

1 Sec. 1. 20 V.S.A. § 2358(f) is added to read:

2 (f) The criteria for all minimum training standards under this section shall
3 include Advanced Roadside Impaired Driving Enforcement training as
4 approved by the Vermont Criminal Justice Training Council. On or before
5 December 31, 2020, law enforcement officers shall receive a minimum of
6 16 hours of training as required by this subsection.

7 Sec. 2. 23 V.S.A. § 1200 is amended to read:

8 § 1200. DEFINITIONS

9 As used in this subchapter:

10 * * *

11 (3) “Evidentiary test” means a breath, saliva, or blood test ~~which that~~
12 indicates the person’s alcohol concentration or the presence of other drug and
13 ~~which that~~ is intended to be introduced as evidence.

14 * * *

15 Sec. 3. 23 V.S.A. § 1201 is amended to read:

16 § 1201. OPERATING VEHICLE UNDER THE INFLUENCE OF
17 ALCOHOL OR OTHER SUBSTANCE; CRIMINAL REFUSAL;
18 ENHANCED PENALTY FOR BAC OF 0.16 OR MORE

19 (a) A person shall not operate, attempt to operate, or be in actual physical
20 control of any vehicle on a highway:

21 (1) when the person’s alcohol concentration is:

1 (A) 0.08 or more; or

2 (B) 0.02 or more if the person is operating a school bus as defined in
3 subdivision 4(34) of this title; or

4 (C) 0.04 or more if the person is operating a commercial vehicle as
5 defined in subdivision 4103(4) of this title; or

6 (2) when the person is under the influence of alcohol; or

7 (3) when the person is under the influence of any other drug or under the
8 combined influence of alcohol and any other drug; or

9 ~~(4) when the person's alcohol concentration is 0.04 or more if the person~~
10 ~~is operating a commercial motor vehicle as defined in subdivision 4103(4) of~~
11 ~~this title.~~

12 (b) A person who has previously been convicted of a violation of this
13 section shall not operate, attempt to operate, or be in actual physical control of
14 any vehicle on a highway and refuse a law enforcement officer's reasonable
15 request under the circumstances for an evidentiary test where the officer had
16 reasonable grounds to believe the person was in violation of subsection (a) of
17 this section.

18 (c) A person shall not operate, attempt to operate, or be in actual physical
19 control of any vehicle on a highway and be involved in an accident or collision
20 resulting in serious bodily injury or death to another and refuse a law
21 enforcement officer's reasonable request under the circumstances for an

1 evidentiary test where the officer has reasonable grounds to believe the person
2 has any amount of alcohol or drugs in ~~the~~ his or her system.

3 * * *

4 (i) Evidence of the results of a standardized field sobriety test conducted by
5 a law enforcement officer trained in Advanced Roadside Impaired Driving
6 Enforcement or a certified Drug Recognition Expert's systematic evaluation of
7 observable signs and symptoms of a person charged with a violation of this
8 section shall be **presumptively** admissible at trial to demonstrate whether or not
9 the person was operating under the influence in violation of this section.

10 Sec. 4. 23 V.S.A. § 1202 is amended to read:

11 § 1202. CONSENT TO TAKING OF TESTS TO DETERMINE BLOOD
12 ALCOHOL CONTENT OR PRESENCE OF OTHER DRUG

13 (a)(1) Implied consent. Every person who operates, attempts to operate, or
14 is in actual physical control of any vehicle on a highway in this State is deemed
15 to have given consent to an evidentiary test of that person's breath for the
16 purpose of determining the person's alcohol concentration or the presence of
17 other drug in the blood. The test shall be administered at the direction of a law
18 enforcement officer.

