



# SACRAMENTO POLICE DEPARTMENT GENERAL ORDERS



## 537.01 DRIVING UNDER THE INFLUENCE PROCEDURES 02-28-17

### PURPOSE

The purpose of this policy is to outline procedures to investigate and document all Driving Under the Influence (DUI) cases for prosecution or other administrative action.

### POLICY

It shall be the policy of the Sacramento Police Department to investigate and document all DUI cases for prosecution or other administrative action.

### PROCEDURE

#### A. DEFINITIONS

1. DUI – Driving under the influence of alcohol, drugs, or a combination of both.
2. ADULT – A person 21 years of age or older.
3. JUVENILE – A person under 18 years of age.
4. MINOR – A person under 21 years of age.
5. HGN – Horizontal Gaze Nystagmus test.
6. OLS – One Leg Stand test.
7. WAT – Walk and Turn test.
8. NHTSA SFST (National Highway Traffic Safety Administration Standardized Field Sobriety Tests) – The three test battery of SFST certified by NHTSA. These include HGN, OLS, and WAT.
9. DS367 – DMV form “Age 21 and Older Officer’s Statement.”
10. DS367M – DMV form “Under Age 21 Officer’s Statement.”
11. SFST- Standardized Field Sobriety Tests.

#### B. INVESTIGATION

- 1 Preliminary Interview – Prior to conducting SFST, when possible, officers should conduct a preliminary interview of the driver.
  - a. Officers should conduct questioning to establish drinking, eating, and sleep patterns, possible medical conditions, possible drug use, and to establish the subject as a driver.
  - b. A list of recommended questions is located on the DUI Investigation Card (SPD 541) and on the DUI Investigation Report Supplement (SPD 170).
- 2 Field Sobriety Tests
  - a. Officers should, whenever possible, use established SFST to evaluate drivers who are suspected of DUI. Officers should use the NHTSA SFST three-test battery of HGN, OLS, and WAT.
  - b. In addition to the NHTSA SFST three-test battery, officers may use
    - (1) Alphabet Test.
    - (2) Counting Test (Backward from 100 - 80).
    - (3) Romberg Test.
    - (4) Finger to Nose.
    - (5) Other field sobriety tests as are appropriate.
    - (6) A preliminary alcohol screening (PAS) test may be used in accordance with G.O. 410.15

#### C. CHEMICAL TESTING

- 1 Officers shall advise the driver of the chemical testing requirements affecting them. These requirements are found in sections 13353, 13353.1, 23154 and 23612 of the California Vehicle Code (VC).
  - a. This advisement may be completed by reading the Chemical Test Admonition directly from the back of the DS367 or the DS367M.



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- b. If the driver is suspected of being under the influence of a drug (or a combination of a drug and alcohol) and they select and complete a breath test, the officer shall advise the person that he/she is also required to submit to a blood or urine test to determine drug content. This advisement may be completed by reading the Drug Admonition Supplement from the back of the DS367 or the DS367M.
2. Officers shall obtain a chemical test from arrestees, including those who refuse to comply with chemical testing requirements, as outlined in G.O. 522.04 (Chemical Testing of Arrestees).
3. Arrestees who refuse to submit to a chemical test shall be charged with section 148(a)(1) of the Penal Code (PC) in addition to any other charges.

### D. CHARGING DUI

1. When charging an arrestee for a DUI, officers should strictly and appropriately charge drivers.
2. In addition to the DUI sections listed below, charge appropriate additional charges, such as hit and run, evasion, licensing violations, or violations of probation or parole. Infraction moving violations are considered lesser included violations and should not be charged in addition to misdemeanor or felony DUI charges.
3. Absent conditions listed in the felony section, officers should, when appropriate
  - a. Charge both 23152(a) and 23152(b) VC when a driver is under the influence of alcohol and has a blood alcohol content (BAC) of .08 or higher, as indicated in a breath test, or when a blood test is obtained and the officer has reason to believe the results of the blood test will be a BAC of .08 or higher.
  - b. Charge 23152(a) VC when the driver is under the influence of alcohol only and has a BAC under .08.
  - c. Charge 23152(e) VC and 11550 California Health and Safety Code (H&S) when the driver is under the influence of a drug.
  - d. Charge 23152 (f) VC in place of 23152 (a) when the driver is under the influence of a combination of a drug and alcohol.
4. When a DUI involves an injury or prior DUI convictions
  - a. Officers should, when appropriate, charge 23153(a) VC (alcohol only), 23153(e) VC (drugs only), 23153(f) VC (combination of drugs/alcohol) and/or 23153(b) VC (over .08 BAC) when a DUI driver causes injury to another person.
  - b. When a driver has three or more prior DUI convictions in the prior ten (10) years, officers should charge the driver with the appropriate 23152 VC sections as felonies and charge 23550 VC.
  - c. When a driver has one or more prior felony DUI convictions in the prior ten (10) years, officers should charge the driver with the appropriate 23152 VC sections as felonies and charge 23550.5 VC.
5. When an officer discovers a driver on probation for a prior DUI offense and the officer suspects the driver has consumed alcohol, the officer should
  - a. Conduct a DUI investigation.
  - b. Proceed with a felony or misdemeanor DUI case if appropriate.
  - c. When the driver is determined to have not committed a felony or misdemeanor DUI violation, proceed with an infraction DUI investigation.
  - d. Advise the driver he/she is required to submit to a chemical test (see section C).
  - e. Obtain a PAS test. If the results are .01 or higher,
    - (1) Issue the driver a citation for 23154(a) VC and any other appropriate vehicle code violations.
    - (2) As appropriate, store the driver's vehicle per 22651(h)(2) VC.
6. When an officer discovers a driver is under age 21 and the officer suspects the driver has consumed alcohol, the officer should
  - a. Conduct a DUI investigation.
  - b. Proceed with a felony or misdemeanor DUI case if appropriate.
  - c. When the driver is determined to have not committed a felony or misdemeanor DUI violation, proceed with an infraction DUI investigation.
  - d. Advise the driver they are required to submit to a chemical test (see section C).
  - e. Obtain a PAS test. If the results are .01 or higher but under .05



