


AURORA POLICE DEPARTMENT

DIRECTIVES MANUAL

06.18	Title: ENFORCEMENT OF IMPAIRED DRIVING LAWS	
	Approved By: Vanessa Wilson, Chief of Police	
	Effective: 09/01/1998	Revised: 02/01/2022
	Associated Policy: DM 06.12	
	References: NHTSA SFST Manual	
Review: Traffic Section Commander		Duty Honor Integrity
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6.18 ENFORCEMENT OF IMPAIRED DRIVING LAWS

This directive will guide members in the enforcement of impaired driving laws.

6.18.1 Field Sobriety Tests

When an officer is in contact with a suspected impaired driver and circumstances permit, voluntary field sobriety tests should be offered. Field sobriety tests should be administered in a manner consistent with the most current National Highway Traffic Safety Administration (NHTSA) Standardized Field Sobriety Tests (SFST) manual.

SFSTs will not always be administered under ideal conditions in the field, because such conditions will not always exist. Even when administered under less than ideal conditions, they will generally serve as valid and useful indicators of impairment.

After arresting a subject for driving under the influence (DUI), driving with excessive alcohol content (DUI per se), driving while ability impaired (DWAI), vehicular homicide (alcohol and/or drug-related), vehicular assault (alcohol and/or drug-related) or a combination thereof, officers shall take necessary steps to check the suspect's criminal history and driver history for prior DUI related convictions. Officers shall contact the Aurora Police Department Records Section and request a *DUI history*. The records section will make the subject's criminal history and driver history available to officers. When the records section locates an out-of-state driver's license number or arrest, the records clerk will begin searching that state's database and attach that state's driver's history as part of the subject's criminal history and driver's history. Officers will view the subject's history and determine if the arrested subject meets the criteria for felony DUI (see section 6.18.11).

A person is deemed to have a prior conviction for DUI, DUI per se, DWAI, vehicular homicide (alcohol and/or drug-related), or vehicular assault (alcohol and/or drug-related) if the person has been convicted under the laws of this state or the laws of any other state of the United States, or Territory subject to the jurisdiction of the United States where the elements of those out of state offenses are substantially similar to the law in this state.

6.18.2 Chemical Testing for Alcohol

After establishing probable cause that impairment due to alcohol exists, officers will offer either a blood test or a breath test to the subject. While not a requirement, it is suggested that an officer use APD Form 018 when advising a subject of the choice of tests. Refusal to submit to chemical testing is found below (section 6.18.8).

6.18.3 Breath Test

After the Colorado Express Consent Advisement, should the subject choose to provide a breath sample, the following procedures will apply:

- a. Only officers certified as instructors or operators will administer evidential breath alcohol tests (EBAT) utilizing the Intoxilyzer 9000 instrument. Certified instructors and operators will administer the EBAT in compliance with the Colorado Department of Public Health and Environment's (CDPHE) rules and regulations.
- b. The Intoxilyzer 9000 instrument will provide a 4-page printout, which includes a completed EBAT (1), Intoxilyzer annual certification (1), and instrument performance report (IPR)(2) for each completed EBAT administered. Any exception messages encountered will also result in a 4-page printout.
- c. The entire 4-page report will be attached with the officer's offense report, including any printouts from any exception messages encountered. No copies are given to the subject after the test.

The CDPHE maintains all backup records about the maintenance of the Intoxilyzer. CDPHE also maintains the backup records of certifications for all Intoxilyzer 9000 instructors and operators, including but limited to, all recertification records required by CDPHE's rules and regulations. Each Intoxilyzer 9000 instrument stores the above data internally.

Intoxilyzer 9000 instructors and operators are solely responsible to maintain their certification as required by CDPHE's rules and regulations.

Intoxilyzer 9000 instructors are required to maintain certification by the following:

- a. Complete an annual online refresher course (within the calendar year) presented by CDPHE;
- b. Participate in teaching one 8-hour operator certification course (once every 2 years).
- c. Complete a recertification EBAT within 180 days, using the recertification menu option on the Intoxilyzer 9000.

Intoxilyzer 9000 operators are required to maintain certification by the following:

- a. Complete an annual online refresher course (within the calendar year) presented by CDPHE;
- b. Complete a Recertification EBAT within 180 days, using the recertification menu option on the Intoxilyzer 9000.

Each Intoxilyzer 9000 instructor and operator is issued a swipe card by CDPHE to operate Intoxilyzer 9000 instruments. Each member is responsible for his/her swipe card. If a member's card is lost or stolen, they must notify CDPHE as soon as possible for a new card to be issued.

6.18.4 Blood Test

After advisement, should the subject choose to provide a blood sample, the following procedures will apply.

- a. The officer will request, via Aurora911, Falck Rocky Mountain respond with an ambulance, to either the detoxification center or the Aurora Detention Center (see exceptions below). The Falck employee will respond and take the blood sample as directed by CDPHE's most current rules and regulations. An officer will always remain with the subject, while the subject is in the presence of Falck personnel. The blood draw will be witnessed by an officer, and that officer will document such in his/her report. The officer shall notate in their report the name and employee ID number of the Falck personnel who collected the blood. The officer will maintain custody of the blood sample and make a copy of the blood kit lab request which will be included in the officer's case report.
- b. When blood samples have been collected, either on a felony or misdemeanor case, the blood kit will be placed into the secured evidence refrigerator located at the Aurora Detention Center. The officer will then complete the DUI blood evidence log, next to the secured refrigerator.

