

**DAYTON POLICE DEPARTMENT
GENERAL ORDER
OVI ENFORCEMENT AND ARRESTS**



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REV. 02/21

POLICY STATEMENT

Drivers, who are impaired by alcohol and/or drugs, represent a serious threat to all persons. The Dayton Police Department supports a comprehensive, coordinated countermeasure program involving education, enforcement, adjudication, treatment, public awareness and support.

- I. Arrests for OVI or Physical Control are based on the arresting officer's observations at the scene. The person must be under the influence of alcohol and/or drugs.
 - A. Note the person's driving characteristics in the relevant reports. Although a person's erratic driving may have been the reason for the initial stop, it is not always a necessary element.
 - B. Observe the person's eyes, breath, speech, walk, and balance. Observe the skin for a flushed or sweaty appearance.
 - C. If the person appears under the influence of alcohol or drugs, request the person to submit to the Standard Field Sobriety tests. Select an area of level ground, free of debris, to administer these tests.
 - D. If a person refuses to take or complete the Standard Field Sobriety tests and the officer's observation warrant, inform him that he will be arrested. The person must be advised at the scene that he is under arrest for violation of ORC 4511.19(A)(1)(a). The Citation wording should be: "Did operate any vehicle while under the influence of alcohol and/or drugs of abuse."
 - E. The violator will also be cited for the violation precipitating the stop of the vehicle, if applicable (i.e. red light, etc.).
 - F. If the violator consents to a chemical test and only alcohol is suspected, transport the person to the Jail or nearest breathalyzer location for a breath and/or urine test (The DPD breathalyzer is located on the ground floor of CPS). If the violator consents to the test, the consent and the breath and/or urine test must be administered within three (3) hours of the time of the violation (if a test is ordered past the time limits by the Traffic Services Unit or a supervisor, the violator can be taken to the nearest hospital to obtain a whole blood, blood serum or plasma sample).
 - G. It is not always necessary to incarcerate the violator. The violator may also be afforded the opportunity to post bond for the violation or may be released to a sober person willing to accept responsibility. The officer will ensure that a property release form (Form RF-27) is signed by the person accepting the violator and forwarded to the Traffic Services Unit for retention.
- II. ALCOHOL BREATH TESTING VERIFIER EXAMINATION (BAC)
 - A. Persons arrested for OVI shall be given the Miranda Warning prior to any interview being conducted.
 - B. If a certified BAC operator is not available, remember that blood and urine tests are an alternative.
 - C. After notifying the Regional Dispatch Center, turn off portable radios when entering the BAC Room, as radio transmission will activate the test instruments negating the test results.
 - D. The arresting officer must continuously observe the violator for 20 minutes prior to administration of the breath test. The person must not be permitted to smoke or consume any liquids or food during this time.
 - E. The current BMV Form 2255 shall be shown and read (location will be noted on the form) to the arrested person by the arresting officer prior to the test. The form will be read to the violator in the presence of one or more persons, and signed by, the arresting officer, another officer, professional staff employee, or an employee of the medical institution.



- If an OVI driver is involved in a crash and transported to a hospital for injuries from the crash, and you are not going to book the OVI driver, you will no longer read the BMV form 2255. In order to obtain a sample of the violator's blood for your investigation you can get a written consent (misdemeanor only) or a search warrant. If the driver is unconscious there is case law which states that consent is implied and the sample can be obtained (no need for consent form or search warrant form).

If an OVI is going to be presented as a felony case (e.g. Traffic Crashes or Traffic Stops) to the Montgomery County Prosecutor's Office, officers should get a warrant. Officers should not proceed with obtaining a blood sample based on consent only.

The consent and search warrant forms are located on the P-Drive under Traffic General then OVI Folder. If the OVI crash involves serious physical harm, see definition below, a TSU callout is justified per General Order 3.02-5 Section III.

