

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

4400 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210

POLICY #: 8.12.10	DATE: 09/01/93	REVISION DATE: 06/29/98
TITLE: IMPLIED CONSENT - BAC DATAMASTER CHECKLIST		PAGE 1 OF 2

RESPONSIBLE AUTHORITY: SPECIAL AGENT IN CHARGE OF
FORENSIC SERVICES LABORATORY

RELATED STANDARDS/STATUTES/REFERENCES: S.C. Code of Laws, Section 56-5-2950
S.C. Code of Laws, Section 50-21-114
S.C. Code of Laws, Section 55-1-100
S.C. Code of Laws, Section 56-1-2130
S.C. Code of Laws, Section 23-31-410
S.C. Code of Laws, Section 56-1-286

GENERAL PURPOSE: To set forth policies for the administration of implied consent breath alcohol tests.

POLICY: The Division will establish procedures for properly conducting implied consent BAC DataMaster breath alcohol tests.

SPECIFIC PROCEDURES: After the subject arrives at the testing site, the test operator will acquire a SLED evidence ticket. The approved ticket is titled, "SOUTH CAROLINA LAW ENFORCEMENT DIVISION Breath Alcohol Analysis Test Report". This form is designated as LAB 006 or Form No. 100190-IC. The operator is not required to maintain any other types of logs or documentation. A copy of every ticket used in an implied consent test, including aborted tests, should be saved.

The arrest status and rights advisement for implied consent breath, blood, and urine tests for DUI, Felony DUI, and/or zero tolerance violations shall come from the "ADVISEMENT OF IMPLIED CONSENT RIGHTS" (Attachment A). This form is designated as Form # IC-001. One form should be completed each time a sample(s) is requested by the officer. For example, if a breath test is performed and then a urine sample is taken later, two separate forms should be completed.

The officer shall read any applicable advisement from the form and furnish the subject a copy. It is suggested that the three copies of the form be distributed as follows: First Copy (Original) - Officer, Second Copy - Subject, and Third Copy - Extra. Other copy distributions are acceptable as well. An optional fourth copy of this form may also be utilized. Unless the subject is unruly and/or violent, he/she should be given the opportunity to sign the form. The subject's signature signifies that he/she received a copy of the form. However, when the subject is provided a copy of the form, the subject has been informed in writing of his/her rights whether or not he/she signs the form. In the event the subject refuses to sign the form and/or is unruly/violent, the officer should print "Refused to sign" or similar wording on the subject signature line. At his/her discretion, the officer also may put a date beside any statement along with his/her initials. In the event the subject is

unconscious or otherwise in a condition rendering him/her incapable of refusal, the officer should print "Incapable of refusal" or similar wording on the subject signature line. At his/her discretion, the officer also may put a date beside any statement along with his/her initials.

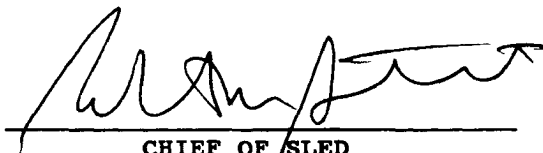
Whether or not the subject signs the form, he/she must be furnished with a copy or a copy left with his/her belongings at the hospital, jail, or other applicable location. After the subject has been advised of his/her rights, the officer shall check the appropriate box beside "Subject Advised/Informed in Writing". The advisement of Miranda rights is not required before an implied consent test. In the event that the breath alcohol test is not for a DUI, Felony DUI, and/or zero tolerance violation, the "ADVISEMENT OF IMPLIED CONSENT RIGHTS" form should not be utilized and the subject should be read the appropriate warning (subject is not required to be informed in writing). Upon request, the subject should be furnished assistance in obtaining an independent test. This level of assistance will be in accordance with the applicable statutes and court decisions.

The statement on the evidence ticket is:

"Subject's mouth checked and any foreign material removed."

