

TITLE: DUI ENFORCEMENT

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PURPOSE

The purpose of this directive is to establish policy and procedures for the enforcement of state laws prohibiting the operation of a motor vehicle while impaired due to alcohol or other controlled substances.

DISCUSSION

Enforcement of DUI traffic laws is an important duty of the law enforcement officer charged with protecting the public welfare. Drivers impaired by alcohol and/or drugs represent a serious threat to public safety.

POLICY

It shall be the policy of the Santa Fe City Police Department to vigorously enforce the DUI traffic laws of the State of New Mexico.

PROCEDURE

While each DUI stop is unique, the following procedures shall be followed as closely as practicable. It is recognized that in some cases the level of intoxication may be so high that some procedures may be impracticable. Also, if an intoxicated driver becomes belligerent, it may become necessary to physically secure the offender to minimize the danger of injury to the public, the officer, and/or the offender.

DETECTION PHASE

67.1.01 An impaired driver may be detected in a variety of ways. Frequently, the Officer may first suspect the driver is intoxicated upon the initial face-to-face meeting after stopping the vehicle for some

other reason. If the Officer suspects intoxication prior to the traffic stop, it is important that the Officer first establishes Probable cause to stop/approach the offender during this phase. Probable cause to stop a vehicle may be established by the following means:

- The Officer observes a violation of State or local laws, or other violation, which gives the Officer cause to stop the vehicle for the purpose of investigation or to take enforcement action.
- The Officer locates the occupied vehicle based upon description from a citizen's complaint of erratic, improper, or reckless driving.
- The vehicle and/or occupants are suspected of involvement in a criminal act.
- The vehicle and/or driver has been, or is suspected of involvement in a recent traffic accident.

67.1.02 Regardless of the means by which the Officer comes in contact with an impaired driver, the Officer must establish reasonable suspicion to stop and investigate. The Officer shall note the indicators present and shall be able to articulate those factors in any subsequent arrest reports and/or court proceedings.

APPREHENSION PHASE

67.1.03 Once reasonable suspicion to stop a vehicle has been established, the Officer shall conduct a traffic stop in accordance with the provisions of Directive 66.1. Often, it is at this time the Officer may become suspicious that the driver may be impaired. The Officer shall observe the driver's actions and driving during this phase to gather further evidence to support an arrest.

INVESTIGATIVE PHASE

67.1.04 Once the vehicle has been stopped, the Officer shall approach with caution. The Officer will be alert to signs of intoxication due to alcohol and/or drug abuse. This investigative process is continuous as long as the Officer is in contact with the offender.

67.1.05 Upon the initial approach to the vehicle, the Officer should look into the vehicle interior for such plain view evidence as open containers of alcoholic beverages or narcotics or paraphernalia.

67.1.06 The Officer should request the driver's license, vehicle registration, and insurance card. The

Officer shall be alert for the odor of alcoholic beverages and shall note any physical characteristics indicating alcohol and/or drug abuse.

67.1.07 To establish the driver's mental and/or physical condition, and to further identify or eliminate the possibility of the driver being impaired by alcohol or drugs, ask him/her questions, such as:

- Where were you going?
- Where are you coming from?
- Are you ill or injured?
- Did you see a doctor or dentist today?
- When was the last time you slept?
- Have you been drinking? If so, what and how much?

67.1.08 While talking with the driver, observe his/her speech, any odor of alcoholic beverages on his/her breath, eyes (blood shot, pupil size, watery, etc.), coordination, in order to begin developing probable cause.

67.1.09 The answers to any/all of these questions is insufficient to establish probable cause. The following steps shall be utilized to develop and document probable cause of impairment.

- A. Ask the driver to exit his/her vehicle, if not already out of the vehicle.
- B. Observe the driver's balance and body coordination while exiting the vehicle, walking and standing.
- C. Ask the driver to move to an area that is suitable for standing and/or walking, and free from the dangers of traffic.
 1. At night, select a location with good visibility.

67.1.10 If conditions warrant, the driver will be asked to take a Field Sobriety Test. If the driver agrees, the Officer shall carefully observe the driver's performance on the test and accurately record the results. The standard Field Sobriety Test shall consist of:

A. Horizontal Gaze Nystagmus Test:

1. 'Nystagmus' is the inability of the eye to follow the stimulus smoothly from side to

side, also referred to as 'lack of smooth pursuit.'

