



## INSPECTOR GENERAL REPORT

2010-06-0153

January 26, 2011

### INDIANA TOXICOLOGY

*Inspector General David O. Thomas, after an investigation by Special Agent Charles Coffin, reports as follows:*

#### Introduction

This investigation by the Indiana Office of the Inspector General (OIG) involved the review of the Indiana State Department of Toxicology (ISDT). The OIG was requested to review the manner in which ISDT had purchased breath test instruments in 2009.

A copy of this report was distributed to the ISDT with the opportunity to file a written response. Additional information was provided by ISDT to the OIG and included in this final report in lieu of filing a separate response by ISDT.

The request to investigate first came from the Assessment Team for the Governor's Council on Impaired and Dangerous Driving (Assessment Team).<sup>1</sup>

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<sup>1</sup> The Governor's Council on Impaired and Dangerous Driving (Council) is a division of the Indiana Criminal Justice Institute. See IC 5-2-6. The Council serves as the public opinion catalyst for statewide action to reduce death and injury on Indiana roadways. The Council's advisory board, a group of volunteers, is appointed by the governor to make traffic safety policy recommendations. The Council also serves as Indiana's primary source for information and research on traffic safety issues which directly affect public safety and policy.

The Assessment Team requested that the OIG investigate “the process used in the selection and purchase of the breath test instruments” by ISDT. *See Exhibit A, at page 4, Recommendations, II.A.*

In 2009, ISDT purchased breath test instruments for the purpose of disseminating these instruments to law enforcement agencies to combat drunk driving. The purchase price was approximately \$1.5 million.

The Executive Director of the Indiana Criminal Justice Institute (ICJI) also requested the OIG to investigate, stating that there were “numerous and persistent concerns about [ISDT]” and that ICJI desired that the OIG “conduct an official review of the process used in the selection and procurement of the breath test instruments” by ISDT. *See Exhibit B, attached.*

Before being contacted, soon after the requests to investigate were made, the Special Assistant to the Dean of the IU School of Medicine made contact with the OIG, offering the University’s cooperation. He advised that he had been appointed to oversee the implementation of the Assessment Team’s report, expressed an interest in communicating with the OIG regarding the transmittal of the necessary materials regarding this procurement, and complied with all OIG requests for information. The Special Assistant’s assistance facilitated the OIG investigation.

#### Jurisdiction

Although the OIG has the duty to enforce the Indiana Code of Ethics through IC 4-2-7-3(3), ISDT as a component of Indiana University, a “state

educational institution,” is exempt from the Indiana Code of Ethics. IC 4-2-6-1(1)(a)(2)(C).

In contrast, the state educational exemption is deleted from the broader OIG jurisdictional language which expands the OIG duties to other areas. IC 4-2-7-1(1). Accordingly, the OIG as a state law enforcement agency has the duty to “recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government.” IC 4-2-7-3(2). The OIG is also authorized to provide advice on developing, implementing, and enforcing policies and procedures to prevent or reduce the risk of fraudulent or wrongful acts, and to recommend legislation to the Governor and General Assembly to strengthen public integrity laws. IC 4-2-7-3(8) and (9).

#### Scope of the Investigation

Legal research was conducted with regard to the relevant law involving the ISDT. It was determined from this research that the Trustees of Indiana University are authorized to establish the ISDT within the School of Medicine. IC 21-45-3-1. ISDT is currently within the oversight of the Indiana University School of Medicine, and specifically its Department of Pharmacology and Toxicology.

Multiple interviews were conducted. Members of ICJI and members of the Assessment Team were interviewed. Individuals within ISDT and Indiana University were also interviewed, including the Director of Purchasing for

Indiana University, the Indiana University Purchasing Manager for Scientific Supplies, the Indiana University Associate Vice-President for Procurement Services, the ISDT Interim Director, the Chair of the Indiana University Department of Pharmacology and Toxicology in the School of Medicine, and an Associate Professor for the Indiana University School of Medicine, Department of Pharmacology and Toxicology.

Examinations of various documents were also made, including the 2010 Assessment Team Report. *See Exhibit A, attached.*

The OIG received cooperation from all parties involved.

### Findings

The following findings were made as a result of the investigation.

1

The ISDT is a statutory entity, currently within the oversight of the Indiana University School of Medicine, Department of Pharmacology and Toxicology. IC 21-45-3. Its primary purposes are to “conduct analyses for poisons, drugs, and alcohols upon human tissues and fluids” submitted by specified public officials, and to supply expert testimony in associated litigations. IC 21-45-3-2.

ISDT is located in Indianapolis, and shares a facility with the Indiana State Police Laboratory and the Indiana Department of Health.

The ISDT currently has an operating budget from state appropriations in the annual amount of approximately \$2.5 million. *See HEA 1001-2009ss, page 81.*

As related by the Assessment Team, prior to FY 2008 the state appropriation for ISDT was \$670,000 per year. *See Exhibit A, attached, page 5, V. Allocation of Resources.*

In addition to state appropriations, the ISDT also generates service and tuition revenues that vary each year. Balances reported in the Assessment Team's report earlier in 2010 were \$1,430,966.17 for the state appropriation and \$1,306,590.34 for the service account. *Id.*

We found no statutory or rule violations with regard to the purchasing of the breath test instruments. We made this examination within the parameters of the following authorities:

A

ISDT as a division of Indiana University, a state educational institution, is exempt from the Indiana Code of Ethics.<sup>2</sup> IC 4-2-6-1(1)(a)(2)(C).

Accordingly, the OIG did not look for, nor did we inadvertently discover, Code of Ethics violations.

B

With regard to statutory procurement requirements, Indiana University is

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<sup>2</sup> 42 IAC 1-5.

exempt from most<sup>3</sup> Indiana Department of Administration (DOA) procurement requirements. IC 5-22-1-2(2) and IC 21-7-13-32. Accordingly, the 2009 procurement of the subject breath machines for approximately \$1.5 million was permissibly made outside DOA established bidding and procurement methods.

### C

We also found no, and no person has alleged, violations of Indiana University Institutional Purchasing Policies.<sup>4</sup>

### D

However, two factors were unusual in the purchase of the breath test instruments. First, the Request for Quotation (RFQ) did not include the narrowing requirement of “dual technology platforms,”<sup>5</sup> a necessary specification for the breath instruments actually desired by the ISDT. The Indiana University Purchasing Manager stated that this omission was an oversight and that the two vendors contacted were the only two pre-qualified vendors who offered certified and approved dual technology platforms. A second concern is in the one-day response sought by ISDT through its RFQ. ISDT responded that this was mitigated by months of research regarding the only two-qualified vendors, and that this process did not violate Indiana University Institutional Purchasing Policies.

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<sup>3</sup> Two procurement rules apply to universities. IC 5-22-5-9 requires universities under certain circumstances to purchase “bio-based products.” IC 5-22-15 requires universities to follow the listed “purchasing preferences.”

<sup>4</sup> <http://www.indiana.edu/~purchase/policies/policies.shtml>.

<sup>5</sup> “Dual technology platform” refers to a feature of some breath-test instruments whereby both infrared and fuel-cell technologies are used to measure alcohol concentration in the breath. The two results are designed to operate as a form of self-check for interference that can affect accurate measurement.

We also find that after the breath test instruments were procured, there was an unreasonable delay in deploying the instruments to the law enforcement authorities, while incurring a monthly storage charge of \$605.

Although ISDT received the equipment by November of 2009, the instruments continued to remain in storage for many months, some through the date of this report.

ISDT remains unaccredited by either the American Board of Forensic Toxicology (ABFT) or the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB).<sup>6</sup> Although these may be desired credentials, we found no authority that made ISDT's operations as an unaccredited institution to be invalid or in violation of statute or rule, nor their results inadmissible in Indiana courts.

The OIG is advised by ISDT that they are actively pursuing accreditation status.

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<sup>6</sup> ASCLD/LAB is recognized as an ISO/IEC 17011 compliant accrediting body in the field of forensic science by the Inter American Accreditation Cooperation (IAAC) and by the International Laboratory Accreditation Cooperation (ILAC). ASCLD/LAB is a signatory to both the Inter American Accreditation Cooperation Multi-lateral Recognition Arrangement and the International Laboratory Accreditation Cooperative Mutual Recognition Arrangement.

ASCLD/LAB offers voluntary accreditation to public and private crime laboratories in the United States and around the world. Accreditation is offered in the forensic disciplines for which services are generally provided by forensic laboratories.

ASCLD/LAB is the largest forensic science accrediting body in the world and as of October 19, 2010, 387 crime laboratories are accredited by ASCLD/LAB. The list of accredited laboratories includes 193 state laboratories, 127 local agency laboratories, 24 federal laboratories, 16 international (outside the United States) laboratories and 27 private.

## Recommendations

As our request to investigate centered on a review of the procurement of the breath test instruments, we do not offer a recommendation as to whether, from an over-all performance perspective, ISDT might perform better within the oversight of the Executive Branch as opposed to remaining within the university.<sup>7</sup> We further view such a performance evaluation to be outside the jurisdiction of the OIG, but within the purview and expertise of the General Assembly and the Assessment Team, the latter of which recommends:

Indiana Code 21-45-3 ... should be amended to remove all administration and supervision of the [ISDT] from the [IU School of Medicine] to a governing board to be appointed by the legislature and the governor....

*See Exhibit A, IV.B.1., Leadership, at page 5, attached.*

However, the OIG is charged by the General Assembly to recommend legislation to the Governor and General Assembly to strengthen public integrity laws. IC 4-2-7-3(9). Based upon this duty, the above findings, and our experience from conducting similar investigations, the OIG respectfully recommends for consideration by the General Assembly that, whether within the current confines of Indiana University or within the Executive Branch of state government (in which the below controls currently apply), the following controls would benefit future ISDT procurement and operation:

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<sup>7</sup> The Assessment Team, in recommending a removal away from the university, relays a historic concern regarding ISDT's operations. In 2008, ICJI, the Indiana Prosecuting Attorney's Council, and the National Highway Traffic Safety Administration (NHTSA) conducted a joint assessment of operational problems at ISDT, and issued recommendations to ISDT. These concerns were not addressed by ISDT, and in March of 2010, the ISDT Director declined an invitation to attend a meeting with the Governor's Council on Impaired and Dangerous Driving to address those unmet recommendations and other concerns. *See Exhibit A, attached, pages 1-2.*

1

The application of the full procurement rules within IC 5-22;

2

The application of the three-tiered approval of contracts by the Attorney General, Budget Agency, and DOA as required in IC 4-13-2-14.1, especially when a purchase is made in an amount exceeding \$1 million;

3

The application of the Indiana Code of Ethics, which would include the Gift Rule (42 IAC 1-5-1), Donor Restriction Rule (42 IAC 1-5-2) and Conflicts of Interest Rules (42 IAC 1-5-6 and 7), for the reason that these ethics rules are those most frequently implicated by purchasing and similar operations; and

4

The institution of public Performance Metrics based on causally-related performance within the oversight of the Government Efficiency and Financial Planning (GEFP) division of the Indiana Office of Management and Budget.<sup>8</sup>

The OIG remains ready to provide more research upon request.

