



IM62

IMPAIRED DRIVING INVESTIGATIONS

IM62

Effective Date: 01 January 1997
Last Reviewed/Revised Date: 01 December 2020*

Contents

POLICY.....	2
REASON FOR POLICY	2
RELATED POLICIES.....	2
PROCEDURES.....	2
Operation & Care & Control	2
Approved Screening Device Demands.....	3
Suspicion of Alcohol in Body.....	3
Mandatory Alcohol Screening	3
Device Usage Requirements	4
12-Hour Suspensions – Alcohol	4
24-Hour Suspensions – Alcohol	5
Criminal Code Investigations – Alcohol Impaired	6
Breath Demand	6
Evidentiary Breath Testing.....	7
Notice To Seek Greater Punishment.....	8
Blood Demand – Blood Alcohol Concentration	8
Blood Samples Warrant.....	9
Standardized Field Sobriety Test Demand – Drug Impaired Investigation	10
Approved Drug Screening Equipment.....	10
24-Hour Suspension – Drugs	11
Drug Recognition Evaluation Demand	12
Blood Demand – Blood Drug Concentrations.....	12
Right to Counsel.....	13
Administrative Driving Prohibitions (ADP)	13
Immediate Roadside Prohibitions (IRP)	13
Notice To Seek Greater Punishment.....	14
Release of Driver/Accused	14
Keeping Accused in Custody Until Sober.....	15
Accused Refuses to Sign Release Document.....	15
Cell Block Video	16



POLICY

1. The Delta Police Department (Department) will establish procedures governing investigation into impaired driving.

REASON FOR POLICY

2. The successful detection and prosecution of impaired drivers are essential elements of traffic safety in the community.

RELATED POLICIES

IM60 – Motor Vehicle Collisions

IM61 – Traffic Enforcement, Management & Towing

PROCEDURES

Operation & Care & Control

3. Members conducting impaired investigations involving care or control shall be aware of a recent Supreme Court Case Law whereby care or control within the meaning of Section 253 (1) of the *Criminal Code of Canada* (CCC), signifies the following:
 - a) an intentional course of conduct associated with a conveyance (motor vehicle, railroad equipment);
 - b) by a person whose ability to drive is impaired to any degree or whose blood alcohol concentration, blood drug concentration, or both, exceeds the legal limit(s); and
 - c) in circumstances that create a realistic and not theoretical danger to a person or property.
4. Members may conduct a random stop of a vehicle to check the driver for sobriety.
5. A member stopping a vehicle due to concern about the driver's sobriety, must promptly advise the driver that investigation of sobriety is the reason for the stop. This satisfies Section 10(a) of the Charter.



6. Members who do not witness the actual driving or care or control must establish the time of driving by either a statement from a witness, or if necessary by a statement from the accused or any other means available. Members shall avoid solely using the dispatch time as the time for operation of a vehicle.

Approved Screening Device Demands

Suspicion of Alcohol in Body

7. Members may make a demand for breath to be taken into an Approved Screening Device (ASD), pursuant to CCC Section 320.27(1)(b), when a member has formed a reasonable suspicion that a person has, within the preceding three hours, operated a conveyance with alcohol in his or her body.
8. Members shall read the ASD Demand promptly when the member has formed this reasonable suspicion, and document any delay between forming the suspicion and reading the demand.

Mandatory Alcohol Screening

9. Members may make a demand for breath to be taken into ASD, pursuant to CCC Section 320.27(2), if:
 - a) the member has pulled over the vehicle for a lawful purpose, and in the execution of their duties;
 - b) the member has in their possession an ASD; and
 - c) the driver is operating a motor vehicle.
10. Members may not make a demand under this section if reasonable suspicion exists for an ASD Demand under CCC Section 320.27(1)(b).
11. Members are advised that vehicle stops made solely for the purpose of making an ASD Demand pursuant to CCC Section 320.27(2) is beyond the scope of the authority.
12. Members are advised to actively investigate instances of possible impaired driving in order to develop suspicion for an ASD Demand pursuant to CCC Section 320.27(1)(b), and to use the Mandatory Screening ASD Demand only when reasonable suspicion does not exist.



