



SUBJECT: Operating While Intoxicated (OWI)/Operating with Any Presence of Drugs (OWPD)/Under 21 Bodily Alcohol Content (BAC) and Chemical Testing

TO: Members of the Department

This Order establishes department policy and member responsibilities for the following:

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53.1 OWI/OWPD/UNDER 21 BAC AND CHEMICAL TESTING

53.1.1. GENERAL

This Order provides policies and procedures for the detection, chemical testing, and prosecution of drivers believed to be under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance. "Operating While Intoxicated" is abbreviated as "OWI." "Operating with Any Presence of Drugs (Schedule 1 and/or Cocaine)" is abbreviated as "OWPD." "Operating While Visibly Impaired" is abbreviated as "OWVI." Operating Under the Influence of Drugs (operating while intoxicated or impaired by a controlled substance other than Schedule 1 or Cocaine), is abbreviated as "OUID". Drivers under age 21 shall not operate a vehicle with any Bodily Alcohol Content, abbreviated as "Under 21 BAC."

Enforcement members shall note that, unlike alcoholic liquor, there is no presumptive level of intoxication set by statute for controlled substances or other intoxicating substances. Similarly, there is no presumptive level of intoxication for the charge of Operating While Visibly Impaired. While proper analysis of a person's breath, blood, or urine is necessary, effective enforcement of such violations requires an enforcement member to articulate in his or her incident report the observations from which he or she concluded that the driver's ability to operate a vehicle was at least impaired due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of them, and whether there was any evidence of consumption of alcoholic liquor, a controlled substance, or other intoxicating substance. The reporting officer must be prepared to present this evidence in court and undergo cross-examination on its merits.

53.1.2. DETECTION

Detection is fundamental to all alcohol, controlled substances, or other intoxicating substance enforcement and is critical to the entire investigation.

- A. Members shall seek guidance in detection from the DWI (Driving While Intoxicated) Detection and Standardized Field Sobriety Testing Student Manual.
- B. Enforcement members, who have received training in Advanced Roadside Impaired Driving Enforcement (ARIDE) and Drug Recognition Expert (DRE), may rely on that training in their investigations.

53.1.3. PRELIMINARY CHEMICAL BREATH ANALYSIS

[MCL 257.625a\(2\)](#) provides for the administration of a preliminary chemical breath analysis. A preliminary chemical breath analysis is defined under [MCL 257.43a](#). It means the on-site taking of a preliminary breath test (PBT) from the breath of a person for the purpose of detecting alcoholic liquor.

A. Administrative Rules

The Department of State Police Administrative Rules for "[Tests for Breath Alcohol](#)" addresses the administration of preliminary breath tests as well as evidential breath tests. Enforcement members shall familiarize themselves with the provisions of these rules found in the Class I and II operator manual. Key elements of the rules include:

- (1) Only enforcement members who have successfully completed the PBT Training Course and are Class I operators shall administer preliminary breath tests.

- (2) Only Preliminary Breath Testing instruments approved by the Department of State Police shall be used.
- (3) A preliminary breath test shall not be administered until the enforcement member has determined that the person has not placed anything in his or her mouth, regurgitated, or smoked for at least 15 minutes. A fifteen minute determination may be achieved by observing the person for fifteen minutes or by other investigation, including admissions by the person that he or she has not placed anything in his or her mouth for over 15 minutes.
- (4) PBT instruments shall be verified for accuracy at least monthly, and tests shall be entered on the Preliminary Breath Test Instrument Calibration and Maintenance Log, OD-053.

B. Operational Procedures

[MCL 257.625a\(2\)](#), concerning pre-arrest screening, provides that an enforcement member, with reasonable cause, may require the person to submit to a preliminary chemical breath analysis.

- (1) When practical, members shall fully develop all other probable cause factors before administering the PBT.

When practical, department members shall conduct Standardized Field Sobriety Tests in accordance with National Highway Traffic Safety Administration guidelines in order to comply with [MCL 257.625s](#), before requesting a subject to submit to a PBT.

- (2) If the person refuses to submit to a preliminary chemical breath analysis or provides an invalid sample for the PBT, a Uniform Law Citation shall be issued for the refusal.
 - a. There are no provisions within the [Aeronautics Code of the State of Michigan](#) that require a person to submit to a PBT test.
 - b. There are no provisions within the [Railroad Code of 1993](#) that require a person to submit to a PBT test.
 - c. Enforcement members shall advise the operator of a commercial motor vehicle that refusing a peace officer's request to submit to a PBT 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.
 - d. Persons under 21 being investigated for non-driving related violations cannot be cited for refusal to submit to a PBT test. [MCL 436.1703](#), which requires that a minor submit to a PBT, has been found to be unconstitutional. This does not impact driving offenses.
 - e. Under normal circumstances, only one preliminary breath test shall be administered. If the enforcement member has some reason to believe the results of the test may not be accurate (e.g., unable to verify proper working condition or unusually high test results), a second voluntary test may be requested.