Dated this 26<sup>th</sup> day of January, 2011.



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David O. Thomas, Inspector General

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<sup>8</sup> Operational inefficiencies of the ISDT led the Indiana Office of Management and Budget and GEFP in its 2006 PROBE Report (Program Results: an Outcome-Based Evaluation) to recommend a merger between the ISDT and the Indiana State Police within the Executive Branch of state government. See Probe Report, Recommendation 5, page 43 at: [www.in.gov/omb/files/2006PROBEReport-Full.pdf](http://www.in.gov/omb/files/2006PROBEReport-Full.pdf).

**A Report to the**

**Governor's Council on  
Impaired & Dangerous Driving**

*a division of the*



**An Assessment of the Operations and Structure of the  
Indiana State Department of Toxicology**

Submitted by:

The Honorable Linda Chezem

The Honorable Thomas Wyss

The Honorable Peggy Welch

Mr. Michael Medler

Dr. Michele Glinn

**EXHIBIT A**

## **ACKNOWLEDGMENTS**

The assessment team acknowledges and thanks Dr. T. Neil Moore, Executive Director of the Indiana Criminal Justice Institute, Ryan Klitzsch, Director of the Traffic Safety Division and Curtis Hill, Chairman of the Governor's Council on Impaired and Dangerous Driving for their support in this assessment.

The assessment team also extends a special thanks to the Indiana University School of Medicine officials who provided the necessary information to conduct this assessment. The assessment team believes that this report can contribute to the State's efforts to improve upon the organizational and operational structure of toxicology in Indiana.

# **An Assessment of the Operations and Structure of the Indiana State Department of Toxicology**

*A Report to the Governor's Council on Impaired and Dangerous Driving*

## **Background**

The Governor's Council on Impaired & Dangerous Driving (Council) serves as the public opinion catalyst for statewide action to reduce death and injury on Indiana roadways. The Council provides ongoing support to state and local traffic safety advocates.

The Council's advisory board, a group of volunteers, is appointed by the governor to make traffic safety policy recommendations. The Council also serves as Indiana's primary source for information and research on traffic safety issues which directly affect public safety and policy.

In 2008, the Traffic Safety Division (TSD) of the Indiana Criminal Justice Institute (ICJI) requested a formal assessment of Indiana's Impaired Driving program from the National Highway Traffic Safety Administration (NHTSA). Dr. Michael Vasko, Chair of the Indiana School of Medicine's Department of Pharmacology and Toxicology, and Dr. Peter Method, Acting Director of the Department of Toxicology, presented on behalf of the Indiana State Department of Toxicology (ISDT) to the 2008 NHTSA assessment team.

The report of that NHTSA assessment set out significant and numerous recommendations for Indiana to consider. A portion of the report gave specific recommendations regarding toxicology in Indiana, which may be found in Exhibit A.

The TSD, as well as the Council, welcomed the assessment's recommendations and moved forward to address many of them. However, the following recommendations regarding the ISDT have not been addressed by Indiana University School of Medicine (IUSM), where the ISDT is located by Indiana statute:

1. Implement a multi-jurisdictional task force of interested parties to develop recommendations for operation and placement of the State Department of Toxicology.
2. Review and evaluate operational and administrative expenses, such as any indirect costs charged by the Indiana University School of Medicine.
3. Mandate the State Toxicology Lab to supply all requested test results of blood or urine in compliance with the International Association of Chiefs of Police (IACP) standards.

On March 19, 2010, ISDT Director Dr. Michael Wagner was invited to address the Council meeting to provide information and to address concerns regarding the ISDT. Dr. Wagner declined to attend the meeting. The Council concluded further analysis by an expert panel should be completed in an effort to address the optimal organizational structure of the ISDT, as well as the forensic services provided by the ISDT to the criminal justice system. Underlying the specific issues to be addressed was the concern that there appeared to be no interest by ISDT and IUSM in addressing the administrative structure and service issues. The Council determined that these were urgent matters which seriously impaired Indiana's ability to fairly and effectively enforce its laws. Therefore, those urgent matters were included in the scope of the formal review to be conducted by the assessment team.

The Council asked ICJI to bring the following team together:

The Honorable Linda L. Chezem  
Judge, Indiana Court of Appeals (retired)

The Honorable Thomas Wyss (R)  
Senator, Indiana Senate District 15

The Honorable Peggy Welch (D)  
Representative, Indiana House District 60

Mr. Michael Medler, Director  
Indianapolis/Marion County Forensic Services Agency

Dr. Michele Glinn, Ph.D., D.A.B.F.T.  
Supervisor, Toxicology Unit, Michigan State Police

The Indiana University administration was notified of the concerns by a letter from the Council with an invitation to meet with the assessment team (Exhibit B).

#### Process

On April 23, 2010, the team held its first meeting with Dr. Neil Moore, Executive Director of ICJI and Traffic Safety Division (TSD) Director Ryan Klitzsch, to review the charge from the Council.

The team reviewed the Council minutes that highlighted concerns from law enforcement and other stakeholders. Mr. Stephen Johnson, Executive Director of the Indiana Prosecuting Attorney's Council (IPAC), was invited to outline the statewide problems the prosecutors were experiencing with ISDT and the effects on the criminal justice system. Mr. Johnson presented detailed information he had collected from the prosecutors. The statements from the prosecutors and the lack of communication from

Indiana University caused members of the team to suggest that immediate contact be made with Indiana University leadership. In addition, the team members decided to invite the former directors of the ISDT to meet with the team.

On May 3<sup>rd</sup>, 2010, Curtis Hill, Chairman of the Governor's Council on Impaired and Dangerous Driving, Linda Chezem, Stephen Johnson, Joel Williams, Deputy Prosecutor for Elkhart County, Rep. Welch, Neil Moore, and Ryan Klitzsch met with Dr. Michael Vasko, John Grew and Jeff Linder of Indiana University to explain the serious nature of this inquiry. Dr. Michael Vasko is the Chair of the IUSM Department of Pharmacology and Toxicology. In terms of the administrative structure of the School of Medicine, Dr. Vasko reports to the Dean of the IUSM. The Dean reports to the Chancellor of Indiana University-Purdue University of Indianapolis. Although Dr. Vasko has supervisory authority over the ISDT, he was unable to answer most of the questions and stated his surprise to learn that there were any problems. During the questioning of Dr. Vasko, it was learned that he was the IUSM -ISDT representative that had presented to the Impaired Driving assessment team in 2008. He stated that he never followed up on the recommendations as a result of his presentation. He also stated he was unaware of the recommendations from that assessment and had no answers as to why the IUSM -ISDT had failed to follow up.

The team agreed that it was desirable to continue the meeting until a time when Dr. Vasko and IUSM had obtained more answers and could provide verification of the information being given.

A second meeting with IUSM was then held on May 14<sup>th</sup>, 2010. At that time, Dr. Vasko announced that Dr. Wagner had resigned to pursue his research interests, and introduced the new Acting Director of the ISDT, Dr. Michael Neerman, who had been serving as Assistant Director of the ISDT since December 2009. Dr. Neerman presented both a written report and an oral report on the status of the ISDT. Dr. Neerman readily admitted his lack of personal knowledge about critical concerns. Dr. Neerman requested time to gather the information. The members of the team then agreed to submit questions in writing.

Former Directors of the ISDT, including Dr. Peter Method and Dr. Michael Evans, were willing to meet with the team. However, due to scheduling concerns, Dr. James Klaunig was the only one able to meet personally with the team.

The questions submitted by the team members were compiled by Mr. Ryan Klitzsch and sent to Indiana University on May 23, 2010. IUSM submitted additional documentation in response to the questions.

#### Recommendations

The considerations and discussions of the team have centered on laboratory, breath testing, allocation of resources, leadership and oversight.

## I. Laboratory

### A. Laboratory results of blood testing.

#### 1. Questions about the lab work remain unresolved.

- a) IU should arrange for an independent review of a sampling of completed tests in preparation for accreditation.
- b) IU should employ outside consultation regarding the drafting and implementation of written policy and procedures for the laboratory.
- c) Obtain accreditation for the laboratory from the ASCLD / LAB or ABFT as recommended by the NHTSA assessment of Indiana's Impaired Driving programs conducted in 2008 and the National Academy of Science's report.

### B. Nothing was discovered that would impugn the integrity of the other laboratory personnel.

1. Provide customer service training to laboratory personnel.
2. Provide training and preparation for testifying for laboratory personnel.

## II. Breath Testing

### A. The selection of breath test instruments purchased in 2009.

1. Since the information provided for the instrument selection process gave rise to additional questions, the Inspector General should conduct an official review of the process used in the selection and purchase of the breath test instruments.

### B. The breath test certification process.

1. The IUSM administration addressed the current problem with the following plan:

*"There are approximately 600 officers on the waiting list for certification, and many more have expressed an interest in the program. The Breath Test School was suspended due to the pending release of new instruments, and the last school for new officers was conducted in October of 2008. However, since the rollout has been delayed, we have scheduled two breath test schools in June, and two breath tests schools in July. We anticipate continuing these every month.*

*The breath test training will be held at the Indiana Law Enforcement Academy. The Academy is located at 5402 South County Road 700E, Plainfield, Indiana 46168. At the present, the Indiana State Department of Toxicology is offering four (4) two-day training classes for new officers on June 21-22, June 23-24, July 19-20, and July 21-22. In order to ensure proper notice to the law enforcement agencies, a detailed memo was mailed to all law enforcement agencies in Indiana. We mailed approximately Five Hundred Sixty (560) memos on May 17, 2010. The memo provided details of all information necessary for registration. The training information and dates were also placed on our website, approximately thirty (30) days in advance of the memo."*

The assessment team expressed reservations regarding the training plan.

- C. The breath test program instrument calibration and repair.
  - 1. The question of calibration standards for the new instruments has not been addressed.

### III. Allocation of Resources

- A. In fairness to the Indiana University School of Medicine, the team feels obligated to mention past funding issues. Those issues appear to have been resolved for the current budget period. Prior to FY 2008, the annual budget for the ISDT was approximately \$670,000 per year. In FY 2008, the state significantly increased the budget to a current level of \$2,463,380. The ISDT also generates service and tuition revenues that vary each year. Current balances of these accounts are \$1,430,966.17 for the state appropriation and \$1,306,590.34 for the service account.
- B. The ISDT must obtain accreditation status. ISDT should have the ability to acquire adequate and sustained funding separate from the IUSM and other University priorities.

