

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 904

S.P. 323

In Senate, March 21, 1995

**An Act to Increase the Penalties for Certain Crimes Involving Alcohol  
and Illegal Drugs.**

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Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script, reading "May M. Ross", is positioned above the printed name of the Secretary of the Senate.

MAY M. ROSS  
Secretary of the Senate

Presented by Senator O'DEA of Penobscot.  
Cosponsored by Senators: LAWRENCE of York, MILLS of Somerset, RAND of  
Cumberland, Representatives: AHEARNE of Madawaska, GREENLAW of Standish.

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

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

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

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

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

Sec. 3. 12 MRSA §7406, sub-§3, as repealed and replaced by PL 1991, c. 443, §21, is amended to read:

3. Hunting under the influence of intoxicating liquor or drugs. A person is guilty of a Class E D crime if that person hunts wild animals or wild birds:

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

B. While having 0.08% more than 0.00% or more by weight of alcohol in that person's blood.

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 or a combination of liquor and drugs. The duty to submit to a blood-alcohol test or a drug concentration test includes the duty to complete either a blood ~~or~~ breath or urine test. Tests and procedures for determining whether a person is under the influence of intoxicating liquor or drugs or a combination of liquor and drugs are governed by section 7912.

2           **Sec. 5. 12 MRSA §7827, sub-§9**, as repealed and replaced by PL  
1991, c. 443, §34, is amended to read:

4           **9. Operating a snowmobile under the influence of**  
6           **intoxicating liquor or drugs.** A person is guilty of a Class E D  
snowmobile: crime if that person operates or attempts to operate any

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

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

16           **Sec. 6. 12 MRSA §7827, sub-§9-A**, as enacted by PL 1991, c.  
443, §35, is amended to read:

18           **9-A. Failure to comply with duty to submit.** A person is  
20           guilty of failure to comply with the duty to submit to and  
complete a blood-alcohol or drug concentration test under section  
22           7828 if that person refuses to submit to or fails to complete a  
blood-alcohol or drug concentration test when requested to do so  
24           by a law enforcement officer who has probable cause to believe  
that the person operated or attempted to operate a snowmobile  
26           while under the influence of intoxicating liquor or drugs or a  
combination of intoxicating liquor and drugs.

28           **Sec. 7. 12 MRSA §7828**, as enacted by PL 1991, c. 443, §36, is  
amended to read:

30           **§7828. Implied consent to chemical tests**

32           Any person who operates or attempts to operate a snowmobile  
34           within this State has a duty to submit to a test to determine  
that person's blood-alcohol level or drug concentration by  
36           analysis of blood or, breath or urine if there is probable cause  
to believe that the person has operated or attempted to operate a  
38           snowmobile while under the influence of intoxicating liquor or  
drugs or a combination of liquor and drugs. The duty to submit  
40           to a blood-alcohol or drug concentration test includes the duty  
to complete either a blood or, breath or urine test. Tests and  
42           procedures applicable in determining whether a person is under  
the influence of intoxicating liquor or drugs or a combination of  
44           liquor and drugs are governed by section 7912.

46           **Sec. 8. 12 MRSA §7857, sub-§10**, as repealed and replaced by PL  
1991, c. 443, §37, is amended to read:

48           **10. Operating an ATV under the influence of intoxicating**  
50           **liquor or drugs.** A person is guilty of a Class E D crime if that  
person operates or attempts to operate any ATV:

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

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

10 **Sec. 9. 12 MRSA §7857, sub-§10-A**, as enacted by PL 1991, c.  
12 443, §38, is amended to read:

14 **10-A. Failure to comply with duty to submit.** A person is  
16 guilty of failure to comply with the duty to submit to and  
18 complete a blood-alcohol or drug concentration test under section  
20 7860 if that person refuses to submit to or fails to complete a  
22 blood-alcohol or drug concentration test when requested to do so  
24 by a law enforcement officer who has probable cause to believe  
26 that the person operated or attempted to operate an ATV while  
28 under the influence of intoxicating liquor or drugs or a  
30 combination of liquor and drugs.