- i. A subject is under no obligation to submit to more than one PBT, and no sanctions may be imposed for refusal of a second PBT.
- ii. If an enforcement member has reason to believe a PBT instrument is not functioning properly or accurately, the unit shall be taken out of service until it can be inspected and/or calibrated by a Class III or IV breath test operator.

C. Admissibility

For information pertaining to the admissibility of a PBT, see [MCL 436.1703](#) (MIP), [MCL 257.625a\(3\)](#) and [MCL 257.319d](#) (Commercial Motor Vehicle Operators), and [MCL 257.625c\(1\)](#) (criminal or administrative proceedings).

D. Inspection and Calibration of PBT Instruments

- (1) PBT instruments shall be inspected and calibrated in accordance with the Administrative Rule 325.2653, Rule 3 for "[Tests for Breath Alcohol](#)."
- (2) Appropriate entries shall be made on the Preliminary Breath Test Instrument Calibration and Maintenance Log, OD-053, for inspection, calibration and maintenance procedures performed on department-owned PBT instruments, as well as those owned by other departments.

E. Service and Repair of the Lifeloc FC-10 PBT

For repair of the Lifeloc FC-10 contact Lifeloc at 1-800-722-XXXX.

53.1.4. PRELIMINARY ORAL FLUID ANALYSIS

A preliminary oral fluid analysis may be administered in compliance with [MCL 257.625r](#) and [MCL 257.625t](#). Only enforcement members or approved members of other law enforcement agencies who are participating DRE's, as defined below, are allowed to utilize oral fluid analysis.

A. Definitions

- (1) "Certified Drug Recognition Expert" (DRE) means a law enforcement officer trained to recognize impairment in a driver under the influence of a controlled substance rather than, or in addition to, alcohol. Such training shall include successful completion of the National Highway Traffic Safety Administration (NHTSA) Drug Evaluation and Classification training. A DRE shall be currently certified as a DRE, which certification shall be in good standing.
- (2) "Equipment" means instruments, any accessories, supplies, and forms necessary for compliance with the procedures in this preliminary oral fluid analysis policy or law.
- (3) "Oral fluid sample" means fluid collected from the oral cavity.
- (4) "Oral fluid collection device" means a swab or other form of collection device.
- (5) "Participating DREs" means DREs, whether enforcement members or approved members of other law enforcement agencies, who have completed departmental training for preliminary oral fluid analysis and are working in one of the counties selected to participate in the pilot program.

- (6) "Preliminary oral fluid analysis" means the on-site taking of a preliminary oral fluid test, performed by a certified DRE from the oral fluid of a person for the purpose of detecting a controlled substance.

B. Authority

- (1) [MCL 257.625r](#) provides that a person may be required to submit to a preliminary oral fluid analysis by a participating DRE when the participating DRE has reasonable cause to believe that a person was operating a vehicle upon a highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state and that the person by the consumption of a controlled substance, may have affected his or her ability to operate a vehicle, or reasonable cause to believe that a person had in his or her body any amount of a controlled substance listed in schedule 1 under [MCL 333.7212](#), or a rule promulgated under that section, or of a controlled substance described in [MCL 333.7214](#).
- (2) Participating DREs shall only conduct a preliminary oral fluid analysis during investigations initiated by the participating DRE.
- (3) A participating DRE may arrest a person in whole or in part upon the results of a preliminary oral fluid analysis.

C. Equipment

Only equipment approved by the department for preliminary oral fluid analysis shall be utilized by participating DREs.

D. Operational Procedures

- (1) A procedure that is used in conjunction with preliminary oral fluid analysis shall be approved by the department and shall be in compliance with all of the following provisions:
 - a. When practical, participating DREs shall fully develop all other probable cause factors before administering the preliminary oral fluid test (e.g. preliminary breath test, standardized field sobriety testing).
 - b. Preliminary oral fluid test instruments shall only be operated by a participating DRE.
 - c. Participating DREs shall perform quality control (QC) testing in compliance with the manufacturer's instructions prior to administration of each preliminary oral fluid test and shall document the QC testing and its result in the incident report. QC testing may be done during the 10 minute period described in subsection D.(1).(d). The QC result will be expressed as "pass" or "fail." If there is a QC failure, the instrument will be taken out of service until the participating DRE is able to contact the manufacturer's customer service and return the instrument to working condition.
 - d. A person may be administered a preliminary oral fluid test on an oral fluid test instrument only after the participating DRE determines that the person has not smoked, regurgitated, or placed anything in his or her mouth for at least 10 minutes prior to the collection of the oral fluid sample.

