



# CONCORD POLICE DEPARTMENT STANDARD OPERATING PROCEDURE

## CHEMICAL TESTS FOR DRUGS & ALCOHOL

**GENERAL ORDER:** 09.06

**CREATED:** November 29, 2021

**ISSUE DATE:** January 23, 2024

**CALEA STANDARD:** 61.1.10

**EFFECTIVE DATE:** January 23, 2024

**ACTION:** Annual review of the general order.

**REVIEW DATE:** December 12, 2024

### **09.06.0**      **PURPOSE**

The purpose of this general order is to establish department guidelines for the administration of chemical analysis to determine the presence of drugs or alcohol concentration of a person's breath or blood when charged with an implied consent offense.

### **09.06.1**      **POLICY**

It shall be the policy of the Concord Police Department that all screening tests and chemical analysis to determine the presence of drugs or alcohol concentration of a person's breath or blood shall be administered for law enforcement purposes only, and in accordance with prevailing law, departmental directives, and the regulations established by the North Carolina Department of Health and Human Services (DHHS).

### **09.06.2**      **DEFINITIONS**

#### A. ALCOHOL CONCENTRATION

The concentration of alcohol in a person's breath or blood, expressed as either grams of alcohol per 100 milliliters of blood, or grams of alcohol per 210 liters of breath.

#### B. CHEMICAL ANALYSIS

A test to determine the presence of drugs or alcohol concentration of a person's breath or blood, performed in accordance with NC GS 20-139.1.

#### C. CHEMICAL ANALYST

A person granted a permit by the Department of Health and Human Services under NC GS 20-139.1 to perform chemical analysis.

#### D. DRUG RECOGNITION EXPERT (DRE)

An individual who successfully completed all phases of the DRE training requirements for certification established by the International Association of Chiefs of Police (IACP) and National Highway Traffic Safety Administration (NHTSA).

**E. IMPAIRING SUBSTANCE**

Any substance, when taken into the human body, that can impair the ability of the person to operate a vehicle safely.

**09.06.3    LEGAL REQUIREMENTS**

- A. NC GS 20-16.2 provides that any person who operates a vehicle on a highway or public vehicular area in North Carolina is deemed to have given consent to a chemical analysis of their breath or blood in the event of being charged with an implied consent offense. The following is a list of implied consent offenses:
1. Impaired driving, NC GS 20-138.1;
  2. Impaired instruction, NC GS 20-12.1;
  3. Impaired driving in a commercial vehicle, NC GS 20-138.2;
  4. Driving after consuming alcohol or drugs for persons under age 21, NC GS 138.3;
  5. Habitual impaired driving, NC GS 20-138.5;
  6. Driving while license revoked by driving in violation of the restrictions on the limited driving privilege prohibiting consumption of alcohol prior to or during driving, NC GS 20-179.3(j);
  7. Driving with open container in the vehicle after consuming alcohol, NC GS 20-138.7;
  8. Felony death by vehicle, NC GS 20-141.4;
  9. Involuntary manslaughter, when underlying charge is DWI, NC GS 20-18;
  10. Second degree murder, when death is caused by impaired driving, NC GS 20-17.
- B. Certain statutory requirements shall be met in order for the chemical analysis results to be admissible in court:
1. The person must have been arrested, charged, or suspected of committing an implied consent offense;
  2. The person must have been requested by the charging officer to submit to a chemical analysis to determine the alcohol concentration of his/her breath or blood;
  3. The chemical analyst conducting the test shall possess a valid permit from DHHS authorizing him/her to administer the type of analysis to be conducted; and
  4. The chemical analysis shall be conducted using instruments and procedures approved by DHHS.

- C. All chemical analysis conducted by or at the direction of the department shall be for law enforcement purposes only, and shall be conducted according to the current methods, procedures, and regulations established by DHHS and state law.
- D. If the arrestee refuses to submit to the analysis requested by the officer, or fails to follow the directions of the chemical analyst in taking the analysis, such action shall be considered a willful refusal and recorded as such. Evidence of the arrestee's willful refusal of the breath or blood analysis is admissible in court.

