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Approval: Chief of Police	Manual: Policy and Procedure			

I. PURPOSE

The purpose of this policy is to establish guidelines for impaired driving enforcement activities by the department.

II. DEFINITIONS

- A. Implied Consent Offense: An “implied consent offense” is any offense involving impaired driving or an alcohol-related offense made subject to the implied consent provisions.

III. POLICY

- A. The Kinston Police Department focuses on the arrest of alcohol and/or drug related traffic offense violations by fielding specially trained and equipped personnel and by identifying these offenses as a priority enforcement activity. Police officers shall receive training in DWI enforcement through shift briefing training sessions, in-service training and specialized courses.
- B. Departmental Chemical Analysts receive detailed instruction in the administration of chemical analysis equipment and are certified in the operation by the North Carolina Department of Environment, Health, and Natural Resources under North Carolina General Statute 20-139.1.
- C. Efforts in the area of targeted enforcement pertaining to DWI violations will include:
1. Assignment of personnel at the times and locations where significant numbers of violations and/or collisions involving impaired drivers have occurred;
 2. Targeted surveillance of roadways where many collisions involving impaired drivers occur;
 3. Targeted roadway checks for deterrence purposes; or,
 4. Enforcement of impaired driving laws through concentration on existing laws and the expeditious processing of violators.
- D. Arrest and Processing of Impaired Motorists
1. The first step in the effective enforcement of Driving While Impaired (DWI) violations is the detection of those motorists under the influence of alcohol and/or other intoxicants. Officers engaged in DWI enforcement should be mindful of the strict legal limitations surrounding the apprehension of impaired subjects and the scope of authority as it relates to enforcement.
 2. An officer’s observations are crucial in establishing the requisite probable cause necessary to arrest a motorist for a DWI violation. Officers must rely on their formal training and experience in this area, putting particular emphasis on those driving actions that give rise to the officer’s belief that a motorist is driving while impaired. Officers should keep detailed notes of a violator’s driving actions that establish probable cause. After a decision has been made to stop a motorist suspected of driving while impaired, an officer shall follow the procedures for initiating a misdemeanor vehicle stop.

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3. When the officer is establishing probable cause for a DWI arrest, the officer shall:
(Note: If circumstances allow the following)
 - a. Interview the driver and establish that the driver was, or is, in control of the vehicle.
 - b. Note any observations that add to the suspicion of intoxication and/or impairment (e.g., slurred speech, hiccupping, clothing in disarray, etc.).
 - c. Request the driver to submit to a field sobriety test at a safe location and out of traffic.

4. When an officer has reasonable grounds to believe a driver has consumed alcohol and has committed a moving traffic violation, or been involved in a collision, or has committed an implied consent offense, the officer shall request the driver to submit to an alcohol screening test in accordance with North Carolina General Statute 20-16.3. All screening devices used must be approved by the North Carolina Commission of Health Services and used according to established procedures. (Requiring a person to submit to such a test is not an arrest.)

5. The driver shall be requested to sign a rights form before the analysis is made, but the signature is not required. The document "Rights of Person Requested to Submit to a Chemical Analysis to Determine Alcohol Concentration under General Statute 20-16-2(a) Form" must be used to inform the driver of the driver's rights.

6. Right to Chemical Analysis
 - a. Officers shall be aware of a driver's right to request a chemical analysis prior to being charged whenever a driver is stopped or questioned by an officer concerning the commission of an implied consent offense under North Carolina General Statute 20-16.2(al). The driver must make the request prior to being charged. The officer must honor the pre-charge request only if a chemical analyst is available.
 - b. The request constitutes the driver's consent to be transported to the test site by the officer. If the driver refuses to be transported in handcuffs by the officer, the driver's request to take the test is considered withdrawn. If this occurs, and the officer has probable cause to believe an implied consent offense was committed, the officer should charge the driver with DWI and follow the procedures outlined in this directive for processing a driver charged with an implied consent offense.
 - c. When a driver requests a pre-charge test and the test results indicate a blood alcohol content of 0.08 percent or more, (0.04 for commercial drivers) the driver shall then be charged with the implied consent offense and given another test. The results of the second test are to be placed on the Affidavit and Revocation Report of the chemical analyst. A refusal to take the second test is to be treated as any other refusal. Provisional licensee shall be charged under North Carolina General Statute 20-138.3