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- (1) Issue the driver a citation for 23136(a) VC and any other appropriate vehicle code violations.
- (2) As appropriate, store the driver's vehicle per 22651(h) (2) VC.
- f. If the PAS results are .05 or higher but under .08
  - (1) Issue the driver a citation for 23140(a) VC and any other appropriate vehicle code violations.
  - (2) As appropriate, store the driver's vehicle per 22651(h) (2) VC.
  - (3) Officers observing impairment in a driver violating 23140(a) VC should charge a misdemeanor violation of 23152(a) VC, if appropriate.
- g. Officers citing and releasing minors with DUI related infractions shall use discretion in determining the appropriate release disposition for the driver. Depending upon the age of the driver, the location, and the time of the enforcement contact, the officer has, but is not limited to, the following options:
  - (1) Release the vehicle to a licensed passenger who would not be in violation of a DUI related law.
  - (2) Release the driver to a parent or guardian.
  - (3) Secure the vehicle and take the driver to a safe place.
  - (4) Assist the driver in calling for a ride or taxi.

### E. DISPOSITION OF ARRESTEES

1. Adults arrested for felony or misdemeanor DUI should be booked into the County jail in accordance with 853.6 PC.
  - a. When a DUI arrestee submits to a breath test and one (1) or both results are below .08% but over 0.05% and there are no indications that the person is under the influence of drugs, the officer may book the subject for 23152(a) or 23153(a) VC or release him/her per 849(b) PC (G.O. 523.06).
  - b. Officers releasing subjects per 849(b) PC, shall document the incident by completing the following forms:
    - (1) MRE Report.
    - (2) DUI Investigation Report Supplement (SPD 170).
    - (3) 849(b) form (SPD 138).
    - (4) Drager Checklist.
2. Juveniles shall be processed per G.O. 540.05 (Arresting/Booking/Releasing Juveniles).
3. Officers with DUI arrestees that require medical treatment shall follow the procedures outlined in section F – Collisions.

### F. COLLISIONS

1. Traffic collisions involving DUI drivers require a collision investigation in accordance with G.O. 537.04 (Collision Reporting).
2. If the driver is not injured or the driver is injured but the injuries do not require prolonged treatment (treatment is estimated to take one hour or less), the subject shall be booked for DUI.
  - a. Drivers with minor injuries may be taken to the County jail for evaluation by the jail nurse.
  - b. If the jail nurse determines that medical treatment is required, the subject shall be taken to any area emergency room.
  - c. If the projected treatment requires more than one hour, the officer may, with the approval of the district sergeant, release the subject per 849(b) PC.
3. DUI drivers should not be released unless the subject fits the same criteria for a misdemeanor citation release as listed in G.O. 523.03 (Misdemeanor and Infraction Arrests).
  - a. Prior to the driver being released, officers should obtain a chemical test from the driver.
    - (1) The arrestee shall be advised that he/she is under arrest, what his/her charges are, and that he/she is required to submit to a chemical test.
    - (2) The arrestee shall be advised that his/her choice of a chemical test is limited to a blood test.
    - (3) A blood sample should then be obtained in accordance with G.O. 522.04 (Chemical Testing of Arrestees).
  - b. The driver may be released if the officer reasonably believes that the driver will stay at the medical facility and receive the needed treatment and will not leave the medical facility while still under the influence.
    - (1) This assurance may be based on the seriousness of the injuries, the time required for treatment, or by the presence of a friend or relative who will take charge of the subject upon release.



