



## MEDFIELD POLICE DEPARTMENT

**POLICY NO.5.02**

# **OPERATING UNDER THE INFLUENCE**

MASSACHUSETTS POLICE ACCREDITATION  
STANDARDS  
REFERENCED: **61.1.5, 61.1.11, 1.2.7**

ISSUING AUTHORITY:

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### BACKGROUND:

Drivers impaired by alcohol and/or drugs represent a serious threat to the lives and safety of themselves, their passengers, pedestrians, and other motorists. The Medfield Police Department has always been committed to a strong enforcement program to address impaired drivers, as well as supporting and participating in education, adjudication, and treatment programs.

Since enforcement is the key element, without which the other OUI countermeasures will fail, all officers shall consider enforcement to be a high priority operational activity. For the Department's enforcement activities to be effective, it is critical that officers perform their duties in strict accordance with the law and accepted procedural guidelines, and that their reports are complete and accurate.

### POLICY:

The Medfield Police Department will identify, arrest, and prosecute persons operating motor vehicles while under the influence of alcohol or drugs.

### PROCEDURES: [61.1.11]

Many traffic accidents are attributable to persons driving under the influence of alcohol and/or drugs. Officers should always be aware of the possibility that a driver may be under the influence of alcohol or drugs when dealing with the motoring public.

It is important to note that certain medications or medical conditions may be responsible for symptoms or behaviors which could be misinterpreted as intoxication, including diabetes, seizure, psychiatric disorders, and Alzheimer's disease.

If such issues are suspected, evaluation and response per department policy and first responder training should be initiated, including prompt medical attention when appropriate. If such issues cause an operator to be a potential hazard to themselves, or the public the Registry of Motor Vehicles shall be notified.

### Training

Officers obtain their initial training in legal procedures when they attend the police academy. Additional training will be provided during annual in-service training, or as necessary to maintain any certifications.

### Enforcement

Detection is the first step in any OUI enforcement. An officer's observations are crucial when establishing the probable cause upon which an arrest is based. If an officer determines that the operator of a motor vehicle is under the influence of alcohol or drugs, the following guidelines shall be used:

1. The vehicle will be towed and impounded if required by law, or released to a sober licensed driver if they are immediately available to take possession of the vehicle;
2. Immediate arrest is the preferred response; or
3. A criminal complaint application may be filed if circumstances do not allow for an arrest; for example, when an operator is admitted to a hospital or the officer has no means to effect an arrest.

NOTE: The amount of time that the vehicle will be impounded will depend on the actions of the driver. If the driver refuses to take the breath test then the impoundment shall be for twelve hours. This shall apply to all BT refusals no matter who the owner of the vehicle is. In all other cases the vehicle shall be impounded until a sober driver comes to claim the vehicle.

### Identifying Impaired Operators

Officers should recognize and identify specific driving behaviors which signify that a driver may be impaired by alcohol or drugs. Established indicators include, but are not limited to:

- Turning with a wide radius
- Straddling a center line or lane marker
- Nearly striking other vehicles or objects
- Weaving or swerving

- Driving off of the road
- Rapid acceleration or deceleration
- Operating more than ten miles per hour under speed limit
- Erratic braking
- Marked lanes violations
- Stopping without cause in a lane
- Following too closely
- Driving into an oncoming lane
- Inconsistent signaling
- Slow response to signals
- Abrupt or illegal turns or stops
- Driving without headlights
- Failure to dim high beams

Any of the above, in addition to other motor vehicle violations, may be used to establish reasonable suspicion for a traffic stop.

