



# MILWAUKEE POLICE DEPARTMENT

## STANDARD OPERATING PROCEDURE

### 120 – OPERATING WHILE INTOXICATED (OWI)

**GENERAL ORDER:** 2025-33  
**ISSUED:** July 23, 2025

**EFFECTIVE:** July 23, 2025

**REVIEWED/APPROVED BY:**  
Assistant Chief Steven Johnson  
**DATE:** June 16, 2025

**ACTION:** Amends General Order 2023-47 (October 11, 2023)

**WILEAG STANDARD(S):** 6.2.6

### ROLL CALL VERSION

**Contains only changes to current policy.  
For complete version of SOP, see SharePoint.**

### 120.05 DEFINITION OF TERMS

#### G. FIELD SOBRIETY TESTS

Simple physical and/or cognitive tests administered by law enforcement designed to determine if an individual is operating under the influence.

#### J. IMPLIED CONSENT LAW

Any person who drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in [Wis. Stat. § 346.61](#), is deemed to have given consent to one or more tests of his or her breath or blood, ~~or urine~~, for the purpose of determining the presence or quantity in his or her blood or breath of alcohol, controlled substances, controlled substance analogs or other drugs or any combination of alcohol, controlled substances, controlled substance analogs, and other drugs, when requested to do so by a law enforcement officer or when required to do so under [Wis. Stat. § 343.305\(3\)](#). The law specifies that: (1) any such tests must be administered upon the request of a law enforcement officer; and (2) the law enforcement agency by which the officer is employed must be prepared to administer, either at its agency or any other agency or facility, two of the three tests (breath or blood, ~~or urine~~) and may designate which of the tests shall be administered first.

### 120.10 ARREST PROCEDURES (WILEAG 6.2.6)

G. Once the type of violation has been determined the officer shall choose the primary chemical test to be offered and issue that test. If the primary test will be breath the officer shall convey the subject to a district station for chemical testing. If the primary test will be blood the officer shall convey the subject to ~~the closest~~ a nearby hospital or other medical facility for chemical testing (see sections 120.30, 120.45 and 120.50). (WILEAG 6.2.6.2 and 6.2.6.3)

J. All tickets related to the OWI shall be included in the OWI envelope (e.g., speeding, unregistered auto). Court dates and times for any citations issued in conjunction with the OWI case must be the same, ~~respective to the venue~~ (for example, an OWI driver

may be stopped for speeding and unsafe lane deviation. If the OWI violation is a first offense, then all citations are issued to Municipal Court with the same date and time. If the OWI offense is a second or subsequent offense, the moving violations shall be issued to Municipal Court and the OWI offense to Circuit Court). and Members shall make sure to complete the passenger under 16 portion of the uniform traffic citations.

### **120.15 CAUSING INJURY VIOLATIONS**

- H. If the DA's office pended the case until the analysis sheet is received listing the results of the blood test, request that the assistant DA reviewing the case sign the *Arrest Detention Report* and release the defendant to appear in 30 60 days as blood results are typically returned to the Court Administration Division between 30-60 days from the date of submission. When there is an OAR case along with the OWI charge, list both cases on the same criminal complaint.

### **120.25 COUNTING PRIOR CONVICTIONS**

- D. IC is the DOT abbreviation for implied consent; a conviction for IC does not count as a prior conviction. If this is observed on a DOT record, it means that the subject refused the chemical test under implied consent for that OWI arrest. Do not count an IC conviction when determining the type of violation. BAC also does not count as a prior conviction.

Do not count incidents that were "vacated" (VAC) or "court released" (CR) as a previous conviction. If the current case involved causing injury, great bodily harm, or death it cannot be considered a city case, regardless if the subject has no prior convictions.

### **120.30 PRIMARY CHEMICAL TESTS (WILEAG 6.2.6)**

- A. The primary chemical test for the MPD is the breath test for first offense, second offense, and absolute sobriety cases only, but only if drugs are not suspected. A blood test becomes the primary test if drugs are suspected, and blood testing is the primary test for all other OWI offenses. ~~A urine test is only admissible as evidence when the bladder is voided before the test sample is obtained, which translates into a waiting time. Under certain circumstances, urine tests may be required by a drug recognition expert (DRE), but shall never be the primary test.~~
- C. When the use of physical force will be required to obtain the blood sample, refer to section 120.55. When the use of a search warrant will be required to obtain the blood sample, refer to section 120.7570.