32 **Sec. 10. 12 MRSA §7860**, as enacted by PL 1991, c. 443, §39,  
34 is amended to read:

36 **§7860. Implied consent to chemical tests**

38 Any person who operates or attempts to operate an ATV within  
40 this State has the duty to submit to a test to determine that  
42 person's blood-alcohol or drug concentration level by analysis of  
44 blood or, breath or urine if there is probable cause to believe  
46 that the person has operated or attempted to operate an ATV while  
48 under the influence of intoxicating liquor or drugs or a  
50 combination of liquor and 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. Tests and  
procedures applicable in determining whether a person is under  
the influence of intoxicating liquor or drugs or a combination of  
liquor and drugs are governed by section 7912.

**Sec. 11. 12 MRSA §7901, sub-§13**, as corrected by RR 1991, c.  
2, §39, is amended to read:

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

2 A. Except as provided in paragraph B, in the case of a  
4 person having no previous convictions of a violation of  
6 section 7801, subsection 9, section 7827, subsection 9 or  
8 section 7857, subsection 10 and having no previous  
10 adjudications of failure to comply with the duty to submit  
12 to and complete a blood-alcohol test under section 7802,  
14 subsection 5, section 7828 or section 7860 within a 6-year  
16 period, the fine shall may not be less than \$300. Beginning  
18 July 1, 1990, the penalties provided in this paragraph may  
20 not be suspended.

22 B. In the case of a person having no previous convictions  
24 of a violation of section 7801, subsection 9, section 7827,  
26 subsection 9 or section 7857, subsection 10 and having no  
28 previous adjudications of failure to comply with the duty to  
30 submit to and complete a blood-alcohol test under section  
32 7802, 7828 or 7860 within a 6-year period, the fine shall  
34 may not be less than \$300 and the sentence shall must  
36 include a period of incarceration of not less than 48 hours,  
which penalties may not be suspended, when the person:

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

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

38 C. In the case of a person having one previous conviction  
40 of a violation of section 7801, subsection 9, section 7827,  
42 subsection 9 or section 7857, subsection 10 or one previous  
44 adjudication of failure to comply with the duty to submit to  
46 and complete a blood-alcohol test under section 7802, 7828  
or 7860 within a 6-year period, the fine shall may not be  
less than \$500 and the sentence shall must include a period  
of incarceration of not less than 7 days, which penalties  
may not be suspended.

48 D. In the case of a person having 2 or more previous  
50 convictions of violations of section 7801, subsection 9,  
section 7827, subsection 9 and section 7857, subsection 10

2 or adjudications of failure to comply with the duty to  
submit to and complete a blood-alcohol test under section  
7802, 7828 or 7860 within a 6-year period, the fine shall  
4 may not be less than \$750 and the sentence shall must  
include a period of incarceration of not less than 30 days,  
6 which penalties may not be suspended.

8 E. In addition to the penalties provided under paragraphs C  
and D, the court may order the defendant to participate in  
10 the alcohol and other drug education, evaluation and  
treatment programs for multiple offenders administered by  
12 the ~~Department of Human Services~~ Office of Substance Abuse,  
as defined in Title 22 5, chapter ~~1602~~ 52.

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

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

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

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

42 In determining the appropriate sentence, the court shall consider  
44 the defendant's record of convictions for operating under the  
influence of intoxicating liquor or drugs or a combination of  
46 liquor and drugs and for failure to comply with the duty to  
submit. The court may rely upon oral representations based on  
48 records maintained by the courts, by the State Bureau of  
Identification, by the Secretary of State, including  
50 telecommunications of records maintained by the Secretary of

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

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

**Sec. 12. 12 MRSA §7901, sub-§17** is enacted to read:

**17. Penalties for hunting under the influence of intoxicating liquor or drugs.** A person who is guilty of hunting under the influence of intoxicating liquor or drugs or a combination of liquor and drugs, as defined in section 7406, subsection 3, commits a Class D crime. In determining an appropriate sentence, refusal to submit to a chemical test is an aggravating factor. In the following cases the following minimum penalties apply.

A. If, within a 6-year period, the person has no previous convictions for a violation of section 7406, subsection 3 and has no previous adjudications for failure to comply with the duty to submit to and complete a blood-alcohol or other chemical test under section 7408, the fine may not be less than \$300 and the sentence must include a period of incarceration of not less than 48 hours. Neither the fine nor the period of incarceration may be suspended.

