



BRAINTREE POLICE DEPARTMENT

Policy and Procedure

OUI Enforcement

2019-56

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Chief Mark Dubois

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Certification Standards: **61.1.11**

Accreditation Standards: **1.2.7**

Optional Accreditation Standards: **61.1.10**

General Considerations Drivers impaired by alcohol and/or drugs represent a serious threat to the lives and safety of both the motoring and general public. This Department is committed to a strong enforcement program as part of an overall countermeasures program that also includes cooperating and participating in local, state and national education, adjudication, and treatment programs. **[61.1.10]**

Procedures **OUI Detection:** Detection is the first step in any OUI enforcement action. The officer's observations in this stage are crucial in establishing probable cause upon which an arrest decision is based. Officers should perform the following tasks:

- A.** Recognize and identify driving behaviors that signify the driver may be impaired by alcohol and/or drugs. The operator doesn't have to be drunk; his or her ability to operate safely just has to be impaired. **[61.1.11]**
- B.** Recognize and identify other behaviors occurring during vehicle stops that could provide additional evidence/suspicion that the driver may be impaired.
- C.** Note all observations leading to the suspicion that the driver may be impaired.
- D.** Watch for unusual or inappropriate reactions from the driver.

- E.** Any pursuit resulting from the stop, or attempted stop, of a suspected impaired operator will be conducted in accordance with the department's **Vehicle Pursuit Policy** guidelines.
- F.** Notify dispatch of location of stop, the registration number of vehicle, and request back-up as necessary.
- G.** Conduct an interview with the operator and, if applicable, the passengers while all are still inside the vehicle.
- H.** Recognize and identify the characteristics, attitudes, and actions commonly manifested by impaired drivers (e.g. speech impaired, odor of alcohol/drugs, glassy/ bloodshot eyes, divided attention skills, etc.).
- I.** If reasonable suspicion exists, request that the driver exit the vehicle for further investigation.
- J.** If vehicle was not observed in motion, determine if operation exists.
- K.** Direct driver to a safe location to conduct field sobriety tests and a further interview.
- L.** Select and administer appropriate field sobriety tests to assess impairment. Any one or more of the following tests are acceptable depending on the officer's training:
 - 1. Horizontal Gaze Nystagmus;
 - 2. Walk and Turn (Nine Step);
 - 3. One Leg Stand;
 - 4. Finger to Nose;
 - 5. Alphabet Recitation;
 - 6. Numeric Recitation;
 - 7. Preliminary Breath Test
- M.** Officers are not required to use Miranda Warning during roadside questioning or before administering field sobriety tests; however, officers should issue Miranda if they place an operator under arrest for OUI and intend to continue questioning.
- N.** Make decision to arrest based on the evidence gathered during the interview and testing phase.

Arrest and Processing

The elements of a OUI violation are:

1. Operation;
2. On a public way, or in a place where the public has the right of access, or in a place where members of the public have access as invitees or licensees;
3. While under the influence of intoxicating liquor; or
4. While under the influence of marijuana, a narcotic drug, a depressant, a stimulant substance, or the vapors of glue.

Generally, the standard response is to arrest for an OUI when probable cause exists. However, it is acknowledged that in some cases an arrest is not practical and a summons or hearing is a more prudent option. Nonetheless, the operator shall be charged with OUI when appropriate. **[1.2.7]**

Once an arrest has been made the officer should adhere to the following procedures **[61.1.11]**:

- A. Handcuff, conduct a search incident to the arrest, and transport subject to station for booking as soon as practicable.
- B. **In the case of an arrest for OUI Alcohol:** The vehicle shall be towed from the scene and not released for a period of 12 hours, regardless of whether or not the operator consents to a breath test at the booking desk, consistent with Melanie's Law and Town of Braintree By-Law 9.300.010. **Town of Braintree By-Laws Section 9.300.010:** *Impoundment for operating under the influence of certain substances. No motor vehicle impounded pursuant to an arrest under M.G.L. 90 Section 21, for operating under the influence of intoxicating liquor, marijuana, or narcotic drugs or depressant or stimulant substances, all as defined in in M.G.L. c. 94C Section1 or under the influence of vapors of glue, or substances set forth in said M.G.L C. 90 Section 21 may be released prior to the passing of 12 hours following arrest. See Department Policies; **Towing and Traffic Enforcement and Management.***
- C. Upon arrival at the station, the subject should be booked according to established OUI procedures. Defendants who refuse to answer administrative booking questions (e.g. name, address, DOB, etc.) may be placed in a cell without a phone call, bail hearing, or breathalyzer until

they cooperate. *Comm v. Maylott*, 43 Mass. App.Ct. 516 (1997).

