

# ELIZABETH POLICE DEPARTMENT GENERAL ORDERS



**VOLUME: 3**

**CHAPTER: 29**

**# OF PAGES: 17**

**SUBJECT: DRIVING WHILE INTOXICATED**

**EFFECTIVE DATE:**

**May 31, 2023**

**ACCREDITATION STANDARDS:**

**61.1.10 (CALEA LE1)**

**BY THE ORDER OF:**

**Chief Giacomo Sacca**

**BY AUTHORITY OF:**

**Police Director Earl J. Graves**

**SUPERSEDES ORDER #:**

**PURPOSE** The purpose of this policy is to establish a DWI countermeasures program designed to reduce alcohol/drug-related crashes.

**POLICY** The Elizabeth Police Department fully supports a comprehensive cooperative DWI countermeasures program and has established DWI enforcement as one of its highest priorities.

Elizabeth police officers shall be alert for signs of alcohol and/or drug impairment in all contacts with motorists and make every effort to detect and apprehend them. After conducting an initial examination at the scene of the traffic contact and upon determining that probable cause to arrest is present, officers will make a physical arrest of the subject and process them in accordance with law.

Chemical testing shall be conducted in accordance with State of New Jersey Statutes and contemporary criminal procedure.

## PROCEDURES

### I. GENERAL

- A. The detection and arrest of impaired drivers differs significantly from other traffic law violators. Specific statutes and regulations govern driving while under the influence of alcohol and/or drugs, implied consent, chemical tests for intoxication, and established legal limits of impairment or intoxication. These statutes and regulations include many provisions, which affect an officer's authority and establish procedures for conducting chemical tests and initiating the DWI sanction process.
- B. An arrest may be made on private property for N.J.S.A. 39:4-50, N.J.S.A. 39:4-14.3g, N.J.S.A. 39:4-50.14 and N.J.S.A. 39:4-50.15, but refusal to submit to chemical breath testing (N.J.S.A. 39:4-50.4a) is not applicable on private property.
- C. Miranda Warnings are necessary when the defendant is subject to custodial interrogation.
- D. Always issue a summons for the precipitating cause and DWI.
- E. The ALCOTEST Coordinator is responsible for the security and maintenance of the departments ALCOTEST 7110 MK III-C, and related equipment, materials, and report forms. He/she will:
  - 1. Will coordinate regular inspections by the New Jersey State Police as required.
  - 2. Will take immediate action to correct malfunction of equipment when detected.
  - 3. Will maintain an ample supply of blood specimen kits
  - 4. Will maintain an ample supply of urine sample containers.
  - 5. Will maintain in file all inspection certificates and make them available for N.J.S.A. 39:4-50 hearings.
  - 6. Will change simulator solution in accordance with NJSP guidelines and training.

### II. TRAINING

- A. Designated officers will complete DWI detection and field sobriety training and receive appropriate in-service refresher training.
- B. All department personnel conducting preliminary or evidential chemical tests for intoxication shall complete operator training programs and appropriate in-service training as required.
- C. All department personnel conducting preliminary or evidential chemical tests shall be certified in accordance with state/local requirements.

- D. The New Jersey State Police is responsible for certifying ALCOTEST operators. Further, ALCOTEST operators:
1. Must attend periodic refresher courses as required by N.J.A.C. 13:51-1.6(d).
  2. Must conduct breath tests in accordance with approved methods as outlined in the state police training.
  3. Must submit proper reports.
  4. Must testify in court where appearance is required in contested cases.

### III. **DWI DETECTION AND PRE-ARREST SCREENING**

- A. Detection is the first step in any DWI enforcement action. The officer's observations in this stage are crucial in establishing probable cause upon which the arrest decision is based. Officers must perform the following tasks:
1. Recognize and identify specific driving behaviors that have a high probability of signifying that the driver may be impaired by alcohol and/or drugs, proof of operation and evidence of influence. All three elements must be present:
    - a. Operation of the vehicle by any of the following:
      - 1) Observation
      - 2) Self-admission
      - 3) Witness
    - b. Impairment of the operator by any of the following:
      - 1) Observation of driving
      - 2) Witness
      - 3) Physical test on road
    - c. Alcohol or drugs are suspected based upon any of the following:
      - 1) Odor of an alcoholic beverage or drugs
      - 2) Self-admission
      - 3) Paraphernalia and/or open containers
      - 4) Witness
    - d. The officer shall formulate an opinion as to the operator's sobriety at the scene and the operator shall be placed under arrest at the scene and not after the breath test.

