

PLANNING AND DEPLOYMENT
TRANSMITTAL OF WRITTEN DIRECTIVE

FOR SIGNATURE OF: James E. White, Chief of Police

TYPE OF DIRECTIVE: Manual Directive 204.3

SUBJECT: OPERATING WHILE INTOXICATED

ORIGINATED OR REQUESTED BY: Planning, Research, and Deployment

APPROVALS OR COMMENTS:

The contents of the above manual directive have been reviewed and approved by Deputy Chief Mark Bliss and Deputy Chief Franklin Hayes. Revisions are indicated with italics. The last effective date for this directive was May 12th, 2015. This newly revised directive will rescind the current Operating While Intoxicated Policy, 204.3. Once reviewed, the newly revised directive will then be submitted to the associated Reviewing Office before submission the BOPC.

The recommended changes reflected in this policy are as follows:

1. 204.3-3 – Definitions - This section was previously titled "General Procedures." The section has since been renamed, and all definitions now shown in this section were rewritten primarily through the use of the following resources: Michigan Compiled Laws; DWI Detection and Standardized Field Sobriety Testing Participant Manual (2018); Michigan DataMaster DMT Evidential Breath Testing Training Manual (2018); and Administrative Rules "Test for Breath Alcohol" (2018).
2. 204.3-4 – Detection Process – This section was newly created with content drawn primarily from the DWI Detection and Standardized Field Sobriety Testing Participant Manual (2018).
3. 204.3-6 – Preliminary Breath Alcohol Test (PBT) – This section was revised to include information from the Administrative Rules "Test for Breath Alcohol" (2018) and Detroit Police Department's Traffic Enforcement, which corresponds with DPD teletype #21-0326.
4. 204.3-7 – Evidential Breath (Alcohol) Test (DataMaster DMT) – This section was rewritten to include updated information from the Administrative Rules "Test for Breath Alcohol" (2018) and Michigan DataMaster DMT Evidential Breath Testing Training Manual (2018).
5. 204.3-10 – Other OWI Procedures – This section was reorganized to incorporate relevant and accurate information contained within DPD's Directive 204.3 "Operating While Intoxicated" from 2015. Additionally, new

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subsections 204.3-10.3 "Open Intoxicants In Motor Vehicle" and 204.3-10.5 "Under 21 OWI Arrests/Violations" were created and added to this section drawing information from Michigan Compiled Laws; Michigan Official Order 53; and DPD Manual Directive 204.2 "Traffic Operations."

Though the recommended changes listed above are not comprehensive concerning this directive, they do comprise the most notable and extensive revisions.

[Handwritten Signature]
1/14/22

A P P R O V E D
FEB 23 2022
[Handwritten Signature]
SECOND DEPUTY CHIEF
OFFICE OF LEGAL ADVISOR

A P P R O V E D
FEB 25 2022
[Handwritten Signature]
CHIEF OF POLICE
OFFICE OF THE CHIEF

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Series 204 Operations	Effective Date	Review Date <i>Three Years</i>	Directive Number 204.3
Chapter 204 – Traffic Operations			
Reviewing Office <i>Traffic Enforcement Unit/Detroit Detention Center</i>			<input type="checkbox"/> New Directive <input checked="" type="checkbox"/> Revised <small>Revisions in <i>italics</i></small>
References			

OPERATING WHILE INTOXICATED

204.3 - 1 POLICY

It is the policy of the Detroit Police Department (DPD) to actively seek out and remove impaired drivers from the streets of the city. These impaired drivers, whether due to alcohol, drugs or intoxicating substance(s), present a significant risk to *both the safety of the public and themselves, and as such, cannot be tolerated.*

204.3 - 2 PURPOSE

This policy provides Department members with the guidelines for Operating While Intoxicated (OWI) investigations, documentation of evidence, and preparation of required paperwork for OWI arrests. *This policy also includes key points from the Administrative Rules, set forth by the Michigan Department of State Police, regarding pertinent information for the Certified Preliminary and Evidentiary Breath (Alcohol) Testing instruments.*

204.3 - 3 Definitions

204.3 - 3.1 Administrative Rules

The drunken driving statute has granted the Michigan Department of State Police mandatory rule-making power. An administrative rule promulgated under this authority carries the full weight of the law. The Administrative Rules regarding "Test for Breath Alcohol" set forth by the Department of Michigan State Police and filed with the Secretary of State on January 16th, 2018 have been utilized for this Department policy and shall be upheld by DPD.