B. If, within a 6-year period, the person has one previous conviction for a violation of section 7406, subsection 3 or has one previous adjudication for failure to comply with the duty to submit to and complete a blood-alcohol or other chemical test under section 7408, the fine may not be less than \$500 and the sentence must include a period of incarceration of not less than 7 days. Neither the fine nor the period of incarceration may be suspended.

C. If, within a 6-year period, the person has any combination, that total 2 or more, of previous convictions for violations of section 7406, subsection 3 or adjudications for failure to comply with the duty to submit to and complete a blood-alcohol or other chemical test under section 7408, the fine may not be less than \$750 and the sentence must include a period of incarceration of not less



than 30 days. Neither the fine nor the period of incarceration may be suspended.

D. In addition to the penalties provided under paragraphs B and C, the court may order the person to participate in the alcohol and other drug education and treatment programs for multiple offenders administered by the Office of Substance Abuse, as described in Title 5, chapter 521.

E. Notwithstanding this subsection, if the State pleads and proves that the person, while hunting in violation of this section, caused serious bodily injury to another person as defined in Title 17-A, section 2, subsection 23 or caused the death of another person, the violation is a Class C crime. The minimum penalties specified in this subsection apply except that the minimum period of suspension of the person's hunting license is 18 months unless a longer minimum period is otherwise required.

The alternatives defined in section 7406, subsection 3, paragraphs A and B may be pleaded in the alternative.

For the purposes of this section, a prior conviction has occurred within the 6-year period if the date of docket entry by the clerk of a judgment of conviction or adjudication is 6 years or less from the date of the new conduct that is penalized.

In determining the appropriate sentence the court shall consider the defendant's record of convictions for hunting under the influence of intoxicating liquor or drugs or a combination of liquor and drugs and for failure to comply with the duty to submit. The court may rely upon oral representatives based on records maintained by the courts, the State Bureau of Identification, by the Secretary of State, including records maintained by the Secretary of State and electronically transmitted to the court. If the defendant disputes the accuracy of any representation concerning a conviction or adjudication, the court shall grant a continuance for the purpose of determining the accuracy of the records.

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

**Sec. 13. 12 MRSA §7910, sub-§1, ¶A,** as amended by PL 1989, c. 918, Pt. D, §13 and affected by §20, is further amended to read:

2 A. All fees, fines, penalties, officers' costs, surcharges  
and all other money received, collected or recovered by the  
4 court or the department under any provisions of chapters 701  
to 721, except section 7109; sections 7361 to 7370-A;  
6 sections 7751 to 7756; section 7800, subsection 3; section  
7824, subsection 3; and section 7854, subsection 4; and  
section 7912, subsection 9;

8  
10 **Sec. 14. 12 MRSA §7912, sub-§§2, 4, 5, 7 and 9 to 12,** as amended by  
PL 1991, c. 443, §42, are further amended to read:

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

26 No test results may be excluded as evidence in any proceeding  
before any administrative officer or court of this State as a  
28 result of the failure of the law enforcement officer to comply  
with these prerequisites. The only effects of the failure of the  
30 officer to comply with the prerequisites are as provided in  
subsection 7.

32  
34 **4. Blood-alcohol level.** The following percentages by  
weight of alcohol in the defendant's blood have the following  
evidentiary effect.

36  
38 A. If there was, at the time alleged, ~~0.05%~~ 0.02% or less  
by weight of alcohol in the defendant's blood, it is prima  
facie evidence that the defendant was not under the  
40 influence of intoxicating liquor.

42 B. If there was, at the time alleged, in excess of ~~0.05%~~  
0.02% but less than ~~0.08%~~ 0.05% by weight of alcohol in the  
44 defendant's blood, it is relevant evidence, but it is not to  
be given prima facie effect in indicating whether or not the  
46 defendant was under the influence of intoxicating liquor  
within the meaning of this section, but that fact may be  
48 considered with other competent evidence in determining  
whether or not the defendant was under the influence of  
50 intoxicating liquor.