2. Recognize and identify specific driving or other behaviors occurring during vehicle stops that provide additional evidence/suspicion that the driver may be impaired.
3. Note all observations leading to the suspicion that the driver may be impaired.
4. Exercise due care and caution in attempting to stop impaired drivers and be alert for unusual or inappropriate reactions from the driver.
5. Once the vehicle has stopped and the driver is impaired, do not allow the driver to move the vehicle.
6. Recognize and identify specific characteristics, attitudes and actions commonly manifested by impaired drivers during face-to-face contact.
7. Note all observations leading to the suspicion that the driver may be impaired. If probable cause exists to support your suspicion, request the driver to exit the vehicle for further investigation.
8. If vehicle was not observed in motion, determine if probable cause exists to charge driver with actual physical control.
9. Request the subject to exit the vehicle and move to a safe location to conduct field sobriety tests. Officers should not conduct interviews or field sobriety tests in the space between the patrol vehicle and the subject's vehicle unless this is the only available area.
10. Select and administer appropriate field sobriety tests, if possible, to assess impairment (e.g., horizontal gaze nystagmus test, walk-and-turn test, one-leg stand test).

#### **IV. FIELD SOBRIETY TESTING**

- A. The following basic tests are the only National Highway Traffic Safety Administration (NHTSA) approved tests and should be performed at the scene. Remember to keep the driver out of the traffic lane and not between cars.
- B. General safeguards include (where applicable):
  1. At scene environmental conditions permitting, tests should be given on level ground, on a hard, dry non-slippery surface.
  2. If the subject's physical condition, impairment or disability poses a significant risk of injury should they perform field sobriety tests, the tests should not be given.
  3. People wearing heels more than two inches high should be advised of their option to remove their shoes, provided the officer is allowed to place them out of reach or control of the subject, as they may be used as a weapon.
  4. When possible, subjects should walk a visible line.

- C. Walk and turn test: The suspect must stand on a line in a heel to toe position while listening to instructions and then take nine heel to toe steps along a straight line, pivot to the left 180 degrees, and take nine steps heel to toe back. A suspect is judged to be impaired if he does two (2) or more of the following:
1. Starts walking before the instructions are finished,
  2. Uses arms for balance,
  3. Stops for a few seconds to steady self,
  4. Does not touch heel to toe with every step,
  5. Steps off the line,
  6. Loses balance while turning, or
  7. Takes an incorrect number of steps.
- D. One-legged stand: The suspect must stand with his/her arms at his/her side and lift one foot six inches off the ground. He/she must maintain that position for 30 seconds without extending his/her arms or losing his/her balance, counting out loud: one thousand one up to one thousand thirty. The subject is judged to be impaired if he/she does two (2) or more of the following:
1. Sways while balancing,
  2. Uses his/her arms for balance,
  3. Hops to maintain his/her balance, or
  4. Put his/her foot down.
- E. Horizontal gaze nystagmus: The subject must keep his/her head stationary and watch an object, such as a penlight or the officer's finger, held 12-15 inches away and slightly above the eyes. The officer checks the right eye by moving the object slowly to the right, the left eye by moving it to the left. As the subject's eye follows the object, the officer looks for it to start jerking back and forth. This jerking is called nystagmus.
1. The officer watches for three signs of intoxication:
    - a. Impaired smooth pursuit,
    - b. Distinct jerking at maximum deviation (eye all the way to the side),  
or
    - c. The onset of nystagmus prior to 45 degrees.
  2. The subject gets one point for each of these signs, for a possible total of six (6) points, three (3) for each eye. Four or more points are indicative of a blood alcohol content above the legal limit.