204.3 - 3.2 Alcohol Standard

A certified alcohol standard.

204.3 - 3.3 Class Operator

For the purposes of this policy, a class operator is a Department member who has successfully completed the appropriate Department-approved training courses and received certification for the administration, verification, calibration, limited service, service, and/or repair of respective tests and/or testing instruments, including the Preliminary Breath Alcohol Test (PBT) and Evidential Breath (Alcohol) Test (DataMaster DMT).

204.3 Operating While Intoxicated**204.3 - 3.4 Detection Process**

The entire process of identifying and gathering evidence to determine whether or not a subject should be arrested for an OWI violation, which includes observations of both the vehicle and the operator as well as the administration of tests to determine impairment.

204.3 - 3.5 Equipment

Evidential and preliminary breath test instruments, simulator devices, forms, and any accessories and supplies necessary for compliance with the procedures outlined in the Administrative Rules regarding "Test for Breath Alcohol" set forth by the Department of Michigan State Police and filed with the Secretary of State on January 16th, 2018.

204.3 - 3.6 Evidential Breath (Alcohol) Test

For the purposes of this policy, an evidential breath test refers to the breath test administered for the detection of alcohol through the use of the DataMaster DMT.

204.3 - 3.7 Implied Consent

A person who 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, within this state is considered to have given consent to chemical tests of their blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or other intoxicating substance or any combination of them.

204.3 - 3.8 Operating While Intoxicated (OWI)

The operation of vehicles by persons impaired and/or under the influence of alcohol and/or other drugs. Regarding an individual of legal drinking age, a bodily alcohol content of .08 or more (per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine) is considered to be under the influence with the exception of specific circumstances (i.e., commercial drivers, operators carrying firearms, etc.), which may have different BAC standards. For the purposes of this policy "Operating Under the Influence" (OUI) and "Driving While Intoxicated" (DWI) will be considered synonymous with OWI.

204.3 - 3.9 Preliminary Breath Alcohol Test (PBT)

A pre-arrest breath test administered during the investigation of a possible OWI violator to obtain an indication of the person's blood alcohol concentration through the use of a preliminary breath alcohol test instrument (PBT), which is a breath alcohol screening device that detects the presence or absence of alcohol in a person's blood.

204.3 - 3.10 Standardized Field Sobriety Tests (SFST)

Roadside tests that can be used to determine whether a subject is impaired. These tests include the Horizontal Gaze Nystagmus, Nine (9) Step Walk and Turn, and One Leg Stand.