19 (2) Blood test. If breath testing equipment is not reasonably available or
20 if the officer has reason to believe that the person is unable to give a sufficient
21 sample of breath for testing or if the law enforcement officer has reasonable

1 grounds to believe that the person is under the influence of a drug other than
2 alcohol, the person is deemed to have given consent to the taking of an
3 evidentiary sample of blood. If in the officer's opinion the person is incapable
4 of decision or unconscious or dead, it is deemed that the person's consent is
5 given and a sample of blood shall be taken. A blood test sought pursuant to
6 this subdivision (2) shall be obtained pursuant to subsection (f) of this section.

7 (3) Saliva test. If the law enforcement officer has reasonable grounds to
8 believe that the person is under the influence of a drug other than alcohol, or
9 under the combined influence of alcohol and a drug, the person is deemed to
10 have given consent to providing of an evidentiary sample of saliva. A saliva
11 test sought pursuant to this subdivision (3) shall be obtained pursuant to
12 subsection (f) of this section. Any saliva test administered under this section
13 shall be used only for the limited purpose of detecting the presence of a drug in
14 the person's body, and shall not be used to extract DNA information.

15 (4) Evidentiary test. The evidentiary test shall be required of a person
16 when a law enforcement officer has reasonable grounds to believe that the
17 person was operating, attempting to operate, or in actual physical control of a
18 vehicle in violation of section 1201 of this title.

19 (4)(5) Fatal collision or incident resulting in serious bodily injury. The
20 evidentiary test shall also be required if the person is the surviving operator of
21 a motor vehicle involved in a fatal incident or collision or an incident or

1 collision resulting in serious bodily injury and the law enforcement officer has
2 reasonable grounds to believe that the person has any amount of alcohol or
3 other drug in his or her system.

4 (b) A refusal to take a breath test may be introduced as evidence in a
5 criminal proceeding.

6 (c) A person who is requested by a law enforcement officer to submit to an
7 evidentiary test or tests has a right as limited in this subsection to consult an
8 attorney before deciding whether or not to submit to such a test or tests. The
9 person must decide whether or not to submit to the evidentiary test or tests
10 within a reasonable time and not later than 30 minutes after the time of the
11 initial attempt to contact the attorney. The person must make a decision about
12 whether to submit to the test or tests at the expiration of the 30 minutes,
13 regardless of whether a consultation took place.

14 (d) At the time a test is requested, the person shall be informed of the
15 following statutory information:

16 (1) Vermont law authorizes a law enforcement officer to request a test to
17 determine whether the person is under the influence of alcohol or other drug.

18 (2) If the officer's request is reasonable and testing is refused, the
19 person's license or privilege to operate will be suspended for at least six
20 months.

1 (3) If a test is taken and the results indicate that the person is under the
2 influence of alcohol or other drug, the person will be subject to criminal
3 charges and the person’s license or privilege to operate will be suspended for at
4 least 90 days.

5 (4) A person who is requested by a law enforcement officer to submit to
6 an evidentiary test or tests has the limited right to consult an attorney before
7 deciding whether or not to submit to such a test or tests. The person must
8 decide whether or not to submit to the evidentiary test or tests within a
9 reasonable time and no later than 30 minutes from the time of the initial
10 attempt to contact the attorney, regardless of whether a consultation took place.
11 The person also has the right to have additional tests made by someone of the
12 person’s own choosing at the person’s own expense. The person shall also be
13 informed of the location of one or more facilities available for drawing blood.

14 (5) A person who is requested by a law enforcement officer to submit to
15 an evidentiary test administered with an infrared breath-testing instrument may
16 elect to have a second infrared test administered immediately after receiving
17 the results of the first test.

18 (6) If the person refuses to take an evidentiary test, the refusal may be
19 offered into evidence against the person at trial, whether or not a search
20 warrant is sought. The person may be charged with the crime of criminal
21 refusal if the person:

1 (A) has previously been convicted of a violation of section 1201 of
2 this title; or

3 (B) is involved in an accident or collision resulting in serious bodily
4 injury or death to another, in which case the court may issue a search warrant
5 and order the person to submit to a blood test, the results of which may be
6 offered into evidence against the person at trial.

