



GENERAL ORDER

DURHAM POLICE DEPARTMENT
DURHAM, NC

NUMBER:

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DRIVING WHILE IMPAIRED PROCEDURES & GUIDELINES

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INTRODUCTION

It is the intent of the Durham Police Department to actively engage in efforts to remove impaired drivers from the roadways in order to safeguard lives and property.

DEFINITIONS

Alcohol: Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

Alcohol Concentration: The concentration of alcohol in a person, expressed either as:

- Grams of alcohol per 100 milliliters of blood; or
- Grams of alcohol per 210 liters of breath.

The results of a suspect's alcohol concentration determined by a chemical analysis of the suspect's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

Charging Officer: The law enforcement officer who arrests the person charged, lodges the charge, or assists the arresting officer or the officer lodging the charge by assuming custody of the person for the purpose of requesting that person submit to a chemical analysis.

Chemical Analyst: A person granted a permit by the North Carolina Department of Health and Human Services under N.C.G.S. § [20-139.1](#) to perform chemical analyses.

Under the Influence of an Impairing Substance: The state of a person having his physical or mental faculties, or both, appreciably impaired by an impairing substance.

Impaired Driving: A person commits the offense of impaired driving if they drive any vehicle upon any highway, street or public vehicular area within the State of North Carolina:

- while under the influence of an impairing substance; or
- after having consumed sufficient alcohol that they have, at any relevant time after driving, an alcohol concentration of 0.08 or greater. Concentration is reduced to 0.04 or greater if operating a commercial

motor vehicle, and concentration is further reduced to any alcohol concentration if the driver is under 21 years of age.

Impairing Substance: Alcohol, any controlled substance under Chapter 90 of the General Statutes, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances. This includes drugs that are obtained legally, either over the counter or via a prescription.

Relevant Time After Driving: Any time after the driving in which the driver still has in his body alcohol consumed before or during the driving.

IMPLIED CONSENT OFFENSES

Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an Implied Consent Offense.

An Implied Consent Offense is one involving impaired driving or an alcohol related offense that is subject to the procedures set forth in N.C.G.S. § [20-16.2](#). They are as follows:

- First or Second Degree Murder based upon impaired driving N.C.G.S. § [14-17](#);
- Involuntary Manslaughter based upon impaired driving N.C.G.S. § [14-18](#);
- No Operator's License when person subject to lower alcohol content restrictions of N.C.G.S. § [20-19\(c3\)](#) but not subject to ignition interlock N.C.G.S. § [20-7](#);
- Impaired Supervision or Instruction N.C.G.S. § [20-12.1](#);
- Driving While License Revoked when person is subject to the provisions of N.C.G.S. [20-17.8](#) (ignition interlock and lower alcohol content on driver's license) and officer has probable cause to believe person has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed N.C.G.S. § [20-28](#);
- Driving While License Revoked when person has a limited driving privilege with an ignition interlock requirement under N.C.G.S. § [20-179.3\(g3\)](#) or (g5) and officer has probable cause to believe person has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed N.C.G.S. § [20-28](#);
- Impaired Driving N.C.G.S. § [20-138.1](#);
- Impaired Driving in Commercial Motor Vehicle N.C.G.S. § [20-138.2](#);
- Operating a Commercial Vehicle After Consuming Alcohol N.C.G.S. § [20-138.2A](#);
- Operating a School Bus, School Activity Bus or Child Care Vehicle After Consuming Alcohol N.C.G.S. § [20-138.2B](#);
- Driving by Person Less Than 21 Years Old After Consuming Alcohol or Drugs N.C.G.S. § [20-138.3](#);
- Habitual Impaired Driving N.C.G.S. § [20-138.5](#);
- Transporting an Open Container of Alcoholic Beverage After Consuming Alcohol N.C.G.S. § [20-138.7](#);
- Felony Death by Vehicle N.C.G.S. § [20-141.1](#).

ALCOHOL SCREENING DEVICES

Alcohol Screening Devices, (commonly known as Portable Breath Testing Devices or by trade names, such as Alcosensor) shall only be used in accordance with the procedures promulgated by N.C.G.S. § [20-16.3](#) and the North Carolina Administrative Code. Officers are only permitted to use Alcohol Screening Devices that appear on the list of devices approved by the Commission for Health Services, N.C. Department of Health and Human Services.

