

- A. PURPOSE. To outline the procedure for the enforcement of Operating While Intoxicated and Operating with the Presence of a Controlled Substance
- B. ENFORCEMENT. All departmental personnel are responsible for the enforcement of all applicable State Laws and City Ordinances relating to the operation of Motor Vehicles while under the influence of alcohol or controlled substances.
- C. LAWS AND ORDINANCES. Michigan Motor Vehicle Code section [257.625](#) et al., and Grand Rapids City Ordinance section [10.16](#) both delineate applicable related offenses specific to this procedure.
- D. OPERATING WHILE INTOXICATED
  - 1. UNDER 21 YEARS OF AGE
    - a. *Operating—Minor with any Blood Alcohol Content (BAC)*. BAC is greater than or equal to .02%, but less than or equal to .07%.
    - b. *Operating While Intoxicated*. BAC is greater than or equal to .08%.
    - c. *Operating With High BAC*. BAC is greater than or equal to .17%.
    - d. *Operating with Presence of Controlled Substance*.
  - 2. 21 YEARS OF AGE AND OLDER
    - a. *Operating While Visibly Impaired*. BAC is equal to or less than .07%. (This charge requires specific, articulated actions that would lead the Officer to reasonably conclude that the driving ability has been affected by the consumption of alcohol or controlled substances. On-scene Supervisor approval needed.)
    - b. *Operating While Intoxicated*. BAC is greater than or equal to .08%.
    - c. *Operating With High BAC*. BAC is greater than or equal to .17%.
    - d. *Operating with Presence of Controlled Substance*.

## E. GENERAL PROCEDURE

1. When officers suspect that a driver whom they have stopped has been driving in violation of any of the aforementioned laws and/or ordinances, based upon the odor of alcohol coming from the driver, the condition of the driver's eyes, the driver's speech, and/or admission of consumption, etc., they should attempt to conduct, if trained, Standardized Field Sobriety Tests (SFST) in order to establish probable cause. If the Officer is not trained in SFST, the following is a list of recommended field sobriety tasks. The Officer shall attempt to administer:
  - a. Walking Heel-to-Toe
  - b. Finger-to-Nose
  - c. Balance
  - d. Alphabet and/or Counting
  - e. Romberg ("attention" stance, head back, eyes closed)
2. When failure of the field sobriety tasks administered is accompanied by indicators of consumption, subjects shall be placed under arrest and advised that they are under arrest for OWI (Minor Operating with any BAC, or applicable offense).
3. In incidents where it is not clear whether the subject is in violation or not, and the officer has "reasonable suspicion" that the person may be under the influence of intoxicating liquor, officers shall request a certified PBT (Preliminary Breath Test) operator for the purpose of administering a test.
4. If the results of the of the SFST and the observed impairment is not consistent with the results of the PBT, and the results of the breath test are below .08 BAC or any signs of ingestion are visible, the officer may request a supervisor to determine if a Drug Recognition Expert (DRE) should respond.
5. Those arrested shall be transported to the Kent County Correctional Facility for further testing.

6. All persons charged with any of the listed offenses shall be charged with first offense, regardless of what a driving history or arrest file may show. Any enhanced charges may be added by the Traffic Unit after the review of any prior offenses and the authorization of the reviewing Assistant Kent County Prosecutor.
7. Officers shall also be mindful that persons who are diabetic, or who are subject to seizures, may appear to be intoxicated by the display of strange or bizarre behavior. Officers shall attempt to differentiate the intoxicated driver from those persons suffering from a medical condition. The table in Appendix A is offered to assist officers as a general guide for enforcement action.
8. Seize license plates of repeat offenders when indicated to do so by the Secretary of State's response via LEIN.
  - a. A plate should only be confiscated if a custodial arrest occurs for one of the specified offenses (prior alcohol convictions/suspensions or revocations).
  - b. Temporary paper license plates are to be issued upon seizing metal plates. The court copy is to be placed in the OWI packet. The agency copy is to be forwarded to the Communications Unit for entry into LEIN.
  - c. Include on the court/agency copy the driver's name, DOB, and incident number.
  - d. Metal plates are to be turned into the Property Management Unit.
  - e. Digital license plates shall only be seized for evidentiary purposes.
9. Officers shall not cite a driver for OWI or similar offense. Drivers shall either be lodged, or if admitted to the hospital, ordered into 61<sup>st</sup> District Court in 10 business days from the date of the offense. Citations may still be issued for related offenses.

