

IN THE _____ COURT OF _____ (County), _____ (State)

(State of _____)

PLAINTIFF

V.

CAUSE NO. _____, _____

(Name of Defendant)

DEFENDANT

MOTION IN LIMINE TO EXCLUDE BREATHALYZER RESULTS

Comes now _____ (Name of Defendant), Defendant in the above-captioned cause, and respectfully moves that this Court exclude the breathalyzer results in this case, and as reasons therefore, Defendant would show the following:

1. The breathalyzer was not conducted within a "reasonable time" as required for the admission of a breath test. Specifically, **(specify regulation)** _____ states the following: **(this is a sample regulation)** _____

:

If after being advised of his or her rights in accordance with the provisions of **(operating under influence statute)** _____, a person arrested for operating under the influence of intoxicating liquor consents to submit to a breath test, he or she, as soon as reasonably possible, shall be taken to a facility with certified breath testing devices.

The regulations further provide that a test is inadmissible if not conducted pursuant to the procedures in the regulations. Defendant, who was stopped at _____ **(include time)**, was initially brought to the _____ **(name of police station)**, where he consented to a breathalyzer that was administered at _____ **(time of test)**. Due to a malfunction, the _____ **(name of police department)** was unable to administer a test. Defendant ultimately was not provided a test until _____ **(time of test)**.

2. The police report establishes that proper procedures were not employed to the extent that Defendant was not observed for _____ **(number of minutes required under regulations)** minutes prior to administering the breathalyzer test. Specifically, the police report not only fails to note this fact, but the timing demonstrates that the Defendant was tested immediately upon being transferred to the station.

3. In support of this Motion, Defendant relies on the attached affidavit of counsel and accompanying police report.

WHEREFORE, Defendant respectfully requests that the State be prohibited by Court order from disclosing to the jury, directly or indirectly, any evidence, argument or other assertion the results of breathalyzer test.

Witness my signature this the _____ (*date*).

Respectfully submitted,

(*Name of Defendant*)

By: _____
(*Name of Defendant's Attorney*)
State Bar No. _____
One of His Attorneys

OF COUNSEL:

(*Name of Defendant's Attorney*)

Post Office Box _____

City, State, Zip Code

Telephone: _____

Certificate of Service

This is to certify that I, _____ (*Name of Attorney*), attorney for Defendant _____ (*Name of Defendant*), have this date served a true and correct copy of the above and foregoing **Motion** by U.S. Mail, postage fully prepaid, to the following counsel of record for Plaintiff:

(*Name of Attorney*)
Post Office Box _____

City, State, Zip Code

This the _____ (*date*).

Respectfully Submitted,

(*Name of Attorney*)

State

Bar
Attorney

No.
for

Defendant

OF COUNSEL:

(Name of Defendant's Attorney)

Post Office Box _____

City, State, Zip Code

Telephone: _____

Notice of Motion In Limine

You are notified that on _____ **(date)**, at _____ **(time)**, or as soon thereafter as counsel can be heard, in Courtroom _____ of the _____ Court for _____ **(Name of County)**, _____ **(Name of State)**, at the _____ **(Name of County)** Courthouse at _____ **(street address, city, state, zip code)**, Defendant _____ **(Name of Defendant)**, by and through his attorney, will bring on for hearing his **Motion In Limine**.

Respectfully Submitted,

(Name of Attorney)

State Bar No.

Attorney for

Defendant

OF COUNSEL:

(Name of Defendant's Attorney)

Post Office Box _____

City, State, Zip Code

Telephone: _____