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# KANSAS CITY, KANSAS POLICE

## GENERAL ORDER

SUBJECT: DUI Procedures

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**I. PURPOSE**

- A. To establish Department policy regarding persons who are suspected of operating or attempting to operate a motor vehicle while under the influence of alcohol or drugs.

**II. DEFINITIONS**

- A. **ALCOHOL CONCENTRATION** - Under the provisions of KSA 8-1013 alcohol concentration means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
- B. **AUTHORIZED, IMPLIED CONSENT** - In accordance with the provisions of U.G. Ord. 35-254 (a) and KSA 8-1001 (a), any person who operates or attempts to operate a motor vehicle within this state is deemed to have given consent, subject to the provisions of these chapters, to submit to one (1) or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The testing deemed consented to herein shall include all quantitative and qualitative tests for alcohol and drugs. A person who is dead or unconscious shall be deemed not to have withdrawn the person's consent to such test or tests, which shall be administered in the manner provided by this section when the officer has probable cause to do so and has obtained a search warrant.
- C. **REFUSAL** - A person refuses to submit to and complete any test(s) of breath, blood or urine as requested by a law enforcement officer.
- D. **INTOXILYZER TRAILER** - This trailer may be furnished with video equipment, police radio and generators. It may be furnished with an Intoxilyzer machine if it is to be set up for use at a D.U.I. checkpoint or other special purpose.
- E. **PROCESSING OFFICER** - Any officer currently certified on the Intoxilyzer 8000.

**III. ENFORCEMENT POLICY**

- A. Officers of this Department shall become familiar with the provisions of Article IV, Division 2, Sections 35-250 thru 35-258 of the Unified Government Code of Ordinances and K.S.A. 8-1567 and 8-1001 related to persons driving under the influence of alcohol or drugs.
- B. It will be the policy of this department that the Traffic Support Unit's DUI Processing Officer will be responsible for processing intoxicated drivers when he/she is on duty and available. He/She will also advise arresting officers with any other type of testing that may be required.
1. The DUI Processing Officer will be utilized whenever he/she is in service.
  2. If the DUI Processing Officer is not in service an officer who is certified on the intoxilyzer may process the subject at the Wyandotte County Jail's Intoxilyzer Room.
- C. The Field Operations Bureau and the Traffic Support Unit Commander will plan and conduct enforcement operations targeting DUI offenders. These operations and checkpoints should be conducted in locations where a significant number of violations or accidents have occurred involving impaired drivers.
1. Operation Impact is an enforcement operation scheduled by the Operation Impact Council, made up by representatives from Kansas City Metropolitan area law enforcement agencies, normally conducted several times per month. Operation Impact targets DUI and other offenders. Operation Impact will be administered and overseen by the Traffic Commander. The Traffic Commander will choose or assist in the selection of the target area for the operation based upon analysis of patterns and trends related to accident prevention, DUI prevention, and other traffic related public safety concerns.
  2. The Traffic Support Unit Commander will periodically conduct additional checkpoints and selective enforcement activity based upon analysis of patterns and trends related to accident prevention, DUI prevention, and other traffic related public safety concerns.

**IV. ACCIDENT SITUATIONS**

- A. Upon arrival at the scene of a motor vehicle accident the officers should first obtain the preliminary information for completing the accident report. The information should include, but not be limited to, name, address, telephone number, vehicle registration and insurance information.
- B. If probable cause exists to suspect that the person was operating or attempting to operate a motor vehicle while under the influence of alcohol and/or drugs, and the person does not require medical attention, the officer will inquire as to whether or not the subject will submit to testing.

