

POLICY AND PROCEDURES

NUMBER: 1406

SUBJECT: Use of Breath Alcohol Testing
Equipment

ACA STANDARDS: None

DIRECTOR: Herbert Bernsen

EFFECTIVE DATE: 9/92 REVISION DATE: 7/98, 5/05, 11/11,
11/13, 1/15, 12/15



I. POLICY

The St. Louis County Department of Justice Services shall comply with guidelines, as published by the State of Missouri, Department of Health and the United States Department of Transportation for the uniform operation of the approved breath analyzing equipment when administering breath tests on Driving While Intoxicated (DWI) prisoners and individuals or employees who are holders of a Commercial Drivers' License.

II. RESPONSIBILITIES

All St. Louis County Department of Justice Services' Intake Service Center Officers and all staff holding active Type II Operator permits are responsible for the following procedures.

III. DEFINITIONS

Fit for Confinement: A form prepared by a local hospital which states that a prisoner, after examination, is medically 'fit' to be confined. The Corrections Medicine staff after questioning and examining the prisoner, may determine the prisoner does not require a 'fit for confinement'. A prisoner is not to be accepted by the Intake Service Center staff if not 'fit for confinement'.

Implied Consent Law: In Missouri (577.020 RSMo.), an operator of a motor vehicle is deemed to have consented to not more than two (2) tests for blood alcohol content when so requested by a police officer maintaining probable cause. Refusal to submit to a chemical test of blood, breath, saliva or urine will result in

the revocation of the operator's license by the Missouri Director of Revenue for up to one year.

IV. PROCEDURES

A. General Information

1. The breath analyzing equipment at the St. Louis County Intake Service Center will be operated only by certified operators who have been licensed by the State of Missouri and are Type II or Type III permit holders.
2. The training of Type III operators and the maintenance of the breath analyzing equipment will only be performed by a licensed Type II permit holder.
3. All Intake Service Center (ISC) Officers will be trained as Type III operators and will be recertified semiannually by a Type II permit holder.
4. ISC Officers will not advise a DWI prisoner whether or not to take a breath test. The arresting law enforcement officer can only advise the prisoner what could occur according to the State of Missouri Implied Consent Law if he/she refuses the test. ISC Officers shall not give any advice on law as this does not comply with the Department's procedures regarding neutrality in this circumstance.
- [5. Prior to the beginning of any part of the Blood Alcohol Count (BAC) test procedure or paperwork, the ISC Officer conducting the test will ask the arresting officer if he/she has completed the following:
 - a. Read the Missouri's Implied Consent to the prisoner
 - b. Received agreement from the prisoner to take the test.

If the answer *either* to any of these questions is “NO”, do not begin the test.]

B. Observation

- [1. The Department of Health rules and regulations require that a DWI prisoner will be observed for fifteen (15) minutes prior to a breath test. The required observation period must be conducted by a Type II or Type III permit holder *conducting the test. At the start of the observation period, the testing officer will conduct a visual*

examination of the subject's mouth for any foreign matter, solid or liquid, not to include dentures, dental work, studs, piercings, or jewelry.]

NOTE: The fifteen (15) minute observation period of the DWI prisoner may take place in an area other than the Intake Service Center (e.g., in the law enforcement agency's car on the way to the Justice Center, if the Officer is a Type II or Type III permit holder).

2. If the DWI prisoner ingests anything, including water, chewing gum, cough drops, cigarette smoke, etc., the fifteen (15) minute observation period will begin again. If the prisoner to be tested has a piercing of the tongue, lip or cheek, it is not to be removed. If the piercing is removed, another 15 minute observation will take place.
3. If a DWI prisoner is bleeding from the mouth or mouth area, he/she cannot be tested on a breath analyzing device. The law enforcement officer will be advised to take the prisoner to the hospital for a blood test instead. It is recommended that the law enforcement officer also obtain a 'fit for confinement' on the prisoner while at the hospital.
4. If the DWI prisoner vomits, wait fifteen (15) minutes, then conduct the breath test. If the prisoner is or has been vomiting repeatedly, the law enforcement officer will convey the prisoner to the hospital for a blood test and the recommended 'fit for confinement'.
5. A DWI prisoner may request to call an attorney prior to taking the breath test. This is a legal right under the following conditions:
 - a. Only an attorney may be contacted for advice or a legal opinion
 - b. The 20 minute attorney contact period does not start at the prisoner's arrival at the Law Enforcement Lobby (LEL). The 20 minute attorney contact period starts when a prisoner requests to speak to an attorney
 - c. The time permitted for an attorney to arrive at the Intake Service Center to observe the test if he/she wishes to do so is included in the above twenty (20) minute period.

