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PREAMBLE

Alcohol and drug impaired driving causes the death or injury of tens of thousands of people and costs billions in other losses annually. Recognizing that drivers who are impaired by alcohol and/or drugs pose an extremely dangerous threat to their own safety as well as the safety of others, DCSO Deputies will strictly enforce all laws regarding the operation of motor vehicles under the influence of alcohol and or drugs.

POLICY

It is the policy of the Douglas County Sheriff's Office (DCSO) to strictly enforce the laws regarding the operation of motor vehicles under the influence of alcohol and/or drugs, and to remove impaired drivers from the public roadways.

PROCEDURE (61.1.5a)

I. Offenses and Violations

- A. Zero Tolerance Violation for Persons Ages 11 through 21 (Nebraska State Statute §60-6211.01)
 - 1. It is unlawful for any person under twenty-one years of age to operate or be in actual physical control of a motor vehicle with a BAC at or over .020.
 - 2. Administrative License Revocation procedures do not apply to this violation.
 - 3. Persons ages 11 through 21 operating or in actual physical control of a motor vehicle with a BAC of .080 or greater will be arrested for DUI.
 - 4. Juveniles ages 10 and younger will not be arrested, cited, or street released in accordance with Nebraska State Statutes §43-248(8) and §43-250(2).
- B. Zero Tolerance Violation for Felony DUI Offenders (State Statute §60-6196.01)
 - 1. It is a Class IIIA misdemeanor for anyone previously convicted for a felony DUI offense within the previous fifteen years to operate or be in actual physical control of a motor vehicle with a BAC at or over .020.
 - 2. Administrative License Revocation procedures do not apply to this violation.
- C. DUI with a Passenger under 16 Years of Age (State Statute §28-1254)
 - 1. It is a Class I misdemeanor and a separate and distinct offense for any person to operate or be in actual physical control of a motor vehicle with a person under the age of sixteen years as a passenger while:

- a. Under the influence of alcoholic liquor or any drug.
- b. With a BAC at or over the legal limit (.080).
- c. Refuses to submit to chemical testing when directed to do so by a peace officer.

D. Ignition Interlock Permits (Nebraska State Statute §60-498.02)

1. NSS §60-498.02 outlines circumstances in which a person granted an ignition interlock permit by the Department of Motor Vehicles may operate a vehicle equipped with an ignition interlock device.
2. The permit itself will indicate for which purposes the permit may be used.

E. Interlock Permit Driver with No Related History

1. A person granted an interlock permit who has no previous convictions for DUI, Refusal, Driving During Revocation, and has no previous administrative license revocations may operate a vehicle equipped with an interlock device, but only to and from the person's residence for purposes of:
 - a. Employment.
 - b. School.
 - c. Substance abuse treatment program.
 - d. Probation or Parole meetings.
 - e. Healthcare for self or a person dependent upon them.
 - f. Court ordered community service.
 - g. An ignition interlock service facility.

F. Interlock Permit Driver with Related History

1. A person granted an interlock permit who has a previous conviction for DUI, Refusal, Driving During Revocation, or has a previous administrative license revocation may operate a vehicle equipped with an interlock device, but only to and from the person's residence for the purposes of:
 - a. Employment.
 - b. School.
 - c. Substance abuse treatment programs.

G. Interlock Permit Violations

1. Class III Misdemeanor – Operating a vehicle equipped with an ignition interlock device in violation of the requirements of the court order or the DMV order under which the device was installed
2. Class IV Felony - Operating a vehicle which is not equipped with an ignition interlock device when issued an ignition interlock permit.
3. Class IV Felony – Tampering with or circumventing an ignition interlock device that has been installed under the order of a court or order of the DMV while such order is in effect.

