

§10701. Hunting under the influence; operating watercraft, snowmobile or ATV under the influence

1. Prohibition.

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §73 (RP); PL 2003, c. 655, Pt. B, §422 (AFF).]

1-A. Prohibition. Prohibitions against hunting and operating under the influence are as follows.

A. A person may not hunt wild animals or wild birds:

- (1) While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs;
- (2) If 21 years of age or older, while having 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; or
- (3) If less than 21 years of age, while having an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath. [PL 2009, c. 447, §5 (AMD).]

B. A person may not operate or attempt to operate a watercraft:

- (1) While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs;
- (2) If 21 years of age or older, while having 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; or
- (3) If less than 21 years of age, while having an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath. [PL 2009, c. 447, §5 (AMD).]

C. A person may not operate or attempt to operate a snowmobile:

- (1) While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs;
- (2) If 21 years of age or older, while having 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; or
- (3) If less than 21 years of age, while having an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath. [PL 2009, c. 447, §5 (AMD).]

D. A person may not operate or attempt to operate an ATV:

- (1) While under the influence of intoxicating liquor or drugs or a combination of liquor and drugs;
- (2) If 21 years of age or older, while having 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; or
- (3) If less than 21 years of age, while having an alcohol level of more than 0.00 grams per 100 milliliters of blood or 210 liters of breath. [PL 2009, c. 447, §5 (AMD).]

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2. Possession of hunting equipment while intoxicated. The possession of hunting equipment in the fields or forests or on the waters or ice in the State by a person while under the influence of intoxicating liquor or drugs is prima facie evidence that the possessor is in violation of subsection 1-A, paragraph A.

[PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §75 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

3. Penalties. A person who violates this section commits a Class D crime. In determining an appropriate sentence, refusal to submit to a chemical test must in every case be an aggravating factor. In the following cases the following minimum penalties apply.

A. In the case of a person having no previous convictions of a violation of subsection 1-A within the previous 6-year period, the fine may not be less than \$400. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete an alcohol test under section 10702, subsection 1, the fine may not be less than \$500. A conviction under this paragraph must include a period of incarceration of not less than 48 hours, none of which may be suspended, when the person:

(1) Was tested as having an alcohol level of 0.15 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath;

(2) Failed or refused to stop upon request or signal of an officer in uniform, pursuant to section 6953 or 10651, during the operation that resulted in prosecution for operating under the influence or with an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; or

(3) Failed to submit to a chemical test to determine that person's alcohol level or drug concentration, requested by a law enforcement officer on the occasion that resulted in the conviction. [PL 2009, c. 447, §6 (AMD).]

B. In the case of a person having one previous conviction of a violation of subsection 1-A within the previous 6-year period, the fine may not be less than \$600. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete an alcohol level or drug concentration test under section 10702, subsection 1, the fine may not be less than \$800. A conviction under this paragraph must include a period of incarceration of not less than 7 days, none of which may be suspended. [PL 2009, c. 447, §7 (AMD).]

C. In the case of a person having 2 or more previous convictions of violations of subsection 1-A within the previous 6-year period, the fine may not be less than \$1,000. If that person was adjudicated within the previous 6-year period for failure to comply with the duty to submit to and complete an alcohol level or drug concentration test under section 10702, subsection 1, the fine may not be less than \$1,300. A conviction under this paragraph must include a period of incarceration of not less than 30 days, none of which may be suspended. [PL 2009, c. 447, §8 (AMD).]

D. In addition to the penalties provided under paragraphs A to C, the court may order the defendant to participate in the alcohol and other drug education, evaluation and treatment programs for multiple offenders administered by the Department of Health and Human Services under Title 5, chapter 521. [PL 2011, c. 657, Pt. AA, §55 (AMD).]

E. The penalties provided under paragraphs B, C and D may not be suspended by the court. [PL 2003, c. 414, Pt. A, §2 (NEW); PL 2003, c. 614, §9 (AFF).]

F. If the State pleads and proves that, while hunting or operating a snowmobile, all-terrain vehicle or watercraft in violation of this section, the defendant in fact caused serious bodily injury as defined in Title 17-A, section 2, subsection 23, to another person or in fact caused the death of another person, the sentencing class for the offenses in subsection 1-A is Class C. The minimum penalties specified in this subsection apply, unless a longer minimum period otherwise applies. [PL 2003, c. 614, §9 (AFF); PL 2003, c. 655, Pt. B, §75 (AMD); PL 2003, c. 655, Pt. B, §422 (AFF).]

Any alternatives defined in subsection 1-A may be pleaded in the alternative. The State may, but is not required to, elect an alternative prior to submission to the fact finder.

For purposes of this subsection, a prior conviction has occurred within the 6-year period if the date of docket entry by the clerk of a judgment of conviction or adjudication is 6 years or less from the date of the new conduct that is penalized or for which the penalty is or may be enhanced.

In determining the appropriate sentence, the court shall consider the defendant's record of convictions for hunting under the influence or operating a snowmobile, all-terrain vehicle or watercraft while under the influence of intoxicating liquor or drugs and for failure to comply with the duty to submit. The court may rely upon oral representations based on records maintained by the courts, by the Department of Public Safety, State Bureau of Identification; by the Secretary of State, including telecommunications of records maintained by the Secretary of State; or by the department. If the defendant disputes the accuracy of any representation concerning a conviction or adjudication, the court shall grant a continuance for the purposes of determining the accuracy of the record.

References in this Title to this subsection are deemed to refer to the juvenile crime stated in Title 15, section 3103, subsection 1, paragraph E and to the disposition, including a suspension, for that juvenile crime as provided in Title 15, section 3314, subsection 3, except as otherwise provided or when the context clearly requires otherwise.

[PL 2011, c. 657, Pt. AA, §55 (AMD).]

SECTION HISTORY

PL 2003, c. 414, §A2 (NEW). PL 2003, c. 414, §D7 (AFF). PL 2003, c. 614, §9 (AFF). PL 2003, c. 655, §§B73-75 (AMD). PL 2003, c. 655, §B422 (AFF). PL 2003, c. 689, §B6 (REV). PL 2009, c. 447, §§5-8 (AMD). PL 2011, c. 657, Pt. AA, §55 (AMD).

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