



## PARADISE VALLEY POLICE GENERAL ORDER

### Driving Under the Influence of Intoxicating Liquor or Drugs

Order Number

61.7

Date

01-19-17

## 61.7 Driving Under the Influence of Intoxicating Liquor or Drugs

- A. *Officers will* make reasonable efforts to prevent intoxicated individuals from driving a vehicle. No person *will* be allowed to drive a vehicle for the purpose of making a DUI *arrest*. Any driver suspected of driving under the influence *will* be *stopped* as soon as it can be done lawfully and safely. While most driving violations apply only on the roadway, the DUI statutes apply on both public and private property.
- B. Upon observing a suspected impaired driver, *officers will* carefully observe the vehicle movements in order to be able to document in the *DR* any facts that lead the *officer* to reasonably believe the vehicle operator is DUI. A vehicle *may* be *stopped* because the *officer* has *reasonable suspicion* of DUI, a traffic violation or any other offense. Once the vehicle is *stopped*, *officers will* pay attention to and later document any additional signs of impairment displayed by the driver. *Officers may* refer to *The Visual Detection of DWI Motorists* booklet published by the *National Highway Traffic Safety Administration (NHTSA)* for some common driving cues of an impaired driver.
- C. *Officers* stopping a vehicle for non-DUI traffic violations or investigating a traffic accident *will* pay attention for any indications of impaired driving. Before individuals involved in an accident can be charged with DUI there *must* be *evidence* that they were driving or in actual physical control of the vehicle. *Officers will* consider the physical *evidence*, as well as the statements of any witnesses who can place the driver behind the wheel.
- D. When *arresting* a driver who is in actual physical control of a vehicle, *officers must* document the details that show the driver was in physical control, including vehicle key in the ignition, whether the vehicle's engine was running or in gear, placement of the driver, the location of the vehicle (roadway, right-of-way or private property), and other relevant details.
- E. Prior to making an *arrest* for a DUI offense, the driver *will* be offered the opportunity to perform standardized field sobriety tests, except in those cases where the tests cannot be administered due to concerns for the suspect's or *officer's* safety. *Miranda* does not need to be read to the person prior to the administration of Field Sobriety Tests as long as the *officer* does not interrogate the driver during the tests.

### 61.7.1 Standardized Field Sobriety Tests

- A. Prior to the testing, *officers shall* ask if the suspect is injured, sick, has any physical disabilities, and if the suspect's shoes are comfortable. Documentation



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of the suspect's answers *shall* be noted in the DUI *report* along with the surface and lighting conditions for the tests.

- B. The following tests are included in the DUI *report*, which contains instructions for the tests, the cues that are to be evaluated and a place to record the evaluation. *Officers shall* explain the instructions and carefully document the driver's actions during each test.

1. Horizontal Gaze Nystagmus – This test *may* only be done by a certified HGN Technician.
2. Walk and Turn Test
3. One Leg Stand Test

- C. The following additional tests are optional. *Officers may* consider using these tests in situations where the Standardized Field Sobriety Tests cannot be completed. The optional tests *may* provide additional cues of impairment consistent with the suspect's lack of ability to divide attention: Alphabet/Number test; Balance test; Finger-to-nose test.

4. Alphabet / Number Test - The instructions for this test, the cues that are to be evaluated and the place to record the evaluation are also included in the DUI *report*.
5. Balance test

**Instructions:** The following instructions *shall* be repeated to the driver: "When I tell you, I want you to stand with your heels together and your arms down to your sides, close your eyes and tilt your head back and estimate thirty (30) seconds. (Demonstrate, but do not close your eyes.) When you think thirty seconds has gone by tilt your head down, open your eyes and say the word 'stop.' Do you understand?" Clarify any questions and note clarifications in the *report*.

**Evaluation:** *Officers shall* time the suspect and stop the test at ninety (90) seconds. Observe the suspect during the test and note observations such as: "Required additional instructions during testing, opened eyes during testing, failed to keep heels together throughout, failed to keep



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head tilted back, etc." Document how much the subject swayed, how much the upper body rotated, and how long the actual time period was that the suspect estimated to be thirty seconds.

