

HONOLULU POLICE DEPARTMENT

POLICY TRAFFIC OPERATIONS

March 6, 2023

Policy Number 6.02

OPERATING A VEHICLE UNDER THE INFLUENCE OF AN INTOXICANT

POLICY

Suspected violations of the law regarding Operating a Vehicle Under the Influence of an Intoxicant (OVUII) (alcohol and/or drugs) shall be handled in accordance with statutory requirements and the guidelines set forth herein.

PROCEDURE

I. DEFINITIONS

- A. Breath alcohol testing instrument (BATI): A departmental, breath alcohol concentration device (e.g., intoxilyzer instrument) that is approved by the Hawaii State Department of Health DUI Coordinator and produces results of evidentiary value.
- B. BATI program: The overall management and/or maintenance of BATI-related devices, documents, and operator training and licensing, all of which are administered by the Central Receiving Division (CRD).
- C. BATI program manager: The officer assigned by the CRD's commander to manage the BATI program.
- D. BATI operator: An officer trained and authorized to operate a BATI.
- E. BATI supervisor: The officer assigned by the BATI program manager in agreement with an element commander to coordinate the BATI program for that element. Every element with personnel that operate a BATI shall have a BATI supervisor.

II. STATE LAW

Personnel shall be guided by Chapter 291E, Use of Intoxicants While Operating a Vehicle, Hawaii Revised Statutes (HRS), for the enforcement, definitions, and legal requirements provided for in state law.

III. STANDARDIZED FIELD SOBRIETY TEST

- A. After establishing reasonable suspicion to believe that a person either has been operating a vehicle or assumes actual physical control of a vehicle while under the influence of an intoxicant, an officer may ask the person to perform the Standardized Field Sobriety Test (SFST). The SFST Report, HPD-424A form, shall be used to document the test.
- B. If the results of the SFST confirm the officer's belief, the person may be arrested for OVUII. The person may also be arrested if the person refuses or is not able to perform the test and there is probable cause to believe that he or she is under the influence of an intoxicant.
- C. An officer trained in the use of a preliminary alcohol screening device may use this instrument to augment probable cause for arrest.
- D. In circumstances where there is insufficient evidence to support an arrest for OVUII, the arrest shall not be effected. However, the person may be arrested or issued citations for other offenses, such as reckless driving, speeding, etc., if there is sufficient evidence.

IV. SANCTIONS AND IMPLIED CONSENT FOR OVUII

- A. When a person is arrested for a violation of Sections 291E-61, 291E-61.5, or 291E-64, HRS, the arresting officer shall:
 - 1. Take possession of any driver's license or any other vehicle operator's license or permit held by the arrestee (only Sections 291E-61 or 291E-61.5, HRS).

In circumstances involving an arrest under Section 291E-64, HRS, the administrative revocation of the license process does not apply. Also, the driver's license or any other license or permit to operate a motor vehicle shall not be confiscated;

2. Inform the arrestee of the implied consent law and the choice of submitting or refusing to submit to testing by using the HPD-396K form. An arrestee who refuses to submit shall be informed of the sanctions for refusing to take a breath, blood, or urine test for the purpose of determining alcohol concentration or drug content, as applicable. Use the HPD-396B form if the arrestee is 21 years of age or older. If the arrestee is under 21 years of age, use the HPD-396B and the HPD-396H forms;
 3. Request that the arrestee take a breath test, blood test, or both to determine the alcohol concentration in an alcohol-related offense or a blood test, urine test, or both to determine drug content in a drug-related case; and
 4. Complete and issue to the arrestee a Notice of Administrative Revocation, AD-DUI Forms 01, as applicable. See Attachment 4 for instructions on completing this form.
- B. An arrestee is not entitled to a warning of constitutional rights before being required to submit to the chemical tests prescribed by law. However, an arrestee who requests to consult with an attorney shall be afforded a reasonable opportunity to do so.

V. TESTING - ALCOHOL CONCENTRATION

A. Breath Test

An arrestee who agrees to a breath test shall be taken without undue delay to the nearest police facility that has a BATI. The test shall be administered without undue delay by an officer trained and licensed in the operation of the BATI.

1. BATI supervisors

- a. A BATI supervisor shall be designated at each station equipped with a BATI.
- b. The BATI supervisor shall perform an accuracy test on the station's instrument at intervals of approximately 15 days to ensure that it is in proper working condition.
- c. After testing the instrument, the supervisor shall complete a sworn statement for the BATI accuracy test, HPD 396E form; make copies; and give them to the desk sergeant for inclusion in the Administrative Driver's License Revocation Office folders. The supervisor shall also retrieve and destroy all remaining copies of the HPD-396E form from the previous test. See Attachment 6 for further information.
- d. All original HPD-396E forms shall be retained on file by the CRD.

2. BATI test forms and documents

Instructions for filling out and handling the test forms and related documents are found in Attachments 4 to 6.

