

	<b>KENOSHA POLICE DEPARTMENT</b>			
	<b>POLICY AND PROCEDURE</b>			
	<b>61.4 Arrest Involving Operating a Motor Vehicle While Under the Influence of Alcohol/Drugs (OWI)</b>			
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**I. PURPOSE**

The purpose of this policy is to establish procedures for the detection, testing, arrest and processing of drivers who are impaired due to intoxicants, controlled substances, or other drugs.

**II. POLICY**

Impaired drivers are a serious threat to roadway users. It is department policy that officers will actively apprehend persons operating vehicles while under the influence of intoxicants, controlled substances, or any other drug.

When probable cause exists to believe that a person is operating a vehicle while impaired by alcohol or drugs an arrest of the operator **shall** be made.

**III. PROCEDURES**

**A. Detection**

1. Members will be alert for impaired driving behavior. When observing such behavior, officers will gather evidence to stop the vehicle. Officers will not permit unsafe driving that endangers the safety of others.
2. On contact with the operator, the officers will monitor that person for signs of impairment and request a back-up unit as necessary.
3. Officers will note the demeanor, physical appearance and actions of the suspect such as speech, balance, attitude, redness of eyes, and odors, etc.

**B. Tests and Screening**

1. Officers will attempt to conduct field sobriety tests on all drivers suspected of operating a vehicle while impaired. The tests should be conducted at the scene unless other factors prohibit it. The tests should be on a flat, lighted area out of traffic and conducted in a consistent manner.
2. Unless the driver is uncooperative or physically unable to perform, tests will be given as follows:
  - a. Standardized Field Sobriety Tests (SFST): horizontal gaze nystagmus (HGN), walk/turn (heel to toe), and one leg stand.
  - b. Optional Tests: alphabet recital, finger to nose.
  - c. Officers not trained in HGN should conduct all other tests in a & b.

## 61.4 Arrest Involving Operating a Motor Vehicle While Under the Influence of Alcohol/Drugs (OWI)

### C. **Arrest**

Based on the totality of the circumstances the officer will decide if there is probable cause to arrest. The officer will take into consideration the circumstances that brought the driver to the attention of the officer, i.e. traffic accident, erratic behavior, witness statement, etc. The officer will also take into consideration the operator's behavior, performance of SFST, other tests and observations.

If probable cause exists to believe that a person was operating a vehicle while impaired by alcohol or drugs an arrest of the operator **shall** be made.

1. If arrested, the driver will be handcuffed and searched, including a search of the vehicle.
2. Accidents with serious injury/death and where OWI is suspected, notification will be made to the Detective Bureau and District Attorney. The investigation may also require the assistance of an officer with special skills in accident investigation and/or evidence collection.

### D. **Vehicle**

1. The officer will secure the person's vehicle and its contents prior to leaving the scene. The vehicle may be:
  - a. Left legally parked.
  - b. If it is illegally parked, it may be moved if consent can be obtained from the owner/driver. If consent cannot be obtained the vehicle may be towed.
  - c. With owner/driver's consent the vehicle may be turned over to a sober, valid person to be removed.
2. This does NOT mandate release if the vehicle is to be seized as evidence.
3. The officer is not required to remain at the scene to attempt to locate a driver to remove the vehicle.
4. If there are other occupants in the vehicle and it is being secured or towed, the officer will attempt to make reasonable arrangements for other occupants but the officer is NOT expected to transport such persons.