3. The suspect must first remove any glasses.
  4. Horizontal gaze nystagmus may be used as determining criteria for certified officers.
- F. At the completion of the field sobriety testing, officers must make a determination as to whether or not to arrest. A proper arrest satisfies three (3) elements: operation, impairment, and impairment due to alcohol and/or drugs. At the time of arrest Miranda Warnings should be administered.
- G. The accused vehicle is to be impounded in accordance with N.J.S.A. 39:4-50.23. Officers should make note of observations and unsolicited comments made by the accused while enroute to headquarters and include this in his/her report.

#### **V. IMPOUNDING A MOTOR VEHICLE OPERATED BY INTOXICATED PERSON**

- A. In accordance with N.J.S.A. 39:4-50.23, a motor vehicle shall be impounded for 12 hours when the vehicle's operator has been arrested for violation of N.J.S.A. 39:4-50 (DWI) or N.J.S.A. 39: 4-50.4a (Refusal to Submit to Chemical Breath Testing). However, Appendix B of the [Attorney General's Directive 2004-1](#) affords the arrested person the right to make other arrangements for the removal of the vehicle.
1. If there is a passenger in the vehicle at the time the operator is arrested, or if there is another person readily available and willing to assist the arrestee, the arrestee may permit that passenger or other person to operate and remove that vehicle and make arrangements for its removal without the vehicle being impounded. The person taking control of the vehicle on behalf of the arrestee:
    - a. Must present a valid operator's license, proof of ownership, or lawful authority to operate motor vehicle, and
    - b. Must present proof of valid motor vehicle insurance for that vehicle, and
    - c. Must be able to operate the vehicle in a safe manner and not otherwise be in violation of *New Jersey Motor Vehicle & Traffic Code, Title 39*.
  2. A vehicle impounded pursuant to this section may be released to a person other than the arrestee prior to the end of the 12-hour impoundment period only if the vehicle is:
    - a. Not owned or leased by the person under arrest and the person who owns or leases the vehicles claims the vehicle and meets the conditions for release in subsection V.B below, or
    - b. Owned or leased by the arrestee, the arrestee gives permission to another person, who has acknowledged in writing receipt of the POTENTIAL LIABILITY WARNING statement required by N.J.S.A. 39:4-50.22 to operate the vehicle, and the conditions for release in

subsection V.C are met. The POTENTIAL LIABILITY WARNING statement required by N.J.S.A. 39: 4-50.22 is set forth in Appendix A of the [Attorney General's Directive 2004-1](#), along with the applicable guidelines.

3. If the arrestee cannot or will not make reasonably prompt arrangements for removal of the vehicle, the vehicle shall be impounded for a period of 12 hours after the time of arrest or until such later time as the arrestee claiming the vehicle meets the conditions for release in subsection V.B below.
- B. No vehicle impounded pursuant to this subsection shall be released unless the person claiming the vehicle:
1. Presents a valid operator's license, proof of ownership or lawful authority to operate the motor vehicle (such as a notarized letter) and proof of valid insurance for that vehicle,
  2. Must be able to operate the vehicle in a safe manner and not otherwise be in violation of the *New Jersey Motor Vehicle & Traffic Code, Title 39*, and
  3. Meets the conditions of N.J.S.A. 39:4-50.22,
  4. Meets any other conditions for release established by this department.

## **VI. ARREST & PROCESSING**

- A. If all elements of the DWI violation have been clearly established, officers shall make a physical arrest of the subject at the scene.
- B. Handcuff and search the subject incidental to arrest.
- C. Notify the subject of his/her rights and responsibilities
  1. Miranda Rights.
  2. Implied Consent.
- D. Vehicles shall be impounded, see subsection V of this policy. Absolutely and under no circumstances are vehicles to be left at the scene of the arrest.
- E. Transport the subject to headquarters, Central Booking, for evidential testing and processing.
- F. DWI potential liability warning:
  1. A person summoned for or on behalf of a person arrested for a violation of N.J.S.A. 39:4-50 (DWI) and/or Refusal N.J.S.A. 39:4-50.4a (Refusal to submit to chemical breath testing) shall be provided with a written statement advising the summoned person of his or her potential criminal or civil liability for permitting or facilitating the arrestee's operation of a motor vehicle while the arrestee remains intoxicated.