### **120.35 IMPLIED CONSENT & INFORMING THE ACCUSED (WILEAG 6.2.6)**

- E. Any person who drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in [Wis. Stat. § 346.61](#), is deemed to have given consent to one or more tests of his/her breath or blood, ~~or urine~~ for the purpose of determining the presence or quantity of alcohol, controlled substances, a combination of alcohol and controlled substances, other drugs, or a combination of alcohol and

other drugs when requested to do so by a law enforcement officer under sub. (3)(a) or when required to do so under (3)(b). Any such tests shall be administered upon request of a law enforcement officer. The law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, two of the three tests under sub. (3)(a), and may designate which of the tests shall be administered first.

(WILEAG 6.2.6.3)

F. ~~2009 Act 163~~ Wisconsin statutes gives police greater authority in requesting breath, blood, or urine samples in cases where a crash is involved.

1. [Wis. Stat. § 343.305\(3\)\(ar\)1](#) states, "If a person is the operator of a vehicle that is involved in an accident that causes substantial bodily harm, as defined in [Wis. Stat. § 939.22\(38\)](#), to any person, and a law enforcement officer detects any presence of alcohol, a controlled substance, a controlled substance analog or other drug, or a combination thereof, the law enforcement officer may request the operator to provide one or more samples of his or her breath, blood, or urine."
2. [Wis. Stat. § 343.305\(3\)\(ar\)2](#) states, "If a person is the operator of a vehicle that is involved in an accident that causes the death of or great bodily harm to any person and the law enforcement officer has reason to believe that the person violated any state or local traffic law, the officer may request the operator to provide one or more samples of his or her breath, blood, or urine."

**Note:** [Wis. Stat. § 343.305\(3\)\(ar\)2](#) does not authorize law enforcement to complete an unreasonable search, as it does not authorize searches. It authorizes law enforcement to require a driver to choose between giving actual consent to a blood draw, or withdrawing "implied consent" and suffering implied-consent-law sanctions."

#### **120.45 BREATH TESTS (WILEAG 6.2.6)**

A. A twenty (20) minute period of continuous observation must be conducted of the subject immediately preceding the breath test. The observation period must be conducted by the arresting officer or the intoximeter operator. The intoximeter operator, however, would be the most effective as they are trained and can present the best judicial testimony in knowing what to look for and what may invalidate such tests. The arresting officer(s) could be an additional witness.

1. Multiple officers may conduct the observation as it may be necessary in some circumstances.
2. Members conducting the observation shall ensure they are not preoccupied during the observation period to ensure the subject does not eat, drink, chew gum or tobacco, smoke, regurgitate or vomit (e.g., they shall observe the subject and not do things like completing reports while observing the subject).

**Note:** The entire twenty (20) minute period of continuous observation must be observed by the same officer.

- E. If the subject submits to a breath test, which results in an alcohol concentration level of below .08, and his/her actions and appearances are not consistent with the tested level of intoxication, the primary test should be changed. Convey the subject to a hospital for a blood test. This would be done for the purpose of determining the presence or quantity of a controlled substance or other drug. If a second test is conducted, a new *Informing the Accused* must be completed and re-read to the subject. Make sure to include both reports with the completed OWI package and list the explanation and information on the RMS *OWI Report*. If the subject refuses to submit to the second test, immediately follow the procedures for refusal (section 120.7065), and blood shall be obtained forcibly pursuant to obtaining a search warrant. Refer to section 120.30(B).

**Note: If the subject's impairment level is not consistent with a low BAC reading, causing the officer to suspect other drug use, the officer must notify his/her shift commander, prior to requesting a second test, and request that a drug recognition expert (DRE) respond to the district station - if available. Refer to section 120.435130.**

#### **120.50 BLOOD TESTS (WILEAG 6.2.6)**

- B. Liaison is maintained with the State Lab of Hygiene (Madison, WI), WI Crime Lab (Milwaukee, WI), Property Control Division, and the court liaison officer to facilitate transmitting of blood samples and reception of chemical analysis results. Blood samples for first, second and third offense OWI cases will be sent to the State Lab of Hygiene. Blood samples for all other OWI violations will be sent to WI Crime Lab. Blood alcohol results are received from the State Lab of Hygiene via U.S. mail and could take up to 30 60 days. Alcohol/drug combinations or drug only results will take longer to process. A person, the employer of any such person, and any hospital where the blood sample was drawn by any such person has immunity from civil or criminal liability under [Wis. Stat. § 895.53](#).