B. Blood Test

1. An arrestee who agrees to a blood test shall be taken without undue delay to the CRD or other designated location where the supervisor on duty shall notify the on-call qualified member of the Health Services Branch, Honolulu Emergency Services Department, to withdraw blood for alcohol testing.
2. See Attachments 1 and 2 for specific procedures to follow in obtaining blood for alcohol testing.

C. Both Breath and Blood Tests

If an arrestee agrees to both tests, both shall be performed as spelled out in sections V A and B above. The breath test shall be given first and the blood test second.

VI. TESTING - DRUG CONTENT

In drug-related cases, prior to obtaining blood and/or urine samples for testing, a Drug Recognition Expert (DRE) should be used to conduct an evaluation of the arrestee.

A. Blood Test

1. An arrestee who agrees to a blood test shall be taken without undue delay to the CRD or other designated location where the supervisor on duty shall notify the on-call qualified member of the Health Services Branch, Honolulu Emergency Services Department, to withdraw blood for drug testing.
2. See Attachment 3 for procedures to follow in obtaining blood for drug testing.

B. Urine Test

1. An arrestee who agrees to a urine test at a police booking station shall have the urine recovered by a DRE officer or person qualified to recover the urine for testing in accordance with departmental procedures.
2. Each booking station shall maintain a supply of urine sample test kits. Kits are available from the Traffic Division.

C. Both Blood and Urine Tests

If an arrestee agrees to both blood and urine tests, they should be performed as specified in established departmental procedures and in the attachments cited in section VII below. The urine test should be given first and the blood test second.

VII. OBTAINING BLOOD FOR ALCOHOL AND DRUG TESTING

- A. When obtaining blood for alcohol and drug testing, blood samples for alcohol testing should be obtained first as enumerated in section IV B above and Attachments 1 and 2. However, after the withdrawal of blood, samples shall be submitted as outlined in sections II E to H in Attachment 3.
- B. Obtaining blood samples for drug testing should be conducted as outlined in section VI A above and Attachment 3.

VIII. OBTAINING NONCONSENSUAL BLOOD SAMPLES

A. Arrestee/Suspect Incapable of Consenting

When an OVUII arrestee/suspect becomes unconscious or otherwise incapable of consenting to a blood test and there is probable cause to believe that the suspected operator committed a violation of Sections 707-702.5; 707-703; 707-704; 707-705; 707-706; 291E-61; 291E-61.5; or 291E-64, HRS, and the arrestee/suspect exhibits indicia consistent with alcohol and/or drug impairment, the arrestee/suspect shall be transported to a designated medical facility for treatment and withdrawal of blood for testing.

- 1. The officer shall use the Application by Honolulu Police Department Officer, HPD-13A form, to request that the medical facility withdraw blood samples from the arrestee/suspect as authorized by Section 291E-14, HRS.
- 2. In circumstances where the requesting officer is unable to determine the type of intoxication testing needed, the officer shall specify that blood samples be for both alcohol and drug testing purposes.

3. The officer may use reasonable force to facilitate the recovery of the blood samples.
 - a. The officer should coordinate with the medical facility personnel when using force to obtain the blood samples.
 - b. Any officer employing force to obtain blood samples shall submit a Use of Force Report, HPD-192E form.
4. The medical facility will withdraw the blood sample(s) unless the responsible attending person determines that withdrawing the blood would represent an imminent threat to the health of the medical personnel or others.
5. The officer shall follow the instructions in sections V B (alcohol related), VI A (drug related), or VII (alcohol and drug related) above.
6. In the event that medical personnel refuse to draw blood pursuant to a request by an officer using the HPD-13A form, the requesting officer shall note in his or her report the reason for the refusal and, whenever possible, the name and title of the person refusing the request.

B. Mandatory Testing After Collisions Resulting in Injury or Death

Mandatory testing (breath, blood, and/or urine) shall be conducted of the operator of any vehicle involved in a collision resulting in the injury or death of any person when the officer has probable cause to believe that the operator is under the influence of an intoxicant and has committed a violation of the following HRS Sections: 707-702.5, 707-703, 707-704, 707-705, 707-706, 291E-61, 291E-61.5, or 291E-64; and the operator exhibits indicia consistent with alcohol and/or drug impairment.

1. Suspected operator being treated at a medical facility
 - a. The suspect should not be placed under arrest prior to the withdrawal of blood samples unless the suspect refuses treatment at the medical facility.

In these circumstances, the suspect shall be processed in accordance with sections VIII B 2 e to i below.
 - b. The officer shall use the HPD-13A form to request that the medical facility withdraw blood samples from the suspect in accordance with Section 291E-21, HRS.
 - c. In circumstances where the requesting officer is unable to determine the type of intoxication testing needed, the officer shall specify that blood samples be for both alcohol and drug testing purposes.
 - d. In the event that the suspect refuses to submit to the mandatory withdraw of blood samples for testing, the officer may use reasonable force to facilitate the recovery of blood samples.
 - (1) The officer should coordinate with the medical facility personnel when using force to obtain the blood samples.
 - (2) Any officer employing force to obtain blood samples shall submit a Use of Force Report, HPD-192E form.
 - e. The medical facility personnel will withdraw the sample(s) unless they determine that recovering the blood represents an imminent threat to their own health or that of others.