7 * * *

8 (f)(1) If a blood test is sought from a person pursuant to subdivision (a)(2)
9 of this section, or if a person who has been involved in an accident or collision
10 resulting in serious bodily injury or death to another refuses an evidentiary test,
11 a law enforcement officer may apply for a search warrant pursuant to Rule 41
12 of the Vermont Rules of Criminal Procedure to obtain a sample of blood for an
13 evidentiary test. If Pursuant to subsection (d)(6) of this section, if a blood
14 sample is obtained by search warrant, the fact of the refusal may still be
15 introduced in evidence, in addition to the results of the evidentiary test. Once a
16 law enforcement official begins the application process for a search warrant,
17 the law enforcement official is not obligated to discontinue the process even if
18 the person later agrees to provide an evidentiary breath sample. The limitation
19 created by Rule 41(g) of the Vermont Rules of Criminal Procedure regarding
20 blood specimens shall not apply to search warrants authorized by this section.

1 a law enforcement officer may withdraw blood for the purpose of determining
2 the presence of alcohol or ~~other~~ another drug. ~~This limitation does~~ Any
3 withdrawal of blood shall not be taken at roadside. These limitations do not
4 apply to the taking of a breath sample. A medical facility or business may not
5 charge more than \$75.00 for services rendered when an individual is brought to
6 a facility for the sole purpose of an evidentiary blood sample or when an
7 emergency medical technician or paramedic draws an evidentiary blood
8 sample.

9 (2) A saliva sample may be obtained by a person certified by the
10 Vermont Criminal Justice Training Council to collect a saliva sample for the
11 purpose of evidentiary testing to determine the presence of a drug. Any saliva
12 sample obtained pursuant to this section shall not be taken at roadside.

13 (c) ~~When a breath test which is intended to be introduced in evidence is~~
14 ~~taken with a crimper device or when~~ blood or saliva is withdrawn at an
15 officer's request, a sufficient amount of ~~breath~~ saliva or blood, as the case may
16 be, shall be taken to enable the person to have made an independent analysis of
17 the sample, and shall be held for at least 45 days from the date the sample was
18 taken. At any time during that period the person may direct that the sample be
19 sent to an independent laboratory of the person's choosing for an independent
20 analysis. The Department of Public Safety shall adopt rules providing for the
21 security of the sample. At no time shall the defendant or any agent of the

1 defendant have access to the sample. A preserved sample of breath shall not
2 be required when an infrared breath-testing instrument is used. A person tested
3 with an infrared breath-testing instrument shall have the option of having a
4 second infrared test administered immediately after receiving the results of the
5 first test.

6 (d) In the case of a breath, saliva, or blood test ~~administered using an~~
7 ~~infrared breath testing instrument~~, the test shall be analyzed in compliance with
8 rules adopted by the Department of Public Safety. The analyses shall be
9 retained by the State. A sample is adequate if the infrared breath testing
10 instrument analyzes the sample and does not indicate the sample is deficient.
11 ~~Analysis~~ An analysis of the person's ~~breath~~ saliva or blood ~~which~~ that is
12 available to that person for independent analysis shall be considered valid
13 when performed according to methods approved by the Department of Public
14 Safety. The analysis performed by the State shall be considered valid when
15 performed according to a method or methods selected by the Department of
16 Public Safety. The Department of Public Safety shall use rule making
17 procedures to select its method or methods. Failure of a person to provide an
18 adequate breath or saliva sample constitutes a refusal.

19 (e) [Repealed.]

20 (f) When a law enforcement officer has reason to believe that a person may
21 be violating or has violated section 1201 of this title, the officer may request

1 the person to provide a sample of breath for a preliminary screening test using
2 a device approved by the Commissioner of Public Safety for this purpose. The
3 person shall not have the right to consult an attorney prior to submitting to this
4 preliminary breath alcohol screening ~~test~~. The results of this preliminary
5 screening ~~test~~ may be used for the purpose of deciding whether an arrest
6 should be made and whether to request an evidentiary test and shall not be
7 used in any court proceeding except on those issues. Following the screening,
8 ~~test~~ additional tests may be required of the operator pursuant to the provisions
9 of section 1202 of this title.

