

GENERAL ORDER



DISTRICT OF COLUMBIA

Title		
Handling Cases Involving Persons Suspected of “Driving While Intoxicated” and/or “Driving While Under the Influence” (DUI and/or DWI)		
Topic	Series	Number
PCA	502	02
Effective Date		
August 26, 2015		
Replaces: General Order 502.2 (Handling Cases Involving Persons Suspected of “Driving While Intoxicated” (<i>per se</i>) or “Operating While Under the Influence”), Effective Date June 1, 2015		
Related to: General Order 303.03 (Tow Crane Operation and Enforcement) General Order 308.03 (Traffic Safety Compliance Checkpoints) General Order 308.12 (Diplomats, Foreign Nationals and Resident Aliens)		

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I. BACKGROUND

The problem of impaired driving is a national one, and is a problem here in the District of Columbia. Statistically, 35% of drivers involved in fatal crashes had a blood alcohol level of .08 or greater. This number does not take into account drivers who were impaired by drugs or by both alcohol and drugs. The problem of impaired driving becomes particularly acute at night, and the presence of impaired drivers increases on the weekends. While the research shows the problem of alcohol related fatalities is dropping, there is still a significant problem, and one that members will encounter while enforcing traffic laws and investigating crashes. (NHTSA, 2010 Drunk Driving Fatality Study).

Members who encounter drivers who display symptoms of impairment by alcohol, drugs (illegal, prescription, or over the counter), inhalants, other chemicals or a combination of them must be prepared to conduct or have conducted the proper

tests to determine if there is probable cause for an arrest and additional chemical testing. An arrest should be made if probable cause of impairment is established. The purpose of this order is to provide members with the procedures for investigating cases of suspected impaired driving.

II. POLICY

It is the policy of the Metropolitan Police Department (MPD) to investigate and arrest all persons driving while intoxicated (*per se*) or operating a motor vehicle while under the influence of intoxicating liquor and/or drugs in the District of Columbia.

III. DEFINITIONS

1. Alveolar Air – Respiratory gases in an alveolus of the lung. Alveolar air can be analyzed for its content of oxygen, carbon dioxide, or other gases by collecting the last portion of air expelled by maximum exhalation.
2. Blood Alcohol Content (BAC) – Concentration of alcohol contained in 100 milliliters of a person's blood.
3. Breath Alcohol Content (BrAC) – Concentration of alcohol contained in 210 liters of breath as measured in a person's breath sample consisting of substantially alveolar air.
4. Breath Test Admissibility Notice (PD Form 29b) – Notice pursuant to D.C. Code § 50-2206.52b advising an arrestee in writing that the breath test results are admissible in court.
5. Certified Breath Test Instrument (Intoximeter EC/IR II) – Certified evidentiary breath analyzer that detects and analyzes alcohol in the breath. The results from this test may be admissible as evidence in court.
6. Driving While Intoxicated – Operating or being in physical control of a vehicle with an alcohol concentration of:
 - a. 0.08 grams or more per 100 milliliters of blood;
 - b. 0.08 grams or more per 210 liters of breath; or
 - c. 0.10 grams or more per 100 milliliters of urine.
 - d. Any amount for a person under 21.
 - e. For individuals operating a commercial vehicle/vehicle for hire:

- (1) 0.04 grams or more per 100 milliliters of blood;
 - (2) 0.04 grams or more per 210 liters of breath; or
 - (3) 0.08 grams or more per 100 milliliters of urine
7. Driving Under the Influence (DUI) – Operating or being in physical control of a vehicle when impaired by alcohol to a degree that can be perceived or noticed or by drugs.
 8. Drug Recognition Expert (DRE) – Members who are specially trained to conduct evaluations of suspected drug-impaired subjects. DREs use a standardized twelve (12) step evaluation procedure to determine whether an individual is impaired by drugs other than alcohol.
 9. Member – Sworn or civilian MPD employee or MPD Reserve Corps member.
 10. Standardized Field Sobriety Tests (SFST) – Battery of scientifically validated tests, administered by **trained** members only, which are designed to evaluate an impaired driver's ability to comprehend instructions, ability to divide attention, and physical coordination and to assist in the determination whether the driver is impaired by alcohol, drugs, or a combination thereof. The tests aid in establishing probable cause to proceed further in a DUI and/or DWI investigation. The results are admissible as evidence in a DUI case.
 11. Urine Alcohol Content (UAC) – Concentration of alcohol contained in 100 milliliters of a sample of a person's urine.

