



**Ohio State Highway Patrol**  
**Policy Number : OSP-902.20**

**ALCOHOL / DRUGGED DRIVER ENFORCEMENT**

Date of Revision : **1/15/2008**

Priority Review : **All Sworn Officers ; Other Affected Employees**

Distribution : **All OSP Offices and Facilities**

**Summary of Revisions**

Material revisions throughout policy and attachments are in bold, italicized text to update reference to:

HP-70B, Impaired Driver Report, and SFST attachment revised to add vertical nystagmus provisions.

HP-70K, Request for Release of Health Care Provider Records, renamed and re-activated to meet revised ORC and Ohio Department of Health provisions. Form referenced and link to CRS added to Current Form and Supplemental References for ease of access. Refer to OSP-103.07 for additional guidelines.

**Purpose**

To establish guidelines for OVI (operating a vehicle under the influence of alcohol and/or drugs) enforcement designed to reduce alcohol/drug related traffic crashes.

To provide guidelines for conducting field sobriety tests.

To establish guidelines for the use of Pre-arrest Breath Testers (PBT) as an alcohol impairment screening device, and to provide maintenance standards for the device.

**Policy**

**A. STATEMENT OF POLICY** - Comprehensive, coordinated OVI enforcement involving public information / education, strict enforcement, and expedient prosecution is essential for making significant reductions in traffic crashes. Officers shall be alert for signs of alcohol and drug impairment and make every effort to identify the impaired driver.

**B. ENFORCEMENT GUIDELINES - TRAINING**

1. All Division officers have received basic training in OVI driver detection, including Horizontal Gaze Nystagmus, as well as other divided attention skill tests.
2. Submit any need for individualized officer training through channels to the Training Academy. The Academy conducts special training programs each year specifically designed to improve an officer's ability to detect, apprehend, and prosecute the alcohol/drug impaired driver.
3. All officers have received training in the operation of breath testing devices and are required to have a valid Ohio Department of Health permit

for each testing device before its use.

## C. ENFORCEMENT GUIDELINES - TESTING <61.1.11; 61.1.05a> 1,2

### 1. Standardized Field Sobriety Testing

- a. An officer should follow the NHTSA procedures to ensure the integrity of the SFST.
- b. The horizontal gaze nystagmus (HGN) and vertical gaze nystagmus (VGN) tests and two divided attention skills tests are National Highway Traffic Safety Association (NHTSA) standardized roadside sobriety tests that accurately determine if a person is impaired.
- c. The 10-step horizontal gaze nystagmus (HGN) and vertical gaze nystagmus (VGN) tests can be administered in either the standing, sitting, or supine position. In each position, the head must be held straight, not tilted to left or right.
- d. As documented by NHTSA, slight variations in administering the SFST's under less than ideal conditions do not make the SFST's invalid. Adjudication will decide the amount of evidentiary weight given to the SFST's under such conditions.
- e. Officers are encouraged to use other divided attention skill tests (e.g., finger-to-nose, Romberg), which they have been trained in, as long as the court accepts the findings. These tests have no scientific data to indicate validity; however, they have been accepted in the past by courts nationally through judicial notice.

### 2. Observations

a. **Probable Cause** - An officer's observations are crucial in establishing probable cause upon which the traffic stop/arrest is based. Officers have been trained to be constantly alert for erratic driving behaviors that indicate a driver's possible impairment, including:

- Straddling the center or lane marker
- Turning with a wide radius
- Weaving, Swerving, Drifting
- Driving 10 MPH below the speed limit
- Almost striking an object or vehicle
- Driving on other than designated roadway
- Stopping without cause in a traffic lane
- Following too closely
- Tires on center of lane marker
- Braking erratically
- Signaling inconsistent with driving actions.

b. **Initial Contact** - Interview the driver, recognize and note

specific characteristics, attitudes and actions commonly associated with alcohol/drug impairment during a face-to-face contact.

#### **D. ENFORCEMENT GUIDELINES - OFFICER SAFETY AND PRE-ARREST SCREENING LOCATION**

1. **Safe Location** - The OVI traffic stop should be made as soon as possible in a safe location. Be prepared for unexpected or unusual reactions from the driver. The safety of the officer and the violator shall be the determining factor on when and where field sobriety tests are administered.

