



# DETROIT POLICE DEPARTMENT MANUAL

<b>Series</b> 200 Operations	<b>Effective Date</b> TBD	<b>Review Date</b> <i>Three Years</i>	<b>Directive Number</b>  <b>204.3</b>
<b>Chapter</b> 204 - Traffic Operations			
<b>Reviewing Office</b> <i>Traffic Enforcement Unit/Detroit Detention Center</i>			<input type="checkbox"/> <b>New Directive</b> <input checked="" type="checkbox"/> <b>Revised</b> <small>Revisions are in <i>italics</i></small>
<b>References</b> <i>Michigan Law Enforcement Accreditation Commission 3.6.2</i>			

## OPERATING WHILE INTOXICATED

### 204.3- 1 PURPOSE

To establish procedures for investigating, apprehending, processing and arresting individuals suspected of driving while under the influence of alcohol, controlled substances, or a combination of both. These impaired drivers, whether due to alcohol, drugs or intoxicating substance(s), present a significant risk to both the safety of the public and themselves, and as such, cannot be tolerated.

### 204.3- 2 POLICY *(MLEAC 3.6.2 a)*

To establish procedures for investigating and, where appropriate, arresting individuals suspected of driving while under the influence of alcohol, controlled substances, or a combination of both. Drivers who are impaired by alcohol, controlled substances, or other intoxicating substances pose a considerable danger to the public as well as themselves. Members shall remain alert for intoxicated drivers and take appropriate enforcement action consistent with this policy free from, including but not limited to, bias based on race, ethnicity, gender, disability, or socioeconomic status.

### 204.3- 3 Procedures

#### 204.3 – 3.1 General

MCL 257.625 prohibits individuals from operating a motor vehicle on a highway, a place open to the general public, or an area generally accessible to motor vehicles while intoxicated (OWI). An individual is “operating while intoxicated” where—

1. The person is under the influence of an alcoholic liquor, a controlled substance, or other intoxicating substance or a combination thereof; or
2. The person has an alcohol content of 0.08 grams or more.

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3. Operating While Visibly Impaired (OWVI) is a lesser included offense of OWI. An individual is guilty of OWVI when the individual’s ability to operate a motor vehicle is “weakened or reduced” due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination thereof so that the suspect drove with less ability than would an ordinary, careful, or prudent driver. *People v. Lambert*, 395 Mich 296, 305; 235 NW2d 338, 342 (1975). Unlike the crime of OWI, there is no presumptive level of intoxication.
  
4. Michigan law also prohibits conduct closely related to OWI. These include, but are not limited to, the following:

MCL	Offense Description
<b>MCL 257.625(8)</b>	Operating with any Presence of Drugs (Schedule 1 and / or cocaine) (OWPD).
<b>MCL 257.625(4)</b>	OWI, OWVI, or OWPD causing death.
<b>MCL 257.625(5)</b>	OWI, OWVI, or OWPD causing serious impairment of a body function.
<b>MCL 257.625(2)</b>	Owner or person in charge of a vehicle authorizing or knowingly permitting an individual to operate a motor vehicle while intoxicated or while visibly impaired.
<b>MCL 257.625(6)</b>	Person under 21 years operating a vehicle with a BAC of 0.02 grams or more or any presence of alcohol resulting from consumption of alcoholic liquor other than as part of a generally recognized religious service or ceremony.
<b>MCL 257.625(1)(c)</b>	<i>Enhanced penalties for drivers with BAC of 0.17 or higher - Super Drunk law.</i>

#### 204.3 – 3.2 Detection

1. Detection of intoxicated drivers is fundamental to the enforcement of crimes involving alcohol, controlled substances, and other intoxicating substances. The National Highway Traffic Safety Administration (NHTSA), in collaboration with the International Association of Chiefs of Police (IACP), developed a national standard for detecting OWI and related alcohol violations. The Michigan Commission on Law Enforcement Standards (MCOLES) has adopted the IACP/NHTSA standards and now requires all police trainees to demonstrate competency in this subject. See *MCOLES Basic Training Curriculum and Training Objectives*, Sec. V.D.1 (2025).

