



FIELD ORDERS

Chapter

TRAFFIC MANAGEMENT and ENFORCEMENT

Subject

DUI Enforcement Policy**POLICY**

[61.1.10] [61.1.11]

COUNTERMEASURE PROGRAM

1. The department engages in a rigorous and comprehensive, coordinated DUI countermeasure program involving education, enforcement, adjudication, and treatment.
2. Public support is essential if the program is to have long-term success in combating the DUI problem.
3. The department fully supports the DUI countermeasure program to reduce alcohol/drug-related traffic collisions.
4. Enforcement is a key element in the DUI countermeasure program and one of the highest department priorities.
5. Sworn officers must be alert for signs of alcohol or drug impairment when contacting motorists and make every effort to detect and apprehend impaired drivers.
6. Every sworn officer is responsible for investigating and taking enforcement action whenever there is reason to believe a person is operating a motor vehicle while under the influence of drugs and/or alcohol.
7. Process persons arrested for DUI pursuant to this policy. Do not release a DUI suspect or arrange for alternate transportation in lieu of arrest.

COLLISION RELATED DUIs – In collision situations, or other cases where the officer did not observe the DUI violation, establish the elements of the crime using witnesses, suspect statements, or physical evidence. It is important to separate the victim of the collision from witnesses, passengers, or the suspect.

DEFINITIONS

Admin Per Se: Also known as Implied Consent or MVD Affidavit. Persons driving in this state are deemed to have given prior consent to submit to chemical test(s) if they are arrested for a DUI. Admin Per Se/Implied Consent is the civil process administered by MVD to ensure the proper steps are followed when an individual's license is suspended for a DUI violation.

Aggravated DUI: Person driving or in actual physical control of, a motor vehicle while impaired by alcohol and/or drugs and while the person's driving privilege is revoked for any reason, suspended due to a DUI conviction,

suspended for Implied Consent, suspended for Admin Per Se, two or more convictions of DUI within the prior 84 months, having any passenger less than 15 years of age, if requiring an ignition interlock device, or driving the wrong way on a highway. *See* ARS [28-1383](#)/Aggravated Driving or Actual Physical Control while Under the Influence.

Alcohol Influence Report (AIR): Standard department report (DR) form that must be completed for every DUI arrest.

Blood Alcohol Concentration (BAC): The number of grams of pure ethanol found in every 100 milliliters of blood. A BAC of .08% means 0.08 grams of pure ethanol in every 100 milliliters of blood.

Driving Under the Influence (DUI): To secure a conviction of Driving Under the Influence of Intoxicating Liquor or Drugs, the state must prove the suspect was driving or in actual physical control of a motor vehicle while impaired to the slightest degree in Arizona.

Drug Recognition Expert (DRE): Person trained to observe and articulate symptoms of drug impairment in persons suspected to be under the influence of drugs.

Extreme Driving Under the Influence: It is unlawful for a person to drive or be in actual physical control of a vehicle if the person has an alcohol concentration of .15 or more within two hours of driving or being in actual physical control of the vehicle. *See* ARS [28-1382](#). A1/Driving or Actual Physical Control While Under the Extreme Influence of Intoxicating Liquor.

Horizontal Gaze Nystagmus (HGN): Involuntary jerking of the eyes as they move on a horizontal plane. A field sobriety test used to observe neurological impairment enhanced by consumption of alcohol and certain drugs.

Implied Consent: Person who operates a motor vehicle in this state gives consent to a test or tests of the person's blood, breath, urine or other bodily substance for the purpose of determining alcohol concentration or drug content. Officers may choose the test or tests to be administered if they have reasonable grounds to believe the person was either:

1. Driving or in actual physical control of a vehicle and either:
 - Under the influence of intoxicating liquor or drugs.
 - Under twenty-one years of age with spirituous liquor in the person's body.
2. Involved in a traffic collision resulting in death or serious physical injury and the officer has probable cause to believe the person caused the collision, or the person was cited for any offense found in Title 28, ARS [28-621](#)/Applicability to Vehicles on Highways, Exceptions through [28-910](#)/Liability for Emergency Responses in Flood Areas, Definitions.

Intoxilyzer Test: Stationary device used to measure breath alcohol

concentration and relate it to blood alcohol concentration.

Phlebotomist: Technician trained to withdraw blood intravenously.

Portable Breath Test (PBT): Portable handheld device used to detect the presence of alcohol in a person's breath.

Responsible Party (RP): Person 18 years of age or older who is sober and willing to take responsibility for a suspect. This may include taxi drivers.

Standardized Field Sobriety Test (SFST): Tests administered and evaluated in a standardized manner by law enforcement officers to determine sobriety. Tests include HGN, walk-and-turn, and one-leg stand.

