

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Date: (Filing No. H-)

CRIMINAL JUSTICE AND PUBLIC SAFETY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1161, L.D. 1590, Bill, “An Act To Amend the Operating-under-the-influence Laws”

Amend the bill by inserting after the enacting clause and before section 1 the following:

Sec. 1. 29-A MRSA §2401, sub-§3, as amended by PL 2009, c. 447, §33, is further amended to read:

3. Chemical test or test. "Chemical test" or "test" means a test or tests used to determine alcohol level or the presence of a drug concentration or drug metabolite by analysis of blood, breath or urine.

Sec. 2. 29-A MRSA §2411, sub-§4, as amended by PL 2009, c. 447, §40, is further amended to read:

4. Arrest. A law enforcement officer may arrest, without a warrant, a person the officer has probable cause to believe has operated a motor vehicle while under the influence of intoxicants if the arrest occurs within a period following the offense reasonably likely to result in the obtaining of probative evidence of an alcohol level or the presence of a drug concentration or drug metabolite.

Sec. 3. 29-A MRSA §2431, sub-§2, as amended by PL 2009, c. 447, §§45 to 47, is further amended to read:

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

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

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

COMMITTEE AMENDMENT

- 1 C. A certificate issued in accordance with paragraph A or B, when duly signed and
2 sworn, is prima facie evidence that:
- 3 (1) The person taking the specimen was authorized to do so;
- 4 (2) ~~Equipment, chemicals and other materials~~ Materials used in the taking of the
5 specimen were of a quality appropriate for the purpose of producing reliable test
6 results as determined by the Department of Health and Human Services;
- 7 (3) ~~Equipment, chemicals or materials~~ Materials required to be approved by the
8 Department of Health and Human Services were in fact approved;
- 9 (4) The sample tested was in fact the same sample taken from the defendant; and
- 10 (5) The alcohol level or the presence of a drug concentration or drug metabolite
11 in the blood or urine of the defendant at the time the sample was taken was as
12 stated in the certificate.
- 13 D. With 10 days written notice to the prosecution, the defendant may request that a
14 qualified witness testify to the matters of which the certificate constitutes prima facie
15 evidence. The notice must specify those matters concerning which the defendant
16 requests testimony. The certificate is not prima facie evidence of those matters.
- 17 E. A person drawing a specimen of blood may issue a certificate that states that the
18 person is in fact ~~duly licensed or certified~~ qualified under section 2524 and that the
19 proper procedure for drawing a specimen of blood was followed. That certificate,
20 when signed and sworn to by the person, is prima facie evidence of its contents
21 unless, with 10 days' written notice to the prosecution, the defendant requests that the
22 person testify.
- 23 F. Evidence that the ~~breath or~~ urine sample was in a sealed carton bearing the
24 Department of Health and Human Services' stamp of approval is prima facie evidence
25 that the equipment was approved by the Department of Health and Human Services.
- 26 G. The results of a self-contained breath-alcohol apparatus test is prima facie
27 evidence of an alcohol level.
- 28 H. Evidence that the self-contained breath-alcohol testing equipment bearing the
29 Department of Health and Human Services' stamp of approval is prima facie evidence
30 that the equipment was approved by the Department of Health and Human Services.
- 31 I. Evidence that materials used in operating or checking the operation of the self-
32 contained breath-alcohol testing equipment bore a statement of the manufacturer or of
33 the Department of Health and Human Services is prima facie evidence that the
34 materials were of the composition and quality stated.
- 35 J. Transfer of sample specimens to and from a laboratory for purposes of analysis by
36 certified or registered mail complies with all requirements regarding the continuity of
37 custody of physical evidence.
- 38 K. The prosecution is not required to produce expert testimony regarding the
39 functioning of self-contained breath-alcohol testing apparatus before test results are
40 admissible, if sufficient evidence is offered to satisfy paragraphs H and I.

1 **Sec. 4. 29-A MRSA §2432, sub-§4**, as enacted by PL 2011, c. 335, §4, is
2 amended to read:

3 **4. Confirmed presence of drug or drug metabolite.** If a person has a trace amount
4 of any drug or the metabolites of any drug ~~at detectable concentration levels~~ within the
5 person's blood or urine in accordance with the drug reporting rules, standards, procedures
6 and protocols adopted by the Department of Health and Human Services, it is admissible
7 evidence, but not prima facie, indicating whether that person is under the influence of
8 intoxicants to be considered with other competent evidence, including evidence of
9 alcohol level.'

10 Amend the bill by inserting after section 2 the following:

11 **'Sec. 3. 29-A MRSA §2521, sub-§1**, as amended by PL 2009, c. 447, §66, is
12 further amended to read:

13 **1. Mandatory submission to test.** If there is probable cause to believe a person has
14 operated a motor vehicle while under the influence of intoxicants, that person shall
15 submit to and complete a test to determine an alcohol level and the presence of a drug
16 ~~concentration~~ or drug metabolite by analysis of blood, breath or urine.

