

# City of Johns Creek Police Department

<i>Subject:</i> DUI Enforcement		<i>Number:</i> 02-22
<i>Reference:</i>		<i>Amends:</i>
<i>Effective:</i> <b>04/08</b> <i>Revised:</i> <b>08/09</b> <b>02/21</b> <b>05/22</b>	<i>Review Date:</i> Annually	<i># of</i> 6 <i>Pages:</i>

## PURPOSE:

The Johns Creek Police Department recognizes drivers impaired by alcohol and/or drugs constitute a great danger to the public and are responsible for a great amount of deaths, personal injuries and property damage. A part of the Department's response will be to maintain an aggressive and impartial enforcement of the DUI and related statutes.

## DEFINITIONS:

Blood Alcohol Concentration - Grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

## POLICY: (02-22)

The Johns Creek Police Department adopts OCGA 40-6-391 as its policy for D.U.I. enforcement, and emphasizes that in accordance with state law, has a zero tolerance for impaired drivers.

OCGA 40-6-391 states, .... "a person shall not drive or be in physical control of a moving vehicle while under the influence of alcohol and/or drugs to the extent that the person is less safe to drive, with an alcohol concentration exceeding the established legal state standards, if there is any amount controlled substance as defined by OCGA 16-13-21 present in the person's blood and/or urine, or if the person is under the age of 21, with an alcohol concentration exceeding the established state standard". A concerted effort will be made by the Department to enforce this and related statutes through detection, arrest, testing, and reporting. (See OCGA 40-6-391 for actual B.A.C. concentrations.)

## PROCEDURES:

### Contact with the Driver (02-22-01)

Contact may be made with impaired drivers for a variety of reasons. The contact need not be traffic related, but each contact must be based on *reasonable and articulable* suspicion. The officer must be able to successfully relate that a reasonable prudent person, given an identical set of circumstances, would detain the driver for a brief investigation. Reasons for detaining a driver include, but are not limited to, traffic violations, driving behaviors normally exhibited by persons

under the influence of alcohol and/or drugs, generally suspicious behavior, and citizen complaints.

The courts have ruled an officer may have the driver exit his/her vehicle to perform a limited investigation of this nature. The officer must be aware of not only his/her own safety, but also the safety of the driver while outside the vehicle.

### **Physical Manifestation of the Driver (02-22-02)**

While in contact with any driver, the officer should note any physical manifestation exhibited by the driver consistent with persons under the influence of alcohol and/or drugs. These manifestations may include, but are not limited to, blood shot or glassy eyes, slurred speech, unsteady balance, odor of alcoholic beverage, inability to answer simple questions, confusion and disorientation.

### **Pre-custodial Questioning (02-22-03)**

During the initial investigatory phase of a traffic stop, the officer may ask questions of the driver without being required to advise the driver of his/her constitutional rights under the Miranda decision. The answers to the officer's questions during this phase of the investigation *are* admissible.

### **Plain View Inspections (02-22-04)**

The officer may, from the exterior of the vehicle, visually inspect the interior of the driver's vehicle. Any items that support the officer's belief the driver is under the influence, any evidence of other crimes, or any items which are a threat to the officer's safety may be seized.

### **Field Sobriety Evaluations (02-22-05)**

If the officer has reasonable suspicion a driver is under the influence of alcohol and/or drugs, the officer may administer a group of field sobriety tests to help determine if probable cause exists to place the driver under arrest. Since these tests are *pre-custodial*, Miranda Warnings are not applicable.

It is recommended the officer administer the standardized battery of field sobriety evaluations developed by the National Highway Traffic Safety Administration. This standardized battery includes the Horizontal Gaze Nystagmus, the Walk and Turn and the One Leg Stand. It is also recommended all patrol officers attend a certified course of instruction on this battery of tests.

The officer should take into account the condition of the person being administered the evaluations. He/she may have physical disabilities that preclude some evaluations. Also, if a person is extremely intoxicated, it may be unsafe to administer psycho-physical evaluations or divided attention evaluations.

### **Arrest (02-22-06)**

After considering a person's manner of driving, physical manifestation, performance of field sobriety evaluations, physical evidence and other pertinent factors, and if probable cause exists that the driver is in violation of OCGA 40-6-391, the officer should place the driver under arrest for DUI.