- D.** Officers should be aware of the rules contained in M.G.L. c. M.G.L. c. 90 § 24e and §§ 24f (1) & (2) regarding the testing of breath and blood alcohol testing.

Some important updates to remember are as follows: **[61.1.11]**

1. Automatic seizure of license or permit for all MA operators refusing to take BT or for failing the test. (If out-of-state, notice is sent to the MA registry via the BT machine);
2. Impound defendant's vehicle for 12 hours regardless of what state they are licensed from;
3. Before administering a BT test, defendant must be observed for 15 minutes, making sure nothing goes in their mouth (food, drink, belch, regurgitation).

E. Consent for blood test:

If a defendant:

1. Is under arrest for OUI;
2. Has been taken for treatment to a medical facility;
3. Is in the Commonwealth;
4. Is not a diabetic, hemophiliac or use of anticoagulants; and consents to take a blood test the following provisions apply:
 - i. Blood cannot be drawn from a person afflicted with hemophilia, diabetes or any condition requiring the use of anticoagulants. The statute deems that these individuals are unable to consent.
 - ii. The Statutory Rights and Consent Form must be used if the person is under arrest for OUI and you are requesting a blood sample.
 - iii. If a blood alcohol test is administered

according to the statute rules, the arresting officer shall advise the hospital personnel that the samples will be sought for use as evidence at trial. Officers shall issue appropriate hospital personnel with ***Department Blood/Urine Preservation Notice***.

- F. If the subject is arrested for OUI Drugs, the officer should document all signs and symptoms of impairment, especially those that are not consistent with alcohol abuse. See policy on ***Drug Recognition Expert***.
[61.1.11]

- G. If the result of the breath test or drug evaluation indicates impairment, or if the subject refuses the test, the Bail Clerk shall be notified. Further, the Bail Clerk will be notified and advised forthwith if the subject has invoked his/her rights under M.G.L. c. 263, § 5A – requesting an independent blood test by a physician.

CUSTODIAL CONDITIONS CHEMICAL TEST RESULTS:

- A. **.02 or higher:** Under 21/ loss of license 90/24
- B. **.04:** CDL 90F – Seize Vehicle/License
- C. **.05 or lower:** release forthwith (inference not intoxicated)
- D. **.06-.07:** No Inference - Rely on field testing
- E. **.08 or higher:** Per Se - intoxicated

NOTE: Persons taking the Breathalyzer and registering .05 or under may receive sanctions from the registry depending on their license class. However, they must be released from custody forthwith. If the person still appears impaired, officers should attempt to find alternative transportation.

REPORTS AND REQUIRED FORMS: The arresting officer should make sure that the case/arrest folder contains all required forms which are pertinent to the particular case, and file a complete report regarding the incident. Supplemental reports should also be filed by officers assisting in the arrest and by the Booking Supervisor when necessary. When filing the appropriate charges, all officers should be aware of the updates to OUI charges as a result of Melanie’s Law.
[61.1.11]



Braintree Police Department

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Blood/Urine Preservation Notice

Paul Shastany
Chief of Police

The individual named below is the subject of an ongoing criminal investigation conducted by the Braintree Police Department.

As part of this criminal investigation, it is hereby requested that any blood and/or urine samples taken from:

Name of Patient: _____

date of birth, _____ who was treated on _____, list

applicable date(s) at the _____ (health care institution) be

preserved pending the issuance of a search warrant.

(Investigator/Officer's name, rank, and ID number.)

Signature of Investigator/Officer _____

Date: _____

If you need more information, please call: **781-794-8601** and ask the dispatcher to immediately contact me. A return call will be made without delay.

Important note: Failure to abide by this notice may constitute the crime of Evidence Tampering or Destruction, in violation of G.L. c. 268, S 13E which is punishable by up to 10 years in prison.

Braintree PD personnel: Record in your police incident report and your search warrant affidavit, the name of the health care or administrative professional who received this notice. (Courtesy of Law Enforcement Dimensions).