



EL PASO COUNTY SHERIFF'S OFFICE

Policy Manual

POLICY 717

Impaired Driving

POLICY 717

EFFECTIVE DATE: 4/1/25

SUPERSEDES DATE: 2/7/25

ACCREDITATION STANDARD:

717.1 PURPOSE AND SCOPE

This policy provides guidance to those Office members who play a role in the detection and investigation of driving under the influence (DUI).

717.2 DEFINITIONS

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717.3 POLICY

The Sheriff's Office is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of Colorado's impaired driving laws.

717.4 INVESTIGATIONS

Deputies should not enforce DUI laws to the exclusion of their other duties unless specifically assigned to DUI enforcement. All deputies are expected to enforce these laws with due diligence.

As with any investigation, thorough documentation of the facts of the case are important. Information that should be documented includes, at a minimum:

1. The Standardized Field Sobriety tests (SFSTs) administered and the results.
2. The deputy's observations of the individual's driving behavior.
3. The deputy's observations that indicate impairment on the part of the individual, and the deputy's health-related inquiries that may help to identify any serious health concerns (e.g., diabetic shock).
4. Sources of additional information (e.g., reporting party, witnesses) and their observations.
5. Information about any audio and/or video recording of the individual's driving or subsequent actions.
6. The location and time frame of the individual's vehicle operation and how this was determined.
7. Any prior related convictions in Colorado or another jurisdiction.
8. Deputies can also consider the use of a Drug Recognition Expert (DRE), if one is available, to further their investigation of the DUI/DUID driver if needed.

717.5 FIELD TESTS

The Office has identified the Standardized SFSTs and any approved alternate tests for deputies to use when investigating violations of DUI laws.

717.6 CHEMICAL TESTS

A person implies consent under Colorado law to a chemical test or tests, and to providing the associated chemical sample, when a deputy has probable cause to believe that the person was driving a motor vehicle in violation of CRS § 42-4-1301 (DUI, DUI per se, DWAI or UDD) (CRS§ 42-4-1301.1). If a person withdraws this implied consent, or is unable to withdraw consent (e.g., the person is unconscious), the deputy should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

717.6.1 STATUTORY NOTIFICATIONS



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Deputies requesting a sample from a person suspected of DUI should inform the person that failure to submit to testing may result in the revocation of his/her license.

717.6.2 CHOICE OF TESTS

Deputies shall respect a viable choice of chemical test made by an arrestee as provided for by law (e.g., breath will not be acceptable for suspected narcotics influence). Generally, a person may request either a test of his/her blood or breath for determining alcohol content on a certified Evidential Breath Alcohol Test device (EBAT) (CRS § 42-4-1301.1). However, if a person under the age of 21 is suspected of underage drinking and driving (UDD), the person may only submit to a breath test.

If a person is suspected of aggravated vehicular unlawful termination of a pregnancy, the type of test or tests shall be determined by the deputy (CRS § 18-3.5-108).

For purposes of determining drug content within a person's system, deputies will select a test of the of the person's blood. The arrestee is required to take and complete the selected test. (CRS§ 42-4-1301.1; CRS § 18-3.5-108).

717.6.3 BREATH SAMPLES

Current Office Intoxilyzer Instructors should ensure all EBAT devices used for the collection and analysis of breath samples are properly serviced and tested, and a record of such service and testing is properly maintained. Deputies obtaining a breath sample should monitor the instrument for any sign of malfunction. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to an Intoxilyzer Instructor.

717.6.4 BLOOD SAMPLES

Only persons authorized by law to draw blood shall collect blood samples (CRS § 42-4-1301.1). The blood draw should be witnessed by the assigned deputy. No deputy, even if properly certified, should perform this task. Deputies should inform an arrestee that 2 blood samples are drawn. Both are retained as evidence. One is available to the arrestee to have tested at an independent lab at their cost if they chose. The blood sample shall be packaged, marked, handled, stored and transported as required by the testing facility. If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she shall not be required to take a blood test. Such inability to take a blood test shall not be considered a refusal. However, that arrestee may be required to complete a breath test.