IV. REGULATIONS

A. Implied Consent Act

D.C. Implied Consent Act provides that any person who operates a motor vehicle in the District of Columbia shall be deemed to have given his/her consent to testing two (2) specimens of his/her blood or breath or urine for the purpose of determining blood-alcohol and/or blood-drug content.

1. A single specimen may be comprised of multiple breaths into an instrument to complete a valid breath test, or a single blood draw or urine sample regardless of how many times the blood or urine sample is tested.
2. Tests administered under the Implied Consent Act shall be at the direction of a sworn member who has reasonable suspicion to believe the person was operating, or in physical control of, a motor vehicle

while intoxicated, or under the influence of intoxicating liquor and/or drugs.

3. In cases of DWI or DUI arrests involving motor vehicle crashes, testing is mandatory under the Implied Consent Act. Therefore, obtaining the consent of the arrestee is not necessary.
4. In addition to submitting up to two (2) specimens for testing administered at the direction of the member, the arrestee may also request, at his/her expense, testing by a physician, registered nurse, or other person of his/her own choosing who is qualified to administer such test(s). The arrestee's failure or inability to obtain additional tests shall not preclude tests administered at the direction of the member, as required under the Implied Consent Act.
5. When the arrestee is unconscious, or in a condition rendering him/her incapable of refusing, the arrestee shall be deemed not to have withdrawn the consent, and the tests may be administered.
 - a. If a previously unconscious arrestee objects post-arrest to the test results on valid religious or medical grounds, D.C. Official Code provides that the evidence is inadmissible, and the case shall be prosecuted as a refusal.
 - b. However, the physical specimens are still potential evidence, and shall be handled in accordance with General Order 601.1 (Recording, Handling, and Disposition of Property Coming into the Custody of the Department).
6. Refusal to Consent
 - a. If the person refuses a particular test on medical or religious grounds, members should offer to administer a different test. If the person still refuses, members shall document this in the DUI Arrest Report in the MPD Records Management System (RMS).
 - b. When possible, members should attempt to ascertain if this is the defendant's first arrest (anywhere) for impaired driving, as a refusal to submit to chemical testing by a person who has had a previous impaired driving offense can be used as "Rebuttable presumption" under D.C. law.
 - c. Members shall document in the narrative section of the DUI Arrest Report and the Gerstein the refusal and the nature of the refusal (reason given for refusing or if the defendant consistently failed to provide a sufficient sample of breath or urine).

7. Document all the pertinent details regarding the signs of impairment, and any pertinent facts, such as the presence of controlled substances, or other evidence in the DUI Arrest Report..
- B. Trained members shall follow the operator's instruction manual of the Certified Breath Test Instrument.
- C. Minors Being Transported by Impaired Drivers

Members making an arrest for DUI/DWI that involves a person under the age of eighteen (18) in the vehicle shall document in the DUI Arrest Report and the Gerstein:

1. Each minor's age;
 2. Each minor's location in the vehicle;
 3. The type of child restraint used by each minor, and if none, that none was used; and
 4. How the age of each minor was determined.
- D. Impaired Drivers of Commercial Vehicles and/or Vehicles for Hire

Members stopping persons operating a commercial vehicle (e.g., tractor trailers, charter buses, cement truck) or a vehicle for hire (e.g., taxi-cab, pedi-cab, limousine, or bus) and determine the operator is impaired shall:

1. Charge the operator with Driving While Intoxicated (DWI) if they have an alcohol concentration of 0.04 grams or more of either 100 milliliters of blood or 210 liters of breath, or 0.08 grams or more of 100 milliliters of urine.
2. Document in the DUI Arrest Report the commercial driver's license (CDL) number, Department of Transportation (DOT) number, type of commercial vehicle or vehicle for hire, and any gross weight signs or hazmat placards on the vehicle or notations on the registration.
3. Document all the pertinent details regarding the signs of impairment, and any pertinent facts, such as the presence of controlled substances, or other evidence in the narrative of the DUI Arrest Report.

V. PROCEDURES

A. DUI/DWI- Traffic Stops or Crashes

1. Members shall establish that the person was either operating, or was in physical control of, the vehicle while under the influence of alcohol and/or drugs to include cases where the operator was behind the wheel, with the vehicle parked, and with the keys in the ignition, and/or the engine running).
 - a. This can be substantiated by a witness, or by a member who saw the person operate or be in physical control of the vehicle.
 - b. Member and witness testimony may also be used as evidence of the sobriety or degree of impairment of the operator, in order to charge with DUI and/or DWI.
2. If the driver appears to be suffering from a physical or medical emergency or condition that requires immediate medical attention, the member shall:
 - a. Immediately notify an on-duty official and request D.C. Fire and Emergency Medical Services to respond to the scene.
 - b. Render prompt assistance, taking any action as may be necessary.
 - c. Permit the arrestee to receive any necessary medical attention, and document in the DUI Arrest Report any medication administered to the arrestee and whether blood was drawn or urine was taken.
3. Members investigating crashes, in which a suspected impaired driver has been transported to a hospital, shall:
 - a. If they are trained, attempt to conduct the horizontal gaze nystagmus (HGN) SFST on the operator in accordance with this order;
 - b. If they are not trained, request that an SFST trained member respond to the hospital to determine what tests may be performed.
 - c. Upon reasonable suspicion that the operator is impaired, place him/her under arrest;