#### F. PRELIMINARY BREATH TESTS

1. A Preliminary Breath Test (PBT) may be administered where an officer has reasonable suspicion that a driver may be Operating While Intoxicated, Operating – Minor with any BAC, and/or in violation of any of the listed laws and/or ordinances.

2. A preliminary breath test should be given after field sobriety tasks have been administered and the results in the officer's mind are inconclusive.
3. Only PBT certified personnel shall administer the test with a calibrated PBT. When administered, the test shall be administered in accordance with procedures promulgated by the Michigan Department of State Police.
4. No preliminary breath test shall be administered until after a fifteen (15) minute observation period to determine that the subject has not consumed alcohol or other substances. All preliminary breath test subjects should not be allowed to smoke or use any other contaminants prior to or during the test. Police officers should not smoke or transmit radio signals directly prior to or during preliminary breath testing.
5. A preliminary breath test shall not be administered to a subject that has a mouth injury or a breathing disorder.
6. If the result of any preliminary breath test is .08% (.02 for Minor with any BAC, etc.), then the suspect shall be arrested for the appropriate OWI violation. Lower test results, if combined with the results of other field testing, may provide police officers with "probable cause" to affect the arrest.
7. The assigned operator shall complete the Preliminary Breath Test form. The completed form shall be given to the requesting officer.
  - a. If the subject is arrested, all copies of the PBT form should be filed in the OWI packet.
  - b. If no arrest is made, but a traffic citation is issued for refusal to take the PBT, all PBT form copies should be submitted to the Traffic Unit.
  - c. If no arrest is made and no traffic citation is issued, all copies of the form are to be discarded.
8. Subjects refusing to submit to a preliminary breath test shall be issued a civil infraction.
  - a. The decision to arrest subjects in these incidents (including .02), shall be based upon other evidence, i.e., administered field sobriety tasks, the detailed observations of the officer, the results of investigative efforts pursuant to a traffic accident, etc.

- b. Officers shall record the refusal to submit to a preliminary breath test in the narrative of the incident report, Traffic Accident Report (UD-10) or the OWI Report, depending upon the nature of the incident or activity.
9. The PBT's are calibrated by the Traffic Unit. Assigned employees shall submit equipment once a month for calibration. The calibration date shall be recorded in the calibration log maintained by the Traffic Unit.

## G. CHEMICAL TESTS

1. Chemical tests for determining the amount of alcohol or presence of a controlled substance or both in a driver's breath, blood, or urine are specified in the Michigan Motor Vehicle Codes "Implied Consent" statute ([257.625c](#)). All drivers arrested for violation of any of the laws and/or ordinances shall be requested to submit to a breath test, unless it is suspected that the driver is under the influence of a controlled substance(s), or a combination of alcohol and controlled substance(s). In cases of the latter, the subject shall be requested to submit to a blood test.
2. Officers should be alert to those rare cases where a person's medical condition prohibits them from submitting to a blood test under "Implied Consent". Persons who are afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician SHALL NOT be required, nor considered to have given consent to submit to a withdrawal of blood. A blood search warrant must be obtained.

## H. BLOOD ALCOHOL SEARCH WARRANTS

1. In cases where either the subject has refused a breath test or has been involved in a fatal or potentially fatal accident, officers shall seek a search warrant for blood.
2. If the request for a search warrant is during normal court business hours, the officer shall go in person to the 61<sup>st</sup> District Court and swear out the warrant in front of a Judge or Magistrate.
3. After court hours, the officer will make their warrant request from the on-call 61<sup>st</sup> District Court Judge or Magistrate (via fax) using blood alcohol search warrant affidavit forms provided.

4. Blood draws may be obtained at the Kent County Correctional Facility, any hospital, or Spectrum Health Med-station. All blood samples shall utilize the Michigan Department of State Police blood removal kits.
5. Officers are responsible for completely recording and submitting all requested information on the Search Warrant affidavit, the blood removal kit, and corresponding forms.
6. Officers may still seek a search warrant using the procedure after a breath test is given AND the results are not consistent with the driver's obvious state of intoxication.