#### **D. PROCEDURES FOR CONDUCTING A BLOOD TEST**

3. The subject shall be conveyed to the nearest a nearby hospital for testing, with a state of WI Blood Test Kit.
10. The agency address for the *Blood/Urine Analysis Form* contained within the blood kit is:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

#### **120.60 URINE TESTS (WILEAG 6.2.6)**

- A. Liaison is maintained with the State Lab of Hygiene, WI Crime Lab, PCS, and the court liaison officer to facilitate transmitting of urine samples and reception of chemical

~~analysis results. Chemical analysis for city cases will be sent to the State Lab of Hygiene. Urine alcohol results are received from the State Lab of Hygiene via U.S. mail and could take up to 30 days. Alcohol/drug combinations or drug only results will take longer as they are sent to the WI Crime Lab and may require up to 6 months to process. Under certain circumstances, urine tests may be required by a drug recognition expert (DRE).~~

## ~~B. PROCEDURES FOR CONDUCTING A URINE TEST~~

- ~~1. The subject shall be placed under arrest for the appropriate charge and informed of the arrest.~~
- ~~2. The arresting officer shall notify the shift commander and provide him/her with the details of the arrest.~~
- ~~3. The subject shall be conveyed to the district station for testing, with a state of WI Urine Test Kit. The subject should not be conveyed to a hospital for testing.~~
- ~~4. The officer must read the *Informing the Accused* to the subject, request that they submit to the chemical test, and give him/her the copy (pink copy).~~
- ~~5. The officer must issue the appropriate OWI related citation.~~
- ~~6. Have the subject void (empty bladder) as soon as possible after the citation is issued. Approximately ½ hour later (not critical), collect the second specimen directly in the container provided and note the exact time for the official report. The officer collecting the sample must monitor the subject during collection to insure that there will be no claims of contamination, dilution with tap water, etc. Each urine kit has an instruction sheet. The officer must read and familiarize themselves with the procedure prior to collecting the sample.~~
- ~~7. The urine sample shall be placed on inventory as evidence and secured in the district evidence locker with no refrigeration. No MPD gun tags or seal numbers are to be used.~~

~~A *Property Inventory Report* shall be completed and copies shall be made for the OWI Package. The original *Property Inventory Report* shall be given to the district property officer or personnel who received the sample. For districts utilizing the "Ace Officer Drop" system, follow established protocol.~~

8. ~~The agency address for the *Blood/Urine Analysis Form* contained within the blood kit is:~~

[illegible]

- ~~9. The OWI Package shall be completed and submitted to the shift commander for review.  
(WILEAG 6.2.6.3)~~

**120.6560**      **PROHIBITED BLOOD ALCOHOL CONCENTRATION**

**120.7065**      **REFUSALS**

- A. A case is considered a “refusal” if the subject refused to submit to the primary chemical test of their breath or blood, ~~or urine~~ that was requested by the officer. Refusal to submit to implied consent will be in one of three forms.

**120.7570**      **SEARCH WARRANTS**

**120.8075**      **ABSOLUTE SOBRIETY**

- B. The mere odor of an alcoholic beverage on his/her breath is sufficient probable cause for conducting SFSTs. The mere odor of an alcoholic beverage on his/her breath is also sufficient probable cause to request that the subject submit to a chemical test of their breath or blood, ~~or urine~~. If the determination is made to arrest the subject, he/she shall be conveyed to the district station for testing, read the *Informing the Accused*, and then administer the appropriate chemical tests. The subject, as in all OWI related offenses, is required to submit to a chemical test of his/her breath or blood, ~~or urine~~ for the purpose of determining alcohol concentration.

D. REQUIRED REPORTS FOR ABSOLUTE SOBRIETY CASES

1. ADR (form PA-45)
2. UTC (form MV 4017) - citation for the violation that was the reasonable suspicion of the traffic stop (recommended).
3. UTC (form MV 4017) - Absolute Sobriety
4. Informing The Accused (form SP4197)
5. RMS OWI Report
6. Intoximeter Test Record

**Note: For absolute sobriety cases which become misdemeanor offenses, add the D.A. reports specified in section 120.425120.**

**120.8580**      **JUVENILE OWI**

**120.9085**      **COMMERCIAL MOTOR VEHICLE OWI**

**120.9590**      **BOATING RELATED OWI**

**120.40095 ADDITIONAL OWI VIOLATIONS****120.405100 RELEASE OF OWI VIOLATORS (WILEAG 6.2.6)****120.410105 LIAISON OFFICER'S DUTIES****120.415110 REQUIREMENT OF OFFICERS TO APPEAR****120.420115 CITY CASES**

C. If the subject's test results are .08 or more (non-commercial motorized vehicle) or .01 or more (commercial motorized vehicle) on the intoximeter, a second citation must be completed for operating/driving with a prohibited alcohol concentration. If the subject submitted to a blood ~~or urine~~ test, the Court Administration Section OWI liaison will issue the second citation upon receipt of the test results.

