

	MARICOPA COUNTY SHERIFF'S OFFICE POLICY AND PROCEDURES	
	Subject OPERATING UNDER THE INFLUENCE (OUI)	Policy Number EB-9
		Effective Date 04-05-22
Related Information Arizona Revised Statutes EA-11, <i>Arrest Procedures</i> EB-3, <i>Driving Under the Influence (DUI)</i> GE-3, <i>Property Management and Evidence Control</i> GJ-29, <i>Independent Testing Procedures for DUI and OUI Arrests</i>	Supersedes EB-9 (09-29-07)	

PURPOSE

This Office Policy establishes guidelines and procedures for handling persons suspected of operating a motorized watercraft under the influence (OUI). Although this offense is referred to by several acronyms, such as BWI (boating while intoxicated), and BUI (boating under the influence), OUI will be used throughout this Office Policy.

POLICY

It is the policy of the Office to support comprehensive alcohol and/or drug traffic enforcement programs to remove impaired operators from the waterways and to deter them from operating a motorized watercraft while under the influence if the person is impaired to the slightest degree.

DEFINITIONS

Deputy: Any sworn law enforcement officer employed by the Office, and reserve deputies with car commander status.

Employee: A person currently employed by the Office in a classified, unclassified, contract, or temporary status.

Motorized Watercraft: Any watercraft, propelled by machinery, whether or not the machinery is the principal source of propulsion.

Operating under the Influence (OUI): The act of operating or being in actual physical control of a motorized watercraft that is underway, while under the influence of intoxicating liquor, drug or its metabolite, vapor releasing substance, or combination thereof if the person is impaired to the slightest degree, as specified in Arizona Revised Statutes (ARS).

Operator: A person who operates, or is in actual physical control of a watercraft.

Qualified Person: For the purpose of this Office Policy, any physician, registered nurse, paramedic, phlebotomist, or other person certified by the State of Arizona to draw blood in a medical capacity. Office qualified phlebotomists are required to attend a refresher phlebotomy course every two years to be considered a qualified person.

PROCEDURES

1. **Enforcement of Operating Under the Influence (OUI) Laws:** Deputies shall take appropriate law enforcement action on lakes, rivers, and waterways when investigating operators suspected of OUI. Deputies

are strictly prohibited from bias-based profiling. All enforcement action taken shall reflect a professional and unbiased attitude, and shall be accomplished in a firm, fair, impartial, and courteous manner. The Office prohibits the use of quotas, whether formal or informal, for boat stops, citations, detentions, or arrests.

2. **Initial Operator Observations:** Deputies should standardize their investigative procedures and provide detailed documentation of OUI investigations. At the time of initial observation, at a minimum, deputies should note the following:
 - A. Water, weather, lighting, and boat traffic conditions at the time of the initial observation;
 - B. The description and general condition of the suspect's motorized watercraft;
 - C. The operator's reaction to outside stimuli, such as water conditions, other traffic, and the patrol boat's emergency lights and siren or horn;
 - D. The operator's ability to bring the motorized watercraft to a stop and follow instructions;
 - E. The time the suspect stopped operating the motorized watercraft;
 - F. Whether the operator was actually operating or in actual physical control of the motorized watercraft at the time of the stop; and/or
 - G. The presence and location of any other occupants of the operator's motorized watercraft, including skiers and swimmers.
3. **Operator Observations:** Deputies shall approach the operator's motorized watercraft in a cautious manner, being cognizant of the operator's actions and behavior. Deputies should note the operator's general appearance, level of understanding, demeanor, speech, coordination, and any evidence of intoxicating beverages or drugs on or about the operator, including drug paraphernalia. After requesting the operator produce identification, preferably verifiable, particular attention should be paid to the amount of time it takes them to fulfill the request and the manner in which it is accomplished.
4. **Standardized Field Sobriety Tests:**
 - A. Standardized Field Sobriety Tests (SFSTs) administered on the water are not among the customary and traditional SFSTs provided on the Office *Alcohol Influence Report* form. Care should be used in choosing and scoring any SFSTs or any approved SFSTs administered on the water.
 1. Deputies certified in conducting Horizontal Gaze Nystagmus (HGN) field sobriety tests, or deputies in training to become HGN certified, can perform the HGN test. If the deputy is in training, a certified HGN deputy shall verify their findings for an arrest. Any HGN test administered regardless of certification to conduct the tests shall be documented in the IR.
 2. After attempting SFSTs, the deputy should administer a Preliminary Breath Test (PBT), if available, while still on the water and prior to moving the remainder of the investigation to shore.
 3. If administering SFSTs on shore, the deputy shall use the Standardized Field Sobriety Worksheet found on the *Alcohol Influence Report* form.

