

## 12.235 OPERATING A VEHICLE UNDER THE INFLUENCE (OVI): PROCESSING & ARREST

### **Reference:**

Procedure 12.230, Fatal or Potentially Fatal Crash Investigation and Placement of Related Charges

Procedure 12.240, Ohio Multi-Count Uniform Traffic Ticket (MUTT)

Procedure 12.260, Warrants for Adults: Service and Recording

Procedure 12.270, Impounding, Moving, and Release of Vehicles

Procedure 12.537, Mobile Video/Digital Video Recording Equipment

Procedure 12.555, Arrest/Citation: Processing of Adult Misdemeanor and Felony Offenders

Procedure 12.600, Prisoners: Securing, Handling, and Transporting

Procedure 12.715, Property and Evidence: Accountability, Processing, Storage and Release

Procedure 12.900, Processing Juvenile Offenders

Ohio Revised Code 1547.11(B), Operating Under Influence of Alcohol, Drugs Prohibited; Test Analysis

Ohio Revised Code 4511.19, Driving While Under the Influence of Alcohol or Drugs or with Certain Concentration of Alcohol in Bodily Substances; Chemical Analysis

Ohio Revised Code 4511.191, Chemical Tests for Determining Alcoholic Content

Ohio Revised Code, Rules of Criminal Procedure, Rule 16

Birchfield v. North Dakota, 136 S. Ct. 2160 (2016)

Mitchell v. Wisconsin, 139 S. Ct. 2525 (2019)

### **Definitions:**

**Physical control** is defined as being in the driver's position in the front seat and having possession of the vehicle ignition key or ignition device.

### **Purpose:**

To provide a safe environment for all motorists and pedestrians on area roadways.

### **Policy:**

The Cincinnati Police Department (CPD) will aggressively engage in OVI enforcement. Officers will properly preserve and prepare evidence for all OVI court cases. The Police Department will work with the community to help develop and participate in preventative programs relating to OVI enforcement. Each police district has a testing site.

District Commanders must designate a supervisor with a valid breath testing permit responsible for the care and security of the testing site. Traffic Unit is responsible for the care, maintenance, and instrument checks of the breath testing instrument.

**Information:**

An officer making an arrest for OVI must establish reasonable grounds for the initial stop. An officer observing an operator commit a traffic violation or any reasonable investigation are examples of a basis for a stop. The officer must then establish probable cause to arrest for OVI before transporting a person to obtain any Blood Alcohol Concentration (BAC) Test. Administer Standardized Field Sobriety Testing at roadside prior to arrest when possible.

**Procedure:****A. Breath Testing for Blood Alcohol Concentration (BAC)**

1. Officers making an OVI arrest who are not certified breath testing instrument operators will request one respond to the arresting officer's district.
  - a. If time is of the essence, officers will use the nearest testing site.
  - b. Read the arrested the Miranda Warning. Document this information on the Form 495, Cincinnati Police Department Intoxication Report, in the Arrest Information section.
2. Officers must obtain a breath, urine, or blood test within three hours of the violation (i.e. last operation of a vehicle). There is no time limit when a chemical test is not taken under ORC Section 4511.19(A)(1)(a).
3. The order of testing for Blood Alcohol Concentration (BAC) is:
  - a. Breath
  - b. Urine
  - c. Blood
    - 1) If arrested is being treated for injuries at a hospital, blood is the preferred test.
4. The arresting officer or the breath testing instrument operator must observe the subject for 20 minutes or more before administering the breath test to ensure nothing is ingested orally.
5. The breath testing instrument operator will:
  - a. Ensure the breath testing instrument is functioning properly and the testing site log book is in proper order.
    - 1) An internal radio frequency interference (RFI) detector protects the breath testing instrument from radio interference. Radio interference inside the testing site may set off the RFI detector.
    - 2) If the RFI detector activates during a breath test, the operator will start the testing process over from the beginning. This does not excuse the arrested from the responsibility of giving an additional breath sample.