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2. The Standard Field Sobriety Tests (SFSTs) include the Horizontal Gaze Nystagmus (HGN), Walk and Turn, and One Leg Stand.
3. Members are reminded that unlike the breathalyzer and preliminary breath test, there is no available sanction against an individual for merely refusing to participate in the SFST's.
4. The Training Center is responsible for ensuring that all recruits are certified in the standard field sobriety tests.

#### 204.3 – 3.3 Procedures for Identifying Intoxicated drivers

1. The process for identifying intoxicated drivers generally involves three phases, DPD members will proceed for further evaluation if the initial observations yield a positive indication of impairment, and the process is as follows:
  - a. **Vehicle in Motion:** This phase begins with the member's initial observation of the vehicle or driver for maneuvers or human behaviors indicative of impairment. Members shall note any behavior suggesting that the operator of the motor vehicle is intoxicated.
  - b. **Personal Contact:** This phase involves approaching, observing, and interviewing the driver. This phase may involve administering some simple, pre-exit sobriety tests to gain additional information on the driver. Members must remain cognizant of and note what they see, hear, and smell. This includes, but may not be limited to, bloodshot eyes, soiled clothing, alcohol containers, slurred speech, admissions of drinking, unusual statements, the odor of intoxicants, and the smell of marijuana, and attempts to mask these odors by using cover-up odors. *Members must remain alert to medical conditions (e.g., diabetes), that can mimic intoxication. Members will notify dispatch if impairment appears medical rather than substance related.*
  - c. **Arrest Screening:** Following the observations, members will administer the standard field tests. The results from these tests along with any prior observations shall be used to determine whether there is probable cause for arrest. If available, a preliminary breath test (PBT) shall be used to confirm the chemical basis of the subject's impairment after the SFSTs have been administered. Arresting members shall record all pertinent observations in their arrest report, ensuring a comprehensive account of the situation.
2. Members must adhere to their training while investigating individuals suspected of intoxicated driving. Members shall seek guidance from the *DWI (Driving While Intoxicated) Detection and Standardized Field Sobriety Testing Student Manual*,

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where necessary.<sup>1</sup> Members trained in Advanced Roadside Impaired Driving Enforcement (ARIDE) and Drug Recognition Expert (DRE) training may rely on their training during investigations.

3. Members not trained on the NHTSA standards, ARIDE, or DRE shall request a trained officer through the zone dispatcher. If none are available, a supervisor shall be notified. Other established sobriety tests (e.g., the alphabet test, the backward number count, or finger count) may be used where administering the SFSTs is not feasible.

**204.3 – 3.4 Considerations Before Administering SFSTs or other Evaluations**

Members shall ask individuals suspected of intoxicated driving if they have any medical conditions that may impair their ability to perform SFSTs. Members must not administer SFSTs or other evaluations if doing so would put the individual suspected of intoxicated driving in danger.

**204.3 – 3.5 Preliminary Chemical Breath Analysis**

1. MCL 257.43a refers to the term “preliminary chemical breath analysis” as the on-site taking of a preliminary breath test from the breath of a person for the purpose of detecting alcohol. MCL 257.625a(2) provides for the administration of a preliminary chemical breath analysis and mandates that an officer have reasonable cause to believe the individual is committing an offense before requiring an individual to submit to the test. An individual that refuses to submit to a preliminary chemical breath analysis is responsible for a civil infraction. An individual who was operating a commercial motor vehicle refuses to submit to a preliminary breath analysis upon a member’s lawful request is guilty of a 93-day misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both. MCL 257.625a(5).
2. A police officer may arrest a person in whole or in part upon the results of a preliminary chemical breath analysis. MCL 257.625a(2)(a). Members must, however, remain cognizant of the fact that the results of a PBT are not admissible as evidence in court proceedings except in very limited circumstances. MCL 257.625a(2)(b). Accordingly, a preliminary breath test (PBT) device shall be used to confirm the chemical basis of the subject’s impairment but should never be a substitute for proper investigative techniques.
3. Only members who have successfully completed the PBT training course and are certified Class I operators are authorized to administer preliminary chemical breath analysis. Only PBT instruments approved by the Department of State Police shall be used. PBT instruments shall be verified for accuracy at least once per month. If a

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<sup>1</sup> Available at [https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/15911-SFST\\_Participant\\_Manual\\_2023-tag.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-03/15911-SFST_Participant_Manual_2023-tag.pdf).