2. **Concealed Carry** - At the first indication that the suspect has a handgun, it should be secured prior to commencing any pre-arrest screening, including standardized field sobriety tests. Securing the handgun might include:

- The officer taking possession of it.
- The officer taking possession of it and unloading it.
- Securing the handgun in the offender's trunk.
- Securing the handgun in the patrol car or the patrol car trunk.
- Installing a trigger-lock.
- Performing another rendering safe procedure.

3. **Pre-Arrest Screening** - Sobriety testing or use of preliminary breath testing equipment may be used.

a. Field sobriety tests should be administered at the time the violator is stopped or as soon thereafter as practical and should be conducted in a safe location.

b. Testing should be conducted on a flat level surface if practicable.

c. While conducting field sobriety tests, officers shall assume a safe position where observation of traffic and passengers in the offender's vehicle is possible. The test may be given in the patrol car if the officer concludes that is the safest place for the test.

d. When practical, the field sobriety tests shall be performed in front of the in-car camera.

4. **Use of a Pre-arrest Breath Tester (PBT)** - PBT's may be used as another screen to help determine the degree of alcohol impairment of persons suspected of being under the influence of alcohol. The officer should offer a PBT test when practical. Submission to a PBT test must be entirely voluntary. Do not allow an offender who has been smoking to blow into the PBT until five minutes after smoking. The PBT may be carried in a coat or shirt pocket during cold weather to keep it at operating temperature. Otherwise it should be stored in its case. PBT's are to be assigned to the post and not to an officer.

a. **Officer Safety While Using a PBT** - The PBT should be administered at a safe distance from the flow of traffic. Select a

place that is most advantageous for the officer. The test may be given in the patrol vehicle if the officer concludes that is the safest location. To lessen the chance of acquiring a communicable disease, use caution while handling the mouthpiece after the test. In many cases, it may be appropriate to have the offender remove the mouthpiece from the PBT and place it in a litter bag or other receptacle.

**b. Screening Process Using a PBT** - OVI screens, including the PBT examinations, should be conducted before arrest when practical. The officer should observe the driver, administer field sobriety tests, including horizontal gaze nystagmus, and then offer the PBT as the final step in the screening process.

**c. Implied Consent Sanctions** - The implied consent process is not affected in any manner by an offender's willingness or refusal to submit to a voluntary PBT. The sanctions imposed by ORC sections 4511.191 and 4511.192 do not apply to pre-arrest, non-evidentiary breath tests. Should a person suspected of having physical control of a vehicle while under the influence or operating a vehicle under the influence (OVI) refuse an evidentiary test (BAC DataMaster or other breath testing instrument) in the belief that the PBT satisfied the refusal requirement of the implied consent law, complete the BMV2255 as provided by ORC Section 4511.192.

**d. Commercial Vehicle Driver** - If an officer has reasonable suspicion to believe the driver of a commercial vehicle is in violation of ORC Section 4506.15, a PBT examination can be used to further support reasonable suspicion. The ORC violation selected in any case would be dependent on supportive evidence of impairment and/or the results of an evidentiary BAC test.

**5. Reasonable Suspicion** - Field sobriety tests should be administered when there is reasonable suspicion to believe a person is operating a vehicle while under the influence of alcohol and/or drugs of abuse, unless the person's condition renders him/her incapable of performing such tests. If all observations support probable cause the driver is impaired, request the driver to exit the vehicle for further investigation.

**6. Probable Cause for Operating a Vehicle** - If the vehicle was not observed in motion, it will be the officer's responsibility to determine if probable cause exists to charge the driver with operating under the influence, as defined in the Ohio Revised Code.

**7. Testing Persons Who are not Drivers** - Field sobriety tests may also be administered to persons under the influence of alcohol and/or drugs of abuse who are in violation of any state statute, (e.g., pedestrians, passengers in vehicles, etc.).

**8. Drugs** - Officers must also be alert to drug-impaired drivers. Different drugs have different effects on the body, such as drowsiness, hyperactivity, or a feeling of euphoria. When combined with alcohol, many drugs react adversely and result in increased impairment.