### IV. Leadership

- A. The IUSM has the responsibility of providing leadership, oversight, and direction for the ISDT. Over the past 60 years, the research and education regarding alcohol impairment and chemical testing provided by the IUSM has been world renowned.
- B. Historically, the management and supervision of the ISDT was delegated by the Dean of the School of Medicine to the Chair of the Department of Pharmacology and Toxicology. In 2002, Dr. Michael Vasko became the chair of the Department of Pharmacology and Toxicology. As supervised by the Dean of the IUSM, it is the responsibility of the Chair of the Department of Pharmacology and Toxicology to provide operational controls and supervision of the ISDT. Dr. Vasko did not require adequate reporting from ISDT nor set up any mechanism to compensate for his lack of experience with forensic science. The placement of the ISDT in the IUSM is not compatible with the IUSM's mission. It should be noted that this is the only university in the country that is currently operating a forensic state department of toxicology.
  - 1. Indiana Code 21 -45-3 (Appendix 4) should be amended to remove all administration and supervision of the Indiana State Department of Toxicology from the Indiana University School of Medicine to a governing board to be appointed by the legislature and the governor. Several models already exist in Indiana state government; however, it is recommended that a review of other states' forensic agencies be considered to ensure Indiana's optimum organizational structure.

## V. Oversight and Guidance

A. A previous practice of meeting with the various stakeholders and legal professionals to address the issues facing the ISDT and planning the advancement of the work was abandoned by Dr. Vasko and Dr. Wagner. The reinstatement of the process was recommended by the NHTSA assessment team in 2008. This recommendation was ignored:

1. "Implement multi-jurisdictional task force of interested parties to develop recommendations for operation and placement of the State Department of Toxicology."The team believes that the recommendation has strong and significant merit and must be implemented.
2. The Council should create a subcommittee to provide oversight and guidance to ensure that the ISDT is responsive to the people of Indiana. That committee should include representatives of the different disciplines and professions that work in the justice and science disciplines that are related to the work of the ISDT. One of the charges to that committee should be to plan and facilitate the move of the ISDT from the IUSM.
3. The Council should propose and support legislation to accomplish the needed legislative changes to carry out these and other recommendations, to include the creation of the governing board.

## Exhibit A

### Selected Sections from the 2008 Indiana Alcohol Assessment Report Concerning ISDT

## 1-D. Resources

### Advisory

*States should allocate sufficient funding, staffing and other resources to support their impaired driving programs. Programs should aim for self-sufficiency and, to the extent possible, costs should be borne by impaired drivers. The ultimate goal is for State impaired driving programs to be fully supported by impaired drivers and to avoid dependence on other funding sources. States should allocated funding, staffing and other resources to impaired driving programs that are:*

- *Adequate to meet program needs and proportional to the impaired driving problem.*
- *Steady and derived from dedicated sources, which may include public or private funds.*
- *Financially self-sufficient, and to the extent possible paid by the impaired drivers themselves. Some States achieve financial self-sufficiency using fines, fees, assessments, surcharges or taxes. Revenue collected from these sources should be used for impaired driving programs rather than returned to the State Treasury or General Fund.*

### Status

Indiana enjoys a well-rounded impaired driving program with dedicated professionals and advocates.

The Governor's Council on Impaired and Dangerous Driving (Council) places an emphasis on reducing the impact of impaired driving with staffing and funding to meet the needs that they can cover. Law enforcement personnel are trained at basic academies, thus every Indiana officer starts their career with the skills to enforce impaired driving laws. Prosecution of impaired driving cases is often handed to inexperienced lawyers. The Traffic Safety Resource Prosecutor is available to provide assistance to all prosecutors. The judicial system provides a key point in the overall process, yet in some areas of the State there appears to be a shortage of court time for the workload generated by enforcement of impaired driving laws. Driving records and the posting of convictions reside within the Bureau of Motor Vehicles (BMV), which has experienced a recent organizational change. BMV staffing is adequate. The court case management system does not link to the BMV driver file. Testing services for breath, urine and blood is primarily through the Indiana State Department of Toxicology and local laboratories. The lab results' turn-around time described by the different partners varied greatly, but recent budget increases in equipment and staffing for the State Laboratory will start to close the gap in service delivery.

Fees and fines paid by the offenders are not solely dedicated to the improvement and maintenance of the efforts in the impaired driving program. Locally generated revenues from offenders are used to support substance abuse, prevention and treatment; however these funds do not cover all the associated costs. The Council dedicates all earmarked impaired driving funds and a significant portion of flexible funds toward impaired driving grants.

### **Recommendations**

- ◆ Complete the hiring of Toxicology personnel.
- ◆ Complete the acquisition of additional toxicology equipment.
- ◆ Provide additional resources to courts experiencing a back-log of impaired driving cases.

LELs also help to monitor law enforcement agency's compliance in their grant and blitz reporting. LELs conduct at least semi-annual site visits to all grantee law enforcement agencies in the State to conduct an evaluation of the agency with the coordinator of the grant.

Sobriety checkpoints are conducted in Indiana: however, the local prosecutor has the authority to prevent the use of checkpoints in their jurisdiction. It should be noted that few sobriety checkpoints are conducted in Indiana.

The Department of Toxicology is responsible for analyses of blood samples submitted by law enforcement for criminal prosecutions. This department is managed by the Indiana University School of Medicine. Inadequate funding and other problems within the Department have resulted in inconsistent and untimely services. This has led to frustration for law enforcement, substantial delays in prosecution and failure to meet International Association of Chiefs of Police DEC guidelines.

The TSD will be hiring a police traffic services program manager that will provide additional oversight for the State's law enforcement programs that support OWI enforcement.

#### **Recommendations**

- ◆ Continue to fund and support OWI task forces.
- ◆ Continue to support additional innovative programs in support of sustained high visibility OWI enforcement to include sobriety checkpoints.
- ◆ Ensure that enforcement of impaired driving is a law enforcement agency priority that is part of their annual strategic plan.
- ◆ Assist law enforcement agencies in developing deployment plans to achieve the greatest impact.
- ◆ Create a multi-jurisdictional task force comprised of all interested parties to develop recommendations for operation and placement of the State Department of Toxicology.

saves the officer time, it also enhances the accuracy of the information. ARIES also includes a Suspicious Activity Reporting System (SARS) program that is being developed through the Indiana Department of Homeland Security. These additions to the program have encouraged more agencies to come on-board.

Confident that high electronic submission rates would continue, members of the TRCC began to focus on crash report timeliness. Prior to electronic report submissions, it took an average of 19 days for a crash report to be available in the data repository.

In April 2007, the TRCC agreed upon the goal of agencies submitting 90 percent of their crash reports within five days of the crash event. Original findings indicated that of all reports submitted in 2007 up to mid-April; only 47 percent were submitted to the data repository within five days of the crash. Following the implementation of the goal, by September 2007, all reports submitted within five days of the crash reached 58 percent, in December timely submissions reached 72 percent. In order to continue an increase in the number of submissions that meet the TRCC timeliness goals, the State's seven Law Enforcement Liaisons (LELs) will continue to monitor timeliness issues in their respective districts. Review of State statute IC 9-26-2-2 reveals that this is an aggressive goal in that it reads that the report is due at the State Police Department 24 hours after completion of investigation. Reportedly the TRCC still believes that this goal is attainable.

The improvements in the original eVCRS system have resulted in significant increase in electronic submissions as well as a significant decrease in the number of reports rejected, both paper and electronic, due to critical errors. The standardization of input and the immediate feedback featured in the new ARIES has contributed to more complete, accurate, and timely data being available to all traffic safety partners. The progress made in crash records over the past 18 months can best be described as a team effort. This team effort has resulted in more than 97 percent of the crashes being submitted to the State electronically.

The Crash Records Assessment Committee, a sub-committee of the TRCC, is investigating the implementation of a web based crash report supplemental submission program. This will allow an officer to retrieve a report through a web based client of the ARIES crash reporting system and add or change the data or information (blood test results, etc). The officer would then submit the report for updating. A copy of the initial report would be retained in the file, and a copy of the updated report would be available almost immediately. The current plan is to do this update through any internet connection. Access to the system will be password specific to the officer; therefore, only reports submitted by that specific officer could be changed. The implementation of this project is being considered for FFY2009. A presentation on this project is expected in April of 2008 to the Indiana TRCC.

#### Chemical Tests

Indiana has made several advancements in the area of obtaining OWI chemical test information for reporting purposes, but there were conflicting reports concerning timeliness of these reports. The State Toxicology Lab asked for and recently received a yearly funding increase from

\$360,000.00 to \$2,400,000.00. They are currently in the process of replacing old equipment and increasing staff. With these improvements they hope to have a 48 hour turn-around on all tests.

The ICJI continues to search for ways to improve the collection of samples and reporting of blood alcohol content. One improvement identified involves putting countermeasures in place to increase not only the testing of individuals involved in fatal crashes, but in the reporting of those results as well.

The Alcohol Countermeasures Manager at the ICJI is notified on a regular basis by the Indiana Fatality Analysis Reporting System (FARS) desk of fatal crashes where at least one of the drivers involved in the crash has no blood alcohol content (BAC) information. FARS sends pertinent information such as the date of the crash, location, names of involved parties, and whether the non-tested person is living or deceased. Based on this information, the Alcohol Countermeasures manager attempts to locate the missing information by:

- Contacting the Police Agency investigating the crash to learn if the test was taken or not. If not taken, stress to the agency its importance.
- Utilizing the Indiana Coroners ME program to search for that particular death record and the toxicology reports that may be associated with it.
- Contacting the County Coroner by E-Mail or telephone to obtain results if the reported non-tested person was deceased.
- Expressing the importance of chemical testing at all ICJI related meetings, trainings, and other events to continue to stress the importance of this information.

This assessment panel found that the State Toxicology Lab had been charging coroners for these tests. They did not realize their importance concerning transportation safety and were going to look for methods to provide these tests for coroners.

#### Citation Data

The ICJI, along with its partner the Judicial Automation and Technology Committee of the Indiana Supreme Court have been working on an Electronic Citation and Warning System. This system was tested during the summer of 2007. This software will be free to all agencies in Indiana. The Citation System is barcode-capable, meaning that the officer on the street can use a bar code scanner to auto-populate the citation from barcodes on a driver's license and/or vehicle registration. The current plan is for all citations issued in Indiana to be electronically generated and transferred. Planned implementation is during the first quarter of calendar year 2008. This project plan allows the Bureau Motor Vehicle (BMV), courts, prosecutors, data-researchers, and others to have access to citations, warnings, and OWI citations statewide as soon as the citation is actually written. The new system will also include an electronic version of Indiana's probable cause affidavit. This affidavit is required any time an arrest is made for OWI or any alcohol-related driving arrest.