F. The following reports are required to be completed and included in the OWI package envelope:

1. OWI Package Envelope (form PO-25)
2. UTC OWI (form MV 4017)
3. Informing The Accused (form SP4197)
4. Three (3) copies of the Intoximeter BAC Report
5. UTC BAC (form MV 4017)
6. RMS *OWI Report*
7. ADR (form PA-45)
8. WI Probable Cause Statement (form CR-215) (if any state charges are involved)
9. TraCS crash report (if an accident occurred)
10. Driving record of defendant
11. Affidavit and search warrant (if applicable)

**Note: Additional reports may be required, but those would be based on whether the case is a blood, ~~urine~~, combination of two tests, or a refusal.**

**120.425120 STATE CASES**

C. If the subject tests above the prohibited blood alcohol concentration level on the intoximeter, he or she will be issued a second citation for operating/driving with a

prohibited alcohol concentration. If the subject submitted to a blood ~~or urine~~ test, the dayshift court officer or liaison will issue the second citation upon receipt of the test results.

E. In addition to those reports needed in section 120.420~~115~~, the following reports also must be completed:

1. Referral Packet Checklist From Law Enforcement to Milwaukee County D.A.'s Office (D.A. form 900)
2. D.A. Complaint Worksheet (D.A. form 800)
3. D.A. Witness Subpoena Data Sheet (D.A. form 4983) (2 copies)
4. D.A. Criminal Case Scheduling Calendar (D.A. form 3074 R22)

**Note: Additional reports may be required, but those would be based on the whether the case is a blood, ~~urine~~, combination of two tests, or a refusal.**

#### **120.430125    REPORTS CHECKLIST**


The following is a list of reports that are used in OWI related offenses, but not all are used in each circumstance. Different reports are required in different cases. In the event of felony cases that involved an injury or death, an incident number must also be generated and used in addition to the uniform traffic citation.

- B. Uniform Traffic Citation OWI (form MV 4017) [pink copy to defendant ~~or their copy if completed in TraCS~~]
- C. Uniform Traffic Citation BAC (form MV 4017) [pink copy to defendant ~~or their copy if completed in TraCS~~]
- D. Informing the Accused (form SP4197) [pink copy to defendant ~~or their copy if completed in TraCS~~]
- G. Notice of Intent to Suspend/Temporary Driving Permit (form MV3519) [pink copy to defendant ~~or their copy if completed in TraCS~~]
- H. Notice of Intent to Revoke Operating Privilege – Page 1 (form MV3396) [pink copy to defendant ~~or their copy if completed in TraCS~~]
- K. Blood ~~/Urine~~ Analysis (form CS-22)
- S. 24-Hour Out Of Service Order (form MV3546) [pink copy to defendant ~~or their copy if completed in TraCS~~]



**120.435130**    **DRUG RECOGNITION EXPERTS (DRE)**

- D. The ~~Technical Communications Division (TCD)~~ shall ~~Department of Emergency Communications (DEC)~~ will keep a copy of the most current version of the memorandum and a list of all the DREs assigned to the MPD to ensure proper utilization of the DREs when one is requested. MPD DREs are on a 24-hour call up roster, which is available from the ~~TCD~~ ~~DEC~~ and lists the names, addresses, and personal phone numbers. The memorandum and the list of MPD DREs on the call up roster may be sent to the shift commander upon request. The shift commander, or their designee, may initiate the call up procedures if the dispatcher is unable to locate an on-duty DRE.
- E. When an officer determines that he/she needs the services of a DRE, the requesting member shall first make the request by contacting their dispatcher to determine if any on-duty MPD DREs are working. The dispatcher shall then attempt to contact any on-duty DRE to respond. If no DRE is able to respond, or no off duty DREs are available, a ~~TCD~~ ~~DEC~~ supervisor shall send a copy of the memorandum and the list of Milwaukee Police Department DREs to the requesting members respective shift commander so that he/she, or their designee, may initiate the call up procedure. If there are no on-duty Milwaukee Police Department DREs available, an MPD DRE may be contacted. In the event that there are no on-duty or off duty DREs available, a DRE from another agency may be requested from the list on the memorandum. When requesting a DRE from another agency, the shift commander, or designee, making the request shall ask for an on-duty DRE from that agency. If there are no on-duty DRE's available from that agency, the shift commander, or designee, shall call another agency to inquire about the availability of any on-duty DREs and will repeat this process until an on-duty DRE from another agency can be located, or there are no on-duty DREs working for any of the agencies on the list. In the event that there are no on-duty DREs available from any of the agencies on the list, the shift commander, or designee, may then call a DRE in from home that is off-duty from any of the agencies on the list.



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