C. Conducting a Test

- [1. *Assure the INTOX DMT and printer are powered on and the touchscreen is displaying “Ready<Push Run>”. Touch the “Run” button on the screen.*
2. *Enter subject and testing officer information by inserting driver’s license and operator card in the card reader, or by entering the information in manually. Enter arrest information. Press “OK” to proceed to testing.*
3. *The instrument will now go through and Automated Test Sequence and display the following: Timed Purse, Ambient Zeroing, Blank Test, and Internal Standard. The instrument will then display: “Did the subject refuse?” If the subject refuses, press “Yes” and the instrument will print “Refused” on the test report and terminate the test sequence. If the subject is going to take the test, press “No”.*
4. *The display will read “Please Blow” and emit a beeping sound. Now insert a mouthpiece into the breath tube and advise the subject as follows: “Place your mouth on the mouthpiece and blow long and steady into the tube until I tell you to stop.” If the subject is providing a sufficient sample, “Please Blow” will cease flashing and the beeping will become a steady tone. If the subject stops blowing prior to the sample acceptance or blows improperly, the flashing and beeping will return. Replace the mouthpiece, repeat instruction, and have subject blow again. The instrument allows two (2) minutes for the subject to provide an adequate sample.]*

D. Refusals

1. A DWI refusal should take place at the Breathalyzer Room room. However, if the prisoner refuses to cooperate or is combative as soon as he/she enters the Law Enforcement Lobby, the prisoner will be secured in a holding cell.
- [2. If a prisoner refuses to take the test prior to entering anything into the INTOX DMT, no paperwork is completed by the ISC Officer conducting the test. If the prisoner indicates refusal any time after engaging the INTOX DMT, wait for the instrument to complete the two (2) minute time limit is complete. The INTOX DMT will then display, “Did the subject refuse?” Press “Yes” on the screen. The INTOX DMT will print “REFUSED” on the test report and terminate the test sequence.

***NOTE:** If the subject was trying to comply but couldn’t provide a valid sample, press “No” on the screen. The INTOX DMT will*

print “INCOMPLETE” on the test report and terminate the test sequence. If the arresting officer requests another test attempt, wait fifteen (15) minutes and begin the re-test.]

3. A DWI prisoner who refuses to answer questions will be considered a refusal.
4. When a DWI prisoner avoids answering the question when asked to take a breath test, it will be considered a refusal.
5. Combative behavior by a DWI prisoner will be considered a refusal.
6. Smoking, Chewing gum, drinking water, the use of cough drops, the use of breath spray, etc., by a DWI prisoner will not be considered a refusal; simply wait fifteen (15) minutes and conduct the breath test.
7. A DWI prisoner that has passed out will not be considered a refusal since his/her inability to respond to a test request is not deemed an acknowledgment of the Implied Consent Law. The law enforcement officer shall be advised to convey the prisoner to a hospital to obtain a blood test. If the law enforcement officer has not already obtained a 'fit for confinement', one will be required before the ISC officer accepts custody of the prisoner.
8. The testing officer has the ultimate authority for accepting a test or refusing to administer a test to a DWI prisoner. The law enforcement officer has the option of having the prisoner tested at another location if dissatisfied with the decision.

E. Malfunctions

1. The present law now permits two (2) types of chemical tests to be performed on a DWI prisoner. Conducting more than one breath test is acceptable.
- [2. If a breath test is being conducted and Radio Frequency Interference (RFI) Monitor *is detected, the INTOX DMT will invalidate the test and display “RFI DETECTED”.* Remove the source and conduct another test.]
3. A breath analyzing device will not be used if there is any doubt that the instrument is in proper working order.