- a) Do not attempt a third test on the breath testing instrument if the RFI detector activates a second time.
  - 1] Time permitting, transport the arrested to another testing site.
  - 2] If time is a factor, the arresting officer will request a urine sample.
- b. An operator encountering a problem which creates doubt as to the breath testing instrument's accuracy or renders the breath testing instrument inoperable will remove the breath testing instrument from service.
  - 1) The breath testing instrument operator will make a blotter entry noting the reason for removing the breath testing instrument from service and notify the shift Officer In Charge (OIC).
  - 2) The shift OIC will notify the Traffic Unit as soon as possible, but no later than the Traffic Unit's next working day.
- c. The breath testing instrument operator will conduct all testing and processing according to the Ohio Administrative Code Sections 3701.53.01-10 and Ohio Revised Code (ORC) Sections 4511.19 and 4511.191.

## B. Operating a Vehicle Under the Influence - Arrest

### 1. Complete the MUTT as follows:

- a. Charge all persons arrested for OVI, including a refusal of chemical test(s), with ORC Section 4511.19(A)(1)(a) **"Operated a vehicle while under the influence of alcohol and/or drugs of abuse"** in the OVI area of the MUTT.
- b. If a completed breath test reveals the arrested has a BAC of .08 but less than .170 BAC the arresting officer will charge the arrested with ORC Sections 4511.19(A)(1)(a) in the OVI area and 4511.19(A)(1)(d) in the first available other offense block of the MUTT.
  - 1) The "Description of Offense" for ORC Section 4511.19(A)(1)(d) should read: **"Operate a vehicle with a concentration of \_\_\_\_\_ Grams by weight of alcohol per 210 liters of breath."**
- c. If a completed breath test reveals the arrested has a BAC of .170 or above, the arresting officer will charge the arrested with ORC Sections 4511.19(A)(1)(a) in the OVI area and 4511.19(A)(1)(h) in the first available other offense block on the MUTT.
  - 1) The "Description of Offense" for ORC Section 4511.19(A)(1)(h) should read: **"Operate a vehicle with a concentration of \_\_\_\_\_ Grams by weight of alcohol per 210 liters of breath."**

- d. If a completed breath test reveals the arrested has a BAC of less than .08, the arresting officer will charge with ORC Section 4511.19(A)(1)(a). Word the MUTT as in Section B.1.a.
    - 1) If drug abuse is suspected, or a combination of alcohol and drug abuse is suspected, request a urine sample.
  - e. For blood or urine samples when alcohol is involved, the arresting officer will charge the arrested with ORC Sections 4511.19(A)(1)(a) in the OVI area of the MUTT and 4511.19(A)(1)(b) or (e) in the first available other offense area of the MUTT as follows:
    - 1) Blood: ORC Section 4511.19(A)(1)(b), "**Operate a vehicle with a BAC above .08 grams of alcohol per 100 milliliters of blood.**"
    - 2) Urine: ORC Section 4511.19(A)(1)(e), "**Operate a vehicle with a BAC above .11 grams of alcohol per 100 milliliters of urine.**"
  - f. The Traffic Unit will obtain blood and urine test results from the Coroner's Office.
  - g. When only drugs are involved, use ORC Section 4511.19(A)(1)(a).
  - h. If the arrested refuses a breath, urine, or blood test, the arresting officer will charge with ORC Section 4511.19 (A)(1)(a). Word the MUTT as in Section B.1.a.
    - 1) Failure to give an adequate breath sample (deficient sample) is considered a refusal.
    - 2) Only a urine test can be offered and refused at the Hamilton County Justice Center (HCJC).
  - i. If the arrested refuses a chemical test and has a prior conviction in the last 20 years for ORC Sections 4301.69,OVI, or 4511.19(B)(3),Underage Consumption, the arresting officer will also charge with ORC Section 4511.19(A)(2).
    - 1) Wording for ORC Section 4511.19(A)(2) will be "**Refused a chemical test under 4511.191 with a prior OVI in 20 years.**"
2. All charges supporting the OVI charge will be written on the same MUTT in the other offense area.
- a. If another MUTT is used due to additional charges, print the words "**Companion Case**" across the "Conditions" area of the MUTT. Also, cross reference the MUTT serial numbers on each companion MUTT.