II. **DUI Enforcement (61.1.5a, 61.1.9, & 61.1.10)**

- A. Deputies will be trained in the detection of impaired drivers, the use of standardized field sobriety testing, the use of preliminary breath testing devices, and use of evidentiary breath testing devices. Deputies will also keep up-to-date on current legislation and departmental procedures regarding impaired driving.
- B. DUI Enforcement is divided into the following three phases:
 1. Vehicle in Motion
 2. Personal Contact
 3. Pre-Arrest Screening
- C. Typically, the three phases occur in order. However, occasionally circumstances may dictate a different sequence of events (e.g., motor vehicle collisions).
- D. Phase One: Vehicle in Motion
 1. Deputies will be alert for traffic violations that may indicate a person is operating a motor vehicle under the influence of alcohol and/or drugs.
 2. Impaired drivers may commit any number of various traffic violations. When a Deputy decides to conduct a traffic stop they will pay attention to how the motorist reacts after being signaled to stop (i.e. delayed reaction, attempts to flee) and how the vehicle is driven after the stop signal is initiated (i.e. sudden abrupt stop, veers to the shoulder to stop, etc.).
 3. Quasi-Public Property
 - a. Deputies will be aware of NSS §60-6,108, which states that laws regarding DUI, careless driving, and reckless driving "may be enforced on highways and anywhere throughout the state except private property which is not open to public access."
 - (1) Deputies may make arrests for these offenses on private property not open to public access if the motorist had been in an eligible area immediately prior (e.g., traffic stops where the motorist pulls into a private driveway, vehicle driving on a public roadway crashes onto private property, etc.).

- b. The Nebraska Supreme Court has established limited case law clarifying where DUI enforcement may take place.
 - (1) The parking lot of an apartment complex is an eligible location for DUI enforcement, whether the suspect lives there or not. (State v. Prater, 2004)
 - (2) A residential driveway is not an eligible location for DUI enforcement. (State v. McCave, 2011)

E. Phase Two: Personal Contact

- 1. Deputies will be alert for signs of alcohol/drug impairment in all contacts with motorists. Signs of alcohol/drug impairment include, but are not limited to:
 - a. Bloodshot eyes.
 - b. Dilated or constricted pupils.
 - c. Altered speech (Slurred, slow, fast, erratic, etc.).
 - d. Odor of alcohol/drugs coming from the person or vehicle.
 - e. Poor coordination.
 - f. Mental confusion.
 - g. Disheveled appearance (vomit on clothing, wet pants from urine, etc.).
- 2. When a Deputy observes signs that a driver may be under the influence, the Deputy has an obligation to conduct further investigation into the driver's possible impairment.

F. Phase Three: Pre-Arrest Screening

- 1. Standardized Field Sobriety Tests
 - a. Deputies will utilize standardized field sobriety tests to aid in determining whether or not a driver is under the influence of alcohol and/or drugs unless the motorist refuses or exigent circumstances exist (e.g., weather or environmental conditions make the tests unsafe or otherwise disadvantageous to the motorist).
 - (1) If standardized field sobriety tests are not utilized, the Deputy will document the reason why in the Case Report.
 - b. Deputies will adhere to the standardized instructions and indicators of impairment for each test set forth by NHTSA. The three standardized field sobriety tests are:
 - (1) Horizontal Gaze Nystagmus (HGN).
 - (2) Walk and Turn (WAT).

(3) One Leg Stand (OLS).

c. Deputies may utilize non-standardized tests in addition to the three standardized tests. However, Deputies will understand that only the three standardized tests have been researched, validated, and accepted by the courts for the purpose of determining whether or not a person was under the influence of alcohol and/or drugs. Other non-standardized tests include, but are not limited to:

(1) Reciting the alphabet.

(2) Counting backwards or counting down.

(3) Finger dexterity test.

