

8.03
CRAIG POLICE DEPARTMENT
Office of Chief of Police
General Order

Date Issued: May 15, 1997

Revision Date: August 16, 2007

Subject: D.U.I. Enforcement

Reference:

To: All Officers

I. Policy:

The detection and apprehension of drivers under the influence of alcohol and/or drugs is vital for the safety of the motoring public. Research has shown that effective enforcement programs to curb the DUI problem in communities must include a strong enforcement component. The Department will strictly enforce Driving Under the Influence violations, and when an officer has probable cause and sufficient elements exist for an arrest for Driving Under the Influence of Alcohol and/or Drugs or while the Driver's Ability is Impaired, an arrest shall be made.

Guidelines for DUI enforcement can be found in the State of Colorado DUI Enforcement Manual.

II. Procedure:

A. Breath Testing

- 1.** Breath testing equipment is available at the Moffat County Detention Center for the determination of alcohol levels in a person's breath. This equipment is used for the determination of alcohol levels in persons arrested for Driving Under the Influence or Driving While Ability Impaired.
- 2.** The equipment utilized is certified by the Colorado Department of Health. The Police Department maintains its own instructor/supervisor who handles the certification of all operators and all maintenance of the equipment. Members of this department will strictly adhere to the rules and regulations of the Colorado Department of Health concerning the operation of the instrument.
- 3.** Only certified operators are allowed to operate the equipment. Only those having a specific lawful need will be allowed to use the equipment. The simple testing to determine a person's alcohol level without a lawful need is prohibited. This includes employees of this department, other agencies or citizens.

B. Drug Testing

1. It is the policy of the Craig Police Department that urine samples will be collected by sworn officers to determine the drug content in a person's system. The sample will be collected in the manner stated in this order and sent by first class US Mail to the Colorado Department of Health for testing. All specimens shall be placed in the indoor mail drop at the Post Office.

2. Urine samples should be requested in cases when the officer has probable cause to believe the person has ingested drugs. Urine samples may also be taken at the request of other agencies, such as but not limited to other police or sheriff's departments, probation, parole, juvenile diversion and juvenile tracking, but only when an officer or personnel from the requesting agency is not available.

3. When an officer has lawfully contacted the driver of a vehicle and reasonably suspects the driver may be under the influence of drugs and/or alcohol, normal DUI procedure should be followed. After the appropriate blood or breath test has been administered, and the officer reasonably believes, based on objective symptoms, that the suspect has no alcohol content or a low alcohol content (under a 0.10 bac), and drugs may have been ingested by the suspect, then the officer may request a urine sample. If the suspect refuses to give a urine sample, it is considered a refusal, the same as if he refused a blood or breath test, the suspect's license shall be surrendered to law enforcement. An Affidavit and Notice of Revocation form shall be issued.

a. Whenever possible, in cases involving drugs, it is recommended that a Drug Recognition Expert (DRE) be contacted for further investigation.

4. In the cases of vehicular assault, vehicular homicide, criminally negligent homicide and third degree assault, an officer may request a blood or urine test if the officer has probable cause to believe that drugs may have been ingested by the suspect.

a. The District Attorney's office requires the officer to be able to articulate at least **THREE** observations of intoxication. An example of three observations are, but not limited to:

- An odor of an alcoholic beverage.
- Slurred speech.
- A traffic accident that the suspect caused.

b. If the officer can articulate three observations of possible intoxication, then a sample may be taken without the person's consent. It is advised that the officer attempt to get the person to voluntarily give the specimen.

C. Voluntary Consent

When an officer obtains a sample voluntarily from a person, he should write the following in the "Remarks" portion of the paperwork, "I have voluntarily given a sample of my urine to determine a drug and/or alcohol content." The person shall then sign the form.

D. Procedure For Obtaining Specimen

1. Have the suspect wash his/her hands, then inspect them to make sure there is nothing on them that could contaminate the specimen.
2. Observe the suspect deposit the specimen (this must be done by personnel the same sex as the arrestee).
3. Place the cap on the bottle and secure by hearing the "click." DO NOT SEAL WITH RED EVIDENCE TAPE or any other type of tape.
4. Fill out the proper paperwork. DO NOT place the specimen jar label over the seal between the lid and the jar.

E. Roadside Sobriety Evaluation

Note: The State of Colorado DUI Enforcement Manual which has been prepared by the Colorado Association of Chiefs of Police in conjunction with the Colorado Department of Highways - Division of Highway Safety and endorsed by the Colorado District Attorneys Council, Governor's Task Force on Drunk Driving, Police Officers Standards and Training Board, and the County Sheriffs of Colorado, Inc., sets forth guidelines which are accepted throughout the State. This manual was designed to establish common *GUIDELINES* throughout the State and also establish uniformity in administering simple physical maneuvers to suspected drinking/drugged drivers. It will be used as a reference manual for items not covered in this policy.