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member has reason to believe a PBT instrument is not functioning properly or accurately, the unit shall be taken out of service until it can be inspected and calibrated by appropriate personnel.

4. Members shall administer a PBT in accordance with their training. Prior to administering a PBT, the member shall—
  - a. Administer PBT rights if the individual was operating a commercial motor vehicle at the time of the violation.<sup>2</sup>
  - b. Determine that the person has not placed anything in their mouth, regurgitated, or smoked for at least 15 minutes.
  - c. Ensure that there are no signs of injury or blood in the subject's mouth.
5. Members shall issue the appropriate citation or warrant request in the event an individual refuses to submit to the member's lawful request to submit to a PBT.

**204.3 – 3.6 Preliminary Oral Fluid Analysis**

1. A preliminary oral fluid analysis may be administered in compliance with MCL 257.625r and MCL 257.625t. Only participating DREs are authorized to administer this test using equipment approved by the Department of State Police. Oral fluid analysis shall not be administered until the participating DRE has determined that the individual has not smoked, regurgitated, or placed anything in their mouth for at least 10 minutes prior to the collection of the oral fluid sample.

2. Under MCL 257.625r(6) to (9), participating DREs shall advise the operator of a commercial motor vehicle that refusing a peace officer's request to submit to a preliminary oral fluid analysis is a civil infraction and will result in the issuance of a 24-hour out-of-service order. Any individual who refuses to submit to a preliminary oral fluid analysis shall be issued a Uniform Law Citation for the refusal.

**204.3 – 3.7 Chemical Tests in General**

1. Individuals arrested for intoxicated- or impaired-driving offenses shall be informed of their chemical test rights as listed on the Breath, Blood, Urine Test Report form (DI-177), the Officer's Report of Refusal to Submit to a Chemical Test form (DI-93), or from another applicable document prior to the administration of the chemical test. Miranda warnings should not be issued before the reading of the chemical test rights. If the arrested subject requests an opportunity to consult with an attorney before taking a chemical test, then the subject shall be granted a reasonable opportunity to do so.

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<sup>2</sup> Under MCL 257.625a(4) and (5), members must advise the operator of a commercial motor vehicle that refusing a police officer's request to submit to a PBT is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both, and will result in the issuance of a 24-hour out-of-service order.

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2. The law provides that the arrested person may demand that a chemical test of their choice be given after an arrested person submits to the test offered by the police officer. Members shall ensure that the subject is provided a reasonable opportunity to obtain a test of their own choosing (at their own expense).
3. Members shall seek a blood sample from individuals suspected of having operated with any amount of Schedule 1 controlled substances or cocaine or while under the influence of a controlled substance or other intoxicating substances or a combination of them. Furthermore, members shall seek a blood test rather than a breath test when the arrested subject appears to be intoxicated but the investigation indicates that the subject's actions are caused using controlled substances or other intoxicating substances, or a combination of them.
4. The administration of a chemical test requires the completion of a DI-177 form where the individual submits to the test or a DI-93 form where the individual refuses to submit to the test. Members shall adhere to the instructions set forth on the form and ensure proper LEIN entry is made.

**Commented [AW21]:** Supreme Court in 2016 stated that in most cases of suspected drunk driving warrantless blood draws are unlawful, whereas warrantless breath tests are lawful.

