

# BATON ROUGE POLICE DEPARTMENT

General Order  
No.221

Effective Date  
11-01-1994

Revised Date  
09-01-2016

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Subject:       DWI Arrests

Reviewed 9/1/16

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## POLICY

This department recognizes the fact that each year scores of vehicle crashes, resulting in property damage, personal injury, and the loss of life are caused by persons who drive while under the influence of drugs or alcohol. Therefore, it is this department's policy to make every effort to apprehend those who drive while intoxicated.

### **Implied Consent Law**

Title 32 section, Section 661, paragraph A, of the Louisiana Revised Statutes states: "*Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given consent, subject to the provisions of R.S. 32:662, to a chemical test or tests of his blood, breath, urine or other bodily substances for the purpose of determining the alcoholic content of his blood and the presence of any controlled dangerous substance as set forth in R.S. 40:964 in his blood if arrested for an offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while believed to be under the influence of alcoholic beverages or any abused or illegal controlled dangerous substance as set forth in R.S. 40:964. The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person driving or in actual physical control of a motor vehicle upon the public highways of this state while under the influence of alcoholic beverages or any abused or illegal controlled dangerous substance as set forth in R.S. 40:964. The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests will be administered.*"

## PROCEDURES

### **I. Preliminary Investigation**

- A. Any officer who has reasonable suspicion that an operator of a motor vehicle may be under the influence of alcoholic beverages or dangerous drugs will proceed with the investigation in the following manner.
- B. When possible, Standardized Field Sobriety Testing (SFST) will be conducted. Officers will utilize the Horizontal Gaze Nystagmus, Walk and Turn, and One Leg Stand test, and will record all results/observations on the approved forms or within the LADriving program
  - 1. When the operator is injured or unable to perform SFST's due to his/her level of impairment, then the tests shall not be administered.
  - 2. An officers observations will be critical to the prosecution and care should be exercised in the documentation of those observations.
  - 3. With the understanding that it will not always be possible due to road conditions, weather, unruly passengers, etc., Officers' should make every effort to ensure that SFST's are conducted on video.

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- C. Once an officer has determined that the operator has exhibited signs of impairment via any of the following:
1. Officer's observations of operator's driving,
  2. Officer's observations of the operator's behavior and/or demeanor,
  3. Any admissions or statements by the operator,
  4. Results of SFST,
  5. Any other evidence, tests, etc. associated with impaired driving.

The operator will be transported to an approved testing facility to be administered a chemical test or tests. Approved testing facilities include but are not limited to First District, Third District, Capitol Police, LSU Police, Mobile Breath Testing, any hospital, and the Parish Prison Infirmary. When available, breath tests will be videotaped, however, the lack of video capabilities shall not prohibit an Officer from using a testing facility.

- D. Prior to administering any chemical test, an Officer must first read to the operator from an approved Rights Relating to the Chemical Test for Intoxication form provided by Applied Technology. This form can be paper or digital.
- E. Once the chemical test or tests have been completed, the operator is to be processed per normal arrest procedures. If the operator will not be arrested, the Officer must transport him/her back to the vehicle, home, or arrange for a ride.
- F. All DWI arrestees will be fingerprinted prior to being transported to a booking facility. In the event that a violator will be issued a summons in lieu of booking they must first be fingerprinted per LA R.S. 15:590(7).

## II. Documentation

- A. Field sobriety test is considered evidence. The results and observations should be recorded on the Initial Observations Form, within the narrative of the police report or within LADriving.
- B. If the subject was observed operating a motor vehicle or any other motorized means of conveyance on a public roadway or governmental property and refuses the chemical test or tests or the reading is .08g% or more, the Officer will seize the driver's license of the operator, regardless of the state of issuance.
1. If the operator is under twenty-one (21) years of age and the subject refuses the breath test or the breath test reading is .02 g% or higher, the officer will seize the operator's driver's license and charge the operator with Underage DWI.
  2. If the subject who is under twenty-one years of age registers a reading of .08g% or above, or refused a chemical test, the driver's license will be seized and the operator charged with DWI.

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- C. All forms/sections of LADriving shall be completed accurately. This shall include the Certification of Arrest, which details the reason for coming into contact with the driver.
- D. Included in the approved forms are the Violator's copies. Officers will ensure that the operator is provided with his/her copies of al paperwork/print outs, including a temporary DL when applicable.
- E. Officer will assign a court date for misdemeanors prosecuted in City Court.
  - 1. All City Court dates will be **exactly** 60 days from date of arrest. Utilize the 60 day court calendar only, do not skip days or give alternate court date.
  - 2. If the prosecution will be in District Court merely indicate "**19th J.D.C. - to be notified**" in the space provided for court date.

