

	LOWER MERION TOWNSHIP POLICE DEPARTMENT Ardmore, Pennsylvania	
	Policy 3.7.3	
Subject:		Distribution:
DUI Incidents		All Sworn Personnel
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By Authority of:		
		Superintendent of Police

POLICY

Driving under the influence of alcohol or other controlled substances presents a public safety hazard and takes a tragic toll on society. When reasonable and articulable grounds exists to stop and investigate a motorist who is suspected of operating a vehicle while under the influence of alcohol or a controlled substance, the following procedures shall be followed.

PROCEDURE

A. Field Sobriety Tests

1. Circumstances permitting, a series of standardized field sobriety tests and a Preliminary Breath Test (PBT) shall be administered at the scene of the vehicle stop or crash.
2. If the operator does not satisfactorily complete these tests, he/she will be transported to headquarters for an evidentiary alcohol breath test, or to a hospital for a blood sample. If the operator is suspected of being under the influence of a controlled substance, or combination of both, the operator shall be transported to a hospital for a blood sample.

B. Evidentiary Breath Test

1. Upon arriving at headquarters, the operator will be taken to the lock up facility. Here the certified breath test operator assigned to conduct the evidentiary breath test shall do so in accordance with the procedure prescribed by Pennsylvania Department of Transportation (PennDOT) regulations.
2. Prior to administration of the test, the breath test operator shall read the implied consent DUI warnings from form DL-26 or DL-27 when applicable and sign the

form acknowledging same. If the subject refuses to submit to the evidentiary breath test, the breath test operator shall again read the implied consent warnings from DL-26/DL-27. The subject shall be given an opportunity to sign the form acknowledging that the form was read to him/her. **NOTE:** A subject's refusal to sign form DL-26/DL-27 is not a refusal to take the test provided the subject otherwise does not refuse to submit to the test requested.

3. **DO NOT** give an individual his or her Miranda Warnings at this stage of the investigation.
4. Only a certified operator of the breath-testing device is permitted to attempt operation of the instrument.
5. Prior to administering an evidentiary breath test, the subject shall be kept under observation for a period of at least 20 minutes; during which time, he/she shall not eat, drink, smoke, chew gum, tobacco, etc. The subject shall not be allowed to induce vomiting. Preferably, the subject should not eat, drink, or place anything in their mouth etc., from the time of first contact.
6. This time period may be transferred from one officer to another; however, it should not actually begin until the subject arrives at headquarters in order to comply with Pennsylvania Department of Transportation (PennDOT) and Pennsylvania Department of Health (DOH) recommendations.

C. Evidentiary Blood Testing

1. In those cases when the breath-testing device cannot be used, a blood sample should be taken from the subject.
2. When such samples are needed, the subject shall be transported to the nearest hospital to have blood drawn. At the hospital, have the subject complete a "Consent Form", Form DL-26/DL-27. The hospital may have a proprietary consent form, separate from the DL-26/DL-27. Refusal to sign the DL-26/DL-27 and/or the hospital consent form does not constitute a refusal, provided the subject otherwise does not refuse to submit to the test requested.
3. Blood collection kits are located at the Evidence Supply Station. Check the expiration date and follow the instructions contained in the kit.
4. Every effort should be made to observe the sample taking.
5. Once the samples are obtained, return them to headquarters and place them in the evidence pass-through refrigerator as described in Policy 3.14.1 covering Evidence Control.
6. Notification that evidence has been placed in the refrigerator is to be made by e-mail to the Police Evidence Distribution List.

7. Attach a laboratory control number sticker to the exterior of the supplied kit and complete the appropriate sections of the form. An additional sticker is to be affixed to the evidence tag submitted with the sample. A supply of lab forms is available in the Evidence Supply Station.
8. When the blood is submitted as evidence, the District Attorney's Lab Work Verification Form and the N.M.S. Lab Work Requisition Form must be completed and submitted with the blood kit. The lab will not accept the sample without these forms. Copies of these forms are to be submitted with the investigative report.
9. When a controlled substance is suspected, if it is possible to suggest a particular controlled substance, it may help the lab.

D. Sample Disposition

1. As soon as practicable, the Evidence Control Officer will determine what type of evidence is to be transported and make arrangements through the Traffic Safety Unit Commander to have an authorized person transport the evidence. The authorized person will obtain the sample from the Evidence Control Officer and transport it directly to the laboratory. The ALERT reporting system evidence field shall be supplemented by the Evidence Control Officer for purposes of documenting the evidence chain of custody.

