

<b>Anchorage Police Department</b> Regulations and Procedures Manual	<b>Operational Procedures</b> <b>3.01.035</b>	
<b>Policy and Procedure Title</b> Operating Under the Influence	<b>Effective Date</b> January 21, 2021	Page 1 of 6
<b>Replaces Prior Policy:</b> August 10, 2009	<b>Approved by:</b> Chief Justin Doll	

**This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.**

### **3.01.035 Operating Under the Influence**

#### **PURPOSE**

The objective of the Department's aggressive enforcement program is to reduce alcohol and drug related traffic offenses by using patrol units that are trained and equipped to apprehend and process impaired drivers.

#### **POLICY**

It is the policy of the Anchorage Police Department to aggressively enforce the Operating Under the Influence related statutes of the State of Alaska and the Municipality of Anchorage.

#### **DISCUSSION**

The Anchorage Police Department recognizes the significant threat to public safety posed by drivers impaired by alcohol and/or drugs. The Department maintains the position that the most effective method of dealing with this problem is to combine enforcement with education. The Anchorage Police Department officers will detect, apprehend and assist in the prosecution of persons in violation of the Operating Under the Influence statutes by providing officers on-going training in OUI countermeasures, and to work with the community to address the serious problems resulting from these violations.

#### **REFERENCES**

AS 28.35.030 through .032 - Operating a Vehicle, Aircraft, or Watercraft while Under the Influence of an Alcoholic Beverage, Inhalant, or Controlled Substance.

AS 12.25.033 - Arrest without a warrant for Operating a Vehicle, Aircraft, or Watercraft while Under the Influence of an Alcoholic Beverage, Inhalant, or Controlled Substance,

AS 12.25.150 – Rights of Prisoner after Arrest,

AMC 9.28.020 through .025 – Operating Under the Influence,

AMC 9.42.020 – Unlawful Operation - Impoundment

## **PROCEDURE**

### **I. TRAINING**

- A. Patrol officers will be trained and will maintain a current breath test operator certification from the State of Alaska.

### **II. DETECTION AND ARREST**

- A. All officers, regardless of their assignment, are to actively attempt to detect drivers driving under the influence of alcohol, other drugs, or a combination thereof,
- B. If an officer observes a vehicle whose operator he/she believes is under the influence, and has reasonable suspicion or probable cause to stop the vehicle, enforcement action will be taken:
  - 1. If the officer is driving a police vehicle which cannot initiate traffic stops, the officer will establish radio contact with Dispatch and attempt to have a marked unit respond to initiate the stop;
  - 2. If the officer is driving a police vehicle which can initiate traffic stops, the officer will take enforcement action by initiating a traffic stop on the vehicle.
- C. Upon stopping the vehicle, the officer will attempt to determine if the driver is under the influence by using Standardized Field Sobriety Tests and/or optional tests such as Rhomberg balance, finger to nose, alphabet, counting and other observational clues to establish probable cause.
- D. Officers will not use a Preliminary Breath Test (PBT) to establish probable cause.
- E. If probable cause has been established the subject shall be arrested.
- F. Impound the suspect's vehicle in accordance with AMC 9.28.026 (see also "Towing--Vehicular Impounds 3.03.010").

### **III. CHEMICAL TEST:**

- A. Breath Test:
  - 1. Breath tests will be conducted by a certified breath test operator.

2. Arrested subjects will be tested on instruments certified by the State of Alaska and maintained by the Anchorage Police Department;
3. Following the arrest, the subject will not smoke or ingest any material into the mouth, except for inhalers that are prescribed and medically necessitated. A 15-minute observation is required after checking the arrestee's mouth and during this time, the arrestee shall not regurgitate, vomit, or place anything into the mouth.

#### **IV. IMPLIED CONSENT LAW**

- A. Introduction. The person arrested for OUI is processed to obtain specific evidence, usually a breath sample for chemical analysis.
- B. Content of Law. The Implied Consent Law states that a suspect who is under lawful arrest for an offense arising out of acts alleged to have been committed while the person was driving, operating, or in actual physical control of a motor vehicle or operating an aircraft or a watercraft while impaired shall be considered to have given consent to a chemical test or tests of their breath for the purpose of determining the alcoholic content of his or her breath, and that refusal to do so is an additional crime. Non-consensual taking of a breath sample is obviously not practical, and non-consensual taking of a blood sample is permissible only in certain circumstances as described below.

