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An Ordinance to update and consolidate the law in relation to drink driving and drug driving.

PJM Squires OBE

ADMINISTRATOR

06 June 2024

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Short title and commencement

1.—(1) This Ordinance may be cited as the Road Safety (Alcohol and Drugs) Ordinance 2024.
(2) This Ordinance comes into force on 14th June 2024.

Interpretation

2.—(1) In this Ordinance—
“the 2006 Ordinance” means the Motor Vehicles and Road Traffic (Consolidation) Ordinance 2006(a);
“breath test” means a preliminary test of a specimen of breath, using a device of a type approved under section 14(a), to obtain an indication as to whether the person who gave the specimen is unfit to drive due to alcohol or whether the proportion of alcohol in the person’s breath is likely to exceed the prescribed limit;
“driving” includes riding, but does not include being a passenger;

(a) Ordinance 05/2006, amended by Ordinance 29/2006; there are other amending instruments but none is relevant.
“drug” means a controlled drug within the meaning of the Narcotic Drugs and Psychotropic Substances (Consolidation) Ordinance 2006(a);
“fail” includes refuse;
“hospital” means any institution, whether civil or military, which provides medical or surgical treatment;
“medical practitioner” means a practitioner within the meaning of the Medical Practitioners Ordinance 1964(b);
“motor vehicle” has the meaning given by section 2 of the 2006 Ordinance;
“police station” has the meaning given by section 2A of the Police (Detainees and Volunteers) Ordinance 2007(c);
“road” has the meaning given by section 2 of the 2006 Ordinance;
“saliva test” means a preliminary test of a specimen of saliva, using a device of a type approved under section 14(b), to obtain an indication as to whether the person who gave the specimen is unfit to drive due to a drug or has a drug in their body;
“specimen” means a quantity of breath, saliva, blood or urine (as the case may be) that is—
(a) sufficient to enable the test or analysis to be carried out, and
(b) provided in such a way as to enable the objective of that test or analysis to be satisfactorily achieved;
“vehicle” means a motor vehicle, pedal cycle, and any other means of human transport intended or adapted for use on a road.

(2) Subject to subsection (3), in this Ordinance, “prescribed limit” means—
(a) 22 micrograms of alcohol in 100 millilitres of a person’s breath;
(b) 50 milligrams of alcohol in 100 millilitres of a person’s blood;
(c) 67 milligrams of alcohol in 100 millilitres of a person’s urine.

(3) Where subsection (4) applies, “prescribed limit” means—
(a) 9 micrograms of alcohol in 100 millilitres of a person’s breath;
(b) 20 milligrams of alcohol in 100 millilitres of a person’s blood;
(c) 27 milligrams of alcohol in 100 millilitres of a person’s urine.

(4) This subsection applies in respect of—
(a) a person who is a recently qualified driver;
(b) a person who is a learner driver within the meaning of the Motor Vehicles and Road Traffic (Driver Licensing) Regulations 2009(d);
(c) a person who is driving, attempting to drive or in charge of—
   (i) a motor vehicle falling within category L1e to L7e of Schedule 1 to the Motor Vehicles and Road Traffic Regulations 2013(e),
   (ii) a motor vehicle falling within category M2, M3, N2 or N3 of Schedule 1 to the Motor Vehicles and Road Traffic Regulations 2013,
   (iii) a taxi within the meaning of the Motor Vehicles and Road Traffic Regulations 2013 whilst that person is on duty as a taxi driver, or
   (iv) a vehicle carrying dangerous goods within the meaning of section 2 of the Road Traffic (Dangerous Goods) Ordinance 2009(f).

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(a) Ordinance 16/2006, amended by P.I. 07/2017; there are other amending instruments but none is relevant.
(b) Ordinance 10/1964.
(c) Ordinance 03/2007. Section 2A was inserted by Ordinance 16/2016.
(e) P.I. 22/2013, to which there are amendments not relevant to this Ordinance.
(5) In subsection (4), “recently qualified driver” means a person who holds a driving licence within the meaning of the Motor Vehicles and Road Traffic (Driver Licensing) Regulations 2009, where—

(a) the licence is the first full driving licence held by that person in any jurisdiction, and
(b) the person has held the licence for under three years.