717.7 REFUSALS

When an arrestee refuses to provide a chemical sample, deputies should:

1. Advise the arrestee of the requirement to provide a sample (CRS § 42-4-1301.1).
2. Audio- and/or video-record the admonishment and the response when it is practicable.
3. Document the refusal in the appropriate report.
4. The deputy will also issue the DR2576P (Notice of Revocation) to the driver

717.7.1 STATUTORY NOTIFICATIONS UPON REFUSAL

Upon refusal to submit to a chemical test as required by law, deputies shall personally serve the notice of revocation upon the person and take possession of any state-issued license to operate a motor vehicle that is held by that person and issue the person a seven-day temporary permit unless the person already possesses one (CRS § 42-2-126).

717.7.2 BLOOD SAMPLE WITHOUT CONSENT

A blood sample may be obtained from a person who refuses a chemical test only when the following conditions exist:

1. A search warrant has been obtained; AND
2. The deputy has probable cause to believe the person committed only one of the following offenses (CRS § 42-4-1301.1):
 - a. Criminally negligent homicide, (CRS 18-3-105).
 - b. Vehicular homicide, (CRS 18-3-106(1)(b)).



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- c. Assault in the third degree, (CRS 18-3-204).
- d. Vehicular assault, (CRS 18-3-205(1)(b)).

A warrant cannot be obtained for a traffic misdemeanor DUI.

A blood sample shall be obtained from a person suspected of aggravated vehicular unlawful termination of pregnancy when the person is dead or unconscious (CRS § 18-3.5-108). Unless exigent circumstances exist, deputies should make reasonable efforts to obtain a search warrant.

717.7.3 FORCED BLOOD SAMPLE

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the deputy should request a supervisor to respond.

The responding supervisor should:

1. Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
2. Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes, a viable form of testing in a timely manner.
3. Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another deputy) and attempt to persuade the individual to submit to such a sample without physical resistance.
4. This dialogue should be recorded on audio and/or video when practicable.
5. Ensure the blood sample is taken in a medically approved manner.
6. Ensure the forced blood draw is recorded on audio and/or video when practicable.
7. Monitor and ensure the type and level of force applied appears reasonable under the circumstances:
 - a. Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.
 - b. In misdemeanor cases, if the suspect becomes violent or more resistant, no additional force will be used, and a refusal should be noted in the report.
 - c. In felony cases, force that reasonably appears necessary to overcome the resistance to the blood draw may be permitted. Deputies may physically restrain a person for the purpose of obtaining a sample only in cases of criminally negligent homicide, vehicular homicide, assault in the third degree, vehicular assault or aggravated vehicular unlawful termination of pregnancy (CRS § 42-4-1301.1; CRS § 18-3.5-108).
8. Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

If a supervisor is unavailable, deputies are expected to use sound judgment and perform as a responding supervisor, as set forth above.

717.8 ARREST AND INVESTIGATION

717.8.1 PRELIMINARY TESTING

A deputy may request that a person provide a breath sample for a preliminary screening test when the deputy (CRS § 42-4-1301):

1. Has reason to believe the person was driving a motor vehicle while under the influence or impaired by alcohol and,
2. Has advised the person that he/she may refuse or agree to provide the preliminary breath sample.

If the person is under the age of 21, the deputy may conduct a preliminary screening test, without the person's consent, if there is a reasonable belief the person has consumed alcohol (CRS § 42-4-1301).

A deputy may use the results of the preliminary test in determining whether probable cause exists to believe the person was DUI and whether to administer additional testing (CRS § 42-4-1301).



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717.8.2 COLLECTING SAMPLES

Arrestee samples shall be collected and processed in accordance with standards set by the Colorado Department of Public Health and Environment (CDPHE) (5 CCR 1005-2:1 et seq.).

