

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1078

H.P. 796

House of Representatives, March 6, 2007

An Act To Amend the OUI Laws Regarding the Use of Immunoassays

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CLEARY of Houlton.
Cosponsored by Senator MARTIN of Aroostook and
Representatives: EATON of Sullivan, TARDY of Newport, Senator: SHERMAN of
Aroostook.

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

2 **Sec. 1. 29-A MRSA §2431**, as amended by PL 2005, c. 606, Pt. B, §5, is further
3 amended to read:

4 **§2431. Evidentiary rules**

5 **1. Test results.** Test results showing ~~drug concentrations~~ urine-drug level or blood-
6 drug level or blood-alcohol level at the time alleged are admissible in evidence. Failure
7 to comply with the provisions of sections 2521 and 2523 may not, by itself, result in the
8 exclusion of evidence of blood-alcohol level or ~~drug concentration~~ urine-drug level or
9 blood-drug level, unless the evidence is determined to be not sufficiently reliable.

10 **2. Analysis of blood, breath and urine.** The following provisions apply to the
11 analysis of blood, breath and urine, and the use of that analysis as evidence.

12 A. A person certified in accordance with section 2524 conducting a chemical
13 analysis of blood, breath or urine to determine blood-alcohol level or drug
14 concentration may issue a certificate stating the results of the analysis.

15 A-1. A person certified in accordance with section 2524 performing an approved
16 immunoassay detection test for urine-drug level may issue a certificate stating the
17 results of the test.

18 B. A person qualified to operate a self-contained, breath-alcohol testing apparatus
19 may issue a certificate stating the results of the analysis.

20 C. A certificate issued in accordance with paragraph A, A-1 or B, when duly signed
21 and sworn, is prima facie evidence that:

- 22 (1) The person taking the specimen was authorized to do so;
- 23 (2) Equipment, chemicals and other materials used in the taking of the specimen
24 were of a quality appropriate for the purpose of producing reliable test results;
- 25 (3) Equipment, chemicals or materials required to be approved by the
26 Department of Health and Human Services were in fact approved;
- 27 (4) The sample tested was in fact the same sample taken from the defendant; and
- 28 (5) The blood-alcohol level or drug concentration in the blood of the defendant
29 at the time the sample was taken was as stated in the certificate.

30 D. With 10 days written notice to the prosecution, the defendant may request that a
31 qualified witness testify to the matters of which the certificate constitutes prima facie
32 evidence. The notice must specify those matters concerning which the defendant
33 requests testimony. The certificate is not prima facie evidence of those matters.

34 E. A person drawing a specimen of blood may issue a certificate that states that the
35 person is in fact duly licensed or certified and that the proper procedure for drawing a
36 specimen of blood was followed. That certificate, when signed and sworn to by the
37 person, is prima facie evidence of its contents unless, with 10 days' written notice to
38 the prosecution, the defendant requests that the person testify.

- 1 F. Evidence that the breath or urine sample was in a sealed carton bearing the
2 Department of Health and Human Services' stamp of approval is prima facie evidence
3 that the equipment was approved by the Department of Health and Human Services.
- 4 G. The results of a self-contained breath-alcohol apparatus test is prima facie
5 evidence of blood-alcohol level.
- 6 H. Evidence that the self-contained breath-alcohol testing equipment bearing the
7 Department of Health and Human Services' stamp of approval is prima facie evidence
8 that the equipment was approved by the Department of Health and Human Services.
- 9 I. Evidence that materials used in operating or checking the operation of the self-
10 contained breath-alcohol testing equipment bore a statement of the manufacturer or of
11 the Department of Health and Human Services is prima facie evidence that the
12 materials were of the composition and quality stated.
- 13 J. Transfer of sample specimens to and from a laboratory for purposes of analysis
14 by certified or registered mail complies with all requirements regarding the continuity
15 of custody of physical evidence.
- 16 K. The prosecution is not required to produce expert testimony regarding the
17 functioning of self-contained breath-alcohol testing apparatus before test results are
18 admissible, if sufficient evidence is offered to satisfy paragraphs H and I.
- 19 L. Evidence that materials used in the collection and performance of an approved
20 immunoassay detection test of urine were provided by the Department of Health and
21 Human Services is prima facie evidence that the materials were of the composition
22 and quality stated by the manufacturer and are of a quality appropriate for the
23 purpose of producing reliable test results.
- 24 M. A photograph, digital image or photocopy of an approved immunoassay detection
25 test clearly showing the results of the test is prima facie evidence of the results.
- 26 N. The results of an approved immunoassay detection test are prima facie evidence
27 of urine-drug level.
- 28 O. The defendant and the prosecution are not required to produce expert testimony
29 regarding the functioning of an approved immunoassay detection test before test
30 results are admissible, if sufficient evidence is offered to show that the test kit was an
31 approved test kit provided by the Department of Health and Human Services.
- 32 **3. Failure as evidence.** Failure of a person to submit to a chemical test is admissible
33 in evidence on the issue of whether that person was under the influence of intoxicants.
- 34 If the law enforcement officer fails to give the required warnings, the failure of the person
35 to submit to a chemical test is not admissible, except when a test was required under
36 section 2522.
- 37 If a failure to submit to a chemical test is not admitted into evidence, the court may
38 inform the jury that no test result is available.
- 39 If a test result is not available for a reason other than failing to submit to a chemical test,
40 the unavailability and the reason ~~is~~ are admissible in evidence.

