POLICY AND PROCEDURE NO. 635

Operating Under the Influence – Arrest and Processing Procedures

Massachusetts Police Accreditation Standards:
61.1.10 & 61.1.11

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1. PURPOSE:

The Worcester Police Department recognizes the danger of impaired drivers and is committed to seeking out and successfully prosecuting violators of M.G.L. c. 90, §24. The purpose of this policy is to:

1. Assist in determining an operator's ability to operate a motor vehicle safely.

2. Assist officers in establishing probable cause to prosecute for violations of M.G.L. c. 90, §24.

This policy shall be adhered to by all department personnel in all cases involving suspected impaired drivers.

This policy incorporates the provisions of Melanie's Law (Chapter 122 of the Acts of 2005). MPAC 61.1.10 MPAC 61.1.11

2. PROTECTIVE CUSTODY:

Under no circumstances shall any operator of a motor vehicle be brought to the Worcester Police Department to be placed into protective custody, rather than arrested. When there is probable cause that the operator is under the influence of either intoxicating liquor or a drug, such an operator shall be placed under arrest. MPAC 61.1.11

3. STANDARDIZED FIELD SOBRIETY TESTS:

A. OUI – Intoxicating Liquor

An operator of a motor vehicle suspected of operating under the influence of intoxicating liquor should be afforded the opportunity to perform the three Standardized Field Sobriety Tests (SFSTs) when feasible and safe to do so. The three SFSTs shall be performed in the following order:

a. Horizontal Gaze Nystagmus

b. Walk and Turn

c. One Leg Stand

The investigating officer should use the SFSTs to determine the level of impairment and to assist in the establishment of probable cause.

B. OUI – Drugs

An operator of a motor vehicle suspected of operating under the influence of a drug should be afforded the same opportunity to perform the three tests when feasible and safe to do so. However, for the purpose of report writing, the SFSTs will be referred to as a roadside assessment.

4. PRELIMINARY BREATH TEST:

Whenever possible, investigating officers should administer a Preliminary Breath Test (PBT) as part of their roadside field sobriety tests. In order for investigating officers to administer a PBT, the following must be adhered to: MPAC 61.1.11

1. The investigating officer must be trained in the use of the PBT in accordance with the guidelines promulgated by the Office of Alcohol Testing (OAT) and/or POST.

2. The PBT may be used as the last test in the SFSTs.

3. The PBT can only be administered with the consent of the suspected impaired driver.

4. The investigating officer must log the test or its refusal in the PBT log.

5. If the suspect is placed under arrest, the investigating officer shall note the use or refusal of the PBT and the results in the arrest report narrative.

6. The maintenance of the PBT will be conducted by the Worcester Police Department's Officer in Charge (OIC) of the breath test instruments.

5. ARREST:

When an officer of this department determines that probable cause exists that an operator of a motor vehicle is under the influence of either intoxicating liquor or a drug, such an operator shall be placed under arrest. The investigating officer shall immediately notify their supervisory official of the arrest. Officers equipped with a body-worn camera shall activate the camera in accordance with Policy and Procedure No. 403 (Body-Worn Cameras) at the earliest point of the OUI investigation. MPAC 61.1.11

If the investigating officer is currently certified as a breath test operator, the investigating officer will handle all necessary reading of the Statutory Rights and Consent and the entry of data into the breath test instrument. If the investigating officer is not currently certified as a breath test operator, they shall ensure that the Holding Facility Officer in Charge is notified of the arrest.

The investigating officer shall request transportation of the suspect to the Worcester Police Department for booking in accordance with Policy and Procedure No. 701 (Transportation of Detainees).

6. OPERATOR TAKEN TO A MEDICAL FACILITY:

If an officer of this department determines that probable cause exists that an operator of a motor vehicle is under the influence of either intoxicating liquor or a drug, and such operator is

transported first to a medical facility for treatment of illness or injury, the investigating officer shall go to the medical facility forthwith. Upon arrival, the investigating officer shall ascertain how long the suspect is expected to remain at the facility for treatment. The investigating officer shall then inform the supervisory official of their findings. The supervisory official will make the determination of arrest or criminal summons based on the individual facts of the case and information obtained by the investigating officer. If the determination to arrest is made, the investigating officer will immediately inform the suspect that they are under arrest for the charge of operating under the influence of intoxicating liquor or a drug.

