

My name is Mike Nichols.

I make these comments and suggestions on my own behalf. For purposes of introduction, I have been practicing law for over 23 years. For the last 15 years I have devoted a substantial amount of my practice to the law and science of Operating While Intoxicated (OWI). I have taught as an adjunct professor of Forensic Science in Criminal Law as well as DUI Law and Practice at WMU Cooley Law School.

I am a member of the Criminal Defense Attorneys of Michigan and serve on the Rules and Laws Committee. I am the co-chair of the Task Force for Forensic Evidence for the National College for DUI Defense and I am a sustaining member of the NCDD and also a faculty member.

With respect to the proposed rules:

General:

- The rules should require that every instrument print the breath alcohol histogram and a flow chart with every subject sample. The point is to assess the flow rate and alcohol curve as a function of time of each and every subject sample. The instrument has this capability. It is vital in order to ascertain if the instrument accepted a sample of breath alcohol when the parameters of volume, flow rate and alcohol curve did not indicate a proper sample. This data also helps ascertain if some other interferent may have been present. Failing to provide this to individuals is tantamount to hiding evidence.

325.2653(2) and (3):

- It is not very clear to my reading, but the 120 calibration checks and weekly accuracy checks should be required whether an air blank is generated during the subject test sequence or not. We are 3 years removed from a complete failure of our breath alcohol measurement system because calibrations were purportedly completed in a fraudulent manner. If I read these proposed sub-rules correctly, a scenario under which no 120 day calibration inspections or weekly accuracy checks are required at all is permissible under these rules. That creates a very high risk of instrument failures without either law enforcement, tested subjects or the criminal justice community to realize an instrument is failing or unreliable.

325.2654:

- This sub-rule appears to be rescinded. It should not be rescinded because it requires that if an instrument is repaired, it must undergo a certification inspection and be verified for accuracy in accordance with a 120 day calibration inspection process.

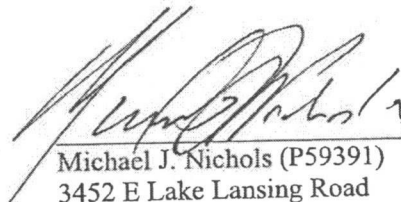
General

- Defense attorneys should have the right under the rules to inspect the instrument at the agency with an expert witness so long as the attorney and expert are accompanied by an employee of the police department. Please write this process into the rule.

Thank you for considering the above.

Date

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