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

8  
10 (1) The person, while hunting, has a blood-alcohol  
level more than 0.00% by weight; or

12 (2) The person, while operating or attempting to  
14 operate an ATV, snowmobile or watercraft, has a  
blood-alcohol level:

16 (a) Equal to or more than 0.05% by weight if the  
18 person is 21 years of age or older; or

20 (b) More than 0.00% by weight if the person is  
less than 21 years of age.

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

24  
26 **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  
28 ~~this~~ each purpose by the Department of Human Services under  
certification standards set by that department.

30  
32 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,  
34 acting at the request of a law enforcement officer, may draw a  
specimen of blood to determine the blood-alcohol level or drug  
36 concentration of a person who is complying with the duty to  
submit to a ~~blood-alcohol~~ chemical test. This limitation does  
38 not apply to the taking of breath or urine specimens. When a  
person draws a specimen of blood at the request of a law  
40 enforcement officer, that person may issue a certificate that  
states that the person is in fact a duly licensed or certified  
42 person as required by this subsection and that the person  
followed the proper procedure for drawing a specimen of blood to  
44 determine the blood-alcohol level or drug concentration. That  
certificate, when duly signed and sworn to by the person, is  
46 admissible as evidence in any court of the State. It is prima  
facie evidence that the person was duly licensed or certified and  
48 that the person followed the proper procedure for drawing a  
specimen of blood ~~to determine the blood-alcohol level~~ for  
50 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.

A law enforcement officer may take a sample specimen of the breath or urine of any person whom the officer has probable cause to believe hunted wild animals or wild birds or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs or a combination of liquor and drugs and who is complying with the duty to submit to and complete a blood-alcohol chemical test. The sample specimen must 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 or drug concentration of that sample.

Only equipment approved by the Department of Human Services may be used by a law enforcement officer to take a sample specimen of the defendant's breath or urine for submission to the Department of Human Services or a person certified by the Department of Human Services for the purpose of conducting tests of the sample specimen to determine the blood-alcohol level or drug concentration of that sample. Approved equipment must 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 must 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 or urine.

As an alternative to the method of breath testing described in this subsection, a law enforcement officer may test the breath of any person whom the officer has probable cause to believe hunted wild birds or wild animals or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor, or drugs or a combination of liquor and drugs 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 must be as provided by rule adopted by the Department of Human Services. The result of any such test must be accepted as prima facie evidence of the blood-alcohol level in any court.

Approved self-contained, breath-alcohol testing apparatuses must have a stamp of approval affixed by the Department of Human Services after periodic testing. That stamp of approval is valid for a limited period of no more than one year. Testimony or other evidence that the equipment was bearing the stamp of

2 approval must be accepted in court as prima facie evidence that  
the equipment was approved by the Department of Human Services  
4 for use by the law enforcement officer to collect and analyze a  
sample specimen of the defendant's breath.

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

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

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

24 **7. Evidence.** The drug concentration or percentage by  
weight of alcohol in the defendant's blood at the time alleged,  
26 as shown by the chemical analysis of the defendant's blood or,  
breath or urine or by results of a self-contained, breath-alcohol  
28 testing apparatus authorized by subsection 5 is admissible in  
evidence.

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

2 which the certificate constitutes prima facie evidence. The  
notice must specify those matters concerning which the defendant  
requests testimony.

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

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

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

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

44 **9. Payment for tests.** Persons authorized to take specimens  
of blood at the direction of a law enforcement officer and  
46 persons authorized to perform chemical tests of specimens of  
blood or breath must be paid from the General Fund or from  
48 dedicated revenues of the Department of Inland Fisheries and  
Wildlife when a law enforcement officer of the Department of  
50 Inland Fisheries and Wildlife authorizes the chemical tests. The

2 Department of Marine Resources shall pay for chemical tests  
authorized by marine patrol officers with funds available within  
that department.

4  
6 A surcharge of \$30 must be added to every fine or penalty imposed  
8 by any court in the State pursuant to this section, except that  
10 the surcharge is \$125 when a person hunted wild animals or wild  
12 birds or operated or attempted to operate an ATV, snowmobile or a  
14 watercraft while under the influence of liquor or drugs or a  
16 combination of liquor and drugs. For the purposes of collection,  
18 the surcharge is considered part of the fine or penalty. For the  
20 purpose of covering the costs associated with the administration  
22 and analysis of chemical tests:

14 A. All surcharge funds collected as a result of a game  
16 warden's authorization for the chemical test accrue to the  
18 Department of Inland Fisheries and Wildlife; and

18 B. All surcharge funds collected as a result of a marine  
20 patrol officer's authorization for the chemical test accrue  
22 to the Department of Marine Resources.