If an operator is arrested for operating under the influence of intoxicating liquor while at a medical facility, the investigating officer shall inform the suspect of their rights pursuant to M.G.L. c. 263, §5A. The suspect shall be asked to submit to a blood test to determine their blood alcohol concentration. If consent is given by the suspect to take a blood test, the investigating officer shall use the blood evidence collection kits available in the breath test room at the Worcester Police Station. Only blood evidence kits that have not expired shall be used. Once blood evidence is obtained, the evidence box should be completed and stored in an evidence refrigerator. The investigating officer should then notify a supervisory official in the Traffic Division so that the blood evidence can be transported and submitted to the State Police Crime Lab. If a blood test is completed, no information is to be entered into the breath test instrument. Only a refusal of a blood test will be entered into the breath test instrument.

7. BREATHALYZER / EVIDENTIARY BREATH TEST:

Only those officers actively certified in the administration of the breath test shall be permitted to use the breath test instrument. Breath test certifications expire three (3) years after the completion of a breath test operator course. If the investigating officer is not currently certified as a breath test operator, the Officer in Charge of the Holding Facility will administer the breath test. MPAC 61.1.11

If an operator is placed under arrest and brought directly to the Worcester Police Department, the investigating officer, during the booking process, shall inform the suspect of their rights pursuant to M.G.L. c. 263, §5A. The suspect shall be asked to submit to a breath test to determine their blood alcohol concentration. Once the suspect successfully completes the breath test, the results will be recorded in the arrest report. A copy of the Notice of Suspension, if applicable, will be provided to the suspect.

If an operator refuses to submit to the breath test, or is unable to successfully complete the breath test, the refusal of such test shall be entered into the breath test instrument. A copy of the notice of suspension will be provided to the suspect. The refusal or inability to complete the breath test and the reasons why will be recorded in the arrest report.

If a suspect is placed under arrest and charged only with OUI-drug and not intoxicating liquor, there are no statutory rights and no information is to be entered into the breath test instrument. The statutory rights under §5A apply only to OUI intoxicating liquor.

If a suspect receives a notice of suspension, the officer or official giving the test must seize the license of the suspect only if the suspect has a Massachusetts-issued license. Out-of-state licenses shall not be seized.

8. OUI DRUG / DRE REQUIREMENTS:

If the investigating officer has established probable cause to believe the operator is OUI-drug, then the operator shall be arrested. There are no statutory rights for an operator that has only been charged with OUI-drug. If a Drug Recognition Expert (DRE) is needed to assist the investigating officer, the following procedure must be utilized:

1. The operator is placed under arrest for OUI-drug and transported to the station for the booking process. The booking process does not have to be delayed for the notification or arrival of a DRE.

2. The investigating officer must then inform supervisory personnel that a DRE may be needed to assist in determining what drug category the operator is under the influence of.

3. If the supervisor authorizes the use of a DRE, then the supervisor or investigating officer may utilize the statewide DRE contact list available at massdre.org.

4. Once a DRE has been contacted and responds, Holding Facility officers may need to assist the DRE with ample space to conduct the DRE Evaluation.

9. VEHICLE DISPOSITION – MELANIE'S LAW:

Pursuant to Melanie's Law (Chapter 122 of the Acts of 2005, codified in M.G.L. c. 90, §24), when a refusal of a breath test is entered into the breath test instrument, the investigating officer shall notify the towing company that took possession of the motor vehicle that a twelve (12) hour hold is to be placed on the vehicle. The vehicle shall not be released during the hold period. This hold can only be applied when a refusal of a breath test is entered. MPAC 61.1.11

Regardless of vehicle ownership or the presence of a capable operator, the twelve (12) hour hold is required per Melanie's Law. The investigating officer shall have the motor vehicle towed, notifying the tow truck operator that there is a brief hold on the vehicle. This brief hold is only for the purpose of determining if there will be a breath test refusal.

1. If the person charged with OUI-Alcohol agrees and successfully completes a valid breath test, the investigating officer shall notify the tow company that the brief hold is removed and the vehicle can be released.

2. If the person charged with OUI-Alcohol refuses or fails to complete a valid breath test, the investigating officer shall notify the tow company that there is now a twelve (12) hour hold on the vehicle from the time of the refusal or failure to complete a valid breath test.