3. If the arrested fails to produce a driver's license, but has a valid license through Law Enforcement Automated Data System (LEADS) verification, do not cite for ORC Section 4510.12. If the arrested has no driving privileges, cite the proper ORC Section for Driving Under Suspension (DUS) or No Operators License on the MUTT.
4. Cite the arrested on the MUTT for the fifth calendar day following the arrest. If the fifth day is a Saturday, Sunday, or a legal holiday, use the next court day.
5. OVI - Physical Arrest:
  - a. Physically arrest the violator having two or more OVI convictions within the last ten years, or five or more convictions within the last 20 years, or any felony OVI conviction. (Example: You have an OVI offender with one prior conviction, they are charged as a second offender. Two prior convictions are charged as third offenders, etc.) Those charged as first and second OVI offenders may be cited (see Procedure 12.555).
    - 1) Query both traffic and criminal histories in RCIC, LEADS and eCLEAR
    - 2) The Form 495 must reflect the number of OVI convictions which occurred in the last 10 years and 20 years.
  - b. If the location of the arrestee's residence and place of employment makes extradition necessary (Procedure 12.555), physically arrest and require bond.
  - c. If the arrested is hospitalized or remains under hospital care, whether or not a BAC test was given, follow Procedure 12.600.
  - d. See Section N. for proper routing of forms.

#### C. Underage Consumption/Arrest

1. If the person is under 21 years of age and has consumed alcoholic beverages and operated a vehicle but is not believed to be under the influence, complete the (MUTT) as follows:
  - a. If a completed breath test reveals a BAC of .02 but under .08 BAC, charge the arrested under ORC Section 4511.19(B)(3) in the first available other offense block of the MUTT.
    - 1) The "Description of Offense" should read: **"Operate a vehicle after underage alcohol consumption."** ORC Section 4511.19(B)(3).
  - b. If a completed breath test reveals a BAC of .08 or greater, charge under the ORC Section 4511.19(A) OVI arrest.
  - c. If the violator refuses chemical tests, then charge under 4301.69 on a NTA.

- 1) The "Description of Offense" should read: "**No underage person shall knowingly order, pay for, share the cost of, attempt to purchase, or consume any beer or intoxicating liquor in any public or private place.**"
  - 2) If the violator refuses a request for chemical testing, advise the violator he is under an immediate Administrative License Suspension (ALS) but do not seize the vehicle.
- d. If the arrested submits to the breath test and the results reveal a BAC of .079 or less, driving privileges shall not be suspended and the vehicle should not be seized. Do not allow violator to operate the vehicle.

#### D. Physical Control Under the Influence - Arrest

1. If a person is under the influence of alcohol and/or drugs of abuse and exercises physical control over a vehicle but does not move the vehicle then complete the MUTT as follows:
  - a. Charge all persons arrested for Physical Control, including a refusal of chemical test(s), with ORC Section 4511.194.
    - 1) The "Description of Offense" for ORC Section 4511.194 should read: "**Physical control of a vehicle under the influence of alcohol/drugs.**" in the first available other offense block on the MUTT.
    - 2) If the violator refuses the request for a chemical test, advise the violator he/she is under an immediate ALS suspension but do not seize the vehicle.
  - b. If a completed breath test reveals the arrested has a BAC of .08 or greater the arresting officer will also charge the arrested with an additional ORC Section 4511.194 in the next available other offense block on the MUTT.
    - 1) The "Description of Offense" for ORC Section 4511.194 with a breath test of .08 BAC or greater should read: "**Physical control of a vehicle with a concentration of \_\_\_\_\_ grams by weight of alcohol per 210 liters of breath.**"
    - 2) If the arrested submits to the breath test, their driving privileges shall not be suspended and the vehicle should not be seized. Do not allow violator to operate the vehicle.

#### E. Completing Required Forms

1. The arresting officer will complete a Form BMV-2255, Administrative License Suspension (ALS), for each OVI, Physical Control, and Underage Consumption arrest.