We will need clarity on this...(Majority Opinion in Birchfield v. North Dakota)

**204.3 – 3.8 Chemical Tests of Juveniles**

1. Juveniles may be requested to submit to a chemical test and the results are admissible in court. Prior to administering a chemical test, the juvenile shall be given the opportunity to consult an attorney or other adult, if requested, before deciding to take the test. Since juveniles may not have the same access to attorneys as adults do, their parent or guardian would qualify as the person with whom the juveniles may consult prior to testing. All efforts to comply with this requirement shall be clearly documented in the member's report.
2. *In cases involving juveniles, members shall adhere to the policies and procedures set forth under Directive 203.5 Juveniles and School Incidents, particularly subsection 203.5-4.24 Operating While Intoxicated and Operating with the Presence of Drugs.*

**204.3 – 3.9 Chemical Tests (Breath)**

1. The Department's chemical breath test machine (currently, the Intoxilyzer 9000) shall be kept at the Detroit Detention Center (DDC). Members intent on administering a chemical breath test shall contact the DDC and verify that the breathalyzer is in service prior to arriving at the DDC with their arrestee.
2. Only members certified to administer chemical breath tests are authorized to conduct the test. Members shall perform the test in accordance with their training and the procedures set forth in the latest edition of the Michigan Breath Test Operator Training

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Manual.<sup>3</sup> No test shall be administered until the member conducting the test has determined that the person to be tested has not placed anything in their mouth, regurgitated, or smoked for at least 15 minutes. Regardless of the results, a copy of the Evidence Ticket (OD-080) shall be given to the arrested subject.

3. *To help ensure chain of custody is maintained, all appropriate documents shall be submitted with biological samples to prevent suppression in court.*

**204.3 – 3.10 Chemical Tests (Blood)**

1. Blood tests shall be sought where—
  - a. A breath sample cannot be obtained because of the subject's physical condition (e.g., a mouth injury or blood in the mouth).
  - b. The member has reason to believe that drugs are involved.
  - c. Subject has refused breath test or Chemical test.
2. Only a licensed physician, or a licensed nurse or medical technician acting under the direction of a licensed physician, in a medical environment, may withdraw blood for the purpose of determining the amount of alcohol or presence of a controlled substance or both in the person's blood. If a blood test is administered, the Alcohol and Drug Determination Kit ("blood kit") furnished by the Forensic Science Division of the Michigan State Police should be used.
3. If controlled or other intoxicating substances are suspected, the member completing the FSD-093 (located inside the kit) shall note this under "Additional Remarks." The member should attempt to further identify what drugs the subject may have ingested by way of the subject's own admissions, confessions, observation of drug paraphernalia or prescription bottles in the vehicle, or other information obtain during the investigation. Members should request a "complete drug screen" on the form when no determination can be made.
4. Filled blood kits shall be appropriately sealed and mailed to the Michigan State Police Lansing Laboratory as soon as practical following the blood draw.

**204.3 – 3.11 Chemical Tests (Urine)**

1. Urine tests are generally disfavored as they can only show that a subject had past exposure to drugs but not when that exposure was. As much as possible, members should attempt to obtain blood specimens for alcohol, controlled substances, or other intoxicating substances.

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<sup>3</sup> Available at <https://msp.qualtraxcloud.com/ShowDocument.aspx?ID=71664> (currently entitled, Intoxilyzer 9000 Operator Guide for Law Enforcement).

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2. Urine specimens may be submitted only after it is determined that there is no medically feasible or safe method for obtaining a blood sample.
3. When collecting a urine sample, enforcement members shall follow the guidelines for sample collection found on the Alcohol or Drug Determination form (FSD-093).