It is planned that the new citation system will work in conjunction with, and as a part of, the statewide case and docket management system currently being developed for all Indiana courts. This project is being headed up by the Indiana Supreme Court and in cooperation with the TRCC and other partners.

The Electronic Citation System is currently available to Indiana agencies, with the only expense to the police agency being in-car scanners and printers. There has been tremendous support for the implementation of this system. It was reported that law enforcement agencies and individual police officers are purchasing the scanners and printers using local and personal funds rather than grant dollars.

Indiana officials expect that the crash records system and the electronic citation system will greatly enhance the traffic records capabilities of Indiana. A major problem that will have to be addressed involves collection of direct file OWI cases including felony cases. It was reported that approximately 25 percent of OWI cases are direct filed without a record keeping citation being issued. These cases will need to be identified and data collected for the State to have a complete case tracking system.

Data from these systems is or will be available to all authorized persons, such as law enforcement, courts, prosecutors, BMV, treatment providers, and researchers.

#### **Recommendations**

- ◆ Continue development of the new citation system in conjunction with, and as a part of, the state-wide case and docket management system currently being developed for all Indiana courts.
- ◆ Develop the new case management system with the capability to transfer OWI adjudications to the BMV electronically and to automatically update driver history.
- ◆ **Implement a multi-jurisdictional task force of interested parties to develop recommendations for operation and placement of the State Department of Toxicology.**
- ◆ Review and evaluate operational and administrative expenses, such as any indirect costs charged by the Indiana University School of Medicine.
- ◆ Mandate the State Toxicology Lab to supply all requested test results of blood or urine in compliance with the International Association of Chiefs of Police (IACP) standards.
- ◆ Support the continued development of eVCRS.
- ◆ **Insure that the new citation system includes case tracking capabilities that allow authorized persons to review case status at any time without case acceptance by the prosecutor.**

**Exhibit B**

**Letters Sent by the Council to Indiana  
University Officials**



Governor's Council on Impaired & Dangerous Driving

APR 5 4 11 30

March 30, 2010

Charles R. Bantz, Chancellor  
Indiana University-Purdue University Indianapolis  
355 North Lansing Street  
Indianapolis, IN 46202

RE: Department of Toxicology

Dear Chancellor Bantz:

The Governor's Council on Impaired and Dangerous Driving (Council) serves as the public opinion catalyst for statewide action to reduce death and injury on Indiana roadways. Affiliated with the Indiana Criminal Justice Institute, the Council's Advisory Board is appointed by the governor to review and provide traffic safety policy recommendations. In 2008, the Traffic Safety Division of the Indiana Criminal Justice Institute requested a formal assessment of Indiana's Impaired Driving Program from the National Highway Traffic Safety Administration (NHTSA). The NHTSA assessment included numerous recommendations relative to the issue of toxicology in Indiana. Both the Traffic Safety Division and the Council welcomed the assessment's recommendations and we have moved forward to implement many of the recommendations. However, the Council has determined that further expert analysis through a new assessment team is required to review and address the optimal organizational structure of the Department of Toxicology (Department).

This further assessment is also required as a result of a number of concerns which have been brought to the Council's attention regarding the testing of blood samples by the Department. By way of example, the Council has been informed that new breath testing instruments have been purchased by the Department to replace the existing instruments (Datamasters). Under Indiana Law, rules must be promulgated for the operation of such instruments before they can be utilized. This is a process which may take a minimum of three to four months and arguably much longer. Until this process is complete, the existing Datamasters remain vital to our traffic safety goals in Indiana. Yet the Council has been informed that the Department refuses to certify new operators or issue recertification of existing operators, which may seriously impair Indiana's ability to fairly and effectively enforce its laws. As the Department has sole statutory responsibility for certifying breath test instruments and operators, this presents an urgency that must be rectified. This issue would therefore be within the scope of the formal review conducted by the assessment team.

INDIANA CRIMINAL JUSTICE INSTITUTE  
101 West Washington Street  
Suite 1170, East Tower  
Indianapolis, Indiana 46204-2038  
Voice: 317-232-1233  
Facsimile: 317-232-4979  
[www.in.gov/cji](http://www.in.gov/cji)

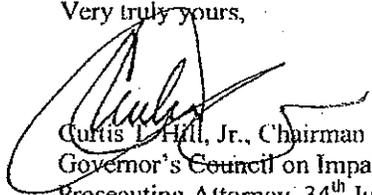
Charles R. Bantz, Chancellor  
March 30, 2010  
Page two

In light of the Council's determination that an assessment team address the optimal organizational structure of the Department, as well as a number of concerns relating to the Department's procedures as brought to the Council, we are respectfully requesting that the Department immediately suspend the drafting and/or implementation of rules for the operation of the new breath testing instruments until the assessment can be completed and reviewed, a task that should be accomplished by no later than mid-June 2010. Furthermore, the Council requests that the Department immediately initiate the certification and re-certification trainings for officers on the current breath test instruments (Datamasters) and continue said trainings until such time as rules for the new instrument have been properly implemented.

The assessment team is planning to meet on April 23, 2010, for its initial meeting. If you or your representative would be interested in meeting with the Assessment Team or its Chair, Linda Chezem, to discuss the scope of the assessment in more detail, please advise the undersigned and I will make the necessary arrangements.

Warm regards.

Very truly yours,



Curtis L. Hill, Jr., Chairman  
Governor's Council on Impaired and Dangerous Driving  
Prosecuting Attorney, 34<sup>th</sup> Judicial Circuit  
Elkhart County, Indiana  
301 S. Main Street, Suite 100  
Elkhart, Indiana 46516  
(574) 296-1888  
[chill@elkhartpa.com](mailto:chill@elkhartpa.com)

Cc: Dr. D. Craig Brater, Dean, Indiana School of Medicine  
Dr. Michael Wagner, Director, Department of Toxicology, Indiana University School of Medicine  
Dr. Michael R. Vasko, Chair, Department of Pharmacology and Toxicology, Indiana University School of Medicine  
J. Sebastian Smelko, Public Policy Director, Office of the Governor

## **Appendixes**

1. Toxicology review committee members and biographies
2. Minutes from the Governor's Council meeting on March 19<sup>th</sup>, 2010
3. Indiana State Department of Toxicology updated organization chart
4. Indiana statute and administrative codes:
  - a. I.C 21 – 45 – 3 State Toxicology Department
  - b. I.A.C. 260 – Breath Test Operators and Instruments
5. Breath test instrument and facility requirements

# Appendix # 1



**The Honorable Linda Chezem**  
**Judge, Indiana Court of Appeals (ret).**

From 1976-1998, Linda Chezem served as a judge in the state of Indiana. She served first as a trial court judge then became a judge on the Indiana Court of Appeals. During her trial court tenure, Judge Chezem was appointed as a special judge in over 300 cases serving twenty-five different counties. Judge Chezem's trial court jurisdiction ranged from traffic to felony-murder, marriage dissolution, probate, juvenile and unlimited civil and criminal dockets. Her appellate level work consisted of review of cases from trial courts in all 92 counties, civil and criminal.

Judge Chezem wrote over 1,000 majority cases and participated in over 3,000 cases during her service on the Indiana Court of Appeals. She now serves as a Senior Judge by the appointment of the Indiana Supreme Court. In 1998, Judge Chezem accepted the position of Professor and Department Head of 4-H Youth in the School of Agriculture at Purdue University in West Lafayette, Indiana, holding the department head position until Feb. 1, 2000. Judge Chezem also serves on the boards of the Greenleaf Center for Servant-Leadership, Fairbanks Hospital, and Indiana Youth Institute. In December of 1999, Governor Frank O'Bannon named Judge Chezem to the Indiana Youth Development Legislative Study Committee. Linda has received numerous honors and awards in her work as judge and professor. She has dedicated much of her time outside of these professions to community projects and community service.



**The Honorable Thomas Wyss**  
**Senator, Indiana Senate District 15**

Senator Thomas Wyss Chairs the Homeland Security, Transportation & Veterans Affairs committee, and is the ranking majority member of the Rules & Legislative Procedure committee. Senator Wyss has also served on the Transportation Subcommittee, Appropriations, Appointments and Claims, Rules & Legislative Procedure, Elections and Local Government committees. Senator Wyss is also a member of Emergency Preparedness Task Force for the Federal Emergency Management Agency (FEMA), and is the Co-chair, Homeland Security and Preparedness Task Force and Previous Vice-Chair Transportation for the National Conference of State Legislatures. Senator Wyss is also a member of GLOBAL Advisory Committee and Intelligence Working Group for the US Department of Justice. Senator Wyss is a graduate of Purdue University and a retired Lt. Col. in the Indiana National Guard, having served for 31 years. Senator Wyss' legislative efforts include the Seat belt law requiring

everyone in Indiana (including pick-up truck drivers) to wear a seat belt (2007), Major veterans benefit legislation (2007), Authored Legislation to create Indiana Intelligence Fusion Center(2006), Authored Legislation for creation of Indiana Department of Homeland Security(2005), Child restraint systems law (2004) and Drunk driving law establishing .08 as legal limit (2001)



**The Honorable Peggy Welch**  
**Representative, Indiana House District 60**

Peggy Welch serves as state representative for the citizens of Indiana House District 60, which encompasses portions of Monroe, Greene, and Brown Counties. Peggy was first elected in 1998. She has continuously served on the House Ways & Means Committee and is currently the Vice-Chair of the Budget Subcommittee of the House Ways & Means Committee. Peggy also serves as the Vice-Chair of the House Public Health Committee and as a member of the Indiana House Family, Children, & Human Affairs Committee.

Peggy has been honored over the years by numerous organizations for her work on issues impacting safety, senior citizens, military personnel, home health and small businesses. She is a frequent speaker at schools, civic clubs, and associations. Peggy is a practicing nurse in the Bloomington Hospital cancer unit. She and her husband, Judge David Welch, are active members of Sherwood Oaks Christian Church. They have one son, David.



**Dr. Michele Glinn, Ph.D., D.A.B.F.T.**  
**Supervisor, Forensics Services Division**  
**Michigan State Police**

Dr. Glinn is a native of Detroit, Michigan. She received a Bachelor of Arts degree in Anthropology from Wayne State University in 1985. Following her graduation, she worked in the Henry Ford Hospital Sleep Research Center, as a research assistant conducting studies on physiological arousal and insomnia in human subjects. In 1993, she received a PhD in biochemistry from Wayne State University, where her field of specialization was substrate metabolism and its relationship to neurochemical diseases. She then spent several years at Eli Lilly in Indianapolis as a postdoctoral and visiting scientist, working on neuropharmacology and neuronal metabolism and their relationship to Alzheimer's disease and ischemic injury. She then joined the Indiana State Department of Toxicology, housed at Indiana University, as Assistant Director, where she helped the Director administer the breath alcohol and drug testing programs. In 1999, she joined the Michigan State Police as supervisor and later program coordinator of the Lansing laboratory toxicology program. As such she is responsible for forensic drug toxicology analysis for the State

of Michigan. Her duties include supervising a staff of 14 scientists and technicians, developing analytical protocols, setting policies for the unit, overseeing laboratory operations, performing casework and testifying in court as an expert in forensic toxicology.