I. ACCIDENTS. A police officer, without a warrant, may arrest a person when the officer has reasonable cause to believe that the person was, at the time of an accident, the driver of a vehicle involved in the accident and was operating the vehicle upon a public highway or other place open to the general public, including an area designated for the parking of vehicles, in the state while in violation of any of the aforementioned laws and/or ordinances. Officers should be aware of the following special circumstances:

1. Accident in which suspect has received minor injuries:
  - a. Officers shall develop their probable cause to arrest based on accident circumstances, sobriety tasks, and observations.
  - b. Officers shall arrest the suspect and offer a blood test at the hospital. If refused, a search warrant for blood shall be sought.
  - c. The incident report shall include the name of the medical staff conducting the blood draw.
  - d. Officers shall guard the suspect until released and then transport the suspect to KCCF. For an officer to have the suspect released on their own recognizance, the officer must have approval from a supervisor and order the driver into the 61<sup>st</sup> District Court within 10 days.
2. Accident that involves serious, potentially fatal, or fatal injuries:
  - a. The Traffic Unit is contacted.

- b. Officers should develop their probable cause based on accident circumstances, sobriety tasks, and observations, and other available information.
- c. If probable cause exists, the suspect should be arrested for OWI Causing Serious Injury or Death, depending upon the circumstances.
- d. Once arrested, officers shall seek a search warrant (due to seriousness of offense implied consent is not used). The name of the medical staff conducting the blood draw shall be included in the incident report.
- e. Officers SHALL NOT issue any citations to the suspect relating to the incident. Accident Investigators will issue citations after the final charges are determined.
- f. A supervisor (after consulting with the Accident Investigator for case status) shall determine if the suspect will be guarded.

J. REPORTING. Officers shall thoroughly and accurately complete all required forms. The following forms shall be completed when processing any driver arrested for OWI or associated offense and placed in the OWI packet:

- 1. Incident report containing information related to probable cause, including information on all passengers and witnesses.
- 2. Grand Rapids Police Department Preliminary Breath Test Form (when applicable).
- 3. State Breath, Blood, and Urine Test Report (DI-177), If driver submits to the test, give the driver their copy (licensed or unlicensed) and put one copy in the Communications Unit mail slot for LEIN entry.
- 4. State Infrared Breath Test Evidence Ticket (UD-80 if breath test is given).
- 5. City Attorney OWI Interview Form.
- 6. Officer's Report of Refusal to Submit to Chemical Test (DI-93), If the driver refuses to submit to the test, give the driver their two copies (licensed or unlicensed), and put one copy in the Communications Unit mail slot for LEIN entry.

7. 61st District Court Affidavit/Search Warrant/Return of Search Warrant Form (if applicable).
8. Michigan State Police blood removal kit form (if applicable).
9. Temporary Registration Plate (if applicable; driver's name, DOB, and incident number to be included on court/agency copy, include court copy in OWI packet, and forward agency copy to the Communications Unit for LEIN entry.)
10. Submit the OWI packet to the Traffic Unit.

#### K. LICENSE SEIZURE

1. All drivers arrested for OWI (.08% or more BAC), including those drivers whose blood or urine test results are pending, shall have their drivers license confiscated by the arresting officer.
2. Those persons charged with (Minor–Operating with any BAC) shall also have their license confiscated.
3. The confiscated license shall be placed in the confiscated license bin located in the Property Management Evidence Lockers (no property card need be submitted).
4. The subject, whether licensed or not, shall then be given the Driver's Copy of the Breath, Blood, Urine Test Report (DI-177) if complied with request to submit to the test or both Driver's copies of the Officer's Report of Refusal to Submit to Chemical Test (DI-93) if the tests were refused. This copy also contains the drivers Michigan Temporary Driving Permit.
5. Only those drivers 21 or older, who test impaired, shall not have their licenses confiscated.

#### L. RELEASE FROM CUSTODY

1. Only juveniles who have been charged with any of the laws and or ordinances shall be released from custody after processing. Juveniles shall only be released to a parent or guardian. If unable to contact a parent or guardian, officers shall follow the procedures mandated in the procedure "Prisoner Processing."



2. Persons under the age of 21, not including juveniles, charged under the (Minor–Operating with any BAC) shall not be released from custody until they are under the .02 blood alcohol content (to be determined by KCCF personnel).
3. All other persons arrested and lodged shall abide by bonding procedures mandated by the 61<sup>st</sup> District Court and the Kent County Correctional Facility.

