



2-42 DWI INVESTIGATIONS AND REVOKED/SUSPENDED LICENSE

2-42-1 Policy

It is the policy of the Department to apprehend, arrest, and assist in the efficient prosecution of persons who are found to be operating a motor vehicle while under the influence of intoxicating liquor, drugs, or driving a vehicle while their license is revoked or suspended for a previous DWI violation.

2-42-2 Rules and Procedures

A. Initial Contact with DWI Suspects

1. Officers who contact the driver of a motor vehicle and develop reasonable suspicion to believe that driver may be impaired by alcohol and/or drugs shall ensure that a DWI investigation is conducted.
2. DWI investigations will be conducted in accordance with the National Highway Traffic **Highway** Safety Administration guidelines.
3. Miranda warnings are only required after an arrest has been made or during custodial interrogations. Miranda warnings are not usually required during a roadside DWI investigations or prior to a chemical test.

B. Preliminary Breath Testing (PBT)

1. PBT Operation

- a. Officers should, in every case, have probable cause to believe the driver is driving while intoxicated, before utilizing the PBT. The random use of the PBT on drivers not suspected of being intoxicated is prohibited.
- b. Officers should wait at least 15 minutes after contacting the driver to test them to allow any mouth alcohol to dissipate.
- c. Issuance of a PBT is strictly voluntary and is not required equipment. Officers issued a PBT will use it for their investigations only. Officers may allow another officer to use their PBT, however, they will not conduct the test for **them the requesting officer.**

2. PBT Calibration

- a. The use of a PBT is a non-evidentiary test. However, officers noting a difference **.03 or greater** from the preliminary to the evidential test shall take the PBT out of service and return it to DWI Seizure Unit **supervisor so that the PBT can be sent back to the manufacturer for re-calibration.**
- b. It will be the operator's responsibility to ensure that the PBT remains properly calibrated.



C. Check for Prior Convictions

Any person arrested for driving while Under the Influence (DWI) must have their prior conviction record checked to determine if the person has prior DWI convictions.

D. BATmobile Booking

Any officer may book any offender at the BATmobile. Booking officers will have the discretion to refuse some prisoners. The DWI Sergeant will have final say over any booking disagreement.

E. Administering a Breath Test

1. ~~Officers will only use Intoxilyzers they have been trained and certified on. If there is not an Intoxilyzer available they are certified on, they will call for a blood tech.~~
2. ~~Upon completion of the test, the operator shall detach all of the copies of the Breath Alcohol Test Card.~~ Distribution of the Breath Alcohol Test Card for the CMI Intoxilyzer ~~Models~~ 8000 ~~Model~~ is as follows:
 - a. A copy shall be submitted to the Motor Vehicle Division, with the DWI Affidavit, the MVD copy of the DWI Citation, and the driver's ~~New Mexico license (if applicable).~~ ~~(Any other state driver's license will be returned to the driver.)~~
 - b. A copy shall be placed with the defendant's paperwork which will be placed in property.
 - c. A scanned copy must be emailed to apdcentralrecords@cabq.gov.
3. Procedures for handling damaged or illegible Breath Alcohol Test Cards or malfunction of the breath alcohol instrument are as follows:
 - a. Regardless of the test score, in the event a Breath Alcohol Test Card is damaged, illegible, or prematurely printed upon, the card shall be maintained as evidence and submitted with the original report.
 - b. Under no circumstances shall any Breath Alcohol Test Card used in a breath alcohol test be discarded or destroyed.
 - c. Breath alcohol tests may be administered until a valid test is obtained. All test cards will be maintained as evidence and submitted with the original report.
4. Supervisors will ensure that all uniformed officers have completed the eight-hour Intoxilyzer 8000 Certification Course or any re-certification class in order to maintain their current certification.



F. Administering a Blood **Test Draw**

1. If a blood test is necessary, a blood **test draw** shall be administered by a qualified blood technician.
2. Communications shall notify the blood technician.
3. Upon arrival of the blood technician, the arresting officer will be present to witness the blood **tests being administered being drawn**.
4. Upon completion of the blood **test draw**, the officer will give the blood technician a case number and the suspect's information for his/her report. The blood technician will then surrender the sealed blood test kit back to the arresting officer. The arresting officer will tag it into evidence according to APD Evidence procedures.
5. **The Law Enforcement Officer's Statement form The Notice of Revocation copies and MVD copy of the DWI citation** shall be retained by the officer until results are obtained. **Only the MVD copy of the DWI citation shall be mailed immediately.** The driver's license shall not be taken and will remain with the driver's property when booked **or summons**.
6. When blood test results are received, the information shall be filled in on the **Officer's Statement form Notice of Revocation forms and MVD copy of the DWI citation**. The **statement Notice of Revocation and MVD copy of the DWI citation** shall be placed in the DWI citation drop box, located at the area command substations/testing locations.

G. **Issuing the** Implied Consent **Warning Advisory**

Once a suspect is placed under arrest for Driving While Intoxicated, the New Mexico Implied Consent **Act Advisory** shall be read **as posted at the testing sites directly from NMDOT provided posters or pocket cards**.