- f. The officer shall follow the instructions in Attachments 2 (alcohol) or 3 (drugs) or both (alcohol and drugs) to obtain blood samples and submit them for testing. The collected blood samples for drug testing only or for both alcohol and drug testing shall be submitted as detailed in Attachment 3.
 - g. If the medical personnel refuse to draw blood pursuant to a request by an officer using the HPD-13A form, the requesting officer shall note in his or her report the reason for the refusal and, whenever possible, the name and title of the person refusing the request.
- 2. When the suspected operator is injured or complains of injury or when visible injuries are observed, the officer's actions shall be guided by whether the suspect agrees or refuses to be transported to a medical facility for treatment or whether the suspected operator accepts or refuses medical treatment at a medical facility.
 - a. Whenever the suspect is injured and agrees to be transported to the medical facility for treatment, blood samples shall be requested in accordance with sections VIII B 1 a to g above.

- b. Whenever the injured suspect refuses to be transported to a medical facility for treatment and there is probable cause that the suspected operator has committed a violation of one or more of the HRS sections enumerated in section VIII B above and the suspect exhibits indicia consistent with alcohol and/or drug impairment, the suspect shall be arrested for the offense(s) and transported to a medical facility for treatment. If the suspected operator accepts medical treatment, blood samples shall be requested in accordance with sections VIII B 1 b to g above.
- c. In circumstances where the requesting officer is unable to determine the type of intoxication testing needed, the officer shall specify that blood samples be for both alcohol and drug testing purposes.
- d. In the event that the suspect refuses to submit to the mandatory withdraw of blood samples for testing, the officer may use reasonable force to facilitate the recovery of the blood samples.
 - (1) The officer should coordinate with the medical facility personnel when using force to obtain the blood samples.
 - (2) Any officer employing force to obtain blood samples shall submit a Use of Force Report, HPD-192E form.
- e. Whenever the arrestee refuses treatment at the medical facility and is released, the arrestee shall be transported to the nearest booking station for processing.

- f. Whenever a suspected operator is not under arrest, refuses treatment at a medical facility, and is released, he or she shall be arrested for one or more of the offenses enumerated in section VIII B above and be transported to the nearest booking station for further processing.
- g. Whenever the suspect/arrestee refuses treatment at the medical facility, the officer shall obtain documentation of the refusal and note the refusal in the police report.
- h. Upon arrival at the booking station, the arrestee is not subject to the implied consent conditions. Therefore, he or she shall not be read the provisions in the HPD-396B or HPD-396K forms.
- i. The officer shall inform the arrestee of the mandatory testing requirements using the Mandatory Testing for Arrestee Involved in Collision Resulting in Death or Injury, HPD-13C form, in an effort to have the arrestee submit to testing.
 - (1) If the arrestee agrees to submit to an applicable test for alcohol and/or drugs, it shall be conducted as specified in this policy.
 - (2) In circumstances where the requesting officer is unable to determine the type of intoxication testing needed, the officer shall specify that blood samples be for both alcohol and drug testing purposes.

- (3) In the event that the suspect refuses to submit to the mandatory withdraw of blood samples for testing, the officer may use reasonable force to facilitate the recovery of the blood samples.
 - (a) The officer shall coordinate with the receiving desk personnel and the person qualified to take the blood specimen when using force to obtain the blood samples.
 - (b) Any officer employing force to obtain blood samples shall submit a Use of Force Report, HPD-192E form.
 - (4) If the arrestee refuses to submit to the mandatory testing and the person qualified to take the blood specimen determines that recovering the blood sample presents an imminent threat to the health of the medical personnel or others, the process shall cease. The refusal shall also be noted in the arrest report.
3. If a health care provider notifies the police of a person being an operator of a vehicle involved in a collision resulting in bodily injury and/or death and the person has an alcohol concentration level that meets/exceeds the legal limits or has one or more drugs that are capable of impairing the person's ability to operate a vehicle in a careful and prudent manner, the following shall apply:
- a. The officer should process the person according to section VIII B above, as applicable; and

- b. If the person is incapable of consenting, the officer shall process the person according to section VIII A above.
- 4. Suspected operator of a vehicle not injured
 - a. The officer shall place the suspected operator under arrest for one or more of the offenses enumerated in section VIII B above.
 - b. The arrestee shall be transported to the nearest booking station for further processing.
 - c. Upon arrival at the booking station, the arrestee is not subject to the implied consent provisions and shall not be read the HPD-396B or HPD-396K forms.
 - d. The arrestee shall be informed of the mandatory testing requirements using the HPD-13C form in an effort to have the arrestee submit to testing.
 - (1) If the arrestee agrees to submit to a test, it shall be conducted as specified in this policy.
 - (2) In circumstances where the requesting officer is unable to determine the type of intoxication testing needed, the officer shall specify that blood samples be for both alcohol and drug testing purposes.
 - (3) In the event that the suspect refuses to submit to the mandatory withdrawal of blood samples for testing, the officer may use reasonable force to facilitate the recovery of the blood samples.