Device Usage Requirements

13. Members shall not make an ASD Demand if the member has formed reasonable grounds that an offence under CCC Section 320.14 has occurred.
14. Members may only use an ASD after reading an ASD Demand, as per the CCC.
15. Members shall take the breath sample on the ASD forthwith after reading an ASD Demand, or document all reasons for any delay in their notebook and report.
16. Members must consider a potential waiting period before administering an ASD, depending on the circumstances of investigation. If there is evidence of the driver having consumed certain substances, the following waiting periods must be considered and adhered to:
 - a) 15 minutes for recent alcohol consumption;
 - b) 15 minutes for presence of mouth alcohol (belch, vomit, regurgitate);
 - c) 15 clear minutes for instances where the driver hand sanitizer usage has been observed, detected, or admitted prior to the taking of a breath sample if the member believes there is evidence of recent consumption of alcohol or the presence of mouth alcohol;
 - d) 5 clear minutes for smoking or vaping; and
 - e) 5 clear minutes for anything else inside mouth.
17. Members may use the result of an ASD test to issue a 12-hour suspension under the MVA, a 24-hour suspension under the MVA, an Immediate Roadside Prohibition, or as evidence to support a charge under CCC Section 320.14.

12-Hour Suspensions – Alcohol

18. Authority to issue a 12-hour suspension for alcohol is pursuant to MVA Section 90.3.
19. Members may issue a 12-hour suspension when a driver provides a sample of breath into an ASD which results in a reading in the range of 5 to 50 mg%.



A violation ticket for driving contrary to restrictions of license may also be issued.

24-Hour Suspensions – Alcohol

20. Authority to issue a 24 hour suspension for alcohol is pursuant to MVA Section 215.
21. A member may issue a 24-hour suspension when:
 - a) a member on reasonable grounds believes a driver's ability to driver is affected by alcohol; or
 - b) a driver provides a sample of breath into an ASD, which results in a reading in the range of 51 to 59 mg%.
22. A member issuing a 24 hour suspension when based only on the opinion of the investigating member, must offer the driver the opportunity to demonstrate their blood alcohol level does not exceed 50 mgs in 100 milliliters of blood, by either a breath test on an ASD, or on an approved instrument.
23. A member issuing a 24-hour driving prohibition under the MVA shall:
 - a) seize the driver's license if applicable;
 - b) complete a Notice of Driving Prohibition and Report to ICBC;
 - c) serve a copy of the Notice of Driving Prohibition to the driver;
 - d) use discretion with regards to impounding the motor vehicle for 24 hours;
 - e) inform the driver that a 24-hour suspension will form part of their driving record; and
 - f) provide all relevant information to the dispatcher.
24. Members shall not issue a 24-hour suspension to a person that has been issued an Immediate Roadside Prohibition.



Criminal Code Investigations – Alcohol Impaired

25. When there is a collision that involves serious injury and/or death and an alcohol affected driver, Members shall conduct a CCC investigation.
26. When reasonable grounds are established that a person has committed an offence under Section 320.14(2) and 320.14(3), Members shall consider the following:
 - a) Section 320.14(1)(a) is a separate offence and may be charged as a stand-alone offence without having to further investigate a blood alcohol concentration or blood drug concentration charge; and
 - b) Sections 320.14(1)(b), (c), and (d) are separate offences and may be charged as a stand-alone offence without having to include an impaired driving charge.
27. Members should only consider arresting a person for a CCC Section 320.14(1) offence where there is one or more of the following: a need to establish identity, a need to preserve evidence, a need to prevent continuation of the offence, and a need to ensure court appearance. Where there is no requirement as stated above, Members shall detain and not arrest for a CCC Section 320.14(1) offence.
28. Members arresting or detaining for a CCC Section 320.14(1) offence must read to the accused; the Charter 10(a) and 10(b), and the CCC Breath Demand immediately after forming grounds of a CCC Section 320.14(1) offence. This must be followed by the Official Warning.
29. A member may also form reasonable grounds for a 24-hour suspension under the MVA at the same time as forming reasonable grounds for a CCC Section 320.14(1) offence.

Breath Demand

30. Authority to make a Breath Demand is pursuant to CCC Section 320.28(1).
31. Members may make a CCC Breath Demand if they have reasonable grounds to believe that the driver operated a conveyance while the driver's ability to operate it was impaired to any degree by alcohol, or that the driver committed an offence under section 320.14(1)(b).
32. Members shall read the CCC Breath Demand as soon as practicable after forming an opinion regarding a CCC Section 320.14(1) offence.



