



ALBUQUERQUE POLICE DEPARTMENT  
PROCEDURAL ORDERS

SOP 2-42 (Formerly 3-11)

Effective: 05/25/2022 Review: 05/25/2023 Replaces: 11/14/2019

## 2-42 DWI INVESTIGATIONS AND REVOKED/SUSPENDED LICENSE

### Related SOP(s), Form(s), Other Resource(s), and Rescinded Special Order(s):

A. Related SOP(s)

[2-73 Collection, Submission, and Disposition of Evidence and Property](#)

B. Form(s)

Notice of Revocation

[PD 4006 Intoxilyzer Log](#)

[PD 4228 Report of Blood Alcohol Analysis](#)

C. Other Resource(s)

Intoxilyzer Breath Alcohol Test Card

International Association of Chiefs' of Police Drug Evaluation and Classification (DEC) Program

NMSA 1978, § 66-8-105 Implied Consent Act

NMSA 1978, § 66-8-122(G) Immediate Appearance Before Magistrate

National Highway Traffic Safety Administration (NHTSA) Guidelines

D. Rescinded Special Order(s)

SO 14-74 DWI Breath Card and DV Statements

SO 18-97 Drug Recognition Expert (DRE) Call Out Procedures

### 2-42-1 Purpose

The purpose of this policy is to outline procedures for Albuquerque Police Department (Department) personnel when completing investigations of individuals suspected of driving while under the influence (DWI) and investigations involving individuals with suspended or revoked driver's licenses.

### 2-42-2 Policy

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

### N/A 2-42-3 Definitions

A. Drug Recognition Expert (DRE) Officer



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A Department officer who has successfully completed the Drug Evaluation and Classification (DEC) Program and certified by the International Association of Chiefs' of Police as a DRE officer.

B. Drug Recognition Expert (DRE) Program

A program that trains and certifies sworn personnel as DRE officers in the identification and detection of drivers who are under the influence of substances other than alcohol.

**7** 2-42-4 Procedures

A. Initial Contact with Drivers Suspected of DWI

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

**6** B. Preliminary Breath Testing (PBT)

1. PBT Operation

- a. Sworn personnel shall have probable cause in every case to believe the driver is driving while intoxicated before using the PBT. The random use of PBT on drivers not suspected of being impaired is prohibited.
- b. Sworn personnel shall wait at least fifteen (15) minutes after contacting the driver to test them to allow any mouth alcohol to dissolve.
- c. Sworn personnel with a Department-issued PBT shall use it for their own investigations; however, sworn personnel may allow another officer to use their PBT but the requesting officer shall conduct the test for themselves.

2. PBT Calibration

- a. The use of a PBT is a non-evidentiary test; however, sworn personnel noting a difference of .03 or greater from the PBT to the evidentiary test shall take the PBT out of service and return it to the DWI supervisor so the PBT can be sent back to the manufacturer for re-calibration.
- b. It shall be the operator's responsibility to ensure the PBT remains properly calibrated.



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C. Check for Prior Convictions

Any person arrested for DWI shall have their conviction record checked to determine whether the individual has prior DWI convictions.

D. Breath Alcohol Testing (BAT) Mobile Booking

1. Any officer may book any individual at the BAT Mobile.
2. Booking sworn personnel shall have the discretion to refuse some individuals.
3. The DWI Unit Sergeant shall have the final authority for any disagreement about booking the individual.

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E. Administering a Breath Alcohol Test

1. The arresting officer shall fully complete the Intoxilyzer logbook at the testing location.
2. Sworn personnel shall distribute the Intoxilyzer Breath Alcohol Test Card for the CMI Intoxilyzer 8000 model as follows:
  - a. A copy shall be submitted to the Motor Vehicle Division (MVD), with the DWI Affidavit, the MVD copy of the DWI citation, and the individual's New Mexico driver's license. Any other state driver's license shall be returned to the individual;
  - b. A copy shall be placed with the individual's paperwork, and placed in their property; and
  - c. A scanned copy shall be attached to the Uniform Incident Report for the DWI in the Department's records management system.
3. Sworn personnel shall handle damaged or illegible Intoxilyzer Breath Alcohol Test Cards or malfunctions of the breath alcohol instrument as follows:
  - a. Regardless of the test score, in the event a Intoxilyzer 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 Intoxilyzer Breath Alcohol Test Card be used in a breath alcohol test be discarded or destroyed;
  - c. Breath alcohol tests may be administered until a valid test is obtained; and
  - d. All Intoxilyzer Breath Alcohol Test Cards shall be maintained as evidence and shall be attached to the Uniform Incident Report for the DWI in the Department's records management system.
4. Supervisors shall ensure all uniformed sworn personnel have completed the eight (8) hour Intoxilyzer 8000 Certification Course or any re-certification class in order to maintain their current certification.