- (a) The officer shall coordinate with the receiving desk personnel and the person qualified to take the blood specimen when using force to obtain the blood samples.
- (b) Any officer employing force to obtain blood samples shall submit a Use of Force Report, HPD-192E form.
- (4) If the arrestee refuses to submit to the mandatory testing and the person qualified to take the blood specimen determines that recovering the blood samples presents an imminent threat to the health of the medical personnel or others, the process shall cease. The refusal shall also be noted in the arrest report.

5. Mandatory testing arrest - Vehicular Homicide Section (VHS)

- a. In circumstances involving a person arrested for or suspected of violating one or more of the offenses enumerated in section VIII B above, the responsible officer shall contact the VHS and apprise the on-duty supervisor of the relevant facts pertaining to the investigation.
- b. The VHS shall continue the investigation to include reclassifying, adding new cases or follow-up reports, and final charging or closing.

C. Obtaining Blood Samples From Decedents

The medical examiner will take blood samples from decedents as a matter of course. No specific police request is necessary.

IX. BLOOD EVIDENCE KITS

- A. Officers shall recover blood samples for testing of intoxicants through the use of blood evidence kits. Each booking station shall maintain a supply of Driving Under the Influence (DUI) evidence test kits and OVUII blood kits for use in collecting blood samples.
 - 1. The Health Services Branch, Honolulu Emergency Services Department, provides DUI evidence kits that are to be used for the withdrawal of blood evidence for alcohol testing only.
 - a. DUI evidence kits are available from the CRD and the Department of Health.
 - b. Refer to Attachment 8 for the contents of the alcohol testing kit.
 - c. Kits containing vials that are outdated shall not be used.
 - 2. The department's OVUII blood kit shall be used for the withdrawal of blood for testing of drug content or alcohol concentration and drug content by an authorized vendor.
 - a. OVUII blood kits are available at the CRD and Traffic Division.
 - b. Refer to Attachment 8 for the contents of the department's drug and alcohol blood evidence testing kit.
 - c. Kits containing vials that are expired shall not be used.
- B. Each station's element commander or designee shall ensure that the available kits have not expired.
 - 1. DUI evidence kits that have expired shall be returned to the Health Services Branch, Honolulu Emergency Services Department.
 - 2. OVUII blood kits that have expired shall be returned to the Traffic Division.

X. RELEASE OF TEST RESULTS

Upon request of the arrestee, result(s) of the test(s) taken at the direction of the police shall be made available to the arrestee (see Section 291E-13, HRS).

XI. CHARGING THE ARRESTEE

- A. The arrestee shall be charged under Section 291E-61, HRS, if a chemical test shows a breath alcohol concentration (BrAC) of .08 grams or more.
- B. The arrestee shall also be charged under Section 291E-61, HRS, if any of the following applies:
 1. The arrestee takes a breath or blood test, and:
 - a. The arrestee's BrAC is less than .08 grams but more than .05 grams; and
 - b. There is other competent evidence that the arrestee was operating or assumed actual physical control of a vehicle while under the influence of an intoxicant.
Acceptable evidence shall include: observations by the officer or witnesses, lack of physical coordination by the arrestee, demeanor or conduct of the arrestee, failure of the arrestee to operate a motor vehicle or moped in a safe manner (reckless driving or inattention to driving), being involved in a motor vehicle collision, or other exigent circumstances;
 2. The arrestee agrees to take a blood test to determine alcohol concentration or blood and/or urine test to determine drug content;
 3. The arrestee refuses to take a breath, blood, or urine test for the purpose of determining alcohol concentration or drug content as applicable; or
 4. An arrestee under the age of 21 shall be charged under Section 291E-64, HRS, if a chemical test result is equal to or greater than .02 but less than .08 grams BrAC.

- C. When a test shows that the arrestee is not under the influence of an intoxicant, he or she may still be charged with reckless driving, inattention to driving, or other violations if sufficient evidence exists.