Super Extreme Driving Under the Influence: It is unlawful for a person to drive or be in actual physical control of a vehicle if the person has an alcohol concentration of .20 or more within two hours of driving or being in actual physical control of the vehicle. See ARS [28-1382](#).A2/Driving or Actual Physical Control While Under the Extreme Influence of Intoxicating Liquor.

LEVELS of INTOXICATION

1. **.05 or Less** – Except for a commercial driver, do not charge a driver whose BAC is .05% or less with DUI unless drugs are suspected, or you can definitely attribute the suspect's impairment to the suspect's BAC. If the suspect is less than 21 years of age, the suspect may be charged with:
 - ARS [4-244](#).9 if there is a sealed container of alcohol in the vehicle.
 - [4-251](#).A2 if there is an unsealed container of alcohol in the vehicle.
 - [4-244](#).41 if there is any alcohol in the suspect's body.
 - [4-244](#).34 if there is any alcohol in the suspect's body and the suspect was the driver.

2. **.051 to .079** – You may charge a driver whose BAC is in excess of .05% but less than .08% if the driver is determined to be impaired.

If the suspect is less than 21 years of age, the suspect may be charged with:

- ARS [4-244](#).9 if there is a sealed container of alcohol in the vehicle.
 - [4-251](#).A2 if there is an unsealed container of alcohol in the vehicle.
 - [4-244](#).41 if there is any alcohol in the suspect's body.
 - [4-244](#).34 if there is any alcohol in the suspect's body and the suspect was the driver.
3. **.08 or Higher** – Charge and process a driver whose BAC is .08% or higher. If the suspect is less than 21 years of age, the

suspect may also be charged with:

- ARS [4-244.9](#) if there is a sealed container of alcohol in the vehicle.
- [4-251.A2](#) if there is an unsealed container of alcohol in the vehicle.
- [4-244.41](#) if there is any alcohol in the suspect's body.
- [4-244.34](#) if there is any alcohol in the suspect's body and the suspect was the driver.

4. **.15 and Over** – Charge a driver whose BAC is .15 or higher within two hours of driving or in actual physical control of a vehicle with Extreme DUI BAC .15 or higher (supported by PBT or Intoxilyzer).
 - a. The charges should read as follows:
 - #1) DUI Alcohol/[28-1381A1](#).
 - #2) BAC .08 or above within two hours of driving/[28-1381A2](#).
 - #3) Extreme DUI BAC .15% or above within two hours of driving/[28-1382A1](#).
 - b. If the suspect is less than 21 years of age, the suspect may be charged with:
 - ARS [4-244.9](#) if there is a sealed container of alcohol in the vehicle.
 - [4-251.A2](#) if there is an unsealed container of alcohol in the vehicle.
 - [4-244.41](#) if there is any alcohol in the suspect's body.
 - [4-244.34](#) if there is any alcohol in the suspect's body and the suspect was the driver.
5. **.20 and Over** – Charge a driver whose BAC is .20 or higher within two hours of driving or in actual physical control of a vehicle with Extreme DUI BAC .20 (supported by PBT or Intoxilyzer).
 - a. The charges should read as follows:
 - #1) DUI Alcohol/[28-1381A1](#).
 - #2) BAC .08 or above within two hours of driving/[28-1381A2](#).
 - #3) Extreme DUI BAC .15% or above within two hours of driving/[28-1382A1](#).
 - #4) Extreme DUI BAC .20 % or above within two hours of driving/[28-1382A2](#).
 - b. If the suspect is under 21, the suspect may be

charged with:

- ARS [4-244.9](#) if there is a sealed container of alcohol in the vehicle.
- [4-251.A2](#) if there is an unsealed container of alcohol in the vehicle.
- [4-244.41](#) if there is any alcohol in the suspect's body.
- [4-244.34](#) if there is any alcohol in the suspect's body and the suspect was the driver.

6. **Commercial Driver License** – Charge and process a driver of a commercial vehicle that requires a Commercial Driver License (CDL) whose BAC is .04% or higher.
7. Regardless of the suspect's BAC:
 - a. Notify a DRE officer if drugs are suspected.
 - b. Charge a person under the age of 21 years who has a BAC and was driving or in actual physical control of a motor vehicle with ARS [4-244.34](#)/Driving or in Actual Physical Control with Liquor in the Body while Under 21 years. Juveniles may be tested for alcohol using a breath test or blood draw after parental consent or pursuant to a search warrant.

DUI INVESTIGATION

PHASE ONE – VEHICLE in MOTION – Officers may stop a vehicle for any observed violation of the ARS vehicle code or any articulable suspicion a crime has occurred.