- e. After making the determination required by subsection D.(1).d, the participating DRE shall collect an oral fluid sample from the person for the preliminary oral fluid testing instrument. A second voluntary oral fluid sample shall be collected for confirmation testing at an independent laboratory. Both samples shall be taken using an approved oral fluid collection device.
 - f. The oral fluid sample shall be tested using the department approved oral fluid test instrument following the procedures for the instrument. The second oral fluid sample shall be retained, packaged, and mailed for confirmation testing.
 - g. Whenever practical, a person should be requested to submit to a DRE evaluation.
- (2) If the person refuses to submit to a preliminary oral fluid analysis, a Uniform Law Citation shall be issued for the refusal.
- a. There are no provisions within the [Aeronautics Code of the State of Michigan](#) that require a person to submit to a preliminary oral fluid analysis.
 - b. There are no provisions of the [Railroad Code of 1993](#) that require a person to submit to a preliminary oral fluid analysis.
 - c. Participating DREs shall advise the operator of a commercial motor vehicle that refusing a peace officer's request to submit to a preliminary oral fluid analysis is a civil infraction and will result in the issuance of a 24-hour out-of-service order.
 - d. A person is under no obligation to submit to more than one preliminary oral fluid analysis. No sanctions may be imposed for refusal to provide any additional oral fluid samples.
- (3) A person who submits to a preliminary oral fluid analysis remains subject to the requirements of [MCL 257.625a](#), [MCL 257.625c](#), [MLC 257.625d](#), [MCL 257.625e](#), and [MCL 257.625f](#) for purposes of chemical tests described in those sections.
- (4) Once the decision has been made to arrest the person, the participating DRE shall read the subject his or her Chemical Test Rights per the DI-177a or DI-93a. The person shall be requested to submit to a blood test. If the person refuses to submit to the blood test, or if the person is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant, the participating DRE shall seek a search warrant.
- (5) Upon completion of the investigation, participating DREs shall scan and email the preliminary oral fluid analysis case summary, incident report, and preliminary oral fluid test result to MSP-OralFluidAnalysis@michigan.gov.

E. Admissibility

For information pertaining to admissibility of an oral fluid test, see [MCL 257.625r\(7\)](#) and [MCL 257.319d](#) (Commercial Motor Vehicle Operators), and [MCL 257.625r\(3\)](#) (criminal or administrative proceedings).

F. Equipment Repair and Service

- (1) The repair and service of an oral fluid test instrument shall be performed by the instrument manufacturer or by a manufacturer authorized representative.

- (2) The instrument shall be returned to the manufacturer for servicing after the instrument has been in use for one year.

53.1.5. ARREST

- A. The following statutes shall be considered when a member makes the decision to arrest a subject for OWI/OWPD/UNDER 21 BAC:

- (1) [MCL 257.625](#)- Applies to motor vehicles or a person operating a snowmobile or an ORV on a highway or other place open to the general public or an area generally accessible to motor vehicles. The chemical test and implied consent provisions of the Michigan Vehicle Code are applicable to the operator of a snowmobile or ORV charged under MCL 257.625.

Enforcement members should consider the totality of the circumstances and exercise proper discretion when considering whether to arrest under the Michigan Vehicle Code or the Natural Resources and Environmental Protection Act.

- (2) Vessels--[MCL 324.80176](#) and [MCL 324.80187](#)
- (3) ORVs--[MCL 324.81134](#), and [324.81137](#)
- (4) Snowmobiles--[MCL 324.82127\(1\)](#) and [324.82143](#)
- (5) Aircraft--[MCL 259.185](#) and [259.189](#)
- (6) Locomotives--[MCL 462.353](#) and [462.361](#)
- (7) Violation of Conditional Release--[MCL 765.6b](#)
- (8) Child Endangerment--[MCL 257.625\(7\)a](#)
- (9) OWPD--[MCL 257.625](#)

Michigan Medical Marihuana Act—Qualifying Patients ([People v. Koon](#))

The Michigan Medical Marihuana Act (MMMA) supersedes all statutes inconsistent with its provisions. Accordingly, a registered qualifying patient under the MMMA who is operating a motor vehicle with marihuana in his or her system cannot be charged with operating with the presence of a controlled substance under [MCL 257.625\(8\)](#) unless he or she is shown to be under the influence of marihuana. Although the MMMA does not define what it means to be “under the influence of marihuana,” it does require some effect on the person beyond simply having the mere presence of marihuana in one’s system. An enforcement member must therefore articulate in his or her incident report the observations from which he or she concluded that the driver’s ability to operate a vehicle was at least impaired due to the consumption of marihuana, and be prepared to present this evidence in court.

Thus, enforcement members should inquire whether or not a person has a Michigan Medical Marihuana Card when conducting these investigations. If the person does not have a card then he or she may be arrested for OWPD simply for having the presence of THC in his or her system. If the person does have a card then he or she may only be arrested for OUID if he or she is impaired or intoxicated by THC.

