BOARD OF TESTS
TRAINING BULLETIN

If you have any questions regarding the Intoxilyzer or its operation access the Board of Tests website at WWW.OK.GOV/BOT. It is available 24/7 and should answer most of your questions. If the information you need it NOT on the website contact the Board of Tests office at 405-425-2460 during normal business hours.

THERE IS A NEW BLOOD TEST OFFICER’S AFFIDAVIT FORM

Each blood kit, as issued by OSBI, will have one (1) copy of the new Officer’s Affidavit form. If you utilize this form, and there will be no accompanying breath test, DO NOT go to the Intoxilyzer and prepare another affidavit. This creates a duplicate record of the same event and can result in legal challenges later on.

If a blood kit is utilized complete the enclosed Blood Test Officer’s Affidavit. The original, which will be mailed to OSBI in the blood kit, should be signed in BLUE ink. This is to specify, and readily identify, which Affidavit is the original. After signing, make as many copies as the situation requires, and distribute them per the distribution list at the bottom of the affidavit. The original, signed in BLUE ink, should then be placed in the blood kit and mailed to OSBI. It should be laid on top of the styrofoam mailer but OUTSIDE the zip-loc baggie.

IMPLIED CONSENT ISSUES

Operating CMV w/BrAC of 0.04 - 0.07 g/210L

When you arrest an individual who holds a Commercial Driver’s License for DUI, and the results are 0.04-0.07 inclusive you will still serve the individual a copy of the Officer’s Affidavit. The Intoxilyzer will have noted on the Affidavit that the individual has been “Disqualified” to operate a Commercial Motor Vehicle. However, despite the “Disqualification” you will NOT seize the individual’s physical license. He still retains the ability to operate non-commercial vehicles.

You will then forward the original Affidavit, signed in Blue, to the Legal Division at the Department of Public Safety.

DEPRIVATION PERIOD
The deprivation period is still an area of major contention among defense attorneys.

Rules for the deprivation period are:

Subject’s mouth SHALL be checked for foreign substances, smokeless tobacco, gum, etc

Continuous observation of the subject whose breath is to be tested

For a period of at least 15 minutes prior to collection of the first breath sample

Subject shall not have eaten, drank, smoked, or vomited.

Subject shall not have ingested any alcohol or alcoholic beverages

Deprivation/observation may be carried out by the Breath Analysis Operator or any other qualified person. **It is strongly recommend that the Operator conduct the deprivation.**

The State Director agrees with the following article published in the Journal of Forensic Science

Logan, BK, Gullberg RG,

Lack of Effect of Tongue Piercing on Evidential Breath Alcohol Test


“Defendants in several driving under the influence cases have asserted that the presence in the mouth of a metal stud, through a hole pierced in the tongue, invalidates the breath alcohol test because of the prohibition against foreign substances in the mouth and because of the potential for the jewelry to retain alcohol and interfere with the breath test. Rates of mouth alcohol elimination were evaluated in two subjects with pierced tongues and in two control subjects. No differences in the mouth alcohol elimination pattern were observed. The 15 min alcohol deprivation period prior to the test ensures no effect from residual mouth alcohol. For the purposes of breath alcohol testing oral jewelry should be treated in the same manner as dental work and may be left in place during the test without affecting its outcome.”

**INFORMATIONAL MESSAGE**

The informational message “IMPROPER SAMPLE” means the breath sample is invalid due to either residual mouth alcohol or the individual blowing at the incorrect time. Should this message appear the individual’s mouth should be rechecked and a new deprivation period started.

The information message “DEFICIENT SAMPLE” means the individual did not deliver a complete air sample (did not blow long and steady). The individual should be prompted to blow again until the 3 minute prompt expires. If the individual continually fails to provide a proper sample before the device “times out” offer the individual a blood test. If he/she refuses then prepare a refusal affidavit if the situation requires it.
FATALITY ACCIDENTS

In order to draw blood from a driver involved in a fatality accident you must have probable cause.