#### M. MEDICAL TREATMENT

1. If a subject test is .30% or greater or is unresponsive due to suspected alcohol or drug ingestion, officers shall immediately convey the subject to the nearest hospital for treatment. In these cases, officers shall seek a Blood Alcohol Search Warrant for determining the level of alcohol and/or the presence of controlled substance(s) in the subject's system.
2. Officer shall seek a **Blood Alcohol Search Warrant** for drivers involved in fatal or potentially fatal accidents. These subjects may be arrested on probable cause after consulting with Accident Investigators but shall not be given any citations related to the incident.
  - a. If lodged on a felony, an investigator shall complete a follow up to further support/ clarify the charge.

N. SPECIFIC RESPONSES. Alcohol related incidents involving Commercial Vehicles, Trains, Snowmobiles, and Off-Road Vehicles (ORV's) mandate special procedures as the application of the law in each case is different. The following procedures shall be used when dealing with each of the following:

##### 1. COMMERCIAL VEHICLES

- a. Commercial Motor Vehicle is defined in Michigan Vehicle Code [257.7a](#) as:
  - (1) A bus, a school bus, or a school transportation vehicle.
  - (2) A motor vehicle, except a motor home, having a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds.
  - (3) A motor vehicle towing a vehicle with a gross vehicle weight rating of more than 10,000 pounds.

- (4) A motor vehicle carrying hazardous material, and on which is required to be posted a placard as defined and required under 49 C.F.R. parts 100 to 199.
- b. A commercial vehicle does not include a vehicle used exclusively to transport personal possessions or family members for non-business purposes.
- c. Commercial Motor Vehicle Operators, while driving a Commercial Vehicle, are subject to different Blood Alcohol Levels, whether they possess a Commercial Drivers License (CDL) or not.
- d. Certain violations may require a "Commercial Motor Vehicle/24 Hour Out of Service Order." An Out-of-Service Order is verbally issued by a peace officer and prohibits the driver in question to operate a commercial motor vehicle for 24 hours. The Out-of-Service Order should be documented in the officer's report. It is a misdemeanor only if the order is violated ([257.319d](#)).
- e. The commercial vehicle laws specifically mandate the following:
  - (1) Misdemeanor for operating a Commercial Vehicle with a Blood Alcohol Level of .04% or more (no physical arrest unless impaired or above, issue a citation and Out-of-Service Order).
  - (2) Misdemeanor for operating a Commercial Vehicle and refuse a PBT. A police officer may request an operator of a commercial vehicle to submit to a preliminary breath test (PBT) for any detectable presence of intoxicating liquor, which includes the mere odor of liquor. Any driver, operating a commercial motor vehicle, who refuses a Preliminary Breath Test (PBT) shall be arrested for a misdemeanor.
  - (3) 24-Hour Out-of-Service Order for Commercial Vehicle Operators with Blood Alcohol Level of .015% to less than .04% (also applies to those arrested for more serious violations as well). This order possesses no penalty, unless violated. If violated, it becomes a misdemeanor.
  - (4) The following Blood Alcohol Levels and corresponding actions shall apply to Commercial Motor Vehicle operators while operating a commercial motor vehicle:

(a) Under 21 years of age:

- [1] *24-Hour Out-of-Service Order*. BAC is greater than or equal to .015%, but less than .04%.
- [2] *Operating–Minor any BAC & 24-Hour Out-of-Service Order*. BAC is greater than or equal to .02%, but less than or equal to .07%.
- [3] *.04% Commercial Motor Vehicle Law & 24-Hour Out-of-Service Order (this is still a Minor any BAC violation as well)*. BAC is equal to or greater than .04%, but less than or equal to .07%.
- [4] *Operating While Intoxicated & 24 Hour Out of Service Order*. BAC is greater than or equal to .08%.

(b) 21 years of age and older:

- [1] *24-Hour Out-of-Service Order*. BAC is greater than .015%, but less than .04%
- [2] *.04% Commercial Motor Vehicle Law & 24-Hour Out-of-Service Order*. BAC is equal to or greater than .04%, but less than or equal to .07%.
- [3] *Operating While Intoxicated & 24-Hour Out-of-Service Order*. BAC is greater than or equal to .08%.

- (5) The processing of the arrested driver shall be the same as that of non-commercial vehicle operators. Accordingly, all forms used in the processing of non-commercial drivers apply in these incidents as well. However, commercial drivers who test .04 and above shall have their license confiscated and a temporary driving permit issued.
- (6) Officers shall not apply this law to drivers who possess a Commercial Drivers License where the driver is not operating a Commercial Vehicle.

