

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 admissible at trial to demonstrate whether or not the person  
9 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 or saliva for testing or if the law enforcement officer has

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

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

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

20 ~~(4)~~(5) Fatal collision or incident resulting in serious bodily injury. The  
21 evidentiary test shall also be required if the person is the surviving operator of

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

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

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 a blood sample is obtained by search warrant, the fact of  
14 the refusal may still be introduced in evidence, in addition to the results of the  
15 evidentiary test. Once a law enforcement official begins the application  
16 process for a search warrant, the law enforcement official is not obligated to  
17 discontinue the process even if the person later agrees to provide an  
18 evidentiary ~~breath~~ sample. The limitation created by Rule 41(g) of the  
19 Vermont Rules of Criminal Procedure regarding blood specimens shall not  
20 apply to search warrants authorized by this section.

1           (2) If an evidentiary saliva test is sought from a person pursuant to  
2           subdivision (a)(3) of this section, a law enforcement officer may apply for a  
3           search warrant pursuant Rule 41 of the Vermont Rules of Criminal Procedure  
4           to obtain a sample of saliva for the evidentiary test.

5           (g) The Defender General shall provide statewide 24-hour coverage seven  
6           days a week to assure that adequate legal services are available to persons  
7           entitled to consult an attorney under this section.

8           Sec. 5. 23 V.S.A. § 1203 is amended to read:

9           § 1203. ADMINISTRATION OF TESTS; RETENTION OF TEST AND

10           VIDEOTAPE

11           (a) A breath or saliva test shall be administered or taken only by a person  
12           who has been certified by the Vermont Criminal Justice Training Council to  
13           operate the breath or saliva testing equipment being employed. In any  
14           proceeding under this subchapter, a person's testimony that he or she is  
15           certified to operate the breath testing equipment employed shall be prima facie  
16           evidence of that fact.

17           (b) Only a physician, licensed nurse, medical technician, physician  
18           assistant, medical technologist, ~~or~~ laboratory assistant, intermediate or  
19           advanced emergency medical technician, or paramedic acting at the request of  
20           a law enforcement officer may withdraw blood for the purpose of determining  
21           the presence of alcohol or ~~other~~ another drug. **This limitation does Any**

1 withdrawal of blood shall not be taken at roadside. These limitations do not  
2 apply to the taking of a breath or saliva sample. A medical facility or business  
3 may not charge more than \$75.00 for services rendered when an individual is  
4 brought to a facility for the sole purpose of an evidentiary blood sample or  
5 when an emergency medical technician or paramedic draws an evidentiary  
6 blood sample.

7 (c) ~~When a breath test which is intended to be introduced in evidence is~~  
8 ~~taken with a crimper device or when~~ blood or saliva is withdrawn at an  
9 officer's request, a sufficient amount of ~~breath~~ saliva or blood, as the case may  
10 be, shall be taken to enable the person to have made an independent analysis of  
11 the sample, and shall be held for at least 45 days from the date the sample was  
12 taken. At any time during that period the person may direct that the sample be  
13 sent to an independent laboratory of the person's choosing for an independent  
14 analysis. The Department of Public Safety shall adopt rules providing for the  
15 security of the sample. At no time shall the defendant or any agent of the  
16 defendant have access to the sample. A preserved sample of breath shall not  
17 be required when an infrared breath-testing instrument is used. A person tested  
18 with an infrared breath-testing instrument shall have the option of having a  
19 second infrared test administered immediately after receiving the results of the  
20 first test.

1           (d) In the case of a breath, saliva, or blood test ~~administered using an~~  
2 ~~infrared breath testing instrument~~, the test shall be analyzed in compliance with  
3 rules adopted by the Department of Public Safety. The analyses shall be  
4 retained by the State. A sample is adequate if the infrared breath testing  
5 instrument analyzes the sample and does not indicate the sample is deficient.

6 ~~Analysis~~ An analysis of the person's breath saliva or blood ~~which~~ that is  
7 available to that person for independent analysis shall be considered valid  
8 when performed according to methods approved by the Department of Public  
9 Safety. The analysis performed by the State shall be considered valid when  
10 performed according to a method or methods selected by the Department of  
11 Public Safety. The Department of Public Safety shall use rule making  
12 procedures to select its method or methods. Failure of a person to provide an  
13 adequate breath or saliva sample constitutes a refusal.

14           (e) [Repealed.]

15           (f) When a law enforcement officer has reason to believe that a person may  
16 be violating or has violated section 1201 of this title, the officer may request  
17 the person to provide a sample of breath for a preliminary screening test using  
18 a device approved by the Commissioner of Public Safety for this purpose. The  
19 person shall not have the right to consult an attorney prior to submitting to this  
20 preliminary breath alcohol screening ~~test~~. The results of this preliminary  
21 screening ~~test~~ may be used for the purpose of deciding whether an arrest



1 should be made and whether to request an evidentiary test and shall not be  
2 used in any court proceeding except on those issues. Following the screening,  
3 ~~test~~ additional tests may be required of the operator pursuant to the provisions  
4 of section 1202 of this title.

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

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

16 (i) The Commissioner of Public Safety shall adopt emergency rules relating  
17 to the operation, maintenance, and use of preliminary alcohol screening  
18 devices for use by law enforcement officers in enforcing the provisions of this  
19 title. The ~~commissioner~~ Commissioner shall consider relevant standards of the  
20 National Highway Traffic Safety Administration in adopting such rules. Any  
21 preliminary alcohol screening device authorized for use under this title shall be

1 on the qualified products list of the National Highway Traffic Safety  
2 Administration.

3 \* \* \*

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

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

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

13 § 1204. PERMISSIVE INFERENCES

14 \* \* \*

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

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

3               On or before January 15, 2020, the Department of Public Safety shall report  
4       to the House and Senate Committees on Judiciary and on Government  
5       Operations on its plan to:

6               (1) achieve geographic equity in Drug Recognition Expert availability to  
7       conduct roadside evaluations of drivers suspected of violating 23 V.S.A.  
8       § 1201 across Vermont; and

9               (2) expand the availability of the Drug Recognition Expert program  
10       beyond law enforcement officers to other public safety officials to the extent  
11       authorized by the national qualification standards of the International  
12       Association of Chiefs of Police and the National Highway Traffic Safety  
13       Administration.

14       Sec. 9. DEPARTMENT OF PUBLIC SAFETY; NATIONAL HIGHWAY  
15               TRAFFIC SAFETY ADMINISTRATION APPROVED SALIVA  
16               TESTING DEVICE; REPORT

17               Upon the National Traffic Highway Safety Association identifying a  
18       threshold level of delta-9 tetrahydrocannabinol concentration in a person's  
19       bloodstream to establish impairment and approving a chemical testing device  
20       for roadside use capable of demonstrating such a threshold level of delta-9  
21       tetrahydrocannabinol concentration in a person's system, the Department of

1 Public Safety shall report to the House and Senate Committees on Judiciary  
2 and on Government Operations on a proposal to implement the use of such a  
3 device to evaluate individuals suspected of operating under the influence of  
4 marijuana in violation of 23 V.S.A. § 1201.