

DATA MASTER: LEGAL AND FOUNDATIONAL ISSUES

**KENNETH STECKER AND PERRY
CURTIS**

MICHIGAN TRAFFIC SAFETY SUMMIT

MARCH 23, 2011

REFERENCE DOCUMENTS

- MCL 257.625A(6)
- CJI 2ND 15.5
- MSP ADMIN RULE R 325.2651 ET SEQ
- MSP EVIDENTIAL BREATH TESTING
TRAINING MANUAL
- CASE LAW

MCL 257.625A(6)(G)

THE DEPARTMENT OF STATE
POLICE SHALL PROMULGATE
UNIFORM RULES IN
COMPLIANCE WITH THE
ADMINISTRATIVE PROCEDURES
ACT...

CHEMICAL TEST RIGHTS

MCL 257.625A(6)(B)

- NOTE TIME OF CONSENT IN POLICE REPORT
- NOTE TIME AND DEFENDANT'S CONSENT ON PAGE 2 OF DI-177 (BLOOD, BREATH, URINE TEST REPORT)
- REFUSALS RESULT IN REQUEST FOR SEARCH WARRANT FOR BLOOD, BREATH, OR URINE
- DATAMASTER REFUSALS ARE EITHER "OPERATOR" OR "TECHNICAL" REFUSALS

- Refusing a Preliminary Breath Test if arrested while operating a commercial motor vehicle.
- Endangerment (Operating while intoxicated with person under age of 16.)

CHEMICAL TEST RIGHTS

DL
I am requesting that you take a chemical test to check for alcohol and/or controlled substances in your body. IF YOU WERE ASKED TO TAKE A PRELIMINARY BREATH TEST BEFORE YOUR ARREST YOU MUST STILL TAKE THE TEST I AM OFFERING YOU.

DL
If you refuse to take this chemical test, it will not be given without a court order, but I may seek to obtain such a court order. Your refusal to take this test shall result in the suspension of your operator's or chauffeur's license and vehicle group designation or operating privilege, and the addition of six points to your driving record.

DL
After taking my chemical test, you have a right to demand that a person of your own choosing administer a breath, blood, or urine test. You will be given a reasonable opportunity for such a test. You are responsible for obtaining a chemical analysis of a test sample taken by a person of your own choosing.

DL
The results of both chemical tests shall be admissible in a judicial proceeding, and will be considered with other admissible evidence in determining your innocence or guilt.

DL
Will you take a: (Select the appropriate test from the following list)
Breath Test? *02:50 or WCJ* * Blood Test? or Urine Test?
"I'll TAKE ASKED ONE"

*MCL 257.625c(2) provides that a person afflicted with hemophilia, diabetes, or a condition requiring the use of anticoagulant shall not be considered to have given consent to the withdrawal of blood.

SUSPECT INTERVIEW: The suspect stated that he had 6 to 7 beers. After the Data Master he stated that he also took 10 Vicodin.

LEIN CHECK: LEIN produced that the driver had expired and suspended ops with 3 prior (625) OUIL conviction.

VEHICLE SEARCH: I conducted a search of the suspect's vehicle but did not locate anything illegal.

VEHICLE DISPOSITION: The vehicle was towed to Budget Towing

CHEMICAL TEST RIGHTS: While in the car at the Jail, I read Fockler his Chemical Test Rights at 0215hrs. When asked to submit to a breath test, Mr. Fockler stated "yes" at 0217 hrs.

BREATH TEST: The breath test was administered at the Washtenaw County Jail. Instrument # 931126

Test #1: .23 at 0240

Test #2: .22 at 0242

ACTION TAKEN: Mr. Fockler was booked into the Washtenaw County Jail and held pending a legal alcohol level.

CJI 2ND 15.5

FACTORS IN CONSIDERING OWI AND OWVI

(2) You may also consider bodily alcohol content in reaching your verdict. In that regard, *were the tests technically accurate?* Was the equipment properly assembled and *maintained and in good working order* when the tests were given?

(3) Were the test results reliable? *Was the test given correctly?* Was the person who gave it properly trained? Did the *circumstances under which the test was given* affect the accuracy of the results?

(6) You may infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time [he / she] operated the motor vehicle.

(7) *In considering the evidence and arriving at your verdict, you may give the test whatever weight you believe that it deserves. The results of a test are just one factor you may consider, along with all other evidence about the condition of the defendant at the time [he / she] was operating the motor vehicle.*

MSP ADMIN RULE R325.625 1

- EVIDENTIAL V. PRELIMINARY BREATH ALCOHOL

- EQUIPMENT ACCURACY

- WEEKLY VERIFICATIONS BY CLASS II-IV
- 1 20-DAY CERTIFICATIONS BY MFG REP.

- TECHNIQUES & PROCEDURES

- OBSERVATION
- SUBSEQUENT TESTS
- ALLOWABLE VARIATIONS

Chapter 3 - ADMINISTRATIVE RULES

The Michigan Department of State Police has been granted mandatory rule-making power by the drunk driving statute. An administrative rule promulgated under this authority carries the full weight of the law.

The Administrative Rules titled, "Tests for Breath Alcohol," were filed with the Secretary of State on December 12, 1994, and became effective December 28, 1994, at 12:01 a.m. Highlights of the administrative rules are outlined below.

RULE 1 - Definitions

- Class I Operator - PBT Operator
- Class II Operator - Evidential Breath Test Operator
- Class IIIA Operator - Evidential Breath Test Operator plus PBT Operator, PBT instructor, and PBT calibrator
- Class IIIB Operator - Evidential Breath Test Operator plus limited service technician
- Class IV Operator - All of the above plus instructor for all classes of operator and a full-service technician



BAC DataMaster

READY

AUGUST 22 89125

National Patent Analytical Systems, Inc.