- a. The ALS contains all rights, penalties, and appeals concerning driving privileges. The arresting officer, in the presence of a witness, must read and show the offender the back side of the form regarding the "Consequences of Test and Refusal." The arrested must have the opportunity to sign the form. If the arrested refuses, mark the "Refused to Sign" box. If the offender is unable due to injury, the form will still be read to the offender and write "**Unable**" on the signature line.
  - 1) The three hour time limit to obtain a chemical test does not extend the two hour time limit for the reading of the ALS.
    - a) Reading of the ALS must occur within two hours from the time of the alleged violation.
    - b) Once the ALS is read and shown to the arrested, failure to submit to a chemical test within three hours of the alleged violation automatically constitutes a refusal.
  - 2) Ensure the ALS is completed with current information, signed by a witness and notarized before separating the form.
    - a) The OFFENDER copy must be complete, but notarization is not required.
- b. Impound the vehicle of a person arrested and charged with OVI for pretrial seizure if they are the vehicle owner, based on LEADS verification, and have at least one (1) OVI conviction within the last ten years.
  - 1) Refer to Procedure 12.270, for towing or moving a vehicle.
    - a) Advise the Emergency Communications Section (ECS) the vehicle is a "pretrial seizure" when requesting a wrecker.
- c. Routing the ALS form
  - 1) OVI arrests
    - a) If the arrested tests .08 or above BAC or refuses a breath, urine, or blood test:
      - 1] Send the ORIGINAL and LAW ENFORCEMENT copies of the ALS to the Traffic Unit.
        - a] Attach the COURT copy of the ALS to the MUTT.
        - b] Give the OFFENDER copy of the ALS to the arrested.
    - b) If the arrested tests below .08 BAC or a urine or blood sample is taken:
      - 1] Send the ORIGINAL and LAW ENFORCEMENT copies of the ALS to Traffic Unit.

- 2] Attach the COURT copy of the ALS to the MUTT.
  - 3] Give the OFFENDER copy of the ALS to the arrested.
- 2) Physical Control and Underage Consumption Arrests
- a) If arrested submits to a chemical test all copies of completed ALS are stored in the OVI jacket at the processing site.
  - b) If the arrested refuses a chemical test:
    - 1] Send the ORIGINAL and LAW ENFORCEMENT copies of the ALS to the Traffic Unit.
      - a] Attach the COURT copy of the ALS to the MUTT.
      - b] Give the OFFENDER copy of the ALS to the arrested.
- d. Routing of the seized Driver's License
- 1) The arrestee's Driver's License should be seized only when they are placed under an ALS suspension, or they are already under a previous suspension.
    - a) An offender is placed under an ALS suspension when:
      - 1] Arrested for OVI, Underage Consumption or Physical Control and refuses ANY test
      - 2] Arrested for OVI and tests at or over .08 BAC
    - b) An offender is NOT placed under ALS suspension when:
      - 1] Arrested for OVI and tests under .08 BAC
      - 2] Arrested for Underage Consumption or Physical Control and submits to a breath test, regardless of the result
      - 3] Arrested for OVI, Underage Consumption or Physical Control and submits to a blood or urine test
        - a] The Traffic Unit will process a blood or urine positive result suspension upon receiving results that are above per se limits
  - 2) If the arrestee's driver's license is seized pursuant to an ALS suspension as outlined above:
    - a) Attach the driver's license to the ORIGINAL and LAW ENFORCEMENT copies of the ALS form
    - b) Send items to Traffic Unit
    - c) Traffic Unit will ensure the license is properly returned to the State of Ohio BMV.

- 1] This includes any out-of-state driver's license seized
    - d) An arrestee, not in possession of their driver's license at the time of arrest, shall be advised to surrender the license as soon as possible to the nearest police district.
      - 1] The district shall forward the surrendered driver's license to Traffic Unit for processing and return to the Ohio BMV.
  - 3) If the arrestee's driver's license is seized for the sole reason of a pre-existing suspension (DUS only), then attach it to the MUTT.
    - a) Police Records will ensure the DUS seized driver's license is properly returned to the Ohio BMV.
2. The arresting officer will complete a Form 600, Notification of Rights for each OVI arrest.
- a. Read and show the arrested the Form 600 in the presence of a witness. The arrested must have the opportunity to sign the form. If the arrested refuses, mark the "Refused to Sign" box.
    - 1) At the time of arrest, read the arrested the Miranda Warning. Refer to Section A.1.b.
3. The arresting officer will complete a Form 495 for each OVI arrest.
- a. The summary of arrest must contain sufficient information to establish reasonable grounds for the initial stop and probable cause to arrest for OVI.
4. The instrument operator will complete a Form HEA2652, State of Ohio Test Report, breath test record, and testing site log book entry whenever the breath testing instrument is operated or placed in operation, even if the arrested refuses the test.
- a. For refusals, complete the Form HEA2652 through Step 4. Check the "Refusal" block.
  - b. Enter all refusals, instrument checks, breath, urine and blood tests in the testing site logbook.
    - 1) All logbook entries must be in numerical order according to the OVI number on the Form 495.
    - 2) If an entry needs to be deleted in the testing site logbook, draw a single line through the item and notify Traffic Unit of the deletion.
    - 3) Notify Traffic Unit of any irregularities involving the testing site logbook.