**E. ARREST AND PROCESSING** <61.1.11; 61.1.05a> 1-8

1. Once the driver is determined to be impaired, do not permit the driver back into the vehicle.
2. After conducting an initial examination at the scene and determining that probable cause to arrest is present, the officer shall effect a physical arrest of the offender.
3. The offender will be informed of constitutional rights (Miranda Warning). If possible, the officer should ask the offender to read and sign an HP-70G, Constitutional Rights Waiver.
4. The arresting officer will be responsible for the disposition of the offender's vehicle. This includes a complete inventory of the vehicle and towing, if necessary. The vehicle may be left at the scene upon the owner/driver's request, provided it is legally parked and does not require seizure and/or pre-trial retention as directed by Division policy, the court, or the Ohio Revised Code. Do not permit firearms, weapons, or dangerous ordnance to remain with the vehicle or be released to a towing company.
5. The offender should be transported for processing in accordance with the Division's Custodial Transportation guidelines.
6. The officer shall administer a chemical test to the offender unless conditions such as an injury or uncooperative behavior prohibit chemical testing. If the offender refuses, no test will be given.
7. The offender may then be incarcerated, afforded the opportunity to post bond for the violation, or released to a sober person willing to accept responsibility. If released to a third party, the officer should obtain a signed HP-60 receipt for the offender. Division officers will follow the pretrial release procedures established by the court of jurisdiction in making these decisions.
8. The arresting officer will be responsible for completing the necessary arrest reports and required forms.
9. Upon the arrest of a driver for OVI, the arresting officer should consider the additional charge of child endangering if there are passengers in the vehicle under the age of eighteen (ORC 2919.22).

**F. SELECTIVE (CONCENTRATED) ENFORCEMENT** <61.1.10> 1-3

1. The Division has developed traffic crash reduction programs that focus on the precise identification of high frequency areas through statistical analysis of crash information, and concentrate enforcement efforts on those violations which directly contribute to the crash problem in those areas.
2. There is a direct relationship between removal of alcohol/drug impaired drivers and the reduction of all traffic crashes. This method has been proven to be the best solution for the reduction of alcohol involved fatal crashes.
3. It is the responsibility of the post commander to continually monitor

alcohol/drug-related traffic crash problems and develop concentrated special enforcement efforts. These efforts include, but are not limited to, selective / concentrated enforcement, federally-funded enforcement programs, and team enforcement (tactical squad operation).

#### G. PUBLIC INFORMATION / EDUCATION <61.1.10> 1-3

1. Voluntary compliance by the motoring public is the key to successful prevention efforts, and can be best accomplished by combining strict enforcement with education of the public to the dangers of impaired driving.
2. It is essential that each employee fully support OVI prevention efforts, not only within the Division, but private efforts as well. Employees are encouraged to support and assist organizations such as MADD, SADD, and other concerned civic groups.
3. The responsibility for formal public information efforts at the local level rests with the post commander.

H. **CONDUCTING TESTS FOR OTHER AGENCIES** - Local agencies should be encouraged to become involved in OVI enforcement. The Division may assist them by providing guidance in obtaining equipment, training, or by placing breath testing equipment in their facility. An officer may conduct a breath test for another law enforcement agency unless Division operations are adversely affected.

#### The Form

#### HP-70B IMPAIRED DRIVER REPORT

1. **Use** - To document evidence relating to an OVI arrest and related offenses. Conduct the Gaze Nystagmus, Walk - Turn, and One Leg Stand evaluations in accordance with the NHTSA's "**DWI Detection and Standardized Field Sobriety Testing Manual**".
2. **Completion** - Complete when there is reason to believe that a person is *under the influence of alcohol and/or drugs, including administrative actions against commercial vehicle drivers for operating with a measurable or detectable amount of alcohol*. Officers should use their own words or descriptive phrases to record the actions, condition, and performance of the person suspected of being under the influence.
  - **Vehicle Condition** - Describe any vehicle condition that may have affected the person's ability to operate.
  - **Vehicle Disposition** - Record if the vehicle was left at the scene or who it was released to or towed by.
  - **Divided Attention Skills**
    - **Horizontal / Vertical Gaze Nystagmus**: Check results.
    - **Walk and Turn**: Check applicable results and record other observations as required.
    - **One Leg Stand**: Check applicable results and record other observations as required.