2. Preliminary Breath Test (PBT)

a. When available and circumstances permit, Deputies will utilize a preliminary breath test (PBT) to aid in the investigation of possibly impaired drivers.

b. A PBT allows a Deputy to confirm whether the impairment they have observed from a violator is caused by alcohol, but does not allow a Deputy to determine whether or not impairment is caused by drugs.

c. PBT units will be checked for accuracy, and if necessary calibrated, every thirty days.

d. Deputies must hold a Class 'C' permit for the operation of fuel-cell breath alcohol measuring devices from the Nebraska Department of Health and Human *Services Licensure Division* in order to use a PBT unit.

e. Nebraska law requires all drivers who have been in a motor vehicle collision or have committed a traffic violation observed by a peace officer to comply with a law enforcement officer's request to submit to a preliminary breath test.

(1) Refusing to submit to a preliminary breath test is a Class 'V' misdemeanor.

(2) Drivers who refuse to submit to a lawfully requested test should be arrested.

f. After using a PBT, Deputies will record the instruments use on the usage log form located in the PBT case.

g. In the event of a DUI arrest, Deputies will also document the use of the PBT in the DUI tab of the Case Report.

h. If the result of a PBT is inconsistent with the signs of impairment a Deputy has observed, the Deputy will strongly consider whether the impairment is caused by drugs or possibly an acute medical condition.

i. If Deputies believe that the impairment is caused by drugs other than alcohol, they will contact a Drug Recognition Expert (DRE) for assistance.

- j. If the Deputy believes that the impairment is caused by an acute medical condition, the Deputy will request a rescue squad respond to the stop location for treatment.

G. Post Arrest Processing and Chemical Testing (61.1.10)

1. Decision to Arrest

- a. After the Deputy completes the investigation a decision to arrest or not arrest will be made based on the totality of the circumstances (e.g., observed driving behaviors, observation of the driver's appearance and condition, field sobriety test observations, and PBT result).
- b. When a Deputy is able to establish probable cause to believe the motorist is/was driving or in actual physical control of a motor vehicle while under the influence of alcohol and/or drugs, the Deputy will arrest the motorist and transport them for post arrest chemical testing and processing.
 - (1) The vehicle driven by a DUI driver prior to arrest will not be left parked upon any public roadway, parking lot, or other private property without the consent of the property's owner. The vehicle driven by the DUI driver will either be:
 - (a) Impounded and towed to the City of Omaha Impound Lot using an Impound/Release Report. (61.4.3c)
 - (b) Turned over to a sober, licensed driver who is known to the arrestee, and has been granted permission by the driver or vehicle's owner to take possession of the vehicle.
- c. When a Deputy is unable to established probable cause to believe the motorist is/was driving or in actual physical control of a motor vehicle while under the influence of alcohol and/or drugs, the Deputy will not arrest the motorist.
- d. If probable cause for a DUI arrest is not present but the Deputy does not believe the motorist can safely operate a motor vehicle, the Deputy will not allow the motorist to drive from the scene and will arrange transportation for the motorist.
- e. When video evidence has been requested by the prosecuting authority, a supervisor or command officer will obtain the in-car and body worn camera video in accordance with the DCSO "In-Car Video System" and "Body Worn Cameras" policies.
 - (1) When delivering the evidence to the City Prosecutor's Office or County Attorney's Office, the Deputy will ask for an administrative assistant to sign the chain of custody report. The Deputy will ensure that the date and time are also written on the chain of custody report. The completed report will then be returned to PED.

