



POLICY AND PROCEDURE

NO.635

OUI Arrests

Date Issued October 28, 2004	Date Effective October 28, 2004	Revision No.	No. of pages 3
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1. ARREST:

It shall be the policy of the Worcester Police Department that, when an officer of this department determines that probable cause exists that an operator of a motor vehicle is under the influence is under the influence of either alcohol or drugs, such an operator shall be placed under arrest.

2. PROTECTIVE CUSTODY:

Under no circumstances shall any operator of a motor vehicle brought to the Worcester Police Department be placed into protective custody, rather than arrested, when there is probable cause that he or she is under the influence of either alcohol or drugs.

3. PRELIMINARY BREATH TEST USE:

The Worcester Police Department recognizes the danger of impaired drivers and is committed to seeking out and successfully prosecuting violators of Massachusetts General Laws, Chap.90, and sec. 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 Massachusetts General Laws, Chap.90, and sec. 24.

In order to accomplish the purpose outlined above, the below procedures will be adhered to by all department personnel in all cases involving roadside evaluations of suspected impaired drivers.

- Whenever possible, officers should administer a preliminary breath test as part of their roadside field sobriety tests, in doing so, officers shall:
- Be trained in the use of the Preliminary Breath Test (PBT) in accordance with guidelines promulgated by the Office of Alcohol Testing (OAT) and/or the Massachusetts Criminal Justice Training Council;
- The officer in charge of the PBT shall adhere to the maintenance and use guidelines as promulgated by the OAT;
- Use the PBT as the last test in the series of sobriety tests;
- Only administer the PBT with the prior consent of the suspect;
- Log each test, or its refusal, in the PBT log, which will be kept in the Breath Test Room;
- If the suspect is placed under arrest, the officer shall note the use or refusal of the PBT, and the results, in the arrest report narrative.

4. 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 alcohol or drugs, and such operator is transported first to a medical facility for treatment of illness and/or injury, the investigating officer shall go to the medical facility forthwith. The officer shall then ascertain how long the suspect is expected to remain at the facility for treatment. In cases where the suspect is to be admitted, the investigating officer shall inform supervisory official of this fact, note it in the incident report, and issue a citation for the OUI and any other offenses. The suspect will then be issued a summons for a court appearance, through the Court Liaison Office, at a later date. If it is practical to do so, the supervisor shall inform the suspect of his rights under Chap. 263 sec. 5A at the medical facility. The suspect shall then be asked to submit to a blood test. In cases where it is determined that the suspect is not expected to be admitted, the investigating officer shall inform a supervisory official of the expected length of time until the suspect is to be released from the medical facility. The supervisor shall then make the determination of whether to proceed with an arrest after the suspect is released, or to issue a citation and summons as stated above in this paragraph.

5. BAIL PROCEDURE:

Every person arrested on a charge of OUI shall have the decision of whether he or she is eligible for release on bail or personal recognizance made by the on-call clerk-magistrate and/or bail commissioner. This requirement shall apply regardless: a) of the amount of money that the prisoner has available for bail, either personally or through a third party; b) the time of day or night; c) or the day of the week. In addition, whenever an OUI suspect has expressed his/her desire to obtain an independent exam, the officer who contacts the on-call clerk-magistrate and/or bail commissioner must inform him/her that the suspect wishes to exercise his/her sec. 5A rights. An entry will then be made on the Service Division Journal, indicating that this procedure has been followed, as well as whatever decision and/or action was made or taken by the on-call clerk-magistrate and /or bail commissioner.

6. REPORTS:

In addition to the usual information required for an OUI complaint to be filed, the incident report shall include all information regarding any medical treatment received by the suspect, including whether blood was drawn. If an officer of this department determines that probable cause exists that an operator of a motor vehicle is under the influence of either alcohol or drugs, and such operator is transported first to a medical facility for treatment of illness and/or injury, the investigating officer shall go to the medical facility forthwith. The officer shall then ascertain how long the suspect is expected to remain at the facility for treatment. In cases where the suspect is to be admitted, the investigating officer shall inform a supervisory official of this fact, note it in the incident report, and issue a citation for the OUI and any other offenses. The suspect will then be issued a summons for a court appearance, through the Court Liaison Office, at a later date. In cases where it is determined that the suspect is determined that the suspect is not expected to be admitted, the investigating officer shall inform a supervisory official of the expected length of the time until the suspect is to be released from the medical facility. The supervisor shall then make the determination of whether to proceed with an arrest, or to issue a citation and summons.

7. ARRESTED FOR OUI – RIGHT TO SECOND OPINION:

A subject under arrest for operating a motor vehicle while under the influence of drugs or intoxicating liquor has the right to a second opinion. If a subject 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, (ex) Breathalyzer Room or Interview Room. The subject will not be taken from the Police Station to another facility.

8. OUT OF TOWN – OUI ARRESTS:

If an Out of Town police department brings a prisoner charged with Operating Under the Influence of Liquor to this station for a Breathalyzer Test and the prisoner refuses to take such test, the notice of refusal to take such test shall be signed by the officer of this department conducting the same and the notice shall be given to the arresting officer so that his Chief of Police shall sign the form and send it to the Registry. In the event that the Out of Town department involved in the arrest desires the presence of our testing officer in court a summons shall be issued for his appearance and such court time cost will be reimbursed by this department.

Per:

A handwritten signature in black ink, appearing to read "Gary J. Gemme". The signature is written in a cursive style and is positioned above the printed name and title.

Gary J. Gemme
Chief of Police