931078

Ohio. 800-800-8143
Gier. 517-522-6972

2611-734-560-4389

Keyboard layout details:

- Top row: RUN, P1, P2, SET, ADV, F1, F2, SUP, TST, MTR, NV, ABT, CLR, CPY
- Second row: ←, 1, 2, 3, 4, 5, 6, 7, 8, 9, 0, -, =, ;, DEL
- Third row: TAB, Q, W, E, R, T, Y, U, I, O, P, {, }, ENTER, RETURN
- Fourth row: CTRL, A, S, D, F, G, H, J, K, L, ;, ', SHIFT
- Fifth row: SHIFT, Z, X, C, V, B, N, M, <, >, ?, SHIFT
- Bottom row: USER 1, SPACE, SPACE, USER 2





MODEL 10-4

ON/OFF

POWER

HEATE



BLOW IN HERE
→



SERIAL
S-0313

2 0313
SERIAL



TH
ER
ER
AH

DATAMASTER LOGS

- UNIT MUST BE TESTED EACH CALENDAR WEEK
- THERE CAN BE UP TO 13 DAYS BETWEEN TWO TESTS, ASSUMING TEST #1 ON SUNDAY OF 1ST WEEK AND TEST #2 ON SATURDAY OF 2ND WEEK
- RESULTS MUST BE .076 THROUGH .084
- CUSTODIAN OF LOGS NEEDED FOR TRIAL, UNLESS DEFENSE ATTORNEY STIPULATES TO LOGS
- EVEN IF A STIPULATION, ALL OFFICERS SUBJECT TO CROSS EXAMINATION OF DATAMASTER LOGS

AUTHORITY: 1949 PA 300
 COMPLIANCE: Required
 PENALTY: Removal/Decertification of Instrument

Month July Year 05
 Instrument Location Washtenaw Co Jail
 Instrument Number 931126 ORI Number MI 8118100

EVIDENTIAL BREATH TESTING LOG

| Day | Operation | Operator ORI Number MI | Certification Number | Results (1) | Results (2) | Ampoule Control Number | Signature |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|----------------------|-------------|-------------|------------------------|--------------|
| 01 | Have inspected, serviced, and checked this instrument for accuracy and certify that it is in proper working order. <u>Marvin Gier</u> Instrument Manufacturer's Authorized Representative | | | | | | |
| 7 | Simulator | MI 8118100 | 08094 | .076 | | B1201 | Marvin Gier |
| 15 | Simulator | MI 8118100 | 08094 | .076 | | B1201 | Wayne Ahlers |
| 22 | Simulator | MI 8118100 | 08094 | .076 | | B1201 | Wayne Ahlers |
| 25 | Simulator | MI 8118100 | 08094 | .076 | | B1201 | Wayne Ahlers |
| 25 | SIMULATOR | MI 8196400 | 18496 | .077 | | B1201 | Wayne Ahlers |
| 28 | Simulator | MI 8118100 | 21709 | .079 | | B1201 | Wayne Ahlers |
| 31 | Simulator | MI 8118100 | 08094 | .076 | | B1201 | Wayne Ahlers |

Accurate test results shall be

Supervisor Signature

AUTHORITY: 1949 PA 300
 COMPLIANCE: Required
 PENALTY: Removal/Decertification of Instrument

| | |
|-----------------------------------------------------|---------------------------------|
| Month <i>JUNE</i> | Year <i>2007</i> |
| Instrument Location <i>WISHTONOW COUNTY Jail</i> | |
| Instrument Number <i>931078</i> | ORI Number <i>MI 8118100</i> |

EVIDENTIAL BREATH TESTING LOG

| Day | Operation | Operator ORI Number MI | Certification Number | Results (1) | Results (2) | Ampoule Control Number | Signature |
|----------------------|------------------|---------------------------|----------------------|----------------|----------------|------------------------|--------------------|
| <i>11</i> | <i>SIMULATOR</i> | <i>339800</i> | <i>25613</i> | <i>.076</i> | | <i>D0801</i> | <i>[Signature]</i> |
| <i>20</i> | <i>SIMULATOR</i> | <i>8196400</i> | <i>18496</i> | <i>.077</i> | | <i>D0801</i> | <i>[Signature]</i> |
| <i>23</i> | <i>Simulator</i> | <i>8118100</i> | <i>81109</i> | <i>.076</i> | | <i>D0801</i> | <i>[Signature]</i> |
| Day | Operation | Operator ORI Number MI | Certification Number | Results (1) | Results (2) | Ampoule Control Number | Signature |
| Day | Operation | Operator ORI Number MI | Certification Number | Results (1) | Results (2) | Ampoule Control Number | Signature |
| Day | Operation | Operator ORI Number MI | Certification Number | Results (1) | Results (2) | Ampoule Control Number | Signature |
| Day | Operation | Operator ORI Number MI | Certification Number | Results (1) | Results (2) | Ampoule Control Number | Signature |
| Day | Operation | Operator ORI Number MI | Certification Number | Results (1) | Results (2) | Ampoule Control Number | Signature |
| Day | Operation | Operator ORI Number MI | Certification Number | Results (1) | Results (2) | Ampoule Control Number | Signature |
| Supervisor Signature | | | | | | | Date |

Accurate test results shall be
 .076 to .084 inclusive.

AUTHORITY: 1949 PA 300
 COMPLIANCE: Required
 PENALTY: Removal/Decertification of Instrument

| | |
|--------------------------------------------|---------------------|
| Month <i>July</i> | Year <i>2007</i> |
| Instrument Location <i>Washtenaw Co</i> | |
| Instrument Number <i>931078</i> | ORI Number MI |

EVIDENTIAL BREATH TESTING LOG

| Day | Operation | Operator ORI Number MI | Certification Number | Results (1) | Signature | Ampoule Control Number |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|----------------------|----------------|------------------------------|----------------------------------|
| 10 | <p>have inspected, serviced, and checked this instrument for accuracy and certify that it is in proper working order.</p> <p><i>Marvin Gies</i></p> <p><i>checked weekly</i></p> | MI 8118100 | 99998 | .079 | <i>Marvin Gies</i> | D0801 Bulb. exp. date 2-26-07 |
| 10 | Simulator | MI 8118100 | 07942 | .077 | <i>Robert C. [Signature]</i> | D0801 |
| 13 | SIMULATOR | MI 8196400 | 18496 | .078 | <i>Robert C. [Signature]</i> | D0801 |
| 14 | <p>have inspected, serviced, and checked this instrument for accuracy and certify that it is in proper working order.</p> <p><i>Marvin Gies</i></p> <p><i>12.0 Day</i></p> | MI 8118100 | 99998 | .078 | <i>Marvin Gies</i> | D0801 Bulb. exp. date 2-26-08 |
| 23 | Simulator | MI 8118100 | 24669 | .078 | <i>Robert C. [Signature]</i> | D0801 |
| 28 | SIMULATOR | MI 8118100 | 81709 | .076 | <i>Robert C. [Signature]</i> | D0801 |
| 30 | Simulator | MI 8118100 | 07942 | .078 | <i>Robert C. [Signature]</i> | D0801 |
| | Operation | Operator ORI Number MI | Certification Number | Results (1) | Signature | Ampoule Control Number |
| | | | | (2) | | |

