07-06 Ability Impaired/80 mg and Over Investigation

Status: Amended **Issued:** 2026.03.10 **Replaces**: 2021.07.06

Rationale

This Procedure outlines the steps to be taken when arresting a person for ability impaired/80 mg/100 mL and over under the *Criminal Code*.

Procedure

The Toronto Police Service (Service) has designated four locations for the purpose of conducting ability impaired/80 mg/100 mL and over investigations. These are 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 Qualified Breath Technician (QBT) 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 conveyance as soon as practicable
   - note all observations of impairment on a TPS 357 or in their memorandum book

     ➔ *This may be completed by observing, but is not limited to:*
     - *the person inside the conveyance*
     - *the person exiting the conveyance*
     - *evidence in the conveyance (e.g. liquor bottles, prescription bottles, drugs, drug paraphernalia, other plain view evidence)*
     - *the person's walk, balance, coordination, sway, pupil size, speech*
     - *information obtained from 911 caller (if any)*
     - *previous observations (e.g. how the conveyance was being operated)*

   - 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 of physical/mental impairment which
   - 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 conveyance

   shall comply with the applicable items in Procedure 07–01.

3. When sufficient evidence has been obtained to arrest the operator shall
   - comply with Procedure 01–01
   - read the "Breath Demand (Approved Instrument)" from their memorandum book
   - make arrangements for the storage of the operator's conveyance 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 Approved Instrument 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 Approved Instrument 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 mg/100 mL 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 QBT.*

5. Upon entering the breath testing area with a person in custody shall
   - advise the QBT of
     - the time the accused was first observed
     - the fact that the accused was operating the conveyance
     - 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

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 QBT

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 QBT, 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 and served on the accused during release on video.*

   - 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 mg/100 mL 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 electronically 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, arresting officer(s) 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. During the course of the prosecution, if approached by a Crown Attorney to lay an alternative *Provincial Offences Act* information (POA), the officer will refer the Crown Attorney to the Traffic Services Unit Commander (or designate) and ensure appropriate notations of the conversation and referral are recorded in the memorandum book in compliance with Procedure 13–17.

Qualified Breath Technician (QBT) – Traffic Services

10. When requested to perform a breath test on a person arrested for an ability impaired/80 mg/100 mL 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 BTC when an interferent is confirmed.

Divisional Detective

12. When an ability impaired/80 mg/100 mL and over investigation is initiated by a priority response officer, the divisional investigator shall
    - assume the role of case manager
    - assist with case preparation
    - ensure effective case management, including disclosure and trial management

Officer in Charge

13. 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 mg/100 mL and over investigations, if applicable.

Unit Commander

14. The Unit Commander shall ensure investigators from the Detective Office under their command are responsible for case management of ability impaired/80 mg/100 mL and over investigations initiated by officers.

Officer in Charge – Breath Testing Centre (BTC)

15. When a person is brought into the facility under arrest for an ability impaired/ 80 mg/100 mL and over offence shall ensure
    - the person in custody is taken to a QBT as soon as possible
    - the appropriate documents are completed and served after the person has been tested by the QBT
    - the person is processed in accordance with the applicable procedures

16. When advised that the person in custody had an interferent detection on the Approved Instrument, have the person immediately transported to a hospital.

17. When a person in custody exhibits a level of impairment which may require medical attention shall comply with Procedure 01–03.

18. 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 mg and over Summary Chart
Appendix B – Quick Chart – Administrative Suspensions & Impoundments under the HTA

Supplementary Information

Governing Authorities

Federal:
- Criminal Code

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

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
- 07–01 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 Card
- TPS 342 Notice of Motor Vehicle Impoundment
- TPS 357 Impaired Driving Notes and Evidence
- SRLC120 Notice to Registrar
- SRLC123 Notice of Suspension
    - *The TPS 337 is available as a text template.*

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]

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]

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