DUI or DUID Arrest

1. If DUI, advise the driver of Colorado's Express Consent law.
 - a. If the driver elects a breath test:
 - i. The deputy will transport the driver to a facility equipped with a CDPHE certified EBAT device. A certified operator on the EBAT device shall administer the breath test in accordance to CDPHE rules and regulations. The deputy shall retain all print outs for inclusion in the case file. If the driver's BrAC is in violation of the DUI per se law, the deputy shall confiscate all driver licenses regardless of state of issue. If the driver's BrAC is below the DUI per se level the driver license shall not be confiscated.
 - b. If the driver elects a blood test:
 - i. The deputy will transport the driver to the appropriate facility for the blood to be drawn in accordance with CDPHE rules and regulations. The deputy will witness the blood draw, complete the required blood collection kit paperwork, and ensure that the blood tubes are individually sealed and securely packaged. The deputy will then send the sealed blood collection kit to the EPSO approved toxicology laboratory for testing prior to the end of shift.
 - c. If the driver refuses a chemical test:
 - i. The deputy will confiscate all driver licenses regardless of state of issue. The deputy will also issue the DR2576P (Notice of Revocation) to the driver
2. If DUID, where the deputy has probable cause to believe that the observed impairment is the result of drugs, or the combination of alcohol and drugs: advise the driver of Colorado's Express Consent law.
 - a. If the driver volunteers a blood draw, follow the procedures outlined above for performing the blood draw, and indicate on the blood kit paperwork the drug(s) to be tested for.
 - b. If the driver refuses a blood draw, follow the procedures outlined above for refusal of chemical test.

717.8.3 TIME TO COLLECT SAMPLE

If a deputy requests that a person submit to a blood or breath test to determine the alcohol content of the person's blood or breath, the person must cooperate with the request such that the sample can be obtained within two hours of the person's driving (CRS § 42-4-1301.1). If the 2-hour time period lapses, a sample should still be obtained for DUI prosecution.

If a deputy requests that a person submit to a blood, saliva or urine test to determine the drug content within the person's system, the person must cooperate with the request such that the sample can be obtained within two hours of the person's driving (CRS § 42-4-1301.1).

717.8.4 NOTICE TO COMMERCIAL MOTOR VEHICLE DRIVER

Deputies investigating a driver of a commercial motor vehicle license for DUI shall advise the person that a refusal to submit to a chemical test shall result in an out-of-service order for a period of 24 hours and a revocation of the privilege to operate a commercial motor vehicle for one year (CRS § 42-4-1301.1).

717.8.5 DEPUTY RESPONSIBILITIES

A deputy believing a person should be subject to license revocation as a result of DUI shall forward the following to the Division of Motor Vehicles (DMV) on the forms prescribed by the DMV (CRS§ 42-2-126):

1. A copy of the completed notice of revocation form.
2. A copy of any completed temporary permit.
3. The person's driver's license.



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4. A copy of the DUI case report.
5. A copy of the summons.
6. Any other documents the deputy feels are relevant.

717.8.6 EXTRAORDINARY CIRCUMSTANCES

If a deputy requests a person to submit to a chemical test and subsequently determines that there are extraordinary circumstances that prevent the completion of the test elected by the person within the two-hour time period, the deputy shall inform the person of such circumstances and request and direct the person to take and complete the other test. The person shall then be required to take and complete, and to cooperate in the completing of, the other test. Extraordinary circumstances include, but are not limited to, weather related delays, high call volume affecting medical personnel, malfunctioning breath test equipment and other circumstances that preclude the timely collection of a sample (CRS § 42-4-1301.1).

717.8.7 UNCONSCIOUS OR DECEASED PERSONS

If a deputy believes a person to be DUI and the person cannot submit to a chemical test because the person is unconscious, hospitalized or undergoing medical treatment, the deputy may (CRS§ 42-4-1301.1):

1. Have access to and analyze any blood, urine or saliva that was obtained and not utilized by the health care provider.
2. Have access to medical tests administered by the health care provider that show test results of the alcohol or drug content in the person's system. The provisions of CRS§ 13-90-107 relating to physician privileged communications do not apply to such test results.

In addition, the blood or urine sample of any deceased driver or pedestrian at least 15 years of age shall be tested for alcohol, drug and carbon monoxide concentration following the procedures established by the Department of Public Health and Environment (CRS § 42-4-1301.1; CRS § 42-4-1304).

717.8.8 MEDICAL MARIJUANA REGISTRY IDENTIFICATION CARD

A person who possesses a valid medical marijuana registry identification card (RIC) shall not be required to submit to a blood test solely based on the possession of the RIC (CRS § 42-4-1301).

717.9 RECORDS SECTION RESPONSIBILITIES

The Records Supervisor will ensure that all case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office.

717.10 ADMINISTRATIVE HEARINGS

The Records Supervisor will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to the Colorado Department of Revenue (DOR).