	ANDOVER POLICE DEPARTMENT GENERAL ORDER	Number: O2201 Page: 1 of 6 Distribution: All
Title: DRIVING UNDER THE INFLUENCE		Section: Alcohol Related
Issued: 08/30/2011	Effective: 09/07/2011	Revised: 10/30/2014
Rescinds: All Previous	Amends:	
CALEA References: 61.1.11		
Review: Annual	Authority: Chief Michael A. Keller	

I. Purpose

The purpose of this General Order is to establish procedures for the detection and apprehension of persons driving under the influence of alcohol and/or drugs.

II. Policy

Officers of the department will actively seek to detect and apprehend motor vehicle operators who are under the influence of alcohol and/or drugs. An officer encountering a vehicle operator who is suspected of being under the influence of alcohol and/or drugs will evaluate the driver to determine if probable cause exists to make an arrest. If the officer determines that probable cause exists that the driver is under the influence of alcohol and/or drugs, then an arrest will be made.

III. Definitions

(This section intentionally left blank).

IV. Regulations

A. Only officers certified to operate the Intoxilyzer 8000 will administer breath tests [B].

B. Arresting officers are responsible for mailing or personally serving Certification and Notice of Suspension (DC-27/DC-28) to defendants [A].

V. Procedures

A. General Guidelines

1. The primary objective of the department's DUI apprehension and enforcement effort is to reduce alcohol related traffic offenses through the utilization of available resources.
2. Officers will receive training during their initial classroom and field training on current methods of detecting and investigating impaired drivers.
3. Officers should be aware of driving patterns and habits commonly associated with impaired drivers, and should be careful to consider the totality of the circumstances when making the decision to stop a motorist suspected of DUI.

4. Officers may stop vehicles for observed violations of traffic laws and ordinances and may stop vehicles exhibiting driving characteristics that would lead a reasonable officer to conclude that the driver is impaired. Officers should carefully document the reason for the stop in the associated report.
5. Officers will strictly enforce all laws relating to the detection and apprehension of impaired drivers. Once an officer develops probable cause that a driver is impaired, the officer will place the driver under arrest for DUI. Warnings are not appropriate for DUI.
6. Officers should attempt to record the suspect's driving before the stop and any subsequent field sobriety tests using the patrol car's mobile video recorder.

B. Field Sobriety Testing

1. Unless circumstances prevent otherwise, a driver suspected of DUI will be asked to complete a series of divided attention sobriety tests to determine if they are capable of safely operating a motor vehicle.
2. Officers certified to perform NHTSA Standardized Field Sobriety Testing (SFST) will strictly adhere to the established protocol and carefully document their observations of the driver and driver's performance on all field sobriety tests. The three tests include:
   a. Horizontal Gaze Nystagmus Test
   b. The Walk and Turn Test
   c. The One Leg Stand Test.
3. Officers may elect to use other divided attention tests when the suspected driver is unable to perform the standardized tests because of a physical handicap. Those test may include, but are not limited to:
   a. Reciting a portion of the alphabet.
   b. Counting backwards.
   c. Thumb-Finger count test.
4. A preliminary breath test (PBT) may be requested of the driver in conjunction with, or in lieu of, other field sobriety tests. Officers will be trained according to manufacturer's operating instructions.
   a. A PBT may be requested when an officer has reasonable suspicion to believe that the driver has been operating a vehicle under the influence of alcohol or drugs or both.
   b. At the time the test is requested, the driver shall be given oral notice that there is no right to consult with an attorney regarding whether to submit to testing, refusal to submit to testing is a traffic infraction, and further testing may be required after the preliminary screening test pursuant to KSA 8-1012.
   c. Officers may arrest a person based in whole or in part upon the results of a preliminary breath test, however, officers should be mindful that PBT

results are not admissible in court, except in a challenge to the validity of the arrest or during an administrative hearing concerning driving privileges.