- **Pre-Arrest Breath Tester (PBT) Result** - Check **P** (PASS), **W** (WARN), **F** (FAIL), or enter percentage of blood alcohol if PBT used.
- **Other Skill Evaluations** - If an officer wants to use another method of evaluation such as the finger-to-nose test, the coin tests, balance, or an unstructured walk and turn, record the results of that evaluation. Record time, date, and location where tests were performed.
- **Audio / Video Recording** - Check yes or no. If yes, enter **storage media** number.
- **Statement of Facts** - Detail in your own words and terminology, and expand any comments made on the front of the report.

3. **Disposition** - File original with arrest report and related forms. Copies may be made for the court, prosecutor, or arresting officer. The original may be destroyed when criminal prosecution is complete. File forms completed as the result of administrative actions against commercial vehicle drivers with the HP-7 buff copy at the post, with retention of one year plus the current year.

#### **HP-70B-1 IMPAIRED DRIVER REPORT - OPTIONAL INTERVIEW**

1. **Use** - To record responses to a series of questions by a person suspected of being impaired. The interview is optional and need only be prepared when needed by an officer or required by a court.
2. **Completion** - Prepare as many copies as needed. Space is provided for additional notes. Use 24-hour clock (military time).
3. **Disposition** - File with related reports and destroy when no longer needed.

#### **BMV2255 REPORT OF LAW ENFORCEMENT OFFICER**

- Administrative License Suspension
- Notice of Possible CDL Disqualification
- Immobilization
- Forfeiture

##### **1. Use of Report**

- To notify the BMV that a law enforcement officer arrested a person for OVI and the person refused to submit to the chemical test or tests required by ORC 4511.191, or submitted to the test and was found to have a prohibited concentration of alcohol.
- To notify the BMV of an ORC Chapter 4506 commercial motor vehicle (CMV) violation that carries a possible administrative license disqualification of driving privileges.
- To document reasonable grounds that existed to stop and request a blood, breath, or urine test from a commercial driver operating in a violation of ORC 4506.15.
- To document OVI arrests without a test being offered, and vehicle,

license plates and/or drivers license seizures under ORC 4511.195 (OVI), 4507.38 (DUS-OVI and/or FRA, or Wrongful Entrustment).

2. **Completion of Report** - Type or print in black ink except where signatures or initials are required. A person who is deceased, unconscious, or in such a condition to be rendered incapable of refusal shall be deemed not to have withdrawn consent (ORC 4511.191). The following clarify instructions for OSP officers:

#### **SECTION A - Driver and Vehicle Descriptions**

- **Name** - If last name is different from that on license, put last name from license in parenthesis, e.g., maiden name.
- **Date and Time of Refusal / Test** - Must be within two hours of the date and time of the violation. If offender was not offered a test, enter 'Not Offered'.

#### **SECTION B - Driver Actions**

##### **Complete for All OVI Physical Control Arrests -**

Leave test results line blank if results are not available when offender is given his/her copy of the form or not available at initial court appearance.

##### **"My reasonable grounds for OVI / Physical Control arrest before test were based on ..." -**

Enter ORC section that led to offender being stopped. If no section number other than 4511.19, enter descriptive text, e.g., MVI traffic check, crash involvement, offender's admission, intoxication readily apparent.

**SECTION C - Vehicle Sanctions** - Check applicable vehicle sanctions.

#### **SECTION D - Commercial Motor Vehicle Driver Actions**

- **Commercial Vehicle** - Check appropriate items and complete test result if, after reading the ORC 4506.17 implied consent consequences, the offender refused to submit to the requested test or tests, or submitted to testing and was found to have a prohibited concentration of alcohol.
- **Refused to submit to test(s)** - Check this caption if the violator was found operating a CMV with a measurable or detectable amount of alcohol or controlled substance, and refused to submit to a test or tests to determine the amount of alcohol and/or controlled substance in blood, breath or urine. Check 24-hour out-of-service.
- **BAC per se content of .04 or above without OVI charge** - Check this caption if the violator was found operating a CMV with an alcohol content of .04 or above and no criminal charge of OVI is filed with a court of law. Additionally, check 24-hour out-of-service.