- d. Request that a blood sample be drawn or if hospital refuses urine specimen taken and ensure they have informed the operator under the Implied Consent law. MPD will work with the Office of the Attorney General to issue subpoenas to hospitals in cases of refusal.

NOTE: Districts have a supply of NIK blood evidentiary kits. In the event NIK kits are not readily available and hospital tubes are utilized, request that medical personnel refrain from using alcohol wipes to clean the injection site.

4. After the member establishes reasonable suspicion of the driver's impairment, the member shall:
 - a. If trained, administer the SFSTs to the driver; or
 - b. Request through the Office of Unified Communications (OUC) the assistance of an SFST trained member at his/her location.

NOTE: Drivers may refuse to participate in the SFSTs.

5. If a SFST trained member from the member's district is not available the member shall request through OUC that a SFST trained member respond from another district.
6. If probable cause is not established, members shall release the driver from custody after the applicable PD Form 61Ds and/or NOIs have been issued, in accordance with Standard Operating Procedures, entitled PD Form 61D (Violation Citation) and/or General Order 303.02 (Notices of Infraction Procedures), which led to the traffic stop.
7. If the member has probable cause to believe that the impairment is caused by a substance other than alcohol, and has established probable cause that the operator is impaired, (through observation's SFSTs, and other evidence such as chemical odors, and/or the presence of drug paraphernalia/prescription bottles) he/she shall:
 - a. Arrest the driver and:
 - (1) Transport the arrestee to a police facility;
 - (2) Read the Implied Consent Act to the arrestee;
 - (3) Have the arrestee provide a breath sample. If the breath sample indicates a low concentration of alcohol inconsistent with the level or type of impairment observed, then collect a urine or blood sample; and

- (4) Document in the DUI Arrest Report all of the pertinent facts that were indicative of impairment.
 - b. Advise the driver of his/her Miranda rights.
 - c. **If the driver waives his/her rights**, request through the Office of Unified Communications (OUC), that a Drug Recognition Expert (DRE) respond and assist with further testing.
 - (1) If no MPD DREs are available, the member may inquire, through OUC, with the United States Capitol Police (USCP) or the United States Park Police (USPP) as to the availability of a DRE.
 - (2) In the event that no DREs are available, the member shall document in the DUI Arrest Report all the observations and facts that lead the member to suspect that a substance other than alcohol was causing the impairment.
8. If probable cause is established that the driver is impaired and unable to operate a motor vehicle safely, then the member shall:
 - a. Arrest the driver.
 - b. Advise the driver of his/her rights under the D.C. Implied Consent Act by reading and having the driver sign PD Form 29 (Implied Consent Form).
 - c. If the arrestee refuses to submit to the mandatory testing, and/or to sign the PD Form 29, the member shall inform the driver that failure to submit to such tests will result in the revocation of his/her DC license or privilege to drive in the District of Columbia if the person is a nonresident.
 - (1) Should the arrestee consent to a test, but refuse to sign the PD Form 29, the member shall ensure the refusal to sign is witnessed (as explained on the form), and enter "Refused" in #5 of the "Advised" section of the form.
 - (2) If the driver still refuses to submit to testing no test shall be administered and the member shall:
 - (a) Document the refusal on the PD Form 29; and
 - (b) Charge the driver with DUI Refusal.

- d. After the driver signs the PD Form 29, obtain a blood; breath; or urine sample from the driver.

NOTE: Blood, breath, or urine specimens shall not be obtained until the driver has been arrested and has signed the PD Form 29.