Defined by O.R.C. 2901.01 – Serious Physical Harm

"Serious physical harm to persons" means any of the following:

- *Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;*
- *Any physical harm that carries a substantial risk of death;*
- *Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;*
- *Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;*
- *Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain."*

- F. If a violator submits to and tests within any of the following limits, issue him a second Citation for the applicable violations listed below:
1. ORC 4511.19(A)(1)(d) greater than or equal to .08 but less than .17, the citation wording should be "Did operate any vehicle at the time of operation having a concentration of eight-hundredths of one gram or more but less than seventeen-hundredths of one gram by weight of alcohol per two hundred ten liters of breath".
 2. ORC 4511.19(A)(1)(h) greater than or equal to .17, the citation wording should be "Did operate any vehicle at the time of operation having a concentration of seventeen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of breath".
- G. If a person tests below .08, that evidence may be considered with other competent evidence in determining the guilt or innocence of the defendant. This does **not** preclude prosecution for the OVI, ORC 4511.19 (A)(1)(a), charge. Officers will test for drugs pursuant to Section C below. If unable to obtain evidence pursuant to Section C, prosecution will still be pursued for OVI, based on standard field sobriety tests and statements of witnesses. If a person refuses to give a subsequent blood or urine sample after taking a breath test, he/she shall be subject to an immediate suspension of his Ohio driving privileges pursuant to RC 4511.19 (B). The BMV Form 2255 must also be completed.
- H. If the defendant tests .08 or higher on the breath test, or refuses to submit to a test, the officer shall confiscate the violator's license and attach it to the Citation. The license is placed in a coin envelope with the arrested's name, address, date, charge, and citation number written on it. If not in possession of a driver's license, advise the violator he must present it at the arraignment or their first appearance.



- III. When suspected OVI drivers are encountered and clearly observed to be under the influence of drugs, those suspects should be taken to a local hospital to obtain an OVI whole blood, blood serum or plasma sample. When a person submits to a blood test, only a physician, registered nurse, or qualified technician, chemist, or phlebotomist shall withdraw the blood. If the violator consents to the test, the blood, breath and/or urine test must be drawn within 3 hours of the time of the violation (Urine is a last resort for alcohol OVI prosecutions and also is not effective in drug OVI prosecutions – call for a DRE if drug OVI is suspected). If the violator refuses this test, they will be subject to an immediate suspension of his Ohio driving privileges pursuant to ORC 4511.19 (B). The BMV Form 2255 must also be completed.
- A. At a hospital ask the suspect for a whole blood, blood serum or plasma sample and read the BMV Form 2255 to him/her. If he/she consents, use the OVI Collection Kit the collection must be witnessed by the arresting or transporting officer.
 - B. Whole blood, blood serum or plasma, or urine samples are to be properly marked prior to placement in the evidence envelope.
 - C. Should gender differences make the officer witness of the urine sample impractical, an officer of the same sex as the offender will be summoned. If this is not possible, the officer will request hospital personnel witness the collection. The witness will be identified in the report for future response.
 - D. When whole blood, blood serum or plasma, or urine is taken, it is placed in the refrigerator in the B of I office or taken to MVRCL. Complete a Lab Sheet, and Routing sheet. Put the temperature of the refrigerator on the form. Attach these forms to the OVI Kit before placing in refrigerator.
 - E. If hospital personnel refuse to administer the whole blood, blood serum or plasma or urine tests, the violator will still be arrested. The Prosecutor will still try the case, based on the officer and witness testimony.
 - F. **Drug Recognition Expert (DRE)** - A DRE is an individual specially trained to detect and evaluate individuals who are under the influence of drugs. Then based on that evaluation determine which drug category an individual is impaired by or if the problem may be a medical condition or otherwise.
 - DRE's are not necessarily limited to traffic offense investigations. DRE's can be contacted for many other circumstances including child death investigations where the parent, guardian, or responsible party on scene may be under the influence of drugs, rape investigations (should a subject claim to have been drugged) or in schools with students suspected to be impaired by drugs. A DRE should be contacted to see if an evaluation is indeed appropriate.

When an officer encounters persons who appear to be under the influence but the means of their intoxication is not readily available, a DRE can help pinpoint the cause of impairment.

1. A Request for a DRE should be made as early as possible since the physical indicators of drug impairment diminish as time passes. The field commander or field supervisor has the primary responsibility for such a call out. The list of certified DRE's is located on PowerDMS under the DRE Call-out list.
 - A suspect has a low BAC level not consistent with their field test results.
 - The suspect is obviously impaired (i.e. can't perform field sobriety tests to the satisfaction of the arresting officer).
 - If a traffic collision results in a fatality and based upon the drivers signs of intoxication (i.e. slurred speech, constricted or dilated pupils, incoherent behavior, combative conduct, poor balance and coordination, etc.)
 - When the driver of a vehicle involved in a serious injury traffic crash has been placed under arrest for OVI or related criminal charges, and physical evidence developed during the investigation substantiates impairment.
 - A traffic stop involving a drug arrest or an odor of a controlled substance on the suspect or in the vehicle (i.e. a warm pipe, recent smoking, an admission, chemical odors, etc.).