- B. Commercial Motor Vehicle BAC Violations--[MCL 257.625a\(3\)](#), [257.625m](#), and [257.319d](#).
- C. Under 21 BAC Driving Violations--[MCL 257.625\(6\)](#)

Any presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony. If the minor is coming from such a religious ceremony they may be arrested if their bodily alcohol content is above 0.02%.

- D. OWI/OWPD or Under 21 BAC Enforcement at Crash Scenes

Enforcement members shall consider the following statutes when considering arresting someone for OWI/OWPD or Under 21 BAC at a crash scene:

- (1) Motor vehicles, or ORVs and snowmobiles operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles--[MCL 257.625a](#).
- (2) Snowmobiles--[MCL 324.82136](#)
- (3) ORVs--[MCL 324.81144](#)
- (4) Vessels--[MCL 324.80180](#)
- (5) Aircraft--[MCL 259.185](#)
- (6) Locomotives--[MCL 462.353](#)

53.1.6. UNDER 21 NON-DRIVING VIOLATIONS--[MCL 436.1703](#)

A person less than 21 years of age shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, or possess or attempt to possess alcoholic liquor.

- A. A peace officer who has reasonable cause to believe that a person less than 21 years of age has consumed alcoholic liquor may request the person to submit to a preliminary chemical breath analysis, but a person less than 21 years of age who refuses to submit to a preliminary chemical breath analysis cannot be cited for refusal to do so.
- B. When processing alcohol offenders under 21 years of age, enforcement members shall follow these guidelines:
 - (1) Age 18 - 20: Process the offender as a standard misdemeanor arrestee. Subjects who have consumed alcohol, if not lodged, should be turned over to a responsible adult.
 - (2) Age 17: In addition to processing the offender as a standard misdemeanor arrestee, the arresting enforcement member shall immediately notify the parent, guardian, or custodian of the violation, via telephone or in person. If unable to make contact by the end of the shift, notice shall be sent to the parent, guardian, or custodian by first class mail. Notification shall be made within 48 hours of the violation. Enforcement members shall document notification or its attempts in the narrative portion of the Incident Report, and the report shall not be closed until the

notification is completed. Subjects, who have consumed alcohol, if not lodged, should be turned over to a responsible adult.

- (3) Age 16 and Under: Follow the standard policies and procedures for juvenile misdemeanor arrests as outlined in Official Order No. 31.
- C. A minor who consumes alcohol in a location where it is legal to do so may assert the affirmative defense found in [MCL 436.1703\(17\)](#). Enforcement members should take this into consideration and consider using discretion before citing minors who can show that they were consuming alcohol in locations where it was legal for them to do so.

This defense does not apply to driving offenses. A person under 21 years of age who is operating a vehicle with any alcohol content may be arrested regardless of where he or she consumed the alcohol.

- D. There are several circumstances in which an individual is not considered to be in violation of this act. These include presenting himself or herself or another individual for medical assistance for a legitimate health care concern. See [MCL 436.1703\(9\),\(10\),\(11\)](#).

53.1.7. ADVICE OF RIGHTS

A subject arrested for one of the following offenses listed in Section 53.1.5 shall be informed of their chemical test rights as listed on the Breath, Blood, Urine Test Report form, DI-177 or on the Officer's Report of Refusal to Submit to a Chemical Test form, DI-93.

- A. The arresting enforcement member shall read the Chemical Test Rights to the arrested person as soon as possible after arrest. Advice of rights for a chemical test is required in arrests for the following offenses, in addition to those offenses covered under [MCL 257.625c](#):
- (1) If the subject was arrested for operating a watercraft while under the influence of intoxicating liquor, enforcement members shall read the Chemical Test Rights from the Watercraft/Officers Report of Refusal to Submit to Chemical Tests, DI-93M.
 - (2) If the subject was arrested for operating an ORV while under the influence of intoxicating liquor, enforcement members shall read the Chemical Test Rights from the ORV Officers Report of Refusal to Submit to Chemical Tests, DI-93O.
 - (3) If the subject was arrested for operating a snowmobile while under the influence of intoxicating liquor, enforcement members shall read the Chemical Test Rights from the Snowmobile Officers Report of Refusal to Submit to Chemical Tests, DI-93S.
 - (4) If the subject was arrested for operating an aircraft while under the influence of intoxicating liquor, enforcement members shall advise the rights from [MCL 259.187\(5\)&\(6\)](#).
- B. Miranda warnings do not apply to a decision to take a chemical test. The Miranda rights indicate the defendant may remain silent and have an attorney present, and although these rights do not apply to the implied consent law, a defendant may become confused and believe he or she can refuse the chemical test if an attorney is not present. Therefore, Miranda Warnings should not precede Chemical Test Rights.

