

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

4400 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210

8.12.10 IMPLIED CONSENT – BAC DATAMASTER CHECKLIST

POLICY #: 8.12.10	DATE: 09/01/93	REVISION DATE: 11/16/01
TITLE: IMPLIED CONSENT - BAC DATAMASTER CHECKLIST		PAGE 1 OF 3

RESPONSIBLE AUTHORITY: SPECIAL AGENT IN CHARGE OF THE
FORENSIC SERVICES LABORATORY

RELATED STANDARDS/STATUTES/REFERENCES: S. C. Code of Laws, Section 23-31-410
S. C. Code of Laws, Section 50-21-114
S. C. Code of Laws, Section 55-1-100
S. C. Code of Laws, Section 56-1-286
S. C. Code of Laws, Section 56-1-2130
S. C. Code of Laws, Section 56-5-2950
S. C. Code of Laws, Section 56-5-2953
S. C. Code of Regulations, Chapter 73,
Article 1

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 following procedures, if applicable, will be performed:

- A. The test operator will acquire a SLED evidence ticket. The approved ticket is titled, "SOUTH CAROLINA LAW ENFORCEMENT DIVISION Breath Alcohol Analysis Test Report". A copy of every ticket used in an implied consent test, including aborted tests, should be saved.
- B. The arrest status and rights advisement for implied consent breath, blood, and urine tests for DUI, Illegal Per Se, Felony DUI, and/or zero tolerance violations will come from the "ADVISEMENT OF IMPLIED CONSENT RIGHTS/VIDEOTAPING" form. 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 collected later, two separate forms should be completed.
- C. The officer will 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.

- D. The reading of any applicable rights advisement and the furnishing the subject a copy (advisement process) should be completed as soon as practical after the subject arrives at the testing location. It is recommended, but not required, that the advisement process occur before checking of the mouth and time stamp (beginning of the observation period). A typical order of events would be advisement process, then checking of the mouth, and then time stamp (beginning of the observation period). However, the advisement process will be completed before the subject is requested to blow into the instrument. This advisement process is necessary to comply with statutory requirements regarding notifications about breath testing and/or videotaping. For tests requiring mandatory videotaping pursuant to Section 56-5-2953, it may be necessary to perform the advisement process twice if the observation period is not videotaped. The advisement process should be videotaped if mandatory videotaping is applicable.
- E. 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. The subject may sign the form after the test as long as he/she is provided a copy before being requested to blow into the instrument. A subject is provided a copy if a copy is either given to him/her or placed in close proximity where he/she can read it.
- F. 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.
- G. Whether or not the subject signs the form, he/she will 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 will 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/VIDEOTAPING" 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.

- H. In reference to the statement "Subject's mouth checked and any foreign material removed" on the evidence ticket, the operator will 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 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 discovered in the mouth will be removed as a precaution.
- I. Any foreign material and/or removable dental work discovered in the mouth will be removed before the observation period begins. If foreign material and/or removable dental work discovered in the mouth is removed, 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 discovered, 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.
- J. If any foreign material and/or dental work is discovered and removed, it is not necessary nor required that the mouth is rinsed out, as long as the minimum twenty minute observation period is used.
- K. The checking of the mouth should occur before the time stamp (beginning of observation period). However, if the time stamp occurs before checking of the mouth and if any foreign material and/or removable dental work is discovered and removed, another evidence ticket must be time stamped and a new observation period initiated.

BY ORDER OF:


CHIEF OF SLED