07-15 Drug Recognition Expert Evaluations and Standardized Field Sobriety Testing

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Rationale

This Procedure outlines the steps to be taken when arresting a person for ability impaired by a drug, or a combination of alcohol and drug under the *Criminal Code*, and instruction on conducting Standardized Field Sobriety Testing (SFST) and Drug Recognition Expert (DRE) evaluations.

Procedure

If a peace officer has reasonable grounds to suspect that a person has a drug in their body and that the person has, within the preceding 3 hours, operated a conveyance, whether it was in motion or not, the peace officer may, by demand, require the person to perform forthwith physical coordination tests prescribed by regulation to enable the peace officer to determine whether a demand may be made, and if necessary accompany the peace officer for that purpose.

In addition, if a peace officer has reasonable grounds to believe that a person is committing, or at any time within the preceding 3 hours, has committed an offence under ss. 320.14(1) of the *Criminal Code* as a result of the consumption of a drug or of a combination of alcohol and a drug, the peace officer may, by demand made as soon as practicable, require the person to submit, as soon as practicable, to an evaluation conducted by an evaluating officer to determine whether the person's ability to operate a conveyance is impaired by a drug or by combination of alcohol and a drug, and to accompany the peace officer for that purpose.

Drug Recognition Expert officers must be fully certified and accredited by the International Association of Chiefs of Police before they can perform operational testing. The Service has designated Traffic Services (TSV) as the unit responsible for conducting DRE evaluations.

Police Officer

1. When investigating a person for an ability impaired offence shall
   - stop the conveyance, as soon as practicable
   - note the evidence of impairment
   - ensure the person receives medical attention, if required
   - comply with Procedure 15–17, if equipped

2. When reasonable suspicion exists that the driver has a drug in their body shall
   - read the SFST demand to the person
   - continue to note any evidence of impairment
   - ensure the person receives medical attention, if required

3. When reasonable grounds exist to believe that the person is impaired by a drug shall
   - arrest the person
   - comply with Procedure 01–01
   - comply with instructions contained in 07-06 Appendix A
   - make arrangements for the storage of the person's conveyance in compliance with Procedure 07–11

4. When it is determined that a DRE evaluation is required shall
   - read the "Drug Recognition Evaluation Demand (DRE)" from their memorandum book to the person
   - contact the Communications Operator – Communications Services and request a DRE
   - transport the person to the designated location for the purposes of a DRE evaluation

5. Upon arrival at the designated location for the purposes of a DRE evaluation shall
   - parade the person before the Officer in Charge in compliance with Procedure 01–03
   - escort the person to the location where the DRE will conduct the evaluation
   - provide all necessary information to the DRE

6. When the results of the DRE have been obtained and charges are warranted shall
   - obtain a copy of the TPS 289
   - complete the applicable eReports and other required reports in compliance with Procedure 12–01
   - comply with Procedure 12–08

7. When investigating a person for an ability impaired offence and the person refuses/fails to perform the SFST or DRE evaluation shall
   - arrest the person
   - comply with Procedures 01–01 and 12–08
   - complete the applicable eReports and other required reports in compliance with Procedure 12–01

Standardized Field Sobriety Test Officer

8. When requested to perform a SFST on a person shall
   - ensure the person receives medical attention, if required
   - record the results of the test on a TPS 290 and
     - retain the original
     - provide a copy to the officer requesting the SFST
     - forward a copy to the DRE Program Co-ordinator
   - if the subject performs poorly on the SFST, read the applicable demand from their memorandum book to the person
     - subject is impaired by **alcohol**: "Breath Demand (Approved Instrument)"
     - subject is impaired by **drugs**: "Drug Recognition Evaluation Demand (DRE)"
     - subject is impaired by **alcohol and drugs**: "Breath Demand (Approved Instrument)"
   - if the subject performs well on the SFST and alcohol is suspected shall
     - read the "Approved Screening Device Demand (ASD)" from their memorandum book to the person
     - comply with Procedure 07-08
   - advise the officer of the results

Officer in Charge

9. When a person is brought in the facility under arrest for ability impaired by drug shall
   - comply with Procedure 01–03
   - ensure that the person is immediately transported to the hospital if medical attention is required

     ➔ *The medical wellbeing of the person is paramount and takes precedent over the DRE evaluation. Under no circumstances shall a person be subject to a DRE evaluation prior to attending the hospital if medical attention is required.*

   - ensure the person in custody is taken to a DRE for evaluation as soon as possible
   - ensure the applicable reports are completed and served after the person has been tested by the DRE
   - ensure the applicable eReports have been completed
   - ensure compliance with Procedure 12–01