204.3 Operating While Intoxicated**204.3 - 4 Detection Process**

1. *Detection is fundamental to all alcohol, controlled substances, or other intoxicating substance enforcement and is critical to the entire investigation. The detection process refers identifying and gathering evidence to determine whether or not a subject should be arrested for an OWI violation, which includes observations both of the vehicle and the operator as well as the administration of tests to determine impairment, sometimes referred to as pre-arrest screening. The following are examples of detection as it pertains to an OWI investigation:*
 - a. *Vehicle in Motion – observing the vehicle in operation to note any initial cues of a possible OWI violation and observations of the manner in which the operator responds to the signal to stop, if there is reasonable suspicion to conduct a traffic stop. Some observations while the vehicle is in motion can include but are not limited to drifting; swerving; problems stopping; varying speed; driving without headlights; slow or failure to respond to officer signals, etc.*
 - b. *Personal Contact – approaching, observing, and interviewing the operator of the vehicle while they are still inside the vehicle to note any face to face indicators of possible impairment. Some observations of the operator during personal contact can include but are not limited to bloodshot eyes; slurred speech; unusual actions or statements; the odor of intoxicants; alcohol containers; drug(s) and/or drug paraphernalia, etc.*
 - c. *Pre-Arrest Screening – administering Standardized Field Sobriety Tests (SFSTs), provided conditions allow for these tests to be administered safely, and the Preliminary Breath Test (PBT) to confirm the chemical basis of the subject's impairment. This is the final step in the detection process regarding OWI.*
2. *The entire detection process culminates in the decision of whether or not to make an arrest for OWI based upon probable cause. Officers should be mindful of their training when conducting OWI investigations and be aware of situational conditions that could change the course of the investigation (i.e. vehicle accident prior to observing vehicle in motion; personal contact cues with subject attributed to a medical condition as opposed to intoxication; roadway and/or traffic conditions creating an unsafe environment for the administration of certain SFSTs, etc.).*
3. *If the situation allows, officers should ask the driver if they have any medical conditions or if they are taking any prescribed medication that may cause impaired driving.*

204.3 - 5 Standardized Field Sobriety Tests (SFST)

1. *Field Sobriety Tests should be given to drivers prior to administering the preliminary breath test to support the officer's investigation, if the tests can be administered safely. All results and observations shall be documented on the investigating officer's incident report. Standardized Field Sobriety Tests (SFST) provide valuable evidence for prosecution, especially when the evidential breath*

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test is refused or suppressed in court. Field Sobriety Tests are subjective. If the *subject* being tested has formed a tolerance for alcohol, they may be able to perform the tests well enough to pass.

2. *Officers that are certified as Standardized Field Sobriety Test practitioners shall administer the following mandatory tests as outlined in the Standard Field Sobriety Test Manual:*
 - a. Horizontal Gaze Nystagmus;
 - b. Nine (9) Step Walk and Turn; and
 - c. One Leg Stand.
3. *Officers that are not certified as Standardized Field Sobriety Test practitioners should request a certified Standardized Field Sobriety Test practitioner to their location via dispatch. The officer's SFST practitioner certification should be verified once they make the location of the investigation, in these instances. If no certified SFST practitioner is available, the officers conducting the investigation shall notify a supervisor via dispatch and be guided by their instruction before continuing the investigation.*

204.3 - 6 Preliminary Breath Alcohol Test (PBT)**204.3 - 6.1 General**

1. *An officer who has reasonable cause to believe a person was operating a vehicle under the influence of alcohol may require the subject to take a PBT after SFSTs have been administered (Reference Section 204.3-5 of this Directive). If the investigating officer is not a certified PBT operator and/or does not have a PBT instrument available, they shall notify dispatch to request a PBT instrument be brought to the scene.*
2. *Given that PBT results are generally not admissible in court, unless certain legal exceptions apply, the administration of a PBT is not mandatory during the course of an OWI investigation. However, the PBT provides the information that alcohol is the chemical basis of impairment by yielding a direct indication of the subject's BAC level and should be conducted if possible to strengthen the probable cause for an OWI arrest.*
3. *Before administering a PBT, the officer must be aware of the following:*
 - a. The PBT is not a substitute for proper investigative techniques and field sobriety tests should still be conducted *if possible*.
 - b. *PBT instruments shall be operated only by officers who are appropriate class operators.*
 - c. *PBT instruments shall only be verified and calibrated by appropriate class operators.*
 - d. *PBT instruments shall only be repaired and serviced by appropriate class operators.*

