

## Procedure

# 4.11

**EFFECTIVE  
DATE  
5-21-99**

# Eugene Police Department



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## DUII Enforcement

### 4.11.1 PURPOSE AND SCOPE

Effective 10.05.12, CD12-009 revises this General Order by the deletion of Section F. General Order 303.11 contains guidelines for booking subjects that are no longer relevant and are covered in General Order 501.1- Arrests.

The primary objective of DUII enforcement is the reduction of fatal and injury accidents caused by alcohol and/or drug-impaired drivers.

#### PART I - Responsibilities and Procedures for Sworn Personnel

- a. Field sobriety tests
- b. Approved tests
- c. Breath tests
- d. Blood tests (at health care facility)
- e. Processing
- f. Booking
- g. Reporting
- h. Vehicle impound

### 4.11.2 RESPONSIBILITIES AND PROCEDURES FOR SWORN PERSONNEL

#### a. Field sobriety tests

1. It is best to ask for consent prior to beginning FSTs. You may give only the tests outlined in this policy; do not use others that are not currently listed in the Oregon Administrative Rules by the Oregon State Police. (Specific instructions to give to individuals performing the tests, as given in training, are not included in this policy.)
2. Determine if the subject has any injuries, illness, deformities, or footwear which may affect the test. Ask if the subject has diabetes, takes insulin, has epilepsy, or has a past or present head injury.

3. As you conduct the tests, always keep officer safety in mind. Consider having a second officer present during the tests.
4. Conduct all tests on a flat, unobstructed surface in an area with adequate lighting.
5. Explain and demonstrate each test before you ask a subject to do the test. Ask if your subject understands your directions. You may include his or her repeated failure to understand as evidence of impairment.

**b. Approved tests**

1. *Horizontal Gaze Nystagmus*
  - a. This test determines impairment by observing the jerking of the eyes as they deviate to the side.
  - b. Ask if the subject is wearing hard contact lenses. Ask the subject to remove his or her glasses and to keep the head still, since you are testing movement of the eyeball.
  - c. You may not use this test unless you have successfully completed the NHTSA/DPSST training.
2. *Walk and Turn*: This is a divided-attention test where the subject is asked to walk heel-to-toe for a prescribed number of steps out and back while counting aloud.
3. *One-Leg Stand*: This is a divided-attention test where the subject is asked to stand on one leg, while lifting the other off the ground, for a prescribed period of time. (Note: For this test and the walk and turn test, remember that factors other than intoxication, such as a disability, *may* affect the test results.)
4. OTHER TESTS

You may use the following tests as alternatives when conditions exist which would affect the ability to use the tests outlined above, or as additional evidence in the DUII investigation:

- a. *Counting*: The subject counts aloud a prescribed series of numbers forward and backward (e.g., the numbers 90 through 100 and backwards from 100 to 90).
- b. *Alphabet*: The subject recites the alphabet.

- c. Romberg: The subject stands with feet together, head held slightly back, hands at sides and eyes closed. The subject may be asked to maintain this position for what he or she believes to be 30 seconds. (This test can also be combined with the counting or alphabet test to create a divided-attention test.)
- d. *Modified finger-to-nose*: The subject stands flat-footed with feet together and leans back slightly with head tilted to the rear, eyes closed and arms outstretched. The subject is then asked to touch the tip of the nose with the tip of the extended index finger(s).
- e. *Finger dexterity*: The subject is asked to touch the index finger to the thumb of the same hand and count "one," touch the middle finger to the same thumb and count "two," touch the third finger to thumb and count "three," and touch the little finger to the thumb and count "four." The order is then reversed, 4-3-2-1, counting little finger to first finger. This sequence is generally repeated three times.

c. **Breath tests**

1. Before any breath test, inspect the subject's mouth for substances that should be removed. After removing any foreign substances, re-inspect the person's mouth and have him/her rinse it out with water. Wait 15 minutes before checking the mouth again and conducting the test.
2. Follow the breath-test check list. Write no comments on the check list.
3. Prior to the breath test, read the "Consequences and Rights of a Driver Under the Implied Consent Law" from the "Implied Consent Report" to your subject. Before reading this information, obtain from DMV the duration of suspension for refusal of the breath test and for having a reading of .08% blood alcohol or higher.
4. If your subject requests, allow a reasonable time (15 minutes) to call an attorney. While the subject talks with his/her attorney, allow as much privacy as possible consistent with officer safety and operational concerns.
5. Do not use military time on the Implied Consent Report.
6. Refusal to submit to a breath test after arrest for DUI is admissible evidence in both criminal and civil trials. Record any reason your subject gives for not taking a breath test. Include the refusal on the DUI Report. Fill out Intoxilyzer checklist and operate the Intoxilyzer. Abort the test by pushing the green (start) button when it indicates to blow. The machine will print a refusal card.