- (1) If the arrested subject requests an opportunity to consult with an attorney before taking a chemical test, then the subject shall be granted a reasonable opportunity to do so.
 - (2) If the subject is arrested for an additional crime, such as carrying a concealed weapon (CCW), any Miranda warnings given shall be read after the chemical test.
- C. The Implied Consent Law, MCL 257.625c, provides for the testing of breath, blood or urine to determine the amount of alcohol or the presence of a controlled substance, other intoxicating substance, or a combination of both, in the blood of persons arrested for alcohol or drug related driving offenses.
- D. Enforcement members should not explain the chemical test rights beyond what is found on the chemical test rights form. Improper explanations can have a negative effect on DLAD hearing if the person refused the chemical test.

53.1.8. CHEMICAL TESTS

- A. There are three chemical tests that may be given to test a driver under the Implied Consent Law ([MCL 257.625c](#)): breath, blood, and urine.
- (1) Members shall offer the breath test to an arrested subject unless the enforcement member suspects that a controlled substance may be involved, or the person has an injury to the mouth.
 - (2) The chemical test results shall be used to supplement the investigation and shall not be used as a substitute for the enforcement member's observations.

Note: [MCL 257.625c\(2\)](#) provides that a person afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant shall not be considered to have given consent to the withdrawal of blood. People suffering from these conditions shall be offered a breath test. In cases where a blood draw is required the enforcement member shall seek a court order (i.e. a search warrant) for the blood draw.

- B. After arrest, the enforcement member shall prevent the subject from ingesting food, drink, or any other items that could contaminate chemical testing.
- C. The law provides that the arrested person may demand that a chemical test of their choice be given. An arrested person may not specify which type of test he or she wishes to take until after he or she submits to the test offered by the arresting enforcement member.

After an arrested person submits to the offered test, he or she shall be afforded a reasonable opportunity to obtain a test of his or her own choosing at his or her own expense. See Section 53.1.8.J below.

- D. Enforcement members shall make every effort to obtain a blood sample from individuals suspected of being under the influence of a controlled substance or other intoxicating substance or a combination of them.
- E. Enforcement members shall obtain blood when the arrested subject appears to be intoxicated but the investigation indicates that the subject's actions are caused by the use of controlled substances, or other intoxicating substance, or a combination of them, and not the result of illness or injury.

F. If the subject charged with operating while intoxicated refuses to submit to a chemical test, a chemical test shall not be given without a court order except in cases where the person later asks for a test and the enforcement member feels that the request is both practical and reasonable. This cannot be considered a refusal.

- (1) The department does not subscribe to any specific time limit within which the person must decide whether he or she will submit to the offered test.
- (2) Statutory language does not specify a time limit for delaying the test and the Michigan Department of State, Driver's License Appeal Division, does not have a time limit policy either. Therefore, enforcement members shall be guided by the reasonableness and circumstances of each case on its merit.

G. Breath Test

Enforcement members shall follow the procedures outlined in the latest edition of the Michigan Breath Test Operator Training Manual.

- (1) Because of the general availability of breath testing equipment and qualified personnel to administer this test, the breath test shall be offered to persons arrested for operating while intoxicated. This policy does not prohibit the enforcement member from taking unusual circumstances into consideration, or from conforming to the wishes of the local prosecutor or courts.
- (2) For the personal safety of the breath test operator and the arrested subject, breath test operators shall not be armed while administering a breath test. When it is reasonably feasible, the arresting enforcement member shall remain with the subject during the administration of the test.
- (3) While an arrested subject does not have the right to have an attorney or other person present during a breath test, subjects who request to contact an attorney prior to submitting to the offered test shall be given a reasonable opportunity to do so.

H. Blood Test

- (1) The enforcement member shall request a blood sample if:
 - a. In the breath test operator's judgment, a breath sample cannot be obtained because of the arrested subject's physical condition (e.g., a mouth injury or blood in the mouth).
 - b. The PBT or breath test results (e.g., a result of 0.00) are inconsistent with the arrested subject's behavior, indicating that drugs may be involved.
- (2) The law provides that only a licensed physician, or a licensed nurse or medical technician acting under the direction of a licensed physician, in a medical environment, may withdraw blood for the purpose of determining the amount of alcohol or presence of a controlled substance or both in the person's blood.

If a blood test is administered at the request of an enforcement member for the detection of alcohol, controlled substances, or other intoxicating substance, or a combination of them, the Alcohol Specimen Kit furnished by the Forensic Science Division through the Distribution Center should be used to collect and forward the blood sample for analysis to the Lansing Laboratory.

- (3) If controlled substances, or other intoxicating substances, or a combination of them are suspected, the enforcement member should indicate that in the "Additional Remarks" section of the Alcohol or Drug Determination form, FSD-093. The enforcement member should attempt to further identify what drugs the subject may have ingested using any of the following methods:
 - a. Suspect interview following the advising of Miranda Rights.