#### Operator Contact

In conjunction with training protocols for routine motor vehicle stops, the following steps should be considered if indication of impairment or alcohol consumption is present, and specific to the detection and documentation of potential OUI offenders:

1. Shut off forward facing strobe lights so only the white lights face forward.
2. Look for potential indications of impairment. They include, but are not limited to:
  - Striking the curb as they stop, or other vehicle control problems
  - An odor of alcoholic beverage
  - Glassy or blood shot eyes
  - Pupils excessively constricted or open
  - Poor coordination, confusion, incoherency
  - Lack of ability to be attentive
  - Slurred, slow or thick speech
  - Empty alcoholic beverage containers or drug paraphernalia
  - Hesitation to make eye contact
  - Exhibiting a blank stare
3. Conduct an initial interview, being alert to odors and behaviors indicating the presence of alcohol or drugs. Preliminary questions for a suspected impaired operator may include, but are not limited to:
  - Where they are coming from and going to
  - Whether they have had any alcohol or drugs recently
  - If so, when they had their last drink, or other intoxicating substance
  - Whether they are tired
  - Whether they have taken any medications
  - Their orientation as to time, day, and location
  - Other topics as applicable to their situation, or driving behavior

NOTE: Miranda is not needed for preliminary questioning.

(Berkemer v. McCarty 1984)

### Field Sobriety Tests

If reasonable suspicion exists that the operator may be impaired, direct the suspect to exit the vehicle and move to a safe location so that you may conduct field sobriety tests (FST) and/or a further interview. To the extent possible, the area should be a flat level surface, well lit, and free of debris or major defects.

Be aware of passengers in the vehicle, and their behavior or threat level, advising them to remain in the vehicle at all times unless instructed otherwise. Do not allow anyone to move or drive the vehicle at any time during the stop.

Determine whether there are any medical concerns, illness or injury, which may affect sobriety tests, and determine whether they wear glasses or contact lenses.

Do not conduct any testing while on the traffic stop if it presents a danger to the person being tested (i.e. too intoxicated to stand up, refusal to remain on the shoulder of roadway). Arrests may be made without administering field sobriety tests.

Officers may conduct field sobriety tests in accordance with their level of academy, post-academy, and field training, to make further observations of sobriety. Operators may not be compelled to perform such tests.

“Standardized” field sobriety tests are as follows:

1. Alphabet recitation test;
2. The 9 step walk and turn; and
3. The one leg stand.

Additional field sobriety tests used, based on individual officer training and experience, may include:

1. Divided attention test, (count backwards from 35 to 15);
2. The finger-to-nose touch;
3. The portable breath test (PBT) (Mutual Aid can be used in the absence of a department owned/trained PBT).

### Portable Breath Test

Officers who have been trained to use the portable breath test (PBT) may use the device to assist in determining the sobriety of an individual not currently in custody.

The device shall be used in compliance with:

1. Office of Alcohol Testing (OAT) guidelines and training;

2. The OAT "Operational Procedure Sheet";
3. Academy and/or Department training; and
4. The device operating manual;

Prior to administering a PBT, an officer should assure that the subject has not placed anything into their mouth which may affect the test. (Smoking chewing gum, candies, etc. should be prohibited during the time prior to FSTs.)

Each PBT result shall be entered into the PBT log and officers shall note the use or result of the PBT in their report.

#### Arrests

If all elements of the OUI violation have been clearly established, then the officer has the right of arrest. Arrests will be handled in accordance with the policy on Arrest and Transporting Detainees.

#### Post Arrest Procedures

Individuals arrested for OUI will be processed according to the policy on Processing Detainees. Additionally, procedures specific to OUI arrests will include:

1. Advising the detainee of his rights, including those pertaining to OUI;
2. Turning on the breathalyzer machine and simulator;
3. If the detainee consents, administering the breath test and entering the results into the BT Log Book;
4. If a detainee consents to a breath test, there is no need for a new consent for any second or subsequent tests due to a failure in the testing process, or if taken to another facility for testing;
5. If the subject refuses an offered test, document the refusal;
6. Placing the citation and notice of license suspension in the detainee's property

#### Statutory Rights for a Chemical Test

The following statutory rights shall be administered by a supervisor, arresting officer, breath test operator, or booking officer, depending on shift availability and other variables:

**RIGHT TO A POLICE ADMINISTERED BREATH TEST:** A defendant has no statutory or constitutional right to a police administered breath test.

**RIGHT TO AN ATTORNEY:** A defendant does not have the right to have an attorney present while deciding whether or not to take a breath test.

**STATUTORY RIGHTS AND CONSENT FORM:** Officers must read each section of the form to the defendant. Forms are available in different languages.

