

# UW Whitewater Police



## OWI Procedures

Number:  
61.1.10

No. Pages:  
8

Special Instructions:  
CALEA 61.1.10

Approved By:  
Chief Kiederlen

Effective Date:  
1/17/23

Revised Date:  
New

Revision number:

### I. Purpose

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

### II. Definitions

**Drive**: The exercise of physical control over the speed and direction of a motor vehicle while it is in motion (§346.63(3)(b)).

**Drug Evaluation and Classification (DEC)**: A systematic, standardized method of examining a suspect to determine whether the person is under the influence of one or more categories of drugs.

**Drug Recognition Expert (DRE)**: A law enforcement officer who has successfully completed the National Highway Traffic Safety Administration (NHTSA) approved curriculum for the Drug Evaluation and Classification process, and is certified by the NHTSA and the International Association of Chiefs of Police as a Drug Recognition Expert.

**Great Bodily Harm**: Bodily injury which creates a high probability of death or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury (§939.22(14)).

**Highway**: All public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways in the state, county or municipal parks and in state forests which have been opened to the use of the public for the purpose of vehicular travel and roads or driveways upon the grounds of public schools, as defined in §115.01(1), and institutions under the jurisdiction of the county board of supervisors, but does not include private roads or driveways as defined in sub. (46) §340.01(22). (Chapter 346 applies exclusively upon highways except as otherwise expressly provided in §346.02(1)).

**Motor Vehicle**: A vehicle that is self-propelled, including a trackless trolley bus, except that a snowmobile, ATV, electric personal assistive mobility device shall only be considered a motor vehicle for purpose made specifically applicable by statute §340.01(35).

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**Negligent:** One is considered "negligent" when he/she fails to exercise ordinary care in the operation of a vehicle.

**Operate:** The physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion (§346.63(1)(c)).

**OWI:** Operating Motor Vehicle While Impaired.

**Private Road or Driveway:** Every way or place in private ownership and used for vehicular travel only by the owner and those having expressed or implied permission from the owner and every road or driveway upon the grounds of public institutions other than public schools, as defined in §115.01(1), and institutions under the jurisdiction of the county board of supervisors (§340.01(46)).

**Restricted Controlled Substance:** According to WI §340.01(50m): Any of the following: a controlled substance included in schedule I under Ch. 961 other than a tetrahydrocannabinol, a controlled substance analog as defined in §961.01(4m) of a controlled substance, cocaine or any of its metabolites, methamphetamine, or delta—9—tetrahydrocannabinol.

**Roadway:** The portion of a highway between the regularly established curb lines or that portion which is improved, designed or ordinarily used for vehicular travel, excluding the berm or shoulder. In a divided highway, the term "roadway" refers to each roadway separately but not to all such roadways collectively (§340.01(54)).

**Street:** Every highway within the corporate limits of a city or village except alleys (§340.01(64)).

**Substantial Bodily Harm:** Bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth (§939.22(38)).

**Under the Influence of an Intoxicant:** The actor's ability to operate a vehicle or handle a firearm or air gun is materially impaired because of his or her consumption of an alcoholic beverage, a controlled substance, a controlled substance analog under Ch. 961, any other drug under §939.22(42).

**Vehicle:** Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except railroad trains. A snowmobile, an all-terrain vehicle, and an electric personal assistive mobility device shall not be considered a vehicle except for purposes made specifically applicable by statute §340.01(74).

## III. Policy

Impaired drivers are a serious threat to public safety. It is the policy of the UW-Whitewater Police Department (UWWPD) that officers will apprehend persons operating vehicles while under the influence of intoxicants, controlled substances or any other drugs in accordance with WI §346.63 and all related sub sections as well as §346.71(2) and §343.305 and all related sub sections.

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## IV. Procedure – OWI

### A. Training

1. Patrol officers shall receive training in OWI enforcement during the Police Training and Evaluation period. This includes training in detection and processing of OWI arrestees and standardized field sobriety testing training.
2. Officers will also be trained by the Wisconsin Department of Transportation Chemical Test section as Intoximeter operators.

### B. Detection

1. Officers will be alert for signs of impairment.
2. Upon observing behavior indicative of intoxicated operation, officers shall gather sufficient evidence to establish reasonable suspicion to stop the vehicle. However, officers should not permit unsafe driving to continue for an unreasonable length of time so as to endanger other motorists or pedestrians.
3. Officers should attempt to stop the vehicle in an area that will not interfere with or endanger other traffic or the officer.
4. Upon contact with the operator, officers will watch for signs of impairment.
5. When an officer suspects intoxication, and prior to the administration of field sobriety tests, he or she shall request a backup unit if one is available, or request mutual aid.
6. Officers will note the demeanor, actions of the suspect such as speech, balance, attitude, and odors.

### C. Tests and Screening

1. Officers will attempt field sobriety tests on drivers suspected of OWI; tests should be conducted at the scene unless other factors necessitate moving, such as inclement weather. When possible, tests should be on a flat, lighted area that is 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. Officers may use other optional tests including, but not limited to: alphabet recital, finger to nose, finger dexterity, counting backwards, etc.
  - c. Officers may use a Preliminary Breath Test (PBT).