In addition to the above activities, Dr. Glinn also works with the Michigan State Police Alcohol Enforcement Unit, which administers the evidential breath test program in the State of Michigan. Dr. Glinn is a Class IV (highest classification) breath test operator. She teaches prosecutors and law enforcement officers about the operation of infrared instrumentation, does research and validation studies on breath testing devices, assists with promulgation of the State of Michigan's Administrative Rules on breath testing and on other policy decisions, and testifies in court as an expert on breath alcohol cases.

Dr. Glinn is a Diplomate of the American Board of Forensic Toxicology. She has also served as Vice President, President and Past-President of the Midwestern Association for Toxicology and Therapeutic Drug Monitoring.



**Mr. Michael M. Medler**  
**Director, Indianapolis/Marion County Forensic Services Agency**

Director Medler began his career in law enforcement as a Trooper with the Indiana State Police operating out of the Fort Wayne District in 1976. In 1979, Director Medler was promoted to the rank of Sergeant, working as a Crime Scene Technician, with the responsibility of identifying and recovering physical evidence at crime scenes. As First Sergeant of the Fort Wayne Regional Crime Lab he quickly established himself in the lab environment and became a Lieutenant for the four satellite regional labs. His duties included management responsibility over the Field Support section of the forensic laboratory. Director Medler was promoted to major in 1987 assuming responsibilities for the training and personnel division of the Indiana State Police. He led the development of numerous improvements in the training academy to include "Survival Spanish" and is a certified Master Instructor. He returned to division command of the Indiana State Police Laboratory in 2002 and was instrumental in the expansion plans of the new Indiana Forensic and Health Sciences laboratory in Indianapolis. He also led other improvements with facilities and staffing within the laboratory system. In 2004, then Lt. Colonel Medler was appointed over the Bureau of Criminal Investigations, responsible for Criminal Investigations, Gaming and the Laboratory Division. In 2005, he retired from the Indiana State Police, with over 29 years of service, and was appointed as the Laboratory Director, Indianapolis-Marion County Forensic Services Agency. Director Medler holds a BA in Political Science/Pre-Law from Wabash College and has attended the University of Virginia while attending the FBI National Academy.

## Appendix # 2

Minutes from the Governor's Council meeting on March 19<sup>th</sup>, 2010

Governor's Council on Impaired and Dangerous Driving Meeting 3/19/2010

12:10 opening

Ryan Klitzsch- introduction and traffic safety update

2009 TS Update

-AR completed- on website

-Record setting year

-down 127 fatalities, 15% decrease

-8x number of vehicles on the road

-6<sup>th</sup> consecutive year- down 28%

-fatalities reduced by 1/3 in last 10 yrs

-drive same number of miles

-ahead of national drop (8.9%)

-motorcycle fatalities dropped 19 (14%); 1<sup>st</sup> reduction in years

-Highlights

-more agencies

-LOVE vouchers increased

-young drivers fatalities decreased by 14%

-5<sup>th</sup> lowest Q-R fatalities in nation

-catching more than bad drivers

\*criminal misdemeanor and felony

-Seatbelt rate at 92.6%

\*Pickup trucks still low (85%)

-checkpoints- education is key

-crash report timeliness is 84%

Still room for improvement

-Unrestrained fatalities are at 44% still

Marie Gregor Smith-

-checkpoints on St. Patrick's Day

\*people still drink even though they know they're out there

-Other updates/initiatives- Ryan

-current blitz on impaired/aggressive driving

-April

\*Speed campaign

-paid media in late April

-DDE enforcement

-May

\*CIOT

\*RDP

-targeting pickup truck seatbelt usage

-extends CIOT so there is enforcement driving entire month of May

\*RACCE31

-kickoff blitz (CIOT)

-6 to 10pm

\*194 potential for RACCE with rest of Region 5 for July 4<sup>th</sup> holiday for DUI enforcement

-Young Driver Brochures

\*teens

\*parents

\*explains GDL education

-Motorcycle campaign

\*Nicky Hayden

-produced spots for helmet/gear

-Dan Jefferies- June 5<sup>th</sup>-20<sup>th</sup> \$125,000 media time TV and radio spots

-Impaired riding spot in August

-developed posters/brochures for PI & E

-May 6<sup>th</sup> 11am-1pm MCTSP/ABATE/ICU/BMV Motorcycle Safety Awareness

Month Kickoff

Ryan-

-MADD Grant opportunity to increase BAC testing

-TSD applied and received \$50k for grant

-sent to LEA's to qualify

-BAC tests given between March and October 2009

-Agencies awarded \$100 per test given

-report monthly progress to MADD

-no paperwork for agencies to complete to receive grant

-FY2011 Budget

SAFETEA-LU

\*resolution may be moved to end of calendar year so we would stay at the same funding level

\* IND working on FY2011 grantee funding levels now

-Macro budget in May

Intro of Curt Murff Region 5

-IND accomplishments

Commercial driving schools- John Bodeker

-Streamline licensing

-Every school in state has been inspected

-all application forms have been revised to reflect CJI as lead agency

\*will be posted to website with checklist

-renewals begin soon (exp June 30)

\*May 1<sup>st</sup> deadline

DOE- Mike De La Rocca

-Tasked with proposal for DOE for summer study committee

\*all under 1 agency and final proposal by 4/30/10

Curt- IND eligible for 408 funding (Traffic Records)

-qualified again- 2<sup>nd</sup> state in country

Ryan- Teen Driving events

Steve Johnson- IPAC

-Blood samples

Brown v State

\*Law- police take someone to hospital; draw must be done under supervision

-if you take them somewhere else, draw must be done by certified phlebotomist

BUT IND does not certify

-Supreme Court granted transfer

-Bill 341 introduced

\*list of people that have to be medically qualified does not apply when you take person to hospital-effective immediately

HTV- are permitted to get restricted DL- issue with monitoring

SB221- judge can impose zero tolerance, restrictions

-scram of IID

-class A misd.

-submit to chemical test not based on reasonable suspicion

-Changed law to include out of state convictions toward HTV in IND

-Fixed loophole

\*suspended license- 1<sup>st</sup> class C misd

2<sup>nd</sup> class A misd

\*was always class c with no license moved to class a

Joe Turner- Certification to draw blood?

Steve Johnson- It could be possible at a later date. Some concern for the same officer drawing the blood and making an arrest but it is possible if a program is created to certify anyone. Originally drawing blood excluded officers without any medical training.

-Toxicology

Result of growing amount of concern of IN Dept of Toxicology regarding tests performed, function of the office, what is not being done and the rules the director has been promulgating. Dr. Wagner was requested to be here but he declined.

\*Dept. of Tox. Issues packet/handout passed out by Steve Johnson who elaborated on a number of points.

Steve Johnson- The dept. of Toxicology was assigned with responsibilities with respect to drunk driving

- select instruments for testing

- certify instruments and instructors to test alcohol and blood levels

- member of the dept. of toxicology was called often in to court to explain the results in a case

- For many years the dept. was underfunded by the university but received help by CJI and it now receives adequate funding to hire toxicologists and purchase equipment.

Dr. Wagner and others were told that he needed an advisory committee. Things have never been worse and [the dept] is seriously impairing the ability to prosecute drunk driving cases in Indiana.

1) This has been pointed out many times to Dr. Wagner, it has everything to do with the management of the lab, there is an enormous back log, many cases are pushed back multiple times until the judge decides that it will not be pushed back anymore and many cases are plead to a lesser degree or dismissed

3) .08 is important and also to test for drugs

4) When they get the results there is great concern whether the tests are reliable. Dr. Wagner has been doing audits and receives different test results for the same sample (ex. Of one individual has 3 samples taken there are 3 different results

5) Samples may be thrown out after a short period of time; this is of concern since it is official evidence.

6) Dr. Wagner wants/does only give out 6 blood test kits at one time, law enforcement agencies need a lot more than that since they can go through 6 blood kits in a few hours time.

7) Certified Breath Test Issues

1) Once new rules are actually drafted it takes more time to train. Dr. Wagner is refusing to certify any new officers in Datamaster- even the new hires and officers whose certification has expired.

2) Dr. Wagner has yet to draft any of the rules for the new Intoxilizers for review.

3) Dr. Wagner is proposing a "two test" system- we would just like to know how it will be implemented

4) It may be that mouth alcohol can set within 20 min of arrest therefore 20 min of direct observation is required but Dr. Wagner wants to extend the observation time- starting at the site of the breath test

instrument than the time of arrest. If something obscures the direct observation, Dr. Wagner says the time starts over. This makes the process a lot longer than necessary and keeps more officers of the street for extended periods of time. This is a legal issue not a scientific one.

5) Dr. Wagner wants to eliminate the -8% deviation from breath test result to know ethanol content in the inspection and maintenance of the equipment.

-Calibrated- set with some advantage to change

-blood to breath alcohol ratio has variations within humans

-Dr. Wagner wants to calibrate exactly to .08

6) Skip

7) Discussion with law enforcement?

8) Blood samples will be sent to private labs in increasing numbers, not dept. of Toxicology because test results are taking so long and court cases are being dismissed.

- needs to be certification of new people

Discussion

Joe Turner- recertification now web-based, yearly and every year but still cost \$40- which was the price for an in-class recertification

Brian Clouse- Admin Rule are not drafted yet

Curtis Hill- concerns with report

ISP- concerned with 20 min wait period. Will have less officers in the street with "legal" procedures on blood draws

Steve Johnson and Chairman Hill think the Council needs to get involved to issue a resolution

-put together independent/group/committee to address these issues

Ryan- NHTSA alcohol assessment recommended advisory board be put together in 2008 to review the policies and procedures of the Department of Toxicology.

Chairman Hill- Issue of lack of communication with Dept. of Toxicology.