1. Facts to take into consideration in determining probable cause are:
  - a. An odor of alcoholic beverage.
  - b. Alcoholic beverage container is in the vehicle.
  - c. The driver has slurred speech.
  - d. The driver exhibits poor balance or coordination.
  - e. The driver has bloodshot eyes.
  - f. The driver has difficulty communicating.
  - g. The driver states that he or she has consumed alcohol or drugs.
  - h. The driver failed a Preliminary Breath Test.
  - i. The driver failed a Standardized Field Sobriety Test.
- C. The officer will request that a Processing Officer respond to process the individual.
  1. The subject will be transported to the intoxilyzer room at the Wyandotte County Detention Facility. If the officer is not certified on the intoxilyzer, he/she shall request that a Certified Processing Officer respond to the intoxilyzer room to process the individual.
    - a. When requesting a Processing Officer, notification will be in the following order:
      - (1) An enforcement officer (when available).
      - (2) An accident investigation officer.
      - (3) Another Processing Officer.
        - (a) If certified intoxilyzer personnel are unavailable, the arresting officer will be required to complete all applicable alcohol/drug reports, with the assistance of a Field Supervisor.
- D. Once at the County Facility, the arresting officer will advise the Processing Officer of the circumstances surrounding the contact with the subject, (the reasons for the stop or contact, what first led the arresting officer to believe the subject is under the influence of alcohol, and any statements the subject may have made.) Before the arresting officer leaves the booking facility, he/she must complete and do the following.
  1. The first page of the Alcohol/Drug Influence Report must be completed by the Processing Officer with all applicable input from the arresting officer.
  2. The arresting officer must sign the Alcohol/Drug Report.
  3. Sections 1,2,5,6 and 7 of the DC-27 (Implied Consent Advisory Procedure) must be filled out and initialed by the arresting officer. The arresting officer must sign in the center section of the DC-27.
  4. The arresting officer must sign as complainant on the DUI charge on his/her issued traffic citation(s).
  5. If more than one citation is to be issued, the arresting officer may be required to fill those citations out.
    - a. If a certified Processing Officer is involved in the processing, the procedure as outlined in Section VII, will be followed.
6. At this point the arresting officer has completed his/her requirements and may report back into service if all reports associated with the incident have been completed.
7. Testing procedures will be followed as outlined in section VII.
- E. The Processing Officer shall present the person with a written copy of the Implied Consent Advisory (form DC-70). The officer shall orally advise the person of the Implied Consent Advisory, reading items 1-10 and 11 if the subject refuses testing, from form DC-27. All this should be accomplished while a videotaped recording is being made.
  1. In item #10, the officer will determine what type of test or tests will be administered, and will request the subject to respond yes or no as to whether or not he/she will take the test.
  2. If the subject agrees to submit to the test(s) requested the officer will follow the testing procedures outlined in Section VIII of this order.
  3. If the subject refuses to submit to the test(s) requested, the officer will follow the refusal procedures outline in Section VII, of this order.

Note: The process for videotaping changes from time to time, so check the current procedure in the intoxilyzer room.
- F. An officer shall request a person to submit to testing if the officer has reasonable grounds to believe the person was operating or attempting to operate a vehicle while under the influence of alcohol or drugs or both and the person has been involved in a motor vehicle accident or collision resulting in property damage, personal injury or death.
  1. The officer directing the test(s) may act on personal knowledge or on the basis of the collective information available to him/her while involved in the accident investigation.
  2. Under these circumstances, the driver need not be under arrest in order to have blood drawn for law enforcement purposes.
- G. If the subject is placed under arrest, the officer shall advise the subject of his/her rights under Miranda.
  1. If the injured arrestee refuses medical treatment he/she will be processed in the same manner as a non-injured arrestee.
  2. If the injured arrestee consents to medical treatment the officer will arrange for transportation of the subject to a medical facility.
    - a. Officers should be aware that if medication is administered during medical treatment, the medication will be noted on applicable reports.
- H. Upon arrival at the medical facility the officer shall present the arrestee with a written copy of the Implied Consent Advisory (form DC-70). The officer shall also orally advise the person of the Implied Consent Advisory reading items 1-11 from form DC-27. As these items are read the officer will check the appropriate box on the form.

1. In item #10 the officer will determine which test(s) will be administered, and will request the arrestee to respond yes or no as to whether or not he/she will take the test(s).
2. If the arrestee agrees to submit to the test(s) requested the officer will follow the testing procedures outlined in Section VIII of this order.
3. If the arrestee refuses to submit to the test(s) requested the officer will follow the refusal procedures outlined in Section VII, E of this order.