Application to the Crown

3.—(1) This Ordinance binds the Crown.
(2) No contravention by the Crown of a provision of this Ordinance makes the Crown criminally liable.
(3) Subsection (2) does not affect the criminal liability of persons in the service of the Crown.
(4) In this section, “the Crown” means the Crown in right of His Majesty’s Government of the United Kingdom and the Crown in right of His Majesty’s Administration of the Sovereign Base Areas.

Driving or being in charge of a vehicle while unfit to drive due to alcohol or a drug

4.—(1) A person who is unfit to drive due to alcohol or a drug, when driving or attempting to drive a vehicle on a road or other public place, is guilty of an offence.
(2) A person who is unfit to drive due to alcohol or a drug, when in charge of a vehicle on a road or other public place, is guilty of an offence.
(3) It is a defence for a person charged with an offence under subsection (2) to prove that at the time the offence is alleged to have been committed, the circumstances were such that there was no likelihood of the person driving the vehicle whilst they remained unfit to drive due to alcohol or a drug.
(4) The court may, in determining whether there was such a likelihood as is mentioned in subsection (3) above, disregard any injury to the person and any damage to the vehicle.
(5) For the purposes of this section, a person shall be taken to be unfit to drive if that person’s ability to drive properly is for the time being impaired.
(6) A police officer may arrest a person without warrant if the officer has reasonable grounds to suspect that the person is or has been committing an offence under this section.

Driving or being in charge of a vehicle with alcohol concentration above the prescribed limit

5.—(1) A person who—
(a) drives or attempts to drive a vehicle on a road or other public place, or
(b) is in charge of a vehicle on a road or other public place, after consuming so much alcohol that the proportion of it in their breath, blood or urine exceeds the prescribed limit, is guilty of an offence.
(2) It is a defence for a person charged with an offence under subsection (1)(b) to prove that at the time the offence is alleged to have been committed, the circumstances were such that there was no likelihood of the person driving the vehicle whilst the proportion of alcohol in their breath, blood or urine remained likely to exceed the prescribed limit.
(3) The court may, in determining whether there was such a likelihood as is mentioned in subsection (2) above, disregard any injury to the person and any damage to the vehicle.

Driving or being in charge of a vehicle with a drug in body

6.—(1) A person who has a drug in their body is guilty of an offence if they—
(a) drive or attempt to drive a vehicle on a road or other public place, or
(b) are in charge of a vehicle on a road or other public place.
(2) It is a defence for a person charged with an offence under this section to prove that—
   (a) the drug was prescribed or supplied to the person for medical or dental purposes,
   (b) the person took the drug in accordance with any directions given by the person by whom
       the drug was prescribed or supplied,
   (c) the person took the drug in accordance with any accompanying instructions given by the
       manufacturer or distributor of the drug (so far as consistent with any directions given under
       paragraph (b)), and
   (d) the person’s possession of the drug immediately before taking it was lawful, in accordance
       with the Narcotic Drugs and Psychotropic Substances (Consolidation) Ordinance 2006 and
       the Narcotic Drugs Regulations 1971(a).

(3) The defence in subsection (2) is not available if the person’s actions were—
   (a) contrary to any advice given by the person by whom the drug was prescribed or supplied
       about the amount of time that should elapse between taking the drug and driving a vehicle,
       or
   (b) contrary to any accompanying instructions about that matter (so far as consistent with any
       advice given under paragraph (a)) given by the manufacturer or distributor of the drug.

(4) It is a defence for a person charged with an offence under subsection (1)(b) to prove that at the
    time the offence is alleged to have been committed, the circumstances were such that there was no
    likelihood of the person driving the vehicle whilst the drug remained in their body.

(5) The Court may, in determining whether there was such a likelihood as is mentioned in
    subsection (4) above, disregard any injury to the person and any damage to the vehicle.