## F. Urinalysis Testing for BAC

1. Use the ALS for the implied consent.
  - a. The arresting officer must read and show the arrested, in the presence of a witness, the "Consequences of Test and Refusal" on the back side of the Form BMV-2255. The arrested must have the opportunity to sign the signature line on the front. If the arrested refuses to sign, mark the "Refused to Sign" box.
2. A police officer of the same sex as the arrested must witness the giving of a urine specimen to assure authenticity.
  - a. Arresting officers do not have to be licensed breath testing instrument operators to process urine samples.
  - b. Collect one sample in a clean, tightly closed container.
    - 1) The container must be at least 3/4 full.
  - c. Add one Jenneile Enterprises sodium fluoride capsule to the sample. Indicate on the Evidence Submission Form and the Form 495 the sodium fluoride capsule was added.
  - d. Seal the specimen container with evidence tape and initial the tape.
  - e. Label the specimen container with the name of the arrested, name of the person taking the specimen, date and time the specimen was taken, and that the sodium fluoride capsule was added.
  - f. Complete one original Evidence Submission Form. Place the OVI number in the upper right corner. List the court date and ORC violation.
  - g. Place the sealed specimen container in an evidence biohazard bag.
  - h. In the outside pocket of the biohazard bag place the following. Do not use staples or paper clips:
    - 1) Original Evidence Submission Form
    - 2) Original Form 327, Property Tag
    - 3) Original Form 330, Property Receipt
    - 4) Copy of the Form 495 or citation.
3. During normal business hours (0700 to 1600 hours), the arresting officer will hand deliver the evidence to the Court Property.
  - a. If Court Property is closed, the officer will place the evidence in the refrigerated locker located outside of Court Property. The delivering officer will make an entry in the Court Property log book.
  - b. Court Property personnel will process the evidence during normal business hours.

4. Court Property personnel will take both evidence specimens to the Hamilton County Coroner's Lab for analysis.
- G. Blood Testing for Blood Alcohol Content
1. No individual will be transported to the hospital for the sole purpose of a blood draw.
  2. Use the ALS for the implied consent.
    - a. The arresting officer must read and show the arrested, in the presence of a witness, the "Consequences of Test and Refusal" on the back side of the Form BMV-2255. The arrested must have the opportunity to sign the signature line on the front. If the arrested refuses to sign, mark the "Refused to Sign" box.
  3. Only a physician, registered nurse, qualified technician, chemist, phlebotomist or Cincinnati Fire Department (CFD) paramedic can draw blood specimens. A search warrant or Voluntary Blood Request Form (Form 611-B) must be completed before obtaining any blood sample.
    - a. Request area hospital personnel (physicians, nurses, etc.) provide this service.
      - 1) An officer who has reasonable grounds to believe a subject was operating a vehicle under the influence of alcohol or drugs may request a blood test pursuant to ORC Section 4511.191. The officer will request the hospital perform the appropriate test by completing an official request form designed by each hospital when required.
        - a) If the hospital refuses to assist in obtaining the specimen, contact the Traffic Unit.
    - b. Fire Department paramedics will not respond for the sole purpose of drawing blood to ascertain BAC.
    - c. Arresting officers do not have to be licensed breath testing instrument operators to process blood samples.
    - d. The arrested will be shown and read the ALS and agree to have his blood drawn for the purpose of analysis.
      - 1) If a person is unconscious, a search warrant must be obtained before a blood sample is taken **unless**:
        - a) BAC evidence is dissipating due to the passage of time **and**
        - b) Other pressing health, safety, or law enforcement needs (e.g. working an accident scene or dealing with a medical emergency) take priority over applying for a search warrant.
      - 2) If a person is unconscious-the BMV implied consent Form 2255 must still be read and witnessed.

