

§10703. Administering chemical tests; test results; evidence; reporting; immunity

1. Blood or breath test. If the law enforcement officer has probable cause to believe a person hunted wild animals or wild birds or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor, then the officer shall inform the person that a breath test will be administered, unless, in the determination of the officer, it is unreasonable for a breath test to be administered, in which case a blood test must be administered. The law enforcement officer may determine which type of breath test, as described in subsection 5, will be administered. [PL 2019, c. 452, §2 (AMD).]

2. Prerequisites to tests. The law enforcement officer shall inform the person to be tested of the consequences of refusing to comply with the test. If the person fails to comply with the duty to submit to and complete the requested chemical tests at the direction of the law enforcement officer, that person is committing a civil violation for which the person may be required to pay a fine of up to \$500. The officer shall also inform the person that the failure to comply with the duty to submit to a 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.

Test results may not be excluded as evidence in any proceeding before any administrative officer or court of this State as a result of the failure of the law enforcement officer 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.

[PL 2019, c. 452, §3 (AMD).]

3. Results of test. Upon the request of the person who submits to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests must be made available to that person or that person's attorney by the law enforcement officer.

[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

4. Alcohol level. The following quantities of alcohol in the defendant's blood or breath have the following evidentiary effect.

A. If, at the time alleged, a defendant who was 21 years of age or older at the time of arrest had an alcohol level of 0.05 grams or less of alcohol per 100 milliliters of blood or 210 liters of breath, it is prima facie evidence that the defendant was not under the influence of intoxicating liquor. [PL 2009, c. 447, §11 (AMD).]

B. If, at the time alleged, a defendant who was 21 years of age or older at the time of the arrest had an alcohol level in excess of 0.05 grams of alcohol but less than 0.08 grams of alcohol per 100 milliliters of blood or 210 liters of breath, 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. [PL 2019, c. 452, §4 (AMD).]

C. For purposes of evidence in proceedings other than those arising under section 10701, subsection 1-A, it is presumed that a person was under the influence of intoxicating liquor when that person has:

(1) For a person 21 years of age or older, an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; and

(2) For a person less than 21 years of age, an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath. [PL 2009, c. 447, §11 (AMD).]

D. [PL 2009, c. 447, §11 (RP).]

[PL 2019, c. 452, §4 (AMD).]

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

A. Only a physician, licensed physician assistant, registered nurse or person whose occupational license or training allows that person to draw blood samples may draw a specimen of blood for the purpose of determining the blood-alcohol level or the presence of a drug or drug metabolite. 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 an 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 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. [PL 2019, c. 627, Pt. B, §2 (AMD).]

B. 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 and who is complying with the duty to submit to and complete a chemical test. The sample specimen must be submitted to the Department of Health and Human Services or a person certified by the Department of Health and Human Services for the purpose of conducting chemical tests of the sample specimen to determine an alcohol level or drug concentration of that sample. [PL 2009, c. 447, §12 (AMD).]

C. Only equipment approved by the Department of Health and 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 Health and Human Services or a person certified by the Department of Health and Human Services for the purpose of conducting tests of the sample specimen to determine an alcohol level or drug concentration of that sample. Approved equipment must have a stamp of approval affixed by the Department of Health and 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 Health and Human Services for use by the law enforcement officer to take the sample specimen of the defendant's breath or urine. [PL 2009, c. 447, §12 (AMD).]

D. 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, by use of a self-contained, breath-alcohol testing apparatus to determine an alcohol level, as long as 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 Health and Human Services. The result of any such test must be accepted as prima facie evidence of an alcohol level in any court. [PL 2009, c. 447, §12 (AMD).]

E. Approved self-contained, breath-alcohol testing apparatuses must have a stamp of approval affixed by the Department of Health and 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 approval must be accepted in court as prima facie evidence that the equipment was approved by the Department of Health and Human Services for use by the law enforcement officer to collect and analyze a sample specimen of the defendant's breath. [PL

2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF); PL 2003, c. 689, Pt. B, §6 (REV).]

F. Failure to comply with any provision of this subsection or with any rule adopted under this subsection does not, by itself, result in the exclusion of evidence of an alcohol level or drug concentration, unless the evidence is determined to be not sufficiently reliable. [PL 2009, c. 447, §12 (AMD).]

G. Testimony or other evidence that any materials used in operating or checking the operation of the equipment were bearing a statement of the manufacturer or of the Department of Health and Human Services must be accepted in court as prima facie evidence that the materials were of a composition and quality as stated. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF); PL 2003, c. 689, Pt. B, §6 (REV).]

H. A person certified by the Maine Criminal Justice Academy, under certification standards set by the academy, as qualified to operate approved self-contained, breath-alcohol testing apparatuses may operate those apparatuses to collect and analyze a sample specimen of a defendant's breath. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]
[PL 2019, c. 627, Pt. B, §2 (AMD).]

6. Liability. Only a physician, licensed physician assistant, registered nurse or person whose occupational license or training allows that person to draw blood samples or other health care provider in the exercise of due care is not liable in damages or otherwise for any act done or omitted in performing the act of collecting or withdrawing specimens of blood at the request of a law enforcement officer pursuant to this section.
[PL 2019, c. 627, Pt. B, §3 (AMD).]

7. Evidence. The defendant's alcohol level at the time alleged and the concentration of drugs at the time alleged, as shown by the chemical analysis of the defendant's blood, breath or urine or by any test authorized by subsection 5 is admissible in evidence.

