

CHEMICAL TESTS FOR DRIVING UNDER THE INFLUENCE IN NEBRASKA

*In the Event You Are Ever Stopped for DUI in Nebraska
It May Help to Have a Basic Understanding of Why
Chemical Tests are Used, How they Work, and What
the Test Results Actually Mean*



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Being arrested for driving under the influence of alcohol or drugs (DUI or DUID) can be a frightening experience for anyone. If convicted, you face harsh judicial and non-judicial penalties that may include a term of imprisonment, revocation of your driving privileges, and lost employment opportunities. Often, the results of a chemical test are the strongest evidence the State of Nebraska has against a defendant in a DUI or DUID prosecution. Though most people have heard of the infamous Breathalyzer, people rarely know how a breath test actually works



much less how blood or urine tests work. In the event you are ever stopped for DUI in Nebraska it may help to have a basic understanding of why chemical tests are used, how they work, and what the test results actually mean.

PORTABLE BREATH TESTS

Just a quick note as there is often a good deal of confusion with regard to portable breath tests. A law enforcement officer may use a portable breath test as part of the field sobriety tests administered during your stop. A portable breath test is essentially a smaller, less accurate, version of the traditional breath test machine used at the station or jail. The results of the portable breath test

may be used to establish probable cause for your arrest; however, the results are not admissible in court to prove your guilt.

IMPLIED CONSENT LAW

Like most states, Nebraska has an implied consent law of which you should be aware. In essence, the implied consent law states that if you operate a motor vehicle, or have a motor vehicle under your control, you have given your implied consent to submit to a chemical test to determine if alcohol or drugs are in your system. Despite this law you do have the right to refuse to consent to a chemical test; however, there are penalties associated with refusing including the suspension of your driving privileges. Moreover, your refusal to submit to a chemical test can be introduced at trial by the prosecution.

HOW A BREATH TEST WORKS



There are three types of chemical tests that can potentially be used to test for the presence of alcohol in your system – breath, blood, or urine. The breath test is, by far, the most commonly used type of chemical test because it is the least invasive and most readily available

test. When you ingest alcohol it is absorbed into your bloodstream. As the blood circulates through your body it passes through your lungs. Because alcohol is volatile, meaning it evaporates from a solution, when it passes through your

lungs the alcohol in your blood moves across the membranes of your lung's air sacs, (alveoli) into the air. This, in turn, means that the air you breathe out will have traces of alcohol on it if you have alcohol in your bloodstream. A breath test, therefore, tests for the presence of alcohol in your breath, measured as your "breath alcohol concentration", or BAC.

Though people use the generic term "Breathalyzer" when referring to a chemical breath test, "Datamaster CDM" is actually a brand name for a specific type of breath test. The Alcosensor is another type of breath test commonly used by law enforcement. The two types of breath tests use different methods of testing your breath; however, the basic procedure for the suspect is the same in all. You will be asked to place a tube in your mouth and blow into the device. The machine then "stores" your breath in a sample chamber for analysis. The sample is then tested as follows:

- **Datamaster CDM**-- the Datamaster uses infrared spectroscopy to test for the presence of alcohol in the sample breath. Essentially, this test looks at the way different molecules absorb infrared, or IR, light. The wavelengths of the bonds in ethanol are different than those of other substances, making it possible to identify the presence of alcohol in the breath. The extent to which the IR is absorbed then determines the BAC level.
- **Alcosensor**-- the Alcosensor III and IV use fuel cell technology to identify alcohol in a sample breath. The fuel cell has two platinum electrodes with a porous acid-electrolyte material between them. Alcohol passing through the fuel cell is oxidized, creating an electrical current. The stronger the electrical current is the higher the BAC level.

At present, breath test machines are limited in that they cannot detect the presence of a controlled substance in a suspect's breath. Therefore, breath tests are only used to check for the presence of alcohol; however, scientists are working on a new generation of breath tests that may be capable of detecting both alcohol and drugs in a suspect's breath in the near future.

WHEN IS A BLOOD TEST USED?



The most accurate way to check for the presence of anything in someone's system is through a blood test. Requiring a blood test, however, for every individual arrested for DUI or DUID would be impractical and cost prohibitive. Blood tests are, however, used when necessary. The most common reasons why a blood test would be ordered include:

- **Accident** –if the suspect was involved in an injury accident a blood test is often ordered because it is more accurate and will test for both drugs and alcohol. Law enforcement officers usually consider it to be worthwhile to go to the trouble of a blood test when someone was injured.

- **Unconscious suspect** –whether because of an accident or because of intoxication, if the suspect is unconscious, and therefore unable to perform a breath test, a blood test may be ordered.
- **Suspicion of intoxication by a controlled substance** –if an officer suspects intoxication but sees no signs of alcohol use a blood test may be ordered to specifically check for the presence of a controlled substance.
- **Medical reasons** –if a suspect is unable to perform a breath test because of a medical condition a blood test may be ordered.

WHEN IS A URINE TEST USED?

Urine tests are generally considered to be the least accurate of the three types of chemical tests; though they do offer the advantage of being able to detect drugs as well as alcohol. One reason for this is that a urine specimen represents a composite of your BAC level which is constantly changing. If you have not emptied your urine for a few hours, for example, the urine sample tested does not really provide a *current* BAC level. For this reason, you will typically be asked to provide two samples with the second one being taken about 20-30 minutes after voiding your bladder the first time. Because urine tests are considered to be the least accurate of all the chemical tests they are usually only given when a breath or blood test is unavailable.

ARE CHEMICAL TESTS ACCURATE?

As a defendant, the most important question is whether or not the results of a chemical test are accurate. As previously mentioned, blood tests are the most accurate ***when the test is performed and analyzed properly***. The accuracy

of any chemical test bears a direct relationship to the degree to which the test was properly administered and the results properly analyzed.

A breath test machine, for example, must be properly calibrated to work correctly. Results from a machine that has not been calibrated recently can be significantly skewed. Likewise, if the test operator fails to administer the test properly the results can be affected. The actual science behind the BAC level obtained from a breath test can also be called into question under certain circumstances. The “rising alcohol defense”, for example, may apply if you consumed alcohol just prior to driving. In this case, the test can show a higher BAC level than you actually had at the time you were operating your vehicle.

Blood and urine test results can be affected if the sample was tainted during transit or at the laboratory – something that does occur more often than law enforcement agencies would like to admit. Although a blood or urine test may show the presence of drugs in the bloodstream, the concentration of the drugs can become an issue because a sufficient concentration is needed for the prosecution to successfully argue that a defendant was “under the influence” at the time of the arrest.

In short, though chemical tests are capable of detecting the presence of drugs or alcohol in your system, none of the tests are foolproof nor are any of them 100 percent accurate. An experienced Nebraska DUI defense attorney may be able to successfully argue that the test results in your case fall short of accurately depicting the presence of alcohol or drugs in your system at the time of your arrest.

NOLO, [DUI and DWI Tests for Alcohol or Drugs: Are They Accurate?](#)

Nebraska Revised Statute, [60-6, 197](#)

Nebraska Revised Statute, [60-6, 196](#)

About the Author



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For almost two decades Nebraska attorney Thomas M. Petersen of Petersen Law Offices has been defending individuals charged with driving under the influence, or DUI. As a result of his dedication to defending his clients, Attorney Petersen was recently selected as one of the top 50 DUI attorneys in Nebraska. If you have been charged with an Omaha, Cass County, or Sarpy County, Nebraska, contact the Nebraska DUI team today by

calling 402-513-2180 or by filling out our online contact form for a free evaluation of your case.



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