33. After reading the CCC Breath Demand, Members who are continuing an over 80 mgs investigation must do the following:
 - a) the breath sample should be taken as soon as practicable;
 - b) ensure that 10(a) and 10(b) of the Charter are being satisfied;
 - c) ensure that a qualified breath technician has been advised and is attending; and
 - d) as soon as practicable take the driver to the closest approved instrument.

Evidentiary Breath Testing

34. Members shall wait a clear 15 minutes preceding each breath sample. During this time the suspect must be observed and their behaviour should be noted.
35. Only a Qualified Technicians (QT) shall conduct breath testing on an approved evidentiary instrument.
36. Qualified Technicians shall operate the approved instrument in accordance with instruction received in their training course and in accordance with updated information and training.
37. Certificates of Qualified Technician will be completed in accordance with training received for the approved instrument.
38. The Qualified Technician will then give the original Certificate of Qualified Technician over to the investigating member.
39. The Investigating Member shall complete the Notice of Intention to serve at the bottom of the certificate.
40. The Investigating Member shall make a duplicate copy of the Certificate of Qualified Technician and serve it on the accused.
41. The Investigating Member will retain the original Certificate of Qualified Technician as it will be an exhibit for court purposes.
42. If the accused is too intoxicated to understand the intent of the Certificate of Qualified Technician, the Investigating Member shall note this in the report to Crown Counsel.



43. Qualified Technicians after conducting a breath analysis on an approved instrument shall make detailed notes and provide a copy of the notes to the Investigating Member.
44. When a breath test is taken on an apparently intoxicated person and the reading is higher than 300 mgs percent, the Investigating Member or the Qualified Technician shall obtain a medical assessment on the person.

Notice To Seek Greater Punishment

45. In circumstances where a driver has been arrested for impaired driving and has a prior conviction for impaired driving, the driver shall be served with a Notice to Seek Greater Punishment in order to provide the driver notice that Crown Counsel will be seeking a greater punishment if the driver is found guilty of the offence.

Blood Demand – Blood Alcohol Concentration

46. Authority to make a Blood Demand to determine blood alcohol concentration is pursuant to CCC Section 320.28(1)(a)(ii).
47. Members may make a Blood Demand when the member believes on reasonable grounds that:
 - a) the driver operated a conveyance while the driver's ability to operate it was impaired to any degree by alcohol, or that the driver committed an offence under section 320.14(1)(b); or
 - b) by reason of the suspect's physical condition the suspect is incapable of providing a breath sample; or it would be impracticable to obtain a breath sample.
48. Members shall read from a Department issued card or give the Blood Demand as soon as practicable after forming an opinion regarding impaired driving.
49. Members after having decided to obtain a blood sample must keep the person under observation until such time as the blood samples are taken.
50. Members shall consider a breath sample when there is a possibility of an early release from the hospital.
51. Members reading the Blood Demand shall ensure the person is capable of understanding the Blood Demand.



52. Members making a demand for blood must ensure that:
 - a) the person is informed that the blood sample will only be taken by a qualified medical practitioner; and
 - b) the qualified medical practitioner must be satisfied that the taking of the blood sample will not endanger the life or health of the person.
53. Members shall not use force to take a blood sample.
54. Members shall not interfere with the primary function of the hospital emergency departments or medical staff in providing medical care to their patients.
55. Members are cautioned that a medical practitioner commits no offence by refusing to take the blood after a lawful blood demand is given.
56. Members who have blood samples taken pursuant to Section 320.28(1)(a)(ii) by or under the direction of a medical practitioner shall follow steps listed on the 'Blood Sample Checklist' included in the blood kit package.
57. Members shall turn over the blood samples package to the Investigating Member during normal business hours.
58. A Form 5.2 Report to a Justice must be completed for the blood samples.

Blood Samples Warrant

59. The authority to obtain blood with a warrant is pursuant to CCC Section 320.29(1).
60. Prior to applying for a blood warrant, the investigating member shall be satisfied that:
 - a) there are reasonable grounds to believe that as a result of the consumption of alcohol and offence was committed under CCC Section 320.14 within the preceding 8 hours;
 - b) there was a collision resulting in death or bodily harm to any person, including the suspected impaired driver;
 - c) the identity of the person from whom the samples will be taken has been established by some means;



- d) that a medical practitioner is of the opinion that by reason of any physical or mental condition of the person, the person is unable to consent to the taking of samples of their blood; and
 - e) the taking of samples of the person's blood will not endanger their health.
61. Members having obtained a blood warrant shall serve a copy of the warrant on the accused as soon as practicable after obtaining the samples.
62. Members will only serve the warrant when the suspect is capable of understanding the purpose of the document.
63. Members unable to serve a warrant by the end of their shift shall notify their NCO who will arrange for service from the upcoming platoon.
64. Members who have obtained a blood sample pursuant to a warrant must complete a Form 5.2 - B 'Report to a Justice.'