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- e. *Respective operator class(es) for the aforementioned operator functions are specified in the Administrative Rules regarding "Test for Breath Alcohol" set forth by the Department of Michigan State Police and filed with the Secretary of State on January 16th, 2018. All PBT instruments, operator functions, required recordkeeping, and other operations associated with the Preliminary Breath Alcohol Test shall be kept in compliance with these Administrative Rules.*
4. *The commanding officer/officer in charge (OIC) of each precinct and/or Department entity shall be responsible for the monthly calibration of any PBT instruments kept for Departmental use within their command to have PBT equipment accuracy verified.*
5. *Monthly calibrations must be completed by the 10th of each calendar month. PBT instruments shall be taken to Metro Division to be verified by a qualified, designated member of the Traffic Enforcement Unit (TEU). All calibrations must be documented on the TD-053 form ("Preliminary Breath Test Instrument Calibration and Maintenance Log"). The Traffic Enforcement Unit shall be responsible for retaining copies of completed Preliminary Breath Test Instrument Calibration and Maintenance Logs.*
6. *Only Department-approved PBT instruments shall be used by trained/qualified officers. Officers who have purchased their own PBT instruments must have that instrument approved and calibrated by a qualified, designated member of TEU prior to using it during the course of Department investigations and duties.*

204.3 - 6.2 PBT Rights

Before giving the PBT, the field sobriety tests shall be given to the driver (if safe to do so), and they shall be advised of the PBT rights.

204.3 - 6.3 Standard PBT Rights

A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a civil infraction. *MCL 257.625a (2) (d) except as provided in subsections (4) and (5), which address person(s) operating a commercial motor vehicle.*

204.3 - 6.4 Commercial Driver PBT Rights

A person who was operating a commercial motor vehicle and who is requested to submit to a preliminary chemical breath analysis under this section shall be advised that refusing a peace officer's request to take a test described in this section is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both, and will result in the issuance of a 24-hour out-of-service order. *MCL 257.625a (4) and (5).*

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Before administering a PBT, the officer must be aware of the following:

- a. It must be determined that the subject has not smoked, regurgitated, or placed anything in their mouth for at least fifteen (15) minutes prior to the test. Also check to ensure there are no signs of injury or blood in the subject's mouth. This fifteen (15) minute period ensures the results will not be affected by any residual mouth alcohol that could possibly be left in the subject's mouth; and
- b. Make sure the subject expels all of the air from the lungs and takes the breath sample from the deep lung air to get the most accurate results. The subject should exhale at least five (5) to six (6) seconds to force out the deep lung air.

204.3 - 6.6 Interpretation of Preliminary Breath Test Results

1. If the PBT test is conducted and the test indicates .08 or above, the subject may be charged with Operating While Intoxicated (OWI), and they shall be arrested and conveyed to the Detroit Detention Center (DDC) for an evidential breath alcohol test.
2. If evidence of impairment (i.e. emotional instability, slurred speech, loss of balance, etc.) exists, whether or not the PBT is conducted, the subject shall be conveyed to the DDC and processed in accordance with standard breath alcohol procedures. If the blood alcohol level of a subject is .25 or higher, hospitalization shall be mandatory.
3. If an officer detects great impairment and the subject's PBT test indicates .08 or below, the officer shall convey the subject to the DDC for an evidential breath alcohol test. If the evidential breath alcohol test also indicates .08 percent or less, the officer must consider the possibility of narcotics or the possibility that the subject is suffering from some illness. Members may request, through Communications Section, a Drug Recognition Expert (DRE) to the scene if one is available.
4. If after administration of the field sobriety test and the PBT, it is the opinion of the investigating officer that the subject may not be under the influence of intoxicating liquor or other narcotics including prescription drugs, these conclusions shall be noted and the subject may be charged with other applicable offenses (i.e. reckless or careless driving).

204.3 - 7 Evidential Breath (Alcohol) Test (DataMaster DMT)**204.3 - 7.1 General**

1. *An officer who has arrested a subject for the charge of OWI based upon probable cause will subsequently transport the subject to the DDC where an evidential breath test may be administered, provided that the subject does not first require medical attention. Prior to the subject's transport to the DDC, the arresting officer(s) shall notify the dispatcher that a DataMaster class operator will be needed at the DDC for the evidential breath test.*
2. *The arresting officer(s) of the OWI subject shall administer SFSTs and/or PBT to the subject prior to an evidential breath (alcohol) test (DataMaster DMT) at the DDC, if circumstances allow (safety considerations for SFSTs, PBT subject refusal,*