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**6** F. Administering a Blood Draw

1. Felony Cases

- a. After a warrant is obtained, blood draws shall only be administered for felony cases involving great bodily harm or death by motor vehicle and the driver is injured or incapacitated.
- b. The arresting officer shall contact the Emergency Communications Center (ECC) to request a blood technician to respond to their location.
- c. Emergency Communications Center (ECC) personnel shall notify the blood technician.
- d. Upon arrival of the blood technician, the arresting officer shall be present to witness the blood draw.
- e. Upon completion of the blood draw, the officer shall complete the Report of Blood Alcohol Analysis form.
- f. The blood technician surrenders the sealed blood draw kit back to the arresting officer.
- g. The arresting officer shall tag it into evidence, consistent with SOP Collection, Submission, and Disposition of Evidence and Property (refer to SOP Collection, Submission, and Disposition of Evidence and Property for sanction classifications and additional duties).
- h. When Criminalistics Laboratory personnel provide the arresting officer with the individual's blood draw results, they shall document the results in the Notice of Revocation and MVD copy of the DWI citation.
- i. The officer shall place the Notice of Revocation and MVD copy of the DWI citation in the DWI citation drop box, located at the area command substations/testing locations.
- j. The officer shall retain a copy of the Notice of Revocation and MVD copy of the DWI citation until results are obtained.
- k. The driver's license shall not be taken and shall remain with the driver's property when booked.

**N/A**

2. Misdemeanor Cases

- a. A blood draw may be administered when the individual is suspected of a misdemeanor DWI and consents to the draw.
- b. The arresting officer shall contact the ECC to request a blood technician to respond to their location.
- c. ECC personnel shall notify the blood technician.
- d. Upon arrival of the blood technician, the arresting officer shall be present to witness the blood draw.
  - i. If the individual requests an independent blood draw, consistent with the Implied Consent Act, it shall be administered by a licensed medical professional.
- e. Upon completion of the blood draw, the officer shall complete the Report of Blood Alcohol Analysis form.

**N/A**



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- f. The blood technician surrenders the sealed blood draw kit back to the arresting officer.
- g. The arresting officer shall tag it into evidence, consistent with SOP Collection, Submission, and Disposition of Evidence and Property (refer to SOP Collection, Submission, and Disposition of Evidence and Property for sanction classifications and additional duties).
- h. When Criminalistics Laboratory personnel provide the arresting officer with the individual's blood draw results, they shall document the results in the Notice of Revocation and MVD copy of the DWI citation.
- i. The officer shall place the Notice of Revocation and MVD copy of the DWI citation in the DWI citation drop box, located at the area command substations/testing locations.
- j. The officer shall retain a copy of the Notice of Revocation and MVD copy of the DWI citation until results are obtained.
- k. The driver's license shall not be taken and shall remain with the driver's property when booked or issued a summons.

G. Implied Consent Advisory

1. Once the officer arrests an individual for DWI, they shall read to them the New Mexico Implied Consent Advisory directly from New Mexico Department of Transportation (NMDOT)-issued posters or pocket cards.
2. If the arresting officer is not certified in the primary language of the individual under arrest, the officer shall use the Language Access Line; however, if the arresting officer is certified in the primary language of the individual under arrest, the Language Access Line shall not be used.

H. Documentation of Refusal/Warrant Requirement

1. For misdemeanor DWI arrests, if the individual refuses to submit to the chemical test as specified by the officer, the officer shall check all of the appropriate boxes on the Notice of Revocation and submit it as normal.
2. The standard procedure in misdemeanor cases is to obtain a breath sample and not compel a blood sample.
3. For felony investigations, Implied Consent Advisory is sufficient for breath test results. If a blood sample is needed, sworn personnel shall obtain a warrant.

I. DWI Citation

1. Sworn personnel shall complete the DWI Citation in the same manner as other citations with the "blood alcohol concentration" box selected.
2. Sworn personnel shall not indicate "See the Report" in the essential facts section of the citation.



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- a. Sworn personnel shall provide a basis for the DWI charge in this section.

