

## Driving While Intoxicated or Impaired

### 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 motor vehicle while intoxicated or impaired (OWII).

### 503.2 POLICY

The Kalamazoo Department of Public Safety is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of Michigan's OWII laws.

### 503.3 INVESTIGATIONS

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

The Executive Lt. of Operations will develop and maintain, in consultation with the prosecuting attorney, report forms with appropriate checklists to assist investigating public safety officers in documenting relevant information and maximizing efficiency. Any OWII investigation will be documented using these forms. Information documented elsewhere on the form does not need to be duplicated in the report narrative. Information that should be documented includes, at a minimum:

- (a) The field sobriety tests (FSTs) administered and the results.
- (b) The public safety officer's observations that indicate impairment on the part of the individual, and the public safety 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 Michigan or another jurisdiction.

### 503.4 FIELD TESTS

The Executive Lt. of Operations should identify standardized FSTs and any approved alternate tests for public safety officers to use when investigating violations of OWII laws.

### 503.5 CHEMICAL TESTS

A person implies consent under Michigan law to a chemical test or tests, and to providing the associated chemical sample as follows (MCL 257.625c):

# Kalamazoo Department of Public Safety

## Policy Manual

### *Driving While Intoxicated or Impaired*

---

- (a) The person operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles and the person is arrested for most OWII-related offenses.
- (b) A person who is afflicted with hemophilia, diabetes or a condition requiring the use of an anticoagulant under the direction of a physician is not considered to have given consent to the withdrawal of blood.

If a person withdraws this implied consent, or is unable to withdraw consent (e.g., the person is unconscious), the public safety officer should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample. ([See attachment: POLICY 503 - Chemical Test Procedures.pdf](#) )

#### 503.5.1 STATUTORY NOTIFICATIONS

A person arrested for OWI shall be advised of his/her chemical test rights by reading them from the appropriate form (MCL 257.625a).

Public Safety Officers shall advise drivers of commercial vehicles that a refusal to take a preliminary breath test is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100, or both, and will result in the issuance of a 24-hour out-of-service order (MCL 257.625a).

#### 503.5.2 CHOICE OF TESTS

Once an arrestee has submitted to a chemical test, they have the right to have a chemical test of their choosing administered/analyzed at their cost. Officers shall respect a viable choice of chemical test made by an arrestee, as provided for by law (e.g., breath will not be acceptable for suspected narcotics influence) (MCL 257.625a).

#### 503.5.3 BREATH SAMPLES

The Executive Lt. of Operations or designee 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.

Public Safety Officers obtaining a breath sample should monitor the evidential breath testing device for any sign of malfunction. Radios and other communication devices should be turned off or stored out of the area to eliminate radio interference during use of the evidential breath testing device. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to the Shift Commander.

#### 503.5.4 BLOOD SAMPLES

Only persons authorized by law to draw blood shall collect blood samples. The blood draw should be witnessed by the assigned public safety officer. No public safety officer, even if properly certified, should perform this task (MCL 257.625a).

Public Safety Officers should inform an arrestee that if he/she chooses to provide a blood sample, a separate sample can be collected for alternate testing. Unless medical personnel object, two samples should be collected and retained as evidence, so long as only one puncture is required.

# Kalamazoo Department of Public Safety

## Policy Manual

### *Driving While Intoxicated or Impaired*

---

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

If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she shall not be required to take a blood test (MCL 257.625c).

Such inability to take a blood test shall not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

#### 503.5.5 URINE SAMPLES

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

Urine samples shall be collected and witnessed by a public safety officer or jail staff member of the same sex as the individual giving the sample. The arrestee should be allowed sufficient privacy to maintain his/her dignity, to the extent possible, while still ensuring the accuracy of the sample (MCL 257.625a).

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

#### 503.5.6 OWI, OUID AND STOMACH CONTENT KITS

- (a) For specimens that are collected at Bronson Hospital, Bronson shall use their own kits for collection. The Bronson kit is analyzed by Bronson Toxicology lab.
- (b) The OUID, OWI-Borgess and Stomach content kits that are prepared by KDPS Lab can be located in the booking room in the cabinet on the bottom shelf under the Data Master breathalyzer machine. The OWI-Borgess, OUID and stomach content kits stored at KDPS are analyzed by Spectrum Toxicology lab.
- (c) The only kit in the vault is the MSP toxicology specimen kit that is used for suspected date rape drugs. The instructions of the MSP toxicology kit is on the shelf where the kits are stored if you have questions. The MSP toxicology specimen kit is analyzed by the MSP toxicology lab in Grand Rapids.

#### 503.6 REFUSALS

When an arrestee refuses to provide a chemical sample, public safety officers shall:

- (a) Advise the arrestee of the requirement to provide a sample.
- (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, public safety officers shall advise the person of the refusal consequences by reading from the appropriate form (MCL 257.625e).

# Kalamazoo Department of Public Safety

## Policy Manual

### *Driving While Intoxicated or Impaired*

---

#### 503.6.2 BLOOD SAMPLE WITHOUT CONSENT

A blood sample may be obtained from a person who refuses a chemical test when a search warrant has been obtained (MCL 257.625d). ([See attachment: POLICY 503 - DWI Search Warrant Procedures.pdf](#) )

#### 503.6.3 FORCED BLOOD SAMPLE

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the public safety 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 public safety officer), and attempt to persuade the individual to submit to providing such a sample without physical resistance.
  1. This dialogue should be recorded on audio and/or video when practicable.
- (d) Ensure that the blood sample is taken in a medically approved manner.
- (e) Ensure that the forced blood draw is recorded on audio and/or video when practicable.
- (f) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances.
- (g) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

If a supervisor is unavailable, public safety officers are expected to use sound judgment and perform the duties of a supervisor, as set forth above.