**204.3 – 3.12 Chemical Test Refusals**

1. All operators of motor vehicles are deemed to have implicitly agreed to submit to chemical testing. This legal theory is referred to as “Implied Consent.” A person who does not submit to a chemical test in accordance with a member’s lawful request is subject to licensing sanctions. Members shall complete a DI-93 and follow the instructions on the form in the event of all chemical test refusals.
2. If the subject consents to a breath test but then refuses to provide an adequate sample for analysis after the test procedure has started, the refusal shall be regarded as an “Operator Refusal” and shall be noted on the Evidence Ticket. If the subject consents to a breath test but then provides five inadequate samples for analysis within a two-minute period, the breath test operator shall note “Technical Refusal” on the Evidence Ticket. A copy of the Evidence Ticket shall be provided to the arrested subject.
3. Members should generally seek a search warrant for a blood draw in the event the subject refuses to submit to a chemical test. In situations where obtaining a search warrant may not be feasible (e.g., due to high priority runs pending), members shall notify their supervisor. The supervisor shall assess the situation and make a determination as to whether the need to obtain a blood draw outweighs the time, resources, and operational burdens that may be required to complete the process. Blood draws shall be sought where there is reason to believe the subject has committed a felony offense (OWI 3<sup>rd</sup>, OWI causing death, etc.).

**204.3 – 3.13 Seizure and Destruction of Driver’s License or Permit**

1. Pursuant to MCL 257.625g, members shall confiscate and destroy an individual’s license or permit to operate a motor vehicle and issue a temporary license or permit to the individual in any of the following circumstances:
  - a. The person refuses the chemical test offered by the member.
  - b. The person submits to the chemical test or a chemical test is performed under a court order and the test reveals an unlawful alcohol content, or the presence of a controlled substance or other intoxicating substance, or any combination of them.
2. Government-issued identification is crucial for a wide range of daily activities and civic responsibilities unrelated to driving. Accordingly, members shall destroy the license only by severing or cutting a hole through the portion of the license or permit listing the issue and expiration date. What’s left of the license or permit may then be returned to the individual for identification purposes.

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3. If a person submits to a chemical test that requires an analysis of blood or urine and a report of the results of that chemical test is not immediately available, the member shall confiscate the license but not destroy it until the report on the chemical test is received and reveals a unlawful alcohol content, or the presence of a controlled substance or other intoxicating substance, or any combination of them. Members shall immediately return the person's license or permit to operate a motor vehicle by first-class mail to the address provided at the time of arrest.
4. Under no circumstances shall confiscation or destruction of the license or permit take place if any of the following apply:
  - a. The chemical test administered does not reveal an unlawful alcohol content, the presence of a controlled substance or intoxicating substance, or any combination of them.
  - b. The individual possesses an out-of-state license or permit.

**204.3 – 4 Case Preparation**

**204.3 – 4.1 Report Writing**

An incident report shall be completed for all intoxicated- or impaired-driving offenses. The report shall include all pertinent observations the member made (e.g., the odor of intoxicants, slurred speech, bloodshot eyes, or unusual behavior). In addition, the member shall include information on the following, if applicable:

- The subject's performance on the SFSTs.
- PBT results.
- Chemical breath test results.
- The name of the nurse or medical technician that performed the blood withdrawal.
- Record sequence numbers generated from the LEIN entry.
- Any information pertaining to prior convictions for intoxicated- or impaired-driving offenses.
- The location where the vehicle was impounded.
- Information pertaining to any citations issued.
- The UD-10 report number.

**204.3 – 4.2 Case Jackets**

1. Members shall prepare a case jacket that includes all required documentation once the case is ready for submission to the 36<sup>th</sup> District Court using the Court Case Envelope (DPD 532). The following documents are generally required for each case submission:

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- One copy of the incident report.
  - The original DI-177 or DI-93.
  - The Evidence Ticket obtained from the breathalyzer machine.
  - Complete certified driving history from LEIN.
  - Vehicle registration printout.
  - UD-10 report (if applicable).
  - One copy of the signed search warrant (if applicable).
  - One copy of the FSD-093 form from the blood kit (if applicable).
  - One copy of the subject's complete criminal history (CCH).
2. Members who sought a blood test must ensure that the results are obtained from the Lansing Laboratory and included in the Court Case Envelope prior to submission to the 36<sup>th</sup> District Court. Members shall turn in all completed envelopes into the designated area of the DDC.
  3. The Department's Fatal Squad Unit shall be notified on and assume responsibility for the investigation of all OWI 3<sup>rd</sup> (or subsequent) offenses and all critical or fatal accidents involving an OWI violation. All other felony intoxicated or impaired driving violations shall be investigated by the appropriate precinct detective unit (PDU).