The operator shall look inside the subject's mouth and/or ask the subject if he/she has any foreign material and/or removable dental work in his/her mouth. Dental work (removable or permanent) is not considered to be foreign material. Even though the presence of dental work will not affect the breath test when a minimum twenty minute observation is utilized, any removable dental work will be removed as a precaution. Any foreign material and/or removable dental work in the mouth will be removed before the observation period begins. If foreign material and/or removable dental work is removed from the mouth, it is not required that the operator denote what was removed. The checking of this statement verifies that if any foreign material and/or removable dental work was present, it was removed. If a subject intentionally misleads an operator about any foreign material and/or removable dental work, the subject has forfeited his/her right to have it removed. Permanent dental work (such that a dentist is required to safely remove) will be left in the mouth as it will not affect breath test results when an observation period of a minimum of twenty minutes is used. It is not necessary nor required that the mouth be rinsed out if any foreign material and/or dental work is removed, as long as the minimum twenty minute observation period is used.

BY ORDER OF:



CHIEF OF SLED



**SOUTH CAROLINA LAW ENFORCEMENT DIVISION
ADVISEMENT OF IMPLIED CONSENT RIGHTS**

Attachment
A

Subject's Name (Print)

State Licensed / Driver's License Number

CHECK ANY APPLICABLE BOX:

Date of Birth

Subject Advised/Informed in Writing: You are under arrest for Driving Under the Influence, Section 56-5-2930, South Carolina Code of Laws 1976, as amended. The arresting officer has directed that **[breath, blood, and/or urine]** samples be taken for alcohol and/or drug testing. The samples will be taken and tested according to Section 56-5-2950, S.C. Code of Laws 1976, as amended, and the applicable policies and procedures of the South Carolina Law Enforcement Division. You do not have to take the tests or give the samples. If you refuse to submit to the tests or give the samples, your privilege to drive in South Carolina must be suspended or denied for at least ninety days and your refusal may be used against you in court. If you take the tests or give the samples and have an alcohol concentration of fifteen one-hundredths of one percent or more, your privilege to drive in South Carolina must be suspended for at least thirty days. You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense. You have the right to request an administrative hearing within ten days of the issuance of the notice of suspension. You must enroll in an Alcohol and Drug Safety Action Program within ten days of the issuance of the notice of suspension.

Subject Advised/Informed in Writing: You are under arrest for Felony Driving Under the Influence, Section 56-5-2945, South Carolina Code of Laws 1976, as amended, or a law enforcement officer has probable cause to believe that you have violated this section. The law enforcement officer has directed that **[breath, blood, and/or urine]** samples be taken for alcohol and/or drug testing. The samples will be taken and tested according to Section 56-5-2950, S.C. Code of Laws 1976, as amended, and the applicable policies and procedures of the South Carolina Law Enforcement Division. Pursuant to Section 56-5-2946, S.C. Code of Laws 1976, as amended, you must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs. The resistance, obstruction, or opposition to testing pursuant to this section is evidence admissible at the trial of the offense, which precipitated the requirement for testing. If you take the tests or give the samples and have an alcohol concentration of fifteen one-hundredths of one percent or more, your privilege to drive in South Carolina must be suspended for at least thirty days. You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense. You have the right to request an administrative hearing within ten days of the issuance of the notice of suspension. You must enroll in an Alcohol and Drug Safety Action Program within ten days of the issuance of the notice of suspension.

Subject Advised/Informed in Writing: Pursuant to Section 56-1-286, South Carolina Code of Laws 1976, as amended, a law enforcement officer has probable cause to believe that you are under the age of twenty-one and have consumed alcoholic beverages and driven a motor vehicle. The primary investigating law enforcement officer has directed that **[breath or blood]** samples be taken to determine your alcohol concentration. The samples will be taken and tested according to Section 56-1-286 and the applicable policies and procedures of the South Carolina Law Enforcement Division. You do not have to take the tests or give the samples. If you refuse to submit to the tests or give the samples, your privilege to drive in South Carolina must be suspended or denied for at least six months and your refusal may be used against you in court. If you take the tests or give the samples and have an alcohol concentration of two one-hundredths of one percent or more, your privilege to drive in South Carolina must be suspended for at least three months. You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense. You have the right to request an administrative hearing within ten days of the issuance of the notice of suspension. You must enroll in an Alcohol and Drug Safety Action Program within ten days of the issuance of the notice of suspension.