- **BAC per se content of .04 or above with OVI charge** - Check this caption if the violator was found operating a CMV with an alcohol content of .04 or above, and was charged criminally with OVI in a court of law. Additionally, check 24-hour out-of-service.
- **Commercial vehicle per definition** - Check if the vehicle operated at the time of the violation was a commercial motor vehicle as defined in ORC 4506.01(E).
- **24-hour out-of-service order** - Check if the violator was found operating a CMV with any measurable or detectable amount of alcohol and/or controlled substance.
- **CDL to be disqualified** - Check if CDL is to be disqualified as prescribed in ORC 4506.16. This is to be checked even if the driver did not possess a CDL at the time of the violation and the driver was operating a CMV. By following this procedure, the driver will be prevented from obtaining a CDL for the prescribed amount of time found in ORC 4506.16.
- **CDL seized** - Check box if the drivers license or CDL was seized. Seizure will include forwarding the license to the BMV.
- **Hazardous material** - Check when the CMV was transporting a hazardous material in quantities that require placards as required by the Hazardous Materials Transportation Act.
- **Operated a motor vehicle under the influence of a controlled substance** - Check if the violator was operating a CMV while under the influence of a controlled substance. Additionally, check 24-hour out-of-service.

#### SECTION E

**Driver's Signature** - Have driver sign to acknowledge receipt and consequences of refusal were read. Although not required, a signature helps substantiate to the court that proper procedures were followed, especially in the absence of the arresting officer at preliminary court appearances by the offender. If the driver is operating a vehicle that is a commercial motor vehicle as defined in ORC 4506.01 (E), is arrested for violations of ORC 4506.15, and has been read and shown the warning on the back of the form, have the driver sign.

#### SECTION F

**Signature of Arresting Officer** - Legible signature.

**Enforcement Agency** - Enter OSP and unit, post and district numbers.

**NCIC Number** - Enter ORI of post where arresting officer is assigned.

**Signature of Witness** - Legible signature of witness to the reading and showing to the offender the "Consequences of Test and Refusal". Document on the form or elsewhere their position, employer if not OSHP, and other information on their identity and how to contact the witness.

#### **AFFIDAVIT**

**Report and Affidavit** - The arresting officer's sworn affidavit portion shall be completed when the offender refuses to submit to testing, submits to testing and is found to have a prohibited concentration of alcohol, or the CMV/CDL provisions are completed. Have document notarized or sworn to before a clerk of courts or notary public. Completion of the affidavit is not required before the offender's copy is given to him/her, but is recommended.

#### **NOTIFICATIONS (on Reverse Side of Driver's Copy)**

**Consequences of Test and Refusal** - The arresting officer must read the "Consequences of Test and Refusal" warning contained on the reverse side of the driver's copy, to the person under arrest in the presence of one or more witnesses, within the two-hour time limit specified by ORC 4511.19. The form must also be shown to, and a completed copy given to, the person under arrest. Inform the offender of the length of the applicable immediate suspension action and that this is independent of any penalties or sanctions imposed by the court. The form shall be notarized, or sworn to before a deputy clerk of courts, and the original mailed (use BMV2257 envelope) to the BMV within 48 hours, unless specifically directed otherwise in Disposition. This form must be served upon the offender, otherwise the person will not be under an Administrative License Suspension (ALS).

**Consequences of Test and Refusal - Out-of-Service** - The arresting officer must read the commercial motor vehicle operator under arrest the "Consequences of Test and Refusal" warning, contained on the reverse side of the driver's copy, in the presence of one or more witnesses within the two-hour time limit specified in ORC 4506.17. The form must be offered for signature by the driver acknowledging the form and being advised of the consequences of not signing the form. This is required even if the offender was arrested for ORC 4511.19.