Special attention should be given to the legal standard of "**less safe driver**". When the officer determines the driver is to be placed under arrest, it should be clearly stated to the driver that he/she is under arrest for driving under the influence. The driver should immediately be restrained with hand cuffs and placed in the rear seat of the officer's patrol vehicle.

Pursuant to the arrest, a search of the entire passenger compartment of the driver's vehicle for the source of intoxication is permitted.

### **Custodial Questioning (02-22-07)**

After the driver is placed under arrest, any further questioning is custodial. If the officer is going to ask any further probative questions, the Miranda Warning shall be read prior to questioning.

### **Implied Consent (02-22-08)**

OCGA 40-5-55 states, .... “any person who operates a motor vehicle on the highway or elsewhere throughout the state shall be deemed to have given consent, subject to OCGA 40-6-392, to a chemical test or tests of his/her blood, breath, urine or other bodily substances for the purpose of determining the presence of alcohol or any other drug, or if arrested for any offense arising out of acts alleged to have been committed in violation of OCGA 40-6-391, or if such person is involved in any traffic accident resulting in serious injuries or fatalities”.

After placing a driver under arrest for DUI the officer shall read the entire portion of the Georgia Implied Consent Notice Card (DDS-354 (05/19)(or as amended by law or rule)), applicable to a particular offender. This should be done at the scene of the arrest. If it is not practical to read the notice at the scene, it may be done later, but prior to any state administered testing, and only if the officer can successfully articulate the reason(s) it could not be read at the scene.

The officer should clearly designate which test(s) he/she is requesting and should be cautious of any explanations of implied consent issues

### **State Administered Chemical Testing (02-22-09)**

The arresting officer should keep in mind the following criteria when designating the test(s) to be administered:

- A. Suspected Influence of Alcohol - Normally a breath test, but in some circumstances a blood test (i.e., if the person is physically unable to perform a breath test);
- B. Suspected Influence of Drugs - Blood/Urine Tests;
- C. Suspected Influence of Alcohol and Drugs - Blood/Urine Test; and
- D. Accident Involving Serious Injury or Fatality - OCGA 40-5-55 requires blood/urine test including a drug screen.

Breath tests should be conducted in accordance with Georgia Bureau of Investigation Rules and consistent with training, and only by certified personnel. (See “Intoxilyzer 9000 Procedures”)

If a blood and/or urine test is to be administered, the person will be transported to the nearest hospital for collection of the samples by proper medical personnel. These samples, properly packaged, will be transported to the Johns Creek Police Headquarters and placed in the evidence refrigerator until transport to the Georgia State Crime Lab for analysis. The officer shall be required to complete the Evidence Submission Forms.

The officer's request of hospital personnel to collect the samples must be documented.

If one test is administered and another state administered test is requested, implied consent notice should be read to the subject again.

### **Intoxilyzer 9000 Procedures (02-22-10)**

If the subject consents to a breath test, he/she will be transported to the nearest Intoxilyzer 9000 machine. The Johns Creek Police Department's Intoxilyzer 9000 is located at the South Precinct in the main meeting room. Access to the South Precinct is restricted for authorized personnel only, and the following procedures shall be followed during use of the Intoxilyzer machine:

- A. Only certified Georgia Intoxilyzer 9000 operators may administer the test. If no Intox. 9000 certified officers are on duty, the officer may request assistance from a nearby agency.
- B. There will be at least two officers present during the testing process; one to administer the test and one to supervise the detainee. Detainees shall remain under the continuous personal supervision and control of an officer at all times, while at the precinct for testing.
- C. Officers will remain armed and in control of their agency issued and approved weapons at all times, during the testing process.
- D. The detainee will remain in handcuffs or other agency approved restraints for the duration of the testing process.
- E. Officers' body worn cameras will remain active throughout the testing process, and officers will notify dispatch of their arrival and departure from the South Precinct.
- F. Officer portable radios are equipped with emergency notification buttons, in case of a need for emergent assistance.
- G. The officer conducting the test will print and file copies of test results as indicated in section 02-22-14 of this policy.
- H. If breath test results indicate no alcohol present or an amount that is low compared to the observed level of impairment, the officer will re-read the implied consent for blood/ urine test and consider requesting the assistance of a Drug Recognition Expert (DRE) certified officer for evaluation of the detainee.
- I. If the machine fails during testing, due to operator error, RFI interference, or other technical issues, the operator may correct the issues and re-attempt the breath test. If the further failure occurs and the test cannot be completed, the operator will re-read the implied consent notice for blood/ urine tests and follow the procedures outlined in this policy for blood/ urine testing.