#### **V. CONTACT WITH ATTORNEYS, FRIENDS, AND FAMILY**

- A. Right to Contact with Attorney, Friend or Family.
  1. Prior to arrest. The stop, the development of suspicion and the field sobriety/investigation occur before arrest, and no right to counsel exists.
  2. After the arrest. If the suspect requests to telephone anyone after arrest (when State statute allows), but prior to direct questions (when Constitutional provisions require advisement), honor the request by providing a reasonable opportunity to the suspect. For legal reasons, an OUI suspect's phone conversation should not be recorded. Efforts should be made to afford the suspect privacy during his or her use of the phone, however general officer-safety principles should not be compromised.
  3. Direct questioning. Police must provide a Miranda warning for arrested suspects before asking direct, potentially incriminating questions, such as those contained in the Intoxication Report. If an attorney is requested, allow the contact but do not ask any further questions. Attorneys cannot delay OUI processing, nor is the officer conducting the OUI processing required to allow an attorney to be physically present.

## VI. SPECIAL PROCEDURES

- A. Person other than the OUI Suspect that is Injured. If a person is under arrest for an offense arising out of acts alleged to have been committed while the person was driving, operating, or in physical control of a motor vehicle, and that arrest results from a traffic collision that causes death or serious physical injury to another person, a chemical test may be administered without the consent of the person arrested to determine the amount of alcohol in that person's blood and breath (AS 28.35.031(g) / AMC 9.28.021.G). If able, an OUI processing should still be conducted to allow an arrested subject an opportunity to provide a chemical test of their breath on instruments certified by the State of Alaska.

The preferred and recommended method for administering a chemical test for blood without the consent of an arrested subject is to apply to a magistrate for a search warrant to have a blood sample drawn from the suspect and tested. If a chemical test of blood is administered to a person under this provision, that person cannot be charged for refusal to submit to a chemical test. If someone other than the suspected impaired driver was injured in an accident, the driver does not have the right to refuse a chemical test (AMC 9.28.025A/AS 28.35.031(g)).

- B. OUI Suspect is the Only Injured Party. A suspected impaired driver who is injured in a traffic collision and is transported to a hospital (no one else injured in the collision) will be treated at the hospital prior to any arrest. In normal operating procedures, an emergency room doctor may take a blood sample for analysis. This result may be obtained by either obtaining a 'Consent to Release Medical Records' form signed by the suspect or by search warrant at a later date. Do not ask a doctor to take a sample for you and do not attempt to pressure a doctor into taking a sample for you.

The preferred and recommended method for doing this is to apply to a magistrate for a search warrant to have a blood sample drawn from the suspect and have the blood tested. The blood drawn by the hospital typically is only tested for the presence of drugs and medication.

By obtaining a search warrant for blood it will not only validate the presence of drugs, the amount of drugs in the blood can be quantified and can be used in prosecution.

If the person is not deemed serious enough to hold for treatment, you can simply arrest him or her within the 4-hour time limit and transport him/her to a sub-station for normal OUI processing.

- C. Unconscious/Incapable Persons. A person who is unconscious or otherwise in a condition rendering that person incapable of refusal is considered not to have withdrawn the consent provided under Implied Consent and a chemical

test may be administered to determine the amount of alcohol in that person's breath or blood. A person who is unconscious or otherwise incapable of refusal need not be placed under arrest before a chemical test is administered (AS 28.35.035(b) / AMC 9.28.025.B). If a chemical test is administered to a person under this provision, that person cannot be charged with refusal to submit to a chemical test. The critical question is the test of "otherwise incapable". Court decisions are not definitive but tend to consider the physical condition of the subjects themselves, as opposed to the circumstances around them. If the suspect is so impaired as to be incoherent and incapable of intelligently refusing, a test may be taken. If, however, the suspect is able to intelligently decide, but other circumstances prevent him/her from going to a breath test facility, the involuntary test may NOT be administered. An example of this is a conscious, lucid subject being kept at the hospital for observation, but no medical blood test taken. In such cases, a search warrant, telephonic or in person, must be obtained to draw a blood sample.