Drug Recognition Expert

10. When requested to perform a DRE evaluation
    - conduct the required evaluation
    - ensure the person receives medical attention, if required
    - record the results on a TPS 289 and
      - retain the original
      - complete a TPS 289A
      - comply with Procedure 12–08
      - forward a copy to the DRE Program Co-ordinator
    - advise the officer of the results
    - complete a TPS 291 and forward electronically
      - retain the original
      - submit a copy to the DRE Program Co-ordinator at TSV

        ➔ *The "Email Completed Form" button on the TPS 291 is pre-programed to send an electronic copy to the RCMP.*

11. Upon receipt of the Centre of Forensic Sciences Report, update the TPS 291 and forward electronically
    - retain the original

12. Upon completion of the case, update the TPS 291 and forward electronically
    - retain the original

Drug Recognition Expert Program Co-ordinator

13. When assigned as the DRE Program Co-ordinator shall maintain the Service's files for the SFST and DRE program.

Supplementary Information

Governing Authorities

Federal:
- Criminal Code

Provincial:
- Community Safety and Policing Act (Ontario Regulation)
  - O. Reg. 392/23, Adequate and Effective Policing (General)

Associated Governance

Toronto Police Service Board:
- Adequacy Standards Compliance Policy
  - Part 5 XLIV LE-017 Traffic Management, Traffic Law Enforcement and Road Safety

Toronto Police Service Procedures:
- 01–01 Arrest
- 01–03 Persons in Custody
- 07–03 Life Threatening Injury/Fatal Collisions
- 07–04 Railway Collisions
- 07–06 Ability Impaired/80 mg and Over Investigations
- 07–06 Appendix A
- 07–09 Breath Interview
- 07–11 Impounding/Relocating Vehicles
- 07–18 RIDE Program
- 07–19 Suspended/Disqualified Driving
- 12–01 Confidential Crown Envelope
- 12–08 Disclosure, Duplication and Transcription
- 15–17 In-Car Camera System

Forms:
- eReports
- TPS 289 Drug Impairment Evaluation
- TPS 289A Drug Influence Evaluation Narrative Report
- TPS 290 Standardized Field Sobriety Test Worksheet
- TPS 291 Canadian Drug Evaluation and Classification Program – DRE Evaluation Report

Definitions

For the purposes of this Procedure, the following definitions will apply:

Approved Instrument means an instrument that is designed to receive and make an analysis of a sample of a person's breath to determine their blood alcohol concentration and that is approved by the Attorney General of Canada under paragraph 320.39(c). [Source: *Criminal Code*, s. 320.11)]

Conveyance means a motor vehicle, vessel, aircraft, or railway equipment.
[Source: *Criminal Code*, s. 320.11]

Drug - SFST in reference to standardized field sobriety tests (SFST) and drug recognition expert (DRE) means any substance, which when taken into the human body, can impair the ability of the person to operate a motor vehicle safely.

Drug Recognition Expert (DRE) means an officer who has the training, knowledge, skills and abilities to form an opinion based on the totality of facts that emerge during a drug evaluation.

Drug Recognition Expert (DRE) Program Co-Ordinator means an officer who is trained as a drug recognition expert (DRE) instructor and is responsible for the coordination of the DRE program within the Toronto Police Service.

Interferent means a term unique to the Approved Instrument, which is an indication of some volatile substance present in the breath sample, other than ethanol (e.g. acetone). The presence of an interferent will be confirmed via a secondary test prior to any mandated course of action.

Operate means

a) in respect of a motor vehicle, to drive it or to have care or control of it;
b) in respect of a vessel or aircraft, to navigate it, to assist in its navigation or to have care or control of it; and
c) in respect of railway equipment, to participate in the direct control of its motion, or to have care or control of it as a member of the equipment's crew, as a person who acts in lieu of a member of the equipment's crew by remote control, or otherwise.

[Source: *Criminal Code*, s 320.11]

Qualified Breath Technician (QBT) means a person who is designated by the Attorney General under paragraph 320.4(a) of the *Criminal Code* to operate an approved instrument. [Source: Criminal Code, s 320.11]

Reasonable Suspicion in reference to standardized field sobriety tests (SFST) and drug recognition expert (DRE) means facts or circumstances which would lead a reasonable person to suspect that a person consumed drugs.

Standardized Field Sobriety Test (SFST) means three tests that are administered and evaluated in a standardized manner, to obtain validated indicators of impairment.

Standardized Field Sobriety Test (SFST) Officer means an officer who has the training, knowledge, skills and abilities to perform a standardized field sobriety test (SFST).

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