Resolution-

Steve Johnson

1. Ryan was asked to contact Linda Chezem to head an independent assessment evaluation and choose membership
2. Request draft of admin. rules be halted until independent assessment is completed
3. Certification or recertification on old Datamasters needs to begin again promptly

Chief Gilbert- Concerns w mindset (#7)

DRE's trouble with blood draws

Open discussion of Dr. Wagner speaking to Defense attorneys- ICLEF seminar

-Cases being dismissed due to backlog and lack of results being received from Toxicology

-Comment was made about possibly having some of these concerns reviewed by the AG's office

-Steve Johnson may draft a letter outlining these concerns to be sent to the Chancellor of Indiana University and the Dean of the Medical School

1:48pm

Todd Meyer makes motion for Linda Chezem to head up independent review board-

Motion seconded

-recertification of officers on the Datamasters must commence and continue immediately

Motion carried

Chairman Hill to work with Ryan on next steps for bringing together an assessment team to review these concerns about the Department of Toxicology and make recommendations.

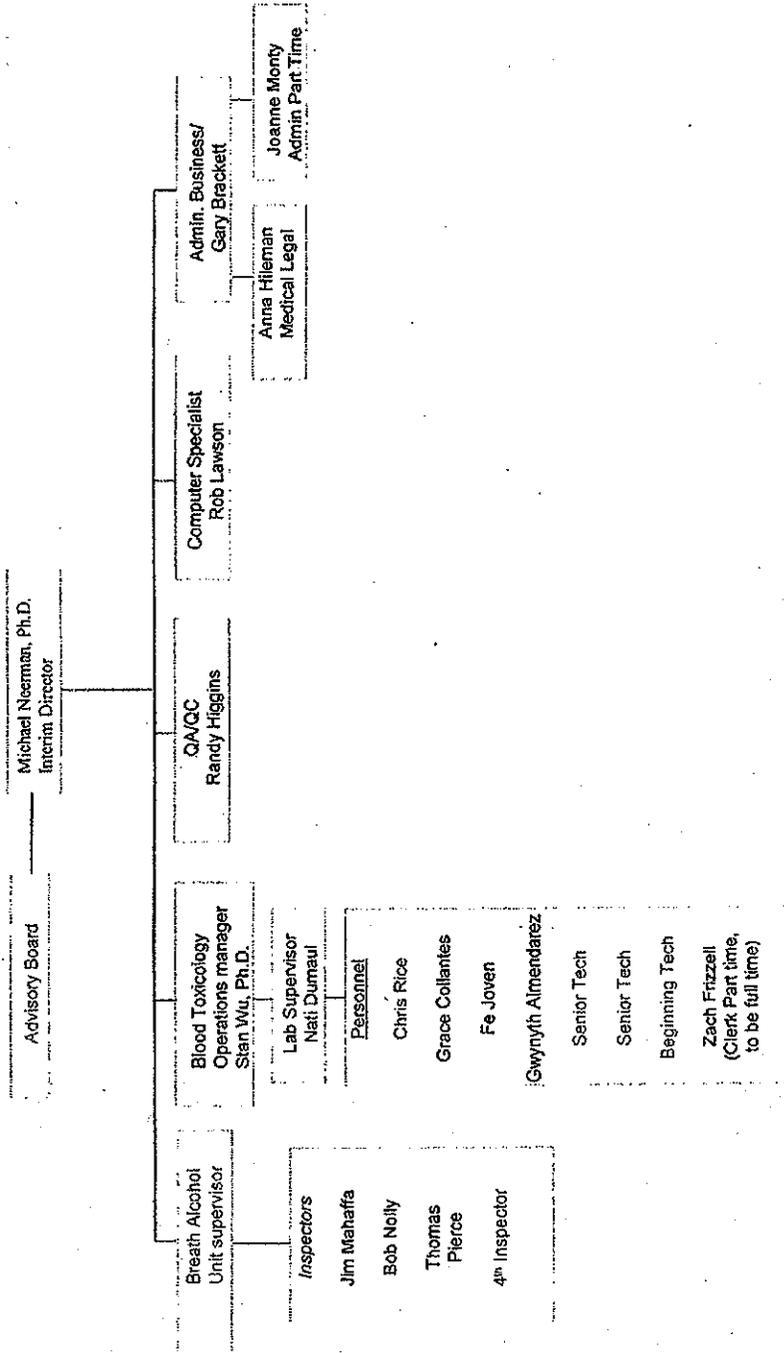
Next Mtg. June 11, 2010

1:51 mtg. concluded

# Appendix # 3

Indiana State Department of Toxicology updated organization chart

# Indiana State Department of Toxicology



# Appendix # 4

## Indiana Statute and Administrative Codes:

I.C 21 – 45 – 3 State Toxicology Department  
I.A.C. 260 – Breath Test Operators and Instruments

### IC 21-45-3

#### Chapter 3. State Toxicology Department

##### IC 21-45-3-1

###### Indiana University School of Medicine; state department of toxicology

Sec. 1. The board of trustees of Indiana University may establish in the Indiana University School of Medicine a state department of toxicology and provide adequate equipment and competent personnel to carry out the purposes of this chapter.

*As added by P.L. 2-2007, SEC. 286.*

##### IC 21-45-3-2

###### Duties; analyses

Sec. 2. (a) The state department of toxicology shall do the following:

(1) Conduct analyses for poisons, drugs, and alcohols upon human tissues and fluids submitted by:

(A) Indiana coroners, prosecuting attorneys, and sheriffs;

(B) authorized officials of the Indiana state police and Indiana city police departments; and

(C) officials of the Indiana University Medical Center hospitals;

in cases of suspected poisoning or intoxication of human beings.

(2) Report the analytical findings of the state department of toxicology to the official requesting the analyses.

(3) Consult with Indiana coroners and coroner's physicians regarding the interpretation of the analytical findings.

(b) The personnel of the state department of toxicology shall furnish expert testimony regarding the department's analytical findings in all legal hearings including criminal prosecutions related to the findings.

*As added by P.L. 2-2007, SEC. 286.*

##### IC 21-45-3-3

###### Duties; training

Sec. 3. (a) The state department of toxicology shall do the following:

(1) Give instruction in toxicology to medical students and physicians being trained at the Indiana

University School of Medicine.

(2) Train qualified students desiring to become toxicologists.

(b) The state department of toxicology shall also train police technicians and other persons selected by the dean of the Indiana University School of Medicine, or the dean's representative, to conduct some of the simpler chemical tests for intoxication.

*As added by P.L.2-2007, SEC.286.*

#### **IC 21-45-3-4**

##### **Duties; research**

Sec. 4. The state department of toxicology shall conduct research on the following:

(1) The detection of toxic compounds that may be components of drugs or medicines or may be present in pesticides used for agricultural or other purposes.

(2) The treatment of poisoning from these toxic substances.

*As added by P.L.2-2007, SEC.286.*

#### **IC 21-45-3-5**

##### **Duties; inspections**

Sec. 5. (a) State department of toxicology examiners shall make periodic visits to various state, county, city, and hospital laboratories in Indiana:

(1) that are performing analyses for alcohol upon materials from the human body; and

(2) whose analytical results may be used in criminal prosecutions.

(b) An examiner shall conduct a visit under this section to:

(1) examine the person conducting the tests concerning the person's competence to reliably perform the analyses; and

(2) inspect the apparatus and chemicals employed in making the analyses.

(c) The state department of toxicology shall keep a record of the examiners' findings under this section.

*As added by P.L.2-2007, SEC.286.*

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### **Indiana Administrative Code 260**

#### **ARTICLE 1.1. BREATH TEST OPERATORS AND INSTRUMENTS**

##### **Rule 0.5. Definitions**

**260 IAC 1.1-0.5-1 Applicability** Authority: IC 9-30-6-5, Affected: IC 9-30-6-5

Sec. 1. The definitions in this rule apply throughout this article. (*State Department of Toxicology; 260 IAC 1.1-0.5-1; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

**260 IAC 1.1-0.5-2 "Breath test instrument" defined**

Authority: IC 9-30-6-5, Affected: IC 9-30-6-5

Sec. 2. "Breath test instrument" means an instrument for performing evidentiary breath tests for ethanol, selected and certified by the department. (*State Department of Toxicology; 260 IAC 1.1-0.5-2; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

**260 IAC 1.1-0.5-3 "Breath test operator" defined**

Authority: IC 9-30-6-5, Affected: IC 9-30-6-5

Sec. 3. "Breath test operator" means a person certified by the department under this article to perform evidentiary breath tests for ethanol. (*State Department of Toxicology; 260 IAC 1.1-0.5-3; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

**260 IAC 1.1-0.5-4 "Department" defined**

Authority: IC 9-30-6-5, Affected: IC 21-45-3

Sec. 4. "Department" means the state department of toxicology established within the Indiana University School of Medicine by IC 21-45-3. (*State Department of Toxicology; 260 IAC 1.1-0.5-4; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

**260 IAC 1.1-0.5-5 "Director" defined**

Authority: IC 9-30-6-5, Affected: IC 9-30-6-5

Sec. 5. "Director" means the director of the department. (*State Department of Toxicology; 260 IAC 1.1-0.5-5; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

**Rule 1. Selection, Training, and Certification of Breath Test Operators**

**260 IAC 1.1-1-1 Screening of applicants for training**

Authority: IC 9-30-6-5, Affected: IC 9-30-6-5

Sec. 1. (a) An examination shall be authorized by the director for the screening of applicants for training as breath test operators.

(b) The screening examination shall include such subjects as are deemed relevant by the director.

(c) Any person selected to attend the training course for breath test operators must have demonstrated eligibility to the director by taking and passing the screening examination.

(d) Any eligible person having failed the school may be admitted to a subsequent school without repeating the screening examination. (*State Department of Toxicology; 260 IAC 1.1-1-1; filed Dec 13, 1983, 10:56 a.m.: 7 IR 335; filed Dec 6, 1998, 1:50p.m.: 22 IR 973; readopted filed Nov 7, 2005, 2:35 p.m.: 29 IR 896; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

**260 IAC 1.1-1-2 Training courses**

Authority: IC 9-30-6-5, Affected: IC 9-30-6-5

Sec. 2. (a) Any person to be certified as a breath test operator must attend and complete a course in the theory and operation of test devices approved by the director.

(b) The course shall include a minimum of twelve (12) hours of instruction.

(c) The instruction shall include lectures, laboratory training, and demonstrations in accordance with the following:

(1) The pharmacology and toxicology of ethanol.

(2) The theory, operation, and care of breath test instruments.

(3) The legal aspects of breath testing for ethanol.

(4) The interpretation of breath test for ethanol results.

(5) Laboratory training using an approved instrument to analyze breath for ethanol:

(A) using known ethanol-water or ethanol-gas solutions; or

(B) on a human who has consumed a test dose of ethanol; or both.

(d) Examinations shall be as follows:

(1) A written examination shall be given after six (6) to eight (8) hours of instruction.

(2) A laboratory examination shall be given consisting of, at a minimum, demonstration of proper technique in giving a breath test using a breath test instrument.

