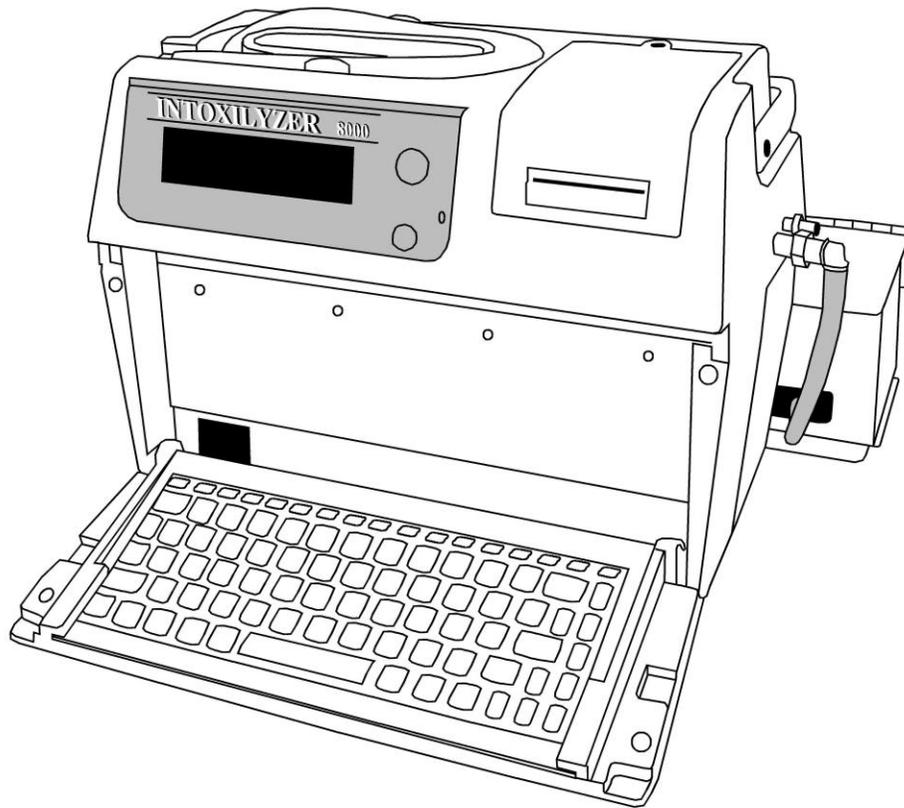




Oregon State Police
Forensic Services Division

ADMINISTRATOR'S GUIDE



INTOXILYZER[®] 8000 ADMINISTRATOR'S GUIDE

OREGON STATE POLICE IMPLIED CONSENT PROGRAM

INTOXILYZER 8000 ADMINISTRATOR’S GUIDE
TABLE OF CONTENTS

Introduction i
 Purpose of the Administrator’s Guide i
 Role of the Instructor ii
 Organization of the Administrator’s Guide ii
 Overview of the Course iii
 Student Qualifications iv
 Student Learning and Participation v
 Student Responsibility v
 Operator Training v
 Operator Re-certification Training v
 Instructor certification vi
 Curriculum Package vi
 Training Goals vi
 Class Description vii
 Instructor Employment and Time Accounting vii
 Instructor Code of Conduct vii
 Breaks, Lunch, and Duration of Class viii
 Reimbursement of Meals and Lodging viii
 How to Give a Good Presentation ix
 Demonstrations ix
 Testing and Practical Exercises ix
 Administering the Final Examination x
 Remedial Training x
 After class x
 Curriculum Changes xi
 Contacts xi
 Statutory Authority xi
 Disclaimer xi
 Frequently asked Questions xii

COURSE INTRODUCTION 1
 CRIMINAL DUII LAW 3
 IMPLIED CONSENT LAW 10
 CRIMINAL LAW VS. ADMINISTRATIVE LAW 26
 BLOOD AND URINE COLLECTION PROCEDURES 33
 IMPLIED CONSENT & DUII DOCUMENTATION 40
 IMPLIED CONSENT CASE LAW 55
 OPERATION OF THE INTOXILYZER 8000 67
 REVIEW 108
 FINAL EXAMINATION AND PRACTICAL EXERCISES 120

	Originally Adopted: 07/13/2006	Revision #: 3.0 Revision Effective Date: 07/01/2014
ALL PRINTED COPIES ARE UNCONTROLLED AND MAY NOT BE COMPLETE		Page iii of xiv

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

Introduction

Intoxicated drivers have been, and still are, a major cause of traffic fatalities in the State of Oregon since the introduction of the automobile. The intoxicated driver is not limited to the interstate or state highways, but can be found on every city street and county road in the state. For law enforcement officers, the problem of the intoxicated driver is a source of major concern.

Intoxilyzer operators (police officers) constitute the cornerstone of any breath alcohol testing program. Conscientious operators, confident in their abilities and competent with the equipment, form the foundation of a solid program. Careless operators, unfamiliar with the operation of the equipment, generate judicial apprehension, as do competent operators that attempt to present expert testimony beyond their background, training, and capabilities. It is the role and responsibility of the instructor to serve as the example for other operators to follow and ensure that students are provided the necessary information and skills to become conscientious operators themselves.

Purpose of the Administrator's Guide

In order for a chemical analysis of a person's breath to be valid in a Driving under the Influence of Intoxicants (DUII) related case, the individual conducting the analysis (the police officer) must possess a valid permit and use a method approved by the Department of State Police (see ORS 813.160(b)). Under this statute, the Department of Oregon State Police is expressly mandated by Oregon's Legislature to do all of the following (emphasis added):

- (A) Approve methods of performing chemical analyses of a person's breath.
- (B) Prepare manuals and conduct courses throughout the state for the training of police officers in chemical analyses of a person's breath, which courses shall include, but are not limited to, approved methods of chemical analyses, use of approved equipment and interpretation of test results together with a written examination on these subjects.**
- (C) Test and certify the accuracy of equipment to be used by police officers for chemical analyses of a person's breath before regular use of the equipment and periodically thereafter at intervals of not more than 90 days. Tests and certification required by this subparagraph must be conducted by trained technicians. Certification under this subparagraph does not require a signed document.
- (D) Ascertain the qualifications and competence of individuals to conduct chemical analyses in accordance with one or more methods approved by the department.**
- (E) Issue permits to individuals according to their qualifications. Permits may be issued to police officers only upon satisfactory completion of the prescribed training course and written examination. A permit must state the methods and equipment that the police officer is qualified to use. Permits are subject to termination or revocation at the discretion of the Department of State Police.**

	Originally Adopted: 07/13/2006	Revision #: 3.0 Revision Effective Date: 07/01/2014
ALL PRINTED COPIES ARE UNCONTROLLED AND MAY NOT BE COMPLETE		Page i of xiv

OREGON STATE POLICE FORENSIC SERVICES DIVISION

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

In short, it is the purpose of this Administrator's Guide, and the role of the instructor, is to assist in fulfilling the Department of State Police's responsibilities under ORS 813.160.

Role of the Instructor

Because of the mandate given to the State Police under ORS 813.160(b), there are several things that each instructor must recognize and understand about their role as an instructor:

1. The Department of State Police solicits assistance from agencies statewide to share the responsibility of training Oregon's law enforcement personnel because DUI enforcement is an important responsibility shared equally by all of Oregon's law enforcement community. The task of training all of Oregon's police officers could not be accomplished by the Department of State Police alone, and therefore, the Department is reliant on and appreciative of those agencies that willingly provide assistance (i.e., instructors) to train police officers.
2. Despite the Department's reliance on other agencies, the responsibilities mandated to the Department by ORS 813.160(b) are not diminished. Therefore, while other agencies are asked to assist with the instruction of police officers in the chemical analysis of a person's breath, the content of the training (a.k.a. "The Curriculum Package"), the qualifications of instructors and students, the standards determining instructor and operator competence, the establishment of approved testing methods, and the approval of testing equipment all remain solely the responsibility of the Department of State Police. The Department codifies many of these requirements in Oregon Administrative Rule (OAR) Chapter 257, Division 30.
3. The nature of this relationship between non-State Police instructors and the Department's obligations under ORS 813.160 can lead to tension between instructors and the Department of State Police. Many agencies may have unique or different DUI processing procedures than those contained in the approved curriculum. Nevertheless, instructors are bound by the Instructor Code of Conduct to teach only the approved training curriculum. Instructors are cautioned and encouraged to resist the oftentimes innocuous tendency to insert personal opinion, attitude, or experience that is in contradiction to the approved training curriculum. If there is an issue in the approved curriculum that requires consideration, then the issue is likely important enough to need permanent incorporation into the approved curriculum and warrants a formal curriculum change request (refer to the "Curriculum Changes" section later in this Guide). This requirement, however, obviously refers to matters of curriculum subject material and not non-substantive material such as typos, statutory numerical reference misprint, and/or other scriveners' errors.

Organization of the Administrator's Guide

This Administrator's Guide provides an introduction and overview of the Department of State Police Implied Consent Program's curriculum for operators of the Intoxilyzer Model 8000 breath alcohol analyzer for Oregon. This Guide aims to further establish and maintain the quality breath alcohol testing program already in existence in Oregon by promoting and standardizing the information taught to prospective Intoxilyzer 8000 operators.

	Originally Adopted: 07/13/2006	Revision #: 3.0 Revision Effective Date: 07/01/2014
ALL PRINTED COPIES ARE UNCONTROLLED AND MAY NOT BE COMPLETE		Page ii of xiv

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

The Administrator's Guide was created for use by Intoxilyzer 8000 Instructors that will be responsible for the training of officers statewide on the Intoxilyzer 8000. This guide is offered as an overview to the Intoxilyzer 8000 training program and is intended to facilitate planning and implementation of the Intoxilyzer 8000 training program. This Guide will serve as a resource for Intoxilyzer 8000 instructors on the operation of the Intoxilyzer 8000 instrument. You should read this Guide and refer to it as needed when instructing operators on the operation of the Intoxilyzer 8000 breath alcohol analyzer.

The Guide covers the sequence of instruction, documents the materials and the teaching aides that make up the instructional package, describes course administrative requirements, and provides guidelines for discharging those requirements satisfactorily.

This Guide also outlines the preparatory work that must be accomplished by the instructor or Course Administrator before the course can be conducted.

Throughout this Guide, the term "Course Administrator" and "Instructor" may be used interchangeably. This is to allow for the many differing permutations under which training sessions might be organized and presented. An instructor may serve as a course administrator; however, a course administrator need not be an instructor.

Terms may also be further defined throughout this guide. For example, the term "BAC" may be used to refer to Blood Alcohol Concentration. Generally, each term or acronym will be defined the first time it is used in the Guide. Readers that are unclear as to the definition or use of a term should refer to an earlier section in the Guide for clarifying information.

Overview of the Course

This training curriculum provides instruction on Oregon's DUI statutes, the Implied Consent laws, Intoxilyzer 8000 operation, and related concepts for operators. The time allotted for this course is six (6) hours. Students must pass the written examination to receive an operator's permit.

1. *Course Introduction* – The "Introductory" session allows instructors to take care of needed "house-keeping" activities such as conducting instructor introductions, providing break information, and orienting students with restroom locations.
2. *Oregon DUII Laws* – The Oregon law session presents and explains concepts pertaining to Oregon's DUII criminal and Implied Consent laws. Included are concepts that are common to both criminal and administrative law, as well as, laws that are tangentially related to conducting a DUII investigation.
3. *Blood and Urine collection procedures* – The "Blood and Urine Collections Procedure" session covers how to properly collect and submit blood and urine.

	Originally Adopted: 07/13/2006	Revision #: 3.0 Revision Effective Date: 07/01/2014
ALL PRINTED COPIES ARE UNCONTROLLED AND MAY NOT BE COMPLETE		Page iii of xiv

OREGON STATE POLICE FORENSIC SERVICES DIVISION

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

4. *Oregon DUUI Forms* – The “Forms” session covers several of the common forms needed to complete a DUUI investigation in Oregon to include the DMV Implied Consent Combined Report, Temporary License, Commercial Driver Addendum, and Blood Test Failure Report.
5. *Oregon DUUI Case Law* – The “Case Law” session presents several concepts officers should be familiar with in order to be successful in DUUI criminal and Implied Consent administrative proceedings.
6. *Intoxilyzer® 8000 Operation* – The “operation” session covers the basic operation of the Intoxilyzer® 8000 breath-alcohol testing instrument. This session is mandatory for officers to complete in order to receive a permit to operate the Intoxilyzer® instrument in Oregon.
7. *Review* – The “Review” session contains questions covered in the previous sessions.
8. *Practical Exercises and Final Examination* – The Practical Exercises session relates to the “Intoxilyzer® 8000” session and provides the student with the opportunity to apply what they’ve learned and obtain direct experience using Intoxilyzer® instrumentation. Students are required to demonstrate to instructors a basic understanding of Intoxilyzer® instrument operation.

The Final Examination is the last step in the training curriculum and is mandatory for officers to pass in order to receive a permit to operate the Intoxilyzer® 8000 instrument.

Student Qualifications

In order to receive a permit to operate the Intoxilyzer 8000 breath alcohol analyzer, the student must meet the requirements set forth in Oregon Administrative Rule (OAR) Chapter 257-030-0080. To qualify for training and to obtain a permit for the operation of the Intoxilyzer 8000, an individual must be a police officer as defined in Oregon Revised Statute (ORS) 801.395 (including reserve police officers) and/or a trained technician of the Oregon State Police. Instructors need only ask whether or not the student requesting training has the authority to enforce the Motor Vehicle Code in Oregon to ascertain whether a student qualifies for training. A “Peace Officer”, for example, would not possess this authority, and therefore, would not qualify for training. A US Forest Service law enforcement officer that has been granted arrest authority in Oregon would, however, qualify.

In addition to meeting the operator qualifications set forth in OAR 257-030-0080, prior to attending the course, students will need to either currently have and know their Department of Public Safety Standards and Training (DPSST) number, or have applied for a DPSST number and be able to forward that information to the Oregon State Police within forty-five (45) days of having completed the operator training course. This is necessary for the Oregon State Police to both track and issue an operator’s permit to the student. If a student meets the operator qualifications but does not have a DPSST # they will need to contact Oregon State Police Implied Consent Unit.

	Originally Adopted: 07/13/2006	Revision #: 3.0 Revision Effective Date: 07/01/2014
ALL PRINTED COPIES ARE UNCONTROLLED AND MAY NOT BE COMPLETE		Page iv of xiv

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

This course is intended to be used to train police officers responsible for enforcing the motor vehicle laws, it is possible that you may have students that do not meet this qualification. Students may elect to attend the course of instruction, but will not be issued a permit to operate the Intoxilyzer 8000 if they do not meet the qualification requirements of OAR 257-030-0080.

Student Learning and Participation

Course Administrators and Instructors are responsible for and should use their own professional style of discipline to ensure students stay fully awake in class, do not talk out of turn, take part in the learning process, and show respect for others attending the training class. If necessary, Instructors are to refer disciplinary matters to the Course Administrator or the student's commanding officer promptly.

Student Responsibility

Students are being held responsible for their own learning and understanding of the course material. Students are expected to listen to the presenter, record the important material in his or her own notes and study from these notes as necessary. This process will reinforce the required skills the student will use in the field when documenting an incident.

Operator Training

The training last approximately 6 hours and will include supervised exercises with the Intoxilyzer 8000 until students become proficient with its operation. After a short review during the class, there will be a written test based on the material contained in this guide.

Students that do not pass these tests will not receive a permit to operate the Intoxilyzer 8000. Any student that does not receive a passing test score may:

- a) Electing to immediately take the second examination; OR
- b) Arranging an alternative time within thirty (30) days with an Instructor to take the second examination.

If the student fails to pass the second examination with a score of at least 80%, the student will need to re-take the entire training course before being given the opportunity to re-take the final examination (refer to the "Remedial Training" section later in this Guide).

Operator Re-certification Training

All Intoxilyzer 8000 operator permits will expire on a period basis at approximately 2 to 3 year intervals depending upon the original training completion date. Operators will need to run a completed test to keep permit active. If an Operator allows their permit to expire they will need to attend the Intoxilyzer 8000 training course.

	Originally Adopted: 07/13/2006	Revision #: 3.0 Revision Effective Date: 07/01/2014
ALL PRINTED COPIES ARE UNCONTROLLED AND MAY NOT BE COMPLETE		Page v of xiv

OREGON STATE POLICE FORENSIC SERVICES DIVISION

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

Instructor certification

Applicants selected to instruct for the Intoxilyzer 8000 Operator Course must be willing to attend a train-the-trainer course provided by the Oregon State Police Implied Consent Unit. Upon successful completion of this course, candidates will then be certified as Intoxilyzer 8000 Instructors.

Instructors will also be expected to maintain proficiency by regularly providing instruction to police officers and hold a valid Intoxilyzer 8000 permit.

Curriculum Package

In addition to this Administrator's Guide, the curriculum package for the Intoxilyzer 8000 training program consists of the following documents, equipment, and materials:

1. Instructor Lesson Plan: The lesson plan is a detailed plan of the material to be presented during the training. The plan is arranged allowing for the instructor to view the information being presented to the student while viewing suggested training notes. The lesson plan references each slide contained in the included "visual aids" (MS PowerPoint) along with instructions on when to demonstrate the use of Intoxilyzer equipment. Each lesson plan is identified by a revision number effective date to indicate when it was placed into service.
2. Visual Aids: Visual aids for the curriculum are intended to augment the lesson plan by providing information in a visual format for the student. This information is contained on a compact disc (CD) that contains a MS PowerPoint presentation. Each MS PowerPoint presentation is identified by a revision number and a revision effective date to indicate when it was placed into service. Other visual aids that may be used by the instructor include, but are not limited to, urine kits, blood kits, copies of DMV forms, and other paperwork items such as operator checklists, out-of-service placards, and student rosters.
3. Intoxilyzer 8000 Instrumentation: Intoxilyzer 8000 instrumentation, mouthpieces, sample operator permit cards, printers, and supplies are to be used to demonstrate and test the student's ability to apply the information presented to them. Each instrument is tracked via its unique serial number.
4. Dry Erase/Chalkboard (Optional): A dry-erase board or chalk board may be used optionally throughout the presentation by the instructor to add to the training experience. Dry erase boards and chalk boards are not provided to the instructor by the Oregon State Police.

Training Goals

Generally, the goal for each training section will be provided in the Lesson Plan for each training section. The goal for the Intoxilyzer Operator Course is: by the end of the class, students should be familiar with the operation of the Intoxilyzer 8000 and be able to successfully complete a breath test with the instrument. Students will be expected to have and demonstrate a working knowledge of the laws encompassing DUII and Implied Consent, as well as, demonstrate completion of a breath testing using the Intoxilyzer 8000.

	Originally Adopted: 07/13/2006	Revision #: 3.0 Revision Effective Date: 07/01/2014
ALL PRINTED COPIES ARE UNCONTROLLED AND MAY NOT BE COMPLETE		Page vi of xiv

OREGON STATE POLICE FORENSIC SERVICES DIVISION

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

Class Description

It is strongly recommended that each Intoxilyzer 8000 Operator course be taught by at least two (2) instructors and be limited to approximately twenty-five (25) students. This is suggested to the instructor to help define the class and ensure that sufficient instructor, instrumentation, and visual aide resources are available to meet the needs of the class.

Instructors must arrange and coordinate all training activities with the Oregon State Police Implied Consent Program. This is necessary to ensure that training materials, instrumentation, visual aids, etc., are provided to the instructor in sufficient quantity to meet the needs of the class. Included in the training materials will be sufficient tests, answer sheets, mouthpieces, and paper for the training.

The instructors should have an estimated class size prior to conducting the training and arrange to have approximately one (1) Intoxilyzer 8000 instrument for at least every three (3) students attending the course.

Instructor Employment and Time Accounting

Many Instructors are employed by agencies other than the Oregon State Police, such as a municipal or city police departments, county sheriff's departments, or the DPSST. As instructors, these individuals are assisting and working under the auspices of the Oregon State Police, and may or may not be on-duty with their agency while instructing. Instructors must remain in compliance with their employer's employment policies at all times and it is expected that all arrangements between the instructor and their employer will be handled by the instructor.

Additionally, the Oregon State Police Implied Consent program will need to have an instructor application and code of conduct on file with the commanding officer's signature for each instructor.

Instructors will need to track their time and fill out time sheets as required by their agency. Please contact your agencies payroll division if you have any questions. The Oregon State Police is not responsible for paying instructors for time spent on- or off-duty while instructing.

Instructor Code of Conduct

Instructors are expected to be positive and motivate students toward learning and professionalism. Instructor should encourage students to take pride in doing their work well, and showing respect for those with whom they work and supervise.

Instructors are expected to always maintain a professional demeanor whenever they are providing instruction to students, representing their Agency, or representing the Department of Oregon State Police. Instructors are always to be polite and courteous, and treat others with respect, no matter who they are. Any differences between instructors are to be kept civil, professional, and should not be discussed or resolved with or in front of students, but rather addressed through consult with other instructors and the Oregon State Police Implied Consent Program. Any breach of professional conduct or standards is grounds for revocation of instructor status.

Originally Adopted: 07/13/2006

Revision #: 3.0
Revision Effective Date: 07/01/2014

OREGON STATE POLICE FORENSIC SERVICES DIVISION

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

Instructors are never (during class or on break) to use offensive jokes, word, gestures, stories, or comments that could reasonably demean or offend any person or group of people. There shall be no visual harassment, offensive touching, jokes, comments, compliments, pet names, cartoons, or other depictions which could be offensive, whether welcome at the time or not, intended or not, before, during, or after class, As an example to your students, show respect for each of them, their employer, other members of the criminal justice system and the general public.