All towing, inventory, and vehicle release procedures shall be conducted in accordance with Policy and Procedure No. 605 (Towing, Inventory, Impoundment, and Abandoned Vehicles). The disposition of the vehicle, including whether a 12-hour hold was applied, shall be documented in the incident report.

10. BAIL PROCEDURE:

Every person arrested on a charge of OUI liquor or drug shall have the decision of whether they are eligible for release on bail or personal recognizance made by the on-call clerk-magistrate and/or bail commissioner. This requirement shall apply regardless of: MPAC 61.1.11

1. The amount of money that the prisoner has available for bail, either personally or through a third party.

2. The time of day or night; or the day of the week.

The on-call clerk-magistrate and/or bail commissioner must be called upon completion of the booking process. Officers shall not wait until the next bail hearing.

In addition, whenever an OUI suspect has expressed their desire to obtain an independent exam, the officer who contacts the on-call clerk-magistrate and/or bail commissioner must inform them that the suspect wishes to exercise their rights under M.G.L. c. 263, §5A (right to a doctor). An entry will then be made in the Service Division Electronic Journal, indicating that this procedure has been followed, who the officer spoke with, as well as whatever decision or action was made or taken by the on-call clerk-magistrate and/or bail commissioner. This same information should then be entered in the arrest report of the investigating officer.

Upon completion of the bail process, if the suspect is to be released, the suspect should be released to a sober, responsible adult when practicable.

11. ARREST FOR OUI – RIGHT TO SECOND OPINION:

A suspect under arrest for operating a motor vehicle while under the influence of intoxicating liquor or a drug has the right to a second opinion. If a suspect takes advantage of this right, any blood test that is done will be performed at the police station in a suitable room in the cell room area, such as the breath test room or interview room. The suspect will not be taken from the police station to another facility. The suspect must make arrangements to have a medical professional come to the police station to draw the blood if the suspect is unable to make arrangements for bail.

12. REPORTS:

When writing a report for an OUI complaint, the investigating officer must be certain to include all facts pertaining to the OUI arrest. This includes but is not limited to: MPAC 61.1.11

a. The scope of the stop or reason why the investigating officer came in contact with the suspect

b. The observations that the investigating officer made during their contact with the suspect

c. The performance during the SFSTs or roadside assessment

d. Results of a PBT if used

e. Results of the breath test instrument if used, or that a refusal was entered

f. Vehicle disposition, including whether a Melanie's Law 12-hour hold was applied

Additionally, if an officer other than the investigating officer conducts the breath test, then that officer or official must also write a report of their observations during the breath test as well as the results or refusal.

13. OUT-OF-TOWN OUI ARRESTS:

If an out-of-town police department brings a prisoner charged with OUI to the Worcester Police Department for a breath test and requires the assistance of an officer from this department who is certified on the breath test instrument, then the above portions of this policy are in effect. In the event that the out-of-town police department involved in the arrest requires

the presence of our testing officer in court, a summons shall be issued for their appearance and such court time costs will be reimbursed by the requesting department.

Per:

Paul B. Saucier
Chief of Police

Revisions:

[Date]–

Corrected the cross-reference in Section 9 (Vehicle Disposition – Melanie's Law) from Policy and Procedure No. 692 (Towed Vehicles), retired June 12, 2026, to Policy and Procedure No. 605 (Towing, Inventory, Impoundment, and Abandoned Vehicles), which consolidated and superseded it. No other changes.

March 2026–

Complete revision of Policy 635 (originally issued October 28, 2004 under Chief Gemme). Added SFST procedures with OUI-liquor/OUI-drug distinction for report writing. Added evidentiary breath test procedures including certification requirements and OUI-drug exclusion. Added explicit Melanie's Law citation (Chapter 122 of the Acts of 2005) and 12-hour vehicle hold provision per MPAC 61.1.11. Added vehicle disposition section with cross-reference to Policy 692 (Towed Vehicles). Added BWC activation requirement consistent with Policy 403. Cross-references to Policies 403 (BWC), 692 (Towed Vehicles), and 701 (Transportation of Detainees). Added release to sober responsible adult provision. Added vehicle disposition to report requirements. Added MPAC 61.1.11 references throughout. Reformatted to current WPD template with Chief Saucier signature.

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