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- etc.). The arresting officer(s) must be able to articulate the totality of the circumstances regarding an OWI arrest if the arrestee refuses both the SFSTs and the PBT.
3. Before administering an evidential breath test, officer(s) must be aware of the following:
 - a. The evidential breath test is not a substitute for proper investigative techniques and field sobriety tests, as well as PBT, should still be conducted if possible;
 - b. The DataMaster DMT shall only be operated by appropriate class operators;
 - c. The DataMaster DMT shall only be verified by appropriate class operators;
 - d. The DataMaster DMT shall only have limited service, service, or repairs conducted by appropriate class operators; and
 - e. Respective operator class(es) for the aforementioned operator functions are specified in the Administrative Rules regarding "Test for Breath Alcohol" set forth by the Department of Michigan State Police and filed with the Secretary of State on January 16th, 2018. **All evidential breath alcohol test instruments, equipment, operator functions, required recordkeeping, and other operations associated with the Evidential Breath Test shall be kept in compliance with these Administrative Rules.**

204.3 - 7.2 Equipment Accuracy and Malfunction

1. To retain state certification, the Michigan Department of State Police (MSP) require the evidential breath testing instrument be verified at least once per calendar week (Sunday - Saturday). The accuracy check for the DataMaster DMT is automatic. Refer to the DataMaster DMT Evidential Breath Testing Training Manual and the Administrative Rules.
2. For the purposes of this policy, the Detroit Detention Center shall be the record-keeping entity for the DataMaster DMT within the Detroit Police Department and ultimately bears the responsibility of said record-keeping. The Commanding Officer of the DDC may assign a member to serve as the designated individual responsible for record-keeping regarding the DataMaster DMT (record-keeper).
3. The designated record-keeper for the DataMaster DMT is responsible for ensuring that that DataMaster DMT is operational in accordance with the DataMaster DMT Evidential Breath Testing Training Manual (2018) or any updated version of this manual, as well as the Administrative Rules.
4. The designated record-keeper for the DataMaster DMT is responsible for any and all record-keeping associated with the DataMaster DMT, including but not limited to Evidential Breath Testing Log(s) (OD-33) and Accuracy/Subject Test(s) (OD-80), and sending these records or record copies to 36th District Court, which does include transportation of records by a court officer.
5. Any certified operator intending to utilize the DataMaster DMT during the course of an OWI investigation, shall verify that the DataMaster DMT is operable with the Officer in Charge of the DDC, prior to use with an OWI subject.

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6. *In the event of a DataMaster DMT malfunction – when the DataMaster DMT reads “Out of Service” - the designated record-keeper for the DataMaster DMT is responsible for sending a copy of the OD-80 Accuracy Check Test showing the error displayed to MSP-alcoholunit@michigan.gov on the same day the instrument shows the error.*
7. *The Detroit Detention Center shall be responsible for having a minimum of one available copy of the most recent and accurate edition of the DataMaster DMT Evidential Breath Testing Training Manual and Administrative Rules for accessibility and/or reference by officer(s)/certified operator(s) at the Detroit Detention Center.*

204.3 - 7.3 Use of Evidential Breath (Alcohol) Test (DataMaster DMT) by Certified Operators from Other Departments

Persons may be tested by outside authorities on Department-assigned equipment. Any state of Michigan certified operator is authorized to operate the DataMaster DMT. It is the responsibility of the OIC of the DDC's desk to check the state certification card of the certified operator.