### E. **Chemical Tests**

1. The department designates the breath test as the primary chemical test of intoxication for 1<sup>st</sup> offense and subsequent offenses. Blood is the Primary test for all OMVWI related crimes involving injury or death. Blood will be the department's primary test when it is believed that the driver is under the influence of drugs, other than alcohol. The officer may modify the primary test if other conditions or circumstances exist.
2. Prior to requesting a person to submit to such test, the officer will issue a citation for OWI and inform the driver of such; if the driver is charged with an offense where a citation is not used, such as a felony, the driver will be informed of the charge.
3. The driver will be read the Informing the Accused Form. Officers should avoid further explanation of this form. If consent is given, the appropriate test will be administered.
4. An officer may REQUIRE a blood sample withdrawal from a person who is unconscious or otherwise not capable of giving consent if there is probable cause to

#### 61.4 Arrest Involving Operating a Motor Vehicle While Under the Influence of Alcohol/Drugs (OWI)

believe the person violated WI ss. 346.63(1), (2), (2m) or 940.25, 940.09 or an ordinance that adopts such laws.

5. An officer may forcibly cause the taking of blood from a suspect or from an arrested person when the following conditions have been met:
  - The blood draw is taken to obtain evidence of intoxication from a person lawfully under arrest or based upon probable cause of a drunk-driving related or other alcohol related violation or crime;
  - There is a clear indication that the blood draw will produce evidence of intoxication;
  - The method used to take the blood sample is a reasonable one and performed in a reasonable manner;
  - The arrestee presents no reasonable objection to the blood draw (the Wisconsin Supreme Court has held that the fears of needles, religious reasons are not reasonable objections to drawing blood).

In all OWI cases, the subject, after his arrest should be given the opportunity to consent; if the subject refuses to consent to the department's primary blood/breath test, the officer can charge the subject with the refusal and still forcibly take blood. The minimum amount of force necessary will be used to accomplish the blood draw.

6. If the results show a prohibited alcohol concentration a citation or charges will be issued as appropriate.

#### F. **Post Test/Refusal Processing:**

1. Given the circumstances of the arrest, the results of chemical testing, statutory requirements and the manner in which the investigation has progressed, the officer may need to complete the following standardized forms:
  - Alcohol Influence Report – The Alcohol Influence Report will be completed by officer; if Miranda is waived, questions may be asked of the driver.
  - Notice of Intent to Revoke – completed by officer, read to the driver refusing a test and issued a copy.
  - Notice of Intent to Suspend – completed by officer, read to the driver, and issued a copy, if the PAC test shows a prohibited alcohol concentration. If the results are delayed, Records will mail the form. Officers should not complete the "notice date" if the form is mailed. "Notice Date" will be completed by Records personnel.
2. The arrested person's driver's license may be confiscated in conformity with statutory and administrative guidelines. This includes when the subject refuses to take the evidentiary test or when the test results indicate a prohibited alcohol concentration.

#### G. **Release of Driver after Processing**

Statutory Reference:

345.24 Officer's action after arrest for driving under influence of intoxicant.

(1) A person arrested under s. 346.63 (1) or (5) or an ordinance in conformity therewith or s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a vehicle, may not be released until 12 hours have elapsed from the time of his or her arrest

#### 61.4 Arrest Involving Operating a Motor Vehicle While Under the Influence of Alcohol/Drugs (OWI)

or unless a chemical test administered under s. 343.305 shows that the person has an alcohol concentration of less than 0.04, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

(2) If the person was issued an out-of-service order under s. 343.305 (7) (b), the person may be released as provided under sub. (1) but the person's license may be retained until the out-of-service period has expired.

1. Whenever practical all persons arrested for OWI will be processed through the Kenosha County Detention Pretrial facility. This will ensure that Wisconsin State Statute 345.24 Officer's action after arrest for driving under the influence of intoxicant is complied with.
2. An exception to the procedure may be if the person's medical condition requires admission to the hospital. In this situation the officer must ensure that the conditions of 345.24 are complied with.

#### H. **Reports**

In addition to the above reports, a narrative completed by the arresting officer and any assisting members will be completed and attached as is appropriate.

Reports must include officer observations of any observed driving behavior, the SFST results, suspect appearance and cooperation, any admissions made and the test results if know. In the absence of a blood/breath test, the officer's report must contain enough details to support the violation. An officer's narrative report should also include information relative to the suspect's booking or release.