2. Implied Consent

- a. Nebraska law requires any motorist operating a motor vehicle on the roadways of the state that has been arrested for driving under the influence of alcohol and/or drugs to submit to chemical testing at the direction of a peace officer to determine the amount of alcohol or drugs in their breath or urine or face additional criminal and administrative (license) penalties for refusing such testing.
 - b. The US Supreme Court has held that actual consent or a warrant is required for the collection of blood, and that implied consent is a violation of the subject's rights.
3. Post Arrest Chemical Test Advisement (SF-16C)
- a. The Post Arrest Chemical Test Advisement (SF-16C) form will be read to all motorists arrested for driving under the influence of alcohol and/or drugs prior to directing them to submit to a breath test and/or urine test or when the Deputy intends to complete a blood draw for chemical testing.
 - (1) This form allows the motorist the option to consent or refuse consent to the blood draw.
 - (2) If the motorist refuses to give consent for a blood draw, this is NOT considered a chemical test refusal. Deputies may obtain a search warrant as noted below.
 - b. Deputies will obtain a search warrant in the following circumstances (see the Affidavit and Application for Issuance of a Search Warrant for Blood and Urine Samples Chemical Testing and Order for details):
 - (1) The collection of a urine/blood from an unconscious motorist.
 - (2) Fatality collisions.
 - (3) Collisions resulting in serious bodily injury.
 - (4) If the motorist refuses to consent to a blood draw.
 - c. Deputies will request the motorist to sign the form to acknowledgement that the advisement was given, but the motorist is under no legal obligation to sign the form.
 - d. If a motorist refuses to sign the form or otherwise cannot sign the form (i.e. subject in handcuffs), the Deputy will seek to have the advisement witnessed and have the witness sign the form.
 - (1) If no witness is available, the Deputy will attempt to have the advisement recorded on video/audio using the in-car video or other recording device.

III. Post Arrest, Evidentiary Chemical Testing (61.1.10)

A. Chemical Testing for DUI - Alcohol

1. Nebraska Health and Human Services Title 177, Chapter 1 establishes the rules and regulations for chemical testing methods approved to determine a person's blood alcohol concentration (BAC). Approved testing methods for determining a motorist's BAC are:
 - a. Evidentiary Breath Testing.
 - (1) Testing will be conducted by a Nebraska Health and Human Services Class 'B' Permit holder and testing will adhere to Title 177 requirements. Approved instrument makes and models are listed below.
 - (a) Datamaster, all models.
 - (b) Intoxilyzer, all models.
 - (c) Intoximeters, all models.
 - b. Evidentiary Blood Testing
 - (1) Title 177 requires blood to be drawn in a medically acceptable manner by a licensed medical professional (i.e. Doctor, Nurse, Phlebotomist), and then tested by a Nebraska Health and Human Services Class 'A' Permit holder.
2. Chemical Testing for DUI - Alcohol Locations
 - a. When a Deputy has arrested a motorist suspected of driving under the influence of alcohol, the Deputy will transport the motorist to an appropriate facility for chemical testing. Appropriate facilities for each type of evidentiary test are listed below, but may be subject to change.
 - (1) Evidentiary Breath Testing Locations:
 - (a) Douglas County Law Enforcement Center.
 - (b) Douglas County Department of Corrections (maintained by the Nebraska State Patrol).
 - (c) Omaha Police Northwest Precinct.
 - (d) Omaha Police Headquarters.
 - (e) Valley Police Department.
 - (f) Bennington Police Department.
 - (g) Ralston Police Department.
 - (h) Metropolitan Community College Police Department – Fort Omaha Campus.
 - (2) Evidentiary Blood Testing Locations

- (a) All Omaha Metropolitan area hospital emergency rooms will assist Deputies in the collection of DUI blood evidence.
- (b) DUI blood evidence will be tested by the DCSO Forensic Services Bureau.

3. Breath Testing for DUI - Alcohol Procedures

- a. State Statute empowers law enforcement officers to direct the chemical testing of drivers who have been arrested for DUI, and grants the arresting officer the authority to choose the method of testing, blood or breath for DUI – Alcohol.
- b. Persons suspected of being under the influence of alcohol will be administered a breath test whenever possible.
- c. The Class 'B' Permit holder administering the breath test will complete a Nebraska Health and Human Services Attachment 16 – Checklist for Infrared Absorption Instruments form.
 - (1) The printed test result will be forwarded to records along with all other reports related to the arrest.