### **204.3 – 5 Record Keeping and Other Procedures**

#### **204.3 – 5.1 General**

1. The Detroit Detention Center (DDC) shall be the custodian of all evidentiary breath test machines and is responsible for ensuring that all records, including calibration and maintenance logs, are maintained in accordance with the administrative rules promulgated by the Michigan State Police. The commanding officer of the DDC may designate an individual to serve as the custodian of the records and individual responsible for ensuring that all required records are kept.
2. The Intoxilyzer 9000 shall be taken out of service in the event of malfunction. A copy of the OD-80 Accuracy Check Test showing the error displayed shall be e-mailed to the Michigan State Police at [MSP-alcoholunit@michigan.gov](mailto:MSP-alcoholunit@michigan.gov) on the same day the instrument shows the error.
3. At least one copy of the most recent version of the Intoxilyzer 9000 Operator Guide for Law Enforcement and the administrative rules for breath alcohol testing shall be kept at the DDC in proximity of the machine.

#### **204.3 – 5.2 License Plate Disposition**

1. Members are required to confiscate and destroy the vehicle license plate, including the plate on a leased vehicle or of an "innocent owner" if the driver has prior

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convictions for intoxicated- or impaired-driving violations. The commanding officer of each precinct and the DDC shall ensure that an adequate number of Temporary Registration Plate books are kept on site.

2. Members shall run a driving history on the driver. If the LEIN response directs the member to confiscate and destroy the metal registration plate from the vehicle, the member shall complete and issue a paper Temporary Registration Plate (BSF-150) to the vehicle. The Temporary Registration Plate shall be placed on the driver's side of the rear window in accordance with MCL 257.904c. Plate confiscation shall be entered into LEIN immediately.
3. Expired license plates shall be confiscated, destroyed, and entered into LEIN in accordance with the above procedures. The Temporary Registration Plate shall be completed noting the same expiration date as the metal plate. If a temporary registration plate already exists for the vehicle, members shall confiscate and destroy the paper plate and issue a new paper Temporary Registration Plate.
4. Under no circumstances shall members confiscate or destroy a dealer, manufacturer, out-of-state, rental, trailer, tribal, U.S. government, or apportioned (IRP) plates.
5. Additional Temporary Registration Plates may be ordered through the Michigan Department of State, Inventory Control Unit in Lansing.

### **204.3 – 5.3 Lost or Temporary Driver Permit**

1. An individual who has lost a previously issued a temporary driver in conjunction with an arrest for intoxicated- or impaired-driving may request a replacement at the DDC.
2. A LEIN query shall be made of the requesting individual's driving record to determine license eligibility before issuing a new permit.
3. Members shall utilize information from the original DI-177 or DI-93 filed with the Court Case Envelope to complete the replacement permit.
4. If these documents are not available, the member may use other reliable sources (LEIN, RMS report, etc.) to complete the request.
5. The member issuing the replacement shall sign the replacement driving permit and indicate "Replacement for Lost Permit" next to the signature.
6. The requesting individual shall only be provided with the carbon copy labeled temporary driving permit. The issuing member shall ensure that the remaining pages are included with the Court Case Envelope as soon as possible.

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***Related Policies:***

- 204.2 – Traffic Operations
- 203.5 – Juveniles and School Incidents

***Related Forms:***

- Accuracy / Subject Test (OD-80)
- Advice of Rights for a Chemical Test (reverse side of form DI-177 or DI-93)
- Affidavit for Search Warrant Request
- Alcohol and Drug Determination Form (FSD-093)
- Breath, Blood, Urine Test Report (DI-177)
- Constitutional Rights Certificate of Notification (DPD 342-B)
- Court Case Envelope (DPD 532)
- Evidential Breath Testing Log (OD-33)
- Officer's Report of Refusal to Submit to Chemical Test (DI-93)
- Preliminary Breath Test Instrument Calibration and Maintenance Log (TD-053)