2. Only those Officers who have been trained in the procedure may administer the Horizontal Gaze Nystagmus Test.

B. Walk and Turn Test:

1. Have the driver stand with his/her hands down at their side and their heel touching their toe, right foot in front of left.
2. Have the driver remain in the above position, while you instruct the following:
 - a. Walk nine (9) steps heel-to-toe in a straight line, keeping their hands to their sides during the entire test.
 - b. Turn around using a pivoting motion, (small steps), with left foot remaining on the ground.
 - c. Return with nine (9) heel-to-toe steps in a straight line.
 - d. Ask the driver if he/she understands the test, if not re-explain the test to them.
3. Have the driver perform the test.
4. While administering this test, watch for the following clues of impairment:
 - a. The driver cannot maintain his/her balance and position during the instructional phase, and may even stumble out of this position.
 - b. The driver starts the test before being told to do so.
 - c. The driver raises his/her arms away from the body and uses them for balance.
 - d. The driver steps off of the straight line he/she was instructed to walk.
 - e. The driver stops walking during the test.
 - f. The driver does not pivot during the turn or does not turn around at all.
 - g. The driver does not touch his/her heel to their toe while walking.

h. The driver takes the wrong number of steps.

5. If the driver exhibits two (2) or more of the above possible clues, the driver has failed this test. Record what possible clues the driver exhibited while performing this test.

C. One Leg Stand Test:

1. Have the driver stand with his/her hands down at their side and their heel touching their toe.

2. Have the driver remain in the above position, while you instruct the following:

a. The driver is to keep his/her hands down at his/her sides.

b. The driver is to extend his/her leg out straight in front of them, where the heel is approximately six (6) inches off the ground, toe pointing forward.

3. While extending their leg out, the driver is to count from one thousand one until told to stop at thirty (30) seconds.

4. Ask the driver if he/she understands the test, if not re-explain the test to them.

5. Have the driver perform the test.

6. While administering this test, watch for the following clues of impairment:

a. The driver cannot maintain his/her balance and position during the instructional phase, and may even stumble out of this position.

b. The driver starts the test before being told to do so.

c. The driver raises his/her arms for balance.

d. The driver sways from side to side while balancing.

e. The driver hops on the balancing foot.

f. The driver puts his/her foot down before thirty (30) seconds has elapsed.

7. If the driver exhibits two (2) or more of the above possible clues, the driver has failed

this test. Record what possible clues the driver exhibited while performing this test.

D. Counting Backwards Test:

1. Ask the driver his/her year of birth.

2. Using the year of birth as the first number, instruct the driver to count backward nine (9) numbers.

3. Ask the driver if he/she understands the test, if not re-explain the test to the driver.

4. While administering this test, look for the following clues of impairment:

a. The driver starts the test before being told to do so.

b. The driver counts forward instead of backwards.

c. The driver starts at the wrong number.

d. The driver counts back beyond nine numbers.

e. The driver skips numbers.

f. The driver completely miscounts or states random numbers.

5. If the driver exhibits two (2) or more of the above possible clues, the driver has failed this test. Record what possible clues the driver exhibited while performing this test.

NOTE: If the driver is impaired, i.e., disabled, injured, extremely intoxicated, etc., to the degree that he/she obviously cannot perform any of the above field tests without endangering their health or safety, then none of the above field tests need be administered.

E. Once Field Sobriety Tests have been completed and there is sufficient Probable Cause to arrest, the Officer shall arrest the driver for Driving Under the Influence of alcohol or drugs.

F. The driver's vehicle will be impounded or released to a second party in accordance with Directive 50.1.

G. The driver shall be transported to the Santa Fe Police Department Headquarters, or, to the hospital should he/she require minor medical attention and/or is incapable of

performing a breath test, i.e., facial injury, physical disability or impairment, to complete booking/testing procedures needed prior to incarceration. (See Arrest procedures/Injured Prisoners)