Breaks, Lunch, and Duration of Class

Respect for students and the learning process will be reflected in the Instructors high expectations of the students. Begin class on time and expect students to be seated when class begins. Advise students of the time that the class will begin after each break and lunch period. Students are expected to time their own breaks; do not call them to class. Lunch periods are normally sixty (60) minutes; breaks are offered each hour for approximately ten (10) minutes. Alternative scheduling is always available to the instructor, however, the instructor should work closely with the students to make sure that class begins and ends on time and that the instructor's expectations about break length are appropriately communicated to the class.

Instructors are responsible for the entire duration of the class time allotted. If an instructor completes the required training prior to the end of the allotted time, that instructor shall make every effort to continue the learning process based on the material covered, by group discussion, scenario-based discussion, or team exercises. After class, the instructor shall notify the training coordinator who will then review the course for future changes in content or time allotted

Reimbursement of Meals and Lodging

This section is included for the benefit of instructors in the rare event that grant dollars are made available to the Oregon State Police to reimburse meal and lodging expenses for instructors used to teach Intoxilyzer operation. Generally, however, instructors should not expect to be reimbursed for meals, lodging, time (salary), or other travel expenses. The existence and availability of grant dollars to offset the costs associated with training operators in Oregon is the exception and are temporary.

Instructors that are receiving reimbursements from their agency are not eligible for reimbursement through the Oregon State Police.

An Instructor may request reimbursement by completing the "State of Oregon Travel Expense Detail Sheet". Oregon State Police employees (e.g., Troopers, Senior Troopers, etc.) need to complete the "State of Oregon Travel Expense Detail Sheet for OSP Employees". Non-OSP employed instructors (e.g., Deputies, Officers, etc.) need to complete the "State of Oregon Travel Expense Detail Sheet for Non-OSP employees", which contains additional space for information to route reimbursements. These forms can be found at the OSP Forensic web-site listed below:

<http://eqov.oregon.gov/OSP/FORENSICS/LawEnfResources.shtml>

	Originally Adopted: 07/13/2006	Revision #: 3.0 Revision Effective Date: 07/01/2014
ALL PRINTED COPIES ARE UNCONTROLLED AND MAY NOT BE COMPLETE		Page viii of xiv

OREGON STATE POLICE FORENSIC SERVICES DIVISION

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

Forms should be completed and provided to the Oregon State Police Implied Consent Program Supervisor for approval and signature. Expenses that have not been pre-approved by the Oregon State Police Implied Consent Program or are not reasonably related to the provision of Intoxilyzer training activities will not be reimbursed.

How to Give a Good Presentation

Instructors should adhere to a simple set of rules when presenting information:

1. Speak clearly – People can't hear you if you mumble or talk softly. If necessary, ask students in the rear of the class if they can hear you speak and, if necessary, consider using a microphone.
2. Make sure the slide is on the screen – Check that the slide is lined up on the screen correctly and that your presentation is about the slide on the screen. Ideally, this should be part of the instructor's course preparation checklist.
3. Watch the time – Try not to go over your time as a courtesy to the audience, however, be courteous to students asking questions. If necessary, arrange to speak with a student during a break or after the class if overall course time becomes an issue.
4. Talk to the audience, not the screen – Instructors are encouraged to engage their audience. Everyone can remember or knows someone who is a "good speaker" in front of groups. Instructors should also work to become "good speakers" for their students.
5. Do not read your slide to the audience – the slides are just an outline for your presentation and should not be the entirety of your talk.

Demonstrations

During the equipment demonstration period of the class, the instructor will have to show at least one complete breath testing sequence from start to finish. Also, you will need to make sure that you demonstrate the data entry part of the test at least twice. Once to show how you would enter data if both the officer and the driver have their permit and license (scanning the documents) and again to show how to use the key board to manually enter data when the driver's license or the officer's permit are not available.

Testing and Practical Exercises

Student testing may include written examination, practical exercises, or both:

1. Written Knowledge Exam: Students will need to correctly answer several multiple choice and /or True-False questions.
2. Practical Exercises with Intoxilyzer Equipment: Students will use their own driver's license and a sample permit (provided by the instructor) to run a complete breath test, a refusal, a jail release test and a reprint.

	Originally Adopted: 07/13/2006	Revision #: 3.0 Revision Effective Date: 07/01/2014
ALL PRINTED COPIES ARE UNCONTROLLED AND MAY NOT BE COMPLETE		Page ix of xiv

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

Due to the limited number of instruments it may be necessary to break the class up in to small groups during the test and start part of the class on the practical exercises while the rest of the class starts on the written exam. Once the first group has finished with the instrument, start a second group.

Administering the Final Examination

Instructors should administer the final examination by providing students with both a test booklet and answer sheet. Answers are to be recorded on the answer sheet leaving the test booklet unmarked for re-use in future training sessions. Instructors should periodically inspect test booklet materials to ensure that test answers do not appear in the test booklet.

Passing score for the final examination is answering at least 80% of questions on the final examination correctly. Student that do not meet this grade are to undergo remedial training as described below or will not receive a permit to operate the Intoxilyzer[®] 8000 instrument.

Remedial Training

Students failing to score at least 80% on the final written examination will be given one additional attempt to successfully pass a final written examination. The additional final written examination will be different than the original examination, but will cover similar conceptual information (i.e. there will be no additional content that was not covered in the training curriculum on the second test). The second examination must occur within thirty (30) days of the training. The student must arrange to have the test proctored by an Oregon State Police approved instructor and will have the choice of either:

- c) Electing to immediately take the second examination; OR
- d) Arranging an alternative time within thirty (30) days with an Instructor to take the second examination.

If the student fails to pass the second examination with a score of at least 80%, the student will need to re-take the entire training course before being given the opportunity to re-take the final examination.

After class

Once the class is over, all instruments will need to be packaged up and made ready for return to the Portland Forensic Laboratory or other specified destination. Instructors are reminded that the Intoxilyzer 8000 is an expensive piece of equipment and should be treated as such. Should an instructor wish to avoid having to purchase their own Intoxilyzer 8000 instrument, it should not be left in an unlocked room or vehicle overnight, or any other place where it might be damaged or stolen. Instructors shall exercise the utmost care in the use and retention of all property of the state entrusted to them to facilitate the performance of their duties. They shall not use such property except in performance of their duties, or permit its use by unauthorized persons.

Additional training supplies should be kept with the Intoxilyzer. If you note that the supplies are getting low please contact the Training Coordinator at the Portland Forensic Laboratory (971-673-8235), arrangements will be made to make sure that supplies are delivered before the next class.

	Originally Adopted: 07/13/2006	Revision #: 3.0 Revision Effective Date: 07/01/2014
ALL PRINTED COPIES ARE UNCONTROLLED AND MAY NOT BE COMPLETE		Page x of xiv

OREGON STATE POLICE FORENSIC SERVICES DIVISION

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

Class rosters, breath test reports performed by students, and student examinations, should be returned to the Implied Consent Unit within five (5) business days of completing the training course unless other arrangements have been made in advance. This paperwork is needed in order to issue the student their permit. Students are not able to run breath tests on the Intoxilyzer 8000 unless they have had their name entered in to the instrument's permit database. To expedite the permit process, roster information can be faxed to the Training Coordinator at the Portland Forensic Laboratory (971-673-8309), however, information may not be legible and instructors must provide copies of breath test reports performed by students and student examinations before the class will be considered complete.

Curriculum Changes

Revisions made to this guide will be made regularly available to all instructors via compact disc and on-line. Instructors are responsible to ensure that they are using and are familiar with the current revision of training materials.

Additional information and guide updates can be found at the following web address:

<http://egov.oregon.gov/OSP/FORENSICS/LawEnfResources.shtml>

Requests for changes in the curriculum may be made in writing to the Oregon State Police Implied Consent Program. All changes must be approved by the Oregon State Police and will be noted by an incremental change in the revision number associated with the training materials. This process is necessary to ensure that changes are adequately tracked and that accurate course information is archived.

Contacts

OSP Regional Dispatch Center (Intoxilyzer Assistance Hotline)1-800-292-6517
OSP Stockroom Email.....osp.generalservices@osp.state.or.us
OSP Stockroom Fax.....503-378-4190

Portland Forensic Laboratory.....971-673-8230
Portland Forensic Laboratory Fax.....971-673-8309

Statutory Authority

This Administrator's Guide is developed under the authority granted to the Department of Oregon State Police under ORS 813.160(b) for use by law enforcement personnel only.

Disclaimer

Information contained in this guide is made available as a service for training law enforcement personnel only. It does not constitute or represent an official record of the Office of the Legislative Counsel. The Oregon State Police, its offices, and employees make no warranty as to the accuracy, reliability, or completeness of any statutory or Oregon case-law information contained herein and are

	Originally Adopted: 07/13/2006	Revision #: 3.0 Revision Effective Date: 07/01/2014
ALL PRINTED COPIES ARE UNCONTROLLED AND MAY NOT BE COMPLETE		Page xi of xiv

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

not responsible for any errors or omissions for results obtained from the use or misuse of this information. Any additional inquiries regarding statutory or case-law interpretation should be addressed to your local district attorney's office.

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Frequently asked Questions

This section is designed to assist the Course Administrator or instructor with common concerns, questions, or other issues that occur as a result of offering Intoxilyzer operator training. Nothing in this section, however, is intended to suggest that all scenarios have been addressed or preclude the use of sound judgment on the part of instructors to resolve problems.

1. What if one of the instructors does not show up for the class?

Generally, all instructor assignments will have been coordinated with the Implied Consent program prior to the start of the training class, however, despite proper planning, accidents, miscommunications, and other mishaps can happen. If a co-instructor does not show for class, it is suggested that you contact the Implied Consent program as soon as possible. We will attempt to locate another nearby instructor or an assistant to help you instruct the class. Do not delay the start of the training as this inconveniences students who have already adjusted their schedules to accommodate the training. Remember, it is recommended that two instructors be used to present this material, however, as a rarity and if necessary, one instructor may be used. If at all possible, to avoid inconveniencing students, instructors should avoid canceling or re-scheduling classes due to the failure of a second instructor to arrive on time.

2. What if one or more of the Intoxilyzer 8000 instruments does not work?

As previously mentioned, care must be used when working with Intoxilyzer instrumentation. If an instrument becomes inoperable during a training session, note the exception reported by the instrument and complete any suggested corrective action. If the problem is not corrected, contact the Oregon State Police Intoxilyzer Assistance Hotline or the Implied Consent Program and they will help try to get the instrument running. If necessary, replacement instrumentation will be made available, but the instructor should be prepared to proceed without the instrument in question.

3. How long after completing the class will it take for students to receive their permits to operate the Intoxilyzer?

In order to conduct a test on the Intoxilyzer instrument, the student's permit number and PIN must be entered into the Intoxilyzer instrument's on-board user database. The permit issued to the student is not usable until this first step is completed. Generally, the Intoxilyzer instrument will have been updated with this information before the student has received his or her permit, which will generally be within ten (10) business days of having successfully completed the training class. However, the Department cannot issue a permit to a student unless the Course Administrator submits the class roster to the Training Coordinator in a timely manner. Therefore, it is important that Instructors regularly send roster information to the Department of State Police Training Coordinator.

Originally Adopted: 07/13/2006

Revision #: 3.0
Revision Effective Date: 07/01/2014

INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

4. What to do if you have students that do not pass the course?

The student will be given one additional attempt to successfully pass a final written examination. The additional final written examination will be different than the original examination, but will cover similar conceptual information (i.e. there will be no additional content that was not covered in the training curriculum on the second test). The second examination must occur within 30 days of the training. The student must arrange to have the test proctored by an Oregon State Police approved instructor and will have the choice of either:

- a) electing to immediately take the test; OR
- b) arrange an alternative time with an Instructor to take the second examination.

If the student fails to pass the second examination with a score of at least 80%, the student will need to re-take the entire training course before being given the opportunity to re-take the final examination.

5. One of the students does not have his or her DPSST number?

Students that do not have a DPSST number assigned to them cannot be issued a permit to operate the Intoxilyzer instrument because the number used to track the student's training is the DPSST number. If the student has applied for a DPSST number and simply not received it yet, they have forty-five (45) days from the date of the class to forward their DPSST number to the Department of State Police Training Coordinator to receive credit for attending the class, however, they are not authorized to conduct any chemical tests until having received a permit.

6. What to do if a student blows a positive alcohol result during class exercises?

First of all, DON'T PANIC! This could be an excellent training opportunity for the class. Assess the level of the result in relation to the student's conduct, behavior, and appearance before assuming the result is accurate. Remember your training and ensure that the student was following all appropriate procedures prior to providing a breath sample on the instrument. Many common foods, such as breath mints, juices, and breads contain small amounts of alcohol that may result in a low level positive result if a pre-test observation period was not maintained. If the test result is duplicated while adhering to a proper testing procedure, it may be necessary to report the incident to the student's command staff for disciplinary action.

7. What to do if the class is running too long?

Sooner or later, this will happen to every instructor at some time. The instructor should evaluate the reason for the delay and determine what action is necessary to correct the situation. Instructors should be candid with one another if the reason for the delay is due to poor presentation skills by one or both instructors. Also, you should be prepared to address the class about the potential need to alter the class schedule, but every attempt should be made to not allow the class to run longer than fifteen (15) to twenty (20) minutes over the allotted timeframe. If necessary, the class may elect to skip a break session in order to correct the problem. In some cases, an overly inquisitive class may need to be told to save questions for a later time rather than continuing to interrupt the presentation.

	Originally Adopted: 07/13/2006	Revision #: 3.0 Revision Effective Date: 07/01/2014
ALL PRINTED COPIES ARE UNCONTROLLED AND MAY NOT BE COMPLETE		Page xiii of xiv

OREGON STATE POLICE FORENSIC SERVICES DIVISION

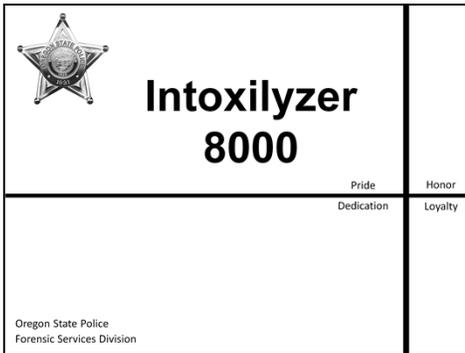
INTOXILYZER 8000 ADMINISTRATOR'S GUIDE
INTRODUCTION

8. **I don't agree with some of the material contained on one or more of the power point slides or in the course curriculum. Is it OK for me to just teach the material I think is correct?**
No. Unless the material in question is obviously incorrect (e.g., a word is misspelled on a slide, or an incorrect statutory citation is made on a slide), corrections or changes to the approved curriculum must be made in writing to the Department of State Police Training Coordinator. Changes will be formally approved by the Department and updated training materials will then be made available to all instructors statewide. This ensures that everyone will benefit from your insight or correction to the curriculum information. Additionally, the State Police can be sure to include the information in future training announcements to operators during update training.
9. **Can non-sworn individuals, parole and probation officers, or correction's officers participate in the training and receive a permit?**
Non-sworn individuals (i.e., dispatchers, attorneys, students, etc.), parole and probation officers, and corrections officers do not meet the definition of a "Police Officer" as defined in ORS 801.395. Therefore, although these individuals can attend a class and receive DPSST credit for attending the training, they are not eligible to receive an operator's permit. Students that are ineligible for a permit should not be allowed to take the place of an eligible student in the class and are not to be given the final examination.

Originally Adopted: 07/13/2006

Revision #: 3.0
Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Go to OSP website and review current training material posted to ensure you have the most current information.
 - a) <http://www.oregon.gov/OSP/FORENSICS/LawEnfResources.shtml>
2. Instructor introductions and brief welcoming remarks.
 - a) Have students sign the DPSST F6
3. Provide students with information regarding:
 - a) The location of restrooms, break rooms, vending machines, etc.
 - b) Anticipated times for breaks and break duration.
4. Inform student now that at the end of the class they will need to pick a 4 digit PIN# (on test answers sheet).
5. Make sure all student are in the correct class.
 - a) No permit will be give to a student that does not have the authority to enforce the Motor Vehicle code.
6. Confirm that all training instruments have been turned on.

Note: Non-OSP employed instructors are working under the direction of the Oregon State Police. Additional information regarding the specific duties assigned to the Oregon State Police can be found by referring to ORS 813.160

- Authorization for non-OSP employed instructors is granted under OAR 257-030-0160

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Intoxilyzer 8000

Curriculum Overview

- Criminal DUII Law
- Implied Consent Law
- Criminal vs. Administrative Law
- Blood and Urine Collection Procedures
- Implied Consent and DUII Documentation
- Oregon DUII Case Law
- Intoxilyzer 8000 Operation
- Review Questions
- Practical Exercises and Final Exam



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2

Lesson Plan:

1. Provide a general over view of the curriculum to be covered.
2. Oregon DUII Laws:
 - a) General differences and similarities between the Implied Consent Law and the Criminal DUII laws.
 - b) Detailed discussion on the criminal laws associated with DUII enforcement.
 - c) Detailed discussion of the relevant statutes and the requirements of Oregon's Implied Consent Laws.
 - d) General laws that are often related to DUII enforcement.
3. Blood and Urine Collection Procedures
 - a) How to properly collect and submit blood
 - b) How to properly collect and submit urine
4. Oregon DUII Forms - DMV Implied Consent documentation process.
 - a) The need for Police Officers to pay close attention to the Implied Consent documentation process;
 - b) The documents required for the Implied Consent process;
 - c) How to properly complete Implied Consent documents.
5. Oregon DUII Case Law
 - a) Case law decisions involving DMV hearings that police officers should be aware of in order to be successful in the DMV hearing process.
6. Intoxilyzer 8000 Operation
 - a) Operator overview
 - b) Parts and controls of the Intoxilyzer 8000
 - c) Test Reports
 - d) Exception Messages and Suggested Corrective Action Statements
 - e) Operation / Test sequence – Jail Release vs. Breath Test
 - f) Placing the Intoxilyzer Out of Service
7. Practical Exercises and Final Exam

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Criminal DUII Law



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3

Lesson Plan:

1. This session addresses in more detail the criminal laws associated with DUII enforcement. Criminal DUII laws are discussed first because the primary course of a DUII investigation is completed first for purposes of the criminal offense of DUII. The administrative (or implied consent) portion of the investigation is secondary to the criminal offense and arrest of DUII.

2. Topics to be discussed in this section are:
 - a) What are the different crime classifications in Oregon and how is the offense of DUII classified;
 - b) What are the criminal consequences associated with a conviction for DUII;
 - c) What is the "Diversion" program and what does an officer need to know about the process;

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Criminal DUII Laws

Crime Classification system:

Crime vs. Violation

- Crime – Imprisonment is authorized
- Violation – No imprisonment, possible fine and/or community service

Misdemeanor vs. Felony

- Misdemeanor crime – Can not be sentenced more than 1 year
- Felony crime – Sentence is more than 1 year



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4

Lesson Plan:

1. What is a Crime versus a Violation (crime classifications):
 - a) Crime - an offense for which a sentence of imprisonment is authorized.
 - b) Violation – an offense for which a sentence of imprisonment is not authorized. The statute prescribing the penalty for the offense will generally outline a fine for the offense. The statute may provide for punishment in addition to a fine as long as the punishment does not include a term of imprisonment (i.e. community service).
2. What are the difference levels of “crimes” (level of offense):
 - a) Misdemeanor - a crime where a person convicted may be sentenced to a maximum term of imprisonment of not more than one year.
 - b) Felony - a crime where a person convicted may be sentenced to a maximum term of imprisonment of more than one year.

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Criminal DUII Laws

DUII is generally a Class A misdemeanor

It becomes a class C felony if the subject has 2 prior convictions for DUII in the prior 10 years in any jurisdiction

- A felony conviction carries a mandatory minimum of 90 days in jail
- If the subject has 3 prior convictions for DUII within 10 years prior to the date of arrest, a 4th or subsequent conviction carries a presumptive prison sentence.



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Lesson Plan:

1. DUII is generally a Class A misdemeanor
2. A DUII is a felony when the subject has:
 - a) 2 prior convictions for DUII in the prior 10 years in any jurisdiction (90 days minimum jail)
 - b) 3 prior convictions for DUII in the prior 10 years in any jurisdiction (presumptive prison for 3 or more).

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Criminal DUII Laws

Criminal Sanctions for DUII Conviction:

- 1st offense – minimum of \$1,000.00
- 2nd offense – minimum of \$1,500.00
- 3rd offense - minimum of \$2,000.00
 - (if no prison term imposed)

If the BAC is ≥ 0.15 – minimum fine is \$2000.00



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Lesson Plan:

1. Criminal Sanctions for conviction of DUII.

Reminder: These penalties are imposed upon conviction and are separate and independent of any sanctions imposed by the Administrative (Implied Consent) process.

2. In addition to any other sentence that may be imposed, the Court shall impose a minimum fine of:
 - a) First conviction - \$1000.00.
 - b) Second conviction -\$1500.00
 - c) Third or subsequent conviction - \$2000.00 if the person is not sentenced to a term of imprisonment.
 - d) If the BAC is $\geq 0.15\%$ -- the minimum fine is \$2000.00

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Criminal DUII Laws

What is "Diversion"?

Diversion is an agreement made between the defendant and the Court in which the State will forego prosecution and sentencing of the subject for one year in exchange for the defendant's agreement to plead guilty to the DUII and complete certain requirements.