(3) A written final examination shall be given at the completion of the school. The final examination shall be prepared, administered, and graded under the direction of the director.

(e) To successfully complete the approved course, a candidate must have performed satisfactorily in the laboratory and demonstrated his or her qualifications to the satisfaction of the director in all examinations. (*State Department of Toxicology; 260IAC 1.1-1-2; filed Dec 13, 1983, 10:56 a.m.: 7 IR 336; filed Dec 19, 1985, 3:37 p.m.: 9 IR 1292; errata, 9 IR 2063; filed Dec 6, 1998, 1:50 p.m.: 22 IR 973; filed Apr 24, 2000, 12:51 p.m.: 23 IR 2222; readopted filed Nov 3, 2006, 1:46 p.m.: 20061122-IR-260060047RFA; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

**260 IAC 1.1-1-3 Certification and recertification of breath test operators**

Authority: IC 9-30-6-5, Affected: IC 9-30-6-5

Sec. 3. (a) The director will certify persons who:

- (1) Have successfully completed a breath test for intoxication course, as described in section 2 of this rule; and
- (2) Are employed by a law enforcement agency. As used in this section, "law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders.

(b) Any person certified as a breath test operator by the director must be recertified by examination at least every two (2) years from the month of certification or recertification. Reasonable deviations from this schedule may be approved by the director.

(c) The recertification procedure shall be established by the director.

(d) Any person seeking recertification must demonstrate his or her qualifications to the satisfaction of the director by doing the following:

- (1) Taking a written examination similar in content to the final examination given at the completion of the course for training breath test operators.
- (2) Demonstrating his or her competence in performing an evidentiary breath test by one (1) of the following methods as prescribed by the director:
  - (A) Successfully performing one (1) or more breath tests during the certification period prior to recertification. The director shall determine the:
    - (i) number of breath tests required to demonstrate competence; and
    - (ii) method of documentation of performance of breath tests.
  - (B) Successfully completing a practical examination at the time of recertification, in circumstances to be defined by the director.

(e) Any person:

- (1) failing the first recertification examination; or
- (2) not appearing to take this examination;

may be given a second recertification examination within sixty (60) days of the first examination. During this time period, the individual is not certified to operate approved evidentiary breath test instruments. If this second examination is failed or missed, the individual will not be certified again until he or she has successfully completed an approved breath test course as described in section 2 of this rule, held after this second recertification examination.

(f) The director shall issue to all certified and recertified breath test operators a wallet identification certificate, which shall be valid from the date of issuance to the expiration date printed on the certificate.

(g) Nothing in this rule shall prevent the director from suspending or revoking the certification of any operator at any time the director determines such suspension or revocation to be in the

best interest of the breath test for ethanol program. (State Department of Toxicology; 260 IAC 1.1-1-3; filed Dec 13, 1983, 10:56 a.m.: 7 IR 336; filed Dec 19, 1985, 3:37 p.m.: 9 IR 1293; filed Dec 6, 1998, 1:50 p.m.: 22 IR 973; filed Apr 24, 2000, 12:51 p.m.: 23 IR 2222; readopted filed Nov 3, 2006, 1:46 p.m.: 20061122-IR-260060047RFA; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)

## **Rule 2. Inspection and Certification of Breath Test Instruments**

### **260 IAC 1.1-2-1 Inspection of breath test instruments**

Authority: IC 9-30-6-5, Affected: IC 9-30-6-5

Sec. 1. (a) Each breath test instrument approved by the director shall be inspected at least once every one hundred eighty (180) days at its established location, which must be in a building. If the location of the instrument is changed, the instrument must be reinspected before it can be certified for use.

(b) The inspection shall include at least one (1) test demonstrating that the instrument:

(1) is in good operating condition; and

(2) satisfies the accuracy requirements set out in subsection (e)(2).

(c) Only persons authorized by the director shall inspect approved breath test instruments.

(d) All such authorized inspectors shall report their findings to the director.

(e) All breath test instruments shall meet the following standards:

(1) Certification tests shall be made using known ethanol-water or ethanol-gas solutions, approved by the director, to simulate a breath sample.

(2) The test results shall not deviate more than minus eight percent (-8%) from the known ethanol content of the ethanol-water or ethanol-gas vapor. No test result for the purpose of certification shall exceed the known ethanol content of the test vapor. For example, a solution of ethanol in water that produces a vapor having eight-hundredths (0.08) grams of ethanol per two hundred ten (210) liters shall test within the range of seventy-four thousandths (0.074) to eighty-thousandths (0.080) grams per two hundred ten (210) liters.

(3) For the purpose of inspecting the breath test instrument, the analytical result shall be expressed to the third decimal place.

(4) Other tests that are not part of the inspection may be performed at the time of the inspection.

(f) Chemicals, if required, shall be of sufficient strength and quality to allow the breath test instrument to operate in the manner specified in subsection (e)(2). (State Department of Toxicology; 260 IAC 1.1-2-1; filed Dec 13, 1983, 10:56 a.m.: 7 IR 337; filed Dec 19, 1985, 3:37 p.m.: 9 IR 1293; filed Dec 6, 1998, 1:50 p.m.: 22 IR 974; filed Apr 24, 2000, 12:51 p.m.: 23 IR 2222; readopted filed Nov 3, 2006, 1:46 p.m.: 20061122-IR-260060047RFA; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)

### **260 IAC 1.1-2-2 Certification of instruments and chemicals**

Authority: IC 9-30-6-5, Affected: IC 9-30-6-5

Sec. 2. (a) All breath test instruments shall be certified as to compliance with standards specified in section 1(e) and 1(f) of this rule at least once each one hundred eighty (180) days.

(b) The certification of inspection and compliance of breath test instruments shall be in writing by the director.

(c) The certification shall be based on information provided by authorized inspectors and any other evidence the director, at his or her discretion, may require.

(d) The current certificate of inspection and compliance shall be sent to the clerk of the circuit court in the county in which the instrument is used. All certifications of inspection shall:

(1) remain on file in the department; and

(2) be made available to anyone for viewing only during regular office hours.

*(State Department of Toxicology; 260 IAC 1.1-2-2; filed Dec 13, 1983, 10:56 a.m.: 7 IR 337; filed Dec 19, 1985, 3:37 p.m.: 9 IR 1294; filed Dec 6, 1998, 1:50 p.m.: 22 IR 975; readopted filed Nov 7, 2005, 2:35 p.m.: 29 IR 896; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)*

#### **260 IAC 1.1-2-3 Repair and maintenance**

Authority: IC 9-30-6-5, Affected: IC 9-30-6-5

Sec. 3. A certified breath test operator is authorized to make replacements and adjustments not related to the calibration of the instrument. *(State Department of Toxicology; 260 IAC 1.1-2-3; filed Dec 13, 1983, 10:56 a.m.: 7 IR 337; readopted filed Aug 6, 2002, 4:55 p.m.: 25 IR 4221; readopted filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)*

#### **Rule 3. Operation Standards**

##### **260 IAC 1.1-3-1 Approval of methods; checklists**

Authority: IC 9-30-6-5, Affected: IC 9-30-6-5

Sec. 1. (a) The director shall approve a method for the administration of a test to analyze breath for ethanol for each approved type of instrument in use.

(b) The approved method shall be followed in making an analysis of breath for ethanol.

(c) The director may approve and distribute a checklist that sets forth in abbreviated form the approved method for the administration of a test to analyze breath for ethanol for each approved type of instrument in use.

(d) A method approved by the director for use with an approved instrument shall remain in effect from the date of approval until such time as the department shall adopt a rule changing the approved method. *(State Department of Toxicology; 260 IAC 1.1-3-1; filed Dec 13, 1983, 10:56 a.m.: 7 IR 338; readopted filed Aug 6, 2002, 4:55 p.m.: 25 IR 4221; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)*

#### **Rule 4. Approved Methods**

##### **260 IAC 1.1-4-1 Breathalyzer test method (Repealed)**

BREATH TEST OPERATORS AND INSTRUMENTS

Sec. 1. *(Repealed by State Department of Toxicology; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976)*

##### **260 IAC 1.1-4-2 Intoximeter 3000 test method (Repealed)**

Sec. 2. *(Repealed by State Department of Toxicology; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976)*

##### **260 IAC 1.1-4-3 Intoxilyzer 4011A and 4011AS test method (Repealed)**

Sec. 3. *(Repealed by State Department of Toxicology; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976)*

##### **260 IAC 1.1-4-4 Intoxilyzer 5000 breath analysis method (Repealed)**

Sec. 4. *(Repealed by State Department of Toxicology; filed Apr 24, 2000, 12:51 p.m.: 23 IR 2223)*

##### **260 IAC 1.1-4-5 B.A.C. Verifier test method (Repealed)**

Sec. 5. *(Repealed by State Department of Toxicology; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976)*

**260 IAC 1.1-4-6 Intoxilyzer 5000 with keyboard test for alcoholic intoxication (Repealed)**

Sec. 6. (Repealed by State Department of Toxicology; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976)

**260 IAC 1.1-4-7 B.A.C. Datamaster without keyboard test for alcoholic intoxication (Repealed)**

Sec. 7. (Repealed by State Department of Toxicology; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976)

**260 IAC 1.1-4-8 B.A.C. Datamaster with keyboard breath analysis method**

Authority: IC 9-30-6-5, Affected: IC 9-30-6-5

Sec. 8. The following is the approved method to conduct a B.A.C. Datamaster with keyboard test for ethanol intoxication:

- (1) The person to be tested must:
  - (A) have had nothing to eat or drink;
  - (B) not have put any foreign substance into his or her mouth or respiratory tract; and
  - (C) not smoke;within twenty (20) minutes before the time a breath sample is taken.

- (2) The green LED on the instrument display must be glowing.

- (3) Depress the run button, enter the password, and insert the evidence ticket or verify that the external printer is ready to use.

- (4) Follow the displayed request for information, and enter the information by the keyboard.

- (5) When "please blow" appears on the display, place a new mouthpiece in the breath tube. The subject must deliver a breath sample.

- (6) When the printer stops, remove the evidence ticket or report sheet from the printer and check the report printed on the evidence ticket or report sheet for the numerical ethanol subject sample and correct date and time.

- (7) If the report displays one (1) of the following messages, the test is not valid; proceed as instructed:

- (A) If "subject sample interferent" is printed on the report, return to step 1 described in subdivision (1) and perform a second breath test beginning with a twenty (20) minute period. If "subject sample interferent" is printed on the report of this second breath test:

- (i) obtain an alternate chemical test for ethanol; or
  - (ii) perform the breath test on another evidentiary breath test instrument.