Preliminary breath or saliva test

7.—(1) Subject to section 10 of this Ordinance, a police officer may require the provision of a
    specimen in accordance with subsection (2) where that officer has reasonable grounds to suspect—
    (a) that a person driving, attempting to drive or in charge of a vehicle on a road or other public
        place has alcohol or a drug in their body;
    (b) that a person driving, attempting to drive or in charge of a vehicle on a road or other public
        place committed a road traffic offence whilst the vehicle was in motion;
    (c) that a person has been driving, attempting to drive or in charge of a vehicle on a road or
        other public place with alcohol or a drug in their body, and that person still has alcohol or
        a drug in their body;
    (d) that a person has been driving, attempting to drive or in charge of a vehicle on a road or
        other public place, and has committed a road traffic offence whilst the vehicle was in
        motion.

(2) The specimen that the police officer may require is—
    (a) if the suspicion relates to the person having alcohol in their body, a specimen of breath for
        a breath test;
    (b) if the suspicion relates to the person having a drug in their body, a specimen of saliva for
        a saliva test;
    (c) if the suspicion relates to the person having committed a road traffic offence, either a
        specimen of breath for a breath test or a specimen of saliva for a saliva test.

(3) If an accident occurs owing to the presence of a vehicle on a road or other public place, a
    police officer may, subject to section 10 of this Ordinance, require any person whom the officer has
    reasonable grounds to believe was driving or attempting to drive the vehicle at the time of the
    accident to provide a specimen of breath for a breath test or a specimen of saliva for a saliva test.

(4) Where a person is required to provide a specimen of breath for a breath test under subsection
    (1) or (3) above, the specimen must be provided either at or near the place where the requirement is

(a) P.I. 01/1971.
made or, if the requirement is made under subsection (3) above and the police officer making the requirement thinks fit, at a police station specified by the officer.

(5) Where a person is required to provide a specimen of saliva for a saliva test under subsection (1) or (3) above, the specimen must be provided either at or near the place where the requirement is made or, if the police officer making the requirement thinks fit, at a police station specified by the officer.

(6) A person who, without reasonable excuse, fails to provide a specimen of breath or saliva when required to do so under this section, is guilty of an offence.

(7) A police officer may arrest a person without warrant if—

(a) as a result of a breath test the police officer has reasonable grounds to suspect that the person is unfit to drive due to alcohol or that the proportion of alcohol in that person’s breath, blood or urine exceeds the prescribed limit,

(b) as a result of a saliva test the police officer has reasonable grounds to suspect that the person is unfit to drive due to a drug or that the person has a drug in their body,

(c) that person has failed to provide a specimen of breath for a breath test when required to do so under this section and the police officer has reasonable grounds to suspect that the person has alcohol in their body, or

(d) that person has failed to provide a specimen of saliva for a saliva test when required to do so under this section and the police officer has reasonable grounds to suspect that the person has a drug in their body,

but a person must not be arrested under the provisions of this subsection when the person is at a hospital as a patient.

(8) A police officer may arrest a person without warrant where—

(a) the person has provided a specimen of saliva for a saliva test,

(b) the indication from the saliva test is that the person does not have a drug in their body, and

(c) the police officer has reasonable grounds to suspect that—

(i) the person has a drug in their body,

(ii) the reason for the indication from the saliva test is that the drug the person has in their body cannot be detected by the test, and

(iii) a laboratory test would be able to detect that drug, if in the person’s body,

but a person must not be arrested under the provisions of this subsection when the person is at a hospital as a patient.

(9) A police officer must, on requiring a person to provide a specimen under this section, warn the person that a failure to provide it without reasonable excuse is an offence.

Provision of specimens for analysis

8.—(1) In the course of an investigation into whether a person has committed an offence under sections 4, 5 or 6 of this Ordinance, a police officer may, subject to section 10 of this Ordinance, require the person—

(a) if the suspected offence relates to alcohol—

(i) to provide two specimens of breath for analysis by means of a device of a type approved under section 14(c), or

(ii) to provide a specimen of blood or urine for a laboratory test;

(b) if the suspected offence relates to a drug, to provide a specimen of saliva, blood or urine for a laboratory test.

(2) A requirement under this section to provide specimens of breath can only be made at a police station.
(3) A requirement under this section to provide a specimen of blood or urine can only be made at a hospital or a police station, and may only be made at a police station if one of the conditions in subsection (4) is satisfied.