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- (2) If the officer feels that the arrestee will become combative or will leave the medical facility while still under the influence, the officer shall stay with the arrestee and contact a supervisor.
- (3) If an officer stays with the arrestee, the arrestee shall be booked as soon as they have been released from medical treatment.
4. If an arrestee is released under this procedure, the following shall be documented on the officer's report(s):
  - a. Felony DUI
    - (1) Indicate "RECCO" in the Special Condition box of the CHP 555.
    - (2) Indicate "REQUEST A WARRANT BE ISSUED" in the recommendations portion of the collision report and state the charges.
    - (3) Check the "WARRANT REQUEST" box in the SPD 170.
  - b. Misdemeanor DUI
    - (1) Check the "WARRANT REQUEST" box in the SPD 170.
    - (2) Complete a Notice to Appear (SPD 109) with the appropriate charges, and indicate "WARRANT REQUEST" in the violator's signature box.
    - (3) The Notice to Appear citation shall be included with the DUI Arrest Package.

## G. DMV ADMINISTRATIVE ACTIONS

1. In adult cases, officers shall
  - a. Complete a DS367 and serve the adult driver if he/she
    - (1) Is on DUI probation and has a BAC of 0.01% or more.
    - (2) Is on DUI probation and refuses a PAS or other chemical test.
    - (3) Is driving a commercial vehicle and has a BAC of 0.04% or more.
    - (4) Has a BAC of 0.08% or more.
    - (5) Is arrested for DUI and refuses a chemical test.
  - b. Complete a DS367, but do not serve the adult driver, if the driver is arrested for misdemeanor or felony DUI but has a BAC of less than 0.08 BAC (e.g. drug DUI).
2. In the case of a minor, officers shall
  - a. Complete a DS367M and serve the minor driver if he/she
    - (1) Has a BAC of 0.01% or more.
    - (2) Refuses a PAS or other chemical test.
  - b. Complete a DS367M, but not serve the minor driver, if the driver is arrested for misdemeanor or felony DUI but has a BAC of less than 0.01 BAC (e.g. drug DUI).
3. Drivers who are served with a DS367 or DS367M are to be given the "Pink-Driver" copy.
4. Officers shall seize the California Driver License of drivers who are served with a DS367 or DS367M. Driver Licenses from other states or countries shall not be seized. Identification cards shall not be seized.
5. The driver copy serves as both a temporary driver license and a notice of suspension. When the driver is unlicensed or already has a suspended driver's license, the officer shall still complete and serve the DS367 or DS367M but shall mark the "Suspended/Revoked" or "Unlicensed" box on the form, as appropriate.
6. Driver Licenses shall not be seized in cases where a DS367 or DS367M is not served.

## H. REPORT WRITING AND DOCUMENTATION

1. When a driver is charged with a DUI, officers shall complete a full MRE report and a DUI Arrest Packet.
2. The following documents should be used to document a DUI.
  - a. DUI ARREST KIT ENVELOPE: The checklists on the DUI Arrest Kit envelope (SPD 808) shall be utilized to ensure all appropriate forms are completed and enclosed. In the case of a felony DUI arrest, officers shall check the felony box on the envelope.
  - b. MRE REPORT: To be completed on all DUI cases. Officers shall create a complete general offense report and include all charges and entities.
  - c. REPORT SUPPLEMENT – DUI INVESTIGATION REPORT SUPPLEMENT (SPD 170): To be completed on all DUI cases.
  - d. DS367 and DS367M shall be completed as outlined in section G.
  - e. DRAGER ALCOTEST 7110 MK III-C PRECAUTIONARY CHECKLIST: To be completed when a Drager test is attempted or completed.



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- f. COST RECOVERY WORKSHEET (SPD 587): To be completed for all misdemeanor and felony DUI cases.
  - g. ARREST REPORT AND PROBABLE CAUSE SHEET: To be included when the driver is booked into Jail or Juvenile Hall.
  - h. COLLISION REPORT: To be included when a collision is related to the DUI incident.
  - i. CALIFORNIA DRIVER LICENSE: To be included when the subject's California driver's license is confiscated in connection to issuing DS367 or DS367M.
  - j. MISDEMEANOR CITATION (SPD 109): If the driver is cited and released or in cases of a misdemeanor warrant request. Infractions and misdemeanor citations shall be completed pursuant to G.O 523.04 Notice to Appear (Citations).
  - k. CERTIFICATE OF RELEASE (SPD 138): To be included when a driver is issued a certificate of release (849b PC).
3. When elements of other felony or misdemeanor crimes are present in a DUI case, officers shall include the charges and detail them in the MRE report.
  4. The Records Division shall ensure
    - a. The DUI report and appropriate DMV forms are forwarded to DMV Office of Driver Safety within five (5) business days.
    - b. Report accountability, preparation, and distribution of DUI packages, data entry, and storage of DUI reports.