10 (g) The Office of the Chief Medical Examiner shall report in writing to the
11 Department of Motor Vehicles the death of any person as the result of an
12 accident involving a vehicle and the circumstances of such accident within five
13 days of such death.

14 (h) A Vermont law enforcement officer shall have a right to request a
15 breath, saliva or blood sample in an adjoining state or country under this
16 section unless prohibited by the law of the other state or country. If the law in
17 an adjoining state or country does not prohibit an officer acting under this
18 section from taking a breath, saliva, or blood sample in its jurisdiction,
19 evidence of such sample shall not be excluded in the courts of this State solely
20 on the basis that the test was taken outside the State.

1 (i) The Commissioner of Public Safety shall adopt emergency rules relating
2 to the operation, maintenance, and use of preliminary alcohol screening
3 devices for use by law enforcement officers in enforcing the provisions of this
4 title. The ~~commissioner~~ Commissioner shall consider relevant standards of the
5 National Highway Traffic Safety Administration in adopting such rules. Any
6 preliminary alcohol screening device authorized for use under this title shall be
7 on the qualified products list of the National Highway Traffic Safety
8 Administration.

9 * * *

10 Sec. 6. 23 V.S.A. § 1203a(b) is amended to read:

11 (b) Arrangements for a blood test shall be made by the person submitting to
12 the evidentiary breath or saliva test, by the person's attorney, or by some other
13 person acting on the person's behalf unless the person is detained in custody
14 after administration of the evidentiary test and upon completion of processing,
15 in which case the law enforcement officer having custody of the person shall
16 make arrangements for administration of the blood test upon demand but at the
17 person's own expense.

18 Sec. 7. 23 V.S.A. § 1204 is amended to read:

19 § 1204. PERMISSIVE INFERENCES

20 * * *

1 (b) The foregoing provisions shall not be construed as limiting the
2 introduction of any other competent evidence bearing upon the question
3 whether the person was under the influence of alcohol or under the combined
4 influence of alcohol and another drug, nor shall they be construed as requiring
5 that evidence of the amount of alcohol or drug in the person's blood, breath,
6 urine, or saliva must be presented.

7 Sec. 8. DEPARTMENT OF PUBLIC SAFETY; DRUG RECOGNITION
8 EXPERTS; REPORT

9 On or before January 15, 2020, the Department of Public Safety shall report
10 to the House and Senate Committees on Judiciary and on Government
11 Operations on how to:

12 (1) achieve geographic equity in Drug Recognition Expert availability to
13 conduct roadside evaluations of drivers suspected of violating 23 V.S.A.
14 § 1201 across Vermont; and

15 (2) whether to expand the availability of the Drug Recognition Expert
16 program beyond law enforcement officers to other public safety officials to the
17 extent authorized by the national qualification standards of the International
18 Association of Chiefs of Police and the National Highway Traffic Safety
19 Administration.

1 Sec. 9. DEPARTMENT OF PUBLIC SAFETY; NATIONAL HIGHWAY
2 TRAFFIC SAFETY ADMINISTRATION APPROVED SALIVA
3 TESTING DEVICE; REPORT

4 Upon the National Traffic Highway Safety Association identifying a
5 threshold level of concentration of an active metabolite of cannabis in a
6 person's bloodstream to establish impairment and approving a chemical testing
7 device for roadside use capable of demonstrating such a threshold level of
8 concentration of such active metabolite of cannabis in a person's system, the
9 Department of Public Safety shall report to the House and Senate Committees
10 on Judiciary and on Government Operations on a proposal to implement the
11 use of such a device to evaluate individuals suspected of operating under the
12 influence of marijuana in violation of 23 V.S.A. § 1201.