- a. When Traffic Support Unit personnel are involved in the DUI processing, all citations issued relevant to the DUI incident will reflect identical court date information.

- D. Once these items have been completed and the arresting officer has fulfilled procedural and/or report responsibilities associated with the incident (e.g. completed tow-in report, officers defensive action report, property report, accident report, investigative report, etc.), the officer shall report back into service.

## V. TRAFFIC VIOLATORS

- A. Officers must have some probable cause to make a legal traffic stop. (e.g., driving left of center, stop sign violation, any traffic infraction or traffic offense).
- B. Upon initial contact with a motor vehicle operator, the officer will determine if he or she has probable cause to believe the driver is operating or attempting to operate a motor vehicle while under the influence of alcohol or drugs.
- C. If probable cause exists, the officer will inquire as to whether or not the subject will submit to testing.
  1. The officer will request a Processing Officer to respond to his/her location to process the subject.
    - a. The subject will be transported to the intoxilyzer room at the Wyandotte County Detention Facility for processing. If the officer is not certified on the intoxilyzer, he or she shall request that an officer certified on the intoxilyzer respond to process the individual.
      - (1) Once at the county facility the arresting officer will process the individual as outlined in section IV D, 1-6 of this order.
  2. If all certified personnel are unavailable then the officer will be required to complete all testing procedures, including completion of all applicable Alcohol Influence Reports with the assistance of a Field Supervisor.

## VI. THE ARRESTING OFFICER'S RESPONSIBILITY

- A. Upon arrival of the Processing Officer, the arresting officer will advise the Processing Officer of the circumstances surrounding the stop; the reason for the stop, what first led the officer to believe that the subject was under the influence of alcohol. Any statements that the individual said need to be documented. The Processing Officer will document all applicable information on the Alcohol/Drug Influence report.
  1. Upon completion of the form the arresting officer will review the report for accuracy and sign the document.
- B. The arresting officer will initial the following items on the DC-27: 1,2,5,6 and 7. The arresting officer will then sign the DC-27.
- C. If there is no third person complainant present, the arresting officer will sign as complainant on the Processing Officer's traffic citation.
  1. The arresting officer should attempt to fill out all non-driving under the influence citations before the arrival of the Processing Officer.

## VII. TESTING PROCEDURES

- A. All tests for law enforcement purposes should be administered within three (3) hours after the person operated or attempted to operate a motor vehicle. Three (3) hours is the standard set by K.S.A 8-1567 (a)(2), Should the test occur outside of the three (3) hour standard, the reports should reflect, in detail, the reasons for doing so.
  1. Under K.S.A. 8-1004, "Without limiting or affecting the provisions of K.S.A. 8-1001 and amendments thereto, the person tested shall have a reasonable opportunity to have an additional test by a physician of the person's own choosing". If the subject is not given this opportunity for additional testing, the Department's test is not competent in evidence.
  2. What is a "reasonable opportunity" to have an additional alcohol concentration test performed depends upon the circumstances of each case.
  3. While the Department is not required to provide a driving under the influence suspect with a free additional alcohol concentration test, the officer may not unreasonably interfere with the suspect's reasonable attempt to secure an additional test, at their own expense by a physician of their own choosing, for the purpose of attempting to secure evidence for his/her defense.
  4. However, before additional testing is done, the suspect must first complete any and all tests the arresting officer deems necessary. Additional testing will then be allowed while the suspect is still in police custody.
- B. Blood Test Procedures
  1. Blood draws without consent, absent exigent circumstances, will require a search warrant.
  2. A three part test must be met to constitute a warrantless blood draw;
    - (a). There must be exigent circumstances in which the delay necessary to obtain a search warrant would threaten the destruction of evidence;
    - (b). The officer must have probable cause to believe that the suspect has been driving under the influence of alcohol; and
    - (c). The procedures used to extract the blood must be reasonable.
  3. K.S.A. 8-1567 allows blood to be measured within three (3) hours of the time of operating or attempting to operate a vehicle which gives officers an ample amount of time to obtain a search warrant when consent is not given, absent exigent circumstances.