Accurate test results shall be .076 to .084 inclusive.

| | |
|----------------------|------|
| Supervisor Signature | Date |
|----------------------|------|

DATAMASTER PROCEDURES

- PROPER SUBJECT TEST SEQUENCE (CHAPTER 8 IN TRAINING MANUAL)
- WHEN A 3RD SAMPLE IS NEEDED
- TWO TYPES OF REFUSALS
- WHAT OCCURS UPON A REFUSAL

FACE THIS SIDE DOWN - THIS EDGE IN FIRST

BAC DataMaster

Evidence Ticket

STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE

INSTRUMENT 931126

OCTOBER 13, 2005
SUBJECT'S NAME (L/F/M):
FANNING/DERRICK/DAVON
SUBJECT'S ADDRESS:
17349 PARK LN
SOUTHFIELD, MI 48076-7716
SUBJECT'S DOB: 03/24/1985
LICENSE NUMBER: F 552 139 135 237
REPORT NUMBER: 26-5741-05
OPERATOR'S NAME (L/F/M):
REBAR/TPR
OPERATOR CERTIFICATE #:
17243

--- BREATH ANALYSIS ---

| | | |
|-------------------|----------|-------|
| BLANK TEST | .000 | 03:20 |
| INTERNAL STANDARD | VERIFIED | 03:20 |
| SUBJECT SAMPLE | .13 | 03:21 |
| BLANK TEST | .000 | 03:22 |
| SUBJECT SAMPLE | .13 | 03:24 |
| BLANK TEST | .000 | 03:24 |
| INTERNAL STANDARD | VERIFIED | 03:24 |

ALCOHOL READINGS ARE EXPRESSED AS
GRAMS OF ALCOHOL PER 210 LITERS OF BREATH

Start Observation Time 03:01
(Enter if required by regulations)

Operator Signature TPR [Signature] 17243

Card Stock No.
60023

OD-8

REORDER ALL SUPPLIES FROM N.P.A.S.
P.O. BOX 1435, MANSFIELD, OH 44901

FACE THIS SIDE DOWN - THIS EDGE IN FIRST

BAC DataMaster

Evidence Ticket

STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE

INSTRUMENT 931126

OCTOBER 13, 2005

SUBJECT'S NAME (L/F/M):

FANNING/DERRICK/DAYON

SUBJECT'S ADDRESS:

17349 PARK LN

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SUBJECT'S DOB: 03/24/1985

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OPERATOR'S NAME (L/F/M):

REBAR/TPR

OPERATOR CERTIFICATE #:

17243

REBAR/TPR

OPERATOR CERTIFICATE #:

17243

--- BREATH ANALYSIS ---

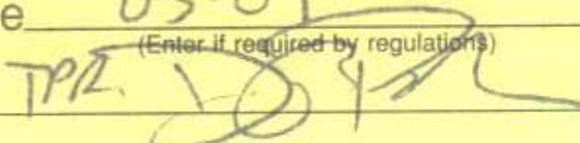
| | | |
|-------------------|----------|-------|
| BLANK TEST | .000 | 03:20 |
| INTERNAL STANDARD | VERIFIED | 03:20 |
| SUBJECT SAMPLE | .13 | 03:21 |
| BLANK TEST | .000 | 03:22 |
| SUBJECT SAMPLE | .13 | 03:24 |
| BLANK TEST | .000 | 03:24 |
| INTERNAL STANDARD | VERIFIED | 03:24 |

ALCOHOL READINGS ARE EXPRESSED AS
GRAMS OF ALCOHOL PER 210 LITERS OF BREATH

Start Observation Time 03:01

(Enter if required by regulations)

Operator Signature

TPR.  17243

Card Stock No.
60023

OD-8

REORDER ALL SUPPLIES FROM N.P.A.S.
P.O. BOX 1435, MANSFIELD, OH 44901

Chapter 8 - SUBJECT TEST SEQUENCE

Step 1: Check mouth of subject for blood, food, gum, tobacco, or any other foreign substances. Observe subject for at least 15 minutes. Record observation start time on Evidence Ticket. Use the time displayed on the instrument panel only.

Step 2: Normal standby display: **“MONTH, DAY, TIME”**
“READY PUSH RUN” (flashing)

Step 3: Push **“RUN”** key on keyboard.

Step 4: Display: **“SUBJECT’S NAME (L/F/M):”**

Type in subject’s last name/first name/middle name.

38 characters are allowed for the entire name. They may be:

1. A letter.
2. A slash (/). Use only to separate last, first, and middle name.
3. A hyphen (-). Use only when part of a name.

Example: SMITH-JONES/LUCILLE/S

4. An apostrophe ('). Use only when part of a name.

Example: O’LEARY/DAN/M

If the subject’s name is unknown, type **“UNKNOWN.”**

MSP ADMIN RULE RE: OBSERVATION

instruments. The department shall certify for use those lots of alcohol standards that are found to be proper in chemical composition.

(e) A person may be administered a breath alcohol analysis on an evidential breath alcohol test instrument only after being observed for 15 minutes by 1 or more appropriate class operators pursuant to R 325.2658(4) before collection of the breath sample, during which period the person shall not have smoked, regurgitated, or placed anything in his or her mouth, except for the mouthpiece associated with the performance of the test. The observation may be conducted by more than 1 operator working in concert. The operator need not stare continuously at the subject, but must be close enough to be aware of the person's actions and conditions. The operator may complete paperwork, enter data into the breath test instrument, or conduct other reasonable tasks during the observation period provided the subject is within the operator's field of vision. Breaks in the observation lasting only a few seconds do not invalidate the observation if the operator can reasonably determine that the subject did not smoke, regurgitate, or place anything in his or her mouth during the break in the observation.