7. Arrest Following Establishment of Probable Cause

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- a. When the officer has established probable cause that a driver has violated the DWI law, the officer shall arrest the driver following departmental arrest procedures and request the driver to submit to a chemical analysis in accordance with North Carolina General Statute 20-16.2. If the charging officer is not a chemical analyst, the driver will be taken before a chemical analyst who has been granted a valid permit by the North Carolina Department of Environment, Health, and Natural Resources under North Carolina General Statute 20-139.1(b), to perform chemical analysis of a person's breath.
- b. The following list cites the appropriate North Carolina General Statutes concerning impaired driving. Officers should refer to Chapter 20 of the General Statutes of North Carolina for the elements of each offense: N.C.G.S. 20-138.1 - Impaired Driving; N.C.G.S. 20-138.3 - Driving by Provisional Licensee After Consuming Alcohol or Drugs; N.C.G.S. 20-12.1 - Impaired Instruction; N.C.G.S. 20-141.4(a1) - Felony Death by Vehicle.

E. DWI Resulting in Death or Serious Injury

1. When an officer suspects a death has, or may result, from a DWI, (for example, when an injured person is removed from a collision scene involving a drunk driver) then the officer shall charge the offender with DWI so that implied consent statute, North Carolina General Statute 20-16.2, may go into effect and the chemical analysis can be obtained.
2. The officer shall obtain a determination of the victim's condition and chances of survival as soon as possible. If a victim lingers near death, the officer shall inform and consult with the District Attorney so that the DWI charge will not be adjudicated until the condition of the victim is finally determined. The officer shall consult with the District Attorney whenever a death results from a DWI since the DWI is an element of the felony death by vehicle charge.
3. In cases where a felony death by vehicle charge is pending, or possible, if a driver charged with DWI refuses to submit to an analysis of breath test, the charging officer shall seek a warrant to require the offender to submit to a blood test under North Carolina General Statute 20-16.2 (c).

F. Administering Chemical Analysis

1. Under North Carolina General Statute 20-16.2, any person who drives a vehicle on a highway, street, or public vehicular area and is "charged" (need not be "arrested" only "cited") with an implied consent offense is considered to have given consent to submit to a chemical analysis. An "implied consent offense" is any offense involving impaired driving or an alcohol-related offense made subject to the implied consent provisions. DWI laws do not apply to people riding animals or riding animal-drawn vehicles.
2. The charging officer may also be a chemical analyst. If the charging officer is a chemical analyst, he/she may administer the chemical analysis. If the charging officer is not an authorized chemical analyst, before the charging police officer may request a driver to submit to any chemical analysis, the charged person must, in all cases including those where a blood test is requested, be taken before a chemical analyst authorized to administer a test of a person's breath. The chemical analyst must inform the person orally and also give the person a notice in writing of the person's implied consent rights.

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The “Rights of Person Requested to Submit to a Chemical Analysis to Determine Alcohol Concentration Form” (under General Statute 20-16-2(a) must be used.

3. A driver may be given a blood test or other chemical analysis without being advised of the implied consent rights, if the driver is unconscious or otherwise incapable of refusal, as long as the charging officer has reasonable grounds to believe the driver has committed an implied consent offense. Implied consent provisions do not alter an officer’s right to apply for a search warrant authorizing seizure of a blood sample. Officers shall use the following guidelines for test selection.
4. Blood Test - Withdrawal of blood must be by a nurse, doctor, qualified technician, etc., in accordance with North Carolina General Statute 20-139.1(c). The charging police officer shall obtain the identification of the person drawing the blood. Written confirmation of the officer’s request may be required by the person drawing the blood. The person drawing blood is protected from civil liability.
 - a. Two samples of whole blood shall be collected in airtight vials. The drawing of the blood must be observed by the charging police officer. The police officer will take custody of the blood samples. Collected blood samples will be submitted to the North Carolina State Bureau of Investigation Crime Laboratory in Raleigh for analysis.
 - b. The officer will request submission to a blood test when transporting the offender to the station is impractical due to the offender’s physical condition, the breath analysis instrument is not operating properly, preventive maintenance has not been performed, the simulator solution is expired or, at the time of arrest, the police officer has reason to believe that the offender is under the influence of narcotics or dangerous drugs, or other controlled substances.
5. Breath Test - The breath test will be conducted by a chemical analyst having a valid permit issued by the North Carolina Department of Environment, Health and Natural Resources pursuant to North Carolina GS 20-139.1(b). The breath test will be conducted following the procedures for analysis approved by the North Carolina Commission for Health Services pursuant to North Carolina GS 20-139.1. All information recorded on the test record card will be entered by the chemical analyst.
 - a. The police officer will request submission to a breath test when:
 - The offender is physically capable of being transported to the chemical analysis room.
 - The certified chemical analyst is available to perform the test, and the breath analysis instrument is available and in operating condition.
 - At the time of the arrest, the police officer believes the offender is solely under the influence of alcohol.
6. When a charging officer and a chemical analyst are involved, the charging officer will be responsible for the following:
 - a. Citation(s);
 - b. Alcohol Influence Report Form;