- If completed – DUII charge will be dismissed
- If not – They are convicted and sentenced



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Lesson Plan:

1. What is "Diversion"?
2. Diversion – An agreement made between the defendant and the Court in which the State will forego prosecution and sentencing of the subject for a one year period of time in exchange for the defendant's agreement to complete certain requirements. To be eligible, the defendant must agree to plead guilty to the crime of DUII. During this one year the subject may also be required to:
 - a) Be evaluated by a substance abuse counselor.
 - b) Participate in an alcohol abuse education class while abstaining from all intoxicants.
 - c) Pay all associated fees and fines imposed by the Court.
 - d) Not have alcohol in their system while driving a vehicle for a period of one year.
 - e) Required to install ignition interlock device if the person has driving privileges.
3. If the Defendant meets all of the Court's requirements, at the end of one year, the DUII charge will be dismissed but the charge stays on the person's record.
4. If the subject does not complete the Diversion agreement, the Court will convict and sentence the subject (based upon the earlier plea) of the offense of DUII.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Criminal DUII Laws

Diversion eligibility

- Present DUII did not involve a crash resulting in death or physical injury to any person other than the defendant.
- Has no pending or prior convictions for DUII in the past 15 years
- Is not currently or previously participated in a diversion program in the past 15 years.
- Has no pending convictions for murder, manslaughter, criminally negligent homicide or assault (from operation of a vehicle) in the past 15 years



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Lesson Plan:

1. A subject is eligible for diversion if they:
 - a) The present DUII did not involve a crash resulting in death or physical injury to any person other than the defendant.
 - b) Have no pending DUII offense in any jurisdiction;
 - c) Have no prior conviction for DUII in any jurisdiction within 15 years;
 - d) Are not participating in a DUII diversion program in any jurisdiction;
 - e) Have not participated in a DUII diversion program in any jurisdiction within 15 years;
 - f) Have no pending or prior conviction for murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle for 15 years in any jurisdiction; and
2. Generally a person is eligible for diversion on their first arrest for DUII.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Criminal DUII Laws

What do you need to know about Diversion?

- A person may ask you to explain "Diversion";
- Do not give advice to a subject about whether or not to take "Diversion";
– Reading off the DO7 is not giving advice.
 - Be sure to document injuries of others if any and notify the prosecutor so that an objection to diversion can be made (if applicable)



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Lesson Plan:

1. What should students know about Diversion?
 - a) Officers might be asked about it by subjects. Questions like, "Do you think I'll be eligible for Diversion?", "Do you think I should take Diversion?", and "What will I have to do in Diversion?"
 - b) Do not give advice to an arrested person about "Diversion". Students can explain what "Diversion" is, but when asked about eligibility, etc., student needs to direct the subject to an attorney or to DMV.
 - c) Document ANY injuries, especially if the current arrest involves a crash that did, or might, result in death or physical injury to any person other than the defendant. This is necessary documentation for the District Attorney to ensure that the defendant does NOT qualify for a "Diversion" agreement.
2. Ask students if there are any questions regarding Diversion.

NOTE: It is not necessary that students understand Diversion – this information will not appear on the final examination, However, it is necessary that students understand they are not to provide advice or counsel regarding the Diversion process to a person arrested for DUII. This is a conflict of interest.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law



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10

Lesson Plan:

1. This section covers the relevant statutes and the requirements of Oregon's Implied Consent Laws. Topics to be discussed are:
 - a) What is Oregon's "Implied Consent" law?
 - b) What are the required elements under Oregon Implied Consent law necessary for DMV to enforce a suspension?
 - c) Suspension levels
 - d) What constitutes a failure for purposes of the chemical test?
 - e) What constitutes a refusal for purposes of the chemical test?

2. Additional topics to be discussed are:
 - a) The sanctions for failure and refusal under the Implied Consent law.
 - b) Subject's rights
 - c) Implied Consent hearing and the officers role

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law

What is "Implied Consent"?

Under law, anyone who drives a motor vehicle on a premises open to the public in Oregon has given their consent to take a breath, blood or urine test when arrested for DUII and asked to do so or else his/her license is subject to suspension.



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11

Lesson Plan:

1. What is the Implied Consent law?
2. The term "Implied Consent" refers to the requirement in the Oregon Motor Vehicle Code which states in part that:
 - a) Anyone who operates a motorized vehicle on premises open to the public in Oregon has given their consent to take a breath, blood, or urine test when under arrest for DUII and asked to do so or their driving privileges are subject to suspension.
3. "Consent" is implied simply by driving a motor vehicle and does not require the person to have a driver's license.
4. Remember: "Implied consent is **NOT** the same as "Voluntary Consent".
5. The term "implied consent" only applies to the administrative suspension process. Implied Consent does not mean that the person has "implied " their consent to perform SFSTs or a chemical test for the purposes of an arrest for the crime of DUII. It is only "implied" that if they do not consent to perform these tests, the person's license is subject to suspension by DMV.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law

Is an unlicensed driver arrested for DUII subject to the Implied Consent law?

YES



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12

Lesson Plan:

1. Quiz students on the meaning of the Implied Consent law.
2. Is an unlicensed driver arrested for DUII subject to the Implied Consent law?
 - a) Answer: Yes. And officer's should submit paperwork to DMV to suspend the driver's right to apply for a license.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law

Required elements for suspension under Implied Consent Law:

Under arrest for DUII

- Operating a motor vehicle upon premises open to public/highway
- Probable Cause to make arrest

Informed of their rights and consequences.

Refused or failed test

Operator is qualified to administer test

Instrument/procedures are approved



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13

Lesson Plan:

1. What are the required elements under Oregon Implied Consent law necessary for DMV to enforce a suspension.
2. In order for a suspension to be valid, Oregon's Motorist Implied Consent Law requires that the following conditions must exist:
 - a) The person is under arrest for DUII.
 - The person operated a motor vehicle upon a public highway or a premise open to the public.
 - The police had "Probable Cause" to make the arrest (i.e., the arrest must be valid).
 - b) The person had been informed of rights and consequences.
 - c) The person refused the test or failed the test with:
 - 0.08% or more if not driving a commercial motor vehicle;
 - 0.04% or more if driving a commercial motor vehicle; or
 - Any amount if under 21 years of age.
 - d) The person administering the test is qualified.
 - e) The breath testing methods, procedures and instrument used were all approved by Oregon State Police.

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Implied Consent Law

Remember:

- Arrests are based on PC
- No PC, no legal arrest.
- No PC, no legal search
- IC suspension may not mean DUII conviction
- IC dismissal may not mean DUII acquittal.



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14

Lesson Plan:

1. Students should remember the following things:
 - a) All arrests must be based on Probable Cause. Impairment equals probable cause.
 - b) Without probable cause (impairment), you cannot legally arrest a person for DUII.
 - c) Without probable cause (impairment), you cannot legally search someone by requiring them to submit to a blood or breath test.
 - d) A person could be suspended under Implied Consent, yet be acquitted on the criminal charge of DUII.
 - e) A person may have their suspension dismissed under Implied Consent, yet be convicted on the criminal charge of DUII.
2. Less than 0.08% BAC does not mean the criminal DUII charges should be dismissed. A blood alcohol concentration less than 0.08% BAC is indirect evidence that can, when combined with other evidence (documented case of impairment), be used to successfully prosecute a driver for DUII.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law

Offenses and consequences:

Non-Commercial driver	Failure	Refusal
1 st Offense	90 days	1 year
2 nd Offense	1 year	3 years
Commercial driver		
1 st Offense	90 days	1 year
Hazmat	3 years	5 years
2 nd Offense	Lifetime (20 years)	Lifetime (20 years)



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15

Lesson Plan:

1. What are the suspension periods for failure and refusal under the Implied Consent law?
2. Suspension levels for Non-commercial drivers (0.08% or higher)
 - a) Failure of the blood or breath test
 - 90 day suspension
 - 1 year, if within the last 5 years subject has been:
 - Convicted of DUII
 - Had driving privileges suspended under Implied Consent Law
 - Participated in a DUII diversion or similar program
 - b) Suspension levels for refusal
 - 1 year
 - 3 years if within the last 5 years:
 - Convicted of DUII
 - Had driving privileges suspended under Implied Consent Law
 - Participated in a DUII diversion or similar program
3. Suspension levels for Commercial drivers (0.04% or higher)
 - a) Failure of the blood or breath test
 - 1 year
 - 3 years, if hazardous materials are involved
 - Lifetime, if subject has a prior CDL suspension.
 - b) Suspension levels for refusal
 - 3 years
 - 5 years, if hazardous materials are involved
 - Lifetime, if subject has a prior CDL suspension
4. Suspension periods for subsequent convictions are enhanced if within 5 years of the previous convictions.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law

A driver who possesses a CDL license is operating a commercial motor vehicle and is arrested for DUII. He refuses the breath test.

Will his license and/or CDL be suspended?

YES

If the same driver was operating his personal vehicle and has a BAC of 0.06%

Will his license and/or CDL be suspended?

NO



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10

Lesson Plan:

1. Quiz students on refusal suspension periods.
2. A driver who possesses a CDL license is operating a commercial motor vehicle and is arrested for DUII. He refuses the breath test. Will his license be suspended?
 - a) Answer: Yes.
3. Will his CDL license be suspended?
 - a) Answer: Yes.
4. A driver who possesses a CDL license is operating his personal vehicle and is arrested for DUII. His blood alcohol level is 0.06%. Will his license be suspended?
 - a) Answer: No. Blood alcohol level is below 0.08% and driver is not operating a commercial vehicle at the time of the offense.
 - b) Can he still be charged with DUII even if his BAC is less than a 0.08%? - YES
5. Will his CDL license be suspended?
 - a) Answer: No. Driver is not operating a commercial vehicle at the time of the offense.
6. NOTE: students need to understand this information so that the appropriate suspension periods are indicated on DMV paperwork. Again, this is one of the leading reasons that suspensions are disaffirmed by DMV – failure of officers submitting timely paperwork and officers failing to complete paperwork properly.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law

What constitutes a failure of a chemical test under implied consent?

Non-commercial -- 0.08%

Commercial -- 0.04%

Minor -- >0.00%



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17

Lesson Plan:

1. What constitutes a failure for purposes of the chemical test?

2. Under Implied Consent a person fails the chemical test if they have a blood alcohol level of:
 - a) 0.08% or more if not driving a commercial motor vehicle
 - b) 0.04% or more if driving a commercial motor vehicle
 - c) Any amount if under 21 years of age.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law

What constitutes a refusal of a chemical test under implied consent?

Anything substantially short of unqualified assent to take a chemical test of the blood, breath, or urine constitutes a refusal. Once the defendant has refused, he cannot reconsider and recant his refusal.

- It is within the officer's discretion to allow it.



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18

Lesson Plan:

1. What constitutes a refusal for purposes of the chemical test?
2. If the subject does not take the test as requested by the officer then it is a "Refusal". If the suspect changes his/her mind and wants to take the test, it is within the officer's discretion to allow it.
3. Discuss what constitutes a refusal of the breath test under implied consent (*Caldeira v. DMV*). Also, note that evidence of refusal can be used in criminal proceedings.
 - a) (*Caldeira v DMV*) After arresting defendant for driving under the influence of intoxicants, a police officer asked defendant to submit to a chemical breath test. Twice, defendant said he would prefer to take a blood test. On the officer's third request to take the breath test, defendant shook his head "no" and said again he would prefer to take a blood test. The officer then registered defendant's refusal to take the breath test and the Driver and Motor Vehicles Services Branch (DMV) suspended defendant's driving privileges based on defendant's refusal to take the breath test. Defendant argues that he did not refuse the breath test, but only indicated that he preferred a blood test. Held: Anything substantially short of unqualified assent to take a breath test constitutes a refusal. Once the defendant has refused, he cannot reconsider and recant his refusal. Reversed and remanded with instructions to reinstate DMV order suspending driving privileges.
4. Discuss what constitutes a refusal of the urine test under implied consent (*Robinson v. MVD*).
 - a) (*Robinson v MVD*) The state appeals a judgment of the circuit court setting aside a final order of the Driver and Motor Vehicle Services Division (DMV) that suspended petitioner's driving privileges for refusing to submit a urine sample. The state argues that the trial court erred in ruling that petitioner did not refuse the officer's request for a urine sample. Petitioner consumed approximately 72 ounces of water from the time of the officer's initial request for the sample until the officer's final request over two hours later. Held: When petitioner told the officer that she could not provide a urine sample and would not even try, that constituted a refusal to take the urine test. Reversed; DMV order suspending driving privileges reinstated.
5. Within 10 days, send the Implied Consent Form to DMV along with any confiscated Oregon license or permit. (more on forms later)
6. Evidence of the person's refusal is admissible in any civil or criminal action arising from a DUII.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 18 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law

Fine for refusing a breath and/or urine test 813.095

\$650

Consecutive Suspensions:

Refusal of a urine test carries same suspension time as refusal of breath test and is consecutive to any other suspension.



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19

Lesson Plan:

1. In criminal section - If the subject refuses a breath or urine test they are also subject to a fine of at least \$650. (ORS 813.095)
2. The refusal of a urine test will be treated as a refusal of a breath test and the suspension will be consecutive to any other Implied Consent suspension. The waiting period for a hardship permit shall be doubled.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law

A driver is arrested for DUII and submits a breath sample of 0.15% BAC. This is his second offense.

How long will he be suspended?

1 year

If he'd refused the test?

3 years



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20

Lesson Plan:

1. Quiz students on suspension periods.
2. A driver is arrested for DUII and submits a breath sample of 0.15% BAC. This is his second offense. How long will he be suspended?
 - a) Answer: 1 year
3. If he'd refused the test?
 - a) Answer: 3 years.

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Implied Consent Law

A driver is injured in a motor vehicle crash and is receiving care at a medical facility. He is arrested for DUII and refuses to take the blood test. He also refuses a urine test.

How long will his suspension period be?

1 year for each refusal (assuming no prior suspensions) for a total of 2 years.



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21

Lesson Plan:

1. Quiz students on blood, breath, and urine suspension periods.

2. A driver is injured in a motor vehicle crash and is receiving care at a medical facility. He is arrested for DUII and refuses to take the blood test. He also refuses a urine test. How long will his suspension period be?
 - a) Answer: 1 year for each refusal (assuming no prior suspensions) for a total of 2 years.

NOTE: Students need to understand this information so that the appropriate suspension periods are indicated on DMV paperwork. Again, this is one of the leading reasons that suspensions are disaffirmed by DMV – failure of officers submitting timely paperwork and officers failing to complete paperwork properly.

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Implied Consent Law

Does the suspect have the right to request an independent test?

YES

- After taking requested test
- Reasonable opportunity
- Own expense
- Qualified person of their choosing



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22

Lesson Plan:

1. Quiz students on independent testing
2. Does the suspect have the right to request an independent test?
 - a) Answer: Yes
3. After a person takes a test as requested by the operator, they have the right to request an independent chemical test. (If they refuse to take the chemical test requested by the officer they do not have the right to an independent test.)
 - a) The person shall be give a reasonable opportunity to a test.
 - Officers should use "reasonable person standard".
 - b) The test will be at the expense of the subject.
 - c) The person administer the chemical test must be qualified.
4. The failure or inability to obtain an independent test or tests by a person shall not preclude the admission of evidence relating to a test or tests taken upon the request of a police officer.
 - a) This doesn't mean that an officer can deny the subject a reasonable opportunity to obtain an independent test.
 - b) DO NOT simply book the person in jail and assume they will be released in a reasonable amount of time to get an independent test.
5. For Implied Consent to be applicable, without a crash, the person must take a breath test and not a blood test. The blood test would be inadmissible in an implied consent hearing because the person was not at a medical care facility receiving treatment for injuries sustained in a crash. If the person is at the hospital, not due to injuries sustained in a crash, obtain blood if you have PC and exigency and do not read Implied Consent Rights and Consequences.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Implied Consent Law

Does the suspect have the right to appeal a license suspension?

Yes

The request must be received by 5:00 pm on the tenth (calendar) day following the arrest for the refusal of a test or the failure of a breath test. If the suspect failed a blood test they have till the tenth day following the date DMV sent the notice of suspension.

- The initial 30 day suspension can not be appealed



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23

Lesson Plan:

1. Does the suspect have the right to appeal a license suspension?
 - a) Answer: Yes
 - If the subject wants to request a hearing they must submit it in writing. If they refused to submit to a test or failed a breath test, the request must be received at the Hearings Case Management Unit by 5 p.m. on the tenth day following the arrest, or they lose their right to at hearing. DMV will hold a hearing within thirty days after the arrest.
 - If the subject failed a blood test, the request must be received at the Hearings Case Management Unit by 5 p.m. on the tenth day following the date DMV sent the notice of suspension, or they lose their right to a hearing. DMV will hold a hearing within thirty days after of the date DMV sent notice.
 - The initial 30 day suspension can not be appealed

2. In 2013 DMV received 14,514 Implied Consent Combined Reports
 - a) Approximately 25% of arrested motorists request an Implied Consent hearing to challenge the proposed suspension

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Implied Consent Law

What is the role of a police officer in an implied consent hearing?

- Can request the hearing be conducted in person.
 - Check box at the bottom of Implied Consent Form
- Officer who was actively involved in the investigation may present evidence, examine and cross-examine witnesses and make arguments



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24

Lesson Plan:

1. What is the role of a police officer in a hearing?
2. Officers need to check the box at the bottom of the Implied Consent Combined Report to request that the hearing be conducted in person.
3. The officer who issued the citation may present evidence, examine and cross-examine witnesses and make arguments relation to:
 - a) The application of statutes and rules to the facts in the case
 - b) The literal meaning of the statutes or rules at issue in the case
 - c) The admissibility of evidence
 - d) Proper procedure to be used in the hearing
4. Officers should use this right only if deemed necessary. If an officer choose to examine, cross-examine, or make arguments during a hearing they need to remember;
 - a) DO NOT give the impression of being "invested" in the outcome of the hearing. It is important that the officer does not have a personal stake in the outcome of the hearing and potentially create bad case law.
 - b) The officer must advise the Administrative Law Judge.
 - c) The officer can only examine a witnesses if they testify.
5. Defense attorneys should not be able to exclude the officer from any part of the hearing.

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Implied Consent Law

DMV may reschedule the hearing if the officer is unable to appear due to illness, vacation, or "Official Duty conflicts"

- Community caretaking
- Court
- Hazardous or impeding travel conditions
- Participation in employer approved training
- Physical incapacity
- Service in the US Armed Forces, military reserves, National Guard or the organized militia

Can only be done once



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29

Lesson Plan:

1. DMV may provide a hearing if the time requirements could not be met. The inability of a subpoenaed police officer to appear due to the officer's illness, vacation, or official duty conflicts.
 - a) Turn in your "notice of availability".

2. "Official Duty conflicts"
 - a) Community caretaking
 - b) Court
 - c) Hazardous or impeding travel conditions
 - d) Participating in employer approved training
 - e) Physical incapacity
 - f) Service in the US Armed Forces, military reserves, National Guard or the organized militia

3. A hearing may not be rescheduled more than once for the officer, but it can also be rescheduled once for the petitioner/attorney.

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**Criminal Law vs.
Administrative Law**



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26

Lesson Plan:

1. This session addresses the differences and similarities between the Implied Consent Law and the Criminal DUII laws. Topics in this section are:
 - a) The importance of establishing impairment first and early in the DUII investigation
 - b) What is the "0.08 legal limit" and of what importance is it to an officer during a DUII investigation;
 - c) What is meant by the term "zero tolerance" and of what importance is it to an officer during a DUII investigation.
 - d) What is the difference between a person's Right to Counsel (DUII Law) and a person's Right to Communicate (Implied Consent Law).

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Criminal vs. Administrative Law

Does BAC prove impairment?

NO

A BAC of 0.08% = Suspension

- Under Implied Consent Law

A BAC greater than 0.08% does not ensure a criminal conviction

Document existence of "impairment" in conjunction with BAC

- Impairment = Probable cause



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27

Lesson Plan:

1. Although it can be said that "impairment" (or intoxication level) generally increases as blood alcohol concentration increases, a person's blood alcohol concentration cannot be used to determine his/her level of impairment. For example:
 - a) Can a person be too intoxicated to safely operate a motor vehicle at a blood alcohol level lower than 0.08%?
Yes
 - b) Can an officer, however well trained, reliably determine blood alcohol concentration based solely on FST performance? No
(See State v. O'Key)
2. Having a 0.08% BAC (or greater) does mean that an officer can immediately suspend a driver's license under Oregon's Implied Consent Laws. This is the administrative blood alcohol limit.
3. However, having a 0.08% BAC (or greater) does not mean that an officer is assured of a criminal conviction for DUII.
4. Documented existence of "impairment" in conjunction with a 0.08% BAC (or greater) is oftentimes needed in criminal court. Lower blood alcohol concentrations may be used to prosecute in some instances, however, documented impairment is still required.
5. Ask students: Why must an officer witness "impairment" in a DUII case?
 - a) Answer: Because an officer's observations of impairment are necessary to develop his/her "probable cause" for the arrest and subsequent search of the person believed to be DUII.

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Criminal vs. Administrative Law

Minors

For an adult to be arrested for DUII, an officer needs probable cause to believe that the person is impaired.

- The BAC may be over or under a 0.08%

What is the requirement for a minor?

The SAME



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28

Lesson Plan:

1. Quiz students on the meaning of the "0.08 legal limit".
2. To be considered legally "intoxicated" in Oregon, a person must have a blood alcohol concentration of what amount?
 - a) Answer: At least 0.08%
3. To be considered "intoxicated" in Oregon, a minor must have a blood alcohol concentration of what amount?
 - a) Answer: At least 0.08%.

Note: Be sure that students understand that under criminal DUII law, the standard for intoxication is exactly the same regardless of age. The "zero tolerance" exception for underage drinking drivers only refers to the administrative license suspension process.