### D. Arrest

1. The officer will decide if there is probable cause to arrest based on SFST, other tests and his/her observations. If arrested, the driver will be handcuffed and searched, including a search of the vehicle (for evidence supporting the OWI charge, alcohol and/or open containers). Driver will remain handcuffed for transport unless extenuating circumstances are present.
2. If the officer suspects that the person may be under the influence of a controlled substance or other drug, the officer will place the person under arrest.

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3. If the officer suspects that the person may be under the influence of a controlled substance or other drug and was involved in a serious crash, the officer will place the person under arrest and make a reasonable attempt to arrange for a DRE to perform an evaluation.

## E. Arrestee's Vehicle

1. The officer will attempt to secure the person's vehicle and its contents prior to leaving the scene as outlined below:
  - a. The driver may have already parked the vehicle in a legal parking location. In this case, the officer should secure the vehicle in place.
  - b. If there is a person at the scene who is willing to take responsibility for the vehicle, the vehicle may be released if the driver or registered owner gives consent for this vehicle to be removed from the scene by this person; AND the person possesses a valid driver's license; AND the person is not under the influence of an intoxicant and/or drugs in the opinion of the arresting officer. The officer may perform field sobriety tests and/or a P.B.T. test on the person to ensure the person's ability to drive.
  - c. If the vehicle is in the roadway or not legally parked and a parking location is nearby, the driver may authorize an officer to move his or her vehicle to a legally parked stall. In this case, the officer should secure the vehicle after moving it.
  - d. If no one is immediately available to take possession of the vehicle and it is not in a legal parking location, a tow company shall be contacted to move the vehicle at owner expense.
  - e. If there are other occupants in the vehicle and it is being secured or towed, the officer will attempt to make reasonable arrangements for them.
  - f. This policy does NOT mandate release of the vehicle if the officer wants the vehicle for evidence. The vehicle may be impounded if the officer determines it should be held for evidentiary purposes.
  - g. If the vehicle has been involved in a crash that results in serious bodily injury or death, the vehicle must be taken to a secure impound facility and held pending release by the District Attorney's Office.

## F. Chemical Tests

1. UWWPD designates the breath test as the primary chemical test of intoxication for 1<sup>st</sup> offenses, and blood for 2<sup>nd</sup> and subsequent offenses and all felonies.
  - a. If drug use is suspected, blood should be considered as the primary test as it is the only means to quantify the level of drugs present.
  - b. If you suspect a specific drug, not only put the facts and circumstances in your report, identify the suspected drug on the test document.
2. Prior to requesting a person to submit to such test, the officer will cite the driver for operating while under the influence, or operating with a restricted controlled substance. The officer shall then take a citation number for all subsequent paperwork.

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3. The officer will read the driver the Informing the Accused form and should avoid further explanation or interpretation of the form.
  - a. If consent is given, an appropriate test is administered.
  - b. For cases of second or subsequent offenses where consent is not obtained due to a language barrier, officers should apply for a search warrant.
4. Blood Testing:
  - a. In all arrests where a blood sample is taken, the blood sample shall be drawn by a medical technician in the presence of the arresting officer.
  - b. The sample should be labeled, sealed and packaged by the officer or the technician in the officer's presence.
  - c. The sample shall remain in the officer's physical custody until transported to UWWPD and placed into a temporary evidence locker.
  - d. The officer placing the sample into the evidence locker will notify an evidence custodian of blood evidence that needs to be submitted to the Wisconsin State Laboratory of Hygiene.
  - e. The evidence custodian will complete the process of sending the blood evidence to the State Laboratory of Hygiene and complete a supplemental report.
  - f. After the blood results are received back from the State Laboratory of Hygiene, if the analysis indicates the driver's BAC is over the legal limit, or if the presence of a restricted controlled substance is present:
    - a. The officer should then complete the applicable citation or charges to the District Attorney's Office.
    - b. The officer should then complete the Notice of Intent to Suspend, and notify administrative staff of case update.
    - c. The driver's copy of the citation(s) and copies of the Informing the Accused form and Notice of Intent to Suspend should then be mailed to the operator.
    - d. A supplemental report shall then be completed.
5. Search Warrants for Blood Testing:
  - a. If an officer requires the withdrawal of a blood sample from a person who is unconscious or otherwise not capable of withdrawing his/her implied consent to an evidentiary chemical test, the officer should proceed with the search warrant process. The absence of a refusal from a subject is no longer considered consent under implied consent. The search warrant process should be utilized if the officer has probable cause to believe the person has violated Section 346.63(1), (2), or (2m) or Section 940.25 or 940.09, Wis. Stats., or a local ordinance in conformity with sec. 346.63(1) or (2m).
  - b. Whenever a person is arrested for homicide by intoxicated use of a motor vehicle, Wis. Stats. 940.09, or injury by intoxicated use of a motor vehicle, Wis. Stats. 940.25, and refuses to submit to a chemical test for intoxication, the officer shall proceed with the search warrant process for a blood draw.