(4) The conditions in this subsection are—

(a) the police officer making the requirement has reasonable grounds to believe that for medical reasons, a specimen of breath cannot be provided or should not be required;

(b) at the time the requirement is made, a device or a reliable device of a type approved under section 14(c) is not available at the police station;

(c) at the time the requirement is made, it is not practicable to use a device or a reliable device of a type approved under section 14(c) at the police station;

(d) a device of a type approved under section 14(c) has been used at the police station, but the police officer who required the specimens of breath has reasonable grounds for believing that the device has not produced a reliable indication of the presence or proportion of alcohol in the breath of the person concerned;

(e) the suspected offence is under section 4 or 6 of this Ordinance and the police officer making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to a drug.

(5) Where a requirement to provide a specimen of blood or urine at the police station is to be made in accordance with subsections (3) and (4), it may be made notwithstanding that the person required to provide the specimen has already provided or been required to provide two specimens of breath under subsection (1)(a)(i).

(6) If the provision of a specimen of blood or urine may be required under this section, the question of whether it is to be a specimen of blood or a specimen of urine is to be decided by the police officer making the requirement, but if the medical practitioner is of the opinion that for medical reasons a specimen of breath cannot or should not be taken, the requirement must be for a specimen of urine.

(7) A specimen of urine must be provided within one hour of the making of the requirement for its provision.

(8) A person who, without reasonable excuse, fails to provide a specimen when required to do so under this section, is guilty of an offence.

(9) A police officer must, on requiring a person to provide a specimen under this section, warn the person that a failure to provide it without reasonable excuse is an offence.

**Breath specimen showing higher alcohol level to be disregarded**

9. Of any two specimens of breath provided by a person under section 8 of this Ordinance, the specimen with the higher proportion of alcohol in the breath must be disregarded.

**Protection of persons under hospital treatment**

10.—(1) A person who is at a hospital as a patient must not be required to provide a specimen of breath for a breath test or to provide a specimen for a laboratory test unless the medical practitioner in immediate charge of the person’s case has been notified of the proposal to make the requirement.

(2) If the medical practitioner objects on a ground specified in subsection (3), the requirement must not be made.

(3) The grounds on which the medical practitioner may object are that—

(a) the requirement,

(b) the provision of the specimen, or

(c) the warning required under section 7(9) or 8(9) of this Ordinance, would be prejudicial to the proper care and treatment of the patient.

(4) If the requirement is made, it must be for the provision of a specimen at the hospital.
Detention of persons affected by alcohol or a drug

11.—(1) A person required to provide a specimen under this Ordinance (including a person who has been required to provide a specimen and failed to do so) may afterwards be detained at a police station while a police officer has reasonable grounds to believe that, were that person to drive or attempt to drive a vehicle on a road, the person would be committing an offence under section 4, 5 or 6.

(2) But a person must not be detained under this section if it ought reasonably to appear to the police officer that there is no likelihood of the person driving or attempting to drive a vehicle whilst—

(a) the person’s ability to drive properly is impaired,
(b) the proportion of alcohol in the person’s breath, blood or urine exceeds the prescribed limit, or
(c) the person has a drug in their body.

(3) A police officer must consult a medical practitioner on any question arising under this section as to whether a person’s ability to drive properly is or might be impaired due to a drug and must act on the medical practitioner’s advice.

Use of specimens in proceedings for offences under sections 4, 5 and 6

12.—(1) Evidence of the proportion of alcohol or any drug in a specimen of breath, saliva, blood or urine provided by the accused person must, in all cases (including cases where the specimen was not provided in connection with the alleged offence), be taken into account.

(2) It must be assumed that the proportion of alcohol or a drug in a specimen of breath, saliva, blood or urine provided by the accused person was, at the time of the alleged offence, not less than in the specimen.

