

Asheville Police Department Policy Manual

Chapter: 13 - Traffic

Policy: 1305 - DWI Enforcement

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Introduction

The Asheville Police Department is committed to vigorous enforcement actions against impaired driving and implied consent offenses. This policy establishes guidelines for the enforcement of driving while impaired (DWI) offenses.

Policy Statement

It is the policy of the Asheville Police Department (APD) to actively patrol the roadways within the city limits and strictly enforce the impaired driving and implied consent laws of the State of North Carolina.

Definitions

Advanced Roadside Impaired Driving Enforcement (ARIDE): advanced training to prepare police officers to conduct various drug-impairment detection tests at the

roadside for use in drugged-driving investigations. This training does not certify the officer as a Drug Recognition Expert.

Chemical Analyses: a test or tests of the breath, blood, or other bodily fluid or substance of a person to determine the person's alcohol concentration or presence of an impairing substance, performed in accordance with N.C. Gen. Stat. § 20-139.1.

Chemical Analyst: a person granted a permit by the N.C. Department of Health and Human Services to perform chemical analyses.

Drug Recognition Expert (DRE): law enforcement officers who have received extensive specialized training to determine if someone is impaired by alcohol and/or other drugs, and have been certified through the appropriate accrediting agency, the International Association of Chiefs of Police (IACP).

Impaired Driving: driving a vehicle on a highway, street, or a public vehicular area while under the influence of an impairing substance; or with a Blood Alcohol Concentration (BAC) of 0.08 or more; or having any amount of a Schedule I controlled substance or its metabolites in the body.

Impairing Substance: alcohol, a controlled substance under Chapter 90 of NC General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.

Standardized Field Sobriety Testing (SFST): three (3) psychophysical tests conducted to assist in determining appreciable impairment of a person who is suspected of driving while impaired.

Rules and Procedures

1305.1 Stopping Vehicles

- A. Upon making contact with the driver, whether at a checking station, during a vehicle stop, or at an already stopped vehicle, an officer should use their senses to observe, smell, or hear possible evidence of impairment. If an officer possesses reasonable suspicion of impairment, the officer should ask the driver to perform Standardized Field Sobriety Testing (SFST) consistent with training.
- B. SFST should be administered by an officer who is properly trained to do so, if such SFSTs can be performed safely. If any of the SFSTs are unable to be administered by the officer or performed by the driver, the officer will document the reasons. Officers not trained in SFSTs can still conduct roadside field sobriety testing and make observations of impairment based on their training and experience.

- C. Upon completion of field sobriety testing, when appropriate, and making a determination of the driver's impairment, the officer may request the subject to submit to an Alcohol Screening Test Device (ASTD) issued by the department.
- D. If it is determined that the impairment is drug-related and the officer has not received advanced training, they can request assistance from a Drug Recognition Expert (DRE) or an officer who has attended Advanced Roadside Impairment Driving Enforcement (ARIDE) training. If neither is available, the officer will continue with the arrest and document the evidence of impairment.
- E. If the driver cannot attend to their vehicle (i.e., due to arrest or transport to the hospital), the procedures outlined in [Policy 1307 – Vehicle Towing](#) will be followed.

1305.2 Rights to Pre-Charge Chemical Analysis

- A. During an implied consent investigation, the driver may request a test before a charge or arrest is made ([N.C. Gen. Stat. § 20-16.2 \(i\)](#)). A test can only be requested by the driver during the investigation of the offense and not after the arrest has been made.
- B. Upon this request, the officer must afford the person the opportunity to have a chemical analysis of their breath, if available, in accordance with the procedures required by [N.C. Gen. Stat. § 20-139.1\(b\)](#).
- C. The officer should complete the Request for Pre-Charge Chemical Analysis (DMV-S784) form before transporting the individual to the test site. If the driver refuses to be transported by the officer to the testing site, the request will be revoked, and the officer will continue with their investigation.
- D. Once at the testing facility, the Chemical Analysts should advise the driver of their rights in accordance with [N.C. Gen. Stat. § 20-16.2 \(i\)](#) (DMV-S784A).
- E. Chemical Analysts should refer to the "Checklist for Pre-Arrest" in their Intox EC/IR II Operator Manual for further instructions after the test has been completed.

1305.3 Chemical Analysis

- A. N.C. Gen. Stat. § 20-16.2 provides that any person who operates a vehicle on a highway or public vehicular area in North Carolina is deemed to have given consent to a chemical analysis of their breath or blood in the event of being charged with an implied consent offense, which includes:

1. Impaired driving (G.S. § 20-138.1)
 2. Impaired driving in a commercial vehicle (G.S. 20-138.2)
 3. Habitual impaired driving (G.S. 20-138.5)
 4. Death by vehicle or serious injury by vehicle (G.S. 20-141.4)
 5. First- or second-degree murder (G.S. 14-17) or involuntary manslaughter (G.S. 14-18) when based on impaired driving.
 6. Driving by a person less than 21 years old after consuming alcohol or drugs. (G.S. 20-138.3)
 7. Violation of the no-alcohol condition of limited driving privilege (G.S. 20-138.2A)
 8. Impaired instruction (G.S. 20-12.1)
 9. Operating a commercial motor vehicle after consuming alcohol (G.S. 20-138.2A)
 10. Operating a school bus, school activity bus, or child care vehicle after consuming alcohol (G.S. 20-138.2B)
 11. Transporting an open container of alcohol (G.S. 20-138.7 (a))
 12. Driving in violation of restriction requiring ignition interlock (G.S. 20-17.8(f))
- B. All chemical analyses conducted by or at the Asheville Police Department's direction will be for law enforcement purposes only and will be conducted according to the current methods, procedures, and regulations established by the North Carolina Department of Health and Human Services (NC DHHS) and other applicable law. The arresting officer will determine the type of chemical analyses to be performed.
- C. All chemical analysts are to read the arrestee DHHS 4081, Rights of a Person Requested to Submit to a Chemical Analysis to Determine Alcohol Concentration or Presence of an Impairing Substance Under G.S. 20-16 (1). If the arrestee is unconscious or unable to give consent, a Search Warrant for Blood or Urine in DWI Cases (AOC-CR-155) must be obtained to draw blood.
- D. If the arrestee refuses to submit to the analysis requested by the officer or fails to follow the directions of the chemical analyst, such action will be considered a willful refusal and recorded as such.
1. After a willful refusal, officers should attempt to obtain a Search Warrant for Blood or Urine in DWI Cases (AOC-CR-155). Once the Warrant is issued, the officer will transport the arrestee to an available EMS facility or Mission Hospital.