J. Arrests for Revoked Driver's License

1. Booking

- a. Sworn personnel shall take an individual who is driving with a revoked driver's license into custody and book them, consistent with NMSA 1978, § 66-8-122(G).
- b. Prior to booking the individual, the officer shall obtain a copy of the Revoked License print out from National Crime Information Center (NCIC) Unit personnel.
- c. The arresting officer shall then give the Revoked License print out to the booking officer at the time the individual is booked.
- d. If multiple offenses apply, sworn personnel shall book the individual for all traffic violations.
- e. Sworn personnel shall generate a traffic citation and shall indicate "booked" for all traffic related charges.

K. Proving Revocation in Court

1. It is a required element to show the individual knew or should have known that their license had been revoked at the time of the violation.
2. Proof Through MVD
  - a. The MVD maintains proof of revocation of driving privileges.
  - b. The MVD sends notice of revocation to the individual by registered mail.
3. Additional Ways to Prove Revocation
  - a. When the individual has been arrested for DWI, physical proof of the following can be obtained:
    - i. Chemical test results at or above the per se limit; or
    - ii. The individual refused to submit to a chemical test.
  - b. If the individual is charged with a second or subsequent DWI offense, the prior arresting officer shall be called to testify in court that the officer served upon the individual a notice of revocation at the time of the individual's arrest.

L. Drug Recognition Expert (DRE) Program

1. Procedures

- a. The primary officer shall:
  - i. Conduct a DWI investigation before requesting response by the DRE Officer. The primary officer shall have:



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1. Observed the impaired driving;
  2. Arrested the driver for DWI;
  3. Administered a breath alcohol test; and
  4. Observed that the results of the breath alcohol test were inconsistent with the field sobriety tests.
- ii. Notify the on-duty supervisor and request through the ECC for an on-call DRE Officer to respond to the scene.
- b. The primary officer shall not request a DRE Officer to respond to the scene solely based on an individual's admitting to using drugs.
  - c. The primary officer's supervisor shall approve all requests for a DRE Officer to respond to the scene.
  - d. The DRE Officer shall:
    - i. Respond to requests from Field Services Bureau (FSB) sworn personnel requiring drug recognition skills and perform DRE evaluations, consistent with the IACP DRE guidelines;
    - ii. Conduct a DRE examination rather than only obtain a blood sample, if possible;
    - iii. Direct blood draws and testing on individuals suspected of driving under the influence of alcohol or drugs;
    - iv. Respond to an individual's location in the event they are suspected of a drug-involved crash and, if possible, record any pertinent information in a DRE report;
    - v. Respond and complete a Supplemental Report documenting the drug influence evaluation and a DRE report;
    - vi. Advise the primary officer of the findings;
    - vii. Ensure the primary officer revises the blood draw results so that a criminal summons can be filed by the DRE Officer or the primary officer;
    - viii. Conduct the following procedures for report handling:
      1. Prepare written DRE reports of drug influence evaluations;
      2. Ensure DRE reports comply with the guidelines set forth by the New Mexico State DRE Coordinator;
      3. Enter the DRE report information into the DRE national database;
      4. Forward all original DRE reports to the New Mexico State DRE Coordinator;
      5. Maintain personal copies of all DRE reports and evaluations; and
      6. Attach the DRE report for the DWI to the corresponding Uniform Incident Report in the Department's records management system.
    - ix. Perform maintenance for equipment by:
      1. Maintaining all DRE equipment in good working condition; and
      2. Reporting any equipment discrepancies to the New Mexico State DRE Coordinator to arrange for replacement as soon as possible.
  - e. The DWI Sergeant shall:
    - i. Assign DRE sworn personnel to be on a rotation basis;
    - ii. Prepare a DRE Officer on-call list;
    - iii. Post the DRE Officer on-call list in their office; and
    - iv. Distribute the list Department-wide and provide the list to the ECC.



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2. Evidence Handling

a. The DRE Officer shall:

- i. Be responsible for the disposition of blood draw evidence.
  1. All other evidence shall be the responsibility of the arresting officer.
- ii. Be responsible for taking the blood draw evidence to the Scientific Evidence Section within twenty-four (24) hours or by the next business day.
  1. If the blood cannot be drawn within twenty-four (24) hours or by the next business day, the DRE Officer shall tag the blood into evidence.
  2. Once the Evidence/Disposition Unit has completed the intake process, the DRE Officer shall check-out the evidence and transport it to the Scientific Evidence Section for processing.
  3. This process shall be completed within five (5) days of the actual blood draw.