(f) A second breath alcohol analysis shall be requested from the person being tested and administered, unless the person refuses to give the

OCTOBER 18, 2008
SUBJECT'S NAME (L/F/M):
EDWARDS/JAMES/ELVIN
SUBJECT'S ADDRESS:
166 BELLE VILLA BLVD
BELLEVILLE, MI, 48111
SUBJECT'S DOB: 08/11/1987
LICENSE NUMBER: F36336722A187

**51 minute observation period:
12:10 am to 1:01 am**

--- BREATH ANALYSIS ---

| | | |
|-------------------|----------|-------|
| BLANK TEST | .000 | 01:00 |
| INTERNAL STANDARD | VERIFIED | 01:00 |
| SUBJECT SAMPLE | .11 | 01:01 |
| BLANK TEST | .000 | 01:01 |
| SUBJECT SAMPLE | .10 | 01:03 |
| BLANK TEST | .000 | 01:03 |
| INTERNAL STANDARD | VERIFIED | 01:03 |

26-5356-08

ALCOHOL READINGS ARE EXPRESSED AS
GRAMS OF ALCOHOL PER 210 LITERS OF BREATH

Start Observation Time 12:10 Am

(Enter if required by regulations)

Operator Signature J.P.H. Pul 148

SEPTEMBER 27, 2008
SUBJECT'S NAME (L/F/M):
TILLAWI/EMAN
SUBJECT'S ADDRESS:
808 N RIVER
YPSILANTI, MI, 48198
SUBJECT'S DOB: 05/30/1987
LICENSE NUMBER: T400229001406
REPORT NUMBER: 08-12896
OPERATOR'S NAME (L/F/M):

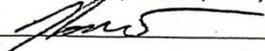
5:28 minus 5:12 = 16 minute observation

--- BREATH ANALYSIS ---

| | | |
|-------------------|----------|-------|
| BLANK TEST | .000 | 05:27 |
| INTERNAL STANDARD | VERIFIED | 05:27 |
| SUBJECT SAMPLE | .16 | 05:28 |
| BLANK TEST | .000 | 05:28 |
| SUBJECT SAMPLE | .15 | 05:30 |
| BLANK TEST | .000 | 05:30 |
| INTERNAL STANDARD | VERIFIED | 05:30 |

ALCOHOL READINGS ARE EXPRESSED AS
GRAMS OF ALCOHOL PER 210 LITERS OF BREATH

Start Observation Time 0512
(Enter if required by regulations)

Operator Signature 

Card Stock No.
60023

0

| Blood alcohol concentration | Allowable variation of second sample result range from the first |
|-----------------------------|------------------------------------------------------------------|
| 0.00% - 0.14% | ± 0.01% |
| 0.15% - 0.24% | ± 0.02% |
| 0.25% - 0.34% | ± 0.03% |
| 0.35% - or more | ± 0.04% |

If the variation is more than that allowed, a third breath sample shall be requested from the person being tested and a third result may be obtained. If the third result does not conform to the allowable variation of either of the first two tests, as established in table 1, the person shall be requested to submit a blood or urine sample for analysis by an approved laboratory.

- (g) The results of a breath alcohol analysis of a person's breath shall be expressed in terms of percent, by weight, that is, grams of alcohol per 100 milliliters of blood (weight/volume) or grams of alcohol per 210 liters of breath, truncated to the second decimal place. For example, 0.237% found shall be reported as 0.23%.

-A SECOND SAMPLE SHALL BE REQUESTED, BUT ONLY ONE SAMPLE IS REQUIRED.

-THE SECOND SAMPLE MUST COMPLY WITH THE TABLE ABOVE. IF NOT, SEEK 3RD SAMPLE. IF 3RD STILL OUT OF VARIANCE, SEEK A BLOOD SAMPLE.

-DATAMASTER AUTOMATICALLY ELIMINATES THE 3RD DECIMAL POINT, WHICH BENEFITS THE DEFENDANT.

ANN ARBOR, MI. 48103
SUBJECT'S DOB: 06/23/1983
LICENSE NUMBER: S312085115480
REPORT NUMBER: 07-11504
OPERATOR'S NAME: MILLI
OPERATOR CERT. # 21673

BREATH ANALYSIS ----

| | | |
|-------------------|----------|-------|
| BLANK TEST | .000 | 03:38 |
| INTERNAL STANDARD | VERIFIED | 03:38 |
| SUBJECT SAMPLE | .20 | 03:39 |
| BLANK TEST | .000 | 03:39 |
| SUBJECT SAMPLE | .25 | 03:41 |
| BLANK TEST | .000 | 03:42 |
| SUBJECT SAMPLE | .17 | 03:44 |
| BLANK TEST | .000 | 03:45 |
| INTERNAL STANDARD | VERIFIED | 03:45 |

ALCOHOL READINGS ARE EXPRESSED AS
GRAMS OF ALCOHOL PER 210 LITERS OF BREATH

Start Observation Time 0320

(Enter if required by regulations)

Operator Signature [Signature]

**Note the variance between
1st, 2nd, 3rd samples:
Admin rules requires blood**

--- BREATH ANALYSIS ---

| | | |
|-------------------|----------|-------|
| BLANK TEST | .000 | 05:48 |
| INTERNAL STANDARD | VERIFIED | 05:48 |
| SUBJECT SAMPLE | .87 | 05:48 |
| BLANK TEST | .000 | 05:49 |
| SUBJECT SAMPLE | .10 | 05:50 |
| BLANK TEST | .000 | 05:51 |
| SUBJECT SAMPLE | .89 | 05:53 |
| BLANK TEST | .000 | 05:53 |
| INTERNAL STANDARD | VERIFIED | 05:53 |

TWO TYPES OF DATAMASTER REFUSALS

Refusals

Only two types of refusals may result after a subject has been read the chemical test rights and has agreed to provide a breath alcohol test but does not provide an appropriate breath sample into the BAC DataMaster.

A. Operator Refusal - Two-minute time limit on the DataMaster

An operator refusal occurs when the operator decides that the subject is not making a sincere effort to provide a breath sample.

