

	Policy & Procedures				No. 1.27	
	Subject: OUI Enforcement					
	Issuing Authority: Chief of Police				Effective Date: 01/01/2014	Review Date: 11/30/2023
					References:	
Review						
Revision	01/28/2016					
Reissued	11/11/19					
Dates:	08/30/2020					

CALEA STANDARDS

61.1.10 41.4.5

61.1.11

GENERAL CONSIDERATIONS AND GUIDELINES

Drivers impaired by alcohol and/or drugs represent a serious threat to the lives and safety of both the motoring and general public. This Department has always been committed to a strong enforcement program as an important part of an overall countermeasures program that also includes cooperating and participating in local, state and national education, adjudication, and treatment programs. Some examples would be our officers participating in Field Sobriety Check Points with the Mass State Police as well as our officers participating in Impaired Driving initiatives supported by a grant through the Executive Office of Public Safety. **6.1.10**

As a law enforcement agency, our primary function is that of enforcement, since it is a key element, without which the other countermeasures will fail. Therefore, all officers shall consider OUI enforcement to be a high priority operational activity.

The importance of OUI enforcement makes it critical that all officers perform their related duties in strict accordance to applicable laws and to procedural guidelines that are acceptable to the courts. This means that officers who arrest for OUI must be certain that their actions in the field, while transporting, and at the station are precise and proper, and that their reports are complete and accurate. No matter what decision is made by the officer regarding arrest, one rule must always be adhered to:

NEVER ALLOW AN OUI SUSPECT TO DRIVE HIS/HER MOTOR VEHICLE

PROCEDURES

- I. DETECTING THE OUI OPERATOR:** Detection is the first step in any OUI enforcement action. The officer's observations in this stage are crucial in establishing probable cause upon which the arrest decision is based. Officers should perform the following tasks:
- A.** Recognize and identify specific driving behaviors that have a high probability of signifying that the driver may be impaired by alcohol and/or drugs. The operator doesn't have to be drunk; his or her ability to operate safely just has to be diminished. **61.1.11 (A,B)**
 - B.** If necessary and/or applicable, recognize and identify specific or other behaviors occurring during vehicle stops that provide additional evidence/suspicion that the driver may be impaired.
 - C.** Note all of the observations leading to the suspicion that the driver may be impaired.
 - D.** Exercise due care and caution in pursuing impaired drivers and be alert for unusual or inappropriate reactions from the driver.
 - E.** Pursuit should not be prolonged; apprehension should be made as soon as possible in a safe location.
 - F.** Notify dispatching officer of location of stop, giving a full description of vehicle (including Registration #); request back-up.
 - G.** Do not allow the operator to move or drive the vehicle if ultimately a decision is made that he/she is impaired.
 - H.** Approach the vehicle with caution but with minimal delay and request pertinent documents from the operator.
 - I.** Conduct a brief interview with the operator and, if applicable, the passengers while all are still inside the vehicle.
 - J.** Recognize and identify specific characteristics, attitudes, and actions commonly manifested by impaired drivers (e.g. speech impaired, odor of alcohol/drugs, glassy/ bloodshot eyes, divided attention skills, etc.).
 - K.** Note all observations leading to the suspicion that the driver may be impaired.... if probable cause exists to support your suspicion, request that the driver exit the vehicle for further investigation.
 - L.** If vehicle was not observed in motion, determine if probable cause exists to charge driver with actual physical control.

- M.** Request the suspect to exit the vehicle and move to a safe location to conduct field sobriety tests and a further interview.
- N.** Select and administer appropriate field sobriety tests to assess impairment. Any one or more of the following tests are acceptable: **61.1.11 (A)**

 - 1. Horizontal Gaze Nystagmus;
 - 2. Walk and Turn (Nine Step);
 - 3. One Leg Stand;
 - 4. Finger to Nose;
 - 5. Alphabet Recitation
 - 6. Numeric Recitation
 - 7. Preliminary Breath Test (PBT administered as last test; see Gen. Order 38, Sec. III)
- O.** It is advisable to use the **Miranda Warning** prior to asking questions of an accusatory nature if you have probable cause to believe he/she is Operating Under the Influence.
- P.** Formulate appropriate arrest decision based on the evidence accumulated during the above steps (use of the PBT will assist the arresting officer(s) in determining whether or not the impairment level corresponds with alcohol or there is another impairing substance aboard). The officer's decision shall be determined as to alcohol, drugs, or both for impairment.