Title 47, Chapter 10, Section 104B states:

Any driver of any vehicle involved in an accident who could be cited for any traffic offense where said accident resulted in the immediate death of any person shall submit to drug and alcohol testing as soon as is practicable after such accident occurs. The traffic offense violation shall constitute probable cause for purposes of Section 752 of this title and the procedures found in Section 752 of this title shall be followed to determine the presence of alcohol or controlled dangerous substances within the driver’s blood system.

Use this statute when you do not have evidence of drug or alcohol use by the driver. If you are investigating a fatality accident and the driver has committed a traffic offense you are required to obtain a blood sample, even if the person refuses. If your investigation indicates the driver did not do anything wrong you do NOT have probable cause to draw blood. You can suggest to the driver that he/she can request a blood test at their own expense. If he/she consents then you will conduct the blood test and mark the affidavit ADDITIONAL TEST - SUBJECTS REQUEST.

Title 47, Chapter 67, Section 753 states:

If a conscious person under arrest refuses to submit to testing of his or her blood or breath for the purpose of determining the alcohol concentration thereof, or to a test of his or her blood, saliva or urine for the purpose of determining the concentration of any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, none shall be given, unless the investigating officer has probable cause to believe that the person under arrest, while intoxicated, has operated the motor vehicle in such a manner as to have caused the death or serious physical injury of any other person or persons. In such event, such test otherwise authorized by law may be made in the same manner as if a search warrant had been issued for such test of tests. The sample shall be taken in a medically acceptable manner.

Use this statute when you have evidence of drugs or alcohol use, impairment of driver, or evidence in the vehicle. In this case you suspect the driver is intoxicated or could be intoxicated due to the presence of alcoholic beverages (open containers), drugs (prescription or illegal), or any other intoxicating substance and there is a death or serious physical injury to another person or persons. You are required to obtain a blood sample even if the person refuses. 11-904.B2 defines “great bodily injury” as bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

In both cases (not subject’s request) the driver MUST be arrested before the blood can be withdrawn.

Title 47, Chapter 67, Section 752B3 states:
B. If the person authorized to withdraw blood, as specified in subsection A of this section is presented with a written statement:

3. Signed by a duly authorized peace officer, that the person whose blood is to be withdrawn has been placed under arrest and that the officer has probable cause to believe that the person, while intoxicated, has operated a motor vehicle in such a manner as to have caused the death or serious physical injury of another person, or the person has been involved in a traffic accident and has been removed from the scene of the accident that resulted in the death of serious injury of any person to a hospital or other health care facility outside the State of Oklahoma before the law enforcement officer was able to effect an arrest for such offense.

When you read the person the Implied Consent Test Request, and he/she refuses, explain that State law requires the blood sample be taken anyway. Usually they will recant the refusal. If they comply, conduct the blood test and submit as the State’s test. If they continue to refuse, draw the blood sample and submit as the State’s test, prepare a Blood Affidavit and specify FOR CRIMINAL PROSECUTION ONLY. Then you can prepare a REFUSAL AFFIDAVIT and submit it to DPS Legal Division. At this time, if you do not have any reason or probable cause to jail the individual, he/she will be released on their own recognizance. Explain that, pending the results of the blood test, the District Attorney will contact them if charges are in fact filed.

Title 47, Chapter 67, Section 751D states:

Any person who has been arrested for one of the offenses listed in subsection A of this section, who is unconscious or injured, and who requires immediate medical treatment as determined by a treating physician, may be released on the person’s own recognizance for medical reasons by the arresting officer. The arresting officer who releases an arrested person on the person’s own recognizance must indicate the release on the face of the citation. Any person released on his/her own recognizance for medical reasons shall remain at liberty pending the filing of charges.

When you work an accident where the driver has been transported to the hospital, your investigation indicates you will need a blood test, and you are unable to go to the hospital to obtain the blood sample the following procedure should be observed. If you did not tell the driver he/she was under arrest before they were transported from the scene then the officer who makes contact with the driver and reads him the Implied Consent Test Request is the arresting officer and he will need to sign the Affidavit as such. The arrest location is where the arrest actually took place and not where the offense occurred. The arresting officer will complete the Blood or Refusal Affidavit and submit it appropriately. He will then give the Investigating Officer a copy and the investigating officer will be responsible for presenting charges in the County where the offense occurred. He will list the arresting officer as a witness.