Use and Care of Alcohol Screening Devices

Officers who have access to these devices shall be thoroughly familiar with how to use these devices, and the relevant laws and procedures involved.

Any Alcohol Screening Device used in the field shall be properly calibrated, according to procedures promulgated by the Commission for Health Services, N.C. Department of Health and Human Services. This means that each Alcohol Screening Device must be calibrated once every 30 days or every 25 tests.

District and Division Commanders shall be responsible for making sure that all Alcohol Screening Devices used by officers under their command shall meet these calibration standards. The actual calibration of each unit shall be completed and appropriately documented by the Chemical Analyst Coordinator or another qualified person.

When Alcohol Screening Devices May Be Used

N.C.G.S. § [20-16.3\(a\)](#) states that a law-enforcement officer may require the driver of a vehicle to submit to an alcohol screening test within a relevant time after the driving if the officer has:

- Reasonable grounds to believe that the driver has consumed alcohol and has:
 - Committed a moving traffic violation; or
 - Been involved in an accident or collision; or
- An articulable and reasonable suspicion that the driver has committed an implied-consent offense under N.C.G.S. § [20-16.2](#), and the driver has been lawfully stopped for a driver's license check or otherwise lawfully stopped or lawfully encountered by the officer in the course of the performance of the officer's duties.

SEIZURE AND TOWING OF DWI SUSPECT VEHICLES

North Carolina law mandates that the vehicles of certain DWI offenders be seized by the officer charging the impaired driving related offense. These vehicles are then sold at auction by the State of North Carolina, with the proceeds going to the school district of the county in which the vehicle was seized.

Eligible Vehicles for DWI Seizure

Any vehicle driven by an eligible offender shall be seized, except for mopeds as defined in N.C.G.S. § [20-4.01](#) (21a), stolen vehicles, and rental vehicles that are either: 1) not operated by a driver authorized by the rental agreement; or 2) operated by a driver authorized by the rental agreement, but the rental car company had no actual knowledge of the person's driver's license revocation at the time the rental agreement was executed.

Eligible Offenders for DWI Seizure

All suspects that are arrested for one of the following charges shall be screened to see if their driving record qualifies them to have their vehicle seized:

- DWI (N.C.G.S. § [20-138.1](#)); or
- Death by vehicle (N.C.G.S. § [20-141.4](#)) when the charge is based on impaired driving; or
- First or second degree murder (N.C.G.S. § [14-17](#)) or involuntary manslaughter (N.C.G.S. § [14-18](#)) when the charge is based on impaired driving; or
- DWI in a commercial vehicle (N.C.G.S. § [20-138.2](#)); or
- Habitual DWI (N.C.G.S. § [20-138.5](#)).

Any suspect who is arrested for one of the above charges qualifies for vehicle seizure if either: 1) the suspect was driving without a valid driver's license and was not covered by an automobile liability insurance policy; or 2) the suspect's driver's license or privilege to operate a vehicle in North Carolina is revoked for an Impaired Driving License Revocation under N.C.G.S. § [20-28.2](#)(a). Generally, the latter would include current revocations due to any DWI convictions or administrative revocations due to the suspect refusing a chemical test or blowing over .08 during a previous DWI arrest. If there is any question as to whether the listed revocation would qualify the suspect for vehicle seizure, or if the revocation is for an out-of-state offense, the text of N.C.G.S. § [20-28.2](#)(a) should be consulted for guidance. A list of qualifying revocations may also be found on the reverse of the AOC-CR-323A form.

DWI Seizure Procedures

If a suspect qualifies to have his or her vehicle seized, the charging officer shall seize the vehicle and the key(s) to the vehicle. The charging officer shall obtain a wrecker to take possession of the vehicle. In order to do this, the charging officer shall contact Communications and request a "10-51 for a DWI Seizure." Communications shall then contact a wrecker service that is authorized by the State of North Carolina to tow and store DWI seizure vehicles. No other type of wrecker (owner's request, regular rotation, etc.) shall be used in these cases.

The charging officer shall also affix a green DWI seizure sticker to the driver's side of the windshield. These stickers are available from the Department storekeeper.

In addition to any other required paperwork, the arresting officer shall complete an AOC-CR-323A form, entitled "Officer's Affidavit for Seizure and Impoundment and Magistrate's Order" and provide this form to the magistrate when the suspect is presented for his or her appearance before the magistrate.