4. If there are indications a suspect will physically resist the blood draw, the arresting officer should contact a field supervisor.

- a. If it is found thereafter that force will be used to facilitate a blood draw, officers will adhere to K.S.A. 8-1001(g); specifically, "if a person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices."
- b. The restraint shall be effective in controlling the person in a manner not to jeopardize the person's safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment".
- c. After the execution of a blood draw, the officer will complete an Officer Defensive Action Report detailing the circumstances at the hospital.

5. If the subject is apprehended on a traffic stop he/she is to be transported to the University of Kansas Medical Center in order to have blood drawn.

- a. If the subject is at any other medical facility (i.e., as the result of an injury accident) the officer will follow that facility's procedures for request to draw blood for law enforcement purposes once a search warrant has been obtained.

C. Blood Vials and Mailers

1. Blood vials and mailers may be obtained from any Traffic support Unit Supervisor or from any Traffic Support Units
2. Once a blood vial and mailer are obtained, and medical personnel have drawn the blood sample, the procedure as outlined on the back of the mailer envelope should be followed to ensure proper processing and chain of custody.
3. Officers shall complete both the Evidence Custody Receipt and the DUI Toxicology Request Form enclosed in the mailer.
4. Officers will also complete a separate property report for the blood sample, which will be approved by a Field Supervisor and sent to the Property Room.
5. Both the mailer and the property report will be placed in Property. The Logistics Officer will complete the certified mail documents, attach them to the mailer, and deposit the mailer in the mailroom.
6. All appropriate reports should be completed, and citations issued even though test results are pending.
  - a. The court date on the citation will be at least 45 days from the date of occurrence.
7. The pink copy of the DC-27 Form will not be given to the individual when blood is drawn. The DC-27 form, in its entirety, will be returned to the Traffic Support Unit Commander's Office.

- a. The officer shall return the individual's driver's license to him/her.

D. Breath Test Procedures

1. All arrestees that are to be given a breath test will be processed in one of two ways:
  - a. The individual will be processed in the field through utilization of the Intoxilyzer Trailer, when it is in use.
  - b. The subject will be brought to the Intoxilyzer Room adjacent to the Booking Facility at the Wyandotte County Detention Facility and processed by a Processing Officer.
2. The Processing Officer will fill out the front page of the Alcohol/Drug Influence Report in the presence of the arresting officer so that all information pertaining to the stop is documented correctly. The arresting officer will then sign the report.
3. The Processing Officer shall present the subject with a written copy of the Implied Consent Advisory Procedure (form DC-70).
4. The Processing Officer will read items 1-10 from the Implied Consent Advisory Procedure (form DC-27), to the subject checking the appropriate box as each item is read. This procedure will be videotaped, if at all possible.
  - a. Item #11 will be read if he refuses to take the test required of the subject.
5. The following sobriety tests will be made and scored appropriately on the Alcohol/Drug Influence Report: The one leg stand, walk and turn and the horizontal gaze nystagmus. These tests are collectively recognized as the Standardized Field Sobriety Tests (SFST) and should only be administered by officers that are certified in SFST.
6. If at all practical, Processing Officer(s) should videotape the following:
  - a. The giving of a DC-70 (implied consent) and the reading of the DC-27 (ICAP) to the individual.
  - b. Having the individual perform a field sobriety test.
7. If the test reveals that the arrestee's alcohol concentration is 0.08% or greater the Processing Officer will:
  - a. Keep the arrestee's driver's license.
  - b. Have the dispatcher or Records and Technology Unit personnel do a complete driver's license check to see if the license is valid. The results of this check should be printed in the Booking Facility at the Wyandotte County Jail, or at the Public Safety Communications Center.
  - c. The Processing Officer will turn in all applicable reports to their Field Supervisor for review. If the Field Supervisor, upon reviewing the reports, is unsure of correctness, they may discuss the correctness of these reports with the Traffic Support Unit's DUI Processing Officer, who is commonly considered to be the

subject matter expert in this area, if he or she is on duty, or the reports may be held for review by a Traffic Support Unit Supervisor.