17 **Sec. 4. 29-A MRSA §2521, sub-§2**, as enacted by PL 1993, c. 683, Pt. A, §2 and
18 affected by Pt. B, §5, is amended to read:

19 **2. Type of test.** A law enforcement officer shall administer a breath test unless, in
20 that officer's determination, a breath test is unreasonable.

21 ~~The law enforcement officer may determine which type of breath test is to be~~
22 ~~administered.~~

23 ~~Another~~ If a breath test is determined to be unreasonable, another chemical test must be
24 administered in place of a breath test.

25 For a blood test the operator may choose a physician, if reasonably available.

26 **Sec. 5. 29-A MRSA §2522, sub-§1**, as amended by PL 2009, c. 447, §67, is
27 further amended to read:

28 **1. Mandatory submission to test.** If there is probable cause to believe that death
29 has occurred or will occur as a result of an accident, an operator of a motor vehicle
30 involved in the motor vehicle accident shall submit to a chemical test, as defined in
31 section 2401, subsection 3, to determine an alcohol level or the presence of a drug
32 ~~concentration~~ or drug metabolite in the same manner as for OUI.

33 **Sec. 6. 29-A MRSA §2523, sub-§1**, as amended by PL 2009, c. 447, §68, is
34 further amended to read:

35 **1. Mandatory submission to test.** A person who operates a commercial motor
36 vehicle shall submit to a test to determine that person's alcohol level or the presence of a
37 ~~drug concentration~~ or drug metabolite if there is probable cause to believe that the person
38 has operated a commercial motor vehicle while having an alcohol level of 0.04 grams or
39 more of alcohol per 100 milliliters of blood or 210 liters of breath or while under the
40 influence of drugs.

1 **Sec. 7. 29-A MRSA §2524**, as amended by PL 2009, c. 447, §§70 and 71, is
2 further amended to read:

3 **§2524. Administration of tests**

4 **1. Persons qualified to draw blood for blood tests.** Only a physician, registered
5 physician's assistant, registered nurse, or person whose occupational license or training
6 allows that person to draw blood samples ~~or a person certified by the Department of~~
7 ~~Health and Human Services~~ may draw a specimen of blood for the purpose of
8 determining the blood-alcohol level or the presence of a drug concentration or drug
9 metabolite.

10 **2. Persons qualified to analyze blood for blood tests.** A person conducting an
11 analysis of blood-alcohol level or the presence of a drug concentration or drug metabolite
12 must be certified by the Department of Health and Human Services.

13 **3. Persons qualified to operate and analyze breath tests.** A person certified by the
14 Maine Criminal Justice Academy as qualified to operate an approved self-contained,
15 breath-alcohol testing apparatus may operate an apparatus to collect and analyze a sample
16 specimen of breath.

17 **4. Chemical tests on blood and urine specimens.** A sample specimen of ~~breath~~
18 blood or urine may be submitted to the Department of Health and Human Services or a
19 person certified by the Department of Health and Human Services for the purpose of
20 conducting chemical tests to determine alcohol level or the presence of a drug
21 concentration or drug metabolite.

22 **5. Equipment for taking specimens.** ~~Only equipment~~ For purposes of this section,
23 only collection kits having a stamp of approval affixed by the Department of Health and
24 Human Services may be used to take a sample specimen of ~~breath~~ blood or urine, except
25 that a self-contained, breath-alcohol testing apparatus if reasonably available may be used
26 to determine the alcohol level.

27 Approved breath-alcohol testing apparatus must have a stamp of approval affixed by the
28 Department of Health and Human Services after periodic testing. That stamp is valid for
29 no more than one year.

30 **6. Procedures for operation and testing of testing apparatus.** The Department of
31 Health and Human Services shall establish, by rule, the procedures for the operation and
32 testing of testing apparatus.

33 **Sec. 8. 29-A MRSA §2528**, as enacted by PL 1993, c. 683, Pt. A, §2 and affected
34 by Pt. B, §5 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

35 **§2528. Liability**

36 A physician, physician's assistant, registered nurse, person ~~certified by the~~
37 ~~Department of Health and Human Services~~ whose occupational license or training allows
38 that person to draw blood, hospital or other health care provider in the exercise of due
39 care is not liable for an act done or omitted in collecting or withdrawing specimens of
40 blood at the request of a law enforcement officer pursuant to this chapter.'

1 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
2 section number to read consecutively.

3 **SUMMARY**

4 This amendment does the following:

5 1. It removes references to "breath" from the evidentiary rules because police no
6 longer use balloon kits for breath analysis; police now use a self-contained, breath-
7 alcohol testing apparatus;

8 2. It amends the law governing the administration of tests for the presence of drugs
9 to remove antiquated references to drug "concentrations" and replace them with "the
10 presence of drugs or drug metabolites." The inclusion of metabolites conforms this
11 section of law with other laws pertaining to drug testing; and

12 3. It removes a reference to the Department of Health and Human Services in the
13 statute that provides liability protection for people who draw blood at the request of a law
14 enforcement officer because the department no longer certifies this group of people. It
15 also explicitly provides liability protection for people whose occupational license or
16 training allows them to draw blood.

17 **FISCAL NOTE REQUIRED**

18 **(See attached)**