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Criminal vs. Administrative Law

Minors

What is "Zero Tolerance"?

- Under Implied Consent Law, any amount of alcohol = suspension.
- Under Criminal DUII law, impairment is required.
- Do NOT arrest a minor for DUII unless they are impaired.

Only applies to minors



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29

Lesson Plan:

1. What does the term "zero tolerance" refer to in Oregon law?
"Zero Tolerance" is the phrase used to describe Oregon's law relating to underage drinking drivers wherein "any amount of alcohol" is the limit in which state law declares a minor to be too intoxicated to driver a motor vehicle.
 - a) This is an administrative limit only!
 - b) The "zero tolerance" only applies to DMV's administrative action of suspending a minor's license.
 - c) In order to legally suspend a driver's license, you must first legally arrest the person for DUII, regardless of the driver's age.
2. Remember, in order to arrest an underage drinking driver for criminal DUII, you must have PC (impairment).
3. If impairment is present, make the arrest for DUII, then use the Implied Consent law to gather BAC evidence. If a breath or blood test shows any amount of alcohol in the minor, suspend the driver's license.
4. Regardless of age, no impairment means no legal arrest for DUII. No legal arrest, there can be no implied consent breath test legally given. The burden of proof for a DUII arrest and conviction of a minor is exactly the same as for an adult. Do not make the mistake of arresting a minor in possession for DUII.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 29 of 120

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Criminal vs. Administrative Law

Right to counsel

Criminal Law (DUII Law)

A person has a guaranteed "right" under the Constitution when placed under arrest to speak to an attorney (*Miranda*).

Right to communicate

Administrative Law (Implied Consent)

relates to affording a person the reasonable opportunity to communicate to the outside world.

- Anyone



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30

Lesson Plan:

1. The "Right to Counsel" applies to criminal (or DUII) law. This relates to a person's guaranteed "rights" under the Constitution when placed under arrest (*Miranda*). A request to speak to counsel supersedes all requests to communicate and should be granted unless doing so would be unreasonable.
2. The "Right to Communicate" applies to administrative (Implied Consent) law. This relates to affording a person the reasonable opportunity to communicate with the outside world. (*Moore v. MVD*). The right to communicate can be delayed if it would unnecessarily impede the timely administration of a breath test.
3. In the case where a person asks to speak with counsel, the officer must be very careful to ensure that the person is afforded a reasonable opportunity to contact an attorney and privacy **MUST** be given.

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Criminal vs. Administrative Law

Implied Consent

- Right to communicate with counsel or others
- No right to privacy
- Must give defendant "REASONABLE OPPORTUNITY" to communicate

Criminal

- Right to counsel (Article I §11)
- Right to speak privately prior to breath test
- Must give "REASONABLE OPPORTUNITY" to consult with counsel



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31

Lesson Plan:

1. Who are they calling, do you give privacy, how long do you give?

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Criminal vs. Administrative Law

If the suspect does NOT ask to talk to counsel or others

Continue with breath test

If the suspect asks to make a call to counsel or others tell them:

"Here is a phone and a phone book. For the next 15-20 minutes you will have a chance to talk to anyone you want, including an attorney. If you choose to talk to an attorney, I will leave the room and give you privacy"



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32

Lesson Plan:

1. If the person mentioned the word attorney, counsel, need advice at any time during the investigation, the best practice is to provide privacy and 15-20 minutes to contact anyone they want including an attorney.
2. Explain that the officer can also simply tell the person they will get privacy to contact anyone they want including an attorney and leave the room. Document where the phone call was made and that the door was shut.
3. Reasons to follow this process:
 - a) Efficiency: prevents several 15 min observation periods
 - b) Allows officer to sit in the room if they choose (or can leave as described above)
 - During non-counsel calls
 - Until attorney is contacted
 - c) Prevents issues regarding purpose of call
 - "I want to talk to someone for advice" = equivocal request for counsel. State v. Ohm, 224 Or App 290 (2008)

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**Blood and Urine Collection
Procedures**



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33

Lesson Plan:

1. This section cover the collection procedures for the collection of blood and urine. Topics to be discussed are:
 - a) When can you collect a blood/urine sample?
 - b) Proper collection procedures
 - c) Submitting to lab

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Collection Procedures

Blood Collection

Under Implied Consent, subject must be under arrest and receiving treatment at a medical care facility for injuries resulting from the crash

– If someone other than the suspect is injured, or the person is at the hospital other than because of a crash, DO NOT READ IMPLIED CONSENT

- If a person is unconscious, express consent is not required.
- Must be performed by a licensed physician
 - or person acting under the direction or control of a licensed physician
- Hospital must release blood/urine results (ORS 676.260)



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34

Lesson Plan:

1. Blood can be requested under Implied Consent only if the person is injured in a crash and is receiving treatment for these injuries in a medical care facility. The officer still needs to have "probable cause" and the person must be under arrest
 - a) If you stopped a suspect that had just been in a fight it may be necessary to take the suspect to the hospital for treatment, but you would not read implied consent because the injuries were not the result of a traffic crash.
 - b) Blood can be obtained pursuant to a warrant or PC and exigent circumstances

2. Nothing in the Implied Consent Law is intended to preclude a police officer from obtaining a chemical test of a person's blood for alcohol or a test of the person's blood and/or urine for a controlled substance or an inhalant.
 - a) If the person expressly consents to such a test
 - b) From a person without their consent if:
 - The officer has probable cause to believe that the person was DUII and that evidence will be found in the person's blood or urine and the person is unconscious or incapable of giving consent.

3. Only a duly licensed physician or a person action under the direction or control of a duly licensed physician may withdraw blood or pierce human tissue.
 - a) They shall not be held civilly liable for withdrawing any bodily substance, in a medically acceptable manner, at the request of a peace officer.
 - b) At the time of the draw the physician or person acting under the direction or control of the duly license physician will need to complete a "Certification of Technician to Collection of Blood Sample" form

4. A health care facility that provides medical care immediately after a motor vehicle accident shall notify any law officer who is at the health care facility and is acting in an official capacity in relation to the motor vehicle crash, if the person's BAC is .08 or higher and whether there is any controlled substances in their blood. ORS 676.260. This is based on the hospital's testing.

5. If a person fails a blood test, the police officer shall send the Blood Test Failure report to DMV within 45 days of the date of arrest.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Collection Procedures

Blood Collection Procedures

- Do not use alcohol swabs
- Do not collect from same arm as IV
- Use grey stopper tubes (Purple is also OK)
 - Do not use tubes with red stoppers
- Collect at least two 5ml tubes of blood
- Observe the blood draw
- Mark the container with the suspects information including name and time of collection rather than having the hospital write the information
 - Do not put tape on tube or where the name is written



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35

Lesson Plan:

1. Do not use alcohol swab – use an iodine based swab like betadine.
2. Do not collect blood “downstream” of IV.
 - a) Other arm is preferred
 - b) Can significantly dilute sample
3. Tubes with a grey stopper are preferred
 - a) Tubes with a purple stopper are also acceptable
 - b) Do Not use tubes with red stoppers
4. Collect at least two 5ml tubes of blood.
 - a) Two draws one hour apart is not necessary. Elimination rate can't be determined from 2 draws in a non-lab situation anyway. However, it's always a good idea to collect two tubes for additional testing if necessary.
5. Make sure to observe the blood draw – you will then be able to lay the foundation for admissibility of blood and phlebotomist will not likely be needed.
6. Mark the container with the suspect information
 - a) Explain that HIPAA implications are not an issue when the officer writes the name on the vial of blood rather than the hospital – no protected health information given.
 - b) Do not put tape on the tube covering the suspects information. If the lab can't read the name and/or time of collection, the report will read “reported as having been collected from...” instead of “labeled as having been collected from...”.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 35 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Collection Procedures

Blood Collection Procedures

- Place in evidence bag and attach evidence tape.
 - Be sure to put sample in the larger pouch.
- Place evidence bag into box. Apply evidence tape to seal the box. Initial and date the tape seal.
- Complete laboratory's FORM 49 (Toxicology)
 - Remember: OSP Lab does not test blood for drugs – only alcohol
- Do not freeze



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36

Lesson Plan:

1. Place the tube in an evidence bag and attach evidence tape.
 - a) Make sure the sample is put into the larger pouch.

2. Place the evidence bag into box
 - a) Apply evidence tape to seal the box
 - b) Initial and date the tape seal
 - Write initials and date across the edge of the tape seal so it spans both the tape and the box.

3. Officers are to complete the "Form 49" and submit the blood to either the Portland or Springfield Lab.
 - a) Neither Lab will test blood for drugs, only alcohol. If the blood needs to be tested for anything other than alcohol the officer will need to submit it to a private lab, or get urine.

4. Do not store the blood sample in the freezer
 - a) Freezing the tube may cause the tube to break and leak

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Collection Procedures

Urine Collection

Officer has completed the 8 hour DID training.
Officer suspects intoxicant other than or in addition to alcohol.
Suspect is under arrest for DUII and either

- Breath test result is < 0.08%
- Involved in a crash resulting in injury or property damage.

Suspect must be given privacy



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37

Lesson Plan:

1. A police officer may not request urine unless the officer has completed at least eight hours of training in recognition of drug impaired driving (DID) and has reasonable suspicion that the person arrested is DUII- controlled substance, an inhalant or any combination of an inhalant, a controlled substance and intoxicating liquor.
2. Anyone who operates a motor vehicle upon premises open to the public or the highways of this state shall be deemed to have given consent to a chemical test of the person's urine for the purpose of determining the presence of a controlled substance or an inhalant if the person is arrested for DUII and either:
 - a) Takes the breath test with a result of less than 0.08 percent; or
 - b) The person is involved in a crash resulting in injury or property damage.
 - A urine test may then be requested regardless of whether a breath test has been requested and regardless of the results of a breath test, if one is taken.
3. A person asked to give a urine sample shall be given privacy and may not be observed by a police officer when producing the sample.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Collection Procedures

Urine Collection Procedures

- Universal precautions: wear gloves.
- Inspect facilities: remove cleaning bottles.
- Flush toilet prior to use/add bluing reagent if available.
- Request suspect remove bulky clothing and wash hands.
- Remove contents from collection box and complete information on cup's label.
 - Suspects name – Officers name
 - Date – Time
- Place label on side of urine cup
- Provide privacy



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38

Lesson Plan:

1. Procedures For Urine Collection:

- a) Universal precautions : wear gloves
- b) Inspect facilities: remove cleaning bottles, wash bottles.
- c) Flush toilet and add bluing reagent if available prior to use.
- d) Request suspect remove outer bulky clothing, place purses in separate room and wash hands prior to providing a urine specimen.
- e) Remove contents (label, security seals, inner bag) from standard collection box.
- f) Complete information on cup's label –
 - Suspect's Name
 - Officer's Name
 - Date
 - Time
- g) A person asked to give a urine sample shall be given privacy and may not be observed by a police officer when producing the sample.

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Collection Procedures

Urine Collection Procedures

- Collection of specimen
 - Collect at least 30 ml of urine
 - Ensure the lid is secure
 - Note temperature on thermal strip (90 – 100).
- Place in evidence bag and attach evidence tape.
- Place bag in box, apply security seal, initial and date seal.
- Complete laboratory's FORM 49 (Toxicology)

Remember:

- OSP Lab does not test urine for alcohol – Only Drugs
- Mark container with the suspects info (Do not cover with tape.)
- Note temperature of the sample
- Make sure the lid is on tight



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39

Lesson Plan:

1. Collection of Specimen
 - a) Collect at least 30 ml of urine
 - b) Have subject secure lid
 - c) Note temperature on thermal strip (90 – 100). If the thermal strip shows no "color" request a second sample

2. Remove tape in inner bag, insert cup and seal bag.

3. Place bag into box. Apply security seal on box. Initial seal.

4. Complete laboratory's FORM 49 (toxicology)
 - a) Include suspected drugs
 - b) If tampering has been suspected, it needs to be noted on the form 49.
 - c) Remember that not all drugs are controlled substances, take caution when filling out any forms or paperwork.
 - DRE's use a different form 49
 - If tampering has been suspected, it needs to be noted on the form 49.
 - d) Send to either the Springfield or Portland Forensic Laboratory

5. Students need to remember:
 - a) The OSP Lab does not test urine for alcohol, only drugs.
 - b) Note the temperature of the sample.
 - c) Mark the sample container with the suspects information.
 - d) Do not cover up the suspect information with the tape.
 - e) Make sure the lid is on straight and tight. If it leaks, laboratory will test ONLY the urine in the sample cup itself, not the surrounding packaging.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

**Implied Consent & DUI
Documentation**



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40

Lesson Plan:

1. This session will familiarize students with the DMV Implied Consent documentation process.

2. Topics to be covered are:
 - a) The need for Police Officers to pay close attention to the Implied Consent documentation process;
 - b) The documents required for the Implied Consent process;
 - c) How to properly complete Implied Consent documents.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Documentation

Importance of completing forms correctly:

In 2013 DMV received 14,514 Implied Consent Combined Reports.

- 97% of those forms are processed
 - Of the 3% rejected
 - » 60% boxes incorrectly marked
 - » 26% incorrect date of arrest
 - » 14% received untimely
- About 25% request an Implied Consent hearing



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41

Lesson Plan:

1. Reasons for needing to complete DMV forms properly.
 - a) In 2013, DMV received 14,514 Implied Consent Combined Reports.
 - b) DMV accepted and processed 97% of those forms.
 - c) Of the 3% rejected
 - Boxes incorrectly marked (60%)
 - Incorrect date of arrest (26%)
 - Received untimely (14%)
 - d) Approximately 25% of arrested motorists request an Implied Consent hearing to challenge the proposed suspension.

2. Students need to pay close attention to the rules of the Implied Consent laws in order to be successful in the DMV hearings process. The legitimacy or intentions of the arrest are not at issue (as they might be in a jury trial), rather did the officer meet the necessary documentation and procedural requirements necessary for the ALJ to uphold, and DMV to impose, the suspension.

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Documentation

Approximately 30% of those cases are disaffirmed

The majority of disaffirms are due to:

- Failure of the police officer to appear
- Incomplete or inaccurate police documents
- Untimely or no documents received by DMV from police



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42

Lesson Plan:

1. Approximately 30% of those cases are disaffirmed.
 - a) The majority of disaffirms are due to:
 - Failure of the police officer to appear
 - Incomplete or inaccurate police documents
 - Untimely or no documents received by DMV from police

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Documentation

Possible documentation needed to successfully complete the DMV Implied Consent process.

- Implied Consent Combined Report
 - Rights and Consequences
 - Basis for suspension/length of suspension
 - Temporary Driving Permit
- CDL Addendum
- Blood Test Failure
- Form 49



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43

Lesson Plan:

1. Introduce students to the forms needed to affect a DMV suspension:
 - a) Implied Consent Combined Report
 - Rights and Consequences
 - Basis for suspension/length of suspension
 - Temporary Driving Permit
 - b) CDL Addendum
 - c) Blood Test Failure
 - d) Form 49

2. Police officers request the DMV Suspensions Unit to suspend a person's drivers license by using one of three forms provided by DMV. These are referred to as Implied Consent Reports.
 - a) Officers need to use the correct form for the situation they are dealing with at the time.
 - b) Each form has its own unique purpose and must be prepared properly to ensure legal compliance.

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(back side of IMPLIED CONSENT Form)

Lesson Plan:

1. The primary “combined report” form is titled IMPLIED CONSENT. It contains the necessary information to request a driver’s license suspension for failing a breath test or for refusing a breath, blood, or urine test.
2. This form may request multiple suspensions in specific circumstances, i.e., when a DUII driver is involved in a motor vehicle crash resulting in injury or property damage. In this instance, the officer has the ability to request a breath and urine test.
 - a) The driver refuses or fails the breath test. The officer marks the appropriate box in the “BREATH TEST FAILURE” or “TEST REFUSAL” section.
 - b) The driver then refuses the urine test. The officer marks the box indication a urine test refusal in the “TEST REFUSAL” section of the same form.
3. The officer then serves the driver his/her copies and submits the form, along with any confiscated Oregon driver license/permit to DMV by the 10th day after the date of arrest.
4. Needs to be carried by the officer for use in the field.
5. This is the only form that contains the RIGHTS AND CONSEQUENCES that must be read in all cases prior to making a request for breath, blood. Or urine (Section I), as well as those that must also be read to the driver prior to requesting urine (Section II).

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent	Rights and Consequences	D07
<p>TEST REFUSAL: <small>(It is NOT an addition to a breath test failure alone. Exemption of a driver's license for refusal may be added to a Breath Test Failure.)</small></p> <p>NOTE: Mark type of test(s) refused in ADDITION to a suspension length below:</p> <p><input type="checkbox"/> You refused to submit to a breath test.</p> <p><input type="checkbox"/> You refused to submit to a blood test when receiving medical care in a health care facility immediately after a motor vehicle accident.</p> <p><input type="checkbox"/> You refused to submit to a urine test. You had been involved in an accident resulting in injury or property damage or you had already submitted to a breath test and the result was less than 0.08%. The officer who requested the urine test was certified by the Department of Public Safety Standards and Training as having completed 8 hours of training in recognition of drug impaired driving, and had reasonable suspicion that you had been driving while under the influence of a controlled substance, an inhalant or any combination of an inhalant, a controlled substance and intoxicating liquor. NOTE: The suspension will be consecutive to any other suspension imposed under the Motorist Implied Consent Law. The urine test was requested by the reporting officer or _____.</p> <p>Your suspension for refusing a test(s) will be for: <small>ONLY MARK ONE BOX</small></p> <p><input type="checkbox"/> 1 year.</p> <p><input type="checkbox"/> 2 years, because you are subject to the increased provisions of ORS 813.430. (See paragraph (a) on back).</p> <p>If you hold a CDL*, were driving a motor vehicle or Commercial Motor Vehicle (CMV) and you refused to submit to a test, your CDL will also be suspended in accordance with ORS 813.404 for:</p> <p>• 3 years, if you have not received a conviction or CDL suspension as described in ORS 809.404; or</p> <p>• Lifetime, if you have received a conviction or CDL suspension as described in ORS 809.404.</p> <p>NOTE: CDL suspension will be concurrent to any other suspension imposed under the Motorist Implied Consent Law.</p> <p>* You hold a CDL if Oregon or another jurisdiction issued a CDL to you that is, not expired or if expired, expired less than one year, or is suspended, but not cancelled or revoked. (ORS 807.021)</p>		
45		

Lesson Plan:

1. Fill out the top of the IMPLIED CONSENT form with:
 - a) PRINT the name of the driver (LAST, FIRST, MIDDLE), driver license/file reference No., and state
 - b) Driver's address and date of birth
 - c) Exact date and time of arrest, county of arrest and nearest city to arrest site
2. Read SECTION I of RIGHTS AND CONSEQUENCES (on back of the IMPLIED CONSENT FORM)
 - a) Needs to be read "Word for Word".
3. If the RIGHTS AND CONSEQUENCES were not read by the reporting officer, note the name of the officer on the form.
4. If the subject takes the breath test and fails you will complete the BREATH TEST FAILURE section of the IMPLIED CONSENT FORM.
 - a) If the breath test was given by anyone but yourself note the name of the officer on the form.
 - b) Instrument serial # (located on test report, the front of the instrument, and the operator's check list)
 - c) Mark the appropriate suspension level.
5. If the subject refuses to take the breath test mark refused breath test box.
6. If the subject refused to submit to a blood test when receiving medical care in a health care facility immediately after a motor vehicle crash, mark refused blood test box.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

OREGON STATE POLICE IMPLIED CONSENT PROGRAM

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Rights and Consequences D07

TEST REFUSAL:
(Do NOT be subjected to a breath test without consent. Consent to a breath test does not imply consent to a blood test.)

NOTE: Mark type of test(s) refused in ADDITION to a suspension length below.

You refused to submit to a **breath test**.

You refused to submit to a **blood test** when receiving medical care in a health care facility immediately after a motor vehicle accident.

You refused to submit to a **urine test**. You had been involved in an accident resulting in injury or property damage or you had already submitted to a breath test and the result was less than 0.05%. The officer who requested the urine test was certified by the Department of Public Safety Standards and Training as having completed 8 hours of training in recognition of drug impaired driving, and had reasonable suspicion that you had been driving while under the influence of a controlled substance, an inhaled or any combination of an inhaled, a controlled substance and intoxicating liquor. **NOTE:** The suspension will be consecutive to any other suspension imposed under the Motorist Implied Consent Law. The urine test was requested by the reporting officer or:

Your suspension for refusing a test(s) will be for:

one year

3 years, because you are subject to the increased provisions of ORS 813.430. (See paragraph (e) on back).

If you hold a CDL*, when driving a motor vehicle or Commercial Motor Vehicle (CMV) and you refused to submit to a test, your CDL will also be suspended in accordance with ORS 813.424 for:

- **3 years**, if you have not received a conviction or CDL suspension as described in ORS 809.404; or
- **Lifetime**, if you have received a conviction or CDL suspension as described in ORS 809.404.

NOTE: CDL suspension will be concurrent to any other suspension imposed under the Motorist Implied Consent Law.

* You hold a CDL if Oregon or another jurisdiction issued a CDL to you that is, not expired or if expired, expired less than one year, or is suspended, but not cancelled or revoked (ORS 807.507).