- d. The pink copy of the DC-27 form will be given to the individual. If the subject has a valid driver's license, this copy will serve as a temporary license for a period not to exceed forty-five (45) days. If the arrestee does not have a valid driver's license, this copy does not serve as a temporary license.
  - e. All applicable Department reports shall be completed in addition to the state forms.
8. If the test reveals that the arrestee's alcohol concentration is less than 0.08% the arresting officer or Processing Officer may require an additional test. (e.g., if the arrestee's alcohol concentration shows to be 0.05, but there are reasonable grounds to believe that there is impairment by a drug which is not subject to detection by the blood or breath test used, a urine test may be required.
- a. If no additional testing is required the officer will return the arrestee's driver's license to him or her.
9. Note that if a commercial vehicle is involved, the legal limit is 0.04%.
- If a commercial vehicle is involved the following forms will be completed:
- a. A DC-27; and
  - b. The CDL-5

#### E. Urine Test Procedures

1. Any time there are reasonable grounds to believe that there is impairment by a drug which is not subject to detection by the blood or breath test used; a urine test may be required.
2. If the arresting officer or the Processing Officer requests an arrestee to submit to a test of urine under K.S.A. 8-1001 (i), the collection of the urine sample shall be supervised by persons of the same sex as the person being tested and shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested (This waiver only applies to third persons, e.g., medical personnel or attorneys).
3. Urine sample bottles are available in the Intoxilyzer room and sample collection may be conducted in the Booking Facility. The sample bottle will be sealed and cleaned by the arrestee and returned to the officer.
4. The officer will complete an Evidence Custody Sheet (available in the Intoxilyzer room) and place it with the sample bottle in the mailer. The officer will also complete a separate property report for the sample, which will be approved by a Field Supervisor and sent to the Property Room.
5. The mailer (available in the Intoxilyzer room) will be sealed by the Processing Officer and placed in the U.S. Mail.

6. The Processing Officer shall return the arrestee's driver's license to him/her.

#### F. Refusal Procedures

1. Kansas law requires the person submit to and complete one (1) or more tests of breath, blood, or urine to determine if the person is under the influence of alcohol or drugs, or both. (U.G. Ord. 35-254)
2. The opportunity to consent to or refuse a test is not a right.
3. There is no right to consult with an attorney regarding whether to submit to testing.
4. If the arrestee refuses or unsuccessfully completes any test(s) of breath, blood or urine requested by the officer, this shall constitute a refusal.
5. The officer shall:
  - a. Determine by computer check if the arrestee has a valid driver's license and secure a printout;
  - b. Keep custody of the arrestee's driver's license;
  - c. Complete the DC-27 form and present the pink copy to the arrestee;
  - d. Complete all applicable departmental reports and citations;
  - e. Book the arrestee into the Wyandotte County Jail Facility.

#### VII. REPORT PROCEDURES

- A. Completeness and accuracy are essential in order to properly justify making an arrest for driving under the influence of alcohol and/or drugs. Full probable cause is necessary to arrest and the elements of the offense should be detailed in the reports.
- B. Circumstances involving each individual case will determine which departmental reports/forms will be completed. However, there are some reports/forms which shall be completed in all DUI cases.
  1. The DC-27 form (Appendix A) is the officer certification and notice of suspension of the arrestee's driver's license. This is also the Implied Consent Advisory notice which is completed by the officer and read to the arrestee. The DC-70 (Appendix A) is also the Implied Consent Advisory which is in printed form and is given to and retained by the arrestee.
    - a. In the upper right hand corner the officer will record the complaint number, videotape number, and beginning and ending times/beginning and ending frames from the videotape machine. The name and serial number of the Intoxilyzer 8000 shall also be recorded on this form. In the upper left hand corner of the form the officer will print: City of Kansas City, Kansas Police Department.
    - b. Driver Information - The officer will accurately record all information relative to the driver such as name, address, license number an state of issuance, and date of birth.