7. Regarding use of the Intoxilyzer 5000:
  - a. If the machine shows an “insufficient sample” result, do not restart the test. Do not treat this as a refusal. If the result shown is above the legal blood-alcohol limit, this constitutes a failure of the test.
  - b. If the machine prints “no sample given”, this is an incomplete test. Restart the test until the subject gives a breath sample or refuses the test. This will constitute a refusal of the test.
  - c. If during the three-minute request period the subject refuses through some willful act to follow the instructions to provide an adequate sample, press the “start test” button to abort the test. This will constitute a refusal of the test.
8. Post a sign on the machine and notify the Watch Commander if the breath test machine malfunctions. (The Watch Commander will notify Oregon State Police, Springfield office.) Use the breath machine at the jail.
9. Notify the Watch Commander if breath machine supplies are depleted. OSP (Springfield office) maintains extra supplies and coordinates the maintenance and repair of the breath machine. Calibration records are maintained by the OSP Crime Lab, Portland.

**d. Blood tests (at health care facility)**

1. If you have arrested a driver for DUII who is receiving treatment at a health care facility, you can request a blood sample under Implied Consent laws.
  - d. If the person agrees to the blood test, you will need to request a public health nurse via the District Attorney’s office to draw the blood.
  - e. If the person refuses, process it as a refusal.
2. If the person gives a blood sample, submit the blood sample for analysis of the blood-alcohol level. Retain the Implied Consent Combined Report until you receive the lab results.
3. Once you have received the lab report, if the blood-alcohol level is sufficiently high to constitute a failure of the test, submit the Combined Report to DMV as you normally would **along with** a copy of the lab results.

**e. Processing**

1. Complete the EPD DUII Report Form. Use Supplemental Reports for other evidence and information not covered on the DUII form. Ask the subject all the

questions on the DUll report form; stop only if the subject invokes his/her Miranda rights.

2. You may cite and release if a responsible, sober adult will take custody of your arrestee within 45 minutes of your call. This would include a taxi, if the subject has funds to pay and is able to adequately care for himself/herself.
3. If your subject requests a blood test following the breath test, you must provide that opportunity. The interval between the tests is crucial; the blood test should follow the breath test as soon as possible.
  - a. If the subject is cited and released, you need not provide transportation to a blood test.
  - b. If the subject is to remain in custody, we will transport after determining where the blood test will occur. Allow your subject to call a private physician or the emergency room at Sacred Heart General Hospital and request a blood test. Confirm this appointment. All testing, billing, and test results are private between the subject and the medical facility.

**f. Booking – (CD12-009 deletes this section, effective 10.05.12)**

You may book your subject only if:

1. The person is unable to meet any cite-and-release criteria;
2. You are arresting him/her on other charges that require incarceration;
3. S/He is combative, physically uncooperative, or refuses to provide sufficient information to complete the DUll citation; or
4. A supervisor authorizes the incarceration for any other reason.

**g. Reporting**

1. Issue a UTC and any other administrative receipts that apply.
2. Inform the person of the conditions of his/her release, including the mandatory court appearance, location, date, time, and possible bail.
3. Normally, DUll cases involving driving inside the city limits are prosecuted in Eugene Municipal Court. If there is also a state criminal charge, both cases must be prosecuted in Lane County Circuit Court (e.g., a felony hit-run and a DUll arising out of the same incident).

**h. Vehicle Impound**

1. The involved vehicle will normally be impounded (refer *Policy 610 – Vehicle Tows and Impounds*), unless:
  - a. A joint owner of the vehicle is at the scene, and is able to legally operate the vehicle (e.g., current driver's license, is not impaired); or
  - b. The vehicle is on the owner's property, and a joint owner of the vehicle is present, is not impaired, and is able to assume custody of the vehicle.
2. Indicate the disposition of the vehicle in your report. If it was released to an individual, or an owner was contacted, list the name of that person in the report.