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

26 A. After a person has been charged with hunting wild  
28 animals or wild birds or with operating or attempting to  
operate a watercraft, snowmobile or ATV while under the  
influence of intoxicating liquor or drugs or a combination  
30 of liquor and drugs or with an excessive blood-alcohol  
level, the investigating or arresting officer shall  
32 investigate to determine whether the charged person has any  
previous convictions of a violation of section 7406,  
34 subsection 3; section 7801, subsection 9; section 7827,  
subsection 9; or section 7857, subsection 10 or  
36 adjudications for failure to comply with the duty to submit  
to and complete a ~~blood-alcohol~~ chemical test under section  
38 7408, 7802, 7828 or 7860. As part of that investigation,  
the officer shall review the records maintained by the  
40 courts, the State Bureau of Identification, the Secretary of  
State, including telecommunications of records maintained by  
42 the Secretary of State, or the Department of Inland  
Fisheries and Wildlife.

44 B. A law enforcement officer may arrest, without a warrant,  
46 any person whom the officer has probable cause to believe  
hunted any wild animal or wild bird or operated or attempted  
48 to operate a watercraft, snowmobile or ATV while under the  
influence of intoxicating liquor or drugs or a combination  
50 of liquor and drugs if the arrest occurs within a period

2 following the offense reasonably likely to result in the  
obtaining of probative evidence of blood-alcohol level or  
4 other illegal chemical use.

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

22 **12. Aid in enforcement among municipalities.** Except as  
otherwise prohibited by municipal charter or ordinance,  
24 municipalities may, in the manner provided by Title 30-A, section  
2674, enter into agreements regarding mutual aid in enforcing  
26 laws governing the hunting of wild animals or wild birds while  
under the influence of intoxicating liquor or drugs or a  
28 combination of liquor and drugs or the operation of a watercraft,  
snowmobile or ATV while under the influence of intoxicating  
30 liquor or drugs or a combination of liquor and drugs.

32 **Sec. 15. 12 MRSA §7912, sub-§§13 and 14** are enacted to read:

34 **13. Mandatory reporting.** If, while acting in a  
professional capacity, a medical or osteopathic physician,  
36 resident, intern, emergency medical services person, medical  
examiner, physician's assistant, dentist, dental hygienist,  
38 dental assistant or registered or licensed practical nurse knows  
or has reasonable cause to believe that a person has been hunting  
40 wild animals or wild birds or operating a motor vehicle,  
snowmobile, all-terrain vehicle or watercraft while under the  
42 influence of intoxicating liquor or drugs or a combination of  
liquor and drugs, and that person has been involved in an  
44 accident, the medical or osteopathic physician, resident, intern,  
emergency medical services person, medical examiner, physician's  
46 assistant, dentist, dental hygienist, dental assistant or  
registered or licensed practical nurse shall immediately report  
48 or cause a report to be made to a law enforcement officer.



2     The physician-patient privileges under the Maine Rules of  
4     Evidence and the confidential quality of communication under  
6     Title 24-A, section 4224 and Title 32, section 1092-A are  
   abrogated in relation to required reporting or other proceeding.  
   Failure to make a report as required by this subsection is a  
   Class E crime.

8         **14. Immunity from liability.** A person participating in  
10     good faith in reporting under this section, or in participating  
12     in a related proceeding, is immune from criminal or civil  
14     liability for the act of reporting or participating in the  
   proceeding. This section may not be construed to bar criminal or  
   civil action regarding perjury. In a proceeding regarding  
   immunity from liability, there is a rebuttable presumption of  
   good faith.

## 20                                   **STATEMENT OF FACT**

22         This bill changes the classification of crimes committed  
24     while hunting under the influence of alcohol or drugs and  
   operating watercrafts, snowmobiles and ATV's under the influence  
   of alcohol and drugs from Class E to Class D crimes and increases  
   the types of drug and alcohol testing that may be used.