XII. HABITUALLY OVUIII FELONY ARRESTS

- A. If a person arrested for OVUIII is found to have one Habitually OVUIII or two or more prior petty misdemeanor OVUIII convictions (Sections 291-4, 291-4.4, and/or 291-7, HRS, as those sections were in effect on December 31, 2001; or Sections 291E-61 or 707-702.5, HRS) within the last ten years, the offense shall be reclassified to "Habitually OVUIII" under Section 291E-61.5, HRS.
 - 1. Prior convictions shall be verified through the Department of the Attorney General's Hawaii Criminal Justice Data Center (HCJDC), Juvenile Justice Information System (JJIS), or judicial records computerized files.
 - a. CRD personnel shall access the files directly via computer.
 - b. Element booking stations outside of the Alapai headquarters shall verify convictions by contacting the Communications Division or by the HCJDC and/or JJIS files when available.
 - 2. The arrestee shall be booked in accordance with established procedures. The receiving desk lieutenant, sergeant, or designee in charge shall immediately notify the on-duty VHS sergeant of the felony Habitually OVUIII arrest; the VHS will assign an officer to investigate and determine the disposition of the arrestee.
 - 3. The contents of the incident report are the same as for a standard OVUIII report, along with the three or more prior convictions (Sections 291-4, 291-4.4, and/or 291-7, HRS, as those sections were in effect on December 31, 2001; or Sections 291E-61, 291E-61.5, or 707-702.5, HRS) noted in the body of the report.

4. If applicable, the administrative revocation of license procedure shall be invoked because it is an action separate from the felony charge.
 5. See Attachment 4 for instructions on the incident report and attachments.
- B. If a person does not qualify as a habitual operator but has other OVUII/DUI cases pending, the arresting officer shall charge the arrestee with OVUII. The officer shall attach a copy of the arrestee's record to the arrest report and forward it to the prosecutor for follow-up.

XIII. OTHER TRAFFIC OFFENSES

- A. Whenever a person is arrested for Sections 291E-61, 291E-61.5, or 291E-64, HRS, and there are additional traffic offenses involved, the arresting officer shall follow the guidelines in this section.
1. If there is a traffic infraction, the officer should:
 - a. Issue a Notice of Traffic Infraction to the arrestee and submit a copy of it with the key report; and
 - b. List the traffic infractions in the PROP SYNOPSIS section of the Incident Report, HPD-192 form.
 2. If there is a traffic crime, the connecting cases shall be recorded in the PROP SYNOPSIS section of the Incident Report, HPD-192 form, and include the following:
 - a. Consecutive report numbers, obtained as needed and listed in order;
 - b. Incident code;
 - c. HRS section number;
 - d. Title of offense (e.g., speeding, disregarding red light, Driving Without a License (DWOL), no insurance, etc.); and

- e. Disposition (arrested and charged or as determined by the desk supervisor).

- B. If the arrestee is not charged with OVUII or other traffic crime(s), then the arresting officer should issue citations for the other traffic violations, except in Habitually OVUII investigations where any additional traffic violations shall be left pending final disposition of the felony case.

XIV. CASES INVOLVING JUVENILES

Juveniles (persons under 18 years of age) arrested for OVUII shall be given the same tests and afforded the same rights and privileges as adults.

XV. MEASURABLE AMOUNT OF ALCOHOL TESTING REFUSAL AFFIDAVIT

In cases where a person under 21 years of age is charged under Section 291E-64, HRS, operating a vehicle with a measurable amount of alcohol, and refuses to submit to alcohol concentration testing, the arresting officer shall submit as soon as practicable an affidavit and copy of the arrest report to the District Court judge, First Judicial Circuit, stating that:

- A. At the time of the arrest, the officer had probable cause to believe that the arrestee was under the age of 21 years and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the state with a measurable amount of alcohol;
- B. The arrestee had been informed of the sanctions of Section 291E-65, HRS; and
- C. The arrestee had refused to submit to a breath or blood test for the purpose of determining alcohol concentration.

XVI. COORDINATION AMONG INVESTIGATORS

- A. In many cases, the officer investigating a collision does not accompany an injured operator of a vehicle to a medical facility. As a result, the officer does not have an opportunity to make observations that might prompt the withdrawal of blood samples for testing of intoxicants. To ensure that valuable evidence is not lost because of a lack of coordination among the investigating officers, it is essential that officers at collision scenes communicate with officers at medical facilities.
- B. The following guidelines apply when a collision results in bodily injury or death and the investigating officer at the scene of the collision has probable cause to believe that the operator being transported to a medical facility has committed an offense that may require the withdrawal of blood for testing of intoxicants.
 - 1. The investigating officer at the scene should initiate the OVUII case, request that blood be withdrawn from the suspect, apprise the officer at the medical facility of the investigation, and note in his or her report the name of the officer who will request the blood withdrawal.
 - 2. The officer at the hospital shall then make the blood withdrawal request to medical authorities (see section VIII B above) and submit a follow-up report indicating whether the samples were taken.
- C. The following guidelines apply when a collision results in bodily injury or death and the investigating officer at the medical facility has probable cause to believe that the operator of the vehicle being treated there has committed an offense that requires the withdrawal of blood for the mandatory testing of intoxicants:

1. The investigating officer at the hospital should initiate the OVUII case, contact the investigating officer at the scene and apprise him or her of the initiation of the OVUII case, and make the blood withdrawal request to medical authorities (see section VIII B above).
2. The investigating officer at the scene should then determine if there is any additional evidence or substantive information at the collision scene to support the OVUII case. The officer should incorporate this information into his or her report and convey it to the officer at the medical facility.

