



Approved:

*Chief Marcia Harnden*

Subject:

# 330. Impaired Driving

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## 330.1: PURPOSE AND SCOPE

This policy provides guidance to those Department members who play a role in the detection and investigation of the crime of Driving Under the Influence of Intoxicants (DUII).

## 330.2: POLICY

**The Albany Police Department is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of Oregon's impaired driving laws ([ORS Chapter 813](#)).**

## 330.3: INVESTIGATIONS

- a. Officers are expected to enforce Oregon's impaired driving laws with due diligence.
- b. The **Community Resource Unit (CRU)** Sergeant will develop and maintain, in consultation with the prosecuting attorney, report forms with appropriate checklists to assist investigating officers in documenting relevant information and maximizing efficiency. Any DUII investigation report should minimally include:
  - 1) The Standardized Field Sobriety Tests (SFST's) administered and the results.
  - 2) The officers' observations which indicate impairment on the part of the individual, and the officers' health related inquiries which may help to identify any serious health concerns (e.g., diabetic emergency).
  - 3) Sources of additional information (e.g., reporting party, witnesses) and their observations.
  - 4) Information about any audio and/or video recording of the individual's driving or subsequent actions.
  - 5) The location and time frame of the individual's vehicle operation and how this was determined.
  - 6) Any information given by the individual related to the source of their impairment and a time frame of use, especially the last admitted use of an impairing substance.

**330.4 CHEMICAL TESTS**

- a. A person implies consent under Oregon law to a chemical test or tests, and to providing the associated chemical sample, under any of the following ([ORS 813.095 and 813.100](#)):
  - 1) The arresting officer has reasonable grounds to believe that the person was DUII.
  - 2) The person is arrested for DUII and takes a breath test that discloses a blood alcohol content of less than 0.08 percent ([ORS 813.131](#)).
  - 3) The person is arrested for DUII and was involved in a **crash** resulting in injury or property damage ([ORS 813.131](#)).
  - 4) The person is receiving medical care at a health care facility immediately after a motor vehicle **crash** and the arresting officer has reasonable grounds to believe that the person was DUII.
- b. If a person withdraws this implied consent by refusing to provide a chemical sample after implied consent paperwork has been read, the officer may proceed to obtain a chemical sample based on probable cause and exigency, and/or by obtaining a search warrant. ([ORS.813.100\(5\)](#)).

**330.4.1: BREATH SAMPLES**

- a. All devices used for the collection and analysis of breath samples are serviced and tested by the Oregon State Police Implied Consent Unit. Service and test records of such devices are maintained by Oregon State Police.
- b. Officers obtaining a breath sample should monitor the device for any sign of malfunction. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to the **CRU Sergeant** and the Oregon State Police Crime Lab.

**330.4.2: BLOOD SAMPLES**

- a. Only persons authorized by law to draw blood shall collect blood samples ([ORS 813.160](#)). The blood draw should be witnessed by the assigned officer if possible. No officer, even if properly certified, should perform this task.
- b. The blood sample shall be packaged, marked, handled, stored, and **mailed** as required by the testing facility.
- c. If an arrestee cannot submit to a blood test because they have a bleeding disorder or have taken medication that inhibits coagulation, they shall not be required to take a blood test. Such inability to take a blood test should not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

**330.4.3: URINE SAMPLES**

A urine test will be performed at an appropriate testing site. The sample shall be packaged, marked, handled, stored, and mailed as required by the testing facility.

**330.4.4: ADDITIONAL TESTING**

An officer requesting that a person submit to a chemical test shall, after obtaining a chemical test for the investigation, also provide the person, upon request, with a reasonable opportunity to have a qualified person of their choosing administer an additional chemical test. The test may be of the person's breath or blood if alcohol concentration is an issue or of the person's blood or urine if the presence of cannabis, a controlled substance or an inhalant in the person's body is an issue ([ORS 813.150](#)). This does not apply to persons who refuse to provide a chemical test for the investigation.