204.3 - 7.4 Testing Procedures

1. *Prior to entering the DDC, the arresting/conveying officers shall notify the OIC, informing them they have an OWI arrest. The arresting/conveying officers will then bring the OWI subject to the room designated for DataMaster DMT usage to begin the fifteen (15) minute observation period of the subject. During this observation period, it must be determined that the subject has not smoked, regurgitated, or placed anything in their mouth for at least fifteen (15) minutes prior to the test. Also check to ensure there are no signs of injury or blood in the subject's mouth. This fifteen (15) minute period ensures the results will not be affected by any residual mouth alcohol that could possibly be left in the subject's mouth.*
2. *The certified breath test operator shall be present while the arresting officer reads the Advice of Rights for a Chemical Test (DI-93) to the subject, from the reverse side of the Officer's Report of Refusal to Submit to Chemical Test (DI-93) or the Breath, Blood, Urine Test Report (DI-177). These forms are available at the Detroit Detention Center.*
3. *The administrative rules promulgated by the Michigan Department of State Police state that after the first breath test, certified operators shall offer the subject a second breath test. **However, members shall keep in mind that a subject's refusal to take a second breath test does not constitute a refusal nor invoke implied consent proceedings.** Additionally, a new testing tube must be used after obtaining individual, successful breath samples to ensure accuracy of test results.*
4. *The arresting officer and the certified operator shall complete their portion of the Breath, Blood, Urine Test Report (DI-177) or the Refusal to Submit to a Chemical Test (DI-93) forms. (Reference: Michigan Datamaster DMT Evidential Breath Testing Training Manual 2018 for instructions on completing the form).*

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5. Once the subject has submitted to the chemical test(s), the operator shall inquire if they wish to seek an independent chemical test to challenge the results obtained at their own expense.
6. At the conclusion of the evidential breath test, the results of the test and the investigation information gathered by the arresting officer and certified operator shall be given to the OIC of the DDC's desk and the supervisor who makes a determination as to what charge should be brought against the subject.

204.3 - 7.5 Refusals for Evidential Breath (Alcohol) Test – (DataMaster DMT)

1. If the subject refuses to submit to a breath alcohol test, the test shall not be given without a court order. The arresting officer shall complete the Michigan Department of State (DI-93), Officer's Report of Refusal to Submit to a Chemical Test. (Reference: Michigan Breath Test Operator Training Manual 2018 for instructions on completing Chemical Tests).
2. *It should be noted that if a subject requests to have a urine or blood test as opposed to an evidential breath (alcohol) test, this does not constitute a refusal of the chemical test, given that all three methods are encompassed within the chemical test.*
3. The certified operator's name shall not be placed on the chemical test except when the subject refuses to take the breath test after initially agreeing to take it, or when the subject refuses to give an adequate sample. The signature of the arresting officer shall be placed on each chemical test submitted.
4. Members shall bear in mind that if they are notified to appear at an implied consent or appeal board hearing and fail to do so, the board must restore the driver's license to the subject. If a member is unable to appear on a scheduled date and time, the member must notify the board chairperson as well as the OIC of the member's command.
5. Only two (2) types of refusals may result after a subject has been read the Advice of Rights which is located on the back of the Breath, Blood, Urine Test Report (DI-177) or Advice of Rights for a Chemical Test (DI-93) forms and has agreed to provide a breath alcohol test, but does not provide an appropriate breath sample into the DataMaster *DMT*.
 - a. Operator Refusal (Two [2] Minute Limit on the DataMaster *DMT*) - An operator refusal occurs when the certified operator decides that a subject is not making a sincere effort to provide a breath sample.
 - b. Technical Refusal (Five [5] Attempts to Blow within Two [2] Minutes) - A technical refusal results when the instrument indicates that a subject is not making a sincere effort to provide a breath sample.
6. At this point, the subject shall be advised that the failure to comply with instructions indicates a refusal to take the required test and that the Secretary of State will suspend the subject's privilege of driving for a period *in compliance with current*

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Michigan Compiled Laws (MCL) and that six (6) points will be added to the subject's driving record.