When the display “**PLEASE BLOW**” appears, the subject has two (2) minutes to provide a breath sample. If an inadequate sample or no sample at all is received during that time, the display will indicate:

“**SUBJECT REFUSED? <Y/N>**”

The operator must decide if the subject should be cited for an “operator refusal” at this time. If a refusal is warranted, the operator will type “**Y**,” the evidence ticket will print out “**Refused**,” and the test is completed. If an “operator refusal” is not warranted at this time, the operator will type “**N**.” The instrument will automatically purge, ambient zero, run a blank test, and display:

OFFICER MUST PRINT THE TYPE OF REFUSAL ON THE DATAMASTER TICKET

The subject now has additional two (2) minutes to provide a breath sample. If no adequate sample is received within two (2) minutes again, the display will indicate:

“SUBJECT REFUSED? <Y/N>”

The operator must again decide if the subject should be cited for an “operator refusal.” If a refusal is warranted, the operator will type “Y,” the evidence ticket will print out “**Refused,**” and the test is completed. If an “operator refusal” is still not warranted, the operator will type “N.” This time the instrument will purge, run a blank test, run an internal standard, and print out the evidence ticket indicating an “**INCOMPLETE**” subject sample.

When an “**INCOMPLETE**” test is received, the operator will need to start the testing procedure over by pressing “**RUN.**” If the subject again continues to not give an adequate sample after two minutes, the operator should press the “**Y**” at the “**SUBJECT REFUSED? <Y/N>**” display.

IF AN “OPERATOR REFUSAL” IS WARRANTED, WRITE THE WORD “OPERATOR” ON THE EVIDENCE TICKET.

B. ~~X~~ **TECHNICAL REFUSAL - FIVE ATTEMPTS TO BLOW WITHIN TWO MINUTES.**

A “**technical refusal**” occurs when the instrument decides that the subject is not making a sincere effort to provide a breath sample.

A subject is allowed five (5) attempts within the two-minute time frame outlined above to provide an adequate breath sample for the DataMaster. After the 5th unsuccessful attempt, the DataMaster will automatically abort the test and print out “**REFUSED**” on the “Evidence Ticket.” The instrument will not wait the entire two minutes before indicating a refusal, but instead will abort the test anytime during the two minutes after the fifth unsuccessful attempt.

Every effort should be made to advise the subject that a refusal is pending after the 1st, 2nd, 3rd, and 4th unsuccessful attempt.

The operator is under no obligation to initiate a new test sequence following this type of refusal.

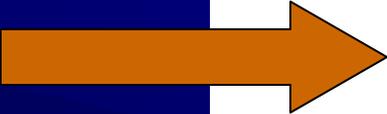
IF NOT AN "OPERATOR" REFUSAL, THEN A "TECHNICAL"

In order to verify that the mouthpiece was not obstructed during these five attempts to provide a breath sample, perform the following check:

After the 5th attempt is completed, do not remove the mouthpiece from the breath tube. The instrument will begin the "**Purge**" cycle. During the purge cycle, place a finger over the mouthpiece opening to verify that air is passing through the mouthpiece.

The two-minute time limit will take preference over all other circumstances.

For example, if three unsuccessful attempts are made and the two minutes expire, the display will indicate "**SUBJECT REFUSED? <Y/N>.**" The operator will then need to decide how to proceed as outlined previously under the "operator refusal" rule.



IF A "TECHNICAL REFUSAL" IS WARRANTED, WRITE THE WORD "TECHNICAL" ON THE EVIDENCE TICKET

Mouth Alcohol

Mouth alcohol implies the presence of alcohol in the mouth. If this is indicated, it may result from stomach contents containing alcohol having been regurgitated from the stomach up into the mouth. If, while the subject is blowing into the DataMaster, mouth alcohol is detected, the test will be aborted.

Both the display and the printout will indicate "**INVALID SAMPLE.**"

THIS IS NOT A REFUSAL!

→ The operator should start a new 15-minute observation period and go through the test procedure again. A blood test shall be requested if "**INVALID SAMPLE**" is detected again. If the subject refuses, seek a warrant. Failure of the subject to provide this test cannot be regarded as a refusal as the subject did provide a sample, even though "**INVALID SAMPLE**" was indicated, pursuant to implied consent.

PRELIMINARY BREATH TEST

MSP Administrative Rule 325.2655 Techniques and Procedures

- (2) A procedure that is used in conjunction with preliminary breath alcohol analysis shall be approved by the department and shall be in compliance with all of the following provisions:
- (a) Preliminary breath alcohol test instruments shall be operated only by operators trained by class IIIA or class IV operators to operate such equipment.
 - (b) A person may be administered a breath test on a preliminary breath alcohol test instrument only after it has been **determined** that the person has not smoked, regurgitated, or placed anything in his or her mouth for at least 15 minutes.
 - (c) Prescribed records shall be maintained at the instrument location and copies shall be forwarded to the department as required.

Smoked, Regurgitated, or Placed Anything in Mouth for 15 minutes

WHY PBTs ARE IMPORTANT

- Allows arrest, without any additional PC, for drunk driving. MCL 257.625a2a
- “To assist the court in determining a challenge to the validity of the arrest” MCL 257.625a2bi
- “As evidence of the defendant’s breath alcohol content, if offered by the prosecution to rebut testimony of a prosecution witness that the defendant’s BAC was lower at the time of the charged offense than when a chemical test was administered.” MCL 257.62512biii

Michigan Department of State Police

**ORIGINAL INCIDENT
REPORT**

ORIGINAL DATE

Thu, Oct 13, 2005

INCIDENT NO.

026-0005741-05 (01)

TIME RECEIVED

0208

FILE CLASS

54002

FANNING swayed throughout the test, and his right arm out over his foot for balance. FANNING planted his foot down at the count of 16, and then stopped. I instructed FANNING to continue. FANNING then held his foot aloft for the remainder. Result: 1 point of 4 possible points (failure).

PRELIMINARY BREATH TEST (P.B.T.):

FANNING stated that he had just finished a cigarette moments before we had stopped him. I then had FANNING take a seat in our patrol vehicle. I then waited with FANNING until 15 minutes had passed since the time of the traffic stop. I then administered to FANNING a P.B.T., which registered .127. FANNING continued to deny that he had been drinking.

