

Atascadero Police Department
Standard Operating Procedure
Driving Under the Influence (DUI)
Section # 1

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Statement of Purpose:

This procedure outlines the protocol for the investigation of DUI incidents.

Lexipol Policy:

Lexipol policy 514 Drunk Driving and Evidence Collection

Lexipol policy 526 Administrative Per Se

Procedure:

- Initial observations and vehicle stop
 - Any probable cause for the vehicle stop is sufficient. A DUI driving pattern is not necessary however it is preferred.
 - Any probable cause for a vehicle stop that can be articulated in a report. "Gut feeling" or simply leaving the area of a bar or liquor store is not sufficient cause to initiate a vehicle stop.
- Observations after the vehicle stop
 - An officer cannot assume that a driver is DUI based solely on driving pattern. The officer must establish the elements of the DUI after the stop.
 - Look for the objective symptoms of impairment during the initial contact with the driver. Such objective physical symptoms include, but are not limited to:
 - The odor of an alcoholic beverage
 - Red, water, and/or bloodshot eyes
 - Slurred, mumbling, or unreasonably slow speech
 - Unreasonably slow or deliberate movements
 - Inability or difficulty in following basic instructions, e.g. a request to provide a driver's license or vehicle registration documentation.
 - Lack of manual dexterity or coordination, e.g. fumbling through vehicle registration documents or not locating a clearly visible driver's license in a wallet.
 - Impaired walking or standing balance
 - Objective physical symptoms of drug impairment.
- DUI arrests per 40300.5 CVC
 - Arrests for 23152 may be made by a police officer when the crime is not committed in the officer's presence. The authority allowing for an arrest is VC 40300.5:
 - *In addition to the authority to make an arrest without a warrant pursuant to paragraph (1) of subdivision (a) of Section 836 of the Penal*

***Code**, a peace officer may, without a warrant, arrest a person when the officer has reasonable cause to believe that the person had been driving while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug when any of the following exists:*

- *The person is involved in a traffic accident.*
 - *The person is observed in or about a **vehicle** that is obstructing a roadway.*
 - *The person will not be apprehended unless immediately arrested.*
 - *The person may cause injury to himself or herself or damage property unless immediately arrested.*
 - *The person may destroy or conceal evidence of the crime unless immediately arrested.*
- When affecting an arrest for 23152 pursuant to 40300.5 there are several considerations that must be made. The first thing and officers must understand is when choosing to affect an arrest they must complete a thorough investigation. They must establish reasonable cause in order to prove that the driver was in fact the individual who was operating the motor vehicle and that they were doing so under the influence of drugs and/or alcohol.
- Many times probable cause can be established by: the driver's proximity to the vehicle, proof of ownership or possession (i.e. keys, registration, pink slip) and driver's statements. The investigating officer can also look at injuries of a person in the case of a vehicle accident or an officer may utilize witness statements placing the driver behind the wheel.
 - Once an officer has identified that the individual was in fact driving the motor vehicle they must establish a timeline to identify if the driver was operating a motor vehicle under the influence of drugs and/or alcohol. Thorough questioning by the investigating officer will assist in determining when and how much alcohol the driver has consumed. The officer must then rely on training and experience to determine if the driver was operating a motor vehicle under the influence of alcohol. Below is a practical example:
 - An officer responds to the scene of a disabled vehicle in the rural area of the city. When officers arrive there is a single individual standing outside of the vehicle. The suspect states they fell asleep behind the wheel and drifted off the road, causing a flat tire. They are currently holding the keys to the vehicle. The investigating officer smells alcohol on their breath. The officer conducts an interview and determines the suspect left the bar

earlier in the evening and while driving home they had a flat tire. The suspect has not consumed any alcohol since leaving the bar approximately 30 minutes earlier. Based on objective symptoms the officer conducts FST's and later a PAS, which registers .12. Based on the facts of this case and officer could affect an arrest for 23152(a) & (b) pursuant to 40300.5 VC.

- Many times while conducting follow-up on hit and run collisions officer obtain information to believe a suspect was operating the motor vehicle while consuming alcohol and/or drugs. Often times when officers develop this suspicion, the suspect is already back at their residence. When this occurs the officer must understand they have an obligation to complete their investigation. They must also realize that case law supports their effort in obtaining evidence to support their investigation.
- Field Sobriety Tests (FST's)
 - Field Sobriety Tests or Standardized Field Sobriety Tests is the correct terminology. The officer is evaluating a driver's sobriety, not his/her coordination. Refer to the tests as FST's or SFST's in the arrest report.
 - The federal government National Highway and Transportation Safety Administration (NHTSA) has validated a series of tests entitled "Field Sobriety Tests". Those tests only include the horizontal gaze nystagmus (HGN), the Walk and Turn, and the One Leg Stand as alcohol impairment tests. No other tests are validated or supported by the NHTSA. Drug Recognition Expert (DRE) protocol has added the Rhomberg and the Finger to nose tests. In a high profile DUI arrest, the NHTSA is able to send an expert to testify to the validity of the tests, but only to the three NHTSA approved tests.
 - It will be the standard that all officers who have received advanced DUI training should use the three NHTSA approved tests as part of their DUI investigation.
 - Select a location for the FST's that is best suited for the safety of the officer and the driver. Fully describe the location of the FST's in the report or on the DUI form.
 - Probable cause field interview questions are located on the department approved DUI form and should be asked in their entirety.
 - The generally preferred manner is to complete the field interview prior to the FST's, although that sequence is not mandated by statute.
 - Each segment of the FST's should be explained and demonstrated separately prior to asking the driver to complete the test.
 - Safety of the driver is critical. If the level of his/her intoxication is such that it would reasonably prevent him/her from safely performing a test or tests, or if he/she can't reasonably perform a test due to injury or disability, another test should be used.
- Preliminary Alcohol Screening (PAS) devices
 - The PAS should be utilized when appropriate and as a final FST. Do not rely primarily upon the PAS device result to determine DUI. The PAS device is only one of the voluntary tests to help establish DUI. The totality of the situation, e.g. driving pattern, objective physical symptoms, FST's and/or PAS device results, should be the guideline for determining DUI. There is no requirement to inform the driver the test is voluntary, it is only necessary to inform them of implied consent.

- If a traffic collision involves a DUI incident and a possible felony offense, e.g. felony DUI or vehicular manslaughter, an officer may draw blood from an individual who is hospitalized without making a physical arrest, thereby avoiding the situation where the Department may become responsible for the medical expenses incurred by the driver.
 - A physical arrest occurs when an officer physical detains an individual and restricts his/her freedom of movement with the intent of booking the individual into a jail facility.
- CVC 23612(C) states that the testing of a suspect's blood shall be incidental to a lawful arrest for CVC 23140, 23152, or 23153.
- An officer should issue a citation and release the individual to hospital staff.

This Standard Operating Procedure was approved and distributed for training by:



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