- 3) Contact the Traffic Unit for guidance in obtaining a Search Warrant.
4. Special circumstances may exist for which a search warrant can be issued to obtain a blood sample from a multiple OVI offender who refuses a chemical test.
  - a. A qualifying multiple offender will have at least two OVI convictions within ten years, or five or more convictions within 20 years, or have a felony OVI conviction.
    - 1) Contact Traffic Unit as soon as possible if special circumstances should be considered. Traffic Unit personnel will obtain a search warrant if appropriate.
    - 2) If a qualifying multiple offender still refuses to submit to a blood sample even after a search warrant has been obtained, attempts to obtain the offender's blood will cease. Officers will charge the offender with ORC Section 4511.19 (A)(2) and any other applicable charges.
  - b. A police officer will witness the drawing of the blood samples and maintain control of the evidence for court purposes.
    - 1) Witnessing officer will ensure alcohol swabs are not used when a blood sample is drawn.
5. Obtain two blood specimens.
  - a. Be sure the test tubes for the blood specimens have a gray cap and contain sodium fluoride and potassium oxalate as anticoagulants.
    - 1) Officers will check the expiration date on the tube to be sure it hasn't expired.
    - 2) Officers in need of blood test tubes will obtain tubes from the district OVI room or the Traffic Unit.
  - b. Seal each specimen container with evidence tape and initial the tape.
  - c. Label each specimen container with the name of the arrested, name of person taking the specimens, and the date and time specimens were taken.
  - d. Complete one original Evidence Submission Form. Place the OVI number in the upper right corner. List the court date and ORC violation.
  - e. Place both sealed specimen containers in one evidence biohazard bag.
  - f. In the outside pocket of the biohazard bag place the following. Do not use staples or paper clips:
    - 1) Original Evidence Submission Form
    - 2) Original Form 327

- 3) Original Form 330
- 4) Copy of the Form 495 or citation.

g. Route the evidence as outlined in Section F.3.of this procedure.

#### H. Testing for Drug Abuse

1. When drug abuse, or a combination of alcohol and drug abuse is suspected, obtain either a urine or blood specimen and follow Section F. or G. of this procedure. Do not complete a Form HEA2652.

#### I. Felony Arrests

1. Persons arrested with five or more prior OVI or Underage Consumption convictions within 20 years will be charged as a 4<sup>th</sup> degree felony (see Section B.5.a.).
  - a. Officers must verify through the Regional Crime Information Center (RCIC) and LEADS that a person has at least five prior OVI or Underage Consumption convictions within 20 years before charging as a 4<sup>th</sup> degree felony.
  - b. In bold letters write "**4<sup>th</sup> DEGREE FELONY**" in the conditions block of the MUTT and the top of Form 495.
2. Persons arrested with three or more prior OVI convictions within ten years will be charged as a 4<sup>th</sup> degree felony (see Section B.5.a.).
  - a. Officers must verify through the RCIC and LEADS that a person has at least three prior convictions within ten years before charging as a 4<sup>th</sup> degree felony.
  - b. In bold letters write "**4<sup>th</sup> DEGREE FELONY**" in the conditions block of the MUTT and the top of Form 495.
3. Persons arrested with any felony OVI conviction, regardless of when the conviction occurred, will be charged as a 3<sup>rd</sup> degree felony (see Section B.5.a.).
  - a. Officers must verify through the RCIC and LEADS that a person has a prior felony OVI conviction before charging as a 3<sup>rd</sup> degree felony.
  - b. In bold letters write "**3<sup>rd</sup> DEGREE FELONY**" in the conditions block of the MUTT and the top of Form 495.
4. Physically arrest all persons charged as a 3<sup>rd</sup> or 4<sup>th</sup> degree felony OVI as outlined in Procedure 12.555.
  - a. Complete the Form 527, Arrest and Investigation Report and the Form 527A, Bond Information Sheet as outlined in Procedure 12.555.