The Aurora Police Department will be responsible for collecting the blood kits and maintaining the DUI blood evidence log. The blood kit will be submitted to an authorized laboratory for testing. After performing the necessary test as outlined by the CDPHE, the results will be forwarded to the arresting officer for follow-up.

The Traffic Section Commander or designee will ensure that blood kits are available for Falck ambulances.

6.18.5 Injured Subjects

Responding emergency medical personnel will determine if the subject will be transported to a hospital for evaluation and/or treatment. Should the investigating

officer have probable cause to believe that the subject was under the influence of alcohol and/or drugs, the officer will advise the subject, as described in section 6.18.2, excluding the option for a breath test. Should the subject choose to provide a blood test, the officer will request, via Aurora911, that a Falck ambulance responds to the hospital.

Should the injured subject be receiving immediate treatment for injuries at a medical facility, Falck personnel must not interfere with medical personnel. Falck personnel should not attempt to obtain a blood sample if such a blood sample would interfere with the treatment of or endanger the subject. If necessary, Falck personnel should obtain permission from attending medical personnel to administer a blood draw.

6.18.6 Chemical Testing for Drugs

If an officer has probable cause to believe that a subject has been in physical control of a vehicle and the subject is impaired by one or more drugs, then the officer may request from the subject any combination of chemical tests of the subject's blood, breath, urine, and/or saliva. Should the officer have indications of impairment, and the officer can reasonably articulate based on training and experience that the impairment is due to drugs and not alcohol, then the officer should request both a breath test (to rule out alcohol as the cause of the impairment), and a blood sample to test for the presence of drugs. The subject is required to cooperate in the completion of both tests or it will be treated as a refusal (see section 6.18.8).

6.18.7 Notice of Revocation

The arresting officer will ensure that an Express Consent Affidavit and Notice of Revocation form is completed if one (1) or more of the following occur:

- The subject provides a valid breath sample within two (2) hours of actual physical control of a vehicle and the results of the test are 0.08 or greater.
- The subject provides a blood sample within two (2) hours of actual physical control of a vehicle and the subsequent results are 0.08 or greater (issued upon receiving the results from an authorized laboratory).
- The subject refuses to take a blood or breath test when alcohol is suspected.
- The subject refuses to take blood, breath, urine, saliva, or a combination of these tests when drugs are suspected.
- Commercial/HAZMAT operators where testing disclosed an alcohol concentration of 0.04 or more.
- Under 21 years of age and testing disclosed an alcohol concentration between .02 and .05 at the time of driving or within two hours of driving.

6.18.8 Processing or Releasing the Arrestee

When a driver has been arrested for a possible impaired driving violation, the suspect may be transported for testing to either the Aurora Detention Center or the detoxification center. In the event the suspect is going to be held on bond, the officer will take the suspect to the Aurora Detention Center for processing and booking.

The detoxification center may be utilized for those arrested for DUI and no other charges that require jailing.

Directive 6.12.4 provides guidelines for officers on placing a subject into the Aurora Detention Center, the detoxification center, or their release to a responsible party.

6.18.9 Mandatory Chemical Testing

If an officer has probable cause to believe that a subject has committed vehicular homicide, vehicular assault, criminally negligent homicide, third-degree assault, or a combination thereof, then the officer can require the subject to submit to chemical testing. The subject cannot refuse or choose the type of test. The officer will request Falck to respond and the blood will be drawn following this section 6.18.4. In the instances listed above in this paragraph, two (2) additional blood draws will be done each hour after the previous draw, for a total of three blood samples (each taken approximately one hour apart).

It is neither necessary nor practical for the Falck ambulance crew to remain for the entire time between the subsequent draws. They may return to service and return to the hospital for the subsequent draws at the appropriate time. The officer will plan and allocate an appropriate amount of time for the response when planning the return trips by the ambulance crew. The officer should ensure all names and ID numbers of Falck personnel who conduct draws and any subsequent draws are cited in their report and the time each draw was collected.

6.18.10 Felony DUI Offenders

After three (3) or more prior convictions arising out of separate and distinct criminal episodes for DUI, DUI per se, DWAI, vehicular homicide (alcohol and/or drug-related), vehicular assault (alcohol and/or drug-related), or a combination thereof, makes the fourth (4) or subsequent arrest for DUI, DUI per se, DWAI, vehicular homicide (alcohol and/or drug-related), vehicular assault (alcohol and/or drug-related), or a combination thereof, a felony crime.

A person is deemed to have a prior conviction for DUI, DUI per se, DWAI, vehicular homicide (alcohol and/or drug-related), vehicular assault (alcohol and/or drug-related), or a combination thereof, if the person has been convicted under the laws of this state or the laws of any other state of the United States, or Territory subject to the jurisdiction

of the United States where the elements of those out of state offenses are substantially similar to the law in this state.

Once an officer determines that a suspect meets the criteria for a felony DUI charge, the officer should process the suspect as any other felony arrest while also following the procedures outlined in this directive for processing impaired drivers as it relates to express consent, chemical testing, and notice of revocation.