2. Officers are not required to read the *Potential Liability Warning* (N.J.S.A. 39:4-50.22) to the person who will transport or accompany the defendant. The statute only requires that the statement be provided to that person and that the person acknowledges receipt of the statement. If the person refuses to acknowledge receipt, then the law enforcement officer is to record the refusal to acknowledge receipt. Once those requirements are fulfilled, the defendant should be allowed to leave with the summoned person. If the person refuses to appropriately identify himself or herself to the law enforcement officer, then the defendant may not be permitted to leave with that person.

G. Preparation of *Potential Liability Warning*

1. Once an arrestee has contacted a person to transport or accompany the arrestee from this department, and before the summoned person arrives, the officer shall prepare the *Potential Liability Warning* - N.J.S.A. 39:4-50.22 form. The officer shall complete the information in the box at the top of the form and then fill in his/her name, rank, and badge number in the section following the warning and labeled '*Law Enforcement Officer*'. The line labeled '*Date & Time of Acknowledgement*' is to be left blank at this time.
2. Completion of *Potential Liability Warning* - upon arrival of the summoned person the officer shall:
  - a. Identify the defendant by name to the summoned person and confirm that the summoned person has arrived to transport or accompany the named defendant.
  - b. Inform the summoned person that the defendant has been arrested and the violations with which the defendant has been charged. The officer should use statutory reference to each violation and a plain language description for each charge.
  - c. Ask the summoned person for some form of positive and verifiable identification. It is not required or necessary to make a copy of the identification provided.
  - d. If the summoned person refuses to appropriately identify himself or herself to the officer, then the defendant may not be permitted to leave with that person, since the requirements of this statute cannot be satisfied. In that circumstance, the defendant may elect to contact another person to transport or accompany the defendant.
  - e. The pre-prepared *Potential Liability Warning* form will be handed to the summoned person. Ask that person to read the form and instruct that person: to complete the blank lines under '*Person Acknowledging Receipt*' and to put their signature on the blank line under '*Acknowledgement of Receipt of Potential Liability Warning*'. The officer will complete the lines under '*Law Enforcement Officer*'. The officer will make a copy of the completed form and give the original to the summoned person.

- f. If this is not in regard to an impound release, and the person has provided verifiable identification, but has refused to complete any portion of the form, the officer will complete, in writing, the '*Refusal to Acknowledge*' receipt of the *Potential Liability Warning*. The officer will make a copy of the completed form and give the original to the summoned person.
  - g. If the summoned person refuses to accept the completed *Potential Liability Warning* form, the officer will note this in the right hand margin of the form and advise the summoned person the arrestee will not be released due to their refusal to accept the form and fulfill the statutory requirement.
  - h. Depending on the applicable circumstances, the copy and/or original will be maintained in the case record.
  - i. Once the summoned person has been given the completed *Potential Liability Warning* N.J.S.A. 39:4-50.22 form, the defendant may be transported or accompanied by the summoned person from headquarters.
- H. Evidential chemical testing:
- 1. If the officer is not a certified breath operator, arrange for another officer who is a certified breath operator to run chemical breath tests.
  - 2. Read the *Implied Consent* form to the arrestee.
  - 3. Conduct evidential chemical tests in accordance with state statutes.
  - 4. If subject's Blood Alcohol Content (BAC) does not substantiate intoxication check for drugs or medical condition that may cause intoxication or physical symptoms that approximate same.
  - 5. Conduct supplementary chemical tests in accordance with state statutes.
  - 6. If the subject refuses to submit to the evidential chemical tests, complete appropriate forms to invoke the implied consent sanction. Issue uniform traffic tickets for N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50.2
- I. Complete all reports and required forms.
- J. All efforts to turn the arrestee over to a competent adult shall be exhausted:
- 1. If the arrestee submitted to the ALCOTEST:
    - a. If one isn't available to take custody of the arrestee, then he/she shall remain in custody until it is determined based upon the burn off rate of .015% per hour, (divide .015% into the ALCOTEST reading), as well as interaction with the arrestee by the supervisor that the arrestee is no longer legally under the influence of intoxicating liquor or drugs.