(3) Where the alleged offence relates to alcohol, the assumption in subsection (2) must not be made if the accused person proves—

(a) that the person consumed alcohol before providing the specimen and after ceasing to drive, attempting to drive or being in charge of a vehicle on a road or other public place, and
(b) that had the person not consumed alcohol as laid out in paragraph (a)—

(i) where the alleged offence is under section 4, the person’s ability to drive properly would not have been impaired;
(ii) where the alleged offence is under section 5, the proportion of alcohol in the person’s breath, blood or urine would not have exceeded the prescribed limit.

(4) Where the alleged offence relates to a drug, the assumption in subsection (2) must not be made if the accused person proves—

(a) that the person took a drug before providing the specimen and after ceasing to drive, attempting to drive or being in charge of a vehicle on a road or other public place, and
(b) that had the person not taken a drug as laid out in paragraph (a)—

(i) where the alleged offence is under section 4, the person’s ability to drive properly would not have been impaired;
(ii) where the alleged offence is under section 6, the person would not have had a drug in their body.

(5) A specimen of blood shall be disregarded unless it was taken by a medical practitioner, with the accused person’s consent.

(6) Where, at the time a specimen of saliva, blood or urine was taken from an accused person, that person asked to be provided with such a specimen, evidence of the presence of alcohol or a drug in the specimen is not admissible on behalf of the prosecution unless—

(a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused person was divided at the time it was provided, and
(b) the other part was supplied to the accused person or the accused person refused to accept the other part.

Documentary evidence as to specimens for use in proceedings under sections 4, 5 and 6

13.—(1) Evidence of the presence or proportion of alcohol or a drug in a specimen of breath, saliva, blood or urine may be given by the production of (as appropriate)—

(a) a statement automatically produced by a device of a type approved under section 14(c) and a certificate signed by a police officer (which may, but need not, be contained in the same document as the statement) that the statement relates to a specimen provided by the accused person at the date and time shown in the statement;

(b) a certificate signed by an authorised analyst as to the presence or proportion of alcohol or any drug found in a specimen of saliva, blood or urine identified in the certificate.

(2) Evidence that a specimen of blood was taken by a medical practitioner with the consent of the accused person may be given by the production of a certificate signed by a medical practitioner.

(3) A statement or certificate (or document containing both a statement and certificate) under subsection (1)(a) is only admissible in evidence on behalf of the prosecution under this section if a copy of it—

(a) was handed to the accused person when the document was produced, or

(b) is served on the accused person not later than seven days before the hearing.

(4) A certificate under subsection (1)(b) or (2) is only admissible in evidence on behalf of the prosecution under this section if a copy of it is served on the accused person not later than seven days before the hearing.

(5) But a certificate is not admissible in evidence on behalf of the prosecution under this section if the accused person serves notice on the prosecutor requiring the attendance at the hearing of the person who signed the certificate, within the time limit mentioned in subsection (6).

(6) Notice must be served under subsection (5) not later than three days before the hearing, or within such further time as the court may in special circumstances allow.

(7) In this section—

“authorised analyst” means—

(a) any person authorised by the Administrator to certify analyses for the purposes of this Ordinance, or

(b) any person holding an appointment as an analyst (by whatever name called) in the public service of the United Kingdom or the Republic of Cyprus, who is authorised by a public body to certify analyses relating to alcohol or drugs in specimens;

“statement” means an indication of the quantity or proportion of alcohol in a specimen of breath, printed on paper or other material.

Type approval of devices

14. The Administrator may, by notice published in the Gazette, approve types of devices for—

(a) conducting breath tests under section 7;

(b) conducting saliva tests under section 7;

(c) analysing specimens of breath under section 8.

Offences and penalties

15.—(1) A person who commits an offence under the provisions of this Ordinance is liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding €5,000 (or to both).
(2) Where a person is convicted of an offence under this Ordinance arising from that person’s driving, attempting to drive or being in charge of a motor vehicle, the court’s power to disqualify under section 21(1) of the 2006 Ordinance is modified such that the court must disqualify the person from holding or obtaining a driving licence for a period of twelve months from the date of the conviction, unless the court for special reasons thinks fit to order otherwise.

(3) Subsection (2) does not limit the power of the court to order a period of disqualification of longer than twelve months if it thinks fit.

(4) In subsection (2), “special reasons” means reasons or circumstances which are, in the opinion of the court trying the offence, special to the offence or to the offender.

