

POLICIES, PROCEDURES, AND RULES

Subject: 61.1.11 DWI, DUI	Effective Date: November 5, 2020
Reference:	Version: 2
CALEA: 61.1.5, 61.1.10, 6.1.9 NT	No. Pages: 5

I. Purpose

The purpose of this policy is to provide guidelines to aid in the effective recognition, apprehension and prosecution of persons who are driving under the influence of alcohol or drugs. This policy shall apply to all sworn members of the Fayetteville Police Department. [CALEA 61.1. 10]

II. Policy

- A. As part of its efforts to ensure the safety of motorists and pedestrians, the Fayetteville Police Department will aggressively enforce laws pertaining to traffic violations by drivers who operate a motor vehicle while under the influence of alcohol or drugs. This effort will be undertaken in the following manner: [CALEA 61.1. 9 NT]
1. By fielding specially trained and equipped personnel;
 2. By identification of these offenses as a priority enforcement activity; and
 3. Participation in DWI Enforcement effort programs, provided program and funding is available.
 4. The Patrol Captain or designee will assign selective personnel at times and locations where analysis and history show a significant number of violations and collisions involving impaired drivers have occurred.
- B. A physical arrest is the preferred method in all cases where sufficient probable cause exists that an operator of a motor vehicle is DWI or DUI. [CALEA 61.1.5.a]

III. Procedure [CALEA 61.1.10]

- A. A police officer's observations are crucial in establishing the requisite probable cause necessary to arrest a motorist for a DWI violation. Police officers must rely on their formal training and experience, placing particular emphasis on those driving actions that give rise to the officer's belief a motorist is driving under the influence. The following basic detection methods should be utilized:
1. Conducting surveillance on a driver suspected of DWI in order to observe his or her behavior;
 2. Initiating a traffic stop after observing a moving or equipment violation;

3. Observing the actions of drivers during accident investigations; and
4. Acting upon the reports of witnesses in regard to erratic or improper vehicle operation.

B. After the decision has been made to stop a motorist suspected of DWI, the officer shall follow departmental procedures for initiating a misdemeanor traffic stop. Certain guidelines and competent evidence must be used to support an arrest, including the following:

1. Fully document all observations related to driver behavior, make sure to note erratic or improper vehicle operation, and utilize MVR anytime available.
2. Note any observations concerning the physical, mental, or emotional condition of the driver, aside from those concerned with vehicle operation, that add to the suspicion of intoxication and/or impairment. (Example: odor of intoxicants, slurred speech, bloodshot eyes, general appearance, etc.)
3. Closely observe driver for signs of impairment of physical or mental functions, as evidenced by poor coordination, equilibrium, or comprehension; or a lack of concentration or confusion. Note if the driver has difficulty following simple instructions, answering questions, or fumbling with wallet or papers.
4. Use of testimony by witnesses who observed the driver's behavior to establish operation and to describe erratic vehicle operation if noted. (Usually related to a traffic accident.)

C. After making contact with a person suspected of DWI, officers are strongly encouraged to conduct field sobriety or performance tests to support their probable cause a person is under the influence of some type of intoxicant or drug. The following tests are certified for use by the National Highway Traffic Safety Administration to determine probable cause indicative of a lack of sobriety:

1. Walk and Turn Test;
2. One-Leg Stand Test; and
3. Horizontal Gaze Nystagmus Test.

Officers are not limited to conducting only these tests. Any other tests, such as alphanumeric tests, finger to nose test, or others that will support probable cause that a person is under the influence may be utilized. Officers should record these tests on MVR whenever available (see G.O. #22).

D. Arkansas' Implied Consent Law, §5-65-202, states that any person who operates a motor vehicle or is in actual physical control of a motor vehicle in this state shall be deemed to have given consent to undergo this chemical test.

E. If after conducting field sobriety tests, an officer has sufficient probable cause to believe a driver has consumed a substance that is impairing his or her ability to operate a motor vehicle, the officer shall arrest the driver following standard arrest procedures. The

officer will request the driver submit to a chemical analysis in accordance with the Implied Consent Law.

F. Upon arrival at the testing facility, the officer shall inform the arrested individual of his or her rights pertaining to the breath test, pursuant to Act 549 of 1983, also known as the Omnibus DWI Act. This statement of rights pertaining to DWI or DUI cites the following:

1. Implied consent statute;
2. Type of chemical analysis to be utilized;
3. Refusal to submit to this chemical test;
4. Right to an additional test by a qualified person; and
5. After taking an additional test, if found not guilty, the Fayetteville Police Department will reimburse the person for the cost of the additional test.