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## G. Refusal Processing

1. If the driver becomes disorderly during the chemical testing process, he or she will be deemed to have refused the test.
2. If a driver refuses to submit to an evidentiary chemical breath test, the Intoximeter test procedure should be completed and the driver's refusal noted in lieu of a breath sample.
3. For refusals, the Notice of Intent to Revoke Operating Privileges should be issued and the driver's copy of all citations provided.
4. For OWI third or subsequent offenses, a search warrant for the collection of a blood sample should be applied for when the arrestee refuses the request to submit to an evidentiary test.

## H. Post Test Paperwork

1. Refusal: Notice of Intent to Revoke
  - a. Officer will complete this form and read it to the driver refusing a test.
  - b. The driver refusing the test will be given a copy.
2. Sample Given: Notice of Intent to Suspend
  - a. Officer will complete this form and read it to the driver.
  - b. The driver will be issued a copy if the chemical test shows a prohibited alcohol concentration.
  - c. If the results are delayed, the form should be mailed. Officers should not complete the "notice date" until the form is mailed.
3. Alcohol/Drug Influence Report – If Miranda is waived, the questions on this form may be asked of the driver to assist with the investigation and potential data collection.

## I. Release of Driver after Processing

1. First Offense: Drivers may be released to a responsible sober adult who accepts responsibility for the driver. Persons accepting responsibility must read and sign the Release Form. If the person refuses to sign the form, the driver will not be released.
2. Drivers who do not have a responsible party, can only be released if their BAC is below a .04. An officer may use their discretion and wait with the arrested person, under their supervision, in the booking room if they believe the arrested person's BAC will drop below a .04 in a reasonable amount of time. This decision should be based on the arrested person's BAC and the distance/time it takes an officer to travel to the Walworth/Jefferson County Jails.
3. If BAC is a .04 or higher, and waiting in the booking room is not a reasonable option, an officer shall transport the arrested person to the proper county jail the offense took place in. The arrested person shall then be confined until sober, based on the jail's policy.

## J. Documentation

1. Department of Transportation (DOT): The following documentation must be submitted to the DOT within five (5) days of the date on the Notice of Intent to Suspend:
  - c. Notice of Intent to Suspend;

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- d. Intoximeter result sheet;
  - e. Informing the Accused;
  - f. Police report/narrative (completed draft is acceptable).
  - g. Documentation should be attached to the purple sheet so that administrative staff can ensure it is sent in within the guidelines specified by the DOT. DOT will not accept the Notice of Intent to Suspend after the five-day timeframe has passed.
2. Complete investigations and accurate, detailed, narrative reports are critical to successful OWI arrests and prosecutions.

## V. Procedure – Intoxicated Drivers in Accidents with Injuries or Fatalities

- A. Unique circumstances exist when an officer suspects that a driver, involved in an injury or fatal accident, is intoxicated. Officers are not likely to regularly encounter these situations and thus should be aware that special procedures are to be followed. This policy deals with those procedures.
  1. 346.63(2) Causing Injury by OWI:
    - a. Elements
      - i. Defendant must have driven or operated a motor vehicle.
      - ii. Defendant must have been under the influence of an intoxicant (alcohol, drugs or combination).
      - iii. Defendant must have caused injury to another person (Injury means any injury, and does not rise to the level of great bodily harms, as defined above).
    - b. Procedure
      - i. In the case of a crash involving serious injury or death, blood shall be taken from every involved operator where alcohol or drugs are detected, or there is reason to believe the operator violated any traffic law. In other circumstances, officers shall make every attempt to obtain a blood sample of the operator(s) involved in a serious injury or fatality.
      - ii. In the case of a crash involving serious injury or death, notification shall be made to supervisor and crash reconstruction team (State Patrol).
      - iii. The on-call DA should regularly be consulted in all serious injury or fatal crashes.
      - iv. Where there is probable cause, the operator should be arrested (no citation) for violation of 940.25, read the Informing the Accused, and taken to a medical facility for a blood draw, following normal procedures. Upon refusal, see search warrant procedure.

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- v. In the case of a crash involving substantial bodily harm, where the officer detects any presence of alcohol, drugs or a combination, but does not yet have probable cause, the operator should be read the informing the accused, and taken to a medical facility for a blood draw (343.305(3)(ar)1), following normal procedures. Upon refusal, arrest the operator under 343.305(3)(a) and follow the search warrant procedure.
- vi. In the case of a crash involving great bodily harm or death, where the officer has reason to believe that the operator violated any state or local traffic law, but does not yet have probable cause for arrest under 940.25, the operator should be read the informing the accused, and taken to a medical facility for a blood draw (343.305(3)(ar)2). Upon refusal, arrest the operator under 343.305(3)(a) and follow the search warrant procedure.
- vii. Operators of vehicles involved in alcohol related fatal crashes that are killed are required to be tested under WI State Statute 346.71(2) (the Medical Examiner's Office handles the sampling and testing of deceased individuals). Surviving drivers involved in fatal crashes shall be processed in accordance with this policy. If no probable cause exists to require chemical testing of a surviving driver, the officer should encourage the driver to voluntarily submit to testing.