B. Obtaining Breath Specimens Required by the Implied Consent Act

1. The arresting member shall transport the arrestee to the nearest police facility, or contact one of the mobile alcohol test vans, through the dispatcher, to ensure the tests are administered by a trained member using a Certified Breath Test Instrument.
2. Prior to the administration of the test, the member:
 - a. Shall provide the arrestee with a written copy of the PD Form 29B (Breath Test Admissibility Notice).
 - b. Shall **not** permit the suspected impaired driver to put anything in his/her mouth including, but not limited to, alcohol, mouthwash, breath deodorants, chewing gum, unnecessary medicine, or to use tobacco for a minimum of twenty (20) minutes prior to testing.
3. **In cases where a suspect's results reveal a BrAC at a level of .35 or higher, immediate medical attention shall be summoned and the watch commander notified.**
4. If the results of the test indicate a BrAC of .05 percent or more and less than .08 percent, the member shall proceed with a DUI arrest.
5. If the result of the breath test is at or above .08 percent BrAC (per se) then the member shall proceed with a DWI arrest.
6. If the driver is under twenty-one (21) years of age and the breath test shows any amount of alcohol, the member shall proceed with a DUI/DWI arrest.
7. When the test indicates a BrAC of less than .05, the arresting member shall obtain a blood sample or a urine sample in accordance with this order to determine if the impairment is caused by a substance other than alcohol.

8. **If the driver waives his/her rights**, request through the Office of Unified Communications (OUC), that a DRE respond and assist with further testing.
 - a. If no MPD DREs are available, the member may inquire, through OUC, with the United States Capitol Police (USCP) of the United States Park Police (USPP) as to the availability of a DRE.
 - b. In the event that no DREs are available, the member shall document in the DUI Arrest Report all the observations and facts that lead the member to suspect that a substance other than alcohol was causing the impairment.
- C. Obtaining Blood Specimens Required by the Implied Consent Act
 1. **In the case of blood and urine, it is imperative that members identify the persons having contact with the sample in the chain of custody.**
 2. The arresting member shall request a medical professional (i.e., physician, registered nurse, licensed practical nurse or any other person who is trained to draw blood, such as a phlebotomist) to obtain a blood specimen for the purpose of determining alcohol or drug content.
 3. If the medical professional refuses the request:
 - a. The arresting member shall inform the medical professional that in accordance with D.C. Law, they are immune from any criminal or civil liability when drawing blood at the direction of a police officer who has reason to believe an operator is impaired.
 - b. If the medical professional still refuses the request:
 - (1) The arresting member shall document the refusal in the DUI Arrest Report , and continue with the processing of the arrest by obtaining alternative breath or urine specimens.
 - (2) The member shall then notify his/her supervisor and request that the Watch Commander call the medical facility and request to speak to the on-call hospital administrator.

NOTE: Refusal on the part of the health care provider to obtain the blood specimen does not constitute refusal by the arrestee

to submit to the tests as required under the Implied Consent Act.

4. Members shall store blood samples in the Patrol District's DUI refrigerator to then be delivered to the Office of the Chief Medical Examiner (OCME) by a member of the Impaired Driver Support Unit.

D. Obtaining Urine Specimens Required by the Implied Consent Act

1. **In the case of blood and urine, it is imperative that members identify the persons having contact with the sample in the chain of custody.**
2. **Only members of the same sex** as the arrestee shall obtain urine specimens.
3. Members shall escort the arrestee to a restroom within the prisoner processing area, provide the arrestee with a specimen bottle, and witness the actual urine collection.
4. When a sufficient amount of urine has been obtained (i.e., the specimen bottle at least half-filled), the member shall tightly secure the cap of the bottle. The bottle shall be sealed and provided to the arresting member.
5. The arresting member shall affix a plain-gummed label on the bottle that contains the arrestee's name, CCN, date of arrest, time and date of specimen, and the arresting member's name, element, and badge number.
 - a. Members shall not cover the white label on the bottle.

NOTE: Members may cover the temperature strip.
 - b. Members shall place the sealed and labeled bottle with the urine specimen back into the zip-top plastic bag, ensuring that the packet with the absorbent towel is also in the bag.
6. The arresting member shall record the appropriate information on the outside of the PD Form 14 (Lock-Seal Envelope), place the specimen bottle in the PD Form 14, and:
 - a. Fill out an original Office of the Chief Medical Examiner Toxicology Laboratory (OCME TOX) *Agency Evidence Submission Form – DUI* (See Attachment A), and log this specimen in the chemical test analysis book. **Members shall pay special attention to completing the chain-of-custody**

box including a notation regarding the placement into the secured storage (refrigerator)

- b. Secure the original copy of the OCME TOX, *Agency Evidence Submission Form – DUI* to the outside of the lock-seal envelope containing the specimen, and place the envelope and forms in the DUI refrigerator located at the district following the instructions for use of a district refrigerator.

NOTE: The specimen will be delivered to the OCME by a member of the Impaired Driver Support Unit.

