

# Germantown Police Department

## Policies and Procedures

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**Number:** 8-4  
**Effective Date:** January 1, 2003  
**Subject:** D.U.I. Investigations  
**Previous Revisions:**

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### **I. PURPOSE**

The purpose of this policy is to establish guidelines for officers who stop a driver and suspect that the driver might be under the influence of an intoxicant or a drug.

### **II. POLICY**

It is the policy of the Germantown Police Department that all officers shall thoroughly investigate drivers who are suspected of operating a motor vehicle while under the influence of an intoxicant or a drug.

### **III. DISCUSSION**

Tenn. Code Ann. 55-10-401 explains the implied consent law for the administration of chemical tests where the officer has "reasonable grounds to believe such person to have been driving, while under the influence of an intoxicant, or drug...". It is not necessary that the officer arrest the suspect for D.U.I. in order for the driver to be required to submit to the chemical tests or lose his license for refusal to do so.

The officer may release the driver if he/she feels: first, that the results of the tests will not sustain a conviction; and second, that physical ability tests and the officer's personal opinion (admissible in court to determine sobriety) do not indicate the person to be intoxicated.

The law states that "any person who drives...shall be deemed to have given his or her consent to a test for the purpose of determining the alcoholic or drug content of his or her blood." There is no need for an arrest of any sort as a prerequisite to the giving of the test. The law does not require that the person need be under arrest for D.U.I. or any other charge.

A traffic violation stop is sufficient, even though no physical arrest is made in that a ticket is issued in lieu of said physical arrest.

Therefore, the officer can wait until after the test in determining whether or not he wishes to bring a D.U.I. charge. It shall be up to the individual officer's discretion whether or not to bring the charge.

If a person refuses to take the test after having been arrested for a traffic offense, the officer should then inform the individual he/she is being charged with D.U.I. and offered another opportunity to take the test. If he/she again refuses to take the test, a physical arrest should be made and both the moving violation and the D.U.I. charges should be brought.

It is also important in all D.U.I. arrests to include specific information regarding field sobriety tests in the arrest report. This helps the prosecutor establish probable cause in order to justify the arresting officer's decision to administer the intoximeter test. This information should include such actions as the arresting officer requiring the defendant to walk a straight line, perform the fingertip to nose agility exercise, or any other divided attention test, which the officer has the defendant perform in order to determine if the defendant is under the influence.

#### **IV. TESTING**

Tenn. Code Ann. 55-10-408 imposes presumptions that the defendant is not under the influence of an intoxicant if he/she registered .05% or less by weight of alcohol or BAC. This statute further sets out that .10% BAC does create a presumption that the defendant is under the influence of such intoxicant and that his/her ability to drive is impaired thereby. After July 1, 2003, the BAC for a presumption that the defendant is under the influence is lowered to .08%

#### **V. REFUSAL TO TAKE D.U.I. TESTS**

If an individual is believed to be under the influence of an intoxicant/drugs, an officer should request the suspect to submit to a test to determine the alcoholic or drug content in the suspect's blood. Officers should also advise defendant that refusal to submit will result in the suspension of his/her license by the court and the charge of Refusal to Submit to BAC Test, Tenn. Code Ann. 55-10-406 will be placed against the defendant. (NOTE: Charge must be on a separate affidavit).

A suspect may wish to take the test and may wish to confer with an attorney. Miranda rules do not apply in this situation and a defendant should be informed that his/her only choice is to take the test or refuse regardless of his/her request for an attorney, and any refusal to submit will result in the charge of Refusal to Submit to BAC Test, Tenn. Code Ann. 55-10-406.

Officers are not allowed to take the license of an individual who refuses to submit to a D.U.I. test where there is probable cause that the person has been driving while intoxicated. The license can only be taken by the Commissioner of Public Safety after the defendant has been offered a hearing. Therefore, officers should not take licenses of individuals in D.U.I. cases.

Officers can seize the license if it has been fraudulently altered and would, therefore, be needed as evidence for the charge of fraudulent use of a license, or if it is suspended, revoked, or cancelled.

## **VI. ADDITIONAL RECKLESS DRIVING CHARGE**

When a defendant is arrested for D.U.I., the arresting officer may also place a charge of reckless driving against the defendant if the defendant's operation of the vehicle makes it appropriate to do so. The courts have held that reckless driving is not a lesser included offense of D.U.I.; so unless the reckless driving charge is on the arrest report, the driver will not be found guilty of reckless driving simply because he/she was charged with D.U.I. The arresting officer should also place all of the appropriate information concerning reckless driving activity in the arrest report. This should include weaving, high rate of speed, sudden lane changes, unusually fast acceleration, etc.

## **VII. D.U.I. SUSPECTS TAKEN TO HOSPITALS**

The Metro D.U.I. Squad will be called to all hospitals where a D.U.I. suspect is taken due to injury. It will be the responsibility of the Metro D.U.I. Squad to fill out all necessary forms pertaining to the suspect.

## **VIII. FIELD SOBRIETY REPORT**

To assist in arrest information, the Metro D.U.I. Squad will use a D.U.I. Field Sobriety Report, which is on the back of the Implied Consent Form. The Metro D.U.I. technician will furnish the form to the arresting officer(s) who will complete the Field Sobriety Report on each defendant and return the form to the D.U.I. technician. The D.U.I. technician will then complete the Implied Consent portion and process the defendant in the usual manner. The D.U.I. Squad will provide the Field Sobriety Report at the scene, to be included with the arresting officer's arrest report.

## **IX. VEHICULAR ASSUALT**

Where uniformed patrol officers are dispatched to an accident involving a D.U.I. suspect and serious bodily injury has been inflicted to another person, responding officers should secure the scene and summon a supervisor. Uniformed officers should assist on the scene and a supervisor will determine the appropriate charges, including Vehicular Assault, Tenn. Code Ann. 39-13-106, where applicable.

"Serious bodily injury" is defined, in Tenn. Code Ann. 39-11-106, as bodily injury which involves:

- A. A substantial risk of death;
- B. Protracted unconsciousness;
- C. Extreme physical pain;
- D. Protracted or obvious disfigurement; or
- E. Protracted loss or substantial impairment of a function of a bodily member, organ, or mental faculty.

**X. D.U.I. VIDEO TAPES**

The Metro D.U.I. Squad officer will make a videotape of his/her interactions with the driver. After the D.U.I. technician has completed his investigation, the technician will turn over the videotape to the arresting officer. After receiving the videotape from the D.U.I. technician, a property envelope, 3-piece property supplement, and a cover sheet will be completed by the arresting officer. The D.U.I. videotape will be turned over to a supervisor and this fact noted in the narrative of the arrest report.

**XI. MANDATORY MEDICAL EVALUATION**

Persons that register .30% BAC or higher **must** be transported to the hospital prior to booking. Other intoxicated persons exhibiting signs of medical problems, at a minimum, will be examined by paramedics prior to booking.

**XII. REVIEW PROCESS**

An annual review of this policy shall be conducted to determine if it should be revised, cancelled or continued in its present form.

This order shall remain in effect until revoked or superseded by competent authority.