XVII. CASES IN WHICH BLOOD SAMPLES ARE TAKEN BUT NO ARREST IS MADE

In some cases, blood samples are taken but no arrest is made.


- A. In such cases, the investigating element's commander should ensure that the following are forwarded to the chief of the Traffic/Misdemeanor Division, Department of the Prosecuting Attorney, for review and disposition:
 1. A copy of the completed investigation (with or without blood and/or urine analysis results) and any connecting cases; and
 2. A memorandum transmitting the investigation/connecting cases to the prosecutor.
- B. The investigating officer who initiated the OVUII case shall follow up with the testing facility to obtain a copy of the test results and forward it with a copy of an activity report to the prosecutor for disposition.

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XVIII. HANDLING OF FORMS AND DOCUMENTS

Officers shall ensure that applicable forms and documents are handled in accordance with this policy and state law.


ARTHUR J. LOGAN
Chief of Police

Attachments

Post on bulletin
board for one week

Policy first issued
February 7, 1997

TITLE 11
ADMINISTRATIVE RULES
STATE DEPARTMENT OF HEALTH

CHAPTER 114
TESTING OF BLOOD, BREATH AND OTHER
BODILY SUBSTANCES FOR ALCOHOL CONCENTRATION

§11-114-23 Sample collection procedures.

- (a) The following safeguards shall be observed in the collection of a blood sample from a living individual for determination of its alcohol content:
- (1) Blood shall be drawn only by a qualified person as specified in section 286-152, Hawaii Revised Statutes (HRS).
 - (2) The area of puncture for the drawing of blood shall be thoroughly cleansed and disinfected with a nonalcoholic aqueous solution of nonvolatile antiseptic such as benzalkonium chloride or povidone-iodine.
 - (3) Blood shall be drawn with an unused sterile dry needle. It may be collected into a evacuated specimen tube or withdrawn with a syringe and deposited into a clean, dry container. The container should contain an amount of anticoagulant and preservative approved by the DUI coordinator in writing. An example of an acceptable tube is a five ml draw glycolytic inhibition tube which contains about 10 mg potassium oxalate and about 12.5 mg sodium fluoride. Two containers of at least five ml each should be drawn, if possible. The container(s) shall be capped or stoppered and sealed.
 - (4) Reusable equipment, if employed, shall not be cleaned with alcohol or kept in alcohol or other volatile organic solvent.
 - (5) Each specimen shall be accompanied by the following information:
 - (A) Name of person from whom the blood was drawn;
 - (B) Date and time the blood sample was collected; and
 - (C) Name of person drawing blood.

- (6) Each specimen should be accompanied by the following information:
 - (A) Area of puncture from which the sample was drawn;
 - (B) Name and amount of preservative and anticoagulant, if any; and
 - (C) Name of witnessing officer.
- (7) A chain of custody shall be maintained.
- (b) While not in transit to a laboratory or under examination, all blood samples shall be kept refrigerated or frozen.

OBTAINING BLOOD SAMPLES FOR ALCOHOL TESTING ONLY

I. LEGAL REQUIREMENTS

- A. Requirements for obtaining blood samples for alcohol testing in traffic cases are found in state law and in the Hawaii Administrative Rules, Department of Health. Section 11-114-23 of these rules specifically addresses sample collection procedures. See Attachment 1.
- B. Some procedures apply in all cases; others will differ depending on whether the sample is taken with the subject's consent, with the subject incapable of consenting, under the mandatory sampling rule, or from a decedent.

II. GENERAL RULES

General rules for obtaining blood samples for alcohol testing are as follows:

- A. If possible, blood samples should be withdrawn within three hours after the time of violation.
- B. Whenever possible, two gray-top (at least 5 ml.) stopper vials of blood should be drawn. The collection process should be witnessed by the arresting or investigating officer.
- C. Whenever possible, the officer should have the person withdrawing the blood use the following kit:
 - 1. In circumstances involving an arrestee agreeing to a blood test for alcohol, the DUI evidence kit should be used.
 - 2. In circumstances involving the testing for both alcohol and drugs, the departmental OVUII blood kit should be used.
- D. The officer shall receive the sample(s) directly from the person making the blood withdrawal and ensure that the vial(s) are labeled with the report number, date/time of blood withdrawal, suspect's name, and name and title of person drawing blood.

- E. The officer shall ensure that the vial(s) are sealed to prevent tampering, damage, or contamination. Whenever possible, evidence tape should be used to protect the blood sample(s).
- F. The officer shall complete the City and County of Honolulu Ethanol Level, DHR-HS-06 form. The original shall remain with the blood sample(s) and a copy shall be attached to the officer's report.
- G. The officer shall ensure that the chain of custody is maintained by filling out an evidence report. The original shall be left with the blood sample(s) and a copy shall be attached to the officer's report.
- H. After withdrawal, the blood sample(s) shall be taken without unnecessary delay to the CRD and placed in a numbered container provided by the Health Services Division, Department of Human Resources. The container, along with the ethanol-level form and the evidence report, shall be secured in the CRD's evidence refrigerator.
- I. When there are blood samples on hand, the CRD shall contact the Health Services Division, Department of Human Resources, daily to have the samples picked up for testing.