- D. Suspected Drug Impairment. If the suspect provided a breath test that yielded a very low reading, yet he/she shows signs of a much higher level of impairment, request a Drug Recognition Expert (DRE). Be alert for drug usage, illness or injury. Be alert for signs of drug abuse (i.e., needle tracks, pill bottles, drugs (prescription or illicit), and drug paraphernalia on the person or in the vehicle. If there is any concern for the well-being of the subject, arrange to have him/her examined by a doctor immediately. If the officer has already arrested the subject but now, as a result of the exam, feels the charges to be inappropriate, he or she should contact a shift Supervisor.
- E. Traffic collisions with Critical or Fatal Injuries. When impaired driving is suspected in traffic collisions that result in critical injuries or fatalities, the possibility of felony charges being brought must be preserved. Arresting for OUI could jeopardize this, and so must be avoided. Such collisions are, therefore, not handled as a conventional OUI arrest and processing, but have a distinct procedure (see Collision Investigations 3.03.020). Such collisions are usually investigated by the Traffic Unit, but initial responding units must take proper action to facilitate the investigation. This includes:
1. Treat the area of the traffic collision as a major crime scene, protecting it and limiting access to only those people providing care for victims or actually involved in the investigation.
  2. If possible, take multiple photographs or video to record the scene prior to disturbing anything.
  3. Identify and separate persons involved in the traffic collision but avoid making any arrests. Maintain positive control and constant observation of the likely at fault driver until collection of blood is obtained.

4. Should an OUI suspect be transported to a hospital; an officer should accompany that person.
5. Be prepared to brief the traffic collision investigator. However, if the Traffic Section is unable to respond, officers should be prepared to conduct the investigation on its behalf. Again, the procedure “Collision Investigations 3.03.020” should be consulted. The most remarkable difference between this collision investigation and others has to do with seizing blood as evidence. Since OUI is not being charged at this time (to allow for charging a more serious crime), Implied Consent does not apply. Seizing blood as evidence would follow this process:
  - a. Attempt to get a search waiver form signed by the subject to obtain a sample of breath or blood. Keep in mind that the suspect could pull his/her consent at any point before the samples are drawn, causing the officer to have to apply for a search warrant. If this happens, valuable time has been wasted. Because of this possibility, it is preferable to apply for the search warrant as soon as observations and evidence provide the probable cause to do so. Coordinate with the District Attorney’s Office or Traffic Investigator in obtaining a search warrant.
  - b. Have the blood sample drawn at the hospital or a substation by the contracted medical company, either by search warrant waiver or by an actual search warrant.
  - c. If alcohol or drugs are suspected and a waiver or warrant is obtained, 4 (four) blood samples are to be drawn. 2 (two) samples are for testing, the other 2 (two) are kept as a control sample for the defendant.

## **VII. ARRESTS BY OUTSIDE AGENCIES**

- A. Military Law Enforcement Officers. Military personnel are responsible for arresting and processing non-military people (civilians) for OUI on their facilities. Anchorage Police Officers may be called by military personnel to assist with charging felony OUI’s and when additional charges are present. In those cases, Anchorage Police Officers may need to take custody of the subject and remand them to the appropriate facility. Additional clarification can be found in the current Memorandum of Understanding held with JBER.
- B. Alaska State Troopers. On rare occasions, the Alaska State Troopers may have a need to use Department facilities. The following would apply:
  1. State Troopers are responsible for the arrest and processing.

2. Anchorage officers will provide technical assistance as needed, forms, etc., and may operate the breath test instrument if the Trooper is not qualified to do so.
3. A police report entitled "Outside Agency Assist" will document the actions of all Anchorage Police Officers involved. All other documentation will remain with the other agency's officer.

**\*\*\*END OF DOCUMENT\*\*\***