- a. It is preferable the deputy administer the SFSTs ashore to minimize any challenge to the results on the basis of an unstable platform or the issue of “on the water stressors.”
 - b. The operator should be on land and under observation for the time frame set by Arizona Game and Fish Department (AZGFD) before beginning standing SFSTs.
 4. If the results of the HGN or PBT are inconsistent with the impairment observed and probable cause to arrest for OUI exists based on operating behavior, initial contact, and HGN and/or PBT, deputies should consider contacting the Communications Division to request a DRE to conduct a Drug Recognition Evaluation.
- B. When probable cause is established following HGN, PBT, or any SFSTs, the operator will be placed under arrest and transported to the nearest boat house, aid station, or substation to complete chemical tests to determine the level of alcohol impairment. If at that time the alcohol level, if any, is not consistent with the level of impairment, other possibilities such as physical, mental, or drug related impairment should be considered.
 1. If the deputy determines the impairment is the result of a physical or mental impairment of the operator, they shall attempt to arrange alternative transportation or appropriate medical attention.
 2. If the deputy believes drugs are the cause of the impairment, a Drug Recognition Expert (DRE) should be requested to respond to the boat house, aid station, or substation to assist.
 - a. Supervisory approval should be sought prior to contacting a DRE. A DRE can be requested through the Communications Division if one is on duty, if not, the agency coordinator or designee will be contacted by the Communications Division.
 - b. If a DRE responds, the deputy shall stay with them and assist as required during the administration of the examination.
 - c. When obtaining urine samples for DRE testing, only deputies of the same sex as the suspect will witness the specimen collection.
5. **Tests to Determine Impairment:** When a deputy has probable cause to believe an operator is impaired by or under the influence of alcohol, any drug, or any other substance, the deputy shall ensure appropriate tests are administered to the operator.
 - A. Operators of motorized watercraft are not presumed to have given implied consent to tests to determine blood alcohol content (BAC), or the presence of drugs or other substances. However, Arizona Revised Statute (ARS) provides that the operator submits to and successfully completes such tests when arrested for a violation of OUI.
 1. An operator who refuses or fails to successfully complete such tests shall be informed they are subject to a civil penalty, as specified in ARS 5-395.03. If the operator continues to refuse the test or tests, a search warrant for blood, urine, or other bodily substance may be requested. If a search warrant is not obtained:
 - a. No tests may be given, but the person shall be cited with a civil violation pursuant to ARS for refusal to submit to breath/blood test(s); and

- b. Deputies should document the evidence necessary to ensure a successful prosecution for OUI and the refusal.
 2. An operator who formerly refuses to be tested, but who reconsiders, will be permitted to take the test if all of the following conditions are met:
 - a. The operator is still in the custody of the arresting deputy or designee; and
 - b. The request is made within two hours of operating or being in actual physical control of the motorized watercraft; and
 - c. The alcohol concentration results from alcohol consumed either before, while operating, or being in actual physical control of the motorized watercraft.
 3. The manner of conducting tests and the presumptions drawn from the results are specified in EB-3, *Driving Under the Influence (DUI)*. If the results from only one breath test can be obtained, admissibility may depend on documentation, which includes body weight and composition, food and beverage consumption, sleep times and duration, and any other physical factors.
 4. In cases where blood is to be taken, a qualified person is authorized to draw blood from the operator, even if they are the arresting deputy. Any blood drawn for testing shall be handled and packaged, as specified in Office Policy GE-3, *Property Management and Evidence Control*. A DPS Request for Scientific Analysis form shall be completed when a DPS Crime Laboratory analysis is requested.
- B. The arresting deputy shall inform the operator of their right to have an independent blood test, as specified in Office Policy GJ-29, *Independent Testing Procedures for DUI and OUI Arrests*.
6. **Arrest Procedures:** When probable cause is established and the operator is arrested, they shall be advised of their arrest for OUI. Prior to any post arrest crime-related questioning, the deputy shall advise the operator of their Miranda Warnings, as specified in EA-11, *Arrest Procedures*. The operator's responses shall be accurately recorded in the IR or in the *Alcohol Influence Report*.
 - A. Care should be taken to prevent injury to the operator, whose reduced stability increases their risk of injury.
 - B. When a full custody arrest has been made, a search of those parts of the operator's motorized watercraft which were immediately accessible to them while under the deputy's observation is permitted. Contraband or evidence may be seized and placed into evidence.
 - C. At the discretion of the deputy, the operator's motorized watercraft shall be turned over to an appropriate responsible person of the operator's choosing, towed, or secured.
 1. A *Vehicle Impound / Towing Request* form shall be completed if the motorized watercraft is impounded or towed.
 2. The deputy shall make a reasonable effort to identify and locate the motorized watercraft's trailer to facilitate towing and impoundment.
7. **Intent to Secure a Hospital Sample:** Although the principles of Implied Consent and Administrative Per Se do not apply to OUI violations, the case agent or designee shall:

- A. Obtain a search warrant or E-warrant for any blood samples drawn by hospital staff during the course of medical care;
 - B. Respond to the facility to take possession of blood samples; and
 - C. Any blood samples for testing shall be handled and packaged, as specified in Office Policy GE-3, *Property Management and Evidence Control*. A DPS Request for Scientific Analysis form shall be completed when the DPS Crime Laboratory analysis is requested.
8. **Misdemeanor OUI:** When probable cause exists that an operator has committed misdemeanor OUI, they should be cited and either released or booked into an Office jail facility. At no time shall an impaired operator be permitted to resume operation of a motorized watercraft or any motor vehicle. The appropriate statutes will be listed on the citation form or arrest record.
- A. A noncommercial operator whose BAC is 0.05 or less will not be charged without the existence of other competent evidence, unless drugs are suspected, and a DRE evaluation was completed. Any evidence of impairment which may be due to drug use shall be documented fully in the IR and submitted to the Maricopa County Attorney (MCAO) for a complaint.
 - B. An operator whose BAC is more than 0.05, but less than 0.08, may be charged when the evidence gathered clearly indicates the operator is under the influence or impaired to the slightest degree. Any evidence of additional impairment, not reflected in the BAC results, which is due to drug abuse in combination with or instead of alcohol, shall be documented fully in the IR.
 - C. An operator whose BAC is 0.08 or higher should be cited and either released or booked.
 - D. The operator of a commercial motorized watercraft, as defined in ARS 5-395.A4, being operated in furtherance of a commercial enterprise, whose BAC is 0.04 or higher, should be cited and either released or booked.
 - E. When possible, misdemeanor OUI operators should be cited and released if they have a safe means of transportation available and it is in the best interests of the Office or the public to release the operator.
 - F. The deputy shall exercise their own judgment in determining when to incarcerate an OUI operator. Factors which may determine whether the operator is to be incarcerated after arrest include, but are not limited to, the following:
 - 1. The operator is uncooperative or combative in ways other than refusing a BAC test;
 - 2. The operator is not a local resident or has no responsible party to assist them;
 - 3. The operator has a history of previous OUI arrests or convictions;
 - 4. A warrants and records check on the operator indicates the current OUI violation is a felony; and/or
 - 5. The deputy determines the operator is unlikely to return for their court appearance.
9. **Aggravated OUI:** An operator should be charged with aggravated OUI, as specified in ARS 5-396, if:

- A. They have previously been convicted of two or more OUI violations committed within the past 84 months. This includes any combination of convictions for OUI, or acts committed in another state for OUI which, if committed in this state, would be an OUI violation; or
 - B. When an operator has a person 14 years of age or under aboard the motorized watercraft and commits a violation of either ARS 5-395 or ARS 5-397.
10. **Report Detail and Completion:** Various reports and forms are required to successfully prosecute OUI operators. Successful prosecution depends not only on a complete investigation, but also on the details included in the IR. Both aggravated and misdemeanor OUIs require an IR to be completed in TraCS.
- A. An aggravated OUI report shall include details which led to the apprehension, any information such as voluntary statements, operator's refusal of test or tests, or admissions which indicate the operator had knowledge of their previous OUI convictions.
 - B. The *OUI Packet* shall include the operator's performance on SFSTs, breath test results, times and date, the deputy's observations, and operator's interview information, as applicable. Space is also available for copies of the breath testing device printout and the right thumb print and fingerprints of the suspect. The *SFST Worksheet* shall also be attached to the IR in TraCS.
 - C. Breath testing device documentation shall consist of the completed breath testing device checklists, which will be attached to the IR in TraCS. One copy of the record of each successful test shall be attached to the IR in TraCS.
 - D. Fingerprint cards may be used as an alternative to collecting the right-hand fingerprints on the *Alcohol Influence Report* form. The fingerprint card, if used, will include a complete set of fingerprints and will then be taped to a continuation sheet and included in the IR.
 - E. The *Arrest/Booking Record Form* will be completed if the subject is booked. If a citation is the complaint upon which the suspect is being booked, it shall be recorded in the charge block. In those cases where a subject is arrested for aggravated OUI, the following procedures will be completed:
 - 1. The IR will be treated as "in-custody" with a copy of the report being forwarded to the MCAO for the issuance of a complaint.
 - 2. Certified OUI Packets containing a Driver Conviction History and Criminal History check are normally requested and obtained by the MCAO. If needed, the case agent may request the packet from the Office Information Center (OIC) and scan and attach the documents to the IR in TraCS.
 - F. A *Release Questionnaire* form is required if booked.
 - G. Any other information, evidence, or exhibits appropriate for prosecution shall be included in the IR.
11. **Accident OUI Reports:** Accidents which are OUI related require the following forms to be completed:
- A. Accident-misdemeanor and accident-aggravated OUI cases require the completion of an IR, an AZGFD *Arizona Boating Accident Report*, and an OUI Packet.
 - B. All forms associated with an accident OUI investigation shall be attached to the IR in TraCS.