

**§205. Operating an aircraft under the influence or with an excessive alcohol level; tests and procedures**

**1. Blood or breath test.** If the law enforcement officer has probable cause to believe a person operated or attempted to operate an aircraft while under the influence of intoxicating liquor or drugs, 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 another chemical test must be administered. When a blood test is required, the test may be administered by a physician of the accused's choice, at the request of the accused and if reasonably available. The law enforcement officer may determine which type of breath test, as described in subsection 5, will be administered.

[PL 1993, c. 467, §4 (NEW).]

**2. Prerequisites to tests.** Before any test is given, the law enforcement officer shall inform the person to be tested that, if that person fails to comply with the duty to submit to and complete the required chemical test at the direction of the officer, that person commits a civil violation for which the person may be required to pay a civil forfeiture of up to \$500. The officer shall also inform the person that the failure to comply with the duty to submit to chemical tests is admissible as evidence against that person at any trial for operating under the influence of intoxicating liquor or drugs.

No test results may be excluded as evidence in a proceeding before an 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 1993, c. 467, §4 (NEW).]

**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 1993, c. 467, §4 (NEW).]

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

A. If the defendant, at the time alleged, had an alcohol level of 0.02 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, §4 (AMD).]

B. If the defendant, at the time alleged, had an alcohol level of more than 0.02 grams but less than 0.04 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 2009, c. 447, §4 (AMD).]

C. For purposes of evidence in proceedings other than those arising under section 202, subsection 11, it is presumed that a person was under the influence of intoxicating liquor when that person has an alcohol level of 0.04 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath. [PL 2009, c. 447, §4 (AMD).]

D. [PL 2009, c. 447, §4 (RP).]

[PL 2009, c. 447, §4 (AMD).]

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

Only a duly licensed physician, licensed physician assistant, registered nurse or a person certified by the Department of Health and Human Services under certification standards set by that department, acting at the request of a law enforcement officer, may draw a specimen of blood to determine the alcohol level or drug concentration of a person who is complying with the duty to submit to a chemical test. This limitation does not apply to the taking of breath 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 the 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 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.

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 operated or attempted to operate an aircraft 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 the alcohol level or drug concentration of that sample.

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 the 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.

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 operated or attempted to operate an aircraft while under the influence of intoxicating liquor or drugs, by use of a self-contained, breath-alcohol testing apparatus to determine the person's 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 the alcohol level of a person in any court.

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.

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 alcohol level or drug concentration, unless the evidence is determined to be not sufficiently reliable.

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.

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 2019, c. 627, Pt. B, §1 (AMD).]

**6. Liability.** No physician, physician's assistant, registered nurse, person certified by the Department of Health and Human Services or hospital or other health care provider in the exercise of due care is 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 1993, c. 467, §4 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

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

When a person, certified under subsection 5, conducts a chemical analysis of blood or breath to determine alcohol level, the person 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 or breath 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.

A person certified under subsection 5 as qualified to operate a self-contained, breath-alcohol testing apparatus to determine the 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.

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 continuity of custody of physical evidence.

The failure of a person to comply with the duty to submit to and complete a chemical test under section 204 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 operated or attempted to operate an aircraft 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, except when a test was required pursuant to subsection 11. 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 no test result is available.

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

[PL 2009, c. 447, §4 (AMD).]

**8. Statements by accused.** Any statement by a defendant that the defendant was the operator of an aircraft that the defendant is accused of operating in violation of section 202, subsection 11 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 aircraft was operated and was operated by the defendant.

[PL 1993, c. 467, §4 (NEW).]

**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 Highway Fund.

[PL 1993, c. 467, §4 (NEW).]

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

A. After a person has been charged with operating or attempting to operate an aircraft 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 202, subsection 11 or adjudications for failure to comply with the duty to submit to and complete a chemical test under section 204. As part of that investigation, the officer shall review the records maintained by the courts, the department, the State Bureau of Identification or the Secretary of State, including telecommunications of records maintained by the Secretary of State. [PL 2009, c. 447, §4 (AMD).]

B. A law enforcement officer may arrest, without a warrant, any person whom the officer has probable cause to believe operated or attempted to operate an aircraft 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 of an alcohol level or drug concentration. [PL 2009, c. 447, §4 (AMD).]

C. A law enforcement officer shall report the results of a chemical test administered, or the refusal of a person to submit to a chemical test, pursuant to this section to the Federal Aviation Administration. [PL 1993, c. 467, §4 (NEW).]

[PL 2009, c. 447, §4 (AMD).]

**11. Fatalities.** Notwithstanding any other provision of this section, an operator of an aircraft who is involved in an aircraft accident that results in the death of a person must submit to and complete a chemical test to determine that person's alcohol level or drug concentration by analysis of blood, breath or urine. A law enforcement officer may determine which type of test will be administered. The result of a test taken pursuant to this subsection is not admissible at trial unless the court is satisfied that probable cause exists, independent of the test result, to believe that the operator was under the influence of intoxicating liquor or drugs or had an excessive alcohol level.

[PL 2009, c. 447, §4 (AMD).]

#### SECTION HISTORY

PL 1993, c. 467, §4 (NEW). PL 2003, c. 689, §B6 (REV). PL 2009, c. 447, §4 (AMD). PL 2019, c. 627, Pt. B, §1 (AMD).

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