4. Blood/Urine Testing for DUI

- a. A blood test will only be used when a motorist has been injured, is being treated for those injuries at a hospital, and such treatment would substantially delay the administration of a breath test.
- b. Deputies are authorized to use reasonable necessary force to restrain a motorist in order to accomplish a whole blood draw and/or urine collection that has been authorized by a search warrant.
- c. Affidavit and Application for Issuance of a Search Warrant to Obtain Blood and Urine Samples for Chemical Testing and Order
 - (1) The DCSO maintains a template, Affidavit and Application for Issuance of a Search Warrant to Obtain Blood and Urine Samples for Chemical Testing and Order, in order to expedite the warrant writing process.
 - (2) This template contains demand information sections that must be completed to the extent reasonably possible.
 - (3) This template contains a section requesting the judge to authorize the use of reasonably necessary force to restrain to motorist in order to execute the warrant.
 - (4) This template serves as an “all hours” warrant service request because the language requires the warrant to be executed within two (2) hours of approval, any time of day or night.

- (5) Upon completion of the search warrant affidavit and application and search warrant the arresting deputy/affiant will seek to have the warrant approved by a County Court Judge.
 - (a) During regular business hours warrants can be approved at the Douglas County Hall of Justice by any available judge.
 - (b) Between the hours of 1630 and 0830 or on weekends or holidays, Deputies will contact the Douglas County Court Duty Judge via telephone and arrange to meet the judge at a location of their choosing with two (2) copies of the affidavit and application and three (3) copies of the search warrant.
 - (c) The County Court Duty Judge can be contacted at (402) 660-4837 if attempts to contact them on their home number are unsuccessful.
 - (d) If the Duty Judge cannot be reached, the Deputy may contact any Douglas County Court Judge.
- (6) Once approved by a judge the arresting Deputy/Affiant will return to the arrested motorist's location and immediately ensure the warrant is executed.
- (7) After the warrant is executed, Deputies may issue the motorist a citation for Misdemeanor DUI charges, as long as there are no circumstances for which the driver would otherwise be booked into corrections. It is not necessary to wait for blood test results to issue a citation.
- d. Upon execution of the search warrant the arresting Deputy will provide the motorist with a copy of the search warrant and a copy of the inventory of items seized.
 - (1) The arresting deputy/affiant will complete the search warrant return as soon as practical after the execution of the search warrant, never to exceed ten (10) days from the date of service.
 - (2) The DCSO maintains a template Search Warrant Return – Blood and Urine that should be used for the warrant return of blood and urine search warrants.
- e. Deputies will adhere to the following procedures when obtaining a blood test:
 - (1) Deputies will document the name, title, work address, and work phone number of the medical professional collecting the blood sample.
 - (2) Deputies will ensure the vials containing the blood specimen are grey-topped vials and are labeled appropriately. The required information on the label is:
 - (a) Name of the person tested.

- (b) The date and time the specimen was collected.
 - (c) The initials of the medical professional who collected the specimen.
 - (3) Deputies will witness the collection of the blood specimen, the labeling of vials, and take physical custody of the specimen as soon as practical in order to maintain the chain of custody.
 - (4) When a whole blood sample has been taken pursuant to a search warrant, the deputy must provide the motorist a copy of the search warrant and an inventory listing the items taken.
 - (a) Deputies will use the Property Sheet to complete the inventory, and provide a copy of the report to the suspect.
 - (5) As soon as practical, Deputies will transport blood specimens to the DCLEC, complete a Property Sheet and Forensic Services Request (1000-F102), seal the specimen vials in a safety tube, and place the forms and specimen in the PED Refrigerator.
5. Chemical Testing for DUI – Drugs
- a. Nebraska Health and Human Services Title 177, Chapter 7 establishes the rules and regulations for the analysis and determination of the drug content in urine relating to driving under the influence of drugs.
 - b. At the present time, the analysis of a motorist’s urine is the only evidentiary chemical testing method approved for DUI – Drugs cases.
 - c. DUI – Drugs Testing Procedures
 - (1) When a Deputy arrests a motorist who is suspected of being under the influence of a drug or drugs other than alcohol, the Deputy will attempt to enlist the assistance of a Drug Recognition Expert (DRE). The DCSO and several other law enforcement agencies in the Omaha Metropolitan area have Deputies/Officers certified as Drug Recognition Experts.
 - (2) If there is no on-duty DCSO DRE, Deputies will contact Communications to request a countywide broadcast for a DRE.
 - (3) If no DRE is available after a countywide broadcast, Deputies will have Communications contact NSP and Sarpy County Communications to check for an on-duty DRE or Deputies will contact their Supervisor who may call in an off-duty DCSO DRE.
 - (4) When a DRE is available to assist:
 - (a) The arresting Deputy will transport the arrested motorist to the DCLEC or other location specified by the DRE.