#### 6. Finger to Nose Test

**Instructions:** The following instructions *shall* be repeated to the driver: "When I tell you, I want you to stand with your heels together and your arms down at your sides, pointing your index fingers with your palms facing forward. Your index fingers are the fingers closest to your thumbs. (Demonstrate the position and place the suspect in this position). When I tell you to I want you to close your eyes and tilt your head back. Then using the finger I tell you, touch the tip of your nose with the very tip of your finger. (Demonstrate, but do not close your eyes.) Do you understand? Close your eyes and tilt your head back."

**Evaluation:** The sequence for the finger to nose *shall* be left – right – left – right – right – left. The *officer shall* observe the suspect for required additional instructions during testing, open eyes during testing, failing to keep heels together throughout, failing to keep head tilted back, using a hand other than the one designated, missing nose with fingertip, touching nose with other than fingertip.

#### 61.7.2 Arrest of DUI Suspects

- A. To make a DUI *arrest* the *officer must* have *probable cause* that the:
1. suspect was driving or in physical control of a motor vehicle, and
  2. suspect's ability to drive was impaired to the slightest degree by alcohol or drugs, or there is an alcohol concentration of .08 percent or more within two hours of driving or being in actual physical control of the vehicle.
- B. If the *officer* takes the suspect into custody for DUI the *officer shall* advise the suspect of his/her *Miranda Rights* prior to interrogating the suspect. If the subject indicates that he/she understands the rights, the questions on the DUI *report shall* be asked, along with other reasonable questions to further the investigation.





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- C. A records check *will* be conducted on all persons *arrested* for DUI including driver license status and prior DUI history.

#### **61.7.3 Administrative Per Se and Implied Consent**

- A. Persons *arrested* for DUI *must* be allowed access (by phone or in person) to an attorney, if requested, before taking a breath, blood or urine test, if granting the request *will* not unreasonably interfere with the investigation. In all cases where DUI is being charged, the *arresting officer will* read the Admin Per Se/Implied Consent Affidavit form to the suspect and complete the form. *Officers will* document the facts that established *probable cause* for the *arrest* on that form.
- B. If the arrestee refuses or fails to successfully complete any blood alcohol concentration (BAC) test(s), the *officer shall* specify the manner in which the refusal or failure occurred. The *officer shall* then serve the driver with a Twelve (12) Month Implied Consent Order of Suspension and *seize* the driver's Arizona license or permit (only Arizona licenses or permits *may* be *seized*).
- C. If the arrestee has completed a test to determine their BAC and the results indicate a BAC of 0.08 or more (BAC of 0.04 or more for commercial vehicle operators) *officers shall* complete the DUI Affidavit, serve the driver with a Ninety (90) Day Order of Suspension, and *seize* the driver's Arizona license or permit.
- D. When results from a blood or urine test are not known, the Admin Per Se will be completed and served. Select results not available, and forward to the MVD.
- E. If a valid Arizona driver license or permit is surrendered, the *officer shall* issue a temporary driving permit that is valid for fifteen days. *Seized* Arizona driver licenses *shall* be attached to the original (white) copy of the Implied Consent/Administrative Per Se Affidavit and forwarded to MVD. Out of state driver's licenses or permits *shall* not be *seized*.
- F. The implied consent provision applies whether the DUI occurs on private or public property and also applies to drivers in violation of the underage drinking and driving law.

#### **61.7.4 Chemical Testing**



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All suspects *will* be informed that they are under *arrest* prior to being requested to provide a breath, blood or urine sample. Except pursuant to a *search warrant* (see G.O. #61.7.6), force *will* not be used to obtain blood, breath or urine samples.

#### 61.7.4.1 Breath Testing

- A. The breath test *must* be done within two hours of the time the defendant was seen driving or in physical control of the motor vehicle. All DUI suspects *will* be informed that they are under *arrest* before they are asked to give a breath sample for analysis.
- B. The breath test operator *will* utilize the approved *Department of Health Services (DHS) operational checklist* and *will* initial the appropriate places on this checklist for each test administered.
- C. If the *officer* suspects drug use, a blood or urine sample *should* be obtained in addition to the breath test under the Implied Consent Law and submitted to the *Arizona Department of Public Safety* for analysis.

