



07-06 Ability Impaired/ 80 mgs and Over Investigation

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Rationale

This Procedure outlines the steps to be taken when arresting a person for ability impaired/80 mgs and over under the *Criminal Code*.

Procedure

The Toronto Police Service (Service) has designated four units for the purpose of conducting ability impaired/over 80 investigations. These will be referred to as Breath Testing Centres (BTC) and are located at Traffic Services (TSV), 23, 32 and 41 Divisions. In addition, TSV has established a Mobile Breath Testing Centre (MBTC) which can be situated at a variety of locations throughout the city.

Persons requiring a breath test must be taken to the closest BTC or the MBTC. Members shall ascertain the location of the MBTC from Communications Services before transporting a person.

If a test must be administered in a hospital, or when the person to be tested is extremely violent, TSV will provide a breath testing technician to attend the designated location.

Appendix B contains a Quick Chart outlining the available Administrative Suspensions and Impoundments under the *Highway Traffic Act* (HTA).

Guiding Principles

Impaired Driving is a major cause of death and injury on Canada's roadways. Interventions to counter impaired driving include community education, enforcement, adjudication/sanctioning and rehabilitation. There has been a major focus on deterrence of impaired driving behaviour particularly through the use of roadside screening devices. The following are guiding principles that members shall use to ensure the Service is effective in its goal to Reduce Impaired Driving Everywhere (RIDE).

1. High visibility of police RIDE enforcement activities (e.g. spot-checks, vehicle stops)
2. Effective RIDE community education (e.g. awareness initiatives and communication strategies)
3. Zero Tolerance (e.g. maintaining a high number of roadside tests administered to drivers)
4. More effective RIDE enforcement activities showing quality results
5. Targeted deployment of spot-checks to identified collision locations, dates, and times
6. Random enforcement patterns
7. Broad coverage of the total road network
8. Focused and targeted locations to ensure that all vehicles drive through the RIDE spot-check
9. Highly motivated traffic safety and enforcement personnel.

Police Officer

1. When investigating a person for an ability impaired offence shall
 - stop the motor vehicle, or vessel, as soon as practicable
 - note observations of impairment on a TPS 357 or in their memorandum book (e.g. the person's stability, speech, general appearance or any odour of an alcoholic beverage on the person's breath or evidence of drug use)
 - if drug impairment is suspected, comply with Procedure 07–15
 - comply with Procedure 15–17, if equipped
2. When investigating an operator who shows signs or exhibits behaviours of driving incompetence that could be due to physical/mental impairment which
 - and here
 - may have played a role in causing a collision
 - may impede the drivers ability to sustain safe driving practices
 - may put the driver and/or public at risk if the driver continues to operate a motor vehicle shall comply with the applicable items in Procedure 07–01.
3. When sufficient evidence has been obtained to charge the operator shall
 - comply with Procedure 01–01
 - read the "Breath Samples – Approved Instrument Demand" from their memorandum book
 - make arrangements for the storage of the operator's motor vehicle in compliance with Procedure 07–11
 - ➔ *Subsection 48.4(1) of the HTA imposes a 7–day motor vehicle impoundment for drivers or persons having care or control of a motor vehicle who are shown to have a blood alcohol concentration (BAC) 0.08 or over based on the results of a demand made under ss. 320.15) or 320.29 of the Criminal Code, or for failure/refusal to comply with a demand made under ss. 320.15 of the Criminal Code, or charged with the offence of Impaired Operation as a result of a Drug Recognition Expert (DRE) evaluation where a bodily fluid demand has been made by a DRE.*
 - For greater clarity, the 7–day motor vehicle impoundment under ss. 48.4(1) of the HTA does not apply on the basis of a failed test on an Approved Screening Device alone. The driver must register Intoxilyzer 8000C results that warrant criminal charges before the 7–day vehicle impoundment can be imposed.*
 - Officers shall be governed by the appropriate authority at roadside (e.g. continuation of the offence, safety and security of the vehicle and contents, by–law, location on the roadway) for the towing of the vehicle, and once the Intoxilyzer 8000C results are confirmed shall commence proceeding with the 7–day vehicle impoundment.*
 - ensure the person in custody is transported to the closest BTC or MBTC
4. Upon arrival at a BTC or MBTC with a person in custody shall
 - comply with Procedure 01–03
 - ➔ *For the purposes of an ability impaired/ 80 mgs and over offence, the additional information required by the Officer in Charge includes the specific time the accused was first observed.*
 - ascertain if any breath testing delay exists and note reasons
 - comply with Procedure 07–09

→ *When practicable, the ARRESTING OFFICER shall escort the arrested party to the breath testing technician.*

5. Upon entering the breath testing area with a person in custody shall
 - advise the breath testing technician of
 - the time the accused was first observed
 - the fact that the accused was operating or had care or control of a motor vehicle or vessel
 - the time of the alleged offence
 - the specific offence for which the accused was arrested
 - whether a demand was made and the rights to counsel given
 - remain in the breath testing area while the Intoxilyzer test is conducted
6. During the required time lapse between subsequent tests shall
 - escort the arrested party from the breath testing area
 - return to the breath testing area when advised by the breath testing technician
7. When the results of the breath tests or refusal have been obtained and charges are warranted shall
 - comply with the instructions contained in [Appendix A](#)
 - obtain the Intoxilyzer Test Record and the [TPS 323](#) from the breath testing technician, if applicable
 - check all copies of the Intoxilyzer Test Record and TPS 323 for accuracy
 - complete the particulars of service for both the Intoxilyzer Test Record and TPS 323
 - serve on the accused
 - the true copies of the TPS 323
 - a copy of the Intoxilyzer Test Record