2. If the arrestee refused to submit to the ALCOTEST:
    - a. If the ALCOTEST wasn't used, then a determination shall be made by the supervisor based upon observations and conversations with the arrestee.
  3. Once that determination has been made, then transportation arrangements shall be made to transport him/her to their residence.
  4. All information shall be recorded in the DWI report.
- K. Release to a taxi unaccompanied is prohibited.
- L. Release into the Police Administration Building lobby unaccompanied is prohibited.
- M. Arrestees will be supervised in a controlled setting throughout their detention.
- N. All reports and supporting documents are to be reviewed by a supervisor.

## VII. ALCOTEST PROCEDURES AND CHARGING

- A. Anyone arrested for operating under the influence shall be requested to voluntarily submit to chemical tests of their breath. The arresting officer will read the Refusal statement. If the answer is to the affirmative, a certified ALCOTEST operator shall conduct the tests. If the answer is to the negative, read the remaining portion of the Refusal form and record the answer. Record everything the defendant says completely and issue summons for N.J.S.A. 39:4-50 and the precipitating cause for the stop.
1. The accused shall only be requested to submit to a breath test twice. If after two (2) requests the accused refuses, issue uniform traffic tickets for refusal to submit to a breath test, DWI, reckless driving, and the precipitating cause for the stop.
  2. Whether the accused refuses or accepts to take the breath test, the Alcohol Influence Report will be generated from the unit. A copy of the Alcohol Influence Report shall be given to the accused.
  3. The officer shall read the following from the posted notice hanging near the ALCOTEST unit:
 

**“I want you to take a deep breath and blow into the mouthpiece with one long continuous breath. Continue to blow until I tell you to stop. Do you understand these instructions?”**
  4. Officer shall document in the narrative of their report that these instructions were read from the posted notice.
- B. ALCOTEST (breath test) Results and Charging for **Adults**:
1. If breath test results are **.08%** and over (per se violation):
    - a. Issue a uniform traffic ticket for N.J.S.A. 39:4-50,

- b. Issue a uniform traffic ticket for Reckless Driving, and
  - c. Issue a uniform traffic ticket for the initial motor vehicle violation
2. If breath test results are **.06%** to **.07%**:
- a. Issue a uniform traffic ticket for N.J.S.A. 39:4-50,
  - b. Issue a uniform traffic ticket for Reckless Driving, and
  - c. Issue a uniform traffic ticket for the initial motor vehicle violation
3. If breath test results are **.00%** to **.07%** and there are indications that the subject is under the influence of drugs, seek a urine or blood sample, or contact a Drug Recognition Expert (DRE), if available, for a DRE exam that will include urine samples.
- a. Urine specimens will not be used in lieu of an ALCOTEST or blood analysis (for alcohol level). Urine will be used for drug analysis only.
  - b. At any stage of the processing officers will use universal precautions when handling the specimen.
  - c. The specimen will be secured taping the lid closed and marking the officer's name, the name of the subject submitting the specimen, the event number, and the date and time the specimen was submitted on the side of the cup prior to placing it in a plastic bag.
  - d. The officer will list possible drugs if known, on the evidence report to assist the lab with analysis.
  - e. The specimen will be taken in the processing bathroom area only. The specimen will be taken in the presence of an officer of the same gender. If a female officer is not available a matron or female officer from another agency shall be requested.
  - f. The driver will be charged with DWI, as outlined below, **prior to the drug test results returning from the analysis**. The probable cause for the charge will be the officer's observation and opinion.
    - 1) Issue a uniform traffic ticket for N.J.S.A. 39:4-50,
    - 2) Issue a uniform traffic ticket for Reckless Driving, and
    - 3) Issue a uniform traffic ticket for the initial motor vehicle violation.
  - g. The officer taking the specimen to the lab will use universal precautions.