- There is reasonable suspicion that drug impairment could be a factor in any felony/fatal/critical injury or departmental-involved crash. A DRE may respond to the scene and evaluate the surviving driver(s).
- The requesting/arresting officer should talk to the DRE directly. The DRE will ask specific questions about the suspect (behavior and performance on SFST's, pupils, speech, drugs in the vehicles, admissions, etc.).

2. Mutual Aid Request - All requests for a DRE, from other agencies must be directed to the TSU Sergeant.

IV. Courts have held (*Stout v McCullion* 70 Ohio App. 3d. 447) the defendant may see an attorney prior to a breath, blood, or urine test if the attorney is "reasonably" available before the conclusion of the two hour consent time limit. If the 2-hour time limit is drawing near, as defined by ORC 4511.19(D)(1), the tests are to be administered within the 3-hour time limit or the defendant's refusal acknowledged regardless of whether an attorney has been contacted.

V. Mandatory testing for certain OVI offenders

Anyone arrested for OVI has a right to refuse to submit to a chemical test (blood, breath or urine). Absent a search warrant, an officer has no ability to compel a suspect to submit to a test except for persons arrested for OVI or Physical Control who meet any of the following criteria:

- 2 or more OVI or OVUAC convictions within the prior 10 years,
- 5 or more OVI or OVUAC convictions within the prior 12 years, or
- 1 or more felony OVI convictions within their lifetime.

If an OVI suspect meets any of these criteria and refuses to submit to a chemical test, an officer may employ "whatever reasonable means are necessary" to ensure that the person submits to a blood test. An officer is not required to get a warrant in this situation. However, a supervisor will be called to the testing location prior to any non-consenting blood test being administered. Ohio law provides for immunity from criminal and civil liability for officers who use "reasonable means" to get a blood test unless the officer acts with "malicious purpose, in bad faith, or in a wanton or reckless manner", any testing performed must be thoroughly documented.

VI. Juveniles are processed in the same manner as an adult. The Juvenile Court has stated juveniles are required to submit to Breath/Blood/Urine Tests or face the loss of their driving privileges for one year. Juveniles are to be treated as adults in some respects; however, the booking process and posting bond with the Clerk of Courts are not available to them. If the juvenile lives outside the County, a Citation may still be issued as juvenile courts have reciprocal agreements nationwide. Implied consent laws bind juvenile violators and parental permission is not necessary to refuse or take a chemical test.

- A. If the juvenile has to be taken to a hospital for alcohol and/or drug blood test, the officer must contact the parents or responsible guardian and obtain permission for the test to be conducted. This is a hospital requirement prior to providing medical treatment for juveniles. If the parent or guardian refuses to allow the hospital to perform the test, this would be the same as a Refusal.
- B. If the officer is unable to contact the parent or guardian, convey the juvenile to the Intake Unit at the Family Court Center. The Intake Unit personnel will obtain the consent authorization to have the juvenile examined/tested at the hospital. After the test is performed, the juvenile will be turned over to the parents after completion of the investigation. Officers charging juveniles with OVI offenses or ALS related suspensions will continue using the 5-day order-in.

VII. The OVI ARREST KIT, F-60, contains all the necessary forms to complete an arrest for OVI. The following forms are to be completely and accurately prepared:



- A. Form F-616, Witness of Alcohol or Drug Influence, is to be completed by civilian witnesses,
- B. Form RF-002, Dayton Police Department OVI Case Summary,
- C. BMV Form 2255.
- D. The Clerk of Courts requires that the citation(s) be included in the packet.

VIII. Physical Control ORC 4511.19.4 - This violation should be used when the suspect is in physical control of a vehicle and under the influence of alcohol, drugs of abuse, or a combination.

- A. Physical Control means "Being in the driver's position of the front seat of a vehicle or in the driver's position of a streetcar or trackless trolley and having possession of the vehicle's, streetcar's, or trackless trolley's ignition key or other ignition device."
- B. Standard Field sobriety tests should be conducted, Chemical tests for breath, urine, whole blood, blood serum or plasma should be conducted and the violator must be advised and given written notice of effect of refusal or submission to chemical tests RC 4511.192.
- C. BMV Form 2255 must also be completed as well as the remainder of the OVI Arrest Kit.

IX. The officer should issue Traffic Citations for all violations involved in the incident, unless fleeing and eluding - felony, other charges are involved, or unless otherwise directed by TSU or a supervisor.