G. Pursuant to Arkansas §5-65-203, which governs the administration of chemical tests, the law enforcement agency that employs the arresting officer shall designate which test shall be administered. The Fayetteville Police Department shall utilize chemical testing in the following order of preference:

1. Breath Test - If the arresting officer believes the offender is solely under the influence of alcohol, a formalized breath test will be conducted. The breath test will be the preferred test utilized by the Fayetteville Police Department.
2. Blood Test – If circumstances make the administration of a breath test impractical or if the arresting officer has reason to believe the offender is under the influence of either a combination of alcohol and drugs or drugs only, a blood test may be utilized. If the officer has reason to believe drugs are involved, he is encouraged to seek the assistance of a certified “Drug Recognition Expert” (DRE).
3. Urine Test – If the arresting officer believes the driver’s impairment is solely from drugs, a DRE should be contacted, and a complete drug recognition examination should be conducted. As a portion of this examination, a urine sample will be collected in accordance with methods set forth by the DRE.

H. A certified officer will conduct the breath test and shall be responsible for completing all pertinent information and logbook requirements in a timely manner.

I. The arresting officer is responsible for the disposition of all evidence collected as a result of the administration of a blood test. The blood vials will be placed in the custody of the Property and Evidence Division in accordance with policy. Blood samples shall be submitted for processing in the following manner:

1. Alcohol Only – Samples will be submitted to the Arkansas Department of Health for analysis. The arresting officer must complete an Arkansas Department of Health submission form to be submitted in addition to the FPD Evidence Submission Form. The chain of custody section on the Department of Health form must be completed.

2. Alcohol and/or Drugs – Samples will be submitted to the Arkansas Crime Laboratory for analysis. The arresting officer must complete a State Crime Lab submission form, in addition to the FPD Evidence Submission Form. Since a chain of custody form is not included with the State Crime Lab submission form, officers shall include the chain of custody information within the narrative of their report.
- J. The Drug Recognition Expert (DRE) who administers the drug recognition evaluation shall be responsible for properly submitting the urine sample to the custody of the Evidence Custodian:
1. The urine sample container shall be sealed with a biohazard label and then heat-sealed in a polyethylene bag before placing it in the refrigerator.
 2. In addition to the FPD Evidence Submission Form, a State Crime Lab submission form shall be completed.
 3. Since no chain of custody form is included with the State Crime Lab submission form, the DRE shall include the chain of custody information within the narrative of his report.
- K. When a driver of a motor vehicle submits to a chemical analysis at the request of a Fayetteville police officer, the driver then has the right to request an additional chemical test. Pursuant to state law, if this request is made, the arresting officer must assist the driver in obtaining the type of test that he or she has requested at the driver's expense. Officers must advise the person being tested that if they take an additional test and are found not guilty, the Fayetteville Police Department will reimburse the person the cost of the additional test.
- L. Arkansas law also states it is unlawful to operate or be in actual physical control of a motor vehicle while intoxicated. Officers should always be prepared to testify as to the level of intoxication observed at the time and not depend solely on the results of the chemical analysis. Arkansas law dictates more stringent legal limits of alcohol concentration for those persons under the age of 21.
- M. The arresting officer shall be responsible for delivering the arrested driver to the Washington County Jail in accordance with policy regarding prisoner handling and transportation. The arresting officer shall ensure that all appropriate intake forms, probable cause affidavits, and citations are completed at the time of booking.
- N. After the offender is arrested and secured, the arresting officer will be responsible for securing the arrested driver's vehicle. The arresting officer shall have the choice of vehicle impoundment, authorized release to a sober third party driver possessing a valid driver's license at the request of the arrested person, or secure and leave at the place of arrest with authorization from the arrested person.
- O. The arresting officer shall submit the following paperwork, per established departmental procedures:
1. Arkansas Statement of Rights form;
 2. Arkansas Department of Health Breath / Blood Alcohol Report Form; and

3. BAC results.
 4. State of Arkansas Department of Finance and Administration – Omnibus DWI Law Official Driver License Receipt and Notice of Suspension/Revocation Form – Yellow Copy
- P. The arresting officer shall retain possession of the arrested person's driver's license and submit it along with the completed State of Arkansas Department of Finance and Administration – Omnibus DWI Law Official Driver License Receipt and Notice of Suspension/Revocation Form. After completion, the white copy and yellow copy along with the driver's license will be placed in our Records' mailbox. The two pink pages of this form shall be given to the driver as a receipt for his or her driver's license.