C. Arrest

1. If the officer has probable cause to believe, based upon driving cues, sobriety tests and other observations, that a driver is operating a vehicle under the influence of alcohol and/or drugs, the officer will make an arrest.
2. Officers may search the area in the suspect's vehicle for fruits and instrumentalities of the crime subsequent to an arrest for DUI. The scope of the search shall be limited to areas where the suspect had ready access.
3. The disposition of the suspect's vehicle shall be in accordance with General Order O2409 Vehicle Towing and Impoundment.

D. Post-Arrest Testing and Processing

1. Following a DUI arrest, the officer will transport the suspect to the police department where additional tests should be performed. If the testing equipment at the police department is not functioning, the officer should transport the suspect to the nearest available law enforcement facility with functioning testing equipment.
2. Upon arrival at the police department, the arresting officer will provide a printed copy of the Implied Consent Advisory (DC-70) to the suspect and verbally read the implied consent notices to the suspect. Additionally, the officer will read:
   a. .02 advisory for drivers under the age of 21; and
   b. CDL advisory if the driver was operating a commercial vehicle.
3. After providing a copy of the Implied Consent Advisory to the suspect and verbally reading all applicable notices, the officer will ask the suspect to submit to a breath, blood and/or urine test. The suspect's response will be recorded on the Implied Consent Advisory form.
4. If the suspect agrees, officers will have the suspect perform a breath test on the Intoxilyzer 8000 according to established protocols. Only officers certified to operate the Intoxilyzer 8000 will administer breath tests.
   a. Officers will strictly follow the Intoxilyzer 8000 protocol as prescribed by the Kansas Department of Health and Environment.
   b. Officer should be careful not to allow the suspect to handle any part of the Intoxilyzer while administering the test.
   c. Officers will include the Intoxilyzer print out in their DUI report.
5. Officers will adhere to the following procedure following a breath test failure indicating a breath alcohol content (BAC) of .08 or greater.
   a. Following a breath test indicating a BAC above the legal limit, the officer will continue with the booking process. If the breath test indicates a BAC below

the legal limit, and impairment is evident, the officer will contact a supervisor and discuss the proper course of action.

b. Officers will complete the Certification and Notice of Suspension (DC-27/DC-28) form and personally serve the suspect with a copy before they post bond. The date and time of personal service should be documented in the officer's report. The form will then be sent to the State of Kansas Division of Motor Vehicles, along with the suspect's driver's license. It is the arresting officer's responsibility to mail the DC-27/DC-28 to the State of Kansas.

c. After the completion of testing, the suspect has the right to consult with an attorney and secure additional testing, if they so choose. If requested by the suspect, officers will transport the suspect to a medical care facility for the testing. The testing will be at the expense of the suspect and the results will be provided to the suspect by the medical care facility. This additional testing should be done as soon as possible following the suspect's request. If requested, the suspect should be allowed to contact an attorney as soon as possible following the completion of testing.

6. At the conclusion of the DUI testing and booking process the suspect should be allowed to post bond. If the suspect is unable to post bond, they should be transported to the Butler County Jail and booked.

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7. Any officer participating in the field sobriety and/or post-arrest testing and processing phase of the investigation shall initial, sign and date as appropriate the DC-27/DC-28.

E. Drivers Requiring Medical Treatment or Hospitalization

1. In the event that a driver suspected of DUI requires medical attention and/or is admitted to a hospital, the officer will request that the driver provide a blood and/or urine sample for testing. Officers should not expect to receive the blood test results obtained by hospital staff during the course of medical treatment, and should request an independent test for evidentiary purposes.
2. A dead or unconscious person is deemed to have given consent for a blood test; however, the person must be verbally advised of and served the notices on the implied consent advisory before blood is drawn.
3. The same procedure for obtaining a breath test should be followed for obtaining a blood test when a suspected impaired driver has been hospitalized.

F. Blood Tests

1. In certain circumstances, officers may order a blood test in addition to or in lieu of a breath test. Upon completion of the blood test, the officer will enter the blood sample into evidence and immediately send the blood sample by certified mail through the US Postal Service to the Kansas Bureau of Investigation for

analysis. A copy of the chain of custody sheet should be made and submitted to the case file before mailing.