- h. If the breath test results are between **.00%** and **.07%** and the arrestee will not submit a urine specimen the officer will:
  - 1) Issue a uniform traffic ticket for 39:4-50,
  - 2) Issue a uniform traffic ticket for Reckless Driving, and
  - 3) Issue a uniform traffic ticket for the initial motor vehicle violation.
  
- A. If a person arrested for N.J.S.A. 39:4-50 refuses to take a breath test, the arresting officer will issue a summons for N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50.2 Refusal.
  
- B. ALCOTEST Calculator
  - 1. Upon completion of the breath test procedure and obtaining the printed *Alcohol Influence Report* generated by the ALCOTEST, the operator must immediately enter the appropriate information into the ALCOTEST Calculator located on the desktop computer or on NCIC 2000. This procedure is completed by entering the required information:
    - a. Defendant's Name
    - b. 1st EC
    - c. 1st IR
    - d. 2nd EC
    - e. 2nd IR
  - 2. The line noted 'Breath samples are within acceptable tolerances?' must indicate: 'True.' If 'False' is indicated, a new set of breath tests must be obtained. All results must be printed and included in the report file.
  
- C. ALCOTEST Malfunction:
  - 1. In the event that the ALCOTEST malfunctions and the operator is unable to obtain the necessary breath samples, or, obtain a 'true' reading from the ALCOTEST as indicated by the ALCOTEST Calculator, officers are directed to notify another local police department to use its ALCOTEST.
  - 2. If an ALCOTEST from another PD is used, ensure that a *Request for Discovery* is executed as soon as practicable for inclusion in the case file.
  - 3. ALCOTEST Coordinator shall notify the New Jersey State Police at the earliest opportunity to have the ALCOTEST unit repaired.
  
- D. The accused is only to be released to a responsible party who is in compliance with the *Potential Liability Warning*.
  
- E. The arresting officer shall complete the following reports and notifications:

1. DUI – Reports checklist.
2. Investigation Report.
3. Alcohol Influence Report, which is generated by the ALCOTEST unit, will have a sequential number on it. Include the sequential number generated by the form in the top portion of the narrative.
4. Elizabeth Police Department Drinking – Driving Report & Alcohol Influence Report Continuation Page.
5. Property/Evidence Form, if applicable.
6. Immigration and Customs Enforcement (ICE) and prosecuting agency notification (AG Directive 2007-03).
7. Alcoholic Beverage Control Notification (AG Directive 2007-02) – When a person has been arrested for a violation of N.J.S.A. 39:4-50, et seq, the arresting officer, or their designee, shall advise the subject of his/her Miranda rights and upon receiving a waiver of those rights, complete the *Statement of Rights* form, and ask the subject a series of questions related to their consumption of alcoholic beverages preceding the arrest.
  - a. Whenever a subject indicates that he/she had consumed alcoholic beverages at a location, other than a private residence or public property, the officer shall ask additional questions to determine if the location was a commercial establishment (e.g., a bar, nightclub, or restaurant). The location of the commercial establishment, including street name and municipality, as described by the subject shall be noted in the investigation report.
  - b. Whenever an officer obtains information on a commercial establishment, he/she shall complete a Division of Alcoholic Beverage Control form LD-1 (Driving While Impaired – Last Drink Location Report).
  - c. The “Driving While Impaired – Last Drink Location Report” shall be faxed to the Division of Alcoholic Beverage Control (609-292-1707) at the completion of the arrest.

#### **VIII. ARRESTS OF INJURED DRIVERS FOR DWI**

- A. If the operator of a motor vehicle is injured requiring his/her transportation to a hospital and if the investigating officer has probable cause to believe that the driver is under the influence of alcohol, the officer will consult with an assistant prosecutor to determine the best course of action. Generally, obtaining a search warrant for the drawing of blood is the preferred course of action unless the assistant prosecutor determines otherwise.