**RIGHT TO BE EXAMINED BY A PHYSICIAN:** A person arrested for OUI alcohol has the right to be examined by a physician of their choice, and at their expense. Police must advise the defendant of this right and the opportunity to exercise it. An opportunity to call a physician is usually sufficient.

**RIGHT TO A TELEPHONE:** A defendant has the right to make a phone call at their own expense within one hour of arrival at the police station.

**REQUEST TO SUBMIT TO A CHEMICAL TEST:** A defendant may take a chemical test if offered. If a defendant takes the test and completes it, he will have the right to a comparison blood test within a reasonable period of time at his own expense. The results of the comparison test can be used to restore their license or right to operate at a court hearing within 10 days.

#### Breath Test Operation

A breath test shall be administered on certified equipment by a trained and certified operator, in accordance with their training, and the guidelines provided by the Executive Office of Public Safety and Security (EOPSS) and the Office of Alcohol Testing (OAT). Blood alcohol tests shall conform to M.G.L. Ch. 263, § 5A, as well as departmental guidelines and training.

#### **BT Results for Persons Age 21 and Over**

BAC below .05%: Arrestee shall be released from custody forthwith.

BAC of .06% or .07%: There shall be no presumption of intoxication. The arrest and booking process shall continue. There is no license seizure.

BAC of .08% or above: There shall be a presumption that the person is under the influence of intoxicating liquor and their license shall be seized.

#### BT Results for Persons Age 18 but Under 21

BAC of .02% - .05%: Administrative 180 day license suspension, licensed seized, driver released forthwith.

BAC of .06% and .07%: Administrative 180 day license suspension, driver held, license seized.

BAC of .08% or above: Driver held, license seized, license suspended for 30 days plus 180 day administrative suspension.

#### **BT Results for Persons Under Age 18**

BAC of .02% - .05%: Administrative 1 year license suspension, licensed seized, driver released forthwith.

BAC of .06% and .07%: Administrative 1 year license suspension, driver held, license seized.

BAC of .08% or above: Driver held, license seized, license suspended for 30 days plus 1 year administrative suspension.

### **BT Results for a CDL License**

.01 TO .03, Any detectible amount: Out of service order. Operator is released forthwith.

.04 TO .05: Out of service order. Operator is released forthwith.

OVER .05: Operator shall be processed as an arrest.

### **License Suspensions**

Immediate license suspensions take place when OUI arrests are processed through the Breath Alcohol Testing System (BATS). There is no longer a provision for issuing a 15 day temporary license. Suspensions are for:

1. Refusal to take a breath or blood test.
2. A person over the age of 21 who obtains a reading of 0.08% or higher.
3. A person under the age of 21 who obtains a reading of 0.02% or higher.
4. CDL: .04% or higher.

### **BT Equipment Problems**

If detainee consents to a breath test and the equipment malfunctions, the Department has an option to offer another test, including bringing the detainee to another department for testing.

The machine should be taken out of service, and notice given to the Department coordinators for training and maintenance of the device.

### **Vehicle Forfeitures**

Prosecutors may seek forfeiture of a vehicle after the 4th or subsequent offense. The arrest report should contain a special note regarding this status so the Court Prosecutor is aware of the potential forfeiture.

### **Operating Under the Influence of Drugs**

Massachusetts law does not provide an implied consent statute for operating under the influence of drugs, and there is no statutory authority to demand any type of drug testing.

The Officer's observations are critical in prosecuting cases for operating under the influence of drugs. Impairment with a low breath test may be indicative of drug impairment.

If a blood sample is obtained, it will be screened for the drug requested by the officer. The officer's observations of the defendant, such as lethargic versus excited, confused, situational awareness, or pupil size and reaction, may be helpful for the chemist.

Drug Recognition Expert (DRE) certified officers are available from several area agencies, and with approval from the Shift Commander, may be requested to evaluate suspected drug impaired drivers.

#### Blood Testing

As part of an OUI investigation, blood tests have to conform to the following requirements outlined in M.G.L. Ch. 90, s.24 (1) e (1) f.