It should be noted that FANNING had urinated copiously while he had been seated in our patrol vehicle.

SUSPECT VEHICLE / DISPOSITION:

The suspect vehicle was a red 2004 Dodge Stratus 4dr., which bore 06MI YWX-455. The suspect vehicle was secured and left parked in the Walgreen's parking lot, at FANNING's request.

CHEMICAL TEST RIGHTS:

I placed FANNING under arrest, and transported him with Tpr. MERRYWEATHER to the Washtenaw County Jail. I read to FANNING his chemical test rights at 2:59AM, while at the Washtenaw County Jail. FANNING stated that he understood the rights, and answered "I'll take a second one." when I asked if he would take a breath test.

CHEMICAL TEST:

I administered to FANNING a Datamaster breath test, at the Washtenaw County Jail. FANNING provided one breath sample each at 3:21AM and 3:24AM. The samples both registered .13.

Left - touched the side of his nose.

Right - touched below his nose

Right - began moving his left hand then used right, touching under the tip of his nose

Left - touched the side of his nose.

OFFICERS OBSERVATIONS: While performing the field sobriety tasks, I observed a scrape on Haner's forehead and a small puncture near his right eyebrow. He denied that the cuts were from tonight and did not want medical attention.

PBT: I asked Haner if he had anything to drink, smoke, or had burped or thrown up in the last fifteen minutes since he had been stopped. He said, "maybe" he had burped.

I waited an additional fifteen minutes before administering a PBT, beginning approximately 0310 hours.

I advised Haner of his PBT Rights. He agreed to take the PBT.

While waiting for the fifteen minutes to expire, Haner admitted to drinking a couple of "Pabst" beer bottles. He said he stopped about an hour ago, thinking it was now about 3AM. Haner now said that he was drinking at a bar named Alley in downtown Ann Arbor.

The result was .332 at approximately 0325 hours.

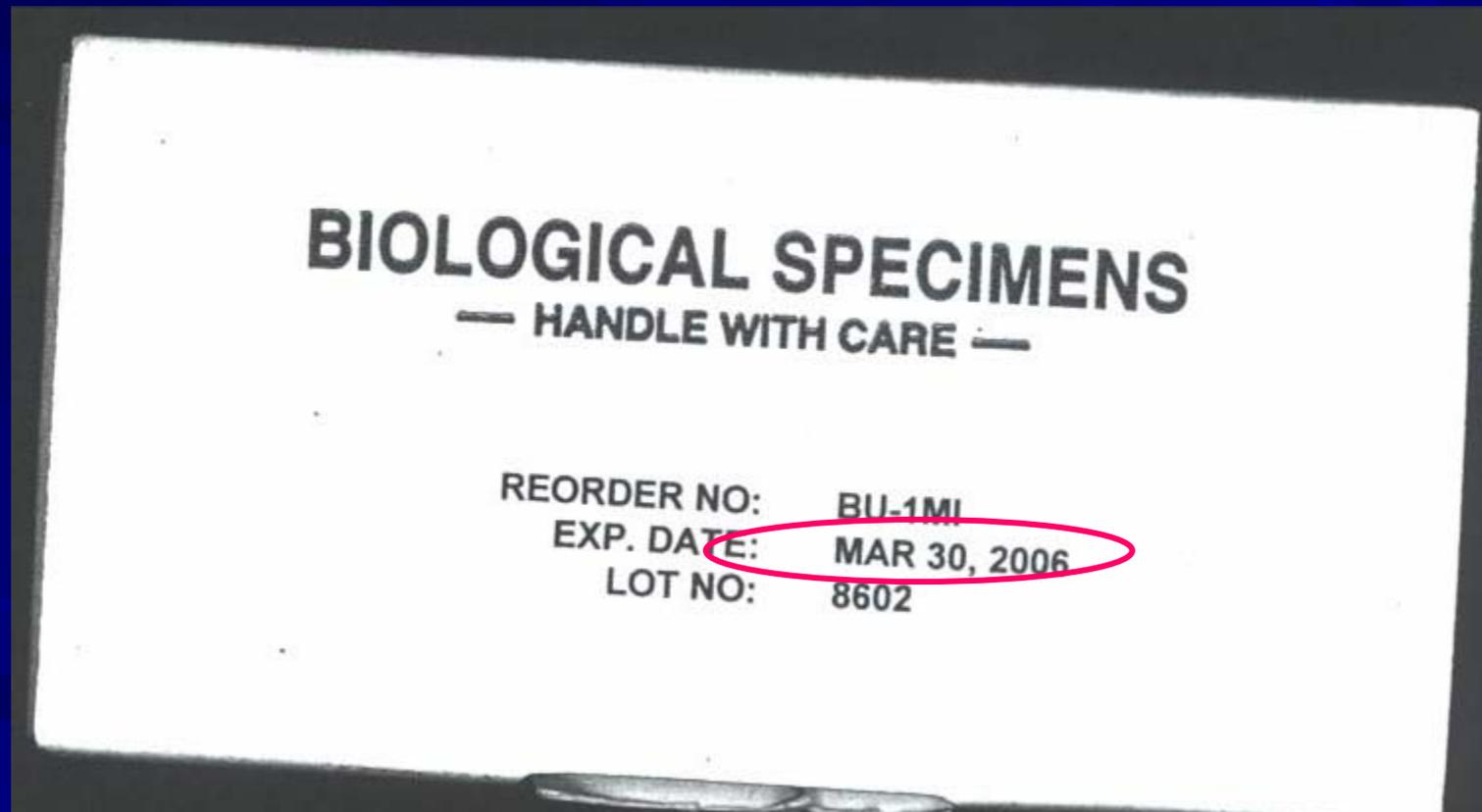
BLOOD DRAWS

- CONSENT (*FORM DI-177*)**
- SEARCH WARRANT FOR BLOOD (*UPON REFUSAL*)**
- BLOOD DRAWN FOR MEDICAL PURPOSES (*LETTER OR SEARCH WARRANT FOR BLOOD RESULTS OF HOSPITAL BLOOD DRAW*)**

REFUSAL = SEARCH WARRANT

MCL 257.625D IF A PERSON REFUSES THE REQUEST OF A PEACE OFFICER TO SUBMIT TO A CHEMICAL TEST OFFERED PURSUANT TO SECTION 625A(6), A TEST SHALL NOT BE GIVEN WITHOUT A COURT ORDER, BUT THE OFFICER MAY SEEK TO OBTAIN THE COURT ORDER.