#### **IX. UNDERAGE ARRESTS FOR DWI**

- A. In the event the individual arrested for a DWI violation is under the legal age to consume alcohol, the following will be done by the officer:
1. If the breath test results are a .08% B.A.C. or greater, the arrestee will be charged with N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50.14, in addition to the probable cause violation.
  2. If the breath test results are within the range of .01% to .05% B.A.C., the arrestee will be charged with N.J.S.A. 39:4-50.14 in addition to the probable cause violation.
  3. If the breath test results fall within the .05% to .08% range, the officer will base his decision as to what the charge should be based upon the arrestee's intoxication. Whether the charge is N.J.S.A. 39:4-50 or N.J.S.A. 39:4-50.14, the officer will also issue for the probable cause violation.
- B. Any juvenile who has been arrested for a violation of the New Jersey drinking driving laws shall receive a uniform traffic ticket and have the complaint forwarded to the municipal court.
- C. Minimally, the parent/guardian of the arrested juvenile will be contacted after the juvenile has been read *Implied Consent* and has offered or refused to offer samples of his/her breath for chemical analysis. Before questioning begins reference the offense/crime, the parent/guardian must be advised of Miranda and the parent/guardian and child must waive such before questioning.

#### **X. DWI ARRESTS WITH A MINOR AS A PASSENGER**

- A. Any person arrested for a DWI violation with a minor(s) as a passenger and the arrestee is a parent/guardian, he/she will be charged with DWI with Minor as Passenger. The Watch Commander will be contacted and advised of the circumstances.
1. The arrestee will be charged with N.J.S.A. 39:4-50.15 on a criminal complaint, as the violation is 4<sup>th</sup> degree crime.
  2. Non-resident violators will have bail set by the Municipal Court Judge, if applicable.
  3. The minor will not be released into the custody of the arrestee. The child will be released into the custody of a non-intoxicated parent or other party who has legal custody of the child. If no such subject can be located, the New Jersey Department of Children and Families shall be contacted. In circumstances where the child is released into the custody of an adult, it shall only be after verifiable identification is provided. Officers will document the name and identifiers of the subject to whom the children were released to.

#### **XI. COMMERCIAL DRIVERS LICENSES (CDL) ARRESTS FOR DWI**

- A. The statutory presumption for being under the influence of alcohol is .04% or higher.

- B. The arresting officer shall reread the *Miranda Rights* and read the *CDL Implied Consent Standard Statement*.
- C. If the accused refuses to submit to the chemical breath tests after having been read the *CDL Implied Consent Standard Statement* by the arresting officer or fail to give satisfactory breath samples as determined by the ALCOTEST Operator, the arresting officer shall issue a summons for refusal pursuant to N.J.S.A. 39:3-10.24. Full documentation of refusal shall be made in the DWI Report.
- D. If the accused refuses to submit to the breath test, the officer will issue a summons for N.J.S.A. 39:4-50 in addition to the refusal under N.J.S.A. 39:3-10.24.
- E. In the event the accused refuses to give samples of his/her breath, the ALCOTEST Operator or arresting officer shall not end his/her investigation but shall continue gathering evidence on the suspect's impairment.
- F. If the accused performs the breath tests satisfactorily, and it is determined that the alcohol concentration is .04% or more, the arresting officer shall issue a summons for N.J.S.A. 39:3-10.13.
- G. If the accused performs the breath tests satisfactorily, and it is determined that the alcohol concentration is .08% or more, the officer shall issue a summons to the accused for N.J.S.A. 39:3-10.13, a per se violation and shall also issue a summons to that accused charging a violation of N.J.S.A. 39:4-50, operating a motor vehicle under the influence of alcohol. The N.J.S.A. 39:4-50 summons will also be supported by the observations of the arresting officer.
- H. Under the law, a person with a CDL operating a commercial vehicle as described in the statute can be charged twice for DWI (N.J.S.A. 39:3-10.13 and N.J.S.A. 39:4-50) as long as the breath reading is over .08% substantiated by the officer's observations.