A. When a person certified under subsection 5 conducts a chemical analysis of blood, breath or urine to determine an alcohol level or drug concentration, the person conducting the analysis may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, is admissible in evidence in any court of the State. It is prima facie evidence that the person taking a specimen of blood or urine was a person authorized by subsection 5; that the equipment, chemicals and other materials used in the taking of the blood or urine specimen or a breath sample were of a quality appropriate for the purpose of producing reliable test results; that any equipment, chemicals or materials required by subsection 5 to be approved by the Department of Health and Human Services were in fact approved; that the sample tested by the person certified under subsection 5 was in fact the same sample taken from the defendant; and that the drug concentration in the defendant's blood or the defendant's alcohol level was, at the time the blood, breath or urine sample was taken, as stated in the certificate, unless with 10 days' written notice to the prosecution, the defendant requests that a qualified witness testify as to any of the matters as to which the certificate constitutes prima facie evidence. The notice must specify those matters concerning which the defendant requests testimony. [PL 2009, c. 447, §13 (AMD).]

B. A person certified under subsection 5 as qualified to operate a self-contained, breath-alcohol testing apparatus to determine an alcohol level may issue a certificate stating the results of the analysis. That certificate, when duly signed and sworn to by the certified person, is admissible in evidence in any court of the State. It is prima facie evidence that the defendant's alcohol level was, at the time the breath sample was taken, as stated in the certificate, unless, with 10 days' written notice to the prosecution, the defendant requests that the operator or other qualified witness testify as to the results of the analysis. [PL 2009, c. 447, §13 (AMD).]

C. Transfer of sample specimens to and from a laboratory for purposes of analysis must be by certified or registered mail and, when so made, is deemed to comply with all requirements regarding the continuity of custody of physical evidence. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

D. The failure of a person to comply with the duty to submit to and complete a chemical test under section 10702, subsection 1 is admissible in evidence on the issue of whether that person was under the influence of intoxicating liquor or drugs. If the law enforcement officer having probable cause to believe that the person 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 fails to give either of the warnings required under subsection 2, the failure of the person to comply with the duty to submit to a chemical test is not admissible. If a failure to submit to and complete a chemical test is not admitted into evidence, the court may inform the jury of the fact that a test result is not available. [PL 2023, c. 228, §4 (AMD).]

E. If a test result is not available for a reason other than a person's failure to comply with the duty to submit to and complete a chemical test, the unavailability and the reason are admissible in evidence. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]
[PL 2023, c. 228, §4 (AMD).]

8. Statements by accused. Any statement by a defendant that the defendant was the operator of a watercraft, snowmobile or ATV that the defendant is accused of operating in violation of section 10701, subsection 1-A is admissible if it was made voluntarily and is otherwise admissible under the United States Constitution or the Constitution of Maine. The statement may constitute sufficient proof by itself, without further proof of corpus delicti, that the watercraft, snowmobile or ATV was operated by the defendant. Any statement by a defendant that the defendant was hunting wild animals or wild birds is admissible against a defendant accused of hunting wild animals or wild birds in violation of section 10701, subsection 1-A if the statement was made voluntarily and is otherwise admissible under the United States Constitution or the Constitution of Maine. The statement may constitute sufficient proof by itself, without further proof of corpus delicti, that the defendant was hunting wild animals or wild birds.

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §79 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

9. Payment for tests. Persons authorized to take specimens of blood at the direction of a law enforcement officer and persons authorized to perform chemical tests of specimens of blood or breath must be paid from the General Fund or from dedicated revenues of the department when a law enforcement officer of the department authorizes the chemical tests. The Department of Marine Resources shall pay for chemical tests authorized by marine patrol officers with funds available within that department.

[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

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

A. After a person has been charged with hunting wild 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 with an excessive alcohol level, the investigating or arresting officer shall investigate to determine whether the charged person has any previous convictions of a violation of section 10701, subsection 1-A or adjudications for failure to comply with the duty to submit to and complete a chemical test under section 10702, subsection 1. As part of that investigation, the officer shall review the records maintained by the courts, the State Bureau of Identification, the Secretary of State, including telecommunications of records maintained by the Secretary of State, or the department. [PL 2009, c. 447, §14 (AMD).]

B. A law enforcement officer may arrest, without a warrant, any person whom the officer has probable cause to believe hunted any wild animal or wild bird or operated or attempted to operate a watercraft, snowmobile or ATV while under the influence of intoxicating liquor or drugs if the arrest occurs within a period following the offense reasonably likely to result in the obtaining of probative evidence that the person was under the influence of intoxicating liquor or drugs. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

[PL 2009, c. 447, §14 (AMD).]

11. Fatalities.

[PL 2023, c. 228, §5 (RP).]

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

[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

13. Reporting; immunity. Immunity from certain criminal and civil liabilities for the act of good faith reporting by certain health care professionals on accidents that the reporting person reasonably believes involved a person who was hunting or operating a snowmobile, ATV or watercraft while under the influence of intoxicating liquor or drugs is set forth in Title 29-A, section 2405.

[PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

SECTION HISTORY

PL 2003, c. 414, §A2 (NEW). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF). PL 2003, c. 655, §§B77-80 (AMD). PL 2003, c. 655, §B422 (AFF). PL 2003, c. 689, §B6 (REV). PL 2009, c. 447, §§11-15 (AMD). PL 2011, c. 253, §8 (AMD). PL 2019, c. 452, §§2-6 (AMD). PL 2019, c. 627, Pt. B, §§2, 3 (AMD). PL 2023, c. 228, §§4, 5 (AMD).

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