46

Lesson Plan:

1. Before you request urine, read the subject SECTION II of the RIGHTS AND CONSEQUENCES form.
 - a) Needs to be read "Word for Word"
2. If the subject refused to take a urine test mark urine refusal box and note the name of the officer that read SECTION II if not reporting officer.
3. Mark the appropriate suspension level.
4. The reporting officer completes the form by signing their name, filling in their agency, telephone number, printing name and DPSST#.
5. Issue a temporary permit if they are taking a valid Oregon Drivers license.
 - a) Go over the 2 samples of D07s and how they would fill out the temporary permit.
6. Get the form to DMV along with any confiscated Oregon license/permit by the 10th day after the arrest.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 46 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Documentation

When would you issue a temporary permit?

Only if you seize a valid ODL or Oregon permit.

- Grants same driving privileges as person's license
- Valid for 30 days
- Becomes effective 12 hours after the permit is issued
- No fee
- Return license to DMV with paperwork



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47

Lesson Plan:

1. When would you issue a temporary permit?
 - a) Only if you seize a valid ODL

2. Remind students that they are only to issue a temporary permit if they are taking a VALID OREGON DRIVERS LICENSE. They can not issue a temporary permit to a suspect that has an out of state license or even to a holder of a Warm Springs License. The permit does not become valid until 12 hours after it is issued and the temporary permit grants the same driving privileges as the person's license.
 - a) Grants same driving privileges as person's license
 - b) Valid for 30 days from date of arrest
 - c) 12-hours before permit is valid
 - d) No fee
 - e) Return license to DMV with paperwork.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. **COMMERCIAL DRIVER LICENSE (CDL) IMPLIED CONSENT ADDENDUM**
 - a) is only used when the arrested driver is actually commercially engaged and required to possess a commercial driver's license
 - b) whether or not he/she actually possesses one.
 - c) It is a supplemental form that must be attached to the primary form.

2. Fill out the top of the CDL IMPLIED CONSENT ADDENDUM form with:
 - a) PRINT the name of the driver (LAST,FIRST,MIDDLE)
 - b) Driver license/file reference No.
 - c) Exact date and time of arrest
 - d) Driver's Date of Birth

3. If the driver qualifies as a Commercial Driver at the time of the arrest, prior to requesting breath, blood or urine, read the driver the "RIGHTS AND CONSEQUENCES" from the primary "Combined Report" form. Then read the driver the "ADDITIONAL RIGHTS AND CONSEQUENCES, CDL" from the CDL addendum.

4. If the commercial driver takes the test with a result of 0.04% or higher but less than 0.08%, complete the primary form and the addendum form but indicate only a CDL suspension on the primary form. After serving the driver his/her copies from both forms, submit both forms to DMV by the 10th day after the date of arrest.

5. If the result is 0.08% or higher, it would exceed both the base license and commercial license limits. In this case, the officer needs to request suspension of both licenses by indicating the failure of the base license test (0.08% or higher) on the primary form and the failure of the commercial license test (0.04% or higher) on the addendum. DMV must receive the forms by the 10th day after the date of arrest and will only suspend based on the information they receive.

6. If the commercial driver refuses to take a breath, blood, or urine test, depending on the circumstances, check the appropriate refusal boxes on both the primary "Combined Report" form and the CDL addendum form. Complete the forms, serve the driver his/her copies of both, and submit them, along with any confiscated operator's license, to DMV by the 10th day after the date of arrest.

7. The reporting officer completes the form by signing their name

OREGON STATE POLICE IMPLIED CONSENT PROGRAM

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

The form is titled "TECHNICIAN CERTIFICATION OF COLLECTION OF BLOOD SAMPLE" and includes the following sections:

- Header:** "TECHNICIAN CERTIFICATION OF COLLECTION OF BLOOD SAMPLE" with a logo on the left.
- Section 1:** "I certify that the following representations are true:" with a line for "Officer Name" and a line for "Patient Name".
- Section 2:** "Implied Consent" with checkboxes for:
 - Requested by _____, a police officer and under the direction or control of _____, a licensed physician.
 - Personally obtained the package and sealed sample to _____
Officer _____
- Section 3:** "Health Care Provider Reporting" with checkboxes for:
 - Requested by and under the direction of _____, a licensed physician. Pursuant to ORS 316.200, the sample was drawn in the course of testing an accident victim who was operating a motor vehicle while intoxicated.
 - The package was sent to another hospital personnel to the hospital laboratory within 15 minutes of collection.
- Section 4:** Two numbered statements:
 - 1. No antiseptic containing alcohol was used and the blood sample container did not contain alcohol.
 - 2. I properly collected the sample, packaged it, sealed it and placed the package to ensure proper packaging of the sample with the patient's name when it was collected. The sample was intact and unopened at the time it was packaged.
- Section 5:** Fields for "Officer Signature", "Officer Printed Name", and "Other".
- Section 6:** "Address where sample was collected:" with a line for the address.

Lesson Plan:

1. This form is no longer in print. If you have this form however, it is a good practice to use it and attach it to your report because it captures all the necessary details that should be included in the collection process. OSP routinely uses this form and a copy can be obtained from any OSP office.
2. Technician Certification of Collection of Blood Sample:
 - a) Officers are not to fill out this form, it will be filled out by the technician that take the blood from the subject
 - b) Officers need to have these forms to present to the technician at the time of the draw
 - c) And officers need to collect the completed form once the blood has been collected.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 49 of 120

OREGON STATE POLICE IMPLIED CONSENT PROGRAM

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Lesson Plan:

1. If the officer is investigating a motor vehicle crash and the driver is “receiving medical care in a health care facility immediately after a motor vehicle crash”, a blood test request may be in order.
 - a) Prior to a request for blood by the officer.
 - The driver must be under arrest for DUII and
 - Be advised of the rights and consequences from the primary form (and addendum if applicable)
2. Fill out the top of the BLOOD TEST FAILURE form with:
 - a) PRINT the name of the driver (LAST, FIRST, MIDDLE), driver license/file reference No., state, and date of birth
 - b) Driver’s address
 - c) Exact date and time of arrest, county of arrest and nearest city to arrest site
3. If the driver refuses, that refusal is indicated in the “TEST REFUSAL” section of the primary form (and addendum if applicable) and submitted to DMV by the 10th day after the date of arrest.
4. If the driver consents, the officer will forward the blood to the Oregon State Police Crime Lab for analysis.
 - a) Send nothing to DMV until you get a report revealing a blood test failure
 - b) Then submit a photocopy of the lab result attached to a completed REPORT OF IMPLIED CONSENT BLOOD TEST FAILURE form to DMV by the 45th day after the date of arrest.
 - c) DMV will send the “Notice of Suspension” to the driver.
 - d) The officer does not need to contact the driver or deliver anything further to the driver.
5. All IMPLIED CONSENT and COMMERCIAL DRIVER LICENSE (CDL) IMPLIED CONSENT ADDENDUM forms must be received by the DMV HEARINGS CASE MANAGEMENT UNIT by the 10th day after the date of arrest. The REPORT OF IMPLIED CONSENT BLOOD TEST FAILURE form is the exception. It must be received by the 45th day after the date of arrest.
6. Officers should always take a moment to double-check the forms prior to serving the driver his/her copies and sending DMV’s copies to them to ensure that all the necessary information has been included. Incomplete forms may jeopardize the suspension by DMV. Read through the form as you go.
7. The reporting officer completes the form by signing their name, filling in their agency, telephone number, printing name and DPSST#.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 50 of 120

OREGON STATE POLICE IMPLIED CONSENT PROGRAM

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Lesson Plan:

1. Fill out the Form 49:
2. Print clearly
 - a) Your Agency
 - b) Agency Case #
 - c) Mark appropriate box; if applicable
 - d) Offense
 - e) Offense Date
 - f) County of Venue
 - g) PRINT the name of the driver (LAST, FIRST, MIDDLE)
 - h) Mark whether breath test was given
 - i) Mark who the sample is coming from (usually the suspect)
 - j) Subject's Date of Birth
 - k) Subject's Race
 - l) Mark subject gender
 - m) SID#, if applicable
 - n) FBI#, if applicable
 - o) Investigating officers name
 - p) Investigating officers phone number
 - q) Agency exhibit#
 - r) DRE officers name
 - s) DRE's agency
 - t) Exam requested - mark any appropriate box
 - u) Note any additional comments that may help the lab (e.g., sample may have been diluted with water)
 - v) When the sample is brought to the lab, the submitting officer needs to Print their name
 - w) Sign
 - x) Fill in date

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 51 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Documentation

Within how many days does an officer have to submit paperwork to DMV?

- 10 Calendar Days for Breath
- 45 Calendar Days for Blood



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53

Lesson Plan:

1. Within how many days does an officer have to submit paperwork to DMV?

- a) Answer: 10 calendar days from the date of arrest including Holidays for a breath test. Not 10 business days.
- b) 45 days in the event of a blood draw

NOTE: This is one of the leading reasons that suspensions are disaffirmed by DMV – failure of officers submitting timely paperwork and officers failing to complete paperwork properly. The leading reason for suspensions being disaffirmed is officers failing to appear at the hearing.

2. Discuss suspension process and timelines: Officers need to have paperwork to DMV in a timely manner because DMV must hold hearing and issue suspension within 30 days of arrest (60 days in case of blood).

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Documentation

Should you always send paper work to DMV concerning a DUII?

NO

- If the person passes the breath test (<0.08% or <0.04 for commercial) and submits urine or
- The person is unconscious

Is there an instance where you would not use Implied Consent laws?

YES

- In the event of a more serious crime
- Not required to take test under IC (Not in a motorized vehicle)



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54

Lesson Plan:

1. Should you always send paper work to DMV concerning a DUII?
 - a) Answer: No
2. Paper work is only sent to DMV if the person refuses to take a chemical test or they failed a breath or blood test.
 - a) If a person agrees to take a breath test, passes the breath test and then agree to take a urine test, there is no refusal or failure of a test (under Implied Consent Law). The person may still be prosecuted and convicted under DUII Law.
 - b) If person suspected of DUII is unconscious they cannot reasonably be expected to understand the Implied Consent Rights and Consequences, and therefore, cannot be administratively suspended under the Implied Consent law if over the legal limit. Officer can still acquire a blood sample using PC and exigency for purposes of criminal DUII, but Implied Consent does not apply.
3. Is there an instance where you would not use Implied Consent laws?
 - a) Answer: Yes
4. In the event of a more serious crime such as a major traffic crash officers should put Implied Consent aside and concentrate on going after the suspect criminally or the subject is not required to take the test under IC (Bicycle, motorized wheelchair)
 - a) If you charge DUII and a victim later dies from injuries from the crash the suspect can not be charged twice (Double Jeopardy)

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Case Law



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55

Lesson Plan:

1. This section will discuss some of the more important case law decisions involving DMV hearings that police officers should be aware of in order to be successful in the DMV hearing process.

2. Topics to be covered are case law decisions relating to:
 - a) Admissibility of Hearsay
 - b) Reason for / Validity of Stop & Arrest
 - c) Articulation of PC
 - d) Credibility of Witnesses
 - e) Right to Communicate

3. Topics to be also covered in this section are case law decisions relating to:
 - a) No observed driving cases
 - b) Challenges to the breath test
 - c) Breath Test / Urine Test refusals
 - d) Challenges to the Observation Period
 - e) Challenges to IC documentation

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Case Law

Admissibility of Hearsay:

Cole v. MVD, Dinsmore v. MVD (2004)

Hearsay police reports are generally admissible in Implied Consent hearings. Therefore, if relevant, the subpoenaed officer should bring and offer into evidence the reports of other officers who played a role in the stop, arrest or DUI processing.



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56

Lesson Plan:

1. Admissibility of Hearsay:
2. Generally, these are cases where the stopping officer and arresting / reporting officer are not the same officer:
 - a) Cole/Dinsmore v. DMV, 366 Or 565 (2004). In an Implied Consent hearing, the agency can use a hearsay police report as evidence when the petitioning party fails to exercise his or her right to subpoena the officer. The court reached the same conclusion in Petteys v. DMV, 195 Or App 644 (2004) and Golliher v. DMV, 173 Or App 856 (2001).
3. If the reporting officer feels the need for other witnesses at the hearing, the officer needs to attach a list of those witnesses to the Implied Consent Form for DMV to subpoena.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Case Law

Reason for / Validity of Stop:

Pomerenke v. MVD (1995)

Even if the stopping officer is not subpoenaed to the hearing, the subpoenaed officer should be able to articulate the reason for the stop, or have the stopping officer's report.

Officers should be in the practice of communicating the reason for stop and arrest and corroborating the information in his/her report.



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57

Lesson Plan:

1. Reason for Stop and Arrest / Validity of Stop and Arrest:
2. Pomerenke v. MVD, 130 Or App 630 (1995). The court held that where no evidence is presented about why the police detain a driver, the hearings officer may not infer the officer's reason for making the stop from other facts in the record. Pomerenke involved an alleged traffic infraction, but the evidence in the record failed to establish that the officers who stopped the driver subjectively believed that any traffic infraction had occurred at the time of the stop.
3. The basis for the stop and the arrest must be valid for the suspension to be valid. Officers should be in the practice of communicating the reason for stop and arrest and corroborating the information in his/her report. This is necessary so that at hearing, evidence for the validity of the stop and arrest can be introduced into the record and so that the petitioner can exercise his/her right to challenge the validity of the stop and/or arrest.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Case Law

Reason for / Validity of Stop:

Pooler v. MVD (1988)

DMV may not suspend driving privileges based on a breath test failure or refusal unless the driver is first validly arrested.



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58

Lesson Plan:

1. Reason for Stop and Arrest / Validity of Stop and Arrest (continued):
2. Pooler v. MVD, 306 Or 47 (1988). The validity of the stop and arrest come within the scope of an Implied Consent proceeding when raised by the petitioner.
3. If either the stop or the arrest are found to be invalid, the suspension will be disaffirmed.
4. Officers need to be prepared to articulate the reason for stop, the reason petitioner was believed to be intoxicated, and the objective facts the lead to the officer's belief that the petitioner was intoxicated. Although the scope of a hearing is meant to be kept narrow, this is an area where case law has dictated otherwise.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Case Law

PC required to compel SFSTs:

Ezzell v. DMV (2001)

Officer should obtain consent, or have probable cause before requesting field sobriety tests. At hearing, the officer should articulate the point at which he/she first developed probable cause.

Without PC, be prepared to allow subject to refuse field sobriety tests and to discontinue the contact.



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59

Lesson Plan:

1. Articulation of Probable Cause:
 - a) Ezzell v. DMV, 171 Or App 591, rev. den. 332 Or 316 (2001). The court held that if illegally obtained evidence forms an "indispensable building block" of the officer's subjective belief, the probable cause is not valid. In Ezzell, the officer administered field sobriety tests without valid consent and before he believed that he had probable cause to arrest for DUII.
2. This refers to the earlier discussion regarding the need for PC prior to requesting that a subject submit to a "search" when conducting a DUII investigation. Without PC, an officer cannot compel someone to perform SFSTs and must be prepared to discontinue the contact should the subject refuse to submit. If the subject is not free to leave, be prepared to articulate why (your Probable Cause).

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Case Law

Credibility of Witnesses:

Tew v. MVD (2002)

ALJs are often required to make findings regarding witness credibility. The court addressed factors the ALJ may consider in making a credibility determination, including the fact that intoxication can affect a person's ability to perceive and recall events and police officers are generally considered disinterested witnesses with no stake in the outcome of a hearing.

But if an officer chooses to advocate for DMV and cross-examines witnesses or makes argument (as authorized by ORS 813.412), he/she may lose standing as a disinterested or unbiased witness.



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60

Lesson Plan:

1. Establishing the Credibility of Witnesses:
2. ALJs are often required to make findings regarding witness credibility.
3. Although intoxication can affect a person's ability to perceive and recall events, and police officers are generally considered disinterested witnesses with no stake in the outcome of a hearing, if an officer chooses to become an advocate for DMV, and cross-examines witnesses or makes argument (as authorized by ORS 813.412), he/she may lose standing as a disinterested or unbiased witness.
 - a) Tew v. DMV, 179 Or App 443 (2002). In an Implied Consent case, it is appropriate for a hearing officer to rely on the following factors in making a credibility determination: (a) the police officer is a trained observer who had the benefit of a written report to refresh his memory of the events in question; (b) the officer, unlike the petitioner, had no specific interest in the outcome of the case, whereas the petitioner was facing a license suspension and potential criminal charge; (c) the petitioner and his witness were intoxicated at the time of the events in issue and alcohol consumption can affect a person's ability to perceive and remember; (d) the petitioner had been less than truthful with the officer at the time of the arrest about the amount of alcohol he had consumed; and (e) the petitioner was apparently hostile toward the police.
4. Remind students to use the authority granted by ORS 813.412 cautiously or risk losing credibility with the ALJ as an unbiased and disinterested witness.
5. Officers are witnesses only in the DMV process, not advocates for DMV or the State of Oregon.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Case Law

Right to Communicate:

Moore v. MVD (1982)

The right to communicate in the Implied Consent context differs from the right to counsel in a criminal case. In the Implied Consent context, a petitioner has a right to call someone other than an attorney. And, although the person is not entitled to a private consultation with counsel under the Implied Consent law, the best practice is to afford such privacy. Finally, if the officer limits the petitioner's time on the phone, he or she should articulate the reason for doing so.



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61

Lesson Plan:

1. Right to Communicate:

- a) Moore v. MVD, 293 Or 715 (1982). Under the Implied Consent law, a driver under arrest for DUII who asks to speak to an attorney or others must be afforded a reasonable opportunity to do so unless or until it would interfere with effective administration of the breath test. The court suggested that 15 minutes is a reasonable amount of time to allow a person to communicate before the breath test.

2. Remind students that in the area of Right to Counsel and Right to Communicate, failure on the part of the officer to provide a reasonable opportunity to communicate and/or privately consult with counsel, can result in the loss of either the DMV suspension or the criminal DUII or both.

- a) It is advisable to be as accommodating as is reasonable without sacrificing the timely collection of evidence.
- b) Officers should be prepared to articulate why they chose a particular course of action and why it was reasonable to do so.

3. Other case law:

- a) Green v. MVD, 106 Or App 471 (1991). Where the petitioner asks to communicate with the outside world about something other than whether to take the breath test, the failure of the police to immediately to allow the person to do so is not necessarily a deprivation of the person's liberty interest. In Green, the petitioner requested to call his mother to arrange a ride home. That was the only stated reason for the call. The court decided that if the arrested person expressed the desire to make a call for a specific reason, the reason had to relate to the decision to take or refuse the test in order for there to be a requirement that the police accommodate the request to communicate before the breath test. For example, wanting to call home to arrange a ride is not related to taking or refusing test. Police do not have right to demand that the person state the purpose of the call, but if person volunteers reason, police can accept the person's explanation for the purpose of the call.
- b) State v. Durbin, 335 Or 183 (2003). An arrested motorist's Article I, section 11 right to counsel includes the right to confer privately, so that a driver arrested for DUII who asks to speak with a lawyer need not make a further, independent request for confidentiality.
- c) Gildroy v. MVD, 315 Or 617 (1993). Article I, section 11 does not apply to DMV license suspension hearings. Therefore, under the Implied Consent laws, the petitioner's right to a reasonable opportunity to communicate with another does not include the right to a private consultation.
- d) State v. Brazil-Kay, 137 Or App 589 (1995): The fact that Petitioner did not make better use of opportunity to communicate does not mean she was denied opportunity. Good review of other Right to Communicate cases.
- e) Morgan v. MVD, 85 Or App 267 (1987): The right to communicate does not guarantee that the person will succeed in actually speaking with the person they wish to contact, or that they will get the advice that they are seeking. In this case, court held that 29 minutes was insufficient time to allow communication because officer failed to demonstrate any reason (such as dissipation) to limit Petitioner's opportunity to communicate.
- f) Blackman v. MVD, 90 Or App 408 (1988): The petitioner was allowed ten minutes to make call. Court found this was reasonable because of length of time between arrest and first request to communicate.
- g) Hicks v. MVD, 132 Or App 474 (1995) and Farley v. MVD, 137 Or App 492 (1995): Court found that less than 15 minutes to communicate was reasonable under the circumstances.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Case Law

Challenges to BAC result:

Owens v. MVD:

Challenges to the accuracy of a breath test result are beyond the scope of an Implied Consent hearing.



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62

Lesson Plan:

1. Challenges to the breath test result:
 - a) Owens v. MVD, 319 Or 259 (1994): Challenges to the accuracy of a breath test result are generally considered beyond the scope of an Implied Consent hearing.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Case Law

What constitutes a refusal?

Caldiera v. MVD:

- Any conduct, short of an unequivocal, unqualified assent to the request to take a test is a refusal.
- Any attempt by the suspect to place conditions on, or delay the test can constitute a refusal.

Gilliam v. ODOT:

- Officers do not have to wait the full three minutes on instrument to declare a refusal if the subject is willfully failing to provide a proper breath sample, for example, by feigning an inability to blow or by not sealing lips around the mouthpiece.

Officers should be prepared to articulate the reasons for declaring a refusal. The instrument does not declare a refusal.



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63

Lesson Plan:

1. What constitutes a refusal for purposes of the breath test?
 - a) *Caldiera v. MVD*, 181 Or App 168 (2002): Any conduct, short of an unequivocal, unqualified assent to the request to take a test is a refusal.
 - b) *Gilliam v. ODOT*, 178 Or App 267 (2001): the officer does not have to wait through the full three minute window in which to submit a breath sample before noting a refusal, if the test subject's failure to provide a sample is willful.
 - c) Officers should be prepared to articulate the reasons for declaring a refusal. The instrument does not declare a refusal.
2. Officers should be prepared to articulate why they chose a particular course of action and why it was reasonable to do so.
3. Officers should instruct subject how to provide a proper breath sample. If necessary, reinstruct subject on giving a proper breath sample and indicate that failure to comply will result in a refusal. If subject continues to willfully not comply, subject test should be documented as refused.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Case Law

What constitutes refusal of a urine test?