The suspect should be asked what illegal drugs they had taken and in what quantity, as well as what prescription drugs they had taken, in what quantity, and for what illnesses.
 - b. If the subject admits to illicit drug use, the enforcement member should document the admission and the types of drugs used.
 - c. Any drug paraphernalia or other signs of drug use present.
 - d. Prescriptions, bottles, pills, and the results of any searches at the scene of the incident shall be documented.
 - e. Unusual behavior.
 - f. Enforcement members shall list on the FSD-093 what drugs the lab should test for. If the type of drug is unknown or there are multiple drugs suspected then enforcement members shall ask for a "complete drug screen."
- (4) Evidence submitted to the laboratory shall be sealed. Evidence that is not sealed may be unacceptable in court proceedings.
- (5) Identification labels provided in the kit should not be used to seal the test tubes or the specimen bottles. The labels shall be placed on the test tube or bottle, clear of the end of the cap.
- (6) Only blood samples withdrawn or collected at the request of a peace officer shall be sent to the department laboratory for analysis using the Alcohol Specimen Kit.

I. Urine Test

- (1) A blood specimen is the best sample to submit when trying to establish that a subject was under the influence of drugs, or other intoxicating substances, or a combination of them, during a specific time period. A urine specimen can only show that a subject had past exposure to drugs but not when that exposure was (e.g., what day or time, or how many hours or days ago).
- (2) As much as possible, enforcement members should attempt to submit blood specimens for alcohol/controlled substance/other intoxicating substance related offenses. (See "Note" in Section 53.18.A.) For hemophiliacs, urine specimens may be submitted if it is determined that there is no medically feasible or safe method of obtaining a blood sample.

J. Additional Tests

- (1) After a chemical test has been administered, if the arrested person requests a test of his or her own choosing (blood or urine), he or she shall be given a reasonable opportunity to have a person of his or her choosing administer such a test within a

reasonable time after the person's detention.

This is the arrested person's own test and shall not be sent to the department laboratory for analysis. Furthermore, the department Alcohol Specimen Kit shall not be used for this test. The arrested person shall arrange for the withdrawal, collection, and analysis of the sample, as well as payment for the test.

- (2) If the arrested person has been administered a breath test, then requests a breath test administered by a different officer as an additional test for personal use, the test shall not be administered by a department breath test operator.
- (3) If the arrested person submits to a blood or urine test to determine their bodily alcohol level, and then requests a breath test as their personal test, the enforcement member shall administer the test, or have the test administered, if this is a reasonable request. The subject must also be physically able to take the test (i.e., no mouth injury or blood in the mouth).

53.1.9. CHEMICAL TEST REFUSALS

- A. A person who does not consent to the request of an enforcement member to submit to a chemical test at the time the request is made shall be considered to have refused the test. However, if the person changes his or her mind within a reasonable time and decides to submit to a test, in some cases it may be reasonable to administer the test at that time (if the enforcement member is still at the test instrument location and an operator is still reasonably available).
- B. When the subject consents to a breath test, but then refuses to provide an adequate sample for analysis after the test procedure is started, it shall be considered an "Operator Refusal" and shall be noted on the Evidence Ticket, OD-080.
- C. When the subject consents to a breath test but then provides five inadequate samples for analysis within a two-minute period after the test procedure is started, it shall be considered a "Technical Refusal" and shall be noted on the Evidence Ticket, OD-80.
 - (1) In such cases the operator shall ensure that there are no blockages in the breath tube or mouthpiece which would prevent air from passing into the sample chamber.
 - (2) The arresting enforcement member shall enter the name of the breath test operator and the name of the law enforcement agency on the Officer's Report of Refusal to Submit to Chemical Test form DI-93, for all operator or technical refusals.

53.1.10. CHEMICAL TEST RESULTS

- A. If a test is given, the law provides that the results shall be made available to the subject charged, or the subject's attorney, upon written request to the prosecution. If the subject submitted to a breath test, one copy of the Evidence Ticket, OD-080, shall be given to the arrested subject upon completion of the test. A second copy shall be filed with the court. The prosecution shall furnish the report at least two days prior to the day of the trial. Failure to comply with this request shall bar the admission of the test results into evidence.
- B. "Per Se" Violations--[MCL 257.625\(7\)](#)

There shall not be an original charge for a "per se" violation. If the results of the evidential test are found to be 0.08 or more, the local prosecutor shall have discretion in amending the charge to a "per se" violation. If the prosecutor chooses to charge for an

enhanced offense, no additional arrest shall be carried in the Incident Report arrest segment or the Officers eDaily report.

- (1) [MCL 257.625\(8\)](#) provides that to operate a vehicle while having any amount of a controlled substance listed in Schedule 1 [MCL 333.7212](#), or a rule promulgated under that section, or of a controlled substance described [MCL 333.7214](#), is also a “per se” violation.