Inspect MSP Tri-tech kit to ensure it hasn't expired



FOUNDATION FOR BLOOD RESULTS

PEOPLE V. CORDS, MICH CT APPEALS 1975

- *BLOOD TIMELY TAKEN*
- FROM A PARTICULAR PERSON
- NURSE, OR BLOOD TECH, DESIGNATED BY MD
- STERILE INSTRUMENTS USED
- SAMPLE PROPERLY PRESERVED
- SAMPLE PROPERLY LABELED
- PROPER PROCEDURES FOR SHIPPING TO MSP LAB

Officer should address MSP Tri-tech kit, expiration date, nurse's name, & delegating physician in narrative report

BLOOD DRAW: I examined the Michigan State Police Blood draw kit and observed an expiration date of 3-30-06. During the time of the blood withdrawal from the suspect I remained in direct presence of the suspect and Witkowski. I broke the seal of the blood kit in Witkowski's presence, Witkowski removed the blood withdrawal vial, removed a blood withdrawal needle from a sealed package, cleansed the suspect's arm with a non-alcohol swab (from the kit), then drew 2 vials of whole venous blood. I immediately repacked the tubes in the blood kit. I completed the appropriate lab, and hospital paperwork, resealed the blood kit (in front of the suspect). The blood kit remained in my possession until it was delivered to WCSO property for transport to MSP labs for testing.

BLOOD TEST: Blood test by Chelsea Community Hospital by ER Tech Tim Turnwald under the direction of Dr. Hunter. The MSP biological specimens box (LOT NO. 9400, EXP. DATE: March 30, 2008) was opened by Officer Pulford in the presence of Mr. Maveal. A non-alcoholic iodine swab was used.

Vile 1: Drawn from left arm at 0350hrs.

Vile 2: Drawn from left arm at 0351hrs.

I sealed the kit in the presence of Mr. Maveal. Kit was taken to CPD headquarters to be mailed to the Michigan State Police crime lab.

- **NURSE/ER TECH'S NAME IN REPORT**
- **SUPERVISING DOCTOR'S NAME IN REPORT**
- **EXPIRATION DATE OF TRI-TECH KIT IN RPT**
- **KIT OPENED IN FRONT OF DEFENDANT**
- **NON-ALCOHOLIC SWAB USED**
- **TIME OF BLOOD DRAW (FROM LEFT ARM)**
- **KIT SEALED IN PRESENCE OF DEFENDANT**

POLICE PROCEDURES RELATIVE TO CHEMICAL TESTING – HOSPITAL BLOOD

■ PERLOS LETTER

■ NOT PREFERRED

- SERUM VERSUS WHOLE BLOOD

 - SERUM AVERAGES 16% HIGHER THAN WHOLE (UP TO 34%)

- MORE WITNESSES NEEDED

■ IF MUST PURSUE HOSPITAL BLOOD, NOTE IN REPORT

- DEFENDANT INVOLVED IN CRASH

- DEFENDANT TAKEN TO MEDICAL FACILITY FOR MEDICAL TREATMENT

- BLOOD NOT DRAWN AT OFFICER REQUEST

- ENSURE THAT BLOOD WAS DRAWN FOR MEDICAL PURPOSES

■ SEEK SEARCH WARRANT FOR MSP BLOOD INSTEAD

EXAMPLE OF HOSPITAL BLOOD REPORT

ETHANOL COLLECTED: 07/17/06 15:25 ORDER#: 11.01
RESULTED: 07/17/06 15:30 SPECIMEN#: 216511
ETHANOL
93 MG/DL
ETHANOL-BLOOD LOW TOXIC: >100 MG/DL
ETHANOL-BLOOD HIGH TOXIC: >400 MG/DL

DRUG ABUSE SCRIN COLLECTED: 07/17/06 15:25 ORDER#: 12.01
RESULTED: 07/19/06 01:10 SPECIMEN#: 216513

COMMENT

NO SPEC REC'D. CHECK WITH MD RE: NEED TO REORDER.

LAST PAGE

-- Blood drawn: Ron Debrugne
Analyzed : Dawn Buker, Med Tech

$$.093 / 1.16 = .080$$

ACCURATE CHEMICAL TEST INSTRUMENTS

PBT INSTRUMENT

- STATE-APPROVED INSTRUMENT
- VERIFIED FOR ACCURACY AND RELIABILITY ONCE PER MONTH
 - CONDUCTED BY QUALIFIED OPERATOR
 - TESTED WITH CERTIFIED SOLUTION; .076 - .084
- LOGS OF MONTHLY TESTING MAINTAINED

DATAMASTER INSTRUMENT

- STATE-APPROVED INSTRUMENT
- VERIFIED FOR ACCURACY/RELIAB. ONCE PER CALENDAR WEEK
 - CONDUCTED BY QUALIFIED OPERATOR
 - TESTED WITH CERTIFIED SOLUTION; .076-.084
- INSPECTED, VERIFIED, AND CERTIFIED FOR ACCURACY ONCE EVERY 120 DAYS BY QUALIFIED OPERATOR OR COMPANY REP.
- LOGS OF WEEKLY TESTING MAINTAINED

DATAMASTER DMT

- WHY DO WE NEED A NEW EVIDENTIAL BREATH TESTER?
- THE CURRENT BAC DATAMASTER IS EIGHTEEN YEARS OLD
- TECHNOLOGY HAS CHANGED



THE VIRTUALLY
INDESTRUCTIBLE
KEYBOARD®
www.DroidPro.com

Serial Number 01040011
T08409 12:21:33

Run Simulator Test

Print Last Sim. Test Print Last Subject Test Data/Time Copy

Ready 976 mbar 983 PSI

NEW FEATURES OF DMT

- PERFORMS AUTO SIMULATOR TEST
- KEEPS THE LAST SIMULATOR TEST AND LAST SUBJECT TEST IN MEMORY
- USES COMPUTR PRINTER
- PRINTS START OF OBSERVATION TIME ON TEST RESULTS
- DOES NOT REQUIRE OPERATOR TO SIGN TEST PRINT OUT