Robinson v. MVD (2003)

Although the court recognized that "a more flexible standard must be applied" in the urine test context, it held that the suspect refused the test by stating that she could not produce a sample *and would not even try*.

By statute, there are limited defenses: a person may provide documentation from a licensed physician showing that the person has a medical condition that makes it impossible for the person to provide a urine sample, or may assert a denial of privacy in producing the sample.



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64

Lesson Plan:

1. What constitutes a refusal for purposes of the urine test?
 - a) *Robinson v. DMV*, 191 Or App 122 (2003): The court recognized that a "more flexible standard must be applied" in that an officer may need to give the person a reasonable amount of time to produce a urine sample. Petitioner's assertion that she could not produce a sample "and would not even try" constituted a refusal to take the urine test.
 - b) *Caldiera v. MVD*, 181 Or App 168 (2002): Any conduct, short of an unequivocal, unqualified assent to the request to take a test is a refusal.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Case Law

Properly kept observation period:

State v. Barletta (2003):

- Officer believed that defendant had not violated pretest requirements, but his belief was not objectively reasonable

State v. Balderson (1996):

- Officer did a careful enough observation to be able to establish a reasonable certainty, at the time of the observation, that no violation occurred

State v. Snuggerud (1998):

- coughing and blowing nose does not violate requirement

State v. Goddard (1987):

- no requirement to rinse mouth before the breath test



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65

Lesson Plan:

1. Challenges to a properly kept pre-test observation period.

- a) *State v. Barletta*, 188 Or App 113 (2003): The officer did not comply with the requirements of OAR 257-030-0070(2) where he allowed the defendant to use the restroom during the pretest observation. Officer subjectively believed that defendant had not violated pretest requirements, but his belief was not objectively reasonable because the officer could not hear what defendant was doing while in the bathroom, and officer failed to ask defendant if she vomited, burped, or regurgitated when she returned from bathroom.
- b) *State v. Balderson*, 138 Or App 531 (1996): At hearing, defendant testified that she regurgitated liquid from her stomach. The court found the officer did a careful enough observation to be able to establish a reasonable certainty, at the time of the observation, that no violation occurred. Court ruled that pretest requirement is subjective test (based on officer's belief).
- c) *State v. Snuggerud*, 153 Or App 300 (1998): 1) two timepieces can be used, as long as officer is certain that at least 15 minutes has elapsed; 2) officer does not have to check person's mouth before the test; 3) coughing and blowing nose does not violate pre test requirements.
- d) *State v. Goddard*, 87 Or App 130 (1987): There is no requirement that subject rinse mouth before test (presence of flakes of chew in mouth throughout observation period did not invalidate results).

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Case Law

Implied Consent documentation:

Coulter v. DMV (2000)

Jurisdiction of Implied Consent Form
If form not completed correctly (i.e., wrong basis for the suspension is marked), suspension is invalid.

Basile v. MVD (2000)

In the refusal context, the failure to mark the box indicating the suspension length is not a fatal defect.



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66

Lesson Plan:

1. Challenges to validity of Implied Consent documents – properly completed vs. improperly completed forms:
 - a) *Coulter v. DMV*, 168 Or App 442 (2000): Petitioner refused breath test, but officer gave Petitioner and sent DMV copies of ICCR that indicated failure of test. Court held that ICCR is jurisdictional document, and that unless it complies substantially with ORS 813.120, DMV does not have jurisdiction to impose a suspension.
 - b) *Basile v. MVD*, 167 Or App 335 (2000): Petitioner given ICCR that showed correct reason for suspension, but failed to advise him of length of suspension. Court held that Petitioner was adequately advised because Petitioner told reason for suspension.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer
8000



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67

Lesson Plan:

1. Topics covered in this session include:
 - a) Operator overview
 - b) Parts and controls of the Intoxilyzer 8000
 - c) Test Reports
 - d) Exception Messages and Suggested Corrective Action Statements
 - e) Operation / Test sequence – Jail Release vs. Breath Test
 - f) Placing the Intoxilyzer Out of Service

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

“Operator” versus a “Technician”

When you leave this class you will ONLY be a trained “Operator”

Operate the Intoxilyzer 8000 as instructed

Training is provided by OSP

- OSP also tests and certifies the instruments at intervals of not more than 90 days.



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68

Lesson Plan:

1. Officers are operators of the Intoxilyzer 8000 ONLY. The intent of this course is to train officers how to operate the instrument only, not to diagnose, explain, or even understand the inner-workings of the instrument. In the event an officer is asked “how the instrument works”, they should direct the question to the OSP Implied Consent Unit.
 - a) Students shall not testify to the inner workings of the Intoxilyzer 8000.
2. Students are to operate the Intoxilyzer 8000 as instructed, to avoid DMV Hearing, court problems and the possibility of bad case law.
3. Students need to understand that they are being trained by and according to the curriculum approved by the Oregon State Police.
 - a) When students are asked “Who trained you to operate the Intoxilyzer 8000?”, the answer needs to be “The Oregon State Police”.
4. OSP also Tests and certifies the instruments at intervals of not more than 90 days
 - a) Each site is visited at least twice a year.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 68 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Where is the Intoxilyzer 8000 Student Manual?

There is NO "Student Manual"
Operator's Guides located on-site

A copy of the Intoxilyzer 8000 Operator's Guide is available online

<http://www.oregon.gov/OSP/Forensics>



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69

Lesson Plan:

1. Where is my Intoxilyzer 8000 Student Manual?
 - a) Unlike the Intoxilyzer 5000 program, there is no "Student Manual" for Intoxilyzer 8000 Operators.
 - b) Rather, an "Operator's Guide" will be maintained with the Intoxilyzer 8000 instrument at each testing location.
 - c) Operator's Guide contains information regarding the operation of the instrument only.

2. Where can I get a copy of the Intoxilyzer 8000 Operator's Guide?
 - a) Students wishing to obtain a personal copy of the Operator's Guide can visit the OSP Forensics web-site and download a current copy of the Guide.
 - b) Web-site is <http://www.oregon.gov/OSP/Forensics>

3. Additionally, any updates to the Guide will be posted on the web-site. Operator's should consider regularly consulting the web-site for current information.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Operator's Permit

PIN # - DO NOT FORGET

- DO NOT use another operator's permit

Valid approx. 4-6 weeks after class

Expire every even numbered year

If lost contact OSP Implied Consent for replacement

- Operator's can still run test – manual entry



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79

Lesson Plan:

1. Each operator will receive a permit to operate the Intoxilyzer 8000.
 - a) Operator's will be unable to run a breath test without a permit and PIN#.
 - DO NOT use another operator permit and PIN#. Each test report states at the bottom of the test that the above mentioned operator is certified to run the instrument. The test report will have the name of the officer's permit that was used.
 - b) Students will not be able to run a test immediately after completing this course, it will take approximately 4-6 weeks to get the students information entered in the database and get their permit activated.
 - Each student gets to chose their own pin# (on Test Answer Sheet).
 - DO NOT forget your pin#, OSP Implied Consent Unit will have record of the number and you can call if you forget it, but that will be of no use to you at 2:00am when Implied Consent is closed.
 - Student's permit number will be the same as their DPSST number.
2. Operator's permits will expire on the date of your original training during years ending in an even year. (Training 2014 – expires 2016, training 2015 – permit expires 2018, training 2016 – expires 2018)
 - a) Permits will be valid for at least 2 years.
 - b) During the 2014-2016 timeframe - permits will be renewed if you have performed at least one breath test before the expiration date.
 - c) Instruct students to run a test with their permit when they first get it to insure all information and PINs are correct. Preforming this test will also renew it.
3. In the event an officer loses their permit or does not have it with them, they will still be able to run a test by entering all of their information manually using the key board. The display will lead you through the process.
 - a) If an operator loses their permit they need to contact OSP Implied Consent.
4. Reminder: OSP not only issues and renews permits, they can also terminate or suspend a permit, which is needed to run a breath test.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Lesson Plan:

1. To obtain a checklist, press the “F2” key on the instrument keyboard.
 - a) Although **strongly** recommended, use of an Operator’s Checklist is not required to successfully complete the testing process. Refer to 257.030.0130(7)
 - b) A jail release test does not require a checklist (more on jail release tests later).
 - c) Simple way to verify the printer is functional

2. Fill out the top section with the test date, driver’s name, arresting officers name and arresting officers department. Remember to print clearly.

3. Step one:
 - a) Requires the name of the officer that observed the suspect.
 - The observer and/or the operator do not have to be the arresting officer.
 - b) Fill in the start time and stop time for the observation period (This is just for the first fifteen minutes),
 - c) Note the time piece used i.e. instrument, watch or clock on the wall.
 - Be sure to use the same time piece for the whole process to avoid doubt as to whether suspect was given the proper amount of time.

4. Check off the rest of the steps as you complete them

5. Comments section is where you would note any observations. This would be especially important if the suspect refused to take the breath test before they were required to blow into the instrument. Note anything that will help you to remember the event come court time. Keep Comments limited – Do Not put anything in the comments section that should be in your report.

Examples:

6. Instrument Serial # and Location will be auto populated by the instrument.

7. Complete the Operator’s Checklist with the operator’s name, operator’s department, operator’s signature and operator’s permit #.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Observation Period:

- Must be conducted on all subjects prior to breath test
- Most important step
- AT LEAST 15 minutes prior to 1st sample and continuing through to end of 2nd sample
- Not allowed to take anything by mouth, vomit, or regurgitate.



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72

Lesson Plan:

1. The first and most important step in the breath testing process is the Pre-test Observation Period. The Pre-test Observation Period must be conducted on all subjects prior to any breath test. The subject can not take anything by mouth (drinking, smoking, eat, take medication, etc.), vomit, or regurgitate liquid from the stomach into mouth, for at least fifteen minutes before taking the test. This is to ensure there is no possibility of residual alcohol or mouth contamination causing a result that does not reflect the subject's true blood alcohol concentration. The Intoxilyzer does monitor the breath sample throughout the entire delivery and will automatically abort the testing sequence if any abnormalities are detected. By observing the fifteen minute observation period, the possibility of residual mouth alcohol contamination is eliminated.
2. The pre-test observation period needs to be AT LEAST fifteen minutes prior to the first sample and continued thru the two minute interval to the end of the second sample.
 - a) Give your suspect sixteen minutes to avoid any doubt that you only gave your suspect 14.5 minutes. (14:00:30 to 14:15:00 only equals 14 minutes and 30 seconds.)

Originally Adopted: 07/13/2006

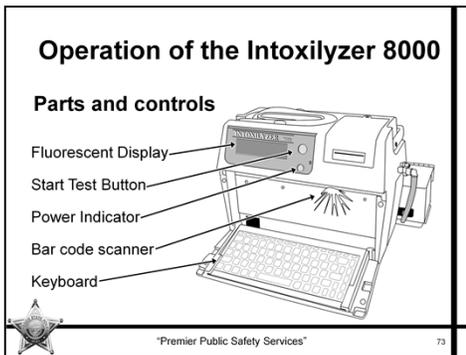
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Revision Effective Date: 07/01/2014

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Page 72 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

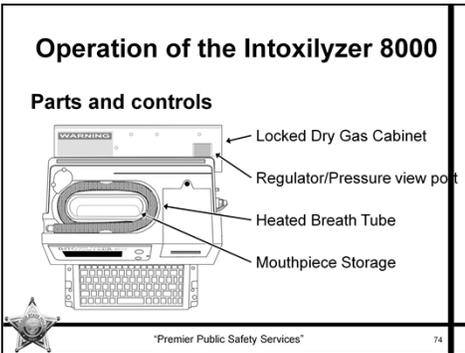


Lesson Plan:

1. Parts and controls

- a) Instrument fluorescent display
 - Instrument display will prompt operator's thru next step.
 - Displays time and date.
- b) Start Test button
 - Used to start test when the instrument is in the "Ready to Start" or Standby mode
 - If pressed a second time during the test but before you get information entered, it will abort the test and no record will be created.
 - If pressed a second time during the test after you have entered information but before the display reads "Please Blow", a test record will be created with that reads "Sequence Aborted by Operator".
 - If pressed while the display reads "Please Blow" you will get a test report that reads "Refused"
- c) Power Indicator
 - Will be a green, amber or red color.
- d) Bar code scanner
 - Reads bar code off of Intoxilyzer permit and driver's license
- e) Keyboard (removable)
 - If permit or license is unavailable or unreadable use the key board to enter data. Directions will be on the display.
 - Function Keys
 - "F2" print operator's check list
 - "F4" reprint test
 - "R" refuse a test
 - "A" abort a test
 - "F6" auto populate – subject information-(Note: "F6" will only pull up information from the operator's last entry if the operator's previously entered the subject's information and made it to the 1st "Air Blank" in the testing process.)
 - Pressed during "Scan Subject License or Press Enter"
 - "F12" reprint the last jail release test

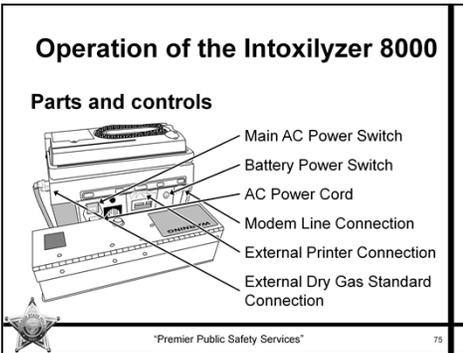
INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Parts and controls (Cont.)
 - a) Locked dry gas cabinet
 - Not accessible to operators
 - b) Flexible heated breath tube
 - Heated, should feel warm to the touch.
 - Should be coiled up when not in use, including in-between sample 1 and 2.
 - Keeping the hose coiled up will help keep its temperature stable.
 - c) Mouthpiece storage area
 - d) External dry gas standard connection

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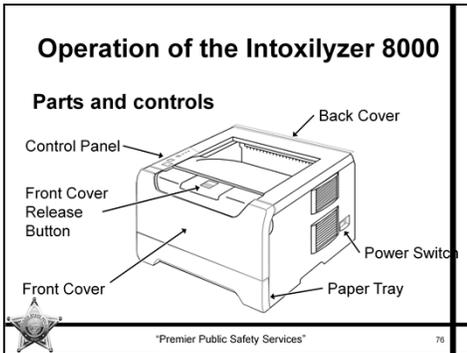


Lesson Plan:

1. Parts and controls (Cont.)

- a. Main AC power switch (rocker-switch)
 - Up position is on
- b. Battery power switch (rocker-switch)
 - Up position is on
 - Do Not Turn OFF unless instructed by a trained technician of the Oregon State Police or it presents a danger (smoke, sparks and/or fire).
 - Instruments take approximately twenty minutes to warm up
 - Both switches need to be in the on (up) position.
- c. AC Power Cord
- d. Dry-gas regulator/pressure view port
- e. Modem Line Connection (RJ-11)
- f. External Printer Connection (25-pin)

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Lesson Plan:

1. External printer Parts and controls (Not all the printers in the field will be the same as the one pictured.)
 - a. Control panel
 - Check Operator's Guide for error messages and trouble shooting (pg 52)
 - b. Front Cover Release Button
 - toner cartridge access
 - Paper jams
 - c. Front cover (multi-purpose tray)
 - Paper jams – open to remove paper and toner
 - d. Back Cover
 - Paper jams – open to remove paper
 - e. AC power switch
 - f. Paper tray
 - Paper jams – check the paper setting to make sure its in the right spot.

2. Students may be asked to add paper or change the toner cartridge.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Complete vs. Incomplete Reports

Complete Test Reports

3 types of Completed test reports

- A numerical result (e.g."0.12% BAC")
- "Refused"
- "Interferent Detected"



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77

Lesson Plan:

1. Test reports are divided into two categories: Complete Test Reports and Incomplete Test Reports.
2. Complete Test Reports will contain one of three results in the Test Result area of the report:
 - a) If the subject submitted to the test, the instrument will print the numerical result obtained from the analysis in the Test Result location. The result will be printed as a two-digit number followed by the measurement units (i.e., "0.04%BAC")
 - b) If the subject refused the test and the operator pushes the "Start Test" button or the "R" key on the instrument keyboard, the instrument will print "Refused" in the Test Result location.
 - c) If the instrument detected an interfering substance in the person's breath sample, the instrument will print "Interferent Detected" in the Test Result location.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Complete vs. Incomplete Reports

Incomplete Test Reports

"Test Result" section will contain an exception message

"Additional Comments" clarification message

- "Invalid Test"
- "Invalid Sample"

"Suggested Corrective Action"

****Do not throw any Test Report away****



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79

Lesson Plan:

1. Incomplete Test Reports can be differentiated from Complete Test Reports in several ways:
 - a) The Test Result will not contain any numerical information, a refusal or an interfering substance detected statement.
 - b) The instrument will print a statement clarifying the message contained in the Test Result location immediately below it in the "Additional Comments" section. The clarification message will begin with the statement "Invalid Test" or "Invalid Sample" followed by additional descriptive information.
 - c) If appropriate the instrument will also print a "Suggested Corrective Action" statement to be read and acted on by the operator.
 - This statement will often contain the necessary information for the operator to re-initiate the testing sequence and obtain a complete Test Report.
2. All Test Reports regardless of whether they are complete tests or incomplete tests should be kept by the operator as evidence.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Exception Messages

Instrument monitors its internal systems during testing sequence.

- Notifies operator of conditions that might affect results of test.
- Only reports test results when no exceptions have occurred.

Suggested Corrective Action Statements

- Intended to provide operator with a course of action
- Neither required or necessary



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79

Lesson Plan:

1. The Intoxilyzer 8000 has the capability of monitoring its internal systems during a testing sequence.
 - a) It will notify the operator anytime it finds a condition that might affect the result of a breath test.
 - b) The instrument is designed to only allow a test result to be reported when no exceptions have occurred during the entire testing sequence.
2. Suggested corrective action statements are intended to provide the operator with a suggested course of action in response to an instrument exception message. **STRICT ADHERENCE TO SUGGESTED CORRECTIVE ACTION STATEMENTS BY AN OPERATOR IS NEITHER REQUIRED NOR NECESSARY TO CORRECT AN EXCEPTION CONDITION.** Any attempt to suggest that an operator is negligent as a result of failure to perform all steps identified in a Suggested Corrective Action statement is misplaced.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 79 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Test Reports



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80

Lesson Plan:

OREGON STATE POLICE IMPLIED CONSENT PROGRAM

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Lesson Plan:

1. Once the testing sequence is completed, the instrument will print a final test report. The report will read “Breath Test Report” on the header of the document and contains all of the information from the testing sequence. The Test Report will contain the following information:
 - a) The date of the test
 - b) Instrument serial number
 - c) The testing location
 - d) Subject’s name, date of birth, license number, and state of issue.
 - e) The test method steps, the intermediary results of each step, the status of each step, and the time each step was initiated.
 - f) Final test result
 - g) Any additional information for the operator.
 - h) Any “Suggested Corrective Action” or “Note” information.
 - i) The operator’s name, permit number, and the OAR reference to the approved testing method.
 - j) The statement affirming that the operator has been trained to operate the Intoxilyzer 8000 using the approved testing method.
 - k) Any additional comments or observations made by the operator.
2. Three copies of the Test Report will print out at the end of the test.
 - a) All three are considered originals
3. There are two types of Test Reports:
 - a) Complete Test Reports
 - b) Incomplete Test Reports
4. All test reports are to be kept, do not throw away any report.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 81 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Complete Test Report

Interfering Substance Detected

- Substance other than alcohol (e.g., acetone, toluene, etc.) was detected in the breath sample.

The test is complete and should NOT be restarted

- Discontinue Implied Consent process.
- Ask about medical conditions or chemical exposure
- Consider requesting blood



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82

Lesson Plan:

1. Interfering Substance Detected

- This exception will occur when a substance other than alcohol (e.g., acetone, toluene, etc.) was detected in the breath sample. The subject may be suffering from a dangerous medical condition. The instrument will display "Interferent Detected" and print "*Invalid Test – Interfering Substance Detected".
- The test is complete and should not be restarted.
 - A test report indicating "Subject Test Refused" is not required to document a refusal.

2. In addition, the following suggested corrective action is provided:

- The operator should discontinue the Implied Consent process.
- Ask the subject about diabetes, fasting, and solvent exposure. If diabetic, consider EMS assistance.
- Consider requesting a voluntary blood sample from the subject or obtain a warrant.
- Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Complete Test Report

Test Refused

- Operator terminated the testing sequence because the subject refused to continue.
 - ‘R’ key – only during the 3 minute breath sample period
 - ‘Start Test’ button – only during the 3 minute breath sample period
 - » Pressing at any other time in the testing sequence we give you a “Sequence aborted” test report

The test is complete and should not be restarted.

- Refused report is not required to document a refusal



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83

Lesson Plan:

1. “Test Refused”
 - a) This exception occurs when the operator terminates the testing sequence because the subject refused to continue. The instrument will display “Subject Test Refused” and print “*Subject Test Refused”.
 - b) The test is complete and should not be restarted (unless terminated in error by the operator).

2. In addition, the following suggested corrective action is provided:
 - a) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 83 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

Sequence Aborted

- The operator aborted the testing sequence.
 - "A" key – only during the 3 minute breath sample period.
 - "Start Test" button
 - » If pressed before the "Review Data" section – no test report will be printed and no record of the test is kept
 - » If pressed during the 3 minute breath sample period – a "Refusal" test report will print

Test is not complete and can be restarted.