If the results of the evidential test are found to show the presence of a controlled substance or other intoxicating substance, or a combination of them, the local prosecutor shall have discretion in amending the charge to a “per se” violation. If the prosecutor chooses to charge for an enhanced offense, no additional arrest shall be carried in the Incident Report arrest segment or the Officers eDaily report or the Motor Carrier eDaily Report.

53.1.11. CHEMICAL TESTING OF JUVENILES

- A. The “implied consent” law applies to both juveniles and adults. If a juvenile is taken into custody for OWI/OWPD or Under 21 BAC, he or she may lawfully be requested to submit to a chemical test, and the results are admissible in court.
- B. The juvenile shall be given the opportunity to consult an attorney or other adult, if requested, before deciding to take the test. 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.
- C. When processing juvenile alcohol offenders age 16 or under, follow the standard policies and procedures for juvenile misdemeanor arrests as outlined in Official Order No. 31.

53.1.12. LICENSE PLATE DISPOSITION

- A. Enforcement members shall check the driving record on every person arrested for OWI/OWPD/Under 21 BAC via the Law Enforcement Information Network (LEIN) before leaving the scene.

LEIN checks shall be run using inquiry codes of 47:35 on the driver and 47:13 on the registration plate.
- B. If the driver has prior convictions, the LEIN response will direct the enforcement member to confiscate and destroy the metal registration plate from the vehicle.
 - (1) Enforcement members shall not confiscate dealer, manufacturer, out-of-state, rental, trailer, tribal, U.S. government, or apportioned (IRP) plates.
 - (2) A paper Temporary Registration Plate, BFS-150, shall be completed and placed in the driver’s side of the rear window as required under [MCL 257.904c](#).
- C. An expired plate shall be confiscated and destroyed and a paper plate shall be issued.

The paper plate expires on the same date as the metal plate.
- D. If a paper temporary registration plate already exists for the vehicle, confiscate and destroy the paper plate and issue a new paper temporary registration plate.
- E. Plate confiscation information shall be entered into LEIN immediately.

- F. Additional Temporary Registration Forms, BSF-150, can be ordered through the Michigan Department of State, Inventory and Control Unit in Lansing. A request may be made by telephone at 517-375-XXXX, or by fax at 517-373-XXXX.

53.1.13. VEHICLE DISPOSITION

A person arrested for OWI/OWPD /UNDER 21 BAC shall not be allowed to continue driving the vehicle. The vehicle disposition shall be handled in one of the following ways:

- A. The driver may turn the vehicle over to one of the passengers.

Enforcement members shall determine if the passenger is legally able to drive.
- B. If the vehicle is on a limited access highway and is not disposed of as provided in Section 53.1.13.A above, or immediate removal cannot be arranged, it shall be impounded according to Official Order No. 48.
- C. If properly parked, the vehicle may be left at the scene.
- D. If improperly parked or deemed to create an immediate public hazard, when taking weather conditions, road conditions, and traffic flow into consideration, and there is no passenger to take possession of the vehicle, the vehicle shall be impounded according to Official Order No. 48.
- E. If requested by the arrested person, the vehicle shall be towed for safekeeping. A heading in the report shall indicate the towing agency's name and where the vehicle was towed.
- F. Enforcement members shall not operate an arrested driver's vehicle except when the vehicle is stopped, parked, or standing in a manner that creates an immediate hazard to life and/or safety, and immediate action is required to mitigate the hazard, according to Official Order No. 48.

53.1.14. FORMS

- A. Alcohol/Drug Influence Report (UD-003)

Unless required by the work site commander, members may choose whether or not to complete an Alcohol/Drug Influence Report, UD-003, on an OWI/OWPD/UNDER 21 BAC arrest. However, if they choose not to complete the form they must ensure that all the necessary information regarding the arrest is contained in their incident report.

- B. Notification of OWI/OWPD Reimbursement (UD-081)

- (1) The Notification of OWI/OWPD Reimbursement form, OD-081, is used to notify the prosecutor and court that the Michigan Department of State Police is requesting court ordered reimbursement of expenses by a person convicted of an alcohol or drug-related driving offense, as provided by [MCL 769.1f](#).
- (2) The Notification of OWI/OWPD Reimbursement form, OD-081, shall be completed by the arresting enforcement member per the instructions on the form. The original form shall be attached to the complaint and warrant request sent to the prosecutor. A copy of the completed form shall be attached to the original complaint and to the Uniform Law Citation, sent to the court.

(3) Collection of Funds and Expenses Paid Out of the Fund

- a. The funds will be collected by the District Court and sent to the Michigan Department of Treasury, which will forward the funds to the department's PCA.
- b. Expenses to be paid out of the fund are fees paid to outside vendors for OWI/OWPD arrests previously paid out of the post CSS&M account.