1. If a Portable Breath Testing Device is available, the driver shall be tested at the arrest location
- H.** Upon administering a breath test or having a blood test administered at the hospital, the driver shall be advised of New Mexico Implied Consent, as follows:
1. You are under arrest for _____.
 2. You are required by the New Mexico Implied Consent Law to submit to an alcohol content test.
 3. If you refuse to take the test, your license will be revoked for one (1) year.
 4. Do you agree to take the test?
 5. If the driver refuses by stating "NO.", refuses to answer the question, i.e., asks for his attorney, changes the subject or remains silent, the Officer shall ask the driver the following questions:
 - a. Do you understand that your refusal to take the alcohol content test will result in the revocation of your license for one (1) year?
 - b. Do you still refuse to take the test?
 6. If the driver still refuses, proceed directly to step 12.
 7. If a breath test is to be administered, perform the following:
 - a. The driver will be observed for a MINIMUM of twenty (20) minute deprivation period. DO NOT permit the driver to use tobacco products, drink or put anything into their mouths. The observation period may include time the officer spent transporting the driver.
 - b. Administer the breath test on the Department's breath testing machine.
 - ONLY those officers who are certified in the use of the department's breath testing machine shall be permitted to administer the breath test.
 - c. A copy of the breath testing machine's results shall be given to the driver.
 - d. If the driver refuses to take the breath test, a copy of the breath-testing machine's 'refusal' shall be given to the driver.
 - e. Log the test results or refusal in the "Instrument Log Book," along with all other necessary information.
- 8.** Spanish version of the New Mexico Implied Consent:
- a. Usted está arrestado por _____
 - b. La ley de Consentimiento Implícito de Nuevo México requiere que usted se someta a un análisis de aliento o de sangre para determinar el contenido de alcohol o de droga en su sangre. Yo seleccionaré el tipo de análisis que usted deberá tomar. ¿Usted está de acuerdo en someterse a estas pruebas?
 - c. IF YES
Usted tiene el derecho de ir con un doctor, enfermera certificada, un técnico de laboratorio o que trabaje en un hospital o doctor de su preferencia para que le hagan análisis químicos adicionales.
 - d. IF NO
Yo no puedo forzarlo a que se someta al análisis, pero si usted se niega usted perderá su licencia de conducir de Nuevo México o el privilegio de operador no residente por un año. Si usted es hallado culpable en una corte por haber conducido bajo la influencia de alcohol, usted también podrá recibir una sentencia más severa por haberse negado a someterse al análisis. ¿Usted comprende?
 - e. IF YES go to h.

- f. IF NO go to d. again
- g. Su derecho de hablar con un abogado o de permanecer en silencio no aplica al requisito de la ley de Nuevo México que indica que usted debe someterse a un análisis de aliento y/o de sangre.
- h. ¿Está usted de acuerdo en que se le haga el análisis?
- IF YES proceed with test, then read c.
IF NO or no response, or no adequate breath sample, go to i.
- i. Considero que su comportamiento indica que niega a someterse al análisis.
9. Based upon the breath test results, do the following:
- a. For a person 21 years of age or older:
- .30 or above, the driver shall be transported to the hospital for medical clearance prior to incarceration.
 - .08 or above - proceed to step 12.
 - .06 to .07 - proceed to step 12.
 - .00 to .05 - Unless the arresting officer can clearly articulate facts to support probable cause to believe the driver is under the influence of alcohol or drugs, he/she will be released.
 - If the arresting officer has sufficient probable cause to believe the driver is under the influence of a substance that did not register during the breath test, he/she will transport the driver to an authorized medical facility to obtain a blood test and follow through with all applicable arrest procedures.
 - If the driver refuses to take the blood test, the officer will book the driver on a Refusal and complete the required paperwork.
- b. Under 21 years of age (Juveniles):
- .02 or above - proceed to step 12.
 - Below .02 - Unless the arresting officer can clearly articulate facts to support probable cause to believe the driver is under the influence of alcohol or drugs, he/she will be released.
 - If the arresting officer has sufficient probable cause to believe the driver is under the influence of a substance that did not register during the breath test, he/she will transport the driver to an authorized medical facility to obtain a blood test and follow through with all applicable arrest procedures.
 - If the driver refuses to take the blood test, the officer will book the driver on a Refusal and complete the required paperwork.
 - Complete a statement of probable cause and refer to Directive 46.1, Juvenile Matters, for the proper booking/court notification procedures.
9. If a blood test kit is to be administered, ONLY a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital, or physical SHALL administer the blood test kit.
10. Consent to search is also typically used to draw blood for blood alcohol and/or drug tests, however, if the person refuses to submit to the test, a search warrant must be obtained.
- a. If there is probable cause to believe the driver was under the influence of alcohol and/or drugs and the driver caused great bodily harm or death to another as a result of his operation of a motor vehicle while under the influence of alcohol and/or drugs, or this is the driver's fourth or subsequent DUI arrest, and the driver refuses to submit to a blood alcohol test, the officer shall seek and obtain a search warrant for the drawing of the blood sample.
- b. Once the search warrant is obtained, the blood may be taken even over the

objection of the driver. It is important to note that even if the officer eventually gets the blood sample as a result of a search warrant, the driver has still refused the test and the refusal may still be reported to the New Mexico Department of Motor Vehicles.

- c. Officers may no longer obtain the results of hospital blood tests for the purpose of determining probable cause. These tests are protected under the physician patient confidentiality.
- 11. Consent to search is required to draw bodily fluids or tissues, however, if the person refuses to submit, a search warrant must be obtained.
- 12. Seal the blood test kit, per the enclosed instructions, for forwarding to the Scientific Labs for analysis.
- 13. Complete the DUI Citation, following the instructions on the cover of the citation book.
- 14. Transport the driver to the Detention Center for processing.

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APPROVED: 
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