#### **09.06.4 INITIAL PROCEDURES AND CHEMICAL ANALYSIS RIGHTS**

- A. After making an arrest for an implied consent offense, the arresting officer shall decide which type of chemical analysis is to be administered, breath is preferred. On those occasions when the arrestee is unable to take a breath test, the officer may request a blood analysis.
- B. If a breath analysis is conducted, the officer shall transport the arrestee to a chemical analysis testing location. A chemical analyst shall be summoned unless the charging officer possesses a valid chemical analyst permit. The chemical analyst shall advise the arrestee of his/her rights under NC GS 20-16.2(a). The rights shall be provided to the arrestee, verbally and in writing.
  - 1. The chemical analyst shall verbally and in writing advise the arrestee of his/her rights under NC GS 20-16-2(a). The arrestee shall be provided a written copy of these rights. After the arrestee has been advised of his/her rights, the charging officer shall request that the arrestee submit to a chemical analysis of his/her breath.
  - 2. The charging officer shall complete a Driving While Impaired Report. The interview questions on the back of the Driving While Impaired Report are considered custodial questioning and the arrestee shall be advised of and waive their Miranda rights prior to these questions being asked. If the arrestee charged is under 18 years old, they shall be advised of and waive their juvenile Miranda rights in accordance with General Order 07.07 Juvenile Operations.
- C. If a blood analysis is conducted, the officer shall transport the arrestee to a local medical facility. A chemical analyst shall be summoned unless the charging officer possesses a valid chemical analyst permit. The chemical analyst shall advise the arrestee of his/her rights under NC GS 20-16.2(a). The rights shall be provided to the arrestee, verbally and in writing.
  - 1. After the arrestee has been advised of their rights, the officer shall, in the presence of the person authorized to administer a chemical analysis, request the arrestee to submit to a blood analysis.
  - 2. Blood withdrawal kits are provided by the department. A qualified medical practitioner shall withdraw the blood and immediately turn it over to the charging officer. The officer shall thereafter handle the blood sample as evidence in accordance with General Order 07.05 Evidence and Property Control.
- D. The charging officer may also designate a chemical test for substances other than alcohol and may request a blood test in addition to the breath test. The arrestee shall be informed of their rights under NC GS 20-16.2(a) at the time they are requested to take each test.

- E. If the arrestee refuses a chemical analysis, the charging officer and chemical analyst shall complete form AOC-CVA-1/DHHS 3907 (Affidavit and Revocation Report of Charging Officer/Chemical Analyst). Then the charging officer shall apply for a search warrant and follow steps outlined above in 09.06.4 C2.
- F. The charging officer and the chemical analyst shall go before a magistrate or notary public for the purpose of affirming or notarizing the affidavit. The magistrate shall initiate a license revocation pursuant to NC GS 20-16.5(c), which requires the filing of a copy of the affidavit. If the refusal occurs in a case involving death or critical injury to another person, that fact shall be included in the affidavit. After being notarized, the affidavit shall be forwarded along with the form DHHS 4081 (Rights of a Person Requested to Submit to a Chemical Analysis to Determine Alcohol Concentration Presence of an Impairing Substance Under NCGS 20-16.2(a) to the Customer Service Unit by personal delivery or placing the form in the designated area for incoming documents. Customer Service Unit sergeant or designee shall forward these documents to the NC Division of Motor Vehicles.

#### **09.06.5**      **MEDICAL ATTENTION FOR ACUTE ALCOHOL INTOXICATION**

- A. Occasionally, the level of intoxication of an arrestee presented for chemical analysis may indicate the need for prompt medical attention. Acute alcohol intoxication can severely depress the central nervous system, and is potentially fatal. The danger is greater for persons who are young or unaccustomed to drinking heavily. The effects of the alcohol can also be compounded if the person has taken central nervous system depressant drugs.
- B. Officers shall carefully monitor arrestees in their custody who are highly intoxicated, and shall ensure that the person receives prompt medical attention in any of the following situations:
  - 1. When either breath test result is .40 or greater;
  - 2. When, in the opinion of the arresting officer or the chemical analyst, the arrestee's level of impairment is such that medical attention is warranted, regardless of the analysis result.
- C. A field supervisor shall be notified in the event that medical attention for an arrestee suffering from acute intoxication is needed. In no case, however, shall apparently necessary medical treatment be delayed for the purpose of notifying or consulting with a supervisor.

#### **09.06.6**      **DOCUMENTATION**

- A. In order to ensure that all legal responsibilities are met, written documentation shall be completed, as applicable:
  - 1. An affidavit and revocation report shall be completed by the charging officer and chemical analyst for every DWI arrest. If the charging officer holds a valid permit to perform a chemical analysis, only one form shall need to be completed.

2. The arresting officer shall complete an arrest report in accordance with General Order 09.19 Field Reporting and Records Management. The chemical analysis test results or refusal shall be recorded in the narrative.