## J. Juvenile OVI Offender

1. A juvenile OVI offender is processed the same as an adult when probable cause exists for ORC Section 4511.19(A) if the BAC is .08 or more.
  - a. If BAC is .08 but below .170, the arresting officer will charge the juvenile with ORC Sections 4511.19(A)(1)(a) and 4511.19(A)(1)(d) on the MUTT (see Section B.1.)
    - 1) Word the "Description of Offense" ORC Sections 4511.19(A)(1)(a) and 4511.19(A)(1)(d) the same as an adult (see Section B.1.).
    - 2) The ALS is completed the same as an adult (see Section C.1.).
  - b. If BAC is at .170 or above, the arresting officer will charge the juvenile with ORC Sections 4511.19(A)(1)(a) and 4511.19(A)(1)(h) the same as an adult.
  - c. A juvenile OVI offender is processed the same as an adult when probable cause exists and the offender is charged with ORC Section 4511.19(A)(1)(a) when the offender refuses any chemical test.
  - d. Release the juvenile to a parent or guardian only.
    - 1) Cite the arrested juvenile on the MUTT for the fifth calendar day following the arrest. If the fifth day is a Saturday, Sunday, or legal holiday, use the next court day.
      - a) The court appearance is at 1430 hours in Juvenile Court, Broadway Building, 800 Broadway.
2. A juvenile is processed for "Underage Alcohol Consumption" ORC Section 4511.19(B)(3), when a completed breath test reveals the juvenile has a BAC of .02 to less than .08, and probable cause does not exist for the ORC Section 4511.19(A)(1)(a) offense of OVI (per Information Section).
  - a. Word the "Description of Offense" ORC Section 4511.19(B)(3) as follows: **"Operate a vehicle after underage consumption."** in the first available other offense area of the MUTT.
    - 1) An ALS is completed for underage consumption but not processed unless chemical test is refused.
    - 2) When a juvenile refuses a chemical test for underage consumption, ORC Section 4511.19(B)(3), refer to Section C.1.c.
3. If physically arrested, follow Procedure 12.900.
4. Obtain the consent of a parent or legal guardian before taking a blood sample.
5. Write the word "**Juvenile**" in bold letters in the top left corner of the original Form 495 and all copies.

- K. Form 496, Operating a Vehicle Under the Influence Investigation Record
1. The arresting officer will complete a Form 496, OVI jacket for each OVI arrest. The OVI jacket will contain the following forms:
    - a. Original Form 495
    - b. Original Form HEA2652
    - c. Original Breath Test Record
    - d. Original Form 600
    - e. One copy of the OH-1, Ohio Traffic Crash Report (if applicable)
    - f. One copy of the ALS
    - g. One copy Form 527 (if applicable)
    - h. One copy of the MUTT
    - i. One picture (adults only).
    - j. Copies of all other related reports
    - k. Statements
      - 1) Any written or recorded statement by the defendant or a co-defendant, including any summaries of such statements.
      - 2) Any written or recorded statement by the victim or witness.
    - l. All laboratory or hospital reports.
    - m. Results of physical or mental examinations, experiments or scientific tests.
    - n. Documentation of evidence collected.
    - o. Photographs related to the offense.
  2. Anytime a DVR equipped police vehicle is involved in a stop where an individual is arrested for OVI:
    - a. Officers will record all OVI incidents from the point of initial contact to the arrival at the testing location. Officers will record during the transport to jail.
    - b. A copy of the OVI incident captured on disc will be held as evidence. Clearly mark the 527 and MUTT(s) with "**ACE**" (Automated Control of Evidence). Also, mark "**yes**" in the specific block on the 495.
      - 1) If the incident captured on a DVR is over an hour in length, the incident will be copied to more than one disc.