E. Subject Refuses to Take Test

1. When a subject refuses any testing procedure, other than refusal to sign the DL-26/DL-27, after being advised of the penalty for refusal, the arresting officer will complete Bureau of Driver Licensing Form DL-26/DL-27.
2. The Report Review Officer will then copy and forward two (2) copies of the completed DL-26/DL-27 forms to the Department of Transportation, and one (1) copy will stay with the original file.

NOTE: Generally a warrant is needed to take a subject's blood without consent.

F. Miranda Warnings

1. After the arresting officer has obtained the necessary sample(s) of breath or blood, and prior to any incident related questioning, he/she shall advise the subject of their Miranda Warnings, form [INV-7](#), have them sign the form acknowledging same.

G. Fingerprinting/Photographing DUI Arrestees

1. All persons arrested for DUI who have a Blood Alcohol Concentration (BAC) above the legal limit will be photographed and fingerprinted prior to being released. In those cases where the arrestee's condition prohibits processing at the time of the arrest, he/she shall be detained until such time as the processing is properly completed and they are arraigned or released.
2. In those cases where blood is taken from a suspect to determine BAC, a suspect is admitted to a hospital for any reason, or hospital records are subpoenaed to determine BAC and a Criminal Summons is mailed, the arresting officer should make fingerprinting/photographing a condition of bail at the preliminary hearing.
3. It is the arresting officer's responsibility to make certain that the suspect returns to Police Headquarters with the officer for processing at the conclusion of the preliminary hearing.
4. Live Scan will be used to fingerprint all persons arrested.

H. Detention of Out-of-State and Unruly Arrestees

1. If, in the opinion of the on-duty platoon supervisor, any arrestee is unruly to such a degree that they present a safety hazard to themselves or others, they shall be detained for arraignment before the presiding Magisterial District Judge.
2. Out-of-State arrestees shall be detained for arraignment. No arrestee shall be detained more than eighteen hours without the knowledge and express permission of the Watch Commander.
3. Any arrestee remaining in police custody, having an indicated BAC of 0.30% or greater, shall be transported to the hospital for medical evaluation.

I. Release of Arrestee after Processing

1. In those cases where a subject is to be released, pursuant to Rules of Criminal Procedure rule 519, the person taking custody of the subject shall be identified and that information included in the report.
2. It is the responsibility of the officer making the release, to ensure that this individual understands that the arrestee's safety and well-being is their responsibility and they must ensure that the arrestee will not drive until the effects of the alcohol or drugs have subsided. Recommend to the person taking custody of any arrestee being released that has an indicated BAC of 0.30% or greater be transported to a hospital or medical facility for a medical evaluation.

J. Zero Tolerance Law:

1. Any person between 18 and 21 years of age, arrested for DUI, and has a BAC of 0.02% or greater, shall be charged with violating 75 Pa. CS § 3802 (e).
2. Any person under 18 years of age who registers a BAC of 0.02%, or greater, shall also be charged with violating § 3802 (e), via a Juvenile Written Allegation. These cases are subject to enforcement and penalties under the Juvenile Act, just as other Juvenile DUI cases. Likewise, the license suspension provisions relating to juvenile offenders under § 1532 (b), remain in effect for juvenile DUI petitions where the BAC is 0.02% or more.
3. Any person less than 21 years of age who drives, operates or is in physical control of a motor vehicle with ANY alcohol in their system is guilty of a summary offense. Section § 3718 violations do not effect a driver's operating privilege with respect to license suspension or revocation.

K. Commercial or School Motor Vehicles

1. Section 1612 (a) of the Vehicle Code makes it a violation to drive, operate or be in physical control of a commercial or school motor vehicle while a person has any alcohol in their system. An operator in violation of this section is prohibited from operating a commercial or school motor vehicle for 24 hours. A person in violation of this section shall be charged with a Summary Offense.
2. A commercial or school motor vehicle operator in violation of Section 1612 (a) will be transported to Headquarters for an evidentiary breath test. In those cases when the breath-testing device cannot be used, preferably a blood sample should be taken from the subject.
3. For DUI in cases of commercial or school motor vehicles the following tolerances shall be used. When an Officer has reasonable grounds to believe that an operator is at or above these levels that operator shall be taken into custody for the purposes of evidentiary chemical testing.
 - a. For commercial motor vehicles a BAC .04% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a commercial vehicle.
 - b. For school motor vehicles a BAC .02% or greater within two hours after the individual has driven, operated or been in actual physical control of the movement of a school bus or a school vehicle.