2. TRAINS. Accident or Derailment ([MCL 462.353\(1\)](#))

- a. A peace officer may, without a warrant, arrest a person when the peace officer has reasonable cause to believe that the person, at the time of the accident, was the operator of a locomotive engine involved in the accident and was operating the locomotive engine upon the railroad tracks of this state while under the influence of intoxicating liquor or a controlled substance, or a combination of both. The mere fact that a collision occurred does not establish reasonable cause.
- b. In incidents where trains are involved, officers shall contact a supervisor for the purpose of contacting a railroad police officer from the involved railroad company. The railroad police can help in investigating train-related matters. The Communications Unit maintains 24-hour emergency contact numbers for local rail companies.

3. SNOWMOBILES. MCL Section [324.82127](#), et al., shall be used when charging an operator of a snowmobile suspected as being under the influence of intoxicating liquor or controlled substances. This section applies to highways, other places open to the public, including areas designated for the parking of vehicles, and areas designated as snowmobile trails.

- a. When the incident occurs on areas designated as a snowmobile trail, the section requires that officers must use the following special forms:
  - (1) DI-93(S)
  - (2) DI-177(S)
- b. On a highway or other place open to the public, including an area designated for the parking of vehicles, the standard DI-93 and DI-177 would be used. These forms will be maintained at the Kent County Correctional Facility.
- c. The Operating–Minor any BAC Law also applies to the operation of snowmobiles involving operators under the age of 21 years.

4. OFF-ROAD VEHICLES (ORV). OWI procedures involving operators of Off-Road Vehicles are the same as those for Motor Vehicles with one

exception: The applied Michigan Motor Vehicle Code section is different if operated on property designated for off-road use.

- a. When the incident occurs in an area designed for Off-Road Use, officers shall refer to Michigan Motor Vehicle Code section [324.81134](#), et al., for the appropriate cite. Off-Road Vehicles operated on highways or other places open to the public, including areas designated for the parking of vehicles, shall fall under the same Code as Motor Vehicles.
- b. The Operating–Minor any BAC Law also applies to the operation of Off-Road Vehicles involving operators under the age of 21 years.

O. LOGISTICS. The Traffic Unit Supervisor will ensure an adequate supply of the following items in the breathalyzer room of the Kent County Correctional Facility:

1. OWI Packets containing the necessary forms
2. Michigan State Police approved blood removal kits

## Appendix A - Enforcement Guide

### **Operating While Intoxicated (OWI) and Operating with High BAC (HBAC)**

1. Reasonable suspicion for traffic stop
2. Sobriety tasks
3. PBT (if necessary)
4. Arrest
5. Infrared test (If refused, seek search warrant for blood)
6. Lodged

### **Operate – Minor with any BAC**

- Same as above except suspects 17-21 yrs lodged until BAC is under .02. Juveniles are released to parents after processing.

### **Operate-Presence of Controlled Substance**

1. Reasonable suspicion for traffic stop
2. Sobriety tasks
3. PBT (if necessary; may show .00)
4. Arrest
5. Blood test (If test is refused, seek search warrant for blood)
6. Lodged

### **Highly Intoxicated OWI**

1. Reasonable suspicion for traffic stop
2. Sobriety tasks
3. Arrest
4. Infrared test shows .30 or higher (if refused, seek search warrant for blood) or if suspect is unresponsive due to suspected ingestion of alcohol or drugs, seek search warrant for blood
5. Suspect is taken to hospital for treatment
6. Officer guards suspect until released
7. Lodged

### **OWI Accident, No Injuries**

1. Probable cause to believe driver may have been under the influence at time of accident
2. Sobriety tasks
3. PBT (if necessary)
4. Arrest
5. Infrared test (if refused, seek search warrant for blood)
6. Lodged

### **OWI Accident, Suspect Driver has Minor Injuries** (requires medical attention, but not being admitted)

1. Probable cause to believe driver may have been under the influence at time of accident
2. Sobriety tasks
3. Arrest
4. Blood test offered at hospital (if refused, seek search warrant for blood)
5. Officer guards suspect until released
6. Lodged

### **OWI Accident that involves serious, potentially fatal, or fatal injuries to victim or suspect**

1. Traffic Unit is contacted
2. Probable cause to believe driver may have been under the influence at time of accident
3. Sobriety tasks (if able) / PBT
4. Arrest
5. Officer seeks search warrant for blood
6. Suspect NOT issued ANY citations related to incident
7. Investigated by Accident Investigator

**Note:** See procedure for specific information. Chart does not reflect processing for commercial vehicles, trains, snowmobiles, or off-road vehicles.