H. Documentation of Refusal/Warrant Requirement

1. On misdemeanor DWI arrests, if the subject refuses to submit to the chemical test that the officer specifies, the officer will check all of the appropriate boxes on the **Officer's Statement Form Notice of Revocation** and submit it in the normal manner.
2. The standard procedure in misdemeanor cases is to **obtain a breath sample and not compel a sample (blood sample)**. **In the rare event a sample is needed for misdemeanor prosecution, a warrant must be obtained prior to compelling a blood draw.**
3. For felony investigations, Implied Consent advisory is sufficient for breath test results. If a blood sample is needed a warrant will be obtained.



I. DWI Citation

1. The DWI Citation will be filled out the same way as other citations with the inclusion of the blood alcohol concentration box.
2. At no time will "See the Report" be placed in the essential **factor facts** section of the citation. Officers must provide a basis for the DWI charge in this section.

J. Testing of Injured or Incapacitated Persons

1. The following procedures shall be followed if the arrestee is injured or incapacitated to such an extent that the breath test cannot be administered. Due to case law and NM State Statute, the only manner in which a blood sample can be taken in a misdemeanor case is through expressed consent from the driver. If the driver consents to a blood draw the procedures from 2-42-2 F will be followed.
 - a. A blood test shall be administered by a qualified blood technician.
 - b. Communications shall notify the blood technician.
 - c. Regardless of the state of the suspect's consciousness, the suspect shall be read the New Mexico Implied Consent Act. During the reading of the Implied Consent Act, a witness should be present, i.e., the Blood Technician. The name of the witness will be indicated in the officer's report.
 - d. The physician in charge of treating the suspect will be consulted prior to obtaining a blood test draw. Physicians must give their permission for the test to avoid aggravation of the suspect's condition.

K. Intoxilyzer Log

The arresting officer shall **fill in complete** the Intoxilyzer logbook at the testing location. The log shall be filled out completely. (Move and add to 2-42-2 E)

L. Arrests for Driving While Driver's License is Revoked

1. Booking
 - a. Officers will take the subject into custody and book him under NMSA 66-5-39 (Driving While License Is Revoked).
 - b. Prior to booking subject, officer will need to obtain a copy of the read out from the NCIC operator.
 - c. The arresting officer will then give this documentation to the booking officer at the time of booking the offender.
 - d. If multiple offenses apply, officers shall book the subject for all traffic violations.

M. Proving Revocation in Court

1. It is an important element to show that the violator **was notified knew or should have known** that his license had been revoked at the time of the violation.



2. Proof through Motor Vehicle Department

- a. The Motor Vehicle Department will send notice of revocation to the violator by registered mail.
- b. The Motor Vehicle Department will be is responsible for providing any other pertinent documentation showing notice of revocation, including a certified notarized copy of the Notice of Revocation, which will be kept in the District Attorney's Office.

3. Additional ways to prove revocation

- a. Subject has been arrested for driving while intoxicated and physical proof of the following can be obtained:
 - i. Failed a breath alcohol or blood test. Chemical test results at or above the per se limit.
 - ii. Violator Subject refused to submit to a breath alcohol/blood test chemical test.
 - iii. Subject arrested for a second or subsequent driving while intoxicated charge offense.
 - iv. If second or subsequent driving while intoxicated charge, prior arresting officer will be called to testify in court, that he the officer had given served upon the subject prior a notice of revocation, at the time of his the subject's arrest.

N. DWI Vehicle Seizures

1. It is the policy of the Albuquerque Police Department to actively seek seizure proceedings against any person should the subject's driving history reveal one of the following:
 - a. A revoked or denied driver's license with an arrest clause, 66-8-122G, as a result of a DIO or D11.
 - b. And/or the person is suspected of driving while under the influence of an intoxicating liquor or drug and MVD reveals that the driver has been successfully convicted of one or more DWI violations.
2. These procedures will be in compliance with Albuquerque City Ordinance 7, Article 6 ROA 1994.
3. Vehicle Seizure Procedures
 - a. Place the driver under arrest.
 - b. A wrecker service will be requested and the seized vehicle will be towed to the designated DWI storage seizure lot. {The wrecker towing company will be advised to bill the tow service to the City of Albuquerque, Albuquerque Police Department, attention DWI Seizure Unit (Forfeiture).}