- c. Officer's Certification - In all cases items 1-3 and 5-7 on the form shall be completed. In cases involving a breath test items 1-10 shall be completed. These items are certified by the officer placing his/her initials to the left of the number. Items 4, 8, 9 & 10 may only be certified by officers who are certified by the state to operate the Intoxilyzer 8000. completed and mailed to the appropriate Motor Vehicle Department (i.e., Kansas, Missouri, etc.).
- d. Implied Consent Advisory - The officer shall read the Implied Consent Advisory and check the appropriate box to indicate that each item has been covered.
- (1) Box #10 shall be marked with a yes or no response. The officer shall indicate by marking the appropriate box(s) noting which test(s) is offered. If yes is indicated, proceed with the test. If no is indicated, complete item #11 and proceed with refusal procedures.
- e. Temporary Driver's License - Before completing this section a complete computer check shall be done to determine if the arrestee has a valid driver's license.
- (1) In cases involving a blood or urine test this section will be left blank and all three copies of the DC-27 form will be forwarded directly to the Traffic Support Unit Commander's office (this form should not be sent to Case Screening with the other reports). Upon receipt of the test results from the State, the Traffic Support Unit Commander or his designee will complete this section, serve the arrestee notice and send a copy of the notice to the State.
- (2) In cases involving a breath test this section will be completed upon completion of the test.
- (a) If it is determined that the arrestee has a valid driver's license, the appropriate box will be checked, the date service is made will be recorded, the officer will sign the form listing the agency name, address, city and zip code, and give the pink copy to the arrestee.
- (b) If it is determined that the arrestee does not have a valid driver's license, the appropriate box will be checked, the information as listed above will be completed and the pink copy will be given to the arrestee.
- (c) A photo copy of the evidence card revealing the test results will be attached to the white copy of the form prior to the mailing.
- (d) The arrestee's driver's license will be attached to the white copy of the form, placed into the pre-addressed envelope and left at the Duty Sergeant's Office in the Traffic Support Unit.
- (e) If it is determined that the arrestee's driver's license is expired, revoked, or suspended, a Request For Certified Records form will be completed and mailed to the appropriate Motor Vehicle Department (i.e., Kansas, Missouri, etc.).
- (f) The yellow copy is to be turned in at the officer's duty station with all other reports.
2. Alcohol/Drug Influence Report
- This report shall be filled out in all cases, regardless of the type of test(s) administered, in order for the officer to establish and record his/her probable cause for making the arrest.
- a. All information is self-explanatory and the officer need only record what he or she has observed.
- b. This report will be turned in at the officer's duty station with all other reports.
3. Request for Certified Records
- When it is determined that the arrestee's driver's license is expired, revoked or suspended, the officer will complete this form and mail it to the appropriate Motor Vehicle Department (i.e., Kansas, Missouri, etc.).
4. Evidence Custody Receipt/Toxicology Request Form
- In cases involving a blood or urine test, this form shall be completed and will accompany the sample when it is mailed to the state.
5. Intoxilyzer 8000 Checklist
- In cases involving a breath test the certified officer shall complete this form. This form is to be turned in at the officer's duty station with all other reports.
6. Property Report
- Items other than narcotics that are recovered as evidence needed in the prosecution of the arrestee shall be recorded on a Property Report in accordance with established department policy.
- a. Narcotics property shall be recorded on a Vice-Narcotic Property Report and the accompanying Vice-Narcotic Evidence Custody Receipt.
7. Arrest Report
- If the arrestee is an adult, an Arrest Report will be completed in accordance with established department policy. If the arrestee is a juvenile, an Arrest Report will be completed and the procedures for processing juvenile DUI offenders outlined in General Order #40.02 will be followed.
8. Uniform Notice to Appear
- In all cases where the arrestee is to be charged with DUI, the appropriate citations(s) will be issued. Juveniles are to be issued citations on the Wyandotte County Sheriff's Uniform Notice to Appear.