- (b) If the motorist has consumed alcohol, the Deputy will complete an evidentiary breath test of the motorist after giving the Post Arrest Chemical Test Advisement. Only motorists with a breath test result under .080 will be forwarded to the DRE. If the evidentiary breath test shows a BAC at or over .080, a DUI – Alcohol will be completed.
- (c) At the DCLEC or other location specified by the DRE, the arresting Deputy will temporarily turn over custody of the motorist to the DRE so a Drug Influence Evaluation can be completed. The arresting Deputy will remain with the DRE and the motorist for the entirety of the evaluation unless the DRE gives permission for the arresting Deputy to leave.
- (d) At the end of the evaluation a urine specimen will be collected after the Post Arrest Chemical Test Advisement has been given. Motorists are required by law to submit to a request for a urine sample. Motorists who refuse to submit a urine sample will be charged with refusing to submit to a chemical test as well as DUI.
- (e) The arresting Deputy will maintain custody of the collected urine sample. The arresting Deputy will be responsible for submitting the urine specimen taken from the motorist to the Nebraska State Patrol Crime Laboratory. The urine specimen kit must have all seams taped with evidence tape or the NSP Crime Lab will refuse the specimen.
- (f) Once properly labeled and sealed, urine specimens will be placed in the PED refrigerator along with the completed NSP Lab Request form and a copy of the DRE evaluation observation report form.
- (g) After the evaluation is completed the DRE will give the arresting Deputy an opinion as to the motorist's impairment and which drug categories may be causing the impairment. The arresting Deputy will include this opinion in the Narrative of the Case Report and request on the NSP Lab Request that the urine specimen be tested for the drug categories indicated by the DRE.
- (h) The arresting Deputy will be responsible for completing the booking process or issuing a citation in lieu of arrest as well as a Case Report, Post Arrest Chemical Test Advisement form (SF-16C), Attachment 16 (if an evidentiary breath test is administered), Property Sheet, and NSP Evidence Submittal Form (NSP750).
- (i) The DRE is required by state guidelines to complete an evaluation checklist, evaluation observation form, and a narrative report. If the DRE is from an outside agency, the arresting Deputy will obtain copies of these forms/reports, and forward them with all other associated reports. A Case Report will be completed by the arresting Deputy to cross reference an outside agency's report number with a DCSO Case Report number.

- (5) When a DRE is unavailable to assist:
 - (a) The arresting Deputy will transport the arrested motorist to the DCLEC.
 - (b) At the DCLEC, the arresting Deputy will give the motorist the Post Arrest Chemical Test Advisement requesting a urine specimen to determine the presence of drugs.
 - (c) If the motorist has also consumed alcohol, an evidentiary breath test will also be completed.
 - (d) If the motorist refuses breath testing or a court ordered blood or urine test the Deputy will book the motorist for the appropriate DUI charge as well as refusing to submit to chemical testing.
 - (e) Deputies will properly seal and label the urine specimen and then place the specimen in the PED refrigerator along with an NSP Lab Request/Evidence Submittal Form (NSP750). The arresting deputy will request on the NSP Lab Request that the specimen be tested for "Drugs."
 - (f) The arresting deputy will then complete the booking process or issue a citation in lieu of arrest as well as a Case Report, Post Arrest Chemical Test Advisement form (SF-16C), and Attachment 16 (if an evidentiary breath test is administered).