The Traffic Safety Unit Commander shall appoint an officer to serve as the department liaison for maintenance and required inspections of the Intoxilyzer 9000 machine.

- A. The department liaison will coordinate with the Georgia State Patrol to ensure quarterly inspections of the machine are completed.
- B. The department liaison will be responsible for documenting completion of all required certifications and inspections of the Intoxilyzer 9000 machine. Certification and inspection documentation will be stored at the South Precinct.
- C. If issues related to machine failure, low printer toner, or other maintenance-related problems occur, officers will notify the department liaison via email.

### **Refusal of State Administered Chemical Tests (02-22-11)**

If the person refuses to submit to the requested, then no test shall be given. The DPS 1205 form shall be completed for all refusals and forwarded to the Department of Motor Vehicle Safety. The fact that he/she refused to submit is admissible in any criminal trial. (Also, see "Reporting".)

### **Additional Testing (02-22-12)**

OCGA 40-6-392 provides that a person who has submitted to the state administered chemical test is entitled to an additional test by personnel of his/her own choosing at his/her own expense.

Any person entitled to an additional test, and requesting such a test, shall be allowed access and given transportation to accommodate reasonable requests. If arrangements are made, the arresting officer must provide transportation to a facility, within reason, for the administration of the test. Questions for whether transportation to a particular facility is reasonable or not should be addressed to a supervisor.

Officers should avoid making comments on additional tests. Including comments on cost or usefulness, as such comments may be construed as coercing the person into giving up his/her right to an additional test.

### **Incarceration (02-22-13)**

DUI violators will be incarcerated at the detention facility designated by the Johns Creek Police Department unless the person is admitted to a hospital, or in unusual circumstances as authorized by a supervisor.

### **Reporting (02-22-14)**

A detailed incident report will be submitted on all DUI arrests. The report will contain any pertinent information regarding the case including reasonable suspicion for stopping the vehicle, probable cause for the arrest and data pertaining to the chemical test(s). The report will be approved by a supervisor and submitted to the records section.

If a state administered breath test was administered, two copies of the test data will be attached to the court copy of the traffic citation, and one copy will be made available to the violator.

The Intoxilyzer 9000 machine operator will print four (4) copies of the test results, which will be filed as follows:

- A. One (1) copy will be placed in the provided folder mounted on the wall near the machine, for use during quarterly audits.
- B. One (1) copy will be provided to the offender.
- C. One (1) copy will be turned in to the Records Unit to be scanned and added to RMS and made available for court.
- D. One (1) copy will be retained by the Intoxilyzer operator for court purposes.

If a blood or urine test is administered, the following documentation will be forwarded to the property/evidence section:

- A. Copy of the incident report;
- B. Johns Creek Police Department Property Receipt/Voucher, describing the evidence placed in the evidence refrigerator;

If a person meets any of the following criteria, a DPS 1205 form, may be completed and the original forwarded to the Georgia Department of Motor Vehicle Safety within 10 days with one copy left with the violator.

- A. The person refused to submit to the designated state administered chemical testing;
- B. Chemical test results indicate a blood alcohol concentration exceeding the established legal state standards for drivers age 21 or older;
- C. The driver was under the age of 21 and chemical tests indicate a blood alcohol concentration exceeding state legal standards; and
- E. The driver was operating or in actual physical control of a commercial motor vehicle and the chemical tests indicates a blood alcohol concentration exceeding the established legal state standards.

**Disposition of Vehicle (02-22-15)**

The driver's vehicle may be released to another licensed driver at the driver's request or may be left at the scene at the driver's request if the vehicle is on private property and permission can be obtained from the owner or custodian of the property. In either instance, it must be safe, reasonable and practical to permit the request. Otherwise, the vehicle should be impounded.

If the vehicle must be impounded for evidentiary reasons, the driver will not be allowed to release the vehicle.

**Driver's License (02-22-16)**

If a DPS Form 1205 is completed and the violator has a Georgia Driver's License on their person it should be attached to the DPS form 1205. If the Driver holds a license from another state, it should be returned to the Driver.