204.3 - 8 Chemical Tests as Evidence

1. It is recommended that a subject who exhibits great impairment, but whose breath alcohol test indicates less than .08, be conveyed *to the closest authorized medical facility*. A blood sample kit shall be conveyed with the subject and a blood sample shall be requested.
2. A driver or pedestrian who has been involved in an accident and is hospitalized may be compelled by a court order to give a blood sample. *When applicable, officer(s) shall read the subject their chemical test rights from the Advice of Rights for a Chemical Test (DI-93/DI-177).*
3. The subject shall be advised that refusal to take a chemical test requested by a peace officer shall result *in a suspension* of the subject's license and the addition of six (6) points to the subject's driving record. If the subject refuses to submit to a blood test, the arresting officer may request a warrant using the following procedures:
 - a. Complete an affidavit for a search warrant for blood;
 - b. Call Communications Section and request a conference call with the city prosecutor for the warrant approval; and
 - c. Once the prosecutor approves the warrant, the arresting member shall contact Communications Section again and request a conference call with the magistrate to request them to sign off on the warrant.
4. Once the blood sample is obtained, the container shall be sealed in the presence of qualified medical personnel and the subject. Once the subject has submitted to the chemical test(s), the certified operator shall *advise the subject of their right to seek or demand an independent chemical test (breath, blood, or urine) to challenge the results obtained. The subject will be responsible for obtaining a chemical analysis of a test sample taken by the independent entity of their choosing at the subject's own expense.*
5. The officer shall convey the sample kit to the DDC with the completed Alcohol and Drug Determination form (FSD-93). (Details for processing the blood sample kit are included on the instruction sheet in the kit). The sample kit shall then be mailed to the Michigan State Police, *Toxicology Unit, Lansing Laboratory*.
6. The amount of alcohol or the presence of narcotics in the driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath shall be admissible as evidence.

204.3 Operating While Intoxicated**204.3 - 9 Preparation/Documentation Required for OWI Court Case Jackets****204.3 - 9.1 Documentation of "Interview" Questions**

1. Each of the following interview questions with the subject's answers shall be documented in "question and answer" format in the narrative section of the *incident* report:
 - a. "Were you operating the vehicle?"
 - b. "Where did you start from and where were you going?"
 - c. "Have you been drinking and if so, what were you drinking?"
 - d. "How much have you been drinking?"
 - e. "Do you have diabetes and if so, are you taking insulin?" and
 - f. "Are you injured?"
2. Additionally, members shall document their observations of the *subject* in the *incident* report (i.e. breath [odor of alcohol], speech, eyes, attitude and any unusual actions/behavior). The *incident* report shall also include:
 - a. PBT results;
 - b. Whether the subject refused or complied to the PBT test;
 - c. The SFST that were given and the results;
 - d. DataMaster *DMT* results;
 - e. Whether the subject refused or complied to the DataMaster *DMT* test;
 - f. If blood was drawn (document the *name of the person who drew the blood* and the hospital's name);
 - g. Record sequence numbers provided from LEIN on the (DI-177) or (DI-93);
 - h. If this is a second offense, document the previous conviction date;
 - i. The location where the vehicle was impounded and the LEIN reference number;
 - j. Any citations(s) issued; and
 - k. The UD-10 number (if applicable).

204.3 - 9.2 Documentation Required for 36th District Court Jacket

1. After the *incident* report has been submitted and approved, the following shall be included in the 36th District Court jacket, *using the Court Case Envelope (DPD 532)*:
 - a. Two (2) copies of the *incident* report;
 - b. The original (DI-177) or (DI-93) and the DataMaster *DMT* Result Ticket;
 - c. Complete Certified Driving History (42-C) (obtained from LEIN);
 - d. Vehicle registration print-out (Signed by the LEIN operator);
 - e. UD-10 (if applicable);
 - f. Two (2) copies of the Search Warrant (if applicable);

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- g. Two (2) copies of the Alcohol and Drug Determination form included with the blood sample kit box; and
 - h. Two (2) copies of the subject's Complete Criminal History (CCH) (obtained by DDC personnel).
2. All traffic charges, including OWI, related to the subject's arrest should be listed on the portion of the Court Case Envelope meant for the display of this information. Completed Court Case Envelopes shall be turned into the designated area of the DDC and subsequently collected by a court officer, unless the circumstances of the arrest require the Court Case Envelope to be delivered to Fatal Squad.