IV. Determination of DUI Charges (61.1.10)

- A. Nebraska Law provides for enhanced penalties against motorists for second or subsequent DUI and Refusing to Submit to Chemical Test arrests within a 15-year "look back" period (current date of arrest to previous date of arrest).
 1. Previous convictions of Nebraska State Statutes §60-6,196 and §60-6,197 can be used to enhance DUI and Refusal charges. Nebraska State Statute §60-6,197.02 states that previous convictions for Refusing a chemical test can be used to enhance a DUI charge.
- B. Deputies will conduct a thorough arrest/background check of motorists arrested for DUI in order to accurately determine charges.
 1. Deputies will conduct a State of Nebraska Driver's Abstract History Check. If prior DUI/Refusal Convictions are documented on the driver's abstract, the Deputy will request Communications print a copy of the driver's abstract and forward that copy with the DUI reports to Records.
 2. Deputies will also conduct a 'Triple I' check through Communications to determine if the motorist has previous DUI/Refusal convictions in a state other than Nebraska. The 'Triple I' will be forwarded to Records with the DUI reports.

- a. 'Triple I' information cannot be disseminated over the radio or phone. Deputies will physically inspect the 'Triple I' in order to determine if previous convictions exist.
 - b. The arresting Deputy, their Supervisor, or another Deputy will retrieve and sign for all requested 'Triple I' information as soon as practical, but no later than the end of the Deputy's duty shift.
- C. After the Deputy has determined whether or not prior DUI/Refusal convictions exist, the Deputy will either issue a citation in lieu of arrest to the motorist or book the motorist into Douglas County Department of Corrections on the appropriate charge(s).
 - 1. Zero or one prior convictions – Misdemeanor charge for DUI and/or chemical test refusal.
 - 2. Two prior convictions and the driver has an evidentiary BAC under .150 – Misdemeanor charge for DUI.
 - 3. Two prior convictions and driver has an evidentiary BAC at or above .150 OR refuses the chemical test – Felony charge for DUI and/or chemical test refusal.
 - 4. Three or more prior convictions – Felony charge for DUI and/or chemical test refusal.
 - 5. A motorist arrested for "DUI-drugs" will be charged under the same state statutes as a traditional DUI-alcohol. It is the equivalent of a "non-aggravated" DUI.
- D. Deputies will book all motorists who refuse chemical breath, urine, or a court ordered blood test for chemical test refusal. The chemical test refusal charge will be in addition to the DUI charge.

EXCEPTION: Drivers under 21-years-old that are being charged with a "zero tolerance" DUI are only guilty of an infraction by refusing chemical testing (NSS §60-6,211.02). The "zero tolerance for minors" violation (NSS §60-6,211.01) is also an infraction. Deputies will not book the driver for refusal in this case unless accompanied by a bookable charge (e.g., PBT refusal).

V. Administrative License Revocation (ALR)/Sworn Report and Temporary License (61.1.10)

- A. Nebraska law provides authority to the Department of Motor Vehicles to conduct an administrative license revocation of motorists arrested for driving under the influence of alcohol with a BAC of .080 or greater and/or motorist who refuse to submit to evidentiary chemical testing.
 - 1. The administrative license revocation process only applies to driving under the influence of alcohol and refusing chemical testing. A motorist arrested for driving under the influence of drugs is not subject to the ALR process and no Sworn Report will be completed unless the motorist refuses to submit to chemical testing.
- B. This is an administrative procedure separate and distinct from the criminal DUI case.
- C. It is the policy of the DCSO to complete a Nebraska Department of Motor Vehicles Sworn Report Notice of Revocation and Temporary License for all arrests involving DUI – Alcohol of .080 BAC or greater and/or Refusing to Submit to Chemical Testing.