1. Carefully document the type, approximate time, and approximate location of any and all violations.
2. Note any irregularities in the way the driver stops the vehicle.
3. Situations where Phase One may not be present are sobriety checkpoints, vehicle collisions, actual physical control situations and circumstances where the officer was acting in good faith on a circumstance or citizen complaint and discovered the violation in the process of the investigation.

PHASE TWO – FACE to FACE CONTACT and OBSERVATION –

Document all signs and symptoms of alcohol or drug use such as slurred speech, watery and bloodshot eyes, an odor of intoxicating liquor on the driver's breath, poor coordination and balance, confusion and disorientation, containers of alcohol or any drug paraphernalia etc.

PHASE THREE – PRE-ARREST SCREENING

1. Proceed with this phase if there is enough reasonable suspicion developed from Phase One and Phase Two.

2. Administer the Standardized Field Sobriety Test (SFST) and carefully document the suspect's performance.
3. Make a decision to arrest or not arrest the suspect based on the total accumulation of evidence obtained from all three phases.
4. There may be situations where Phase Three will not take place such as vehicle collisions that incapacitate the suspect, a suspect who is too intoxicated to perform the tests without risking injury, or a suspect who refuses to do the tests.

PHASE FOUR – ARREST – Immediately, upon deciding to arrest, advise the suspect that he/she is under arrest for Driving Under the Influence and immediately handcuff per department procedure. Document in the report all passengers in the vehicle by name, DOB, address, and phone number.

PHASE FIVE – PROCESSING

1. Following arrest, read the suspect the requirements of Admin Per Se/Implied Consent per ARS [28-1321](#)/Implied Consent, Tests, Refusal to Submit to Test, and the suspect's Miranda rights.
2. If the suspect invokes right to counsel, do not ask accusatory questions unless the suspect's attorney is present, and do not administer chemical tests until the suspect is given an opportunity to talk to an attorney.
3. If the suspect invokes the right to remain silent, do not ask accusatory questions unless the suspect initiates the conversation or waives the right to remain silent.
4. You may still ask the suspect the standard booking questions whether or not the suspect has invoked any rights.
5. Document suspect statements made without questioning, even after rights are invoked.
6. ARS [28-1321](#)/Implied Consent, Tests, Refusal to Submit to Test, states that any person operating a motor vehicle within the state of Arizona gives consent to a test or tests of blood, breath or urine for the purpose of determining the alcohol and/or drug content of the person's blood, if arrested for a violation of ARS [28-1381](#)/Driving or Actual Physical Control while Under the Influence, or [4-244](#).34.
 - a. Read to the suspect the block of admonitions on the Admin Per Se Affidavit before asking the suspect to consent to the test.
 - b. The suspect may be required to take multiple tests to

determine the alcohol or drug content of the suspect's blood. It is considered a refusal if the suspect fails to consent to a second or subsequent test. *See* FIELD Order [4038/Blood/Breath/PBT Testing](#) for further information on what constitutes a refusal.

- c. Do not give the test under Implied Consent if the suspect refuses to submit, unless a warrant is obtained. Seize the suspect's Arizona driver license and return it to MVD with the completed affidavit for a one-year suspension or for two years if there is a prior implied consent refusal within the last 84 months. Before seizing the license, make sure the suspect has a clear understanding of the consequences.
 - d. If, at the time of arrest, you are able to obtain the suspect's BAC using an Intoxilyzer device approved by the Arizona Department of Public Safety and the BAC is found to be .08% or greater, seize the suspect's Arizona driver license and return it to MVD with the completed affidavit for a 90-day suspension.
 - e. Do not seize out-of-state driver licenses.
- 7. Even if the suspect's driver license is currently suspended, revoked, or canceled for any reason, you must issue the pink and yellow copy of the Admin Per Se form even though the yellow copy states it is a temporary driver license to inform the driver of his/her right to a hearing (pink copy) and his/her alcohol screening and reinstatement requirements (yellow copy). The suspect must be provided with the yellow copy because it has information on it pertaining to alcohol and/or drug screening locations. Use a pen or magic marker to redact the "temporary license" words.
 - 8. Charge the suspect with all known or observed violations of the law. This includes both civil and criminal violations, including civil moving violations and criminal reckless driving if the elements are met.
 - 9. If a felony drug arrest includes a DUI charge, use the following guidelines when submitting charges:
 - a. If the misdemeanor DUI alcohol offense is in violation of Titles [4](#), [5](#), or [28](#), split it from the felony drug charge (e.g, marijuana) and submit to the City Prosecutor's Office. Submit the felony drug charge to the County Attorney's Office.

- b. If the felony offense is possession of a drug and DUI/Drugs, submit all charges to the County Attorney's Office.
- c. If the offense includes unlawful flight, submit all charges to the County Attorney's Office.