204.3 - 10 Other OWI Procedures**204.3 - 10.1 Pedestrians Taking a Breath Test**

When the sobriety of a pedestrian involved in an accident is questionable, the pedestrian may be requested to take a breath alcohol test if it will aid in the investigation of the case. Civil penalties apply for a refusal of these tests.

204.3 - 10.2 Alcohol Tests for Hospital Cases

A driver or pedestrian who has been involved in an accident and is hospitalized may be compelled by a court order to give a blood sample.

204.3 - 10.3 Open Intoxicants in Motor Vehicles

Per MCL 257.624a, "[A] person who is an operator or occupant shall not transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger area of a vehicle upon a highway, or within the passenger area of a moving vehicle in any place open to the general public or generally accessible to motor vehicle, including an area designated for the parking of vehicles, in this state."

204.3 - 10.4 Lost Temporary Driver Permit

1. An individual who was previously issued a temporary driver permit subsequent to an OWI arrest may apply for replacement of a lost temporary driving permit at the DDC. Officers shall utilize information from the original Breath, Blood, Urine Test Report (DI-177) or Chemical Test form (DI-93) filed in the Court Case Envelope (DPD 532) to complete the replacement permit.
2. A query shall be made of the individual's Secretary of State driving record to determine license eligibility. A Breath, Blood, Urine Report, (DI-177), shall be completed as a replacement temporary driver permit, if applicable. The issuing officer shall sign the Breath, Blood, Urine Test Report (DI-177) and indicate "Replacement for Lost Permit" next to their signature. The individual shall be given page three (3) as the temporary driving permit. Page one (1) of the form shall be placed in the Court Case Envelope (DPD 532) along with the original arrest paperwork. Page two (2) is not required and may be destroyed.

204.3 Operating While Intoxicated**204.3 - 10.5 Under 21 OWI Arrests/Violations**

1. *Per MCL 257.625 (6), "A person who is less than 21 years of age, whether licensed or not, shall 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 person has any bodily alcohol content."*
 - a. *Officers should refer to the aforementioned MCL (257.625) in its entirety regarding definitions and other legal specifications.*
 - b. *[T]he minor may be arrested if their bodily alcohol content is at or above 0.02%, even if the consumption of intoxicating liquor was part of a generally recognized religious service or ceremony.*
2. *An officer who has reasonable cause to believe a person less than twenty-one (21) years of age has consumed alcoholic liquor, and is not operating a motor vehicle may request the person to submit to a PBT. Civil penalties apply for a refusal of these tests.*
3. *The "implied consent" law applies to both juveniles and adults. If a juvenile is taken into custody for OWI, they may lawfully be requested to submit to a chemical test, and the results are admissible in court.*
 - a. *The juvenile shall be given the opportunity to consult an attorney or other adult, if requested before deciding to take the test.*
 - b. *Since juveniles may not have the same access to attorneys as adults do, their parent/guardian would qualify as the person with whom the juveniles may consult prior to testing.*
4. *For further enforcement procedures, refer to Department Manual Directive 203.5, Juveniles and School Incidents.*

Related Policies:

- 204.2 - Traffic Operations
- 203.5 - Juveniles and School Incidents

Related Forms:

- Accuracy/Subject Test (OD-80, DataMaster DMT)
- Advice of Rights for a Chemical Test (reverse side of DI-93 and/or DI-177 form)
- Affidavit for Search Warrant (Blood Sample) Request
- Alcohol and Drug Determination Form (FSD-93)
- Breath, Blood, Urine Test Report (DI-177)
- Constitutional Rights Certificate of Notification (DPD 342-B)

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- *Court Case Envelope (DPD 532)*
- *Evidential Breath Testing Log (OD-33)*
- *Officer's Report of Refusal to Submit to Chemical Test (DI-93)*
- *Preliminary Breath Test Instrument Calibration and Maintenance Log (TD-053)*

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