1. Roadside sobriety evaluations have been defined by the courts as a "search", thus the same consideration must be given to the administration of roadside sobriety evaluations that would be given to any other search. It is not feasible for an officer to obtain a search warrant prior to conducting the maneuvers. The considerations must be those that are given to a warrantless search. One of two circumstances must be present before the maneuvers are conducted:

a. Probable cause along with exigent circumstances: The officer has probable cause to arrest the driver for driving under the influence. To meet this requirement, the officer must have reason to believe the person was driving under the influence, and circumstances exist, which makes the immediate administration of the maneuvers

necessary. Since the effects of alcohol and other drugs dissipate with time, exigency exists with any sobriety evaluation.

b. Establishing probable cause may include: obvious traffic violations; other driving mistakes that give reasonable grounds for the stop; the driver's unusual reaction to emergency lights or siren; driver's behavior before and after the stop; physical observations of the driver, such as: an odor of an alcoholic beverage on his breath; slurred speech; bloodshot and/or watery eyes; etc.

2. Voluntary Consent

If a person consents to perform the maneuvers, it is not necessary for the officer to have probable cause to arrest prior to administering the maneuvers. Consequently, officers will advise the driver the simple physical maneuvers are voluntary. If the driver agrees to complete the maneuvers, ask the driver if he understands that they are voluntary.

3. Elimination of Medical Considerations

Before the officer requests that the driver perform the maneuvers, ask the driver if he has any injuries, ailments or disabilities. If he responds in the affirmative to any of the three, ask him to explain. Ask if he is taking medication or drugs of any type. If he responds in the affirmative, ask for the name of the medication/drug, what it is for and when it was last taken. Ask who prescribed the medication and/or diagnosed the injury, ailment or disability. Document **all** responses to the above questions in your report.

4. Instruction Phase

Establish a routine when administering the maneuvers. A well organized routine, with the maneuvers given in a specific order, will allow the process to flow smoothly, and will allow the officer to testify more effectively at a later date. The instructions for each maneuver must be complete and easy for a sober person to understand. Inform the driver that if he does not understand the instructions, he may ask that they be repeated. The officer may choose to demonstrate portions of the maneuvers, i.e. heel-to-toe position; heels and toes together - but must not compromise officer safety at any time. The officer must speak slowly and clearly while giving the instructions. The officer may later be asked to repeat the instructions to a jury, and if the jury cannot understand the instruction, they will not expect the driver to have understood them.

5. Conducting Roadside Sobriety Maneuvers (recommended order)

a. HORIZONTAL/VERTICAL GAZE NYSTAGMUS: Nystagmus is only to be administered by officers who have successfully completed a NHTSA (National Highway Traffic Safety Administration) certified nystagmus course taught by a certified instructor.

1. Officers who are not nystagmus certified must use test "b" and "c" below. If, after having the suspect perform these two basic tests the officer still is unable to make a determination he may ask an officer who is nystagmus certified to check the suspect.

b. WALK AND TURN: (Divided Attention Maneuver) In order for the subject to perform this maneuver, he must concentrate on performing more than one task at a time. It is important that the instructions be explained clearly and the subject understands what is expected. This maneuver is divided into two stages. The first stage is the instruction stage. During this stage, the subject is required to balance and listen to the instructions. The second stage, walk-and-turn, the subject is again required to balance himself while walking heel-to-toe, but also has to remember the instructions throughout the walking stage.

c. ONE LEG STAND: The one leg stand is another divided attention maneuver requiring the suspect to listen, concentrate, and maintain balance.

d. USE OF ALTERNATE TESTS: The following test may also be given if the officer feels it will assist in establishing probable cause.

1. FINGER-TO-NOSE: It is necessary to establish a routine for this maneuver. The instructions should be given the same way every time. It is easier to remember how the subject performed when recording the results on the Alcohol Influence Report Form and when testifying to the results in court.

2. RHOMBERG (MODIFIED ATTENTION MANEUVER): Research has shown it is best for this maneuver to be performed by the suspect for 30 seconds. A sober person will demonstrate a slight motion during this maneuver. It can be either front-to-rear, side-to-side, circular, or any combination, but usually it will be very slight movement. Whereas an intoxicated person may show a more pronounced front-to-rear, or side-to-side motion, or may stand erect and rigid without any motion, or a combination of all of the above described behaviors.

3. ALPHABET OR COUNTING MANEUVER: The officer must ascertain that the subject is familiar with the English alphabet prior to asking him to perform this maneuver. If the subject says he does not know the English alphabet, ask what grade of formal education he completed, then proceed to the counting maneuver.

Ask the subject if he knows how to count in the reverse order. If so, ask that he count backward from a predetermined number to a predetermined number. If the subject does not know how to count in reverse order, ascertain if he is capable of either counting from "1" to "10", and then backward from "10" to "1".

e. Any of the tests or techniques listed, that can not be performed by the officer, should not be used in testing sobriety.

f. Use of tests not listed in this general order is prohibited unless the person is disabled, then a different type of test that the person is capable of performing may be used.

g. Roadside sobriety evaluations shall be video taped if an in-car video camera unit is available.

1. The videotape shall be treated as evidence.

Authorized By:

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Chief of Police