

Impaired Driving

503.1 PURPOSE AND SCOPE

This policy provides guidance to those department members who play a role in the detection and investigation of operating a vehicle under the influence of alcohol or drugs (OVI).

503.2 POLICY

The Beachwood Police Department is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of Ohio's impaired driving laws.

503.3 INVESTIGATIONS

Officers should not enforce OVI laws to the exclusion of their other duties unless specifically assigned to OVI enforcement. All officers are expected to enforce these laws with due diligence.

The department will develop and maintain, in consultation with the prosecuting attorney, report forms with appropriate checklists to assist investigating officers in documenting relevant information and maximizing efficiency. Any OVI investigation will be documented using these forms.. Information that should be documented includes, at a minimum:

- (a) The field sobriety tests (FSTs) administered and the results.
- (b) The officer's observations that indicate impairment on the part of the individual, and the officer's health-related inquiries that may help to identify any serious health concerns (e.g., diabetic shock).
- (c) Sources of additional information (e.g., reporting party, witnesses) and their observations.
- (d) Information about any audio and/or video recording of the individual's driving or subsequent actions.
- (e) The location and time frame of the individual's vehicle operation and how this was determined.
- (f) Any prior related convictions in Ohio or another jurisdiction.

503.4 FIELD TESTS

The department should identify standardized FSTs and any approved alternate tests for officers to use when investigating violations of OVI laws.

503.5 CHEMICAL TESTS

A person implies consent under Ohio law to a chemical test or tests, and to providing the associated chemical sample, under any of the following (ORC § 4511.191):

- (a) The arresting officer has reasonable grounds to believe the person was operating or in physical control of a motor vehicle while under the influence of alcohol, a drug or a combination of the two.

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- (b) An officer has arrested a person under the age of 21 and has reasonable grounds to believe the person was OVI (ORC § 4511.19(B)).
- (c) The person has been arrested for a substantially equivalent municipal OVI ordinance.

If a person withdraws this implied consent the officer should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

503.5.1 STATUTORY NOTIFICATIONS

An officer arresting a person for OVI shall, prior to requesting that the person submit to a chemical test, read from a written form the mandatory statutory advice provided by ORC § 4511.192(B). The reading of the advice shall be witnessed by one or more persons and the witness shall certify to this fact by signing the form (ORC § 4511.192(A)).

If the arrestee has a previous conviction for OVI as described in ORC § 4511.191, the officer (ORC § 4511.191(A)(5)):

- (a) Shall request the person to submit to a chemical test.
- (b) Shall advise the person of the consequences of submitting or refusing to submit to a chemical test.
- (c) Shall provide the person with the written form described in this policy.
- (d) Shall advise the person that the officer may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test.
- (e) At the time of arrest, shall advise the person that he/she may have an independent chemical test taken at his/her own expense and permit such testing (ORC § 4511.19(D)(3)).

If an officer does not ask the arrestee to submit to a chemical test, the officer shall seize the person's driver license and forward it to the court in which the person is to appear, pursuant to ORC § 4511.192(C). If the person is not in possession of his/her license, the officer shall order the person to submit it to this department within 24 hours of the arrest.

503.5.2 BREATH SAMPLES

The Traffic Bureau should ensure that all devices used for the collection and analysis of breath samples are properly serviced and tested, and that a record of such service and testing is properly maintained.

Officers obtaining a breath sample should monitor the device for any sign of malfunction. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to the Traffic Bureau.

503.5.3 BLOOD SAMPLES

Only persons authorized by law to draw blood shall collect blood samples (ORC § 4511.19(D)(1)(b)). The blood draw should be witnessed by the assigned officer. No officer, even if properly certified, should perform this task.

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The blood sample shall be collected, packaged, marked, handled, stored and transported as required by the testing facility.

If an arrestee cannot submit to a blood draw under the recommendation of the attending physician, he/she shall not be required to take a blood test. Such inability to take a blood test should not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

503.5.4 URINE SAMPLES

If a urine test will be performed, the arrestee should be promptly transported to the appropriate testing site. The officer shall follow any directions accompanying the urine evidence collection kit.

Urine samples shall be collected and witnessed by an officer, jail staff member or medical professional of the same sex as the individual giving the sample. The arrestee tested should be allowed sufficient privacy to maintain his/her dignity, to the extent possible, while still ensuring the accuracy of the sample.

The sample shall be collected, packaged, marked, handled, stored and transported as required by the testing facility.