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- c. The on-call DWI Seizure Officer may be contacted through Radio Dispatch at any time when questions or concerns arise.
 - d. The officer shall instruct the wrecker tow truck driver to tow the seized vehicle to the Gerald Cline Memorial Substation.
 - e. The tow truck driver will be instructed to place the keys to the seized vehicle in a labeled drop box located at the Gerald Cline Substation.
 - f. The officer will perform an extensive inventory of the seized vehicle, which will be documented on the Tow in Form. Also to be The officer shall documented is any observed damage on the interior or exterior of the vehicle.
 - g. The arresting officer shall complete the Forfeiture Notice of Seizure paperwork in TraCS to include a copy of:
 - i. The arrest report.
 - ii. Copy of the individuals driving history to include the revocation and/or DWI history.
 - iii. Copy of the registration of the vehicle being seized.
 - iv. Copy of the Notice of Vehicle Seizure form.
 - h. This paperwork The initial report shall be sent to the DWI Seizure Unit (apddwis@cabq.gov) Forfeiture Detail within 24 hours of seizure.
 - i. Officers shall not disclose the location of the seized vehicle.
- O. Drug Recognition Expert (DRE)/DWI Program
1. It is the policy of this department that the DRE/DWI Program provide trained and certified Drug Recognition Officers trained in the identification and detection of drivers under the influence of substances other than alcohol.
 2. The coordinator may come from any area of the department. The DRE Coordinator is directly responsible to the DWI Lieutenant for any DRE issues.
 3. DRE Officer
 - a. Is assigned on a rotation basis to an on-call list. This schedule will be posted in the DWI Sergeant's office, be distributed department wide and an On Call List will be sent to Radio Communications.
 - b. Responds to requests requiring drug recognition skills and performs DRE evaluations in accordance with State of New Mexico DRE Regulations.
 - c. Arrests persons suspected of driving while under the influence of alcohol or drugs.
 - d. Conducts breath or Directs blood tests draws and testing on suspected DWI drug offenders and logs results.
 - e. Prepares written reports of DRE events Drug influence evaluations and complies with the requirements set forth by the NM state DRE coordinator. on shift and prepares a DRE event report to be turned in at the end of the month to the DRE Coordinator.



- f. Prepares a DRE report at the end of each on call period and submits it to the DRE Coordinator. Enters the DRE report information into the DRE National Database.
- g. Will respond to hospitals in the event of a suspected drug involved crash and if possible record any pertinent information in a report.
- h. Will conduct a DRE examination rather than only obtain a blood sample if possible.

4. DRE Testing Site Procedures

- a. Officers must be aware of officer safety during the DRE evaluation.
- b. Prisoners under the influence may react unexpectedly or violently.
- c. Officers will may secure firearms in a locker or trunk of a police vehicle.
- d. DRE Officers are responsible for the drug influence evaluation investigation. The arresting An additional officer will be available to maintain officer safety during the evaluation.
- e. There should always be one officer assigned to cover (officer safety) responsibilities. Two DRE officers should be used if available, one to conduct the exam and one to scribe. If two DRE officers are not available, a field officer may be used for officer safety.

5. Reports Distribution

- a. DRE Officers are responsible for ensuring that all original forms are forwarded to the DRE State Coordinator.
- b. DRE Officers are responsible for making and maintaining personal copies of all forms and evaluations.
- c. The DRE Coordinator is responsible for reviewing all DRE forms and for forwarding the originals to the Records Division, through their supervisor in a timely manner.
- d. The DRE officers are responsible for entering the DRE report information into www.sobrietytesting.org upon completion of the report.
- e. The DRE Coordinator is responsible for maintaining a central file system for all DRE forms, logs, and evaluations for all DRE certified officers.
- f. The DRE Coordinator is responsible for coordination and distribution of all results of drug analysis from the State Scientific Laboratory Division.

6. Evidence Handling

- a. DRE Officers are responsible for the disposition of blood evidence; all other evidence will be the responsibility of the arresting officer.
- b. The DRE is responsible for taking the blood evidence to Scientific Laboratory Division within 24 hours. If the blood cannot be taken within 24 hours the DRE will tag the blood into evidence. Once the evidence unit has concluded the intake process (usually 3-4 days) the DRE will check out the evidence and



transport it to SLD for processing. It is recommended that the DRE officer call Evidence at 823-4200 prior to pick up to insure it can be checked out. This process must be completed within 5 days of the actual blood draw.

7. Drug Recognition DRE Call-Out

- a. Investigating officer's supervisor will approve all call-out requests.
- b. Officers may call-out DRE personnel in cases where:
 - i. A subject shows physical impairment based on performance of Standard Field Sobriety Tests (SFST's) and/or operation of a vehicle and give a low breath test score (below .08% blood alcohol content) on the Intoxilyzer. Impaired driving was observed by an officer.
 - ii. There is a case of a fatality or serious injury crash. The driver is under arrest for DWI.
 - iii. Circumstances lead the investigating officer to believe that the impairment of the subject is due to illegal street narcotics, prescription medications, or volatile substances. The driver has submitted to a breath alcohol test.
 - iv. The DRE Coordinator has cleared the call-out. The results of the breath alcohol test and field sobriety tests are inconsistent with each other.
- c. When called to assist, it will be the DRE Officer's responsibility to determine if a blood technician will be called out. A DRE will not be called solely based on an admission to use of medications or drugs.
- d. The DRE will conduct a supplemental investigation. The DRE will complete a supplemental report documenting the drug influence evaluation, and advise the arresting officer of the findings.
- e. The DRE will ensure the arresting officer receives the blood tests results so that a criminal summons can be filed.

8. DRE Equipment

- a. DRE Officers will maintain all issued equipment in good working condition.
- b. DRE Officers will report any equipment discrepancies to the DRE State Coordinator as soon as possible. The DRE State Coordinator will replace the equipment.