- c. Complete a Form 606, Records Request. Process the copy of the DVR disc as evidence held for court (see Procedure 12.715). Mark the copy of the disc with the date and OVI number.
    - 1) Discs must be identified by attaching a label with all pertinent information. Do not write directly on the disc.
  - d. When an incident is captured on a DVR, a second copy of the disc will be made and routed to the Prosecutor's Office with the OVI paperwork.
3. Supervisory Review of Completed Forms
- a. The completed Form 496 will be submitted for review to an on-duty supervisor prior to securing the tour of duty. The on-duty supervisor will review all forms for accuracy and completeness and sign the Form 495 and Form 496 as the reviewing supervisor.
    - 1) The arresting officer will submit the Form 496 to be filed by the test site supervisor.
  - b. The test site supervisor will file all OVI case jackets and will review the logbook weekly for accuracy and completeness.
    - 1) The testing site supervisor will notify Traffic Unit of any irregularities.
- L. Use of Testing Sites by Outside Agencies
1. A Form 495 will be used for each outside agency arrest. If the outside agency has its own intoxication report, assign a Cincinnati OVI number to each report.
  2. The arrest will be entered in the CPD testing site log book by OVI number in numerical order.
  3. The Form HEA2652 will be completed when any breath test is given (not necessary with blood or urine).
  4. All original documents, Form 495, Form HEA2652, Breath Test Record, Form 600, ALS, Operator's License, and any other form completed for the arrest will remain with the arresting officer from the outside agency. It will be the responsibility of the arresting officer from the outside agency to forward the proper copies to their court system.
  5. Copies of all of the above listed forms completed for the arrest will be filed in the Form 496. Mark in bold letters on the top of the case jacket **"OTHER AGENCY ARREST."**
  6. Copies of all the paperwork listed in 4.above will be sent to Traffic Unit.

## M. Removal of OVI Case Jackets

1. OVI jackets can only be removed for court or with the permission of the district testing site supervisor or district commander.
  - a. To remove an OVI jacket, complete an entry in the OVI Jacket Sign Out Log. The entry must contain the OVI jacket number, name of the officer removing the OVI jacket, reason (including room number and case number), and the date removed. The OVI jacket must be returned promptly and an entry made in the log indicating the return date. The site supervisor will re-file the OVI jacket.
    - 1) Officers unable to return OVI jackets within five days must submit a Form 17 detailing the circumstances.
  - b. The testing site supervisor will ensure accountability and security of all OVI jackets.
    - 1) An audit of all OVI jackets will be conducted on January 1<sup>st</sup> and July 1<sup>st</sup> each year. Forward a summary of the audit through the affected commander to Inspections Unit and Traffic Unit.
2. The testing site supervisor will review the logbook weekly for accuracy and completeness.
  - a. The testing site supervisor will notify Traffic Unit of any irregularities.

## N. Routing Completed Forms

1. All copies must be hand delivered before 0800 hours each court day. Each copy must be legible and on 8-1/2" X 11" paper.
  - a. City Prosecutor's Office, 801 Plum Street, Room 200:
    - 1) Two copies of the Form 495.
    - 2) One copy of the Form HEA2652 and breath test record attached to the Form 495.
    - 3) One copy of the OH-1 (if applicable).
    - 4) One copy of the DVR disc. The disc will be identified with the arrestee's name, the date of arrest, and the OVI number. The information will be written on a label and attached to the disc.
  - b. Municipal Court Probation Division, Broadway Building, 800 Broadway:
    - 1) One copy of the Form 495, placed in an envelope and labeled "**Municipal Court Probation Division**" and left at the Prosecutor's Office.
  - c. Traffic Unit, 3201 Warsaw Avenue:
    - 1) One copy of the Form 495.

- 2) The ORIGINAL and LAW ENFORCEMENT copies of the ALS with the driver's license attached, if applicable.
  - a) Attach the license to the ALS when breath tests are .08 or above or any chemical test is refused and forward to the Traffic Unit.
  - b) Attach the COURT copy of the ALS to the MUTT for ORC Section 4511.19(A)(1)(a) on any test under a .08 BAC, or for blood and urine samples; allow the offender to physically retain their license. Advise the offender the Ohio BMV or court will likely suspend the license or modify their driving privileges at a point in the future and they may be required to physically surrender their driver's license at such time.
- 3) One copy of the Form HEA2652 and breath test record.
  - a) Attach all of the forms together.

O. Instrument Checks

1. Traffic Unit will perform an instrument check on the breath testing instrument once every seven days.