503.6 REFUSALS

When an arrestee refuses to provide a chemical sample, officers should:

- (a) Advise the arrestee of the requirement to provide a sample (ORC § 4511.191).
- (b) Audio- and/or video-record the admonishment and the response when it is practicable.
- (c) Document the refusal in the appropriate report.

503.6.1 STATUTORY NOTIFICATIONS UPON REFUSAL

Upon refusal to submit to a chemical test as required by law, officers shall personally serve the notice of license suspension upon the person and take possession of any state-issued license to operate a motor vehicle that is held by that person. If a person was arrested only for having physical control of a vehicle while under the influence pursuant to ORC § 4511.194, the officer shall not seize the person's driver license if the person submits to the chemical tests, regardless of the amount of alcohol or controlled substances indicated by the test (ORC § 4511.192(D)).

503.6.2 BLOOD SAMPLE WITHOUT CONSENT

A blood sample may be obtained from a person who refuses to submit to a chemical test when any of the following conditions exist:

- (a) A search warrant has been obtained.
- (b) The officer can articulate that exigent circumstances exist. Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol or controlled or prohibited substances in the person's bloodstream. Exigency can be established by the existence of special facts, such as a lengthy delay in

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obtaining a blood sample due to an accident investigation or medical treatment of the person.

503.6.3 FORCED BLOOD SAMPLE

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the officer should request a supervisor to respond.

The responding supervisor should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
- (b) Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes a viable form of testing in a timely manner.
- (c) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer) and attempt to persuade the person to submit to such a sample without physical resistance. This dialogue should be recorded on audio and/or video when practicable.
- (d) Contact the Patrol Captain regarding the application of a search warrant for this process. If a search warrant is issued:
 1. Ensure that the blood sample is taken in a medically approved manner.
 2. Ensure the forced blood draw is recorded on audio and/or video when practicable.
 3. Monitor and ensure that the type and level of force applied appears reasonable under the circumstances.
 - (a) Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.
 - (b) In misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
 - (c) In felony cases, force which reasonably appears necessary to overcome the resistance to the blood draw may be permitted.
 4. Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

503.7 ARREST AND INVESTIGATION

503.7.1 DESIGNATION OF CHEMICAL TESTS

The type of chemical test to be administered to persons in violation of OVI laws shall be the type designated by the Department and administered at the direction of the arresting officer (ORC § 4511.191(A)(3)). The chemical test sample shall be collected within three hours from the time of the alleged violation.

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503.7.2 OFFICER RESPONSIBILITIES

If a person refuses to submit to a chemical test, or submits to the test and the results indicate a prohibited concentration of alcohol, controlled substance or metabolite of a controlled substance, the officer shall (ORC § 4511.192(D)):

- (a) Confirm the arrested person's residence and notify the Bureau of Motor Vehicles (BMV) of any change.
- (b) Within 48 hours, forward a sworn report to the BMV and the court in which the arrested person will appear that contains the statements required by ORC § 4511.192(D)(1)(d).
- (c) Provide a copy of the officer's sworn report to the arrested person, if available. A copy of an unsworn report may be provided to the arrested person provided that the report is complete when given to the person and that it is subsequently sworn to by the arresting officer (ORC § 4511.192(E)).

503.7.3 TIME TO CONSENT TO TEST

If an officer requests that a person consent to providing a chemical sample pursuant to Ohio law, failure to consent to the test within two hours of the alleged violation automatically constitutes a refusal (ORC § 4511.192(A)).

503.7.4 VEHICLE SEIZURE

An officer arresting a person for OVI shall seize the vehicle the person was operating at the time of the offense if the person is the registered owner of the vehicle and either of the following conditions apply (ORC § 4511.195(B)):

- (a) The person is arrested for OVI or for a municipal OVI ordinance and has been previously convicted of or pleaded guilty to OVI, or an equivalent offense, within the last 10 years.
- (b) The person is arrested for OVI or for a municipal OVI ordinance and has been previously convicted of or pleaded guilty to a felony OVI offense, regardless of when the conviction or guilty plea occurred.

503.8 RECORDS BUREAU RESPONSIBILITIES

The Clerk of Courts will ensure that all case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office.

503.9 ADMINISTRATIVE HEARINGS

The Clerk of Courts will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to the BMV.

Any officer who receives notice of required attendance to an administrative license suspension hearing should promptly notify the prosecuting attorney.

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503.10 TRAINING

The Training Officer will seek classes for officers participating in the enforcement of OVI laws receive regular training. Training should include, at minimum, current laws on impaired driving, investigative techniques and rules of evidence pertaining to OVI investigations. The Training Officer should confer with the prosecuting attorney's office and update training topics as needed.