- [4. When using the *INTOX DMT* and it displays “*Invalid Sample*” or “*INTERFERENCE DETECTED*”, wait 15 minutes and conduct another test. The testing officer may use the same equipment, use different equipment or advise the law enforcement officer to obtain a blood test.]

F. Multiple Tests

1. If a law enforcement officer feels a blood alcohol content reading is lower than expected and requests a second test, the ISC Officer will advise the law enforcement officer to convey the prisoner to a hospital for a blood test. If the law enforcement officer insists on a second breath test at the Intake Service Center after being advised to take a blood test, then comply with his/her request. It will be at the law enforcement officer's discretion whether or not the second test will be conducted at the Intake Service Center. If the DWI prisoner refuses to submit to the first or second test, this will constitute a refusal.
2. If blood was drawn at a hospital, but the law enforcement officer requests a breath test, the ISC Officer will comply with his/her request. If the prisoner will not submit to a second test it is considered a refusal.

G. Results

- [1. When a *BAC* test is conducted, the ISC Officer will provide the following documents to the arresting officer:
 - a. *The Blood Alcohol Test Report*
 - b. *The INTOX DMT Maintenance Report*
 - c. *a copy of the certificate of solution analysis*
 - d. *a copy of the Simulator Calibration Report*
 - e. *a copy of the operator's Type II or Type III permit*
 - f. *a copy of the Type II permit*]
 2. If a DWI prisoner's breath test indicates a BAC reading of .30% or above, the Corrections Medicine staff will be notified. The Corrections Medicine staff will determine if the prisoner requires a 'fit for confinement' due to the high alcohol content reading. It will be the law enforcement officer's responsibility to convey the

prisoner to a hospital for a 'fit for confinement' if required by the Corrections Medicine staff.

- [3. The appropriate equipment's log book will be completed with the *Test Number, Subject's Name, Date, BAC Results, Time, Arrest Officer and DSN, and Test Officer and DSN.*]

H. Juveniles

1. If the DWI prisoner is under the age of sixteen, he/she will not be given a breath test without the written or oral authorization from a Deputy Juvenile Officer of the Family Court. This authorization will normally be obtained by the law enforcement officer prior to arrival at the Law Enforcement Lobby. If authorization has been obtained, the test will be conducted.

NOTE: The juvenile prisoner and the law enforcement officer will depart the Law Enforcement Lobby immediately after the test. The Intake Service Center will at no time retain custody of the juvenile prisoner.

- [2. The prisoner's name, the law enforcement officer's name and DSN, and the testing officer's name and DSN will be entered in the appropriate equipment's log book and The Blood Alcohol Test Report. The log book will be noted with the letters CJV (indicates juvenile).]
- [3. If the DWI prisoner is sixteen (16), he/she can be given a breath test following normal procedures.]

I. Court Appearances

1. Occasionally ISC Officers are subpoenaed to testify as a witness in a DWI trial. The only personnel authorized to accept subpoenas for the Intake Service Center personnel will be the Intake Service Center Manager or the Intake Service Center Supervisor II. When the aforementioned personnel are not on duty, the ISC Shift Supervisor will accept the subpoena. He/she will ensure that one of the above mentioned personnel receives the subpoena the following administrative working day.
2. The ISC Officer's name, along with all relevant court information will be entered on the court calendar posted in the ICS's Booking Counter and the actual subpoena will be placed in the ISC Officer's

mailbox. Each ISC Officer will be responsible for checking the court calendar and his/her mailbox on a daily basis for pending court cases or cancellations.