1. A physician, a registered nurse, or a certified medical technician must draw the blood;
2. The suspect must be brought to a licensed medical facility;
3. The drawing of blood for testing must be voluntary;
4. Hemophiliacs, diabetics, and people requiring the use of anti-coagulants cannot consent to a blood test; and
5. The suspect must be advised that they have a right to an independent blood test at their own expense;

The license suspension provision only applies to suspects who are under arrest for OUI liquor and refuse to take the test. Suspects arrested for OUI drugs, keep their licenses whether they take the test or not.

Two tubes of blood should be drawn into tubes containing powdered anticoagulant. No red-topped tubes should be submitted. Alcohol free swabs should also be used.

Properly mark the evidence and refrigerate the samples in the refrigerator in the evidence lockers until they can be delivered to the State Police Crime Lab for analysis by a certified blood analyst. The Evidence Officer should be informed in order to submit evidence to the laboratory in a timely manner.

Officers should have the suspect sign the Statutory Rights and Consent form.

A record of a blood test conducted pursuant to medical treatment is admissible as evidence, and may be obtained via subpoena by the prosecutor whether or not the individual is under arrest.

#### Immediate Threats

In cases where the circumstances support probable cause for OUI, but no license suspension occurs due to factors in the case (drugs, hospitalization, etc.), an immediate threat request for license suspension may be filed with the Registry of Motor Vehicles based on the overall circumstances.

#### Melanie's Law

Melanie's Law, enacted in October 2005, established new offenses and penalties in relation to operating under the influence (OUI) of alcohol. If the circumstances apply, officers should assure that they are properly charging and documenting these offenses.

A driver operating under the influence of alcohol while his license was already suspended for OUI can be charged with two crimes at once, OUI and OUI with a suspended license. The additional offense carries a minimum of a 1 year mandatory jail sentence and a one year license suspension.

Employing or allowing an unlicensed operator to operate a motor vehicle. This also covers issues related to ignition interlock devices which might be required of convicted drunk drivers.

Child endangerment while OUI is a new crime. When an operator is charged with OUI and has a child under 14 years of age with him, the charge may be brought simultaneously with the primary OUI offense.

Registration cancellations and vehicle forfeitures may result based upon subsequent OUI charges.

Chemical test refusals or failures were addressed by Melanie's Law, and resulted in the elimination of temporary (15-day) licenses; required impoundment of vehicles for 12 hours; and affected license suspension periods.

Manslaughter by motor vehicle, while OUI, became law. Motor vehicle homicide penalties were enhanced, as well.

Ignition Interlock Devices were defined and allowed or required, depending on court action. Officers should be aware of vehicles bearing such devices, or indications of their involvement in license status information.

If a Massachusetts operator refuses or fails a breathalyzer test, his Massachusetts license shall be confiscated. Massachusetts licensees will lose all operating privileges in the Commonwealth of Massachusetts, and out-of-state, if it was their only active license.

The confiscated Massachusetts license needs to be destroyed. Officers will cut the license in half, staple it to Form D and fax to the RMV.

Melanie's Law eliminates the allowance of a 15-day temporary license. Suspension of the license is effective immediately. There are no provisions or exceptions to this suspension notice. An RMV notice of suspension shall be given to the operator as soon as possible.

Out-of-state licenses are not to be confiscated and destroyed. Out-of-state operators will lose their "RIGHT TO OPERATE" in the state of Massachusetts only.

If the detainee refuses to take the breath test, or to consent to another form of chemical testing, the vehicle he was operating at the time of arrest shall be impounded for a minimum of 12 hours;

If a detainee 21 years of age or older elects to take the breath test or participate in another form of chemical testing, and he registers blood alcohol content of:

- .05 or less – He or another party on his behalf shall be able to recover the impounded vehicle upon his release.
- .06 or above - Only another party, such as a properly licensed parent or friend, shall be able to recover the impounded vehicle upon the detainee's release. The detainee may recover the vehicle himself, provided it has been impounded for a minimum of 12 hours.

If a detainee under the age of 21 elects to take the breath test or participate in another form of chemical testing, and he registers blood alcohol content of .02 or above, only another party, such as his parent or guardian, shall be able to recover the impounded vehicle upon his release. The detainee may recover the vehicle himself, provided it has been impounded for a minimum of 12 hours.