OBTAINING BLOOD SAMPLES FOR DRUG TESTING ONLY

I. LEGAL REQUIREMENTS

- A. Obtaining blood samples for drug testing shall be in accordance with established departmental procedures and statutory authority provided in Chapter 291E, HRS.
- B. Some procedures apply in all cases; others will differ depending on whether the sample is taken with the subject's consent, with the subject incapable of consenting, under the mandatory sampling rule, or from a decedent.

II. GENERAL RULES

Obtaining blood samples for drug testing shall be as follows:

- A. Whenever possible, blood samples should be withdrawn within three hours after the time of the violation.
- B. If possible, four gray-top (at least 5 ml.) stopper vials of blood should be drawn. The collection process should be witnessed by the arresting or investigating officer.
- C. The officer shall receive the sample(s) directly from the person making the blood withdrawal and ensure that the vial(s) are labeled with the report number, date/time of the blood withdrawal, suspect's name, and the name and title of the person drawing the blood.
- D. The officer shall ensure that the vial(s) are sealed to prevent tampering, damage, or contamination. Whenever possible, evidence tape should be used to protect the blood sample(s).
- E. The officer shall complete the applicable portion of the Request for Laboratory Examination, HPD-492 form, and attach the original with the specimen(s) collected and a copy with the officer's report. The officer shall ensure that the portion of this report for the chain of custody is maintained.

- F. The officer shall, without unnecessary delay, have the blood sample(s) recovered and, together with the documentation, transported directly to an authorized vendor (Clinical Laboratories) for testing.
- G. The officer shall notify the designated station's booking supervisor for the storage of the blood evidence.
- H. The designated station's booking supervisor shall conduct daily inspections of their blood evidence refrigerator and, when necessary, contact the authorized vendor to recover the sample(s) for testing.

HANDLING OF DOCUMENTS BY THE ARRESTING OFFICER

- I. When an arrestee is charged in violation of Sections 291E-61 or 291E-61.5, HRS, the arresting officer shall:
 - A. Complete the Notice of Administrative Revocation, AD-DUI Form 01, specifically ensuring that the following sections of the form have been completed:
 1. The "Issue Date and Time" should reflect the date and time when the arrestee has been charged.
 2. Indicate whether the notice is or is not a temporary driving permit.

Note: If the arrestee did not have a valid driver's license in his or her possession at the time of arrest, the notice cannot be used as a temporary driving permit.
 - B. Give copies of the following to the arrestee:
 1. The completed AD-DUI Form 01; and
 2. The Request to Reconsider Administrative Revocation of Driver's License, AD-DUI Form 06.
 - C. On the Incident Report, HPD-192 form, complete the "Sworn Statement of Arresting Officer" (just above the arresting officer's signature) as follows:

"I, _____ (officer's name) _____, police officer, swear the above facts are true and correct."
 - D. Insert the following into the Administrative Driver's License Revocation Folder:
 1. The original Notice of Administrative Revocation, AD-DUI Form 01;
 2. A photocopy of the entire police report. Bank and/or investment account numbers, medical and health records, and social services reports shall be fully redacted prior to transmitting police reports to the Administrative Driver's License Revocation Officer. Social security numbers and dates of birth transmitted on those police reports shall also be redacted. However, the last four digits of social security numbers and birth years may be displayed.

3. Copies of the Use of Intoxicants While Operating a Vehicle Implied Consent for Testing, HPD-396K form, and when applicable, Sanctions for Use of Intoxicants While Operating a Vehicle and Implied Consent for Testing, HPD-396B forms;
 4. The confiscated driver's license or any other license or permit to operate a motor vehicle (if any);
 5. A copy of the Standardized Field Sobriety Test Report, HPD-424A form; and
 6. The completed Documents Checklist, AD-DUI Form 15, by the Administrative Driver's License Revocation Office.
- E. Give the revocation folder to the desk sergeant at the station where the arrestee is processed.
- II. When an arrestee chooses to take a breath test in an alcohol-related test and the BrAC result is less than .08 grams, the arresting officer shall:
- A. Complete the Notice of Administrative Revocation, AD-DUI Form 01, with the notation that the administrative driver's license revocation procedure is being terminated;
 - B. Give the arrestee a copy of the AD-DUI Form 01 and the confiscated driver's license or any other license or permit to operate a motor vehicle;
 - C. Insert the following into the Administrative Driver's License Revocation Folder:
 1. A copy of the AD-DUI Form 01;
 2. A copy of the Intoxilyzer 9000 Test documents; and
 3. The Administrative Driver's License Revocation Documents Checklist; and
 - D. Give the revocation folder to the desk sergeant at the station where the arrestee is processed.