3. Cancellation of a court date will be indicated by a red line drawn through the ISC Officer's name on the court calendar. The cancellations normally occur by telephone; therefore the ISC Officer accepting the phone call will place his/her initials next to the red line on the calendar.
4. Cancellation notices are sometimes received on very short notice. ISC Officers are required to contact the Intake Service Center no more than two hours prior to a scheduled appearance to verify status of the case. Failure to comply with this procedure will result in compensation being denied if the case was disposed.
5. All subpoenaed staff will report to the Intake Service Center to pick up the Blood Alcohol Test Report for the court case prior to the time indicated on the subpoena. Staff will then proceed to the court for his/her testimony. Intake staff will be at the court according to the time indicated on the subpoena. If a case is dismissed or continued because of the ISC Officer's tardiness, compensation will not be granted.
6. ISC Officers on the midnight shift who have two subpoenas for different times on the same day may have one of the cases continued by the ISC Supervisor II. It will be the ISC Officer's responsibility to advise the ISC Supervisor II of this situation at least two (2) administrative working days in advance of the court date.
7. It is the ISC Officer's responsibility to contact the ISC Shift Supervisor if he/she is unable to keep a scheduled court appearance for any unforeseen reason (i.e., illness, personal emergency, etc.). If the ISC Officer has a previously approved vacation day and is then subpoenaed for that day, the ISC Supervisor II will make every effort to obtain a continuance.

NOTE: Once an ISC Officer is subpoenaed, a vacation request will only be approved with the understanding that he/she will still be required to report for the court appearance.

8. ISC Officers who fail to appear for a scheduled case without sufficient notice will be required to provide the reason in writing to the ISC Supervisor II. If an ISC Officer fails to appear for a

scheduled court date without sufficient notice or a valid reason, he/she will receive a Letter of Caution for a first absence in any six (6) month period. A second such absence will result in a Letter of Reprimand and a six (6) month action plan. ([See Policy # 125 Employee Action Plan](#))

9. ISC Officers will not be permitted to be "on call" unless the subpoena so indicates.
10. When reporting to duty for a court appearance, the ISC Officers will be required to dress in full uniform.

J. *Employee Breath Tests and Commercial Driver's License (C.D.L.) Breath Tests*

- [1. *Any employee of the Department of Justice Services is subject to a breath test at the discretion of the Director/designee if there is reasonable suspicion that the employee has consumed an alcoholic beverage. The breath test will be completed using normal procedures and the results will be given to the Director/designee.*

NOTE: *A second confirmation test will be conducted after ten (10) minutes if the result is over a .000 BAC.]*

2. Individuals employed by St. Louis County who hold a Commercial Driver's License will be required to submit to chemical tests of his/her breath. Breath tests will be conducted for the following reasons:
 - a. Pre-employment
 - b. Post accident - an accident is defined as:
 - (1) Any fatality
 - (2) Any time a C.D.L. holder is given a citation and medical treatment is given to any person away from the scene of the accident
 - (3) Any time a C.D.L. holder receives a citation and any vehicle involved with the accident must be towed.
 - c. Reasonable suspicion that the C.D.L. holder has consumed an alcoholic beverage

e. *If only one test is necessary (results of .000 for employee or less than .019 for CDL tests), use tamper-evident tape to secure one copy of the INTOX DMT Test Report to the back of each copy of the DOT form.*

f. *If a second confirmation test is necessary (results of .001 or more for employee or .020 or more for CDL), use tamper-evident tape to secure one copy of each test conducted to the back of each copy of the DOT form.*

g. *Place one copy of the Blood Alcohol Test Report, the white copy of the DOT form, with attached Blood Alcohol Test Report, into the white business envelope, seal it with tamper-evident tape, and forward it to the Department of Personnel via inner-office mail.*

h. *The green copy of the DOT form, with attached Blood Alcohol Test Report, is given to the employee.*

i. *The blue copy of the DOT form, with attached Blood Alcohol Test Report, is to be placed in the bottom right box slot for the Type II's records.]*

- 6.** Terminate the testing process and notify the operating department representative if any of the following occur:
- (1) The *employee/C.D.L.* holder refuses to complete and sign all forms
 - (2) The *employee/C.D.L.* holder refuses to provide an adequate amount of breath
 - (3) The *employee/C.D.L.* holder refuses to cooperate with the testing process in a way that prevents the completion of the test.