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- c. Affidavit and Revocation Report of Charging Police Officer;
- d. Driving While Impaired Report;
- e. Operator's License Record Check;
- f. Request for Blood Sample (if applicable);
- g. Request for Pre-Charge Chemical Analysis (if applicable);
- h. Arrest Report;
- i. Fingerprinting and photographing of the arrestee (if applicable); and,
- j. Blood Kit. (If applicable)

7. When a charging officer and a chemical analyst are involved, the chemical analyst will be responsible for the following:
 - a. Conducting the test(s) in accordance to North Carolina GS 20-139.1 and the approved procedures for analysis of the North Carolina Commission for Health Services;
 - b. Rights of Person Requested to Submit to a Chemical Analysis to Determine Alcohol Concentration under North Carolina General Statute 75a-10; and,
 - c. Affidavit and Revocation Report of Chemical Analyst.

- G. The same procedures shall be followed for a juvenile 14 years of age or older as for an adult with the following exceptions:
 1. The charging officer shall notify the juvenile's parents or legal guardian of the juvenile's custody and request that they meet the police officer at the appropriate location where the juvenile will be released to them once the approved test has been administered.
 2. If the parent or legal guardian cannot be located or does not respond, the juvenile, after the administration of the test, shall be held until a determination can be made by either the N.C. Juvenile Division, Department of Social Services or District Court Judge.

- H. Procedures Following a DWI Arrest
 1. Unless otherwise impractical, the charging officer will transport the driver to the police department or magistrate's office for testing purposes. Both the charging officer and the chemical analyst will respond to the police department (or magistrate's office) to be sworn to their respected affidavits concerning the arrest. All applicable reports are to be filed with the judicial official conducting the initial appearance at the magistrate's office.
 2. All procedures following a DWI arrest, including initial appearance, shall be in accordance with North Carolina General Statutes 15A-511 and 15A-534.2.
 3. For court procedures, the chemical analyst shall appear in court for testimony when a subpoena is issued. Chemical analysts do not normally appear in district court cases. Chemical analysts should be prepared to appear in felony and superior court cases.

- I. Request for Reexamination
 1. Officers, who identify a driver appearing to be incompetent, physically or mentally disabled, suffering from a disease or other condition that prevents the motorist from exercising reasonable and appropriate care over a motor vehicle, can request that notification be made to the Department of Motor Vehicles for reexamination of said driver pursuant to North Carolina General Statute 20-17.1, GS 20-29.1, and GS 20-37.1.

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J. Witness to Breath Testing

It is the policy of the Kinston Police Department that anyone contacted by an individual charged with an Implied-Consent offense, for the purpose of being a witness to a breath testing procedure, pursuant to North Carolina General Statutes, must adhere to the following guidelines:

1. Witness should be directed, by the charging officer, to the rear of the Kinston Police Department Headquarters Building.
2. Upon arrival, the witness should approach the rear of the building between the sally port entrance and the restricted access entry door.
3. The witness will open the door to the brown box, located on the exterior wall.
4. The witness will either push the button located within the box and asked for the charging officer or utilize the phone contained within the box to contact the charging officer by dialing 3179 or one of the other numbers listed in the box.
5. The witness will be directed to stand-by while someone is sent to escort them to the Breath Testing Room.
6. The charging officer will record a phone number at which the witness can be contacted in case the witness does not arrive as stated.

K. DWI Seized or Impounded Vehicles

1. Vehicles seized based on DWI arrests shall be handled according to the requirements defined in North Carolina General Statutes 20-28.3; including completing a Vehicle Storage Report that should be forwarded to the Kinston Police Department Crime Lab Supervisor.