III. When an arrestee chooses to take a blood test, urine test, or combination of tests to determine alcohol concentration or drug content, the arresting officer shall:

- A. Complete the Notice of Administrative Revocation, AD-DUI Form 01, as spelled out in I A above;
- B. Give the arrestee the documents listed in I B above;
- C. Complete the top portion of the Sworn Statements Re: Blood Test for Alcohol Related Offense, AD-DUI Form 025, in alcohol-related cases and ensure that the applicable persons complete their portion of the form; or

Complete the top portion of the Sworn Statements Re: Blood/Urine Test for Drug Related Offense, AD-DUI Form 26, in drug-related cases and ensure that the applicable persons complete their portion of the form;

- D. Complete the sworn statement portion of the incident report as spelled out in I C above;
- E. Insert the following into the revocation folder:

The items listed in sections I D 1 to 6 above; and

The goldenrod copy of the Sworn Statement of Blood Analyst, AD-DUI Form 05; and

Note: The other copies of the AD-DUI Form 025 (alcohol related) and/or AD-DUI Form 026 (drug related) must accompany the blood and/or urine and be given to the person drawing the blood. The person testing the blood or urine is to complete the form and submit all remaining copies to the Administrative Driver's License Revocation Office.

- F. Give the revocation folder to the desk sergeant at the station where the arrestee is processed.

IV. In circumstances where the arrestee submits to a blood test, the arresting officer shall complete the DUI Arrest - Blood Test Log, HPD-176A form.

HANDLING OF DOCUMENTS BY THE BATI OPERATOR

When a breath test is administered, the operator shall:

- I. Complete the Sworn Statement of Intoxilyzer 9000 Operator, HPD-396D form; and
- II. Submit the following in the Administrative Driver's License Revocation Folder to the desk sergeant:
 - A. A copy of the HPD-396D form; and
 - B. A photocopy of the Honolulu Police Department Intoxilyzer 9000 Accuracy Test Supervisor's Sworn Statement, HPD-396E form.

HANDLING OF DOCUMENTS BY THE DESK SUPERVISOR

- I. The supervisor at the receiving desk shall ensure that all applicable documents and sworn statements have been properly completed before the arresting officer and the BATI operator leave the station. The supervisor shall ensure that the documentation is packaged for submittal to the Administrative Driver's License Revocation Office (ADLRO) and the Department of the Prosecuting Attorney.
- II. Additionally, the desk supervisor shall ensure that:
 - A. There are sufficient photocopies of the current Honolulu Police Department Intoxilyzer 9000 Accuracy Test Supervisor's Sworn Statement, HPD-396E form, at the receiving desk so that a copy can be issued to the BATI operator for each test.
 - B. All superseded copies of the HPD-396E form are given to the BATI supervisor each time the instrument is tested.
 - C. The originals of the following forms are attached to the prosecutor's copy of the arrest report:
 1. Use of Intoxicants While Operating a Vehicle Implied Consent for Testing, HPD-396K form, and when applicable, Sanctions for Use of Intoxicants While Operating a Vehicle and Implied Consent for Testing, HPD-396B form; and
 2. Sworn Statement of Intoxilyzer 9000 Operator, HPD-396D form, with copy of Intoxilyzer Test Record attached, if applicable.
 - D. Materials for forwarding to the ADLRO shall include the following:
 1. Completing and signing the Administrative Driver's License Revocation Documents Checklist after all of the forms have been perused and properly distributed;
 2. Preparing (and retaining) a property receipt listing all OVUII report numbers and the names of the arrestees;

3. Inserting a copy of the property receipt and all completed Administrative Driver's License Revocation Folders into a manila envelope; and
4. Ensuring that the sealed envelope is delivered to the ADLRO pick-up box in the Records and Identification Division.

CONTENTS OF BLOOD EVIDENCE KITS

I. Alcohol Testing

Each kit shall consist of, but not be limited to, an envelope; two gray-top stopper vials (at least 5 ml.) for collecting blood; labels; security tape; an antiseptic swab; and a City and County of Honolulu Ethanol Level, DHR-HS-06 form. The officer should ensure that the date on the vials has not expired.

II. Alcohol and Drug Testing

Each kit shall consist of, but not be limited to, the following:

- A. An Application by Honolulu Police Department Officer, Requirement to Recover Blood or Urine for Testing of Intoxicants, HPD-13A form;
- B. The Sworn Statements Re: Blood Test for Alcohol Related Offense, AD-DUI Form 025;
- C. The Sworn Statements Re: Blood/Urine Test for Drug Related Offense, AD-DUI Form 026;
- D. The Honolulu Police Department, Request for Laboratory Examination, HPD-492 form;
- E. A plastic biohazard specimen bag;
- F. Four gray-top stopper vials (at least 5 ml.). The officer should ensure that the dates on the vials have not expired;
- G. The Department of Health Ethanol Level, DHR-HS-06 form; and
- H. Security tape, labels, and an antiseptic swab.