

3.27 DUI INVESTIGATION / ALCOHOL AND DRUG IMPAIRED TRAFFIC OFFENDERS

The following steps are to be followed when making a DUI arrest:

CHECKLIST:

- Observations of the impaired driving are probable cause for a stop.
- Stop and contact the driver in a safe location.
- Assess the possibility of intoxication.
- Conduct "pre-exit" sobriety tests as deemed necessary.
- Conduct standardized field sobriety tests outside of the vehicle in a safe location and note performance by the driver on each test to support a D.U.I. charge. At a minimum, officers shall use the **State-Approved Sobriety Tests** (Walk-and-Turn, One-Leg Stand, and HGN).
NOTE: Officers should not administer FST's at the police station because doing so could create issues regarding voluntariness of the tests and/or whether the violator was "in custody" at the time of the tests. If it is not safe to administer the tests at the scene, document in the report why tests were not done and why there was sufficient PC for arrest without the tests.
- If trained in the Preliminary Breath Test instrument, administer the PBT in accordance with Training Bulletin 2003-15.
- If from field observations, FST's and/or PBT results the officer has PC that the person was driving under the influence of intoxicating liquor and/or had an alcohol concentration of 0.08 or higher, advise the person that he/she is under arrest.
- If the person does not exhibit being under the influence of intoxicating liquor and/or the PBT result is 0.00, but the person does appear to be under the influence of a drug, consider requesting as Drug Recognition Expert (DRE) for further testing and evaluation. DRE's are available by contacting on-duty, trained Everett Police DRE's, SNOPAC or the WSP Dispatch Center. If following this further testing the officer has PC that the person was driving under the influence of a drug, advise the person that he/she is under arrest.
- Take the violator into custody.
- If a child under 13 years of age is in the vehicle that was being driven by the DUI driver, ascertain whether or not the arrestee is the child's parent, guardian or legal custodian. If so, promptly notify CPS. In addition, determine whether or not

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there is a responsible person or an agency having the right to physical custody of the child that can be contacted to safely take custody of the child.

- Upon arrest, handcuff and search the violator prior to placing in the patrol unit.
- Take photographs to support subsequent prosecution, such as photographs of the car, things in the car (beer/bottles), the accident, etc.
- Advise the violator of Miranda warnings from the department-issued card. Washington law requires that an arrested person must, as soon as practicable after arrest, be advised of the right to a lawyer. Read the warning immediately after arrest instead of waiting until arrival at the station.
- Follow impound procedures for the vehicle. Even though officers have authority to impound a DUI driver's car, the officer must show that the decision to impound was reasonable under the circumstances.
- Note all "spontaneous utterances" for inclusion in the report.
- Transport violator to the station for administration of a breath test. **Use the clock on the Datamaster for observation period.**
- Once transported to the station, re-advise the violator of his/her constitutional rights and implied consent warnings as written in the WSP DUI Packet. Note any questions the violator may have about the warnings.
- If the violator refuses to sign the Rights form and/or Implied Consent Warnings, document the refusal in your report. Write "REFUSED" where the signature is required.
- Provide access to public defender by phone if requested. The phone number is located on the wall by the BAC machine.
- Administer the breath test.
- Punch the License (Washington State License **only**) if the suspect provides a breath sample **at or above** the state accepted threshold.
- Fill out and issue the "Drivers Hearing Request Information" form prior to release.
- In case of booking, write, "booked" in the signature line of the citation for the defendant and leave with the booking officer at the jail.
- Offering Blood Tests instead of BAC Test:** Qualified medical personnel may draw blood when:

- The violator incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample; or
- The violator is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility where a breath-testing instrument is not available; or
- The officer has reasonable grounds to believe that the violator is under the influence of a drug.

Physicians, registered nurses, licensed practical nurses, nursing assistants, physician assistants, emergency medical technicians, health care assistants, and technicians trained in withdrawing blood are all "qualified medical personnel". Read the implied consent for blood when offering the blood test instead of the BAC test.