**330.4.5: ADDITIONAL REQUIREMENTS FOR URINE SAMPLES**

- a. An officer may not request that a person submit to a urine test unless the officer is certified by the Department of Public Safety Standards and Training as having completed the required training in the recognition of drug impaired driving. The officer must also have a reasonable suspicion to believe that the person arrested has been driving under the influence of cannabis, a controlled substance, an inhalant or any combination of cannabis, an inhalant, a controlled substance and intoxicating liquor ([ORS 813.131](#)).
- b. The person providing the urine sample shall be given privacy and may not be observed by the officer when providing the sample ([ORS 813.131](#)).

**330.4.6: STATUTORY NOTIFICATIONS**

Prior to administering any chemical tests, the person should be informed of the rights and consequences for DUII and refusals of testing ([ORS 813.100](#); [ORS 813.130](#); [ORS 813.135](#)) unless the officer is acting outside the scope of Implied Consent.

**330.5: CHEMICAL TEST REFUSALS**

When an arrestee refuses to provide a chemical sample, officers should:

- a. Advise the arrestee of the requirement to provide a sample ([ORS 813.100](#); [ORS 813.130](#); [ORS 813.131](#); [ORS 813.135](#)).
- b. Audio and/or video-record the admonishment and the response when it is legal and practical.
- c. Document the refusal in the appropriate report.

**330.5.1: STATUTORY NOTIFICATIONS UPON REFUSAL**

Upon refusal to submit to a chemical test through Implied Consent, officers shall ensure the written notice of intent to suspend upon the person is served and if possible, take possession of their Oregon issued license to operate a motor vehicle that is held by that person ([ORS 813.100](#)).

**330.5.2: BLOOD SAMPLE WITHOUT CONSENT**

A blood sample may be obtained from a person who refuses a chemical test when any of the following conditions exist:

- a. A search warrant has been obtained ([ORS 813.100](#)).
- b. The officer can articulate that exigent circumstances exist. Exigency does not exist solely because of the natural dissipation of alcohol in the person's bloodstream. However, exigency can be established with the existence of additional facts including but not limited to the amount of time that has passed since the person was driving and the amount of time it would take to get a warrant under the circumstances.

**330.5.3: FORCED BLOOD SAMPLE**

- a. If an arrestee indicates by word or action that he/she will physically resist a blood draw, the officer should request a supervisor to respond.
- b. The responding supervisor should:
  - 1) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
  - 2) Ensure that all attempts to obtain a blood sample through force cease if the person agrees to and completes a viable form of testing in a timely manner.
  - 3) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer) and attempt to persuade the individual to submit to such a sample without physical resistance.
    - A. This dialogue should be recorded on audio and/or video when legal and practical.
  - 4) Ensure that the blood sample is taken in a medically approved manner.
  - 5) Ensure the forced blood draw is recorded on audio and/or video when practical.
  - 6) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances:
    - A. Unless otherwise provided in a warrant, force should generally be limited to handcuffing,

wrap restraint, or similar restraint methods.

- B. In misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used, and a refusal should be noted in the report.
  - C. In felony cases, force which reasonably appears necessary to overcome the resistance to the blood draw may be permitted.
- 7) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.
- c. If a supervisor is unavailable, officers are expected to use sound judgment and perform as a responding supervisor, as set forth above.

