, except when a test was required pursuant to  
30 subsection 11. If a failure to submit to and complete a  
31 ~~blood-alcohol~~ chemical test is not admitted into evidence, the  
32 court may inform the jury of the fact that no test result is  
33 available.

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

40 **10. Accidents and officer's duties.** The law enforcement  
41 officer has the following duties.

42  
43 A. After a person has been charged with hunting wild  
44 animals or wild birds or with operating or attempting to  
45 operate a watercraft, snowmobile or ATV while under the  
46 influence of intoxicating liquor or drugs or with an  
47 excessive blood-alcohol level, the investigating or  
48 arresting officer shall investigate to determine whether the  
49 charged person has any previous convictions of a violation  
50 of section 7406, subsection 3; section 7801, subsection 9;  
section 7827, subsection 9; or section 7857, subsection 10

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2 or adjudications for failure to comply with the duty to  
 3 submit to and complete a ~~bleed-alcohol~~ chemical test under  
 4 section 7408, 7802 7805, 7828 or 7860. As part of that  
 5 investigation, the officer shall review the records  
 6 maintained by the courts, the State Bureau of  
 7 Identification, the Secretary of State, including  
 8 telecommunications of records maintained by the Secretary of  
 9 State, or the Department of Inland Fisheries and Wildlife.

10 B. A law enforcement officer may arrest, without a warrant,  
 11 any person whom the officer has probable cause to believe  
 12 hunted any wild animal or wild bird or operated or attempted  
 13 to operate a watercraft, snowmobile or ATV while under the  
 14 influence of intoxicating liquor or drugs if the arrest  
 15 occurs within a period following the offense reasonably  
 16 likely to result in the obtaining of probative evidence of  
 17 bleed-alcohol-level that the person was under the influence  
 18 of intoxicating liquor or drugs.

19 11. **Fatalities.** Notwithstanding any other provision of  
 20 this section, any person hunting wild animals or wild birds who  
 21 is involved in a hunting accident or any operator of a  
 22 watercraft, snowmobile or ATV who is involved in a watercraft,  
 23 snowmobile or ATV accident that results in the death of any  
 24 person must submit to and complete a--test chemical tests to  
 25 determine that person's blood-alcohol level or other chemical use  
 26 by analysis of blood ~~or~~, breath or urine. A law enforcement  
 27 officer may determine which ~~type-of-test~~ types of tests will be  
 28 administered. The ~~result--of--a--test~~ results of tests taken  
 29 pursuant to this subsection is are not admissible at trial unless  
 30 the court is satisfied that probable cause exists, independent of  
 31 the test ~~result~~ results, to believe that the hunter or operator  
 32 was under the influence of intoxicating liquor or drugs or had an  
 33 excessive blood-alcohol level.

34 12. **Aid in enforcement among municipalities.** Except as  
 35 otherwise prohibited by municipal charter or ordinance,  
 36 municipalities may, in the manner provided by Title 30-A, section  
 37 2674, enter into agreements regarding mutual aid in enforcing  
 38 laws governing the hunting of wild animals or wild birds while  
 39 under the influence of intoxicating liquor or drugs or the  
 40 operation of a watercraft, snowmobile or ATV while under the  
 41 influence of intoxicating liquor or drugs.

42 **Sec. 14. 12 MRSA §7912, sub-§13 is enacted to read:**

43 **13. Reporting; immunity.** Immunity from certain criminal  
 44 and civil liabilities for the act of good faith reporting by  
 45 certain health care professionals on accidents that the reporting  
 46 person reasonably believes involved a person who was hunting or

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operating a snowmobile, ATV or watercraft while under the influence of intoxicating liquor or drugs is set forth in Title 29-A, section 2405.

Sec. 15. 15 MRSA §3103, sub-§1, ¶E, as amended by PL 1989, c. 599, §6, is further amended to read:

E. Offenses involving hunting or the operation or attempted operation of a watercraft, ATV or snowmobile while under the influence of intoxicating liquor or drugs, as defined in Title 12, section 7406, subsection 3; Title 12, section 7801, subsection 9, and; Title 12, section 7827, subsection 9; and Title 12, section 7857, subsection 10, respectively, and offenses involving failing to aid an injured person or to report a hunting accident as defined in Title 12, section 7406, subsection 15; and

Sec. 16. 29-A MRSA §2405, sub-§1, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

1. **Persons who may report.** If, while acting in a professional capacity, a medical or osteopathic physician, resident, intern, emergency medical services person, medical examiner, physician's assistant, dentist, dental hygienist, dental assistant or registered or licensed practical nurse knows or has reasonable cause to believe that a person has been operating a motor vehicle, hunting or operating a snowmobile, all-terrain vehicle or watercraft while under the influence of intoxicants and that motor vehicle, snowmobile, all-terrain vehicle or watercraft or a hunter has been involved in an accident, that person may report those facts to a law enforcement official.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.'

Further amend the bill by inserting at the end before the statement of fact the following:

**FISCAL NOTE**

This bill may increase prosecutions for Class C, D and E crimes. Sentences of more than 9 months imposed for Class C crimes must be served in a state correctional institution. The cost to the State per sentence is \$55,711 based upon an average length of stay of one year and 10 months. The State also must reimburse counties for sentences served in county jails of 9 months or less for Class C crimes.

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2 If a jail sentence is imposed for Class D and E crimes, the  
3 additional costs to the counties are estimated to be \$83.70 per  
4 day per prisoner. These costs are not reimbursed by the State.  
5 The number of prosecutions that may result in a jail sentence and  
6 the resulting costs to the county jail system are expected to be  
insignificant.

8 The Judicial Department may require additional General Fund  
9 appropriations to cover indigent defense costs related to these  
10 new cases. The amounts can not be estimated at this time. The  
11 additional workload and administrative costs associated with the  
12 minimal number of new cases filed in the court system can be  
13 absorbed within the budgeted resources of the Judicial  
14 Department. The collection of additional fines may also increase  
General Fund revenue by minor amounts.

16 The ineligibility of certain hunters convicted of hunting  
17 while intoxicated to obtain future hunting licenses may result in  
18 insignificant reductions of General Fund revenue from hunting  
19 license fees.'

22 **STATEMENT OF FACT**

24 This amendment is the majority report of the Joint Standing  
25 Committee on Inland Fisheries and Wildlife. The amendment  
26 replaces the bill and makes the bill an emergency.

28 The amendment increases from Class E to Class D the crimes  
29 of hunting while under the influence of intoxicating liquor or  
30 drugs and operating a snowmobile or all-terrain vehicle while  
31 under the influence of intoxicating liquor or drugs. Operating a  
32 watercraft while under the influence of intoxicating liquor or  
33 drugs has been a Class D crime since 1989. The amendment also  
34 sets the minimum penalties for those crimes equal to those that  
35 apply in current law to the crime of operating a watercraft while  
36 under the influence of intoxicating liquor or drugs.

38 The amendment keeps the existing 0.08% blood-alcohol content  
39 prohibition on hunting and operating a snowmobile, ATV or  
40 watercraft by persons 21 years of age or older, but prohibits a  
41 person younger than 21 from engaging in those activities while  
42 having any alcohol in the blood.

44 The amendment provides immunity from certain criminal and  
45 civil liability for certain health care professionals who  
46 voluntarily report on alcohol-related or drug-related hunting,  
47 snowmobile, ATV or watercraft accidents.

**COMMITTEE AMENDMENT**



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2           The amendment retains those provisions of the bill that  
allow additional types of drug and alcohol testing.

4           The amendment adds a fiscal note to the bill.