The magistrate shall determine if probable cause exists for the seizure of the suspect vehicle. If the magistrate determines that there is no probable cause for the seizure, the charging officer must notify the towing service as soon as possible that the vehicle may be returned to the suspect, once the suspect pays whatever fees are required by the towing company.

It is possible that a suspect may be arrested and no driving history or revocation information is available at the time of arrest. If this is the case, the charging officer shall obtain a driving record of the suspect at the next opportunity to do so. If it is then found that the driver qualifies to have his or her vehicle seized under N.C.G.S. 20-28(a), then the arresting officer shall complete an AOC-CR-323A form, entitled "Officer's Affidavit for Seizure and Impoundment and Magistrate's Order" and provide this form to the magistrate. After the magistrate signs this form, the charging officer shall attempt to locate the vehicle and seize it, in accordance with the same procedures as if he or she was seizing the vehicle at the time of arrest. Once executed by the magistrate, the AOC-CR 323A authorizes an officer with jurisdiction to enter onto the property of the suspect to seize the

motor vehicle. However, if the vehicle is within an enclosed structure on the defendant's property, such as a garage, the officer shall obtain valid consent or a search warrant to enter the property and seize the vehicle. If the suspect vehicle is on the private property of another, it is necessary to obtain valid consent to enter the property to seize the vehicle. If consent cannot be obtained, then the charging officer shall attempt to obtain a search warrant to enter the property to seize the vehicle.

DMV Notification

After a vehicle is seized under these procedures, the DMV must be notified of the seizure within 24 hours. The charging officer shall contact the Warrant Control / DCI Unit and have a DCI operator fill out the "Seized Vehicle N.C.G.S. § [20-28.1](#) (VSEZ)" online form with the appropriate information and transmit it to the DMV through a DCI terminal. The charging officer will need to provide the DCI operator with detailed information about the suspect, the vehicle, and the owner. It is no longer necessary to fax the AOC-CR-323A form to the DMV.

Tow Log and Reporting Requirements

The charging officer shall enter the vehicle's information into the Desk Officer's Tow Log, in accordance with General Order 4044 (Towed and Stored Vehicles). Additionally, the charging officer shall complete a vehicle report (code 2), either in paper or electronic form.

Court Date for Initial Appearance

The charging officer shall set the initial court date for the charges that precipitated the seizure of the vehicle to within 30 days of the charge being filed.

SECURING THE SUSPECT VEHICLE INCIDENT TO ARREST

If not subject to mandatory seizure as described above, an arrestee's vehicle should be secured by:

- Allowing the driver to leave the vehicle parked at the place of arrest if parking is legal at that location; or
- Allowing the driver to turn the vehicle over to a person designated by the arrestee, after the officer confirms that the person has an operator's license and that the person is not under the influence of an impairing substance at the time they take charge of the vehicle; or
- Releasing it to the registered owner if the owner is not the subject arrested; or
- Ordering the vehicle towed. In this case, the officer must comply with the provisions of General Order 4044 (Towed and Stored Vehicles).

PRE-ARREST TESTING REQUESTS

In some rare instances, a DWI suspect may request a "pre-arrest test" under the provisions of N.C.G.S § [20-16.2](#)(i). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. In such a case, even though the suspect is not technically under arrest, he or she shall be transported to the testing site in the same manner as a prisoner who is under arrest. His or her vehicle shall be secured in the same way as in the above section dealing with a suspect who is under arrest. The chemical analyst shall then process the suspect according to the methods and procedures as set forth by the Commission for Health Services, N. C. Department of Health and Human Services for pre-arrest testing.

If it is decided not to charge a person who has taken a pre-arrest test with any criminal or traffic charge, the person may be immediately released from custody, or may be transported to another location at the charging officer's discretion.

CHEMICAL ANALYSIS GUIDELINES AND PROCEDURES

A chemical analysis may be administered when an officer has reasonable grounds to believe a person charged has committed an implied consent offense.

The charging officer will determine the type of test, blood or breath, to be administered to the suspect, and shall make a request for a chemical analyst to administer the designated test.

Breath Test

A Breath Test shall always take place at a test site that has been furnished by the State of North Carolina with an Intoxilyzer 5000 instrument.