Examples of OWI/OWPD expenses include: blood draws, towing, storage, other chemical tests not performed by our laboratory, and other expenditures common to OWI/OWPD arrest.

C. Uniform Law Citation

(1) Arrests for the charge of OWI/OWPD/UNDER 21 BAC committed in the enforcement member's presence, based on investigation and reasonable cause, or subsequently charged on receipt of a warrant, shall be recorded on a Uniform Law Citation, in accordance with this Order.

- a. Enforcement members shall ensure that the complete charge is recorded on the Uniform Law Citation, including MCL section and subsection.
- b. If a chemical test for alcohol is given, the bodily alcohol content shall be indicated, if known. Indicate, in the area reserved for the result, if a breath, blood, or urine test is given, as follows:
 - i. If a breath test is given, enter the results.
 - ii. If a blood test is given, enter "BL."
 - iii. If a urine test is given, enter "UR."
- c. If the subject refuses a chemical test and no test is given by court order indicate "NT" in the area reserved for the result.

(2) Enforcement members shall check the driving record of every person arrested for OWI/OWPD/UNDER 21 BAC via LEIN immediately upon their arrest. If there are previous convictions, enforcement members may seek authorization for an enhanced charge by checking the "Authorization Pending" box on the Uniform Law Citation and then contacting the local prosecutor. Only one arrest shall be carried on the Officer eDaily Report and in the Incident Report arrest segment, even if the prosecutor authorizes an enhanced charge.

D. Incident Report

An Incident Report shall be completed for all OWI/OWPD/UNDER 21 BAC offenses in accordance with Official Order No. 5.

- (1) All applicable person, property, arrest, etc. screens shall be completed.
- (2) If a chemical test for alcohol is given, the bodily alcohol content shall be indicated, if known.

- E. Breath, Blood, Urine Test Report LEIN Input Prompt (DI-177, DI-177S, DI-177M, DI-177O)
- (1) The following forms shall be completed as appropriate in all instances where a person is arrested for an offense that requires submission to a chemical test and the person submits to the required test. Forms are used as follows:
 - a. DI-177: Motor vehicle operators or operators of snowmobile/ORV on a highway or other place open to the general public or an area generally accessible to motor vehicles.
 - b. DI-177S: Snowmobile operators.
Note --Do not enter data from the DI-177S into LEIN.
 - c. DI-177M: Motorboat operators.
Note --Do not enter data from the DI-177M into LEIN.
 - d. DI-177O: Off-Road Vehicle operators.
Note --Do not enter data from the DI-177O into LEIN.
 - (2) Instructions for disposition of the arrested person's driver license and form distribution instructions are provided on the form. A property report is not required for a confiscated driver license, but it must be noted in the incident report.
 - (3) Prior to end of shift, the arrest data shall be entered into the LEIN alcohol file.
 - (4) DI-177 forms are available by written request from the Michigan Department of State, Purchasing and Contracts Section, in Lansing.
- F. Officer's Report of Refusal to Submit to Chemical Test (DI-93, DI-93S, DI-93M, DI-93O)
- (1) These forms shall be completed in all instances where a person is arrested for an offense that requires submission to a chemical test and the person refuses to submit to the required test. Forms are used as follows:
 - a. DI-93: Motor vehicle operator or operators of snowmobile/ORV on a highway or other place open to the general public or other place generally accessible to motor vehicles.
 - b. DI-93S: Snowmobile operator.
 - c. DI-93M: Motorboat operator.
 - d. DI-93O: ORV operator.
 - (2) Instructions for disposition of the arrested person's driver license and forms distribution instructions are provided on the forms. A property report is not required for the confiscated driver license, but it must be noted in the incident report.
 - (3) Prior to end of shift, the arrest data shall be entered into the LEIN alcohol file. If the subject refuses your chemical test, you must put the word REFUSED in the box marked instrument number on the DI-93.

- (4) DI-93 forms are available by written request from the Michigan Department of State, Purchasing and Contracts Section, in Lansing.

G. Officer / Motor Carrier eDaily Report

Enforcement members shall carry one OWI/OWPD/UNDER 21 BAC arrest on the Officer eDaily Report/Motor Carrier eDaily Report, for each subject arrested.

H. Michigan Temporary License Plate, BFS-150

- (1) A Michigan Temporary License Plate shall be issued when an enforcement member confiscates a registration plate under [MCL 257.904c](#), in accordance with instructions provided on the form.
- (2) Temporary License Plates, BFS-150, are available by written request from the Michigan Department of State, Inventory and Control Unit, in Lansing.

53.2 REVISION RESPONSIBILITY

Responsibility for continuous review and revision of this Order lies with the Field Services Bureau and the State Services Bureau (Training and Forensic Science divisions), in cooperation with the Office of the Director.

DIRECTOR