- (B) If "subject sample invalid" is printed on the report, return to step 1 described in subdivision (1) and perform a second, breath test beginning with a twenty (20) minute period. If "subject sample invalid" is printed on the report of this second breath test:

- (i) obtain an alternate chemical test for ethanol; or
  - (ii) perform the breath test on another evidentiary breath test instrument.

- (C) If "radio interference" is printed on the report, locate and remove the source of the radio interference and return to step 2 described in subdivision (2) and perform a second breath test.

- (D) If "radio interference" is printed on the report of this second breath test:

- (i) obtain an alternate chemical test for ethanol; or
  - (ii) perform the breath test on another evidentiary breath test instrument.

- (E) If "subject sample incomplete" is printed on the report, return to step 2 described in subdivision (2) and perform a second breath test. If "subject sample incomplete" is printed on the report of this second breath test:

- (i) obtain an alternate chemical test for ethanol; or
  - (ii) perform the breath test on another evidentiary breath test instrument.

However, if the "subject sample incomplete" was caused by the lack of cooperation by the subject, the breath test operator should record that the test was refused.

*(State Department of Toxicology; 260 IAC 1.1-4-8; filed Sep 6, 1991, 5:00 p.m.: 15 IR 6; filed Dec 6, 1998, 1:50 p.m.: 22 IR 975; filed Apr 24, 2000, 12:51 p.m.: 23 IR 2223; readopted filed Nov 3, 2006, 1:46 p.m.: 20061122-IR-260060047RFA; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)*

**Rule 5. Selection Criteria**

**260 IAC 1.1-5-1 Breath test instruments**

Authority: IC 9-30-6-5

Affected: IC 9-30-6-5

Sec. 1. (a) All breath test instrument models must be selected by the director prior to their evidentiary use in Indiana. The testing of the instruments must be performed in the department's facility. The procedure for evaluation of the instruments must be established by the department and designed to ensure the accurate analysis of breath specimens for the determination of breath or blood ethanol concentrations, or both, relative to traffic law enforcement. To achieve selection under IC 9-30-6-5, a breath test instrument must meet, at a minimum, the following criteria:

(1) The:

(A) instrument must analyze breath samples; and

(B) numerical value reported shall be expressed as grams of ethanol per two hundred ten (210) liters of the person's breath.

(2) The instrument must be as follows:

(A) Capable of calibration for the purpose of certification with a known ethanol standard in accord with 260 IAC 1.1-2-1(e) and maintain this calibration during routine breath ethanol testing.

(B) Able to analyze a known ethanol reference sample within the limits specified by 260 IAC 1.1-2-1(e) separate from calibration for certification.

(C) Equipped with sufficient features to prevent unauthorized alteration, tampering, or manipulation in order to safeguard the breath sampling process and ethanol concentration analysis.

(b) The instruments for which approved methods are provided in 260 IAC 1.1-4 shall constitute the list of approved models required by IC 9-30-6-5. *(State Department of Toxicology; 260 IAC 1.1-5-1; filed Aug 30, 1994, 1:10 p.m.: 18 IR 11; filed Dec 6,*

*1998, 1:50 p.m.: 22 IR 976; filed Jan 26, 2001, 9:31 a.m.: 24 IR 1608; readopted filed Oct 9, 2007, 2:37 p.m.: 20071031-IR*

# Appendix # 5

Breath Test Instrument and Facility Requirements

**INDIANA UNIVERSITY**DEPARTMENT OF PHARMACOLOGY  
AND TOXICOLOGY

Indiana State Department of Toxicology

**New Breath Test Instrument and Facility Requirements**

The Indiana State Department of Toxicology (ISDT) is in the process of replacing the breath test instrumentation throughout the state. ISDT anticipates beginning the launch of the new instruments in January 2010. Currently, the DataMaster from National Patent is being used and will be replaced by the Intox EC/IR II from Intoximeter. In an effort to maintain the certified status of the instrumentation in each agency around the state, and maintain the instruments in good working order in accordance with new Administrative Codes 260, the facilities must meet the following requirements in order to receive the new breath test instrumentation. Please pay special attention to section III that discusses server requirements. If you have any questions, please do not hesitate to contact me at the enclosed address below. Note: ISDT will be notifying each facility of their anticipated installation date in addition to coordinating certification training for breath test operators in the region.

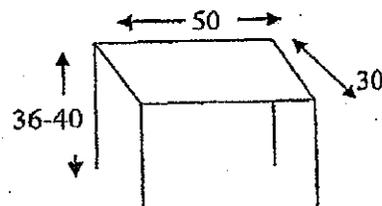
The following guidelines are:

**I. Room requirements -**

- a. **General** - It is recommended that the Intox EC/IR II instrument is located in a dedicated (secure) room for breath alcohol procedures. No other police equipment should operate in this room, in particular no radio equipment, no finger printing, no cleaning and no volatile chemicals to be stored in or near the room containing the instrument. If accessed by public personnel or prisoners, it must be supervised. In addition, the room must be accessible by the inspectors and their equipment.
- b. **Desk Requirements** - Normal wood or metal desk large enough to take the instrument and printer as well as any containers or drawers for mouthpieces, printer paper or forms. Desk surface should be kept clean and clear of any debris or dirt. If the instrument is to be secured to the desk then access to the underside of the desk will be required.
- c. **The Foot Print and Required Instrument Area:**

Dimensions:  
(minimum)

Height:	36 - 40 inches
Width:	50 inches
Depth:	36 inches



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Surface: flat, no raised edges

Type of table: Standard table – not a microwave or typewriter cart  
Stationary – no wheels

Other: Cabinets or other built-in furniture items above instrument table or shelf should be a minimum of 36 inches above the table surface

- d. **Clearance Space to rear instrument:** At least 8 inches is required to the rear of the instrument for breath tube and ventilation. This area must be kept clear of debris and dirt.
- e. **Room temperature** – The instrument will operate correctly over a large temperature range, 0°C to 40°C (32°F to 104°F) but the comfort of the operator and subject should be considered. Therefore it is recommended that the instrument is operated in a normal comfortable room temperature, 18°C to 24°C (68°F to 76°F).
- f. **Room Ventilation** – Adequate ventilation to prevent build up of ambient alcohol which would cause ambient failure of the instrument. Use of an extraction fan is recommended especially for smaller rooms.
- g. **Room Lighting** – adequate office lighting is required.
- h. **AC Vents** – AC vents should not be directed onto or near to the instrument. If necessary, redirect AC flow using vent shields.
- i. **Radio Equipment** – The Intox EC/IR II is designed and constructed to be immune to RFI and is EMC compliant. This does not mean that reasonable measurements should not be taken to prevent the potential for RFI occurring. Therefore, no radio equipment should be located or operated in or near the room containing the Intox EC/IR II. This includes the banning of use of Police personal radios and mobile or Cell phones in the room containing the room. Notices clearly stating that no radio or mobile phone use is allowed in the room containing the instrument are recommended.

**II. Electrical Connection –**

- a. **Power outlets** - Dual 120 V ac, 15 amp outlets, fully earthed are required within 4 foot of the rear of the instrument. If simulators are to be used with the instrument and printer a further dual 120 V AC power outlet within 6

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feet of the instrument is recommended. It is not recommended that a multiple outlet power strip is used.

- b. **Intox EC/IR II with UPS or Surge Protector** – It is recommended that an Un-interruptible Power Supply (UPS) is used with the Intox EC/IR II instrument to prevent damage being caused by electrical storm activity, lightning strikes or power loss. These will be supplied with each instrument and are designed to provide short-term (30 minutes or less) protection in case of a power outage or surge. This must be dedicated to the breath test instrument.
- c. **Printer with UPS** – some printers, such as the Okidata 4600, must not be used with a UPS in line with the power outlet. The printer will not operate correctly if a UPS is used. Please confirm with the printer supplier or manufacturer to determine if the particular printer to be used is affected by the use of a UPS.

**III. Server Requirements –**

- a. **The device servers (serial to Ethernet adapters) are plugged into a standard 10/100 Ethernet connection (a network jack, just like a PC) and may be pre-configured to automatically obtain an IP address via DHCP (Dynamic Host Configuration Protocol) and to connect to the central IntoxNet host computer upon power-up.**
- b. **Network connection to ISDT's central host - each device server will need:**
  - i. **An Ethernet jack within reasonable proximity (variable length Ethernet cables are available)**
    - 1. 6 – 8 feet maximum
  - ii. **A wall outlet for power within reasonable proximity**
    - 1. 6 – 8 feet maximum
  - iii. **The EC/IR within reasonable proximity (variable length EC/IR-II serial cables are available)**
    - 1. 6 – 8 feet maximum
  - iv. **The network segment must have a DHCP server (that will assign an IP and gateway address).**
  - v. **The network segment must allow outbound internet connections.**



**STATE OF INDIANA**

*Mitch Daniels, Governor*



*Dr. T. Neil Moore, Executive Director*  
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June 22, 2010

Inspector General David Thomas  
315 W. Ohio Street, Room 104  
Indianapolis, Indiana 46204

Dear Inspector General Thomas,

In 2008, the Traffic Safety division of the Indiana Criminal Justice Institute requested that the National Highway Traffic Safety Administration (NHTSA) conduct a formal assessment of Indiana's impaired driving program. A portion of that report gave specific recommendations regarding toxicology:

- Implement a multi-jurisdictional task force of interested parties to develop recommendations for operation and placement of the State Department of Toxicology.
- Review and evaluate operational and administrative expenses, such as any indirect costs charged by the Indiana University School of Medicine.
- Mandate the State Toxicology Lab to supply all requested test results of blood or urine in compliance with the International Association of Chiefs of Police (IACP) standards.

Numerous and persistent concerns about the Indiana Department of Toxicology (ISDT) were brought to the attention of the Governor's Council on Impaired and Dangerous Driving (Council) at their March meeting. The Council determined that these were urgent matters which seriously impaired Indiana's ability to fairly and effectively enforce its laws. The Council concluded that a formal assessment of the operations and structure of the ISDT needed to be conducted.

The assessment team met with officials from the IU School of Medicine and the ISDT. The assessment team also reviewed documentation provided by ISDT, including applicable statutes and regulations. These findings and recommendations can be found in the assessment team's report, which is attached.

One of the recommendations in the report cited concerns about the selection of breath test instruments purchased in 2009, "Since the information provided for the instrument selection process gave rise to additional questions, the Inspector General should conduct an official review of the process used in the selection and purchase of the breath test instruments."

The Indiana Criminal Justice Institute is formally requesting that the Inspector General follow up on this recommendation outlined in the assessment teams' report. The Council will be forming an advisory board to help with oversight and guidance of the ISDT in the near future. Findings by the Inspector General will be of great benefit to the advisory board in moving forward to improve toxicology in the State of Indiana.

Respectfully,

T. Neil Moore, Ed.D.  
Executive Director

EXHIBIT B