#### 61.7.4.2 Blood Testing

Blood *may* be drawn with the voluntary consent of the suspect or with a search warrant. Only a *physician*, registered nurse or other qualified person (including *employees* who have completed the *AZ P.O.S.T.* approved training course as a phlebotomist) *may* withdraw blood for the purpose of determining alcohol concentration. An *officer will* witness the blood draw and take immediate custody of the sample. The *officer shall* document the sterilizing agent used (*officers should* request a non-alcoholic sterilizer be used), any unusual circumstances, and the entire *chain of custody*.

#### 61.7.4.3 Urine Testing

In cases where the breath test result is inconsistent with the impairment of the individual, an *officer may* request the person to complete a urine test. Such tests *may* be done by a medical facility or using a urine test kit, if one is available. In either case, the *officer will* observe the collection and take custody of the sample. The *officer shall* document any unusual circumstances and the entire *chain of custody*.



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#### **61.7.5 Right to an Independent Test**

All suspects under *arrest* for DUI *will* be advised of the right to arrange and pay for an independent test or tests, regardless of whether the suspect completed a test for the *officer*. The *officer* advising the suspect *shall* document this in their *report*. Suspects who are released have the responsibility to arrange for and obtain their own independent test. Suspects who are to be booked and request an independent test *shall* be transported for the test as soon as practical after the *arrest* and in any event prior to booking. If the test is a blood test, the *officer may* request a portion of the sample as provided in A.R.S. § 28-1388.

#### **61.7.6 Search Warrants for Blood or Urine Testing**

- A. When the suspect refuses to provide a chemical sample and no sample is taken under a medical draw, the *officer shall* apply for a *search warrant* based on *probable cause* for a blood and/or urine sample.
- B. If the suspect refuses to cooperate with the service of the *search warrant*, *officers may* use reasonable force to restrain the suspect while blood is drawn. *Officers should* not endanger themselves or the suspect; if it reasonably appears injury *will* occur, *officers should* cease the attempt, charge the suspect with failure to comply with a court order in addition to any other appropriate charges and book the suspect into jail.

#### **61.7.7 Disposition of the Suspect and Suspect's Vehicle**

- A. Generally, misdemeanor DUI suspects *should* be cited and released upon their signed promise to appear. Absent exigent circumstances, DUI suspects *will* not be cited and released if one or more of the following exists:
  - 1. a previous failure to appear charge,
  - 2. a previous DUI *arrest* in the past 24 hours,
  - 3. refusal to be fingerprinted or photographed,
  - 4. inability to get a responsible person to pick them up and take responsibility for them,





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5. they make statements that they *will* drive again if released,
  6. they are charged with a felony (*may* not be cited, *must* be long formed if released).
- B. Suspects who are released *will* be given a lawful order to not return to the vehicle and drive until sober.
- C. Additional issues to consider when dealing with DUI charges and arrestees include:
- BAC Greater than .05 but less than .08: *May* charge with DUI A.R.S. § 28-1381.A.1 if impaired to slightest degree. Consider using DRE if drugs are suspected, including lawfully prescribed or recommended (medical marijuana) drugs.
  - BAC .30 or higher: If booked, obtain a doctor's release prior to booking. If released, medical attention is the responsibility of the driver or the person accepting custody of the driver. Advise the responsible party of the suspect's condition and that medical attention *should* be obtained (document advice).
  - Aggravated DUI: When charging with a felony DUI, do not cite the underlying misdemeanor DUI or civil traffic charges.
- D. The arrestee's vehicle *will* be impounded if required under A.R.S. § 28-3511, another law, or *Department* policy. If not required, *officers may*:
1. Release the suspect vehicle to a responsible party designated by owner/operator, if the:
    - a. responsible party has a valid license, and
    - b. vehicle has current registration and proof of financial responsibility, and
    - c. responsible party shows no signs of impairment; a preliminary breath testing (PBT) *may* be used if the responsible party consents.



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2. Secure the suspect's vehicle if requested.
3. If the owner requests it, the vehicle *may* be towed.
4. If no other disposition of the vehicle is appropriate, the vehicle *may* be towed.

#### **61.7.8 DUI Countermeasure Enforcement**

The *Department will* utilize patrol *personnel* in impaired driver countermeasure and enforcement programs such as the following:

- A. Enforcement of impaired driver laws.
- B. Mobile surveillance of roadways where there has been a high incidence of DUI violations.
- C. The selective assignment of *personnel* at the time when, and to the locations where, analysis has shown that a significant number of DUI violations have occurred.
- D. Alcohol and drug-related accident investigations.