

# Impaired Driving

## 504.1 PURPOSE AND SCOPE

### Best Practice

This policy provides guidance to those department members who play a role in the detection and investigation of driving while intoxicated (DWI).

## 504.2 POLICY

### Best Practice

The City of Galveston Police Department is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of Texas's impaired driving laws.

## 504.3 INVESTIGATIONS

### Best Practice

Officers should not enforce DWI laws to the exclusion of their other duties unless specifically assigned to DWI enforcement. All officers are expected to enforce these laws with due diligence.

The Traffic Supervisor will develop and maintain, in consultation with the prosecuting attorney, report forms with appropriate checklists to assist investigating officers in documenting relevant information and maximizing efficiency. Any DWI investigation will be documented using these forms. Information documented elsewhere on the form does not need to be duplicated in the report narrative. Information that should be documented includes, at a minimum:

- (a) The field sobriety tests (FSTs) administered and the results.
- (b) The officer's observations that indicate impairment on the part of the individual, and the officer's health-related inquiries that may help to identify any serious health concerns (e.g., diabetic shock).
- (c) Sources of additional information (e.g., reporting party, witnesses) and their observations.
- (d) Information about any audio and/or video recording of the individual's driving or subsequent actions.
- (e) The location and time frame of the individual's vehicle operation and how this was determined.
- (f) Any prior related convictions in Texas or another jurisdiction.

## 504.4 FIELD TESTS

### Best Practice

The Traffic Supervisor should identify standardized FSTs and any approved alternate tests for officers to use when investigating violations of DWI laws.

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### 504.5 CHEMICAL TESTS

**State**

A person implies consent under Texas law to a chemical test or tests, and to providing the associated chemical sample, under any of the following (Tex. Transp. Code § 724.011):

- (a) The person is arrested by an officer having reasonable grounds to believe the person is DWI.
- (b) The person is under 21 years of age and is arrested by an officer for operating a motor vehicle in a public place while having any detectable amount of alcohol in the person's system.

If a person withdraws this implied consent, or is unable to withdraw consent (*e.g.*, the person is unconscious), the officer should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

#### 504.5.1 STATUTORY NOTIFICATIONS

**State**

Before requesting that a person submit to the taking of a breath or blood sample, whether or not consent has been given, the officer shall inform the person orally and in writing of the required information contained in Tex. Transp. Code § 724.015.

#### 504.5.2 BREATH SAMPLES

**Best Practice**

The Traffic Supervisor should ensure that all devices used for the collection and analysis of breath samples are properly serviced and tested, and that a record of such service and testing is properly maintained.

Officers obtaining a breath sample should monitor the device for any sign of malfunction. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to the Traffic Supervisor.

#### 504.5.3 BLOOD SAMPLES

**Best Practice**

Only persons authorized by law to draw blood shall collect blood samples (Tex. Transp. Code § 724.017). The blood draw should be witnessed by the assigned officer. No officer, even if properly certified, should perform this task.

Officers should inform an arrestee that if he/she chooses to provide a blood sample, a separate sample can be collected for alternate testing. Unless medical personnel object, two samples should be collected and retained as evidence, so long as only one puncture is required.

The blood sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she shall not be required to take a blood test. Such inability

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to take a blood test shall not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

### 504.5.4 URINE SAMPLES

#### Best Practice

If a urine test will be performed, the arrestee should be promptly transported to the appropriate testing site. The officer shall follow any directions accompanying the urine evidence collection kit.

Urine samples shall be collected and witnessed by an officer or jail staff member of the same sex as the individual giving the sample. The arrestee should be allowed sufficient privacy to maintain his/her dignity, to the extent possible, while still ensuring the accuracy of the sample.

The sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

### 504.5.5 ADDITIONAL TESTING

#### State

A person who submits to a chemical test at the request of An officer may, on request and within a reasonable time (not to exceed two hours after arrest), have a qualified medical professional of his/her own choosing take an additional specimen of the person's blood for analysis. While the person must be provided with a reasonable opportunity to contact a professional to respond and administer an additional sample, officers are not required to transport the person for testing (Tex. Transp. Code § 724.019).