Subject's Signature (Received Copy)

Officer's Name (Print)

Officer's Signature

Date/Time

White - Officer Yellow - Subject Pink - Extra

Form No.: IC-001, June 1998



ADVISEMENT OF IMPLIED CONSENT RIGHTS

Subject's Name (Print)

Date of Birth

Driver's License Number

State Licensed

DUI ADVISEMENT

Subject Advised/Informed in Writing: You are under arrest for Driving Under the Influence, Section 56-5-2930, South Carolina Code of Laws 1976, as amended. The arresting officer has directed that [**breath, blood, urine (CIRCLE ONE)**] samples be taken for alcohol and/or drug testing. The samples will be taken and tested according to Section 56-5-2950 and South Carolina Law Enforcement Division procedures. You do not have to take the tests or give the samples. If you are 21 years old or older and you refuse to submit to the tests or give the samples, your privilege to drive in South Carolina must be suspended or denied for at least ninety days and your refusal may be used against you in court. If you are 21 years old or older and take the tests or give the samples and have an alcohol concentration of fifteen one-hundredths of one percent or more, your privilege to drive in South Carolina must be suspended for at least thirty days. Pursuant to Section 56-1-286, if you are under 21 years old and refuse to submit to the tests or give the samples, your privilege to drive in South Carolina must be suspended or denied for at least six months for breath/blood refusals [**ninety days for urine refusals**] and your refusal may be used against you in court. Pursuant to Section 56-1-286, if you are under 21 years old and take the tests or give the samples and have an alcohol concentration of two one-hundredths of one percent or more, your privilege to drive in South Carolina must be suspended for at least three months. You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer must provide you affirmative assistance upon request. You have the right to request an administrative hearing within ten days of the issuance of the notice of suspension. You must enroll in an Alcohol and Drug Safety Action Program within ten days of the issuance of the notice of suspension.

FELONY DUI ADVISEMENT

Subject Advised/Informed in Writing: You are under arrest for Felony Driving Under the Influence, Section 56-5-2945, South Carolina Code of Laws 1976, as amended, or a law enforcement officer has probable cause to believe that you have violated this section. The officer has directed that [**breath, blood, urine (CIRCLE ONE)**] samples be taken for alcohol and/or drug testing. The samples will be taken and tested according to Section 56-5-2950 and South Carolina Law Enforcement Division procedures. Pursuant to Section 56-5-2946, you must submit to either one or a combination of chemical tests for the purpose of determining the presence of alcohol, drugs, or a combination of alcohol and drugs. The resistance, obstruction, or opposition to testing pursuant to this section is evidence admissible at trial. If you are 21 years old or older and have an alcohol concentration of fifteen one-hundredths of one percent or more, your privilege to drive in South Carolina must be suspended for at least thirty days. Pursuant to Section 56-1-286, if you are under 21 years old and have an alcohol concentration of two one-hundredths of one percent or more, your privilege to drive in South Carolina must be suspended for at least three months. You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer must provide you affirmative assistance upon request. You have the right to request an administrative hearing within ten days of the issuance of the notice of suspension. You must enroll in an Alcohol and Drug Safety Action Program within ten days of the issuance of the notice of suspension.

ZERO TOLERANCE ADVISEMENT (NOT INVOLVING DUI OR FELONY DUI CHARGE)

Subject Advised/Informed in Writing: Pursuant to Section 56-1-286, South Carolina Code of Laws 1976, as amended, a law enforcement officer has probable cause to believe that you are under the age of 21 and have consumed alcoholic beverages and driven a motor vehicle. The officer has directed that [**breath, blood (CIRCLE ONE)**] samples be taken to determine your alcohol concentration. The samples will be taken and tested according to Section 56-1-286 and South Carolina Law Enforcement Division procedures. You do not have to take the tests or give the samples. If you refuse to submit to the tests or give the samples, your privilege to drive in South Carolina must be suspended or denied for at least six months and your refusal may be used against you in court. If you take the tests or give the samples and have an alcohol concentration of two one-hundredths of one percent or more, your privilege to drive in South Carolina must be suspended for at least three months. You have the right to have a qualified person of your own choosing conduct additional independent tests at your expense and the officer must provide you affirmative assistance upon request. You have the right to request an administrative hearing within ten days of the issuance of the notice of suspension. You must enroll in an Alcohol and Drug Safety Action Program within ten days of the issuance of the notice of suspension.

Subject's Signature (Received Copy)

Officer's Name (Print)

Officer's Signature

Date/Time

White - Officer Yellow - Subject Pink - Extra

Form No.: IC-001, August 1998