1. The Sworn Report contains several demand information fields which must be completed accurately.
 2. In addition to the demand information, the arresting Deputy will also provide a short narrative on the Sworn Report which describes the probable cause for the arrest. The narrative will fulfill the following elements:
 - a. Places the arrested motorist in actual physical control of or driving a motor vehicle.
 - b. The reason the Deputy had contact with the driver (i.e. the motorist was the driver of a vehicle involved in a collision, contacted on a traffic stop after observing a law violation).
 - c. Signs of driver impairment observed by the Deputy which led them to believe further investigation was warranted.
 - d. Signs of driver impairment observed by the Deputy during field sobriety testing.
 - e. Preliminary breath test result, if available.
- D. When an evidentiary breath test is completed or any chemical test is refused, the arresting Deputy will complete the appropriate section of the Sworn Report, write their name, serial number, agency with agency address in the proper fields, read the Verbal Notice of Revocation to the motorist, provide the motorist with the yellow copy of the Sworn Report at the time of citation or booking, and seize the motorist's operator's license.
1. Operators' licenses will be placed in an envelope marked with the person's name, DOB, license number, and the case's Case Report number.
 2. Operators' licenses will be forwarded with the Sworn Report to Records to be sent to the DMV.
- E. Deputies are not required to, but may, provide the motorist with separate additional forms explaining the ALR process and the ignition interlock program. The back side of the motorist's copy of the Sworn Report contains all the information legally required to be provided.
- F. When an evidentiary blood test has been completed, the arresting Deputy will complete the Sworn Report with the exception of the Blood Test Result fields.
1. Once the blood test is completed and the Deputy has received the result of the test the Deputy will complete the Blood Test Result fields.
 2. The Deputy has 10 days from the time the Deputy receives the test result to complete the Sworn Report and provide it to the DMV.
- G. Deputies do not seize the motorist's operator's license when a blood test is used, unless the motorist refuses the blood test.
- H. The motorist does not receive a copy of the Sworn Report at the time of citation or booking.

1. The DMV will send the motorist a copy of the completed Sworn Report and Notice of Revocation by certified mail after the DMV receives the completed Sworn Report.
- I. The Sworn Report form must be signed by the arresting Deputy in the presence of a Notary Public prior to being sent to Records and ultimately the DMV.
 1. Sworn Reports are not required to be signed and notarized prior to the motorist receiving the yellow copy.

VI. DUI Reporting (61.1.10)

- A. Alcohol – Drug Impairment Report
 1. All arrests for DUI, Refusing to Submit to Chemical Testing, and/or zero-tolerance (.02 BAC) violations will be documented using the DUI tab of the Case Report.
 2. Deputies will completely and accurately supply all demand information required in the report.
 - a. Information regarding unusual circumstances or additional charges stemming from the same incident will be included in the narrative section of this form.
 - b. Deputies will ensure that the appropriate DUI Fee Assessment boxes are marked, and the total fee is documented on the form.
 - c. If a PBT was used during the DUI investigation, Deputies will complete the Preliminary Breath Test section of the report. Doing so satisfies NHHS Title 177 requirement to complete an Attachment 4 checklist.

REFERENCES:

I. Laws/Regulations

- A. U.S. Supreme Court: *Birchfield v. North Dakota* 579 US_(2016).
- B. Nebraska Supreme Court: *State vs. Prater* (2004) and *State v. McCave* (2011).
- C. Nebraska State Statutes: §28-1254, §43-248(8), §43-250(2), §60-498.02, §60-6,108, §60-6,196, §60-6196.01, §60-6,197, §60-6,197.02, and §60-6211.01
- D. Nebraska Health and Human Services Title 177, Chapter 1.
- E. Nebraska Health and Human Services Title 177, Chapter 7.

II. Previous DCSO Orders

- A. Previous DCSO General Orders include: #40-2023, #98-2020, #19-2019, #108-2018, #24-2017, #20-2016, #9-2016, #8-2015, #11-2012, #9-2012, and #1-2012.

III. CALEA Accreditation Standards

- A. Applicable CALEA Accreditation Standards include: 61.1.5a, 61.1.9 and 61.1.10.

IV. Review Schedule

A. Quadrennial.