### **09.06.7 PRE-ARREST CHEMICAL ANALYSIS**

- A. NC GS 20-16.2(I) allows a person suspected of committing an implied consent offense to request a pre-arrest chemical analysis to determine the alcohol content of their blood. The person shall request the analysis prior to being arrested. This law is applicable in situations where an officer stops, detains, or questions a person whom he/she has probable cause to believe has been operating a vehicle on a highway or public vehicular area while under the influence of an impairing substance or any other implied consent offense.
- B. If the person has already been made at the time of the request, the person does not have the right to such an analysis. The officer is not required to advise the person that a pre-charge chemical analysis may be requested.
- C. The request for a pre-charge chemical analysis and a subsequent delay of enforcement action is conditional, based upon the person's compliance with certain restrictions. If the person fails or refuses to comply with these conditions, the request becomes invalid and immediate enforcement action may be taken.
  1. If a proper request is made, the officer shall refrain from making an immediate arrest and shall arrange for the requested analysis to be administered. The voluntary analysis is administered in the same manner as a custodial analysis and the results are admissible in court. The request shall not cause any normal investigative procedure or practice to be delayed, compromised, or omitted.
  2. Upon receiving a verbal request for a pre-charge chemical analysis, the officer shall acknowledge the request and provide the arrestee with a Form DMV-S784 (Request for Pre-Charge Chemical Analysis). Failure or refusal of the arrestee to execute this form invalidates the request for a pre-charge chemical analysis. The original copy of the form shall be turned into the Customer Service Unit by personal delivery or placing the form in the designated area for incoming documents, the 2nd copy retained by the officer, and the 3rd copy provided to the arrestee.
  3. The person shall be transported to the analysis site in the officer's patrol vehicle. The person shall not be allowed to drive his/her private vehicle to the analysis site under any circumstances, and may not be transported by any private citizen or passenger. The officer shall notify communications that a person is being transported for a pre-arrest chemical analysis. Failure or refusal of the person to comply with normal prisoner transportation procedures shall invalidate the request for a pre-charge chemical analysis.
  4. Prior to placing the person in the police vehicle, a pat down search of the person shall be conducted. Resistance or refusal to allow the search shall invalidate the person's request for a pre-charge chemical analysis. The officer may take control of personal property, such as a handbag, that is in the possession of the arrestee, and shall safely secure these items.
- E. The person's vehicle shall be secured in accordance with General Order 09.08 Vehicle Towing and Owner Notification.

- F. The results of the pre-arrest chemical analysis are admissible in court and may be considered by the officer in deciding whether or not to arrest the person. If the officer chooses to arrest the person, this shall be done in accordance with General Order 07.01 Arrest Authority and Procedures. If the person is released without being charged, the officer shall transport the person to their vehicle or other reasonable location.

**09.06.8**     **ALCOHOL SCREENING TEST DEVICES**

- A. NC GS 20-16.3 authorizes law enforcement officers to use approved alcohol screening test devices. Pursuant to this authority, an officer may offer the driver of a vehicle to submit to an alcohol screening within a relevant time after driving if the officer has reasonable grounds to believe that the driver has consumed alcohol and:
1. Has committed a moving traffic violation;
  2. Has been involved in a vehicle crash;
  3. Has committed an implied consent offense under NC GS 20-16.2, and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or detained by the officer in the performance of the officer's duties.
- B. The alcohol screening test shall be administrated using devices and procedures approved by DHHS.
- C. The results of an alcohol screening test or an arrestee's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining whether an arrestee's alleged impairment is caused by an impairing substance other than alcohol.
- D. Negative or low results on the alcohol screening test may be used to support cases by the officer, a court, or an administrative agency in determining whether a person's alleged impairment is caused by an impairing substance other than alcohol.
- E. The results or refusal of an alcohol screening test may also be used in court when charging offenses under NC GS 20-138.7 and NC GS 20-138.3. Except as provided herein, the results of an alcohol screening test may not be admitted into evidence in any other criminal or administrative proceeding.
- F. Calibration of alcohol screening devices shall be verified at least once during each thirty (30) day period of use by employment of a control sample from an alcoholic breath simulator, as defined in Title 10, Section 7B.0102(5) of the North Carolina Administrative Code, or by the use of a NALCO standard, and ensuring that the expected result is obtained. The Public Safety Unit supervisor shall be responsible for overseeing the calibration of all approved screening devices utilized by the department.



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