## **XII. DRUG RECOGNITION EXPERT**

- A. Only officers who have received National Highway Traffic Safety Administration (NHTSA) approved DRE training, and International Association of Chiefs of Police (IACP) certification including re-certification, may be considered a DRE or DRE Instructor.
- B. A drug recognition expert (DRE) should be utilized when an officer believes a driver exhibits indicators of impairment that cannot be attributed to alcohol or entirely to alcohol and/or the driver's BAC is lower than .08%.
- C. A DRE is warranted when an officer makes a traffic stop and has reason to believe that the operator has smoked, inhaled, injected, or ingested a controlled dangerous substance (CDS), the operator is impaired and is unable to safely operate a motor vehicle.
- D. A DRE is warranted when an operator of a stopped motor vehicle makes an admission that he/she has smoked, inhaled, injected, or ingested a controlled dangerous substance (CDS), the operator is impaired and is unable to safely operate a motor vehicle.

- E. If an operator exhibits signs of impairment that cannot be attributed to alcohol consumption or entirely to alcohol consumption (e.g., 0% BAC or low BAC, no odor or very slight odor of an alcoholic beverage on a driver's breath, etc.), then a DRE evaluation should be administered.
1. All DRE evaluations first require an ALCOTEST examination by a certified ALCOTEST operator even if there is no evidence of alcohol consumption.
  2. A DRE should be summoned concurrently with an ALCOTEST operator to ensure a timely response where the arresting officer has probable cause to believe defendant is under the influence but is reasonably certain, based on his investigation, that alcohol is NOT the impairing substance.
  3. Once alcoholic beverages are ruled out as the primary source of the impairment, a DRE should be notified as soon as practicable to perform the evaluation.
  4. Upon arrival, the DRE shall meet with the arresting officer(s) and obtain a copy of the ALCOTEST results.
  5. If a driver is arrested for DWI and the ALCOTEST results indicate a per se violation (.08% BAC or higher), a DRE evaluation is normally not required unless CDS use is suspected.
  6. If the arrestee simply refuses to submit breath samples and CDS use is not indicated as the source of impairment, a DRE evaluation is not warranted.
  7. A DRE be contacted to assist in crash investigation cases under the following circumstances:
    - a. When the driver of a vehicle involved in a crash has been placed under arrest for DWI, or criminally related charges, and physical evidence developed during the investigation reveals drug use as a possible cause of impairment.
    - b. If the crash results in a fatality or serious injury, and evidence is developed during the investigation, which reveals drug use as a possible cause of impairment.
  8. ***DRE evaluations shall not be conducted on vehicle operators involved in fatal motor vehicle crashes.***
- F. If no DRE is available through any means, or the arresting officer believes he or she has sufficient probable cause to make the arrest based on his investigation, the defendant may be asked to provide urine, or submit to a blood test, and that test will be secured by the arresting officer.
- G. The arresting officer should accompany the DRE during the evaluation as a witness, unless unfeasible or as otherwise determined by the Watch Commander.
- H. The DRE is responsible for gathering and processing all evidence obtained during the evaluation, including toxicological samples. The DRE shall complete the *Request for Examination of Evidence Form*, specifically listing the category of CDS

detected by the evaluation. All samples will be entered into evidence by the arresting officer.

- I. Upon completion of the evaluation, the DRE shall advise the arresting officer of his/her findings and determinations.
- J. An additional charge of N.J.S.A. 2C:35-10b (Use or Being under the Influence of CDS) should be made if the DRE determines through his/her evaluation that such a charge is warranted. The criminal complaints and traffic complaints shall be forwarded to the Court together.

### **XIII. INDEPENDENT TESTING**

- A. At the request of the arrestee, and upon completion of all arrest procedures, the arrestee shall be permitted reasonable access to a telephone to have a person or physician of their own selection, and at their own expense, take independent chemical tests of their breath, urine or blood.
- B. Release of an arrestee from custody will be permitted only after all the arrest procedures have been completed and one or both of the following occur:
  - 1. The arrestee's blood alcohol level has decreased to a level below the statutory limit and shows no signs of intoxication, and/or
  - 2. The appearance of a responsible escort who is willing to and does assume responsibility for the arrestee. This escort must provide verifiable identification and be advised of and receive the *Potential Liability Warning* form.
- C. The arrestee will not be released to a taxi or other form of public form of transportation.
- D. This department will not transport the person to any medical facility for independent testing.