L. Special Licensing Exceptions

1. Ignition Interlocks

- a.** An individual required to only drive, operate, or be in actual physical control of the movement of a motor vehicle equipped with an ignition interlock system, under section 3805 and fails to comply is in violation of 3808 (a) 1, relating to driving a vehicle without the device. Additionally, if a driver operates a motor vehicle without an interlock device and has a BAC of .025% or higher is in violation of 3802 (a) 2. It is a violation under 3808 (b) to tamper with an interlock device. Under these circumstances, the arresting officer shall complete PennDOT form DL-27.
- b.** If a driver, under court order to operate a motor vehicle with an ignition interlock is suspected of driving under the influence, under section 3802, the arresting officer shall then use PennDOT form DL-26.

2. DUI Related Suspension or Revocation.

- a.** Under Vehicle Code Section 1543 (b) (1.1), a person who is suspended DUI related, commits an offense if he operates a motor vehicle, and has an amount of alcohol by weight in his blood that is equal to or greater than .02% or has illegal or non-prescribed drugs in his system. When an officer has sufficient probable cause to believe the BAC .02% threshold has been met with such an operator, the officer shall arrest the operator for the purpose of chemical testing and refusal form DL-27 shall be used. If such an operator is arrested for DUI under Vehicle Code Section 3802, refusal form DL-26 shall be used instead.

3. Certain arrests authorized under Section 3811.

- a.** Warrant not required.--In addition to any other powers of arrest, a police officer is authorized to arrest an individual without a warrant if the officer has probable cause to believe that the individual has violated section 1543(b)(1.1) (relating to driving while operating privilege is suspended or revoked), 3802 (relating to driving under influence of alcohol or controlled substance) or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock), regardless of whether the alleged violation was committed in the presence of the police officer.
- b.** The authority under subsection (a) extends to any hospital or other medical treatment facility located beyond the territorial limits of the police officer's political subdivision at which an individual to be arrested is found or was taken or removed for purposes of emergency treatment, examination or evaluation as long as there is probable cause to believe that the violation of

section 1543(b) (1.1), 3802 or 3808(a) (2) occurred within the police officer's political subdivision.

M. Court Preparation - Arresting Officer's Responsibility

1. In cases where the arrestee is being held, a criminal complaint and affidavit of probable cause must be completed prior to reporting off duty.
2. The grading of DUI offenses requires both the determination of the Defendant's BAC and the presence of prior DUI convictions. Every effort must be made to obtain this information so that charges may be filed accordingly. In the event that this information is not available at the time of the Preliminary Hearing, a request to continue the hearing shall be made.
3. When an arrestee is released, pursuant to the Rules of Criminal Procedure, the arresting officer or designee must complete the criminal summons and respond to the appropriate District Court within five business days of the actual arrest, for the purpose of attesting to the information within the criminal summons.

Exceptions: In cases involving blood, the five-day rule commences upon receipt of the lab results. This applies to defendants who are not detained. The arresting officer is responsible for seeing that the results from the lab are timely and that the summons is completed.

4. A supplementary report detailing the actions taken is to be filed indicating which district justice the criminal summons was taken before.
5. Continually update the incident via supplemental reports as the case proceeds through the judicial process.

N. Case Completion

1. In all cases, the original information is to be placed in a DUI Case Envelope. A supply of these envelopes has been placed in the area of the Breath Testing Device and Roll Room DUI forms drawer. A supply of the forms is available from the Records Section.
2. The pertinent blocks on the face of the Case Envelope are to be completed by the arresting officer prior to reporting off-duty on the date of the arrest.
3. Once completed, the Case Envelope will be turned into Report Review.
4. Upon receipt of the Case Envelope, the Report Review Officer will ensure that all required items are present. Should there be any deficiencies notify the reporting officer for items needed.

5. The Report Review Officer will maintain control of the case until all requirements of the envelope are satisfied and all necessary supplemental reports are submitted.
6. Through the chain of command, Report Review Officers will notify supervisory personnel of all deficiencies not received in a timely manner.

SUPERVISOR'S RESPONSIBILITY

- A. It is the responsibility of the arresting officer's supervisor to ensure that this policy is adhered to in all cases where a person is arrested for DUI.
- B. In those cases where the supervisor deems it necessary to deviate from any section of this policy, the deviation must be justified and documented on a Supplemental Report included in the original case file.