#### 330.5.4: DUI SEARCH WARRANTS

- a. Officers should receive authorization from a supervisor before preparing a search warrant application for breath, blood and/or urine. The warrant can be done in written form or telephonic. For telephonic warrants the reading of the warrant to the judge shall be recorded, so a transcript will not have to be completed. The recording can either be done with a digital recorder or on a recorded phone line.
- b. Once authorization is received, the officer will prepare the affidavit and search warrant, consulting with the applicable prosecuting attorney if told to do so by the on-duty supervisor.
- c. Once the warrant has been issued the arresting officer or designee will transport the suspect to the hospital, if the suspect is not already at the hospital, for the execution of the warrant.
  - 1) If the suspect is not being cooperative and may pose a risk to staff at the hospital, the officer or supervisor may contact the on-call Medical Examiner for Linn County to respond to collect a blood sample. The blood draw should be done at the holding facility of the Albany Police Department or the Linn County jail.
- d. The warrant service should be audio recorded and/or recorded with a body camera with notice to all parties that a recording is being made unless otherwise permitted in the warrant or [ORS 133.726](#) ([ORS 165.540](#)).
- e. The person drawing the blood will be identified for the officer's report and in compliance with [ORS 813.160\(2\)](#). The officer will ensure the kit being used is not expired and is an approved OSP blood draw kit.
  - 1) If force is to be used in the execution of the search warrant a supervisor shall be promptly notified and the involved officer(s) will complete a use of force report before the end of the shift.
- f. The suspect will be provided a receipt with a list of items seized along with a copy of the search warrant.

- g. A lab request will be made by completing an appropriate [OSP Forensic Service Request: Form A49](#).

### 330.6: ARREST AND INVESTIGATION

- a. If a person refuses to submit to a chemical test or if a breath test discloses that the person had a prohibited alcohol concentration in the person's blood, the investigating officer shall cause the following items to be forwarded to the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) within 10 days of the arrest. ([ORS 813.100](#)):
- 1) The completed Implied Consent Form.
  - 2) Any confiscated license or permit belonging to the person.
  - 3) Photocopy of evidence card of intoxilyzer test, if applicable.
  - 4) Photocopy of intoxilyzer operator's checklist, if applicable.
- b. An officer confiscating a person's license pursuant to state DUI laws shall provide the person with a temporary driving permit unless ([ORS 813.100](#); [ORS 813.110](#)):
- 1) The driving privileges of the person were suspended, revoked or canceled at the time the person was arrested.
  - 2) The person whose license was confiscated was operating on an invalid license.
  - 3) The person was not entitled to driving privileges at the time of the arrest for any other reason.
  - 4) The person holds a license or permit granting driving privileges that was issued by another state or jurisdiction and that is not confiscated.
- c. If a person refuses to submit to a breath or urine test, the arresting officer may charge the person with a separate offense ([ORS 813.095](#)).
- d. If a blood test is conducted, the report of implied consent blood test failure form and a photocopy of the lab results shall be forwarded to the DMV within 45 days of the date of arrest. ([OAR 735-090-0040](#))

### 330.7: RECORDS SECTION RESPONSIBILITIES

The Police Support Services Manager will ensure that all case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office.

**330.8: ADMINISTRATIVE HEARINGS**

- a. The Police Support Services Manager will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to the DMV.
- b. The officer should make every effort to forward a copy of the written ruling from the administrative license suspension hearing to the district attorney's office.
- c. An officer called to testify at an administrative hearing should document the hearing date and the DMV file number in a supplemental report when they receive the opinion from the administrative law judge. Specific details of the hearing generally should not be included in the report unless errors, additional evidence or witnesses are identified.

**330.9: TRAINING**

The Administrative Lieutenant should ensure that officers participating in the enforcement of DUII laws receive regular training. Training should include, at minimum, current laws on impaired driving, investigative techniques and rules of evidence pertaining to DUII investigations. The Administrative Lieutenant should confer with the prosecuting attorney's office and update training topics as needed.

**330.10: VEHICLE DISPOSITION**

- a. Vehicles operated by a person arrested for DUII will be towed to ensure the safety of the public and the security of the violator's vehicle in accordance with the [Vehicle Towing: Policy 320](#).
  - 1) Officers will complete a Vehicle Impound Notice and route:
    - A. One printed copy to the tow driver; and,
    - B. One printed copy to the violator, or leave the copy in the violator's vehicle; and
    - C. An electronic copy will automatically be sent to the records section.
  - 2) Leave only the ignition key in the vehicle.
- b. If approved by the owner/operator of the vehicle, the vehicle may be released to a person that is not impaired and available on scene. If the vehicle is released to an unimpaired person, the officer will not conduct an inventory search of the vehicle but may search the vehicle incident to the lawful arrest of the driver.