

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 1937

S.P. 691

In Senate, March 18, 1999

**An Act to Allow the State to Obtain a Defendant's Medical Records in  
Cases Involving OUI.**

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator HARRIMAN of Cumberland.

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

2           **Sec. 1. 16 MRSA §357**, as amended by PL 1987, c. 791, §3, is  
4 further amended to read:

6           **§357. Hospital records and copies of records**

8           Records kept by hospitals and other medical facilities  
10 licensed under the laws of this State and records which ~~that~~ the  
12 court finds are required to be kept by the laws of any other  
14 state or territory, or the District of Columbia, or by the laws  
16 and regulations of the United States of America pertaining to the  
18 Department of National Defense and the Veterans Administration,  
20 by hospitals and other medical facilities similarly conducted or  
22 operated or which ~~that~~, being incorporate, offer treatment free  
24 of charge, ~~shall-be~~ are admissible, as evidence in the courts of  
26 this State so far as ~~sueh~~ those records relate to the treatment  
28 and medical history of such cases and the court shall admit  
copies of ~~sueh~~ those records, if certified by the persons ~~in with~~  
custody ~~thereof~~ of those records to be true and complete, but  
nothing ~~therein~~ contained shall-be in those records is admissible  
as evidence which ~~that~~ has reference to the question of  
liability. Copies of photographic or microphotographic records ~~se~~  
kept by hospitals and medical facilities, when duly certified by  
the person in charge of the hospital and other medical facility,  
shall ~~must~~ be admitted in evidence equally with the original  
photographs or microphotographs.

Notwithstanding this section, the result of a laboratory or  
any other test kept by a hospital or other medical facility,  
which ~~that~~ reflects blood-alcohol concentration, ~~shall~~ must be  
available to the State in a criminal proceeding through ordinary  
discovery procedures despite any claim of confidentiality or  
privilege, and may not be excluded as evidence in a criminal or  
civil proceeding by reason of any claim of confidentiality or  
privilege and may be admitted provided--that if the result is  
relevant and reliable evidence if the proceeding is one in which  
the operator of a motor vehicle or watercraft is alleged to have  
operated under the influence of intoxicating liquor or drugs, and  
the court is satisfied that probable cause exists to believe that  
the operator committed the offense charged. If a defendant  
denies culpability for any charged crime involving operation of a  
motor vehicle or watercraft while under the influence of  
intoxicating liquor or drugs, and if the court is satisfied that  
probable cause exists to believe that the operator committed the  
offense charged, the defendant's medical records reflecting  
medical treatment resulting from that operation of a motor  
vehicle or watercraft must be available to the State through  
ordinary discovery procedures and the defendant is deemed to have

2 waived any claim of privilege or confidentiality regarding those  
3 medical records.

4

#### 5 **SUMMARY**

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7 This bill allows the hospital records of a defendant that  
8 contain blood-alcohol results to be available to the State  
9 through ordinary discovery procedures.

10

11 This bill also allows the discovery of any medical records  
12 related to the treatment of an injury suffered by a defendant who  
13 is charged with operating a motor vehicle or watercraft while  
14 intoxicated if the defendant denies culpability for the accident  
that caused the injury.