- Mandatory Blood Test (see also Section 3.07):** Blood shall be taken from a driver arrested for any one of the following:
- **Vehicular Homicide**
 - **Vehicular Assault**
 - **D.U.I., and the arrest results from a collision in which there has been serious bodily injury to another person**
 - **D.U.I., and the driver is unconscious**

Under these circumstances, the officer can take the driver's blood without his/her consent, however the "Special Evidence Warning" must be read to the driver whether he/she is conscious or not.

- It is strongly recommended that if a violator has a BAC level higher than 0.25 the test be re-administered ½ hour later. If the violator's BAC level is continuing to rise, the officer shall transport the violator to a hospital for treatment.
- Complete the DUI packet.
- Charging Considerations:**
- D.U.I. is a **FELONY** if the violator has 4 or more prior offenses in the previous 10 years. A "prior offense" includes a conviction for D.U.I. or a Physical Control, a successfully completed deferred prosecution, and any conviction for Negligent Driving 1st Degree, Reckless Driving, or Reckless Endangerment where the charge was initially filed as DUI/Physical Control.
 - If there is doubt about PC for a felony D.U.I., the officer's supervisor should contact the city prosecuting attorney.
 - If there is not PC for a felony D.U.I., issue a citation, including the BAC record of breath or refusal and a copy of the test and complete the affidavit of breath test/refusal.
 - If there is not PC for either felony or misdemeanor D.U.I., the officer should consider whether there is PC to charge either Negligent Driving First Degree (RCW 46.61.5249) or Driver Under 21 consuming Alcohol (RCW 46.61.503). Note: If the driver is under 21 and there is PC for

D.U.I., the correct charge is D.U.I. Officers should charge Driver Under 21 Consuming Alcohol only if there is no PC for D.U.I.

Incident Report:

- Describe in detail the basis for the stop, physical observations about the driver, his/her actions (e.g. how long it took to get out his/her license), observations about the car (e.g. beer bottles inside), and passenger information, including age.
- List all witnesses to the crime, including firefighters/medical personnel by name, anyone with whom the driver may have had contact before the stop/crash, anyone who can put the driver behind the wheel, and anyone who can describe other aspects of the crime such as the driving or conduct/actions after the stop. If a 911 caller reported the driving, include contact information for that person.
- Include a copy of BAC card of the officer who administered the breath test.

NOTE: In all cases, officers must establish independent PC for alcohol and drug intoxication prior to blood being drawn. Officers **must** be able to articulate the reason for drawing blood.

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3.425 MEDICAL MARIJUANA

Medical Marijuana as a Defense to Criminal Charges

A claim that marijuana possession is for medical use under state law is an affirmative defense to a criminal prosecution. A "medical marijuana" defense does not negate probable cause, nor does it per se legalize an activity. The "medical marijuana" defense assumes that all of the elements of the crime have been established, but that the person committing the crime is able to show by a preponderance of evidence that their conduct meets the requirements of state medical marijuana laws and is thus excused.

Key Elements of the Defense

The key elements of a medical marijuana defense are:

- (1) There is a qualifying patient;
- (2) There is a designated provider; and
- (3) The amount is allowable.

Enforcement

Although "medical marijuana" is considered an affirmative defense and probable cause is not affected, the law also states that any person meeting the requirements of the Medical Use of Marijuana Act "shall not be penalized in any manner, or denied any right or privilege" for their actions. As such, if an officer can reasonably conclude that the person with the marijuana is compliant with all requirements of the Medical Use of Marijuana Act, the officer will not take enforcement action; however, the officer will detail the contact in an informational report.

Asserting the Defense- Legal Limitations

- The defense does not cover drug paraphernalia. Officers encountering a potential medical marijuana claim should use their discretion regarding citing for PDP.
- The defense is never available to a person who has used marijuana in a way that endangers a person through use of a motorized vehicle.
- Marijuana is illegal according to the federal government, even when used by state-authorized patients. Federal penalties for marijuana production and trafficking are not affected by state medical marijuana laws.
- Only specific illnesses "qualify" a patient to use medical marijuana. As of 2010, these illnesses include:
 - Cancer, HIV, multiple sclerosis, epilepsy/other seizure disorder, spasticity disorders;
 - Intractable pain (pain unrelieved by standard medical treatments and medications);
 - Glaucoma;
 - Crohn's disease (with debilitating symptoms unrelieved by standard

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treatments or medications);

- Hepatitis C (with debilitating nausea or intractable pain unrelieved by standard treatments or medications); or
- Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms or spasticity (when these symptoms are unrelieved by standard treatments or medications).