- E. The chemical analysts and arresting officers must complete their designated sections of DHHS3907/AOC-CVR-1A Affidavit and Revocation Report of Law Enforcement Officer and/or Chemical Analyst.

1305.4 Drug Recognition Experts

- A. The Drug Recognition Experts (DRE) utilize a standardized and systematic method of examining a DWI suspect to determine:
 - 1. Whether the person is impaired, and if so
 - 2. Whether the impairment relates to drugs or a medical condition, and if drugs, the category or combination of categories of drugs that is the likely cause of the impairment.
- B. DREs, when available, should be called when the officer believes the driver's impairment is due to drugs. If no DRE is available, the officer will continue with the arrest in accordance with section 1305.1(D) of this policy.
 - 1. The officer should complete the SFSTs on the driver and, if the officer believes the offender is impaired, arrest the offender for the offense.
 - 2. DREs will use the drug influence evaluation to corroborate the impairment that the officer detected and to determine if the impairment is due to a medical condition, alcohol, and/or drugs.
- C. If a DRE is not available to conduct an evaluation, the officer should take detailed notes and obtain a blood sample from the offender in accordance with North Carolina law.

1305.5 Vehicle Seizures

- A. In certain situations, motor vehicles used in a DWI offense may, [and in some cases will](#), be seized and are subject to forfeiture ([N.C. General Statute § 20-28.2](#) and [§ 20-28.3](#)). The statute clearly defines the two situations that [provide for vehicle](#) forfeiture:
 - 1. The offender [is](#) charged with an offense involving impaired driving. An offense involving impaired driving includes the following:
 - a. Habitual impaired driving under N.C.G.S. § 20-138.5
 - b. Impaired driving under N.C.G.S. § 20-138.1
 - c. Any offense set forth under N.C.G.S. § 20-141.4 based on impaired driving (felony death by vehicle and felony serious injury by vehicle)

- d. First or second-degree murder under N.C.G.S. § 14-17 or involuntary manslaughter under N.C.G.S. § 14-18 when based on impaired driving.
 - e. Impaired driving in a commercial vehicle under N.C.G.S. § 20-138.2
2. Either the offender:
- a. Is driving while license revoked (DWLR) for an Impaired Driving License Revocation, **OR**
 - b. Does not have a valid license (for any reason) **AND** is not covered by an automobile liability insurance policy.
- B. All DWI vehicle seizures will comply with the guidelines in [Policy 1004 – Seizure and Forfeiture](#).

1305.6 DWI Case Files

- A. The arresting officer must complete a detailed incident report of the DWI arrest after the arrest is completed.
- B. The arresting officer will complete a DWI case file and submit all discoverable items. The case file must be shared with the District Attorney's office prior to the first court date. [Once the case file is submitted, the upload receipt should be retained and placed in RMS with the completed case file.](#)
- C. DWI case files will consist of the following items, [in order](#), where applicable:
 1. [Cover sheet](#)
 2. [DWI case checklist](#)
 3. [All pages of the incident report\(s\)](#)
 4. [All pages of collision report\(s\) \(if applicable\)](#)
 5. Test ticket (DHHS 4082)
 6. Officer Affidavit (DHHS 3907)
 7. Chemical Analyst Affidavit (DHHS 3907)
 8. Chemical Analyst Rights Advisement Form (DHHS 4081)
 9. [Citations](#)
 10. Arrest sheet
 11. [Warrant copies \(magistrate orders, search warrants, warrants for arrest\)](#)
 12. [CAD call report](#)
 13. [Miranda forms](#)
 14. DWIR (DHS 4064)
 15. [Consent search forms](#)
 16. [Property voucher](#)

17. Criminal/driver history
 18. Booking photograph from the arrest date
 19. Vehicle registration information
 20. Witness statements
 21. SBI-5 submission request
 22. Tow sheet
 23. Medical records consent from (signed)
 24. SBI results
 25. Miscellaneous (anything else you have)
 26. Notes, handwritten
 27. Photographs from officers or forensics (should be uploaded with BWC in [Evidence.com](#))
- D. All body-worn/in-car camera video involved in the DWI investigation should be compiled into a case in Evidence.com and shared with the District Attorney's Office. Any photographs obtained by investigators should be included in the Evidence.com case.
- E. Case files will follow requirements in [SOP 3000 - Case File Documents & Media](#).

By order of:

A handwritten signature in black ink that reads "Jackie Stepp". The signature is written in a cursive style with a large initial 'J' and 'S'.

Jackie Stepp
Interim Chief of Police