(5) Section 21(3) and (4) of the 2006 Ordinance apply in respect of offences under this Ordinance arising from the defendant’s driving, attempting to drive or being in charge of a motor vehicle as they apply in respect of offences under the 2006 Ordinance or Regulations made under it.

(6) See section 32 of the 2006 Ordinance for the court’s power to impose penalty points in respect of offences under this Ordinance.

Consequential amendments

16.—(1) For Part 2 of the Schedule to the 2006 Ordinance, substitute the table following this subsection.

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<th>Part 2</th>
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<tbody>
<tr>
<td>Offences under the Road Safety (Alcohol and Drugs) Ordinance 2024</td>
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<table>
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<tr>
<td>4. Driving, attempting to drive or being in charge of a vehicle with alcohol concentration above the prescribed limit</td>
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<td>4A. Driving, attempting to drive or being in charge of a vehicle with a drug in body</td>
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<td>5. Failure, without reasonable excuse, to provide a specimen of breath, saliva, blood or urine</td>
<td>Section 7 or 8</td>
<td>1</td>
</tr>
</tbody>
</table>

(2) In section 19(12) of the Police Ordinance 2007(a), for “Drinking and Driving Ordinance 1993 (b)” substitute “Road Safety (Alcohol and Drugs) Ordinance 2024”.

Repeals and revocations

17.—(1) The following Ordinances are repealed—

(a) the Drinking and Driving Ordinance 1993(b);
(b) the Drinking and Driving (Amendment) (No. 1) Ordinance 1993(c);
(c) the Drinking and Driving (Amendment) Ordinance 1995(d);
(d) the Drinking and Driving (Amendment) Ordinance 1998(e);
(e) the Drinking and Driving (Amendment) Ordinance 1999(f);

(a) Ordinance 06/2007. Section 19 was repealed and replaced by Ordinance 01/2011.
(b) Ordinance 06/1993.
(c) Ordinance 11/1993.
(d) Ordinance 10/1995.
(e) Ordinance 08/1998.
(f) Ordinance 28/1999.
(f) the Drinking and Driving (Amendment of Prescribed Limit) Ordinance 2006(a);
(g) the Drinking and Driving (Amendment) Ordinance 2012(b);
(h) the Drinking and Driving (Amendment) Ordinance 2015(c);
(i) the Drinking and Driving (Amendment) Ordinance 2022(d).

(2) The following public instruments are revoked—

(a) the Motor Vehicles and Road Traffic Ordinance 1973: Authorisation under section 7A(7)(e);
(b) the Drinking and Driving Ordinance 1993: Declaration made under section 2(f).

(a) Ordinance 06/2006.
(b) Ordinance 33/2012.
(c) Ordinance 09/2015.
(d) Ordinance 06/2022.
(e) P.I. 15/1990.
EXPLANATORY NOTE
(This note is not part of the Ordinance)

1. This explanatory note relates to the Road Safety (Alcohol and Drugs) Ordinance 2024 (“the Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. This note should be read in conjunction with the Ordinance. It is not, and is not meant to be, a comprehensive description of the Ordinance.

3. The Ordinance partially replicates Parts II and IIA of the Republic’s Road Safety Law (Law 174/1986). The Ordinance repeals and replaces the Drinking and Driving Ordinance 1993 (“the 1993 Ordinance”). It consolidates the amendments made to the 1993 Ordinance and modernises the language used, as well as inserting new substantive provisions. The main changes are set out below.

4. The Ordinance creates a new offence of driving with a controlled drug in one’s body, in section 6. There is a defence where the drug was lawfully prescribed or supplied and taken in accordance with instructions. Similar offences exist in both England and Wales and Republic of Cyprus law, reflecting the difficulty of proving that a person is ‘unfit to drive’ due to drugs.

5. Section 7(8) of the Ordinance contains a new provision to permit a police officer to arrest a person without warrant where a preliminary saliva test is negative but there are nonetheless reasonable grounds to suspect that the person has a drug in their body and that a laboratory test could detect such a drug. This is aimed at situations where the saliva test is not able to detect certain drugs, particularly synthetic drugs.