Report, Citation & Booking Decision

- ❖ Any officer who contacts a person who claims a medical marijuana defense:
 - MUST decline to take enforcement action, assuming the officer can reasonably conclude that the person with the marijuana is compliant with all requirements of the Medical Use of Marijuana Act
 - MUST complete an incident report if the officer impounds the marijuana
 - MAY book an arrested subject according to departmental booking policy (see Policy Section 12.1)

- ❖ Incident reports should:
 - Thoroughly document any paperwork that supports the defense, especially the date of the doctor's opinion or the qualifying patient's designation of a provider, OR impound a copy of the paperwork.
 - Document the amount of marijuana involved in the case

Notes:

- Officers should refrain from arresting any subject who was merely in the presence or vicinity of marijuana when the person who was in actual possession of the marijuana appears to be entitled to raise the medical use of marijuana defense at trial. Officers should document the incident but refrain from taking the person in "constructive possession" into custody.
- Peace officers are exempt from civil liability for not seizing medical marijuana

CHECKLIST – QUALIFYING PATIENT

If an officer is told by a subject that he/she is a medical marijuana patient, the following steps should be taken:

- Request the required documentation, allowing the subject a reasonable opportunity to obtain and/or present the documentation.

- Check the documentation to make sure it's either signed by a licensed Washington physician or it's the patient's actual pertinent medical records.

- Make sure the documentation states that the patient has been diagnosed by the physician as having a terminal or debilitating medical condition, that the patient was a Washington resident at the time of the diagnosis, that he/she has been

advised by that physician about the risks and benefits of the medical use of marijuana, and that the patient might benefit from the medical use of marijuana.

- Get proof of ID if not already done.
- Determine and note in the incident report whether the quantity of the drug in the person's possession, being grown or being delivered is a 60-day supply. State WAC provides that a "presumptive" 60-day supply is no more than 24 ounces and 15 plants.
- If a juvenile appears to be a qualifying patient, it is his/her parent or guardian who is responsible for determining the parameters of possession and/or deciding how much / often to use it. If the medical marijuana defense is likely to be raised in a case against a juvenile, the parent or guardian should be interviewed.

CHECKLIST – DESIGNATED PROVIDER:

In order to be a designated provider, the person must:

- Be at least 18 years of age
- Be designated in writing by a qualifying patient to serve as a provider
- Not consume the drug
- Not provide the drug to more than one qualifying patient at a time

CHECKLIST – IMPOUND

- If in a medical marijuana case the subject has in excess of a 60-day supply, the officer should take normal enforcement action and impound the marijuana even if there is reason to believe the subject is a legitimate qualifying patient or designated provider.
- If in a medical marijuana case the subject has the equivalent or less than a 60-day supply but other circumstances require normal enforcement action, the officer may impound a representative sample that is large enough to test and allow the subject keep the rest.
- If a person is being booked on a warrant and the officer is reasonably sure that the requirements of the medical marijuana statute are being met, the officer may book the marijuana with the person into the jail just like with any other prescription. Refer to Training Bulletin 2010-5 for additional information about booking medications into the jail.

- When impounding dried marijuana, it is essential that it not be stored in plastic. Property room personnel should be notified when marijuana that is being impounded in plastic bags is possibly medical marijuana so they can properly package it for storage and potential release back to the subject.
- As with any marijuana impound, if impounding a large amount of non-dried marijuana, property room personnel will coordinate with the investigator and county prosecutor's office to get a court order allowing EPD to photograph and weigh, and then destroy the plants.