### III. Breath Test

- A. The breath test will be the primary method of testing intoxicated drivers. Officers will utilize the Intoxilizer 5000 or Intoxilizer 9000 instruments to administer the test. Only Officers with valid/current certifications will use the instruments. In the event that an Officer's certification has lapsed, a qualified (valid/current certification) operator will be requested to administer the test.
- B. When possible, the breath test or tests will be video taped. Lack of video capabilities shall not prevent an Officer from testing a subject. The results of the test or tests shall be provided to the violator and it shall be recorded in the appropriate places.
- C. If the subject refuses the breath test, this will be noted in the appropriate places. A breath test will still be offered and the instrument cycled to obtain a sample reading.

### IV. Blood Test

- A. If the operator of a motor vehicle is suspected of being impaired and is unable to submit to a breath test due to injury or some other extenuating circumstance, a blood test may be conducted. In order to obtain a blood sample officers must bring a blood collection kit provided by the State of Louisiana to an approved facility and request that a qualified person obtain a sample.
  - 1. Approved facility include a hospital, East Baton Rouge Parish Prison Infirmary, or any other medical facility designated by the Baton Rouge Police Department for blood draws.
  - 2. Persons qualified to draw blood can be located in LA. R.S. 32:664
- B. Officers are to ensure that they are using a blood kit that is not expired and is completely sealed and otherwise not damaged.

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- C. Once the blood draw is complete, Officers are directed to complete all forms contained in the blood kit and other forms required for arrest/blood draw. The Request for Scientific Crime Analysis form will then be attached to the envelope. The officer will then deliver it to the evidence room before the end of his/her shift. This is to ensure the integrity of the sample. Officers must place the sealed blood kit into evidence at the Evidence Processing Room. All blood kits will be sealed in an evidence bag and a computer entry completed. The sealed evidence bag will be placed in an open refrigerated compartment and locked.
- D. Officer's using a urine kit which is contained in the blood kit will follow the same procedures for placing the kit into evidence as would be used for the blood kit.
- E. If there are no injuries to the driver or any other parties involved, a driver may refuse to have blood drawn. The primary concern should be the physical well being of the impaired driver. This shall not prevent an Officer from obtaining a warrant for a blood sample or using other means of chemical testing.

**V. Arrest of drivers involved in accidents.**

- A. Impaired drivers involved in a crash that are transported to an area hospital shall be administered a chemical test, preferably a blood draw.
- B. If a crash involves death or serious injury, the operator has no right to refuse the chemical test.
- C. If hospital personnel refuse to draw the sample, the supervisor will notify an EMS supervisor and request that agency's' cooperation. As soon as their call volume allows, an EMT will take the sample. It will be processed as per the normal blood draw procedures (see Section IV C, D).
- D. If the impaired driver is injured and will be released prior to the end of the Officer's shift, the Officer will obtain the hospital release forms and process the prisoner as per normal procedure. If the impaired driver is to be hospitalized for an extended period of time, a blood draw will be conducted. Once the results of the blood draw are received and reflect impairment, the Officer will complete a warrant for the arrest of the impaired driver.

**VI. LADriving**

- A. The LADriving program shall be the primary method of completing all DWI paperwork and arrests. LADriving is an online, Impaired Driving database which allows for the digital completion of all DWI forms and electronic transfer of the forms to Criminal Records, Traffic Records, Baton Rouge City Court, 19<sup>th</sup> JDC, and the Office of Motor Vehicles.
- B. LADriving reports shall be completed and submitted for approval within 48 hours of arrest

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- C. LADriving work stations can be found at all Intoxilizer locations and can also accessed from any internet connected computer, tablet, or smart phone.
- D. Officers shall only submit an Intoxilizer 5000 print out and checklist to criminal records. All other LADriving shall be submitted digitally.
- E. Only Officers with access to LADriving shall access the program.

**VII. Checkpoints (State v. Jackson, 2000)**

When conducting a checkpoint the following guidelines must be met:

- A. The location, time, and duration of a checkpoint, and other regulations for operation of the checkpoint, preferably in written form, established by supervisory or other administrative personnel rather than the field officers implementing the checkpoint.
- B. Advance warning to the approaching motorist with signs, flares, and other indications to warn of the impending stop in a safe manner and to provide notice of its official nature as a police checkpoint.
- C. Detention of the motorist for a minimal length of time.
- D. Use of a systematic nonrandom criteria for stopping motorist.