- "F6" auto populate – If test needs to be restarted



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84

Lesson Plan:

1. "Aborted"
 - a) This exception occurs when the operator aborts the testing sequence. The instrument will display "Sequence Aborted" and print "**Invalid Test – Sequence Aborted by Operator".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted
2. In addition, the following suggested corrective action is provided:
 - a) If the test was terminated in error, the test may be restarted by the operator.
 - b) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

Purge Fail

- Instrument is unable to purge the sample cell after running a breath test.
 - Purge pump not operating properly
 - Obstructed breath path
- Test is not complete and can be restarted.
 - Check for obvious obstructions
 - New mouthpiece
 - Place instrument out of service



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85

Lesson Plan:

1. "Purge Fail"
 - a) This exception occurs when the instrument was unable to purge the sample cell after running a breath test. This may be due to the purge pump not operating or the breath path being obstructed. The instrument will display "Purge Fail" and print "**Invalid Test – Purge Fail".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted

2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider removing the mouthpiece from the breath tube and checking for any obvious obstructions.
 - b) Use a new mouthpiece and restart the test.
 - c) If the instrument gives an additional exception message, consider placing the instrument out of service by placing an "Intoxilyzer Out Of Service" form on the instrument and reporting the problem to the OSP Regional Dispatch Center at 1-800-292-6517.
 - d) Leave the instrument power on and consider locating an alternative testing location.
 - e) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 85 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

Ambient Fail

- Alcohol or other contaminant has been introduced into the sample chamber from the surrounding room air during "Air Blank"

The test is not complete and can be restarted.

- Remove contaminants (subject)
- New mouthpiece
- Restart test
 - » "F6" auto populate



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86

Lesson Plan:

1. "Ambient Fail"

- a) This exception will occur when alcohol, or a contaminant, is being introduced into the sample chamber from the surrounding room air during the "Air Blank". The instrument will display "Ambient Fail" and print "**Invalid Test – Check Ambient Conditions".
 - Instrument sucked alcohol or contaminant in.
- b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted

2. In addition, the following suggested corrective action is provided:

- a) The operator should consider removing any contaminants from the area (to include the subject, if necessary).
- b) Use a new mouthpiece and restart the test.
- c) Continue the test until the subject properly submits to or refuses the test.
- d) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

Unstable Signal

- The instrument could not obtain a stable reference during the test.

The test is not complete and can be restarted.

- Check for reason
 - » Did subject blow at the wrong time
- New mouthpiece – restart test
 - » "F6" auto populate – If test needs to be restarted
- Out of Service



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87

Lesson Plan:

1. "Unstable Signal"
 - a) This exception occurs when the instrument could not obtain a stable reference during the testing sequence. The instrument will display "Unstable Signal" and print "Invalid Test – Unstable Signal".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted.
2. In addition, the following suggested corrective action is provided:
 - a) The operator should check for any obvious reason(s) for the condition (e.g., did the subject blow at the wrong time?)
 - b) Use a new mouthpiece and restart the test.
 - c) If the instrument gives an additional exception message, consider placing the instrument out of service by placing an "Intoxilyzer Out Of Service" form on the instrument and reporting the problem to the OSP Regional Dispatch Center at 1-800-292-6517.
 - d) Leave the instrument power on and consider locating an alternative testing location.
 - e) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

Diagnostic Fail

- The instrument failed the Diagnostic routine

The test is not complete and can be restarted.

- Check for reason
 - » Did subject blow at the wrong time
- New mouthpiece – restart test
 - » "F6" auto populate – If test needs to be restarted
- Out of Service



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88

Lesson Plan:

1. "Diagnostic Fail"
 - a) This exception occurs when the instrument fails the Diagnostic routine. The instrument displays "Diagnostic Fail" and prints "**Invalid Test – Diagnostic Fail".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted
2. In addition, the following suggested corrective action is provided:
 - a) The operator should check for any obvious reason for the condition (e.g., did the subject blow at the wrong time?)
 - b) Use a new mouthpiece and restart the test.
 - c) If the instrument gives an additional exception message, consider placing the instrument out of service by placing an "Intoxilyzer Out Of Service" form on the instrument and reporting the problem to the OSP Regional Dispatch Center at 1-800-292-6517.
 - d) Leave the instrument power on and consider locating an alternative testing location.
 - e) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 88 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

Control Out of Tolerance

- The result obtained during the testing of the external breath standard is out of tolerance.

The test is not complete and can be restarted.

- Remove contaminants (subject)
- Check dry gas connection
- New mouthpiece – restart test
 - » "F6" auto populate – If test needs to be restarted
- Out of Service



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89

Lesson Plan:

1. "Control Out of Tolerance"
 - a) This exception occurs when the result obtained by the instrument during the testing of the external ethanol breath standard is out of tolerance. The instrument will display "Control Outside Tolerance" and print "Invalid Test – Control Out of Tolerance".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted
2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider removing any contaminants from the area (to include the subject, if necessary).
 - b) The operator may also consider checking the instrument's connection to the standard delivery system on the right-hand side of the instrument.
 - c) Use a new mouthpiece and restart the test.
 - d) If the instrument gives an additional exception message, consider placing the instrument out of service by placing an "Intoxilyzer Out Of Service" form on the instrument and reporting the problem to the OSP Regional Dispatch Center at 1-800-292-6517.
 - e) Leave the instrument power on and consider locating an alternative testing location.
 - f) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

RFI Detected

- Radio or cell phone transmission is detected.

The test is not complete and can be restarted.

- Remove cell phone/radio
- New mouthpiece – restart test
 - » "F6" auto populate – If test needs to be restarted
- Out of Service



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90

Lesson Plan:

1. "RFI Detected"
 - a) This exception occurs when a radio or cellular phone transmission is detected near the instrument. The instrument will display "RFI Detected" and print "Invalid Test – RFI Detected".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted
2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider removing the radio frequency transmission source from the vicinity of the instrument.
 - b) Use a new mouthpiece and restart the test.
 - c) If the instrument gives an additional exception message, consider placing the instrument out of service by placing an "Intoxilyzer Out Of Service" form on the instrument and reporting the problem to the OSP Regional Dispatch Center at 1-800-292-6517.
 - d) Leave the instrument power on and consider locating an alternative testing location.
 - e) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 90 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

Residual Alcohol Present

- Residual Alcohol was detected in the subject's mouth.
 - Recent consumption of alcohol or vomited/regurgitated

The test is not complete and can be restarted.

- Check subject's mouth
- Conduct another pre-test observation period
- New mouthpiece – restart test
 - » "F6" auto populate – If test needs to be restarted



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91

Lesson Plan:

1. "Residual Alcohol Present"
 - a) This exception occurs when residual alcohol was detected in the subject's mouth or upper respiratory tract. This could be the result of recent consumption of alcohol or having vomited or regurgitated liquid from the stomach into the mouth. The instrument will display "Residual Alcohol Present" and print "*Invalid Sample – Residual Alcohol Present".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted
2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider checking the subject's mouth.
 - b) Conduct another pre-test wait/observation period of at least 15 minutes.
 - c) Use a new mouthpiece and restart the test.
 - d) Continue the test until the subject properly submits to or refuses the test.
 - e) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

Sample Correlation Failure

- Subject did not provide two similar breath samples

The test is not complete and can be restarted.

- Check subject's mouth
- Conduct another pre-test observation period
- Re-instruct the subject
- New mouthpiece – restart test
 - » "F6" auto populate – If test needs to be restarted



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92

Lesson Plan:

1. "Sample Correlation Failure"
 - a) This exception occurs when the subject did not provide two similar valid breath samples. This could be a result of improper breath sample delivery or residual alcohol in the subject's upper respiratory tract. The instrument will display "Sample Corr. Fail" and print "**Invalid Test – Subject Sample Correlation Failure".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted
2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider checking the subject's mouth.
 - b) Conduct another pre-test wait/observation period of at least 15 minutes.
 - c) Consider re-instructing the subject on how to provide a proper breath sample.
 - d) Use a new mouthpiece and restart the test.
 - e) Continue the test until the subject properly submits to or refuses the test.
 - f) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

Range Exceeded

- Test result was higher than 0.60% BAC.

The test is not complete and can be restarted.

- Check subject's mouth
- Conduct another pre-test observation period
- New mouthpiece – restart test
 - » "F6" auto populate – If test needs to be restarted



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93

Lesson Plan:

1. "Range Exceeded"
 - a) This exception occurs when the test result was higher than 0.60 %BAC. This could be due to a high concentration of residual alcohol in the subject's mouth or upper respiratory tract from recent consumption of alcohol or having vomited or regurgitated liquid from the stomach into the mouth. The instrument will display "Range Exceeded" and print "**Invalid Sample – Range Exceeded".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted
2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider checking the subject's mouth.
 - b) Conduct another pre-test wait/observation period of at least 15 minutes.
 - c) Use a new mouthpiece and restart the test.
 - d) Continue the test until the subject properly submits to or refuses the test.
 - e) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

No Sample Given

- Subject did not blow hard enough to activate the audible tone.

The test is not complete and can be restarted.

- Re-instruct the subject
- New mouthpiece – restart test
 - » "F6" auto populate – If test needs to be restarted



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94

Lesson Plan:

1. "No Sample Given"
 - a) This exception occurs when the subject did not blow hard enough into the instrument to activate the audible tone during the breath sampling period. The instrument will display "No Sample Given" and print "**Invalid Test – No Sample Given".
 - b) The test is not complete and can be restarted.
2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider re-instructing the subject on how to provide a proper breath sample.
 - b) If the operator is continuing the testing process, restart the test.
 - c) Continue the test until the subject properly submits to or refuses the test.
 - d) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

Improper Sample

- Subject blew into the instrument at the improper time.

The test is not complete and can be restarted.

- Re-instruct the subject
- New mouthpiece – restart test
 - » "F6" auto populate – If test needs to be restarted

How to Avoid

- Maintain control of the breath tube! Do not let the subject provide a sample until the proper time in the test sequence.



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89

Lesson Plan:

1. "Improper Sample"

- a) This exception will occur when a subject blows into the mouthpiece at an improper time during the testing sequence. The instrument will display "Improper Sample" and print "**Invalid Test – Improper Sample".
- b) Operator must maintain control of the breath tube.
- c) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted

2. In addition, the following suggested corrective action is provided:

- a) The operator should consider re-instructing the subject on how to provide a proper breath sample.
- b) Use a new mouthpiece and restart the test.
- c) Continue the test until the subject properly submits to or refuses the test.
- d) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Invalid Test Report

Deficient Sample

- Subject did not blow long enough with sufficient force to provide a proper sample.

The test is not complete and can be restarted.

- Re-instruct the subject
- New mouthpiece – restart test
 - "F6" auto populate – If test needs to be restarted
- Exception: subject may be physically incapable of providing a proper sample (no suspension)



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96

Lesson Plan:

1. "Deficient Sample"
 - a) This exception occurs when the subject did not blow long enough with sufficient force to properly provide a sample during the breath sample period. The instrument will display "Deficient Sample" and print "**Invalid Test – Deficient Sample".
 - b) The test is not complete and can be restarted (unless the operator determines that the subject is physically incapable of providing a proper sample).
 - "F6" auto populate – If test needs to be restarted
2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider re-instructing the subject on how to provide a proper breath sample.
 - b) If the operator is continuing with the testing process, use a new mouthpiece and restart the test.
 - c) Continue the test until the subject properly submits to or refuses the test.
 - d) Any observations made by the Operator during the testing sequence may be recorded in the comments section.
3. If the operator decides that the subject is incapable of providing a breath test, the operator may choose to discontinue the testing process. A deficient sample result cannot be used to suspend a driver's license.
 - a) On the rare occasion the operator feels the subject is physically incapable of completing a breath sample, they will need to be able to articulate the reason.
 - b) If the subject is able to provide the first sample then there is no reason why they can not provide a second, this would be a refusal.
 - c) There is not a BAC% result on a "Deficient Sample"

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Reprinting a Test report

Test Reports can be reprinted by the operator until memory is downloaded.

- "F4"
- Scan permit or "Enter" and manually enter information
- Enter PIN
- Select test report ("Page up" and "Page down" keys)
- Enter # of copies wanted

Reprinted Test Reports are identical to the original and can be used in addition to and/or in place of the original.

- Once memory has been downloaded contact OSP Implied Consent Unit.



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87

Lesson Plan:

1. Both Complete and Incomplete Test Reports can be re-printed from the Intoxilyzer 8000 instrument by the operator at anytime up until the instrument's memory is downloaded by the Department of State Police. Once downloaded requests for duplicate Test Reports can be made by contacting :

Oregon State Police Portland Metro Forensic Laboratory
 Toxicology / Implied Consent Section
 13309 SE 84th Avenue, Suite 200
 Clackamas, Oregon 97015
 (971) 673-8230
2. To Reprint a report - from the "Ready to Start" message, the operator needs to select the "F4" key on the keyboard. The instrument will display "Scan Operator Permit or Press Enter".
 - a) Scan operator's permit or press "Enter" and type in operator's permit#.
3. The instrument display will then read "Enter Operator PIN"
 - a) Operator needs to enter their personal PIN#
 - b) Asterisk will appear on the second line of the display as PIN is entered.
4. Once the instrument has recognized a valid Operator Permit and PIN combination, the instrument will display to the operator all Test Reports performed by the operator still stored in the instruments internal memory by test date, test time, and subject name.
 - a) Using the "Page Up" and "Page Down" keys to select the specific Test Report desired for reprinting.
 - b) Once the desired Test Report is identified, pressing the "Enter" key will initiate the reprint process.
 - It should be noted that only Test Reports generated by the operator will be available to the operator for reprinting.
 - Test Reports that are reprinted are identical Test Reports to the original Test Report and can be used in addition to and/or in place of the original.
5. The instrument will prompt the operator for the number of reprinted copies desired and then generate the requested Test Reports.
6. If the Test Report information is not displayed by the instrument during this process, the Test Report may have already been downloaded and removed from the instrument's internal memory. Additional copies of Test Reports can be requested from the Oregon State Police Implied Consent Program.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Jail Release Test:

- Establishing the presence of alcohol on the breath.
- NOT A PRETEST
- Available for use by jail/corrections personnel – No permit required
- Does not count toward permit renewal



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88

Lesson Plan:

1. A "Jail Release Test" has been developed for the purpose of conducting simple screening tests on people for the purpose of establishing the presence of alcohol on the breath and not necessarily the actual breath alcohol concentration.
 - a) Testing of minors for purposes of establishing Minor in Possession by Consumption.
 - b) Testing of person's for purpose of release from jail detoxification sections.
 - c) Testing of parole and probation participants with no alcohol conditions.
 - d) Testing ordered at the direction of court personnel (i.e., judge ordered tests).
2. This is not a practice or pre test.
3. This test sequence has been made available for use by jail/corrections personnel.
 - a) Students may need to demonstrate and/or remind jail/corrections personnel how to use this feature.
4. Because the student does not use their permit and PIN# to run a jail release test it will not count towards their permit renewal.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 98 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Conducting a Jail Release Test

- Observation period is recommended
- Press "Start test button"
- "Jail Release (Y/N)"
- "Ready in 00:XX" (30 seconds or less)
- "Air Blank" (purge the sample chamber and breath path)
- "Please blow into mouthpiece to activate tone."
- Read directions to subject (located on the front of the instrument.)
- Have subject provide sample.



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99

Lesson Plan:

1. Conducting a Jail Release Test

- a) Suggest that the operator conduct the 15 minute observation period. As stated before this is the most important part of the testing sequence and should never be skipped.
- b) Note that the time and date are correct on the instrument.
- c) Then from the "Ready to Start " screen press the "Start test button".
- d) The display will then read "Jail Release (Y/N)?".
 - Note that the instrument defaults to "No" for a test.
- e) The display will either read "Ready in 00:XX", usually 30-60 seconds (depending on how long it has been since the instrument has been used) or "Air Blank". At this point the instrument is purging the sample chamber and the breath path of any possible alcohol or other contaminants.
- f) From the "Air Blank" message, the instrument will next enter the breath sampling period.
- g) The instrument will briefly display a progress bar as a series of rectangular characters and then begin scrolling the message "Please blow into mouthpiece to activate tone.
- h) Read to the subject

I WANT YOU TO TAKE A DEEP BREATH AND BLOW INTO THE INSTRUMENT WITH ONE LONG, CONTINUOUS BREATH. BLOW WITH SUFFICIENT FORCE TO INITIATE AND MAINTAIN THE AUDIBLE TONE. CONTINUE BLOWING UNTIL I TELL YOU TO STOP. DO YOU UNDERSTAND THESE INSTRUCTIONS?

 - This statement is printed on the front of the instrument above the keyboard.
 - With these instructions the operator can control the length of time that the subject delivers the sample.
- i) Have subject provide the sample

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Conducting a Jail Release Test

- Audible tone and "Please Blow" message on display
- "period" after "Please Blow" (period will appear after breath sample requirements are met)

Please Blow.
OOOOO

- "Air Blank" (purge the sample chamber and breath path)
- Print test report
 - "F12" reprint the last jail release test



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Lesson Plan:

1. Conducting a Jail Release Test (continued)

- a) The operator is assured that a proper sample is being provided to the instrument when a continuous audible tone is heard and the instrument displays the "Please Blow" message.
 - Several circular indicators will appear across the display
- b) When a "period" is displayed following the "Please blow" message the instrument has obtained an adequate sample and the operator may instruct the subject to stop blowing.
- c) If the subject does not provide an adequate breath sample the instrument will notify the operator by flashing the "Please Blow" message and emitting an audible tone.
 - Re-instruct the subject on how to provide a proper sample.
 - Have the subject blow again
- d) If the subject, through a willful act, still does not provide a proper sample, the operator should consider it a refusal and press the "Start Test" button or the "R" button.
- e) If the operator believes that the subject is physically unable to provide an acceptable sample, but he the subject evacuated his/her lungs and the sample was the best the subject could give the operator may let the instrument to time out.
 - The instrument will time out after 3 minutes
 - At the end of the three minutes the display will read "Refusal (Y/N).
 - The operator may select "N" to document an "Invalid Test – Deficient Sample"
 - Choosing "Y" would document a refused test
- f) After the breath sampling period is complete the instrument performs another "Air Blank".
- g) Test Report is printed out, operator needs to review it.
- h) Pressing "F12" will reprint the last jail release test.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Conducting a Breath Test

- Check instrument (power and time)
 - Incorrect time will not affect test – report to OSP
- Operator's Checklist "F2"
- Conduct Pre-test observation period
- "Start Test" Button
- Select test method – "Jail release (Y/N)"



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101

Lesson Plan:

1. Before beginning a breath test, the operator should check the power indicator on the instrument to insure that it is on. The display should be displaying the "Ready to Start" message.
 - a) Note if the date and time are correct. If incorrect note the correct time and date on the report and contact OSP Implied Consent.
 - b) The fact that the time and/or date are incorrect has absolutely no effect on the accuracy and validity of the test result.
2. An Operator's checklist can be obtained by pressing the "F2" key on the keyboard.
 - a) Although strongly recommended, the use of the checklist is not required to successfully complete the testing process.
3. The first and most important step in the breath testing process is the Pre-Test Observation Period, it must be conducted on all subjects prior to any breath test. To ensure that there is no possibility of residual alcohol or mouth contamination, the subject is not allowed to take anything by mouth (drink, smoke, eat, take medication, etc.), vomit, or regurgitate liquid from the stomach into mouth for at least 15 minutes prior to giving the first sample.
4. Press the "Start Test" button.
5. Select test method.
 - a) The display will display the message "Jail release (Y/N)?"
 - For a Breath test the operator can press "Enter", the instrument defaults to the "N".
 - For a Jail Release test the operator would press the "Y" key and then "Enter".

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Conducting a Breath Test

- Scan Operator's Permit or Press "Enter" and Manually Enter Operator's Permit Information
- Enter PIN
- Scanning the Subject's Driver's License/ID or Press "Enter" and Manually Enter the Driver's License/ID
- Review Data (Y/N)



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102

Lesson Plan:

1. The display on the instrument will then display "Scan Operator Permit or Press Enter".
 - a) If the operator has his permit they need to scan it by holding their permit perpendicular to the face of the instrument, directly about the key board. The permit needs to be held flat and still until the instrument reads the bar code printed on the permit.
 - The instrument will try to scan the permit for approximately 30 seconds, if it is successful the operator will hear an audible tone and the display will proceed to "Enter PIN #"
 - If the instrument is unable to scan the permit it will default to manual entry and the display will read "Enter Permit #"
 - b) If the operator presses the "Enter" key the instrument will prompt the operator to enter their permit information.
 - "Enter Permit #" - Operator needs to enter their permit # , then press the "Enter" key.
 - "Enter PIN #"
 - "Enter Operator Name (Last, First, M), then press "Enter".

2. Upon successfully scanning/manual entry of permit information, the instrument will proceed to "Enter Operator PIN".
 - a) Enter four digit PIN # and press the "Enter" key.
 - b) Operator gets three tries to enter the correct PIN # before test is aborted (returning to the "Ready to Start").

3. The instrument will then display "Scan Subject License or Press Enter". The operator can now scan the driver's license as they did their permit or they can press "Enter" and manually enter the driver's information.
 - a) "Enter Subject Name (Last, First, M)" – type in subject's name, press "Enter"
 - b) "Enter Subject DOB (MM/DD/YYYY)" – enter the subject's DOB, press "Enter"
 - c) "Enter Subject ID #" – enter license or ID #, press "Enter"
 - d) "Enter State of Issue" – enter the state of issue of the license or ID, press "Enter"

4. Once data has either been scanned or entered manually, the instrument will display "Review Data (Y/N)?"
 - a) The operator may choose "Y" to review the subject information data entered into the instrument or press "N" to proceed to the testing sequence.
 - The operator must confirm the selection by pressing the "Enter" key.
 - If "Y" is selected, the instrument will display the Subject Name, DOB, ID#, and State of Issue.
 - Operator can not edit the permit information, but may edit the subject information if necessary.
 - After displaying each entry, the operator must accept the information by pressing the "Enter" key.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Conducting a Breath Test

- "Ready in 00:XX" (30 seconds or less)
- "Air Blank" (purge sample chamber/breath path)
- "Diagnostics" (check components and operational standards)
- "Air Blank" (purge sample chamber/breath path)
- "Please blow into mouthpiece to activate tone."
- Read directions to subject (front of instrument.)