Miscellaneous Crimes to Note:

- A person who displays medical marijuana in a manner or place which is open to the view of the general public is guilty of a misdemeanor (RCW 69.51A.060.1)
- A person who fraudulently produces any record purporting to be valid documentation for purposes of the Act, or who tampers with the content of any record for the purpose of having it accepted as valid documentation under the Act, is guilty of a class C felony (RCW 69.51A.060.5)

3.42.1 MEDICAL MARIJUANA

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Enforcement

Although "medical marijuana" is considered an affirmative defense and probable cause is not affected, the law also states that any person meeting the requirements of the Medical Use of Marijuana Act "shall not be penalized in any manner, or denied any right or privilege" for their actions. As such, if an officer can reasonably conclude that the person with the marijuana is compliant with all requirements of the Medical Use of Marijuana Act, the officer will not take enforcement action; however, the officer will detail the contact in an informational report.

Asserting the Defense- Legal Limitations

- Dispensaries are illegal.
- The defense does not cover drug paraphernalia. Officers encountering a potential medical marijuana claim should use their discretion regarding citing for PDP.
- The defense is never available to a person who has used marijuana in a way that endangers a person through use of a motorized vehicle.
- Marijuana is illegal according to the federal government, even when used by state-authorized patients. Federal penalties for marijuana production and trafficking are not affected by state medical marijuana laws.
- Only Certain specific illnesses "qualify" a patient to use medical marijuana. As of ~~2010~~²⁰¹¹, these illnesses include:
 - o Cancer, HIV, multiple sclerosis, epilepsy/other seizure disorder, spasticity disorders;
 - o Intractable pain (pain unrelieved by standard medical treatments and medications);

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- Glaucoma;
 - Crohn's disease (with debilitating symptoms unrelieved by standard treatments or medications);
 - Hepatitis C (with debilitating nausea or intractable pain unrelieved by standard treatments or medications); or
 - Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms or spasticity (when these symptoms are unrelieved by standard treatments or medications).
- The 2011 law added numerous requirements to prescribing physicians. Any suspicion of unprofessional conduct on the part of a physician should be reported to the EPD Legal Advisor for follow-up with the State licensing board.
 - The 2011 law allowed qualifying patients to create and participate in Collective Gardens to produce medical marijuana/cannabis. However, the gardens are banned in the City of Everett until July 2012. If the ban is lifted sooner, EPD will be notified. See Training Bulletin No. 2011-10 for additional detail regarding Collective Gardens.

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Report, Citation & Booking Decision

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- ❖ Incident reports should:
 - Thoroughly document any paperwork that supports the defense, especially the date of the doctor's opinion or the qualifying patient's designation of a provider, OR impound a copy of the paperwork.
 - Document the amount of marijuana involved in the case

Notes:

- Officers should refrain from arresting any subject who was merely in the presence or vicinity of marijuana when the person who was in actual possession of the marijuana appears to be entitled to raise the medical use of marijuana defense at trial. Officers should document the incident but refrain from taking the person in "constructive possession" into custody.
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- Make sure the documentation states that the patient has been diagnosed by the physician as having a terminal or debilitating medical condition, that the patient was a Washington resident at the time of the diagnosis, that he/she has been advised by that physician about the risks and benefits of the medical use of marijuana/cannabis, and that the patient might benefit from the medical use of marijuana/cannabis.
- Get proof of ID if not already done.
- Determine and note in the incident report whether the quantity of the drug in the person's possession, being grown or being delivered is a ~~60-day supply~~. State WAC provides that a "presumptive" 60-day supply is no more than in excess of the allowable maximum amount of 24 ounces of useable marijuana/cannabis and 15 plants. If the officer encounters a marijuana/cannabis product that is not readily apparent to be useable marijuana/cannabis, contact the EPD Legal Advisor for assistance. If the person is both a qualifying patient AND a designated provider, he/she may possess twice the amount, or 48 ounces of useable marijuana/cannabis and 30 plants.
- If a juvenile appears to be a qualifying patient, it is his/her parent or guardian who is responsible for determining the parameters of possession and/or deciding how much / often to use it. If the medical marijuana defense is likely to be raised in a case against a juvenile, the parent or guardian should be interviewed.