#### **503.7 ARREST AND INVESTIGATION**

Generally, a public safety officer with probable cause may arrest a person for DWII offenses not committed in the public safety officer's presence when (MCL 257.625a; MCL 257.625m):

- (a) The person is found in the driver's seat of a vehicle parked or stopped on a highway or street and any part of the vehicle intrudes into the roadway.
- (b) The driver was involved in an accident.

#### 503.7.1 DETERMINATION OF APPROPRIATE CHARGE

- (a) Operating While Intoxicated - An offender, whether licensed or not, will not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicle, including an area designated for the parking of vehicles, within this state when:
  1. The offender is under the influence of an alcoholic liquor, a controlled substance, or a combination of both.
  2. The offender has a BAC of 0.08 or more.

# Kalamazoo Department of Public Safety

## Policy Manual

### *Driving While Intoxicated or Impaired*

---

- (b) Operating While Intoxicated High BAC - An offender, whether licensed or not, will not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicle, including an area designated for the parking of vehicles, within this state when the offender has a BAC of 0.17 or more and;
  - 1. Is at fault in a serious accident.
  - 2. Leaves the scene of an accident.
  - 3. Was driving in a reckless manner.
  - 4. Resists arrests.
  - 5. Displays other serious or unusual behavior.
  - 6. Has a BAC of .20 or more.
  
- (c) Operating While Visibly Impaired - An offender, whether licensed or not, will not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicle, including an area designated for the parking of vehicles, within this state when:
  - 1. Due to the consumption of alcoholic liquor, a controlled substance, or a combination of both.
  - 2. The offender's ability to operate a motor vehicle is visibly impaired.
  
- (d) Operating With the Presence of a Controlled Substance - An offender, whether licensed or not, will not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicle, including an area designated for the parking of vehicles, within this state if the offender has in his or her body any amount of a schedule 1 drug or cocaine. Marijuana is a schedule 1 drug.
  
- (e) Operating While Intoxicated, Impaired, or with the Presence of a Controlled Substance Serious Injury - An offender, whether licensed or not, will not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicle, including an area designated for the parking of vehicles, within this state causing serious impairment of a body function when:
  - 1. Operating While Intoxicated.
  - 2. Operating While Impaired.
  - 3. Operating with the Presence of a Controlled Substance.
  
- (f) Operating While Intoxicated, Impaired, or with the Presence of a Controlled Substance Causing Death - An offender, whether licensed or not, will not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicle, including an area designated for the parking of vehicles, within this state causing the death of another when:

# Kalamazoo Department of Public Safety

## Policy Manual

### *Driving While Intoxicated or Impaired*

---

1. Operating While Intoxicated.
  2. Operating While Impaired.
  3. Operating with the Presence of a Controlled Substance.
- (g) Minor with BAC – An offender who is less than 21 year of age, whether licensed or not, will not operate a vehicle upon a highway of other place open to the general public or generally accessible to motor vehicle, including an area designated for the parking of vehicles, within this state with a BAC of .02 to .07.
- (h) Child Endangerment – An offender, whether licensed or not, will not operate a vehicle with a passenger who is less than 16 years old while violating any of the above listed offenses. This is an additional charge to any of the above listed offenses.

#### 503.7.2 RIGHT TO ATTORNEY CONTACTS

Arrestees should be allowed a reasonable opportunity to consult with an attorney before being required to submit to a chemical test if the delay would not unreasonably interfere with evidence collection.

#### 503.7.3 RIGHT TO SECOND TEST

A person who takes a chemical test shall be given a reasonable opportunity to have a person of his/her own choosing administer a separate chemical test within a reasonable time after his/her detention (MCL 257.625a).

#### 503.7.4 REPORTING

The Executive Lt. of Operations or designee shall ensure that this department complies with all state reporting requirements pursuant to MCL 257.625i.

#### 503.7.5 TEMPORARY LICENSES

In the case of a positive test result or a refusal, the arresting public safety officers shall ensure that temporary licenses are issued and licenses are destroyed pursuant to MCL 257.625g. Related state forms shall be completed and forwarded in a timely fashion. It is KDPS policy that when required to destroy an offender's license, Public Safety Officers shall clip the corner of the license and return it along with the temporary license so that the offender still has a picture ID that confirms their identity.

In cases where a blood or urine draw was done, officers shall confiscate the license pending the return of the blood and/or urine results. If the results confirm a result of .08% BAC or greater, the Operations Division Administrative Assistant shall clip the license corner as described above and return the license via U.S. Mail to the offender. If the results are less than .08% BAC, the license shall not be destroyed and shall be returned to the offender via U.S. Mail.

#### 503.7.6 VEHICLE PLATE CONFISCATION

If the Secretary of State indicates that plate confiscation is required due to a prior conviction, the officer will:

# Kalamazoo Department of Public Safety

## Policy Manual

### *Driving While Intoxicated or Impaired*

---

- a. Seize and destroy the license plate if registered in the State of Michigan.
- b. Issue a temporary paper plate.
- c. Submit the court copies of the temporary plate to dispatch for LEIN entry.
- d. Include the court copies with LEIN entry with the report.
- e. Narrate this information in the criminal report under the heading "PLATE CONFISCATION".

#### **503.8 RECORDS DIVISION RESPONSIBILITIES**

The Operations Division Administrative Assistant will ensure that all case-related records are transmitted according to current procedures and as required by the City and/or Prosecuting Attorney's Office.

#### **503.9 ADMINISTRATIVE HEARINGS**

The Records Supervisor will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to the Michigan Secretary of State (SOS).

Any public safety officer who receives notice of required attendance at an administrative license suspension hearing should promptly notify the City attorney.