SIMULATOR TEST

DMT HAS DRY GAS CANISTER ATTACHED

MONDAY MORNING AT 10:00 AM THE DMT WILL
PERFORM A SIM TEST

OPERATOR WILL ONLY BE REQUIRED TO RECORD
TEST ON OD-33

OPERATOR CAN PERFORM A SIMULATOR TEST

SUBJECT TEST

OPERATOR TYPES IN START OF OBSERVATION TIME

NO STREET ADDRESS REQUIRED

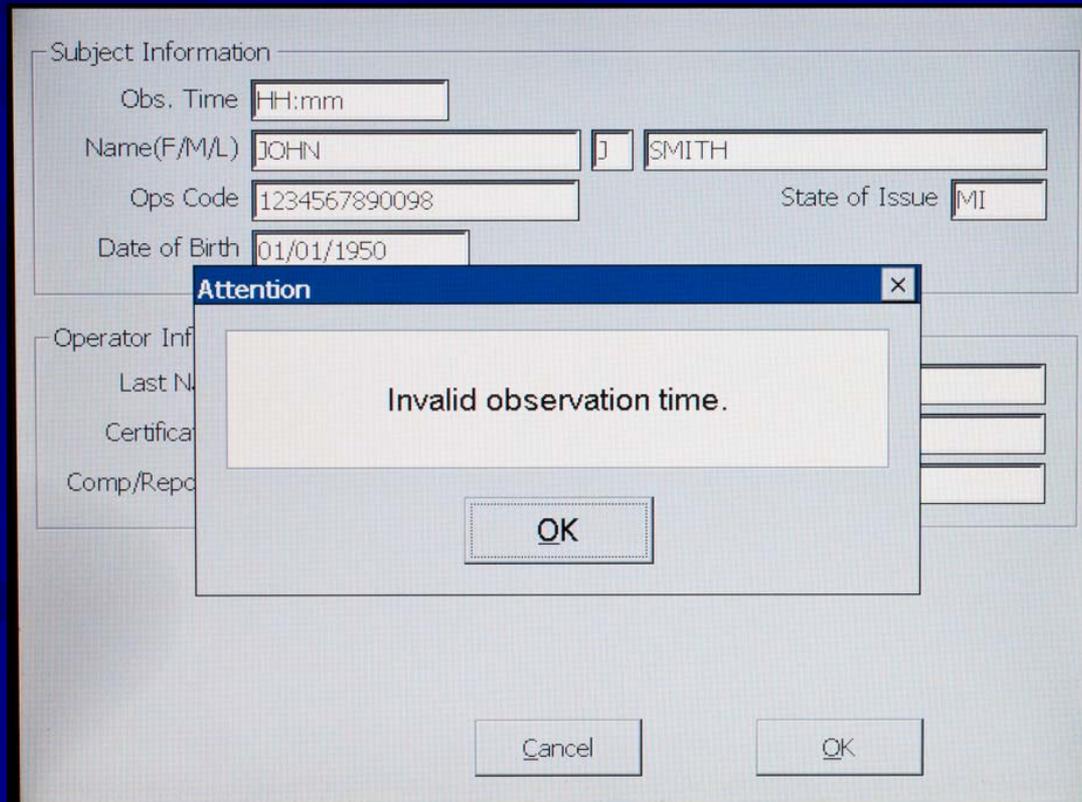
DISPLAYES TIME UNTIL NEXT TEST

NO SIGNATURE REQUIRED ON TEST RESULT PRINT
OUT

ERROR MESSAGES DISPLAYED

ERROR MESSAGES

■ OBSERVATION START TIME LESS THAN 15 MINUTES



The screenshot displays a software interface with a form titled "Subject Information" and a modal dialog box titled "Attention".

Subject Information Form:

- Obs. Time:
- Name(F/M/L):
- Ops Code:
- State of Issue:
- Date of Birth:

Attention Dialog Box:

Invalid observation time.

OK

At the bottom of the main window, there are "Cancel" and "OK" buttons.

REMOVE MOUTHPIECE

The screenshot shows a software window titled "DataMaster DMT® NPAS -- Mansfield, OH" with a sub-window titled "Breath Test". The main window displays the following text:

Time: 11:29:54

OBS. START TIME: 11:10

SUBJECT NAME: JOHN J SM

DOB: 01/0

OPS. CODE

STATE OF

OPERATOR

CURTIS

CERTIFICA

BLANK TEST 0.00 11:30

INTERNAL STANDARD VERIFIED 11:31

An "Attention" dialog box is overlaid on the main window, containing the text "Remove the mouthpiece and discard it." and an "OK" button.

INVALID SAMPLE NOTICE

The screenshot shows a software window titled "Breath Test" from DataMaster DMT. The window contains a text-based interface for recording test data. An "Error" dialog box is overlaid on the main window, displaying the message "Invalid Sample" and an "OK" button.

DataMaster DMT
NPAS -- Mansfield, OH

Breath Test

OBS. START TIME: 11:22
SUBJECT NAME:
JOHN J SM
DOB: 01/0
OPS. CODE
STATE OF
OPERATOR
CURTIS
CERTIFICA
COMPLAINT

Error

Invalid Sample

OK

| | | |
|-------------------|----------|-------|
| BLANK TEST | 0.00 | 11:40 |
| INTERNAL STANDARD | VERIFIED | 11:40 |

SAMPLE AGREEMENT

 DataMaster
DMT®
NPAS -- Mansfield, OH

Breath Test

SUBJECT NAME:
P D CURTIS
DOB: 01/01/1950
OPS. CODE
STATE OF
OPERATOR
CURTIS
BADGE #:
CERTIFICA
BLANK TES
INTERNAL
SUBJECT S
BLANK TES
SUBJECT SAMPLE

Attention

Sample Agreement Failed
Another sample is required. If the Subject
Refuses to Provide Another Sample seek a
Search Warrant for a Blood Test.
This is Not a Secretary of State Refusal

OK

*. ** 11:36

QUESTIONS?