CHECKLIST – DESIGNATED PROVIDER:

In order to be a designated provider, the person must:

- Be at least 18 years of age
- Be designated in writing by a qualifying patient to serve as a provider
- Not consume the drug
- Not provide the drug to more than one qualifying patient at a time. This means a one-on-one relationship. If a provider wants to switch patients, he/she must wait

15 days from the time he/she no longer provides to one patient until the time he/she begins to provide to another patient.

CHECKLIST – IMPOUND

- If in a medical marijuana/cannabis case the subject has in excess of a 60-day supply the allowed maximum amount, the officer should take normal enforcement action and impound the marijuana even if there is reason to believe the subject is a legitimate qualifying patient or designated provider. NOTE: The officer may ONLY seize and impound the useable cannabis/marijuana and plants exceeding the allowable amount. In the case of plants, the person must be allowed to select the plants that will remain at the location.
- If in a medical marijuana case the subject has the equivalent or less than a 60-day supply but other circumstances require normal enforcement action, the officer may impound a representative sample that is large enough to test and allow the subject keep the rest.
- If a person is being booked on a warrant and the officer is reasonably sure that the requirements of the medical marijuana statute are being met, the officer may book the marijuana with the person into the jail just like with any other prescription. Refer to Training Bulletin 2010-5 for additional information about booking medications into the jail.
- When impounding dried marijuana, it is essential that it not be stored in plastic. Property room personnel should be notified when marijuana that is being impounded in plastic bags is possibly medical marijuana so they can properly package it for storage and potential release back to the subject.
- As with any marijuana impound, if impounding a large amount of non-dried marijuana, property room personnel will coordinate with the investigator and county prosecutor's office to get a court order allowing EPD to photograph and weigh, and then destroy the plants.

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Miscellaneous Crimes to Note:

- It is a civil infraction to A person who displays medical marijuana in a manner or place which is open to the view of the general public is guilty of a misdemeanor (RCW 69.51A.060.1)
- A person who fraudulently produces any record purporting to be valid documentation for purposes of the Act, or who tampers with the content of any record for the purpose of having it accepted as valid documentation under the Act, is guilty of a class C felony (RCW 69.51A.060.5).

3.62 VEHICLE THEFT/ STOLEN PLATES

Officers must always attempt to certify the authenticity of reported auto thefts. Consider the possibility that the vehicle has been repossessed or impounded; check with the Records Department for information on this. The vehicle may have been involved in a hit and run accident or other crime and the driver may be making a theft report as a cover-up.

CHECKLIST:

- A "Vehicle Report" will be submitted when reporting the theft of any vehicle with a VIN.
- It must first be established whether or not the reporting person has the authority to sign the vehicle stolen.

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- Officers completing a Vehicle Report for a stolen vehicle shall include the following information on the report: License plate number, state of plate, license year, license type, year of vehicle, make and model of vehicle, style of vehicle, color of vehicle and vehicle identification number (VIN).

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THEFT OF LICENSE PLATES CHECKLIST:

- A "vehicle Report" will be submitted when reporting the theft of one or both vehicle license plates.
- If an officer responds to a theft involving one license plate, the officer shall remove the remaining license plate from the victim's vehicle and impound it as evidence to the property room.
- The reporting officer will provide the victim with his / her business card displaying the case number. The victim may provide this as proof of the report should detainment by law enforcement occurs.
- The reporting officer will instruct the victim to contact the Department of Licensing to obtain a new set of license plates as soon as possible.
- In the even the detailed officer is unable to remove the remaining license plate, the officer shall complete a theft report on an Incident Report.
- When the case involves a vanity plate, the above procedure should be followed.
- Officers should be aware that in the theft of a vanity plate, the State of Washington will re-issue the same plate; the only difference is the tab control number.
- Officers completing a Vehicle Report for stolen license plates shall include the following information on the report: License plate number, state of plate, license year, license type, year of vehicle, make and model of vehicle, style of vehicle, color of vehicle and vehicle identification number (VIN).

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