7. The member may obtain a copy of the laboratory results from the Impaired Driver Support Unit or the Office of the Attorney General for presentation in court.

NOTE: OCME automatically sends the results to the Impaired Driver Support Unit and the Impaired Driver Support Unit will forward the results to OAG.

VI. ROLES AND RESPONSIBILITIES

A. Impaired Driver Support Unit

1. The Commanding Official, Impaired Driver Support Unit, shall:
 - a. Maintain such records as necessary and ensure that a sufficient number of operators, instructors and maintenance personnel are trained for the program.
 - b. Establish procedures to maintain the integrity of the chemical testing process for the collection of breath, blood, and urine.
 - c. Ensure the Breath-Testing Maintenance Log that establishes the chain-of-custody of evidence is maintained.
2. Certified Breath Test Operators shall:
 - a. Successfully complete a course of instruction that has been approved by the OCME and presented by trained instructors.
 - b. Subsequent to their initial certification, complete a recertification course, of a duration and design approved by the Impaired Driver Support Unit and Office of the Chief Toxicologist, no more than twenty-four (24) months following initial training and every twenty-four (24) months thereafter.

- c. Prior to obtaining a breath sample from an arrestee, provide the arrestee with a copy of the PD Form 29b (Breath Test Admissibility Notice).
 - d. Indicate in the Records Management System that the PD29b was given to the arrestee.
 3. Maintenance of Evidentiary Breath-Testing Equipment
 - a. Breath-testing instrument shall be certified as accurate by the Office of the Chief Medical Examiner.
 - b. Upon completion of the certification, the certifying member shall ensure that the appropriate entries are made in the Breath-Testing Maintenance Log.
- B. Supervisors shall respond to DUI/DWI scenes upon request by the dispatcher where no SFST-trained member is available to ensure probable cause is established prior to an arrest.
- C. Commanding Officers/Directors shall ensure their members who perform SFSTs or administer breath tests are properly trained as required.
- D. Watch Commanders, when notified that a suspect's BrAC test result has revealed a level of .35 or higher, shall:
 1. Ensure that prompt medical attention is summoned; and
 2. Ensure the PD Form 313 (Arrestee's Injury/Illness Report) is completed for transportation and evaluation of the suspect at a medical facility.

VII. CROSS REFERENCES

- A. General Order 303.02 (Notices of Infraction Procedures)
- B. General Order 601.1 (Recording, Handling, and Disposition of Property Coming into the Custody of the Department)
- C. Standard Operating Procedures 05-02 (PD FORM 61D [Violation Citation])
- D. D.C. Official Code § 50-2206.52b (Notification Regarding Admissibility of Breath Test Results in a Criminal Proceeding)

VIII. ATTACHMENT

1. Attachment A: Office of the Chief Medical Examiner Toxicology Laboratory Form (Agency Evidence Submission Form – DUI)

A handwritten signature in black ink that reads "Cathy L. Lanier". The signature is written in a cursive style with a large, looped initial "C".

Cathy L. Lanier
Chief of Police

CLL:PAB:MOC:JC



Agency Evidence Submission Form - DUI

AGENCY USE ONLY			
OFFICER INFORMATION		SUBJECT'S INFORMATION	
Arresting Officer: _____		Name: _____ Last First MI	
AGENCY _____ Case # / CCN# _____		SEX (Circle one) FEMALE MALE	Date of Birth: _____
BADGE # _____	Telephone # _____	Incident Date: _____	Incident Time: _____
Please attach investigation report or any other pertinent information to this form.		Specimen Collection Date: _____	Specimen Collection Time: _____

Toxicology Use Only			
Specimen Received	Condition	Item #	Volume (mL)
Blood			
Urine			
Serum			
Other			

Affix Toxicology Label Here

All Specimens were received Sealed and Labeled:
YES / NO

COMMENTS:

Chain of Custody				
Specimen(s) Sealed / Released by:	Date:	Purpose	Specimens Received By:	Date:
Arresting / Collection Officer Signature:		Pending Transfer to Toxicology	Name / Signature	
Name / Signature			Name / Signature	
Name / Signature			Name / Signature	
Name / Signature			Name / Signature	
Name / Signature			Name / Signature	
Name / Signature			Name / Signature	
Name / Signature			Name / Signature	
Name / Signature			Name / Signature	

FOR DISPOSAL ONLY	Date:	Purpose	Name / Signature	Items Retained:
Secured Storage		DISPOSAL		

Toxicology Reviewer Use Only					
Initial Folder Review: Initials:	Date:	Case Complete: Initials:	Date:	Admin Review: Initials:	Date: