



WARREN COUNTY SHERIFF'S OFFICE



**REGULATION 032: DRUGS OR ALCOHOL
INFLUENCED OPERATORS**

EFFECTIVE DATE: 06/17/16

AUTHORITY: SHERIFF NATHAN H. YORK

PRIOR REVISION: 06/20/14

ACCREDITATION STANDARDS: 47.5

REVIEW DATE: -- / -- / --

DEFINITIONS

For the purposes of this Regulation, the following definitions shall apply.

1. **BREATH TEST** - Shall mean a breath test administered in the field by a member for the purposes of determining whether or not a person has consumed alcohol.
2. **CHEMICAL TEST** - Shall mean a chemical test of one or more of the following: breath, blood, urine, or saliva. The test is conducted for the purpose of determining the alcoholic and/or drug content of the blood of a person in terms of a percentage.
3. **OPERATOR** - Shall include the operator of any "vehicle" as defined in this section.
4. **RESPONSIBLE THIRD PARTY** - A person of suitable age and discretion who can be responsible for the welfare, safety, and security of another person released to their custody.
5. **VEHICLE** - Shall include any mechanical means of transportation which could be operated in violation of any drug or alcohol influence statute, regulation, or law. It shall include but is not limited to: motor vehicles, snowmobiles, all terrain vehicles and vessels.

ARRESTS and DETECTION

1. All members of Patrol are responsible for the enforcement of all "driving under the influence+statutes.
2. All persons, regardless of their position, employment, personal or physical characteristics are to be dealt with in a like manner in any contact with members of this office for any purpose.
3. Enforcement and detection efforts shall not be conducted within close proximity to any establishment which serves alcoholic beverages for on premise consumption. Additionally, no patrols shall be in close proximity to any such establishment unless actually handling a call or conducting specific police business. Remember, the public may draw false conclusions when they observe police vehicles sitting near licensed premises.
4. No person shall at any time be singled out as a possible stop or arrest without first having "probable cause" to believe that person is operating a vehicle under the influence.
5. "Probable cause" must be determined by observable and documented violations of the appropriate law and should never be based on previous knowledge or history about the suspected operator or vehicle being operated.
6. The arresting officer shall insure that the defendant's vehicle is secured after the initial arrest by either towing the vehicle in accordance with office policy or by making notification to the defendant's family member or friend to remove the vehicle.

7. Upon completion of the arrest the defendant shall be either arraigned and incarcerated; arraigned and released to a responsible third party; bailed and released to a responsible third party; placed in the Warren County Police Lock-up; or simply released to a responsible third party.

8. Defendants under arrest for any violation alleging an alcohol or drug influence operation shall be transported in accordance with these Regulations.

DRUG RECOGNITION EXPERT (DRE)

1. Drug Recognition Experts (DRE) are members of Patrol who have successfully completed specialized training and have been certified to gather evidence to substantiate charges of impairment by drugs and/or alcohol. DREs shall be utilized during the administration of field sobriety testing, when available.

2. A qualified Drug Recognition Expert (DRE) may be utilized under the following circumstances:

- A. When a suspects level of impairment is not consistent with their BAC;
- B. When there is evidence of the ingestion of drugs with impairment;
- C. When there is evidence of impairment and the arresting officer is unable to determine the substance causing such impairment;
- D. Serious Personal Injury and/or Fatal Motor Vehicle accident investigations involving impaired and/or intoxicated operators.

3. The Drug Recognition Expert (DRE) will conduct all evaluations in accordance with the (DRE) training curriculum and the current (DRE) Program Procedures. At the conclusion of their evaluation the DRE shall render an opinion and advise the arresting officer. Following the determination of the DRE the arresting officer will file the appropriate charges, when applicable, and the DRE will file their reports as an attachment to a supplemental report.

4. The Shift Commander shall make the determination and authorize the Call-In of a Drug Recognition Expert (DRE) when a qualified member is required and not on-duty.

5. The following members are qualified Warren County Sheriff's Office Drug Recognition Experts (DRE):

- A. Patrol Officer Jeremy T. Coon

BREATH TESTS

1. Breath tests shall be administered in accordance with New York State Vehicle and Traffic Law.

2. Alco-sensors shall be used to administer breath tests.

3. Members shall conduct breath tests in accordance with the operating instructions on the back of the Alco-sensor.

DWI WARNING AND CHEMICAL TEST REFUSAL

1. All persons arrested for driving under the influence shall be requested to submit to chemical testing for the purpose of determining the alcoholic and/or drug content of that person.

2. If the arrestee declines (refuses) to submit to chemical testing members must read the Warren County Sheriff's Office Form P-68 DWI WARNING card to the arrestee three (3) times. The DWI WARNING card shall be read to the arrestee verbatim each time to provide a clear and unequivocal warning.

3. The DWI warning notice shall be documented on the P-68 DWI WARNING card, in the 710.30 Notice portion of the New York State DCJS Form-3204 DWI Arrest Instrument and in an Aegis computer narrative.