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2. Instances where an officer may request a blood test include, but are not limited to:
   a. A fatality, injury or property damage automobile accident.
   b. The suspected impaired driver has injuries to or is bleeding from the mouth.
   c. The suspected impaired driver is sick or vomiting, or impaired to a degree that they are unable to complete a breath test.

   (Note: None of these circumstances inherently allow the officer to obtain a blood test where there is a refusal of consent, unless the officer has a warrant or some other exception to the search warrant requirement. Search warrants for blood draws may only be possible in serious injury accidents or accidents where a death is involved.)
3. Blood will be drawn from the suspect by an appropriate healthcare worker including, but not limited to, registered nurses, mobile intensive care technicians, phlebotomists, physicians, etc.
4. Officers should observe the procedure as it takes place and take custody of the blood sample from the healthcare professional immediately after it is obtained. The healthcare professional should complete the appropriate spaces on the evidence custody form.
5. After obtaining the blood sample, officers may release the suspect without bond for the charge of DUI pending the results of the KBI blood analysis. The suspect may be charged and bonded for DUI if sufficient probable cause exists without the results of the blood analysis.
   a. If the officer chooses to delay charging until blood test results are received, the officer will not issue any citations for any charges related to the incident leading up to the blood sample being taken. Additionally, officers will not complete or serve the Certification and Notice of Suspension (DC-27/DC-28) until the blood test results are received.
   b. Once blood results are received, a supplemental report and the KBI blood test results should be submitted into the case file, and the suspect should be, if possible and warranted, personally served with the Certification and Notice of Suspension. If the case is a municipal court case, the suspect should be served with the appropriate citations as needed. If personal service is not possible, then citations and Certification and Notice of Suspension should be mailed to the suspect by certified mail. If the case is being filed in Butler County District Court, an affidavit should be prepared and the case submitted to the Office of the County Attorney.

G. Drug Impaired Drivers

1. In cases involving drivers suspected of being impaired by drugs or a combination of alcohol and drugs, officers should obtain a breath test as outlined above. If

the breath test shows the driver to have a BAC of less than .08, officers and supervisors should consider contacting a Drug Recognition Expert for further evaluation of the suspect.

2. A urine sample should be obtained from drivers who are suspected of being impaired by drugs and who have a BAC of less than .08. The process for requesting a urine sample is the same as the process for requesting a breath or blood sample.
3. When a urine sample is provided, an officer of the same sex as the suspect should observe the suspect as they provide the urine sample. All efforts should be made to shield the suspect from excessive embarrassment or unnecessary exposure. The urine sample should be sent to the Kansas Bureau of Investigation for analysis in the same manner as sending blood samples.

H. Juveniles Driving Under the Influence

1. Juveniles who are 14 years of age and under the age of 21 are subject to the same arrest and testing procedures as an adult and can be arrested and charged with DUI. The Andover Municipal Court has jurisdiction for misdemeanor cases involving juveniles 14 years of age and older charged with DUI within the city limits of Andover.
2. Kansas law further restricts juveniles from driving with a BAC of between .02 and .08, however, a juvenile found driving with a BAC of below .08 but above .02 should not be charged with DUI. The juvenile should be served with the Notice of Suspension (DC-28) and released to a parent. The DC-28 should also be mailed to the Kansas Department of Motor Vehicles.
3. Juveniles found to have a BAC of .08 or greater should be issued a citation for DUI and other traffic related offenses and released to a parent without having to post bond.
4. Juveniles who refuse to submit to testing should be served with the Certification and Notice of Suspension (DC-27) and served with appropriate citations for traffic offenses, including DUI if appropriate. The DC-27 form should be mailed to the Kansas Department of Motor Vehicles.

I. Maintenance of the Intoxilyzer

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1. A Patrol Supervisor assigned by the Operations Commander will review the Intoxilyzer logs and maintain the Intoxilyzer instrument as required by law and Kansas Department of Health and Environment protocol.
2. The Operations Commander will designate a Patrol Supervisor to maintain and calibrate PBT units according to manufacturer's specifications and as required by law.