II. ARREST AND PROCESSING: If all elements of the OUI violation (e.g., operation or actual physical control on a public way, or way in which the public has the right of access, while impaired) have been clearly established, then the officer has the right of arrest and may legally inform the suspect of this fact. Once the arrest has been made the officer should adhere to the following procedures: **41.4.5, 6.1.11**

- A.** Handcuff and search the subject according to procedure. Subject shall then be placed in a patrol unit for transport.
- B.** If there are passengers in the subject's vehicle whose condition is such that they should not be allowed to operate the vehicle, or any person not authorized by the vehicle owner to operate the vehicle, or any person unlicensed to operate a motor vehicle, then the arresting officer shall arrange for the vehicle to be towed according to Department procedure.
- C.** The subject shall immediately be safely transported to the station according to established Department procedures.
- D.** Upon arrival at the station, the subject shall be booked according to established OUI procedures.

- E.** With regards to chemical testing (infrared breath test) and blood alcohol testing, all officers shall be aware of the rules contained in MGL C90-S24e and S24f (1) & (2). These statutes govern all aspects of the use of these procedures. Some important updates to remember: **41.4.5, 61.1.11 (A)**

1. Automatic seizure of license or permit for all MA operators refusing to take BT or for failing the test. If out-of-state, send notice to the MA registry with information about their out-of-state license;
2. Impound defendant's vehicle for 12 hours regardless of what state they are licensed from;
3. Before administering a BT test, defendant must be observed for 15 minutes, making sure nothing goes in their mouth;

- F. Consent for blood test:** If a defendant: **61.1.11 (A,B)**

1. is under arrest for OUI;
2. has been taken for treatment to a medical facility;
3. is in the Commonwealth;
4. is not a diabetic, hemophiliac or use of anticoagulants; **and**
5. **the defendant consents to take a blood test**

If consent is given, the following provisions apply:

Blood cannot be drawn from a person afflicted with hemophilia, diabetes or any condition requiring the use of anticoagulants. The statute deems that these individuals are unable to consent. The Statutory Rights and Consent Form must be used if the person is under arrest for OUI and you are requesting a blood sample.

If a blood alcohol test is administered according to the statute rules, the arresting officer shall advise the hospital personnel that the samples will be used as evidence, keeping in mind the chain-of-evidence rule.

- G.** If the subject is arrested for OUI Drugs, it is imperative that an officer document all signs and symptoms of impairment, especially those that are not consistent with alcohol abuse. If a Drug Recognition Expert (DRE) is used, it must be documented as well. **61.1.11 (B)**
- H.** If the result of the breath test or drug evaluation indicates impairment, or if the subject refuses the test, the Bail Clerk shall be notified. Further, the Bail Clerk will be notified and advised if the subject has invoked his/her rights under M.G.L. 263, Sec. 5A – requesting an independent blood test by a physician.

III. CUSTODIAL CONDITIONS CHEMICAL TEST RESULTS:

A.	.02 or higher	Under 21/ loss of license 90/24
B.	.04	CDL 90F – Seize Vehicle/License
C.	.05 or lower/released forthwith	Inference-Not intoxicated
D.	.06-.07	No Inference/ Rely on field testing
E.	.08 or higher	Per Se- intoxicated

NOTE: Persons taking the Breathalyzer and registering .05 or under may receive sanctions from the registry depending on their license class however, they must be released from custody forthwith. If the person still appears impaired, officers should attempt to find alternative transportation.

- IV. **REPORTS AND REQUIRED FORMS:** It shall be the responsibility of the arresting officer to make sure that the case folder contains all required forms which are pertinent to the particular case, and to file a complete written report which fully explains the incident. Supplemental reports shall also be filed by officers assisting in the arrest and by the Booking Officer when necessary. These reports shall detail all notes, observations of the officers, statements of witnesses, warnings and rights given to the arrestee, results of tests, and any other information which would assist the prosecution in substantiating the charge(s). When filing the appropriate charges, all officers should be aware of the updates to OUI charges as a result of **Melanie's Law**: *In regards to charging DUI offenders, that when an operator fails to submit to a chemical test or analysis of his breath or blood, the agency will impound the vehicle driven by the operator and arrange for the vehicle to be impounded for a period of 12 hours after the operator's refusal. The vehicle cannot be released to any person(s) prior to that period of time. 61.1.11 (2)*