## 504.6 REFUSALS

#### State

When an arrestee refuses to provide a chemical sample, officers should:

- (a) Advise the arrestee of the requirement to provide a sample (Tex. Transp. Code § 724.011).
- (b) Audio- and/or video-record the admonishment and the response when it is practicable.
- (c) Document the refusal in the appropriate report.

### 504.6.1 STATUTORY NOTIFICATIONS UPON REFUSAL

#### State

Upon refusal to submit to a chemical test as required by law, officers shall personally serve the notice of license suspension upon the person and take possession of any state-issued license to operate a motor vehicle that is held by that person. If prior to the arrest the person held a valid driver's license, the arresting officer shall issue a temporary driving permit to the person (Tex. Transp. Code § 724.032).

### 504.6.2 BLOOD SAMPLE WITHOUT CONSENT

#### State

# City of Galveston Police Department

TX LE Policy Manual (linked w/ Global)

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A blood sample may be obtained from a person who refuses to submit to a chemical test when any of the following conditions exist:

- (a) A search warrant has been obtained.
- (b) The officer can articulate that exigent circumstances exist. Exigency does not exist solely because of the short time period associated with the natural dissipation of alcohol or controlled or prohibited substances in the person's bloodstream. Exigency can be established by the existence of special facts, such as a lengthy time delay resulting from an accident investigation or medical treatment of the person.

### 504.6.3 FORCED BLOOD SAMPLE

#### **Best Practice**

If an arrestee indicates by word or action that he/she will physically resist a blood draw, the officer should request a supervisor to respond.

The responding supervisor should:

- (a) Evaluate whether using force to obtain a blood sample is appropriate under the circumstances.
- (b) Ensure that all attempts to obtain a blood sample through force cease if the person agrees to, and completes, a viable form of testing in a timely manner.
- (c) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer), and attempt to persuade the individual to submit to providing such a sample without physical resistance.
  - 1. This dialogue should be recorded on audio and/or video when practicable.
- (d) Ensure that the blood sample is taken in a medically approved manner.
- (e) Ensure that the forced blood draw is recorded on audio and/or video when practicable.
- (f) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances:
  - 1. Unless otherwise provided in a warrant, force should generally be limited to handcuffing or similar restraint methods.
  - 2. In misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
  - 3. In felony cases, force which reasonably appears necessary to overcome the resistance to the blood draw may be permitted.
- (g) Ensure the use of force and methods used to accomplish the collection of the blood sample are documented in the related report.

If a supervisor is unavailable, officers are expected to use sound judgment and perform the duties of a supervisor, as set forth above.

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### **504.7 ARREST AND INVESTIGATION**

**State**

#### **504.7.1 OFFICER RESPONSIBILITIES**

**State**

If a person refuses to submit to a chemical test, the officer shall request that the person sign a statement of refusal (Tex. Transp. Code § 724.031). In addition, the officer shall make a written report of the refusal (Tex. Transp. Code § 724.032).

The officer shall forward a copy of the refusal report along with the following to the Department of Public Safety (DPS) on the prescribed forms within five business days (Tex. Transp. Code § 724.032):

- (a) A copy of the notice of suspension or denial.
- (b) Any license taken by the officer pursuant to this policy.
- (c) A copy of any temporary driving permit issued to the person.

#### **504.7.2 REPORTING**

**State**

The Traffic Supervisor shall ensure that this department complies with all state reporting requirements pursuant to (Tex. Gov't. Code § 411.049).

### **504.8 RECORDS DIVISION RESPONSIBILITIES**

**Best Practice**

The Records Supervisor will ensure that all case-related records are transmitted according to current records procedures and as required by the prosecuting attorney's office.

#### **504.8.1 VIDEO RECORDINGS OF ARRESTS FOR INTOXICATION**

**State**

Upon request of a person stopped or arrested for DWI, the Records Supervisor shall supply a copy of any video recordings related to the stop or arrest as required by Tex. Code of Crim. Pro. art. 2.1396.

### **504.9 ADMINISTRATIVE HEARINGS**

**Best Practice**

The Records Supervisor will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to the DPS.

Any officer who receives notice of required attendance at an administrative license suspension hearing should promptly notify the prosecuting attorney.

An officer called to testify at an administrative hearing should document the hearing date and the DPS file number in a supplemental report. Specific details of the hearing generally should not be included in the report unless errors, additional evidence or witnesses are identified.