4. When an arrestee being processed at Headquarters refuses to submit to chemical testing that arrestee shall be escorted into Investigations Interview Room A to have the DWI WARNING card read three (3) times while being digitally recorded and such recording shall be preserved as evidence.

5. All refusals to submit to chemical testing must be properly recorded on a New York State Department of Motor Vehicles Form AA-107 Report of Refusal to Submit to Chemical Test form and in an Aegis computer narrative.

CHEMICAL TESTS

Chemical testing of an operator shall be governed by the following:

1. When an offense is committed that violates any Federal, State or Local law or ordinance, and that law or ordinance permits the taking of a chemical test to determine blood alcohol concentration, those tests shall be given on an Datamaster unit whenever possible.
2. Tests will be conducted on those units which are maintained and operated in the regular course of business of this office.
3. Tests will be administered only by members who possess a valid operator's permit issued by the New York State Department of Health.
4. When the **arresting officer is** a Datamaster operator they shall conduct their own 20 minute observation of the defendant and perform the chemical test. When the **arresting officer is not** a Datamaster operator, the chemical test shall be conducted by any available Datamaster operator.
5. All chemical tests of the breath of persons arrested shall be given within two hours after arrest.
6. Members administering a chemical test shall complete a Datamaster Operational Checklist on the approved form. Members shall operate the Datamaster in accordance with the steps outlined on the checklist.
7. Continuous observation of the subject shall be maintained for at least 20 minutes prior to the collection of a breath specimen, during which time the subject may not have ingested alcoholic beverages or other fluids, eaten, vomited, regurgitated, smoked any tobacco products, or been allowed to place anything in their mouth. If the subject should vomit or regurgitate, an additional 20 minute waiting period is required.
8. The arresting officer or Datamaster operator shall inquire of the defendant as to the wearing of dentures. If answered in the affirmative, officers shall advise the subject that dentures may hold residual alcohol, which, if present, could cause an erroneous alcohol reading. The individual should then be requested to remove the dentures prior to administering the chemical test. If and when the dentures are removed, the 20 minute observation period would begin. Should the defendant refuse to remove the dentures after being advised of the possible effect on the test, but still consents to take the Datamaster, the officer shall:
 - A. Have the defendant rinse his/her mouth thoroughly with water;
 - B. Commence the 20 minute observation period; and
 - C. Administer the test.
9. A system purge must precede the testing of each subject.
10. The result of an analysis of a suitable reference sample, such as air equilibrated with a reference solution of alcoholic content of greater than 0.08 percent weight per volume at a known temperature, must agree with the reference sample value within plus or minus 0.01 percent weight per volume, or such limits as set by the NYS Commissioner of Health. This analysis shall immediately follow the analysis of the breath of the subject and shall be recorded.
11. Results of an analysis of breath for alcohol shall be expressed in terms of percent weight per volume, to the second decimal place as found; for example, 0.237 percent shall be reported as 0.23 percent.

CHEMICAL TESTS - BLOOD AND/OR URINE TESTS

The following policies govern the collection and handling of blood and urine samples for alcohol or drug testing.

1. No person, except those enumerated in the Vehicle and Traffic Law shall be entitled to withdraw blood for the purpose of determining the alcoholic content therein.
2. All samples shall be collected within two hours of the time of arrest. An analysis of urine shall be made upon two specimens collected at least 30 minutes apart.
3. For the withdrawal of blood from a defendant, an aqueous solution of nonvolatile antiseptic shall be used on the skin. Alcohol or phenol shall not be used as a skin antiseptic.
4. Blood shall be withdrawn with:
 - A. a sterile dry needle into a vacuum container containing a solid anti-coagulant; or
 - B. a sterile dry needle and syringe, and deposited into a clean container containing a solid anti-coagulant, which container shall then be capped or stoppered, and identified.

COMPULSORY CHEMICAL TEST (COURT ORDERED)

1. Members shall familiarize themselves and comply with the appropriate sections of law that deal with court ordered chemical tests to determine blood alcohol concentration levels.
2. Members shall comply with all requirements of law as they pertain to the issuance and use of affidavits and orders for securing court intervention for the purpose of securing blood alcohol concentrations.
3. Members shall be familiar with the elements necessary to request a compulsory chemical test as set forth in appropriate law.

GENERAL PROCEDURES - CHEMICAL TEST EQUIPMENT

The following requirements shall be applicable to all chemical analysis units maintained by this office.

1. Proper and adequate records on all tests and checks shall be maintained and recorded in designated locations for office records.
2. Supervisor tests are to be conducted on a generally weekly basis.
3. Arrangements for a calibration test to be conducted by an outside independent agency shall be made for each chemical analysis unit at least twice a year.

DATAMASTER OPERATIONAL CHECKLIST & ALCOHOL ANALYSIS RECORD DISTRIBUTION

1. The Operational Checklist is to be distributed as indicated on the bottom of the P-71 Checklist form. Copies are sent as follows:

White original checklist with the Case Report
Yellow copy of checklist to the Court
Pink copy of checklist to the DA's Office

2. Copies of the Alcohol Analysis Record are to be distributed to the same locations as the checklist. The Datamaster unit will print a Print Ticket, which has three copies for distribution purposes.