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103

Lesson Plan:

1. Once the permit and license information has been entered and reviewed, the instrument will proceed to the testing sequence. Depending on the amount of time taken to enter operator and subject's data the display will either read
 - a) "Ready in XX:XX" (usually about 30 seconds or less) or "Air Blank".
2. The instrument will initiate the testing sequence by performing an air blank. The instrument display will display the "Air Blank" message and turn on the instrument's internal purge pump for approximately 20 seconds.
 - a) The instrument will draw in room ("ambient") air to purge the sample chamber and breath path of any possible alcohol or other contaminants.
 - b) If all the parameters are met, the instrument will proceed to the next step.
 - c) If there is a problem, the instrument will abort the test and display a message of "Ambient Failure" on the display and print "Invalid Test – Check Ambient Conditions" on the Test report.
3. Following the successful completion of the "Air Blank", the instrument will perform a complete diagnostic check on its components and operational standards.
 - a) If no operational malfunctions are found, the instrument will display a message of "Diagnostics Pass" and then proceed to the next step.
 - b) If any malfunctions in the operation of the instrument are detected, the instrument will abort the test display a message of "Diagnostic Fail" on the display and print "Invalid Test – Diagnostic Fail" on the Test report.
4. The instrument will perform another air blank following the completion of a Diagnostic Routine. The instrument will display the "Air Blank" message and turn on the instrument's internal purge pump for approximately 20 seconds.
 - a) If there is a problem, the instrument will abort the test and display a message of "Ambient Failure" on the display and print "Invalid Test – Check Ambient Conditions" on the Test report.
5. From the "Air Blank" message, the instrument will next enter the breath sampling period. The instrument will briefly display a progress bar as a series of rectangular characters (i.e., "■") and then begin scrolling the message "Please blow into mouthpiece to activate tone" across the top line of the instrument's display.
6. Read the subject the following statement (located on the front of the instrument)

I WANT YOU TO TAKE A DEEP BREATH AND BLOW INTO THE INSTRUMENT WITH ONE LONG, CONTINUOUS BREATH. BLOW WITH SUFFICIENT FORCE TO INITIATE AND MAINTAIN THE AUDIBLE TONE. CONTINUE BLOWING UNTIL I TELL YOU TO STOP. DO YOU UNDERSTAND THESE INSTRUCTIONS?

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Conducting a Breath Test

- Breath Sample period
- "Air Blank" (purge sample chamber/breath path)
- Two-minute Continued Observation Period
- "Air Blank" (purge sample chamber/breath path)
- Breath Sample period



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104

Lesson Plan:

1. Have subject provide the sample
 - a) The operator is assured that a proper sample is being provided to the instrument when a continuous audible tone is heard and the instrument displays the "Please Blow" message.
 - b) A "period" will be displayed following the "Please blow" message when the instrument has obtained an adequate sample and the operator may instruct the subject to stop blowing.

2. After the breath sampling period is complete, the instrument will next perform another air blank. The instrument display will display the "Air Blank" message and turn on the instrument's internal purge pump for approximately 20 seconds.
 - a) If there is a problem, the instrument will abort the test and display a message of "Ambient Failure" on the display and print "Invalid Test – Check Ambient Conditions" on the Test report.

3. After successfully providing the breath sample, the instrument will display "Please Wait XX:XX remaining". The timer will count down time remaining in the two minute observation period. The operator needs to continue observing the subject to ensure that the subject does not take anything by mouth (eat, drink, smoke, or take medication, etc.), vomit, or regurgitated liquid from the stomach into the mouth for an additional period of approximately 2 minutes.
 - a) To ensure that there is no possibility of residual alcohol or mouth contamination causing a result that does not reflect the subject's true blood alcohol concentration.

4. After waiting for approximately two-minutes, the instrument will perform another air blank.

5. After a successful air blank, the instrument will again enter a breath sampling period. The instrument will briefly display a progress bar as a series of rectangular characters and then begin scrolling the message "Please blow into mouthpiece to activate tone." across the instrument display.
 - a) The operator should instruct the subject to provider an acceptable breath sample using the same instructions given to the subject previously (printed on the front of the instrument above the keyboard).
 - b) The operator is assured that a proper sample is being provided when a continuous audible tone is heard and the instrument displays the "Please Blow" message.
 - c) When a "period" is displayed following the "Please blow" message the instrument has obtained an adequate sample and the operator may instruct the subject to stop blowing.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Conducting a Breath Test

- "Air Blank" (purge sample chamber/breath path)
- "Control Sample" (control test on external ethanol breath standard)
- "Air Blank" (purge sample chamber/breath path)
- Comments
- Printing of Test Report (3 copies)
- Reprint Test (Y/N)



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105

Lesson Plan:

1. The instrument will perform another air blank. If a problem occurs, the instrument will abort the test and give an exception message.
2. At the successful conclusion of both breath sampling periods, the instrument will perform a control test using an external ethanol breath standard. The instrument will make several "clicking" and "hissing" noises as the gas supply is initiated and terminated. The instrument display will read "Control Sample".
 - a) The instrument will analyze a sample from the attached ethanol breath standard and evaluate the accuracy of the instrument.
 - b) The result of the analysis will be reported as part of the final Test report. The expected alcohol concentration of the standard is pre-determined and will also be printed on the Test report.
 - c) If there is a problem, the instrument will abort the test and display a message of "Control Sample Out of Tolerance" on the display and print "**Invalid Test – Control Sample Out of Tolerance" on the Test report.
3. The instrument will perform another air blank. If a problem occurs, the instrument will abort the test and give an exception message.
4. The operator will have the opportunity to enter comments into the "Comments" section of the report. This information will then appear on the final printed version of the Test Report. The instrument will prompt the operator displaying the message of "Add Comments (Y/N)?".
 - a) Selecting "N" on the instrument keyboard - the instrument will proceed directly to printing of the Test Reports.
 - b) Selection of "Y" on the instrument keyboard will allow the operator to enter additional information into the Test Report. The instrument will display three (3) comment messages, starting with "Comment Line 1"
5. The final phase of the analysis is the printing of the test reports
 - a) The operator can be assured that all operational parameters of the test were met because the instrument printed a completed test report.
 - b) If at anytime during the testing sequence there had been an exception to the testing sequence, a malfunction, or an error, the test would have been aborted and the instrument would not have printed a completed Test report.
6. The instrument will provide three (3) copies of the Test Report for the operator to distribute.
7. Instrument will give the operator a chance to reprint the test "Reprint Test (Y/N)".

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Other Types of Messages Displayed

- Tank Pressure Low Change Standard Soon
 - Continue test and notify agency
- No Permit Found
- Incorrect PIN
- Permit Expired
- Clearance Exceeded



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106

Lesson Plan:

1. Other Instrument Messages:

- a) Tank Pressure Low Change Standard Soon – If the instrument detects that the external ethanol breath standard pressure is less than approximately 75 PSI. The operator needs to continue with the testing sequence and notify the agency responsible for hosting the instrument of the warning message.
- b) No Permit Found – This will be displayed if the instrument is unable to verify the permit number entered by the operator, the operator does not have a valid permit number, the permit number has not been entered in the instrument's internal database, or the operator is using an incorrect permit number.
- c) Incorrect PIN – The instrument is unable to verify the PIN entered by the operator.
 - An operator is given three attempts to correctly enter their PIN before the instrument aborts the testing sequence.
- d) Permit Expired – This will be displayed on the instrument if the operator's permit has expired.
 - The operator should contact the Oregon State Police Implied Consent Unit.
- e) Clearance Exceeded – The operator has attempted to perform an operation with the instrument that they have not been given clearance for.
 - The operator should contact Oregon State Police to arrange for a Technician to perform the attempted operation or to service the instrument.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Operation of the Intoxilyzer 8000

Out-of-service

- Determine exception message from test report
- Contact OSP regional dispatch
- Leave on (unless dangerous)
- Place a placard on the instrument
- Notify host agency/dispatch
- Locate an alternative testing location and restart test.



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107

Lesson Plan:

1. An Intoxilyzer 8000 instrument may need to be placed out-of-service by an operator. When this occurs the operator should:
 - a) Determine exactly what the exception message being reported by the instrument is. This information will be important when reporting the condition to the Oregon State Police regional dispatch center. Also, be sure to perform the suggested correction action that is provided with the exception message. The dispatcher will inquire as to whether the operator has performed this step prior to placing the instrument out-of-service.
 - b) Contact the Oregon State Police regional dispatch center and provide notification of the exception:

OSP Regional Dispatch Center
1-800-292-6517
 - c) Leave the instrument ON and place an Out-of-Service notification placard on the instrument to notify future operator's of the condition of the instrument. Do not remove an out-of-service placard unless authorized to do so by a trained technician of the Oregon State Police.
 - Placard located on the back of the laminated "Local DRE" list.
 - d) Notify the host agency and/or dispatch
 - e) Locate an alternative testing location and restart the testing sequence.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Review



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108

Lesson Plan:

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

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Page 108 of 120

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Review

What would the operator do if the subject gave the first breath sample but not the second?

This is a Refusal
• Press the "Start Test" or the "R" button



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109

Lesson Plan:

1. What would the operator do if the subject provided the first breath sample but not the second?
 - a) This is a Refusal, the breath test consists of two samples. If the subject does not give both, they are refusing to take the test.
 - b) Press the "Start Test" or the "R" button

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Review

What has happened if the instrument displays "Improper Sample" and prints "Invalid Test – Improper Sample" on the report?

The subject has blown into the instrument at an improper time during the testing sequence.

How should it be corrected?

Refer to the "Suggested Corrective Action" statement



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110

Lesson Plan:

1. What has happened if the instrument displays "Improper Sample" and prints "Invalid Test – Improper Sample" on the report?
 - a) The subject has blown into the instrument at an improper time during the testing sequence.

2. How should it be corrected?
 - a) Refer to the "Suggested Corrective Action" statement.
 - Re-instruct the subject on how to provide a proper breath sample
 - Consider using a new mouthpiece.
 - Continue testing the subject until a proper sample is received or a refusal.
 - Record any observations in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Review

If the instrument displays "RFI Detected", what would the "Suggested Corrective Action" statement recommend doing?

Remove any Radio Frequency transmission source from the vicinity of the instrument and restart test (phone/radio).



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111

Lesson Plan:

1. If the instrument displays "RFI Detected", what would the "Suggested Corrective Action" statement recommend doing?
 - a) Remove any Radio Frequency transmission source from the vicinity of the instrument and restart test (phone/radio).

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Review

If the instrument displays “Interfering Substance Detected”, what would the “Suggested Corrective Action” statement recommend doing?

Discontinue the Implied Consent process
• ask the subject about diabetes, fasting, and solvent exposure. If diabetic, consider EMS assistance.

Consider requesting a voluntary blood sample.

Record any observation made



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112

Lesson Plan:

1. If the instrument displays “Interfering Substance Detected”, what would the “Suggested Corrective Action” statement recommend doing?
 - a) Discontinue the Implied Consent process and ask the subject about diabetes, fasting, and solvent exposure. If diabetic, consider EMS assistance.
 - b) Consider requesting a voluntary blood sample from the suspect or obtain a warrant.
 - c) Record any observation made.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Review

During the "Air Blank" section of the test the instrument is unable to purge the sample chamber, what exception message will you receive and what corrective actions should you take?

- "Purge Failure" and report will read "Invalid Test – Purge Failure"
- Remove mouthpiece and check for obstructions
 - Use new mouthpiece
 - Place out of service
 - Locate alternative testing location
 - Record observations in comments sections



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113

Lesson Plan:

1. During the "Air Blank " section of the test the instrument is unable to purge the sample cell after running a breath test. What exception message will you receive and what corrective actions should you take?
 - a) "Purge Failure" and report will read "Invalid Test – Purge Failure"
 - Remove mouthpiece from breath tube and check for any obvious obstructions.
 - Use a new mouthpiece and restart the test.
 - If the instrument still gives the exception message, place it out of service.
 - Leave the instrument power on and locate an alternative testing location.
 - Record any observations in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Review

During the three minute sampling period your subject did not blow with sufficient force to activate the audible tone, what message will be on the display?

"No Sample Given"



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114

Lesson Plan:

1. During the three minute sampling period your subject did not blow with sufficient force to activate the audible tone. What message will be on the display?
 - a) "No Sample Given"
 - b) The operator should consider re-instructing the subject on how to provide a proper breath sample.
 - c) If the operator is continuing the testing process, restart the test.
 - d) Continue the test until the subject properly submits to or refuses the test.
 - e) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Review

For the purpose of a DUII investigation, what must an officer have to conduct a search?

- Probable cause and Exigency; or
- Voluntary Consent; or
- Warrant



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115

Lesson Plan:

1. Quiz students on the concept of conducting DUII searches in Oregon.
2. For purposes of a DUII investigation, what must an officer have first to conduct a search?
 - a) Probable cause and exigency.
 - Remember that the threshold for establishing PC is relatively low in the DUII investigation.
 - b) Voluntary Consent; or
 - c) A Warrant. Remember that as a general rule, a warrant is needed unless an exception can be articulated.
3. What circumstances create exigency in the case of a DUII investigation?
 - a) Answer:
 - The dissipation of alcohol content from the bloodstream over time (loss of evidence); and
 - The requirement that the blood alcohol concentration at the time of driving be established in court. The more time that elapses between the time of driving and the time of the test, the more difficult it is to establish the person's BAC at the time of the offense.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Review

Which applies to a criminal DUII arrest, a person's right to counsel or a person's right to communicate?

Right to Counsel



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116

Lesson Plan:

1. Quiz students on right to counsel versus right to communicate. Which "right" applies to the criminal arrest for DUII?
 - a) Right to counsel.
 - b) A request for counsel comes in the form of: "I want to speak with an attorney" or something similar.
 - c) A person need only be afforded the reasonable opportunity to consult with an attorney, they do not have a guaranteed right to speak to an attorney.
 - For example: A person arrested for DUII requests to speak to an attorney. You provide them a telephone book, telephone, and private room in which to make the call. After a period of time, you return to find that the person was unsuccessful in contacting an attorney. Do you need to continue to allow the person time to contact an attorney?
 - Apply the "reasonable person" standard. How long did you give them? Generally, fifteen minutes is considered to be a reasonable period of time. Afterwards, regardless of whether the person actually made contact with an attorney or not, you should proceed with the testing process.
 - Another example: A person arrested for DUII requests to speak to his/her brother to arrange a ride home. Is this a request to speak with counsel?
 - Doesn't sound like it, but you may ask a question to clarify (i.e., "Is your brother an attorney?"). If counsel is requested, provide the necessary accommodation.
2. Depending on the level of student understanding, instructors may continue to provide additional example scenarios, or move on to the next slide.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Review

What DMV forms should you complete when investigating the following DUII related incidents?

- Motor vehicle crash
- BAC less than 0.08
- Juvenile less than 0.08 but greater than 0.00
- CDL less than 0.08 but greater than 0.04
- CDL greater than 0.08
- Less than 0.08 and Urine Test Refusal



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117

Lesson Plan:

1. What DMV forms should you complete when investigating the following DUII related incidents?
 - a) Motor Vehicle crash where subject is receiving care at a medical facility as a result of injuries sustained in the crash.
 - Answer: Rights & Consequences (IC Combined Report), Form 49, IC Combined Report, and Blood Test Failure if BAC > 0.08 %BAC.
 - NOTE: Be sure to remind students that the person must be placed under arrest first before requesting a blood sample under Implied Consent.
 - b) DUII arrest with Blood Alcohol Concentration under 0.08 %BAC
 - Answer: Rights & Consequences (IC Combined Report) only. No further documentation is necessary – subject passed the breath test.
 - c) DUII arrest involving a juvenile with Blood Alcohol Concentration under 0.08 %BAC, but greater than 0.00 %BAC
 - Answer: Rights & Consequences (IC Combined Report), IC Combined Report.
 - d) DUII arrest involving Commercial Driver with Blood Alcohol Concentration under 0.08 %BAC, but greater than 0.04 %BAC (assume driver operating commercially)
 - Answer: Rights & Consequences (IC Combined Report), IC Combined Report (Test Failure), CDL Addendum (Test Failure).
 - e) DUII arrest involving Commercial Driver with Blood Alcohol Concentration over 0.08 %BAC (assume driver operating commercially)
 - Answer: Rights & Consequences (IC Combined Report), IC Combined Report (Test Failure), CDL Addendum (Test Failure)
 - f) DUII arrest involving where subject submits to breath test, result is less than 0.08 %BAC, and refuses the Urine test
 - Answer: Answer: Rights & Consequences (IC Combined Report), IC Combined Report (Urine Test Refusal)

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Review

What is the difference between a person's "right to counsel" and his/her "right to communicate"?

Right to counsel applies to criminal (DUII) law.
 Right to communicate applies to administrative (Implied Consent) law.



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118

Lesson Plan:

1. What is the difference between a person's "right to counsel" and his/her "right to communicate"?
2. The "Right to Counsel" applies to criminal (or DUII) law. This relates to a person's guaranteed "rights" under the Constitution when placed under arrest (Miranda). A request to speak to counsel supersedes all requests to communicate and should be granted unless doing so would be unreasonable.

NOTE: The right to speak to an attorney prior to consenting to take the breath test does not extend to an individual that is unable to afford an attorney. [See State v. Smalls, Or App (09/28/2005) A119943]

3. The "Right to Communicate" applies to administrative (Implied Consent) law. This relates to affording a person the reasonable opportunity to communicate with the outside world. (Moore v. MVD). The right to communicate can be delayed if the delay would unnecessarily impede the timely administration of a breath test.
4. In the case where a person asks to speak with counsel, the officer must be very careful to ensure that the person is afforded a reasonable opportunity to contact an attorney. Use the "reasonable person" standard.
5. A reasonable opportunity may not exist when:
 - a) The delay inherent in making the call would defeat the purpose of the test, (exigency!!)
 - b) No telephone is available, or
 - c) Some other reason exists which would make an individual's exercise of the right likely to invalidate the test.
6. NOTE: To avoid having a request for counsel interfere with the testing process, officers may want to offer the subject the opportunity to make a telephone call early in the process before starting the pre-test observation period.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Review

Under Implied Consent what would you do if your suspect has one of the following?

	Implied consent combined report	Temporary permit	Seize license
Out of State License			
Temporary Permit			
Hardship Permit			
No driver's license			
Learners permit			



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119

Lesson Plan:

1. Quiz students on unusual situations involving Implied Consent suspensions.

2. What would you do if your suspect does not have a valid Oregon Driver's License?
 - a) Out of state Driver's License
 - Implied Consent Combined Report? (Yes)
 - Temporary permit? (No)
 - Seize subject's license? (No)
 - b) Temporary Permit
 - Implied Consent Combined Report? (Yes)
 - Temporary permit? (No)
 - Seize subject's license? (No)
 - c) Hardship
 - Implied Consent Combined Report? (Yes)
 - Temporary permit? (No)
 - Seize subject's license? (No)
 - d) No Driver's License
 - Implied Consent Combined Report? (Yes)
 - Temporary permit? (No)
 - Seize subject's license? (No)
 - e) Learner's Permit
 - Implied Consent Combined Report? (Yes)
 - Temporary permit? (Yes)
 - Seize subject's learner's permit? (Yes)

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Final Examination and Practical Exercises

To receive credit for course, each student will need to score at least 80% on the final exam and complete the following:

- Jail Release Test
- Scanned Breath Test
- Manually entered Refusal
- Reprint of a Breath Test
 - Write name in upper right hand corner
 - Hand all four items in with final exam



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120

Lesson Plan:

1. Final exam answer sheet
 - a) Students must print names clearly in block lettering and exactly as they would like to have it appear on their permit (i.e., Bill vs. William).
 - b) Students that do not have a DPSST # will need to contact Oregon State Police Implied Consent Unit immediately after getting a DPSST#.

Send information to:
Oregon State Police Portland Forensic Laboratory
Implied Consent Unit
13309 SE 84th Ave, Suite 200
Clackamas, Oregon 97015
971-673-8230
Contact Person is Fawnda VanRheen – Program Analyst for the OSP Implied Consent Unit
fawnda.vanrheen@state.or.us
971-673-8235
2. PIN# – Students need to pick a four digit PIN (Personal Identification Number) number that they will be able to remember. The PIN is necessary to authorize/initiate a breath test on the Intoxilyzer 8000.
 - a) Suggest that students choose an easy PIN to remember. If a PIN number is forgotten, the student will be unable to conduct a test.
3. Students will need a score of at least 80% to pass the class.(Correctly answer 20 out of 25 questions.)
4. Each student will also need to complete one of each of the following (4 total):
 - a) Jail release test
 - b) Breath test (using the scanner)
 - Students will use the operator's permit provide and their own driver's license
 - c) Breath test - Refusal (manually entering all information)
 - Student will need to use the keyboard to enter operator and subject information
 - d) Reprint one of the two breath tests they just ran (not the jail release test) F4
5. The students need to put their names on the top right hand corner and hand them in with their final exam.

Originally Adopted: 07/13/2006

Revision #: 3.0

Revision Effective Date: 07/01/2014