#### **ADDITIONAL INFORMATION (on Reverse Side of Driver's**

**Copy)**

**Commercial Driver Instructions** - These notifications do not have to be read to the offender. By providing the offender with his/her copy, notification is accomplished. Instruct the offender to read the appropriate information.

**Notice of Suspension** - Based on prior OVI convictions and whether or not offender refused test, the officer should notify the offender of the length of the ALS suspension. Circle and initial this ALS time period on the reverse side of the offender's copy. Note in the statement of facts the ALS suspension length.

**3. Disposition of BMV2255 Copies by OSP Offices****WHITE / Original - BMV Copy**

**Courier Mail** - Forward by courier mail without postage in the business reply envelope (BMV 2257) (Commodity Code 07-0116-50) within 48 hours of the violation only if an ALS is applicable.

**Exceptions To Mailing White Copy to BMV**

**Tested Less Than 0.08 BAC and Charged With OVI** - Attach to yellow copy of the HP-7 with license and forward to court within 48 hours. **Mail nothing to the BMV. This does not apply to CDL disqualification.** The white (BMV) copy of the BMV2255 is sent to the BMV when a driver of a commercial motor vehicle is tested and has a measurable or detectable amount of alcohol or positive drug test.

**Test Not Offered** - Attach to yellow (court) copy of the HP-7 with license and forward to court within 48 hours. **Mail nothing to the BMV.**

**Disposition of CDL** - If a commercial motor vehicle (CMV) driver is administratively charged under ORC 4506.15, violation of a previous 24-hour out-of-service, BAC content of .04 or above, or controlled substance without OVI charge, attach the license to the form and forward to the BMV by courier mail.

**Delayed Receipt of Test Results** - When results of a blood or urine test are received and are .08 or

above, or provisions of ORC 4506.16 will be invoked, complete the remaining applicable captions of the form and attempt to serve on the offender. If HP-7 and BMV2255 are served by the officer, the offender will be under ALS. If the offender is not served with the BMV2255 by the officer (e.g., cannot be located, resides outside of the post area and cannot be served, etc.) and "was provided a copy of this form at the time of arrest" was not checked, except for ORC 4506.16 violations, there will be no ALS.

**CANARY - Law Enforcement Copy** - Include with HP-7 buff copy and other documentation of the arrest .

**PINK - Court Copy** - Forward with affidavit to court within 48 hours. If offender has a drivers license but was not seized, order the person to surrender it at the post within 24 hours, so it can be attached to the documents and forwarded to the court. If the offender fails to do this, attach a note to this effect and forward to the court within the mandatory 48 hours of the violation. The BMV2255 must be sworn to before a notary or deputy clerk of courts.

**GOLDENROD - Driver's Copy** - Issue to offender after completion, whether or not it has been sworn to. ORC requires this copy be served on the offender to be placed under ALS. Offender cannot be instructed of ALS unless the officer knows the results of the test.

### **Current Form and Supplemental References**

#### **BMV2255, Report of Law Enforcement Officer - Administrative License Suspension / Notice of Possible CDL Disqualification / Immobilization / Forfeiture**

Requisition item code 10-0484-00  
Record Retention Schedule, Agency Series #1110

***Access forms on the ODPS Central Repository System (CRS):***  
***<http://odpsweb.ps/crs/WebPages/Repository/MyDocuments.aspx>***

#### **HP-70B, Impaired Driver Report**

OHP0270  
Record Retention Schedule, Agency Series #1079  
Use existing stock of forms until supplies are exhausted.

#### **HP-70B-1, Impaired Driver Report - Optional Interview**

OHP 0271  
Record Retention Schedule, Agency Series #1079  
Use existing stock of forms until supplies are exhausted.  
Not a stocked form.



AGENCIES

**Attachment(s)**

[OSP-902.20 BMV2255 Report of Law Enforcement Officer.pdf](#)

[OSP-902.20 BMV2255 Disposition Chart.doc](#)

[OSP-902.20 Standardized Field Sobriety Tests.doc](#)

[OSP-902.20 Alco Sensor Use and Maintenance.doc](#)

[OSP-902.20 Alco Sensor Manual.doc](#)