The charging officer shall present the suspect to a chemical analyst authorized to administer a test of a person's breath. The charging officer in the presence of the chemical analyst who notified the suspect of his or her rights in accordance with N.C.G.S. § [20-16.2](#)(a) shall request the suspect submit to a chemical analysis. If the suspect refuses to submit to the chemical analysis, none may be given under the provisions of N.C.G.S. § [20-16.2](#). Testing under other applicable procedures of law is not precluded.

The charging officer and chemical analyst shall complete the necessary reports and follow the methods and procedures as set forth by the Commission for Health Services, N. C. Department of Health and Human Services and the Department's Chemical Analyst Coordinator.

The suspect shall be under the care and control of the charging officer at all times unless placed in the care of a medical facility, authorized medical personnel or presented to a judicial official.

The jailer or detention officer will be made aware of a suspect's alcohol concentration.

Blood Test

A Blood Test shall normally be performed at a medical facility, such as a hospital emergency room.

The charging officer shall present the suspect to a chemical analyst authorized to administer a test of a person's blood. The charging officer in the presence of the chemical analyst who notified the suspect of his or her rights in accordance with N.C.G.S. § [20-16.2](#)(a) shall request the suspect submit to a chemical analysis. If the suspect refuses to submit to the chemical analysis, none may be given under the provisions of N.C.G.S. § [20-16.2](#). Testing under other applicable procedures of law is not precluded.

If the suspect agrees to submit to a blood test, or is unconscious, then the chemical analyst shall direct a qualified person to draw blood for them. A qualified person is a doctor, nurse, phlebotomist, or physician's assistant. An EMT or paramedic shall not draw blood for a blood test under these provisions. The qualified person shall draw blood into a test kit provided by the chemical analyst. These test kits, with the appropriate paperwork, are available at Duke University Medical Center in the hospital police office and Durham Regional Hospital in the security office.

The charging officer and chemical analyst shall complete the necessary reports and follow the methods and procedures as set forth by the Commission for Health Services, N. C. Department of Health and Human Services and the Department's Chemical Analyst Coordinator.

The blood test kit shall be turned in as evidence by turning it in to the Property and Evidence Control Unit or by placing it in the evidence refrigerator using the procedures found in General Order 4058 (Property and Evidence Control). A property report (Code 3) and an SBI-5 form must be properly completed for a blood test.

The suspect shall be under the care and control of the charging officer at all times unless placed in the care of a medical facility, authorized medical personnel or presented to a judicial official.

DUTIES OF THE CHARGING OFFICER

The charging officer shall begin preparing for testifying in court upon the initial sighting of a suspected impaired driver. The officer shall observe and note erratic or unusual driving by the suspect. Upon stopping the vehicle, the officer shall note any odor of an alcoholic beverage, slurred speech or any other indicator of mental or physical impairment. A field sobriety test may be administered, if needed, to aid the officer in determining if the suspect is impaired.

If the suspect refuses to submit to a chemical test, the charging officer shall forward a copy of the Affidavit and Revocation Report (AOC-CVR-01) and the Intoxilyzer Test Ticket (DHHS 3908) to the NC DMV Drivers License Section via US Mail.

DUTIES OF THE CHEMICAL ANALYST

Upon receiving a request from the charging officer or by specific designation to administer a chemical analysis, the chemical analyst shall proceed to the test site. The chemical analyst shall administer the test following the methods and procedures set forth by the Commission for Health Services.

If a suspect has an alcohol concentration of 0.35 or greater on one or more breath tests, the charging officer will be instructed to transport the suspect to a medical facility for evaluation.

DUTIES OF THE CHEMICAL ANALYST COORDINATOR

The Chemical Analyst Coordinator shall oversee the entire chemical analysis program and provide instruction, supervision, and assistance, when needed, to ensure the program meets the highest professional standards of the Commission for Health Services, N.C. Department of Health and Human Services and the Durham Police Department.

MAINTENANCE OF TEST EQUIPMENT

Maintenance of Intoxilyzer equipment is performed only by personnel employed by the North Carolina Department of Health and Human Services. Periodic inspection and calibration of Portable Breath Testers shall be coordinated by the Chemical Analyst Coordinator.

Chemical Analysts have the responsibility of directing maintenance problems with Portable Breath Testers to the Chemical Analyst Coordinator. Chemical Analysts have the responsibility of directing maintenance problems with any Intoxilyzer instruments to the North Carolina Department of Health and Human Services via their telephone number, which is available at every test site.



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