Standardized Field Sobriety Test Demand – Drug Impaired Investigation

65. Authority to make a Standardized Field Sobriety Test (SFST) Demand is pursuant to CCC Section 320.27(1)(a).
66. A member may make an SFST Demand when they have reasonable grounds to suspect that the driver has, within the preceding three hours, operated a motor vehicle with a drug or alcohol in their body, and require the driver to accompany them for the purpose of performing the tests.
67. Only Members who have successfully completed SFST training may conduct an SFST.
68. Members conducting an SFST must conduct the full battery of tests, or make detailed documentation about why the entire test could not be performed.
69. A driver who performs poorly on an SFST may be, based on the results of the SFST, detained for Impaired Driving, and an appropriate demand may be read to advance the investigation.

Approved Drug Screening Equipment

70. Authority to make an Approved Drug Screening Equipment (ADSE) Demand is pursuant to CCC Section 320.27(1)(c).



71. A member may make an ADSE Demand when they have reasonable grounds to suspect that the driver has, within the preceding three hours, operated a motor vehicle with a drug or alcohol in their body, and require the driver to accompany them for the purpose of performing the tests.
72. Only Members who are designated operators of ADSE may gather oral fluid samples from a driver.
73. If this avenue of investigation is not feasible, Members are encouraged to proceed into an investigation that includes an SFST Demand.

24-Hour Suspension – Drugs

74. Authority to issue a 24-hour suspension for drugs is pursuant to MVA Section 215.
75. A member may issue a 24-hour suspension when a member on reasonable grounds believes a driver's ability to drive is affected by a drug other than alcohol.
76. Members investigating a 24-hour suspension for drugs shall do at least one or more of the following:
 - a) conduct a Standardized Field Sobriety Test; or
 - b) consult the results of an ADSE test; and
 - c) get an admission of recent consumption of a specific drug; and
 - d) note in their notebooks and in the file as much detail as possible regarding driving evidence and symptoms of impairment, including which drug or drugs the driver may be under the influence of.
77. A member issuing a 24-hour driving prohibition under the MVA shall:
 - a) seize the driver's license if applicable;
 - b) complete a Notice of Driving Prohibition and Report to ICBC;
 - c) serve a copy of the Notice of Driving Prohibition to the driver;
 - d) use discretion with regards to impounding the motor vehicle for 24 hours;



- e) inform the driver that a 24-hour suspension will form part of their driving record; and
- f) provide all relevant information to the dispatcher.

Drug Recognition Evaluation Demand

- 78. Members may make a demand that a driver submit to a drug recognition evaluation pursuant to CCC Section 320.28(2).
- 79. The driver must comply with the demand for the examination and the tests. Failure to comply with the demand shall lead to a prosecution for Refusal.
- 80. Only a Certified Drug Recognition Expert (DRE), accredited by the International Association of Chiefs of Police, with current certification, shall perform the evaluation of the driver.
- 81. An investigating member making the Drug Recognition Evaluation Demand shall make the demand as soon as practicable after the opinion is formed.
- 82. A DRE conducting the evaluation must do so as soon as practicable.
- 83. In the course of a drug recognition evaluation, a DRE may make a Breath Demand or Bodily Substance Demand pursuant to CCC Section 320.28(3) or (4).

Blood Demand – Blood Drug Concentrations

- 84. Authority to make a Blood Demand is pursuant to CCC Section 320.28(2)(b).
- 85. Members may make a Blood Demand for blood drug concentrations when the member believes on reasonable grounds that that a person has operated a conveyance while the person's ability to operate it was impaired to any degree by a drug or by a combination of alcohol and a drug, or has committed an offence under paragraph 320.14(1)(c) or (d) or subsection 320.14(4).
- 86. In these cases, blood must be drawn within two hours of when the driver ceased operating the motor vehicle. If this is avenue of investigation is not feasible, Members are encouraged to proceed into an investigation that includes a DRE Demand.