→ *If the accused is severely impaired by the alcohol consumed and requires lodging, service of the above mentioned forms will be completed at a later time, but no later than 7 days prior to the trial date.*

 - contact TSV front desk to obtain an Administrative Driver Licence Suspension (ADLS) number and effective date from the Ministry of Transportation Suspension and Impound Management System (SIMS – MTO) computer database
 - *The ADLS shall be used when the accused is charged with 80 mgs and over; fail/refuse to provide a breath sample; fail to accompany; refuse standardized field sobriety testing (SFST), or Drug Recognition Expert (DRE) evaluation, or a demand for samples of blood, oral fluid or urine; or charged with impaired operation by drug or a combination of a drug and alcohol **AFTER** the completion of a DRE evaluation.*
 - retrieve the SIMS generated SRLC120 – ADLS from the designated printer at the BTC
 - if SIMS is not available, complete the [SRLC120](#) manually and forward a copy to the MTO via facsimile prior to reporting off duty
 - forward the original [SRLC120](#) and any seized driver's licence via internal mail to the attention of the TSV-MTO Liaison Officer for disposition
 - provide a TPS 316 to the accused, if applicable, and note service in memorandum book
 - complete a [TPS 342](#) and serve a copy on the accused
 - forward a copy of the completed TPS 342 by [TPS eFax](#) or email to the appropriate contract pound and to TSV – Pound Supervisor via interdepartmental mail prior to reporting off duty
 - complete other required reports in compliance with Procedure [12-01](#)
 - comply with the requirements contained in Procedure [12-08](#)

- complete the paperwork required at the BTC to facilitate the release or lodging of the accused
 - serve a copy of the SRLC120 on the accused
8. Upon release or lodging of the accused, primary response officers shall forthwith attend the Detective Office located in the division where the offence occurred and review the case preparation with a divisional investigator who will be responsible for case management.
 9. Divisional non–primary response officers shall, upon release or lodging of the accused, comply with their unit specific policy regarding ability impaired/over 80 investigations.

Breath Testing Technician

10. When requested to perform a breath test on a person arrested for an ability impaired/ 80 mgs and over offence shall ensure
 - a minimum of 2 breath samples are analyzed, regardless of the results or the time of the first sample
11. When conducting a breath test shall immediately notify the Officer in Charge of the breath testing centre when an interferent is confirmed.

Divisional Detective

12. When an ability impaired/ 80 mgs and over investigation is initiated by a primary response officer, the divisional investigator shall assume the role of case manager, ensuring effective case management including case preparation, disclosure and trial management.
13. The divisional investigator shall comply with their unit specific policy regarding investigations initiated by divisional non-primary response officers.

Officer in Charge

14. The Officer in Charge shall ensure that a divisional investigator from the Detective Office has reviewed the crown envelope and has assumed the role of case manager for ability impaired/ 80 mgs and over investigations, if applicable.

Unit Commander

15. The Unit Commander shall ensure investigators from the Detective Office under their command are responsible for case management of ability impaired/80 mgs and over investigations initiated by primary response officers.

Officer in Charge – Breath Testing Centre

16. When a person is brought into the facility under arrest for an ability impaired/ 80 mgs and over offence shall ensure
 - the person in custody is taken to a breath testing technician as soon as possible
 - the appropriate documents are completed and served after the person has been tested by the breath testing technician
 - the person is processed in accordance with the applicable procedures

17. When advised that the person in custody had an interferent detection on the Intoxilyzer, have the person immediately transported to a hospital.
18. When a person in custody exhibits a level of impairment which may require medical attention shall comply with Procedure [01–03](#).
19. When a person in custody exhibits a level of impairment due to alcohol consumption, which may pose a danger to themselves upon release, shall have the person transported to the nearest Central Lockup facility, when the breath testing is complete.

Appendices

[Appendix A – Ability Impaired/ 80 mgs and over Summary Chart](#)

[Appendix B – Quick Chart – Administrative Suspensions & Impoundments under the HTA](#)

Supplementary Information

Governing Authorities

Federal: Criminal Code.

Provincial: Highway Traffic Act; Police Services Act, O. Reg 3/99, Adequacy & Effectiveness of Police Services.

Associated Governance

TPSB Policies: TPSB LE-017 Traffic Management, Traffic Law Enforcement and Road Safety.

TPS Procedures:

- [01–01](#) Arrest;
- [01–03](#) Persons in Custody;
- [07–01](#) Transportation Collisions;
- [07–09](#) Breath Interview;
- [07–11](#) Impounding/Relocating Vehicles;
- [07–15](#) Drug Recognition Expert Evaluations and Standardized Field Sobriety Testing;
- [07–18](#) RIDE Program;
- [12–01](#) Confidential Crown Envelope;
- [12–08](#) Disclosure, Duplication and Transcription;
- [15–17](#) In-Car Camera System.

Forms: [TPS 316](#) Reduced Suspension with Ignition Interlock Conduct Review Program; [TPS 317](#) Driver Information – Request for Driver’s Licence Review; Intoxilyzer Test Record; [TPS 323](#) Certificate of a Qualified Technician; [TPS 336](#) Impounded or Held Vehicle Report; [TPS 337](#) Tow Report; [TPS 342](#) Notice of Motor Vehicle Impoundment; [TPS 357](#) Investigative Notes – Impaired Driving Offences; [SRLC120](#) Notice to Registrar; [SRLC123](#) Notice of Suspension.

Other: [Toronto Police Service Traffic Management, Traffic Law Enforcement and Road Safety Plan.](#)

Definitions

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

Interferent means a term unique to the Intoxilyzer, 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.

Intoxilyzer means the Intoxilyzer 8000C, which is a computer-based, infra-red breath alcohol analyzer. An instrument approved for the purposes of section 320.15 of the *Criminal Code*.

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