Right to Counsel

87. The investigating member after having given an accused their 10(b) Charter rights must:
- a) give the accused a reasonable opportunity to call the lawyer of choice;
 - b) refrain from eliciting evidence;
 - c) refrain from eliciting evidence until the right to speak with a lawyer has been exercised; and
 - d) observe and record non elicited evidence while rights are being exercised.

Administrative Driving Prohibitions (ADP)

88. The authority to issue an ADP is pursuant to MVA Section 94.1.
89. Members shall only issue an ADP to a driver when at least 1 breath sample at or exceeding 80 mg% has been taken on an approved evidentiary instrument, or, to a driver that has refused to provide a proper sample of breath on an approved evidentiary instrument or a roadside screening device in response to a lawful breath demand made under CCC Section 320.28(1).
90. Members shall make detailed notes and write a detailed report about the service and the explanation of the ADP to the driver.
91. Members shall not issue an ADP to a person that has been issued an Immediate Roadside Prohibition.

Immediate Roadside Prohibitions (IRP)

92. The authority to issue an IRP to a driver is pursuant to MVA Section 215.
93. Members issuing an IRP must have completed the IRP training from a person designated and qualified to teach the IRP program.
94. The member can issue an IRP to any driver or person found in care or control of a vehicle whereby a sample of breath has been taken on an ASD and a reading of 'Warn' or 'Fail' has been observed by the member.



95. The member can issue an IRP to any driver or person found in care or control of a vehicle whereby the driver has refused to provide a sample of their breath as required by CCC Section 320.27.
96. An IRP shall not be issued when there is a collision involving serious injury or death.
97. Members shall consider an impaired driving charge under the CCC instead of an IRP when there is strong driving evidence and strong symptoms of impairment.
98. Members issuing an IRP must follow IRP guidelines and procedure in place for the IRP program at the time of the investigation and in accordance with their IRP training.

Notice To Seek Greater Punishment

99. A copy of the Notice to Seek Greater Punishment form will be served on all accused previously convicted of the following:
 - a) failing to stop at the scene of a collision;
 - b) impaired driving;
 - c) drive over blood alcohol or blood drug concentrations;
 - d) impaired driving causing bodily harm;
 - e) impaired driving causing death;
 - f) refusing to comply with a breath demand; or
 - g) driving while disqualified, contrary CCC Section 320.18.

Release of Driver/Accused

100. In all cases of detention and arrest for Impaired Driving and Drive over Blood Alcohol or Blood Drug Concentrations, the investigating member shall release the accused when and as soon as public interest and court appearance is satisfied.
101. Members shall be familiar with current release documents applicable to the charge and location of release.



Keeping Accused in Custody Until Sober

102. If the member is of the opinion that it is in the public interest to keep a person accused of an impaired driving offence in custody, authority can be found in CCC Sections 497 and 498.
103. Members considering keeping an accused in custody must believe on reasonable grounds and having regard to all the circumstances, that it is necessary in the public interest to detain a person further.
104. Examples of factors to consider are:
 - a) prevent repetition of the offence;
 - b) establish identity of the accused;
 - c) compel the accused to court;
 - d) secure or preserve evidence;
 - e) safety of the accused or safety of others;
 - f) the blood alcohol level of the accused; and
 - g) behaviour of the accused.
105. Members considering holding an accused person in custody shall also consider that without a legal justification for holding an accused in custody, the court may consider staying charges against the accused.
106. Supervisors should assess the level of sobriety to determine the release or detention of impaired drivers. Upon completion of breath tests, evaluations, and identification procedures, subjects should be considered for release. Detention should only continue for as long as the subject presents as a danger to themselves or others or if the public interest standard cannot be met. When a person is sufficiently capable of caring for themselves, the Duty NCO should authorize their release. Consideration may be given to release an intoxicated person into the care of a capable adult.

Accused Refuses to Sign Release Document

107. CCC Section 501(4) states that if an accused refuses to sign a release document, it is still binding on them.



108. An accused shall not be kept in custody on the basis of refusing to sign a release document alone.

Cell Block Video

109. Any suspects taken into the cell block for impaired driving investigations are to be recorded on video. Video may be required for evidence.

*Revised Dates:
19 April 2013
16 November 2016