

DRIVING UNDER THE INFLUENCE INVESTIGATIONS	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03 PAGE 1

1. **DRIVING UNDER THE INFLUENCE (DUI) VIOLATIONS**

DUI/Alcohol, Drugs, or Any Combination <u>ARS 28-1381A1</u>	<ul style="list-style-type: none"> • Suspects must have been driving or in actual physical control of a motor vehicle. • The ability to drive must have been impaired to the slightest degree by the use of intoxicating liquor, drugs, toxic vapors, or any combination thereof.
Blood Alcohol Concentration (BAC) of .08 or More Within Two Hours of Driving <u>ARS 28-1381A2</u>	<ul style="list-style-type: none"> • Suspects must have been driving or in actual physical control of a motor vehicle. • Suspects must have an alcohol concentration of .08 or more within two hours of driving or being in actual physical control of the vehicle.
DUI While Having any Drug or its Metabolite in the Body <u>ARS 28-1381A3</u>	<ul style="list-style-type: none"> • Suspects must have been driving or in actual physical control of a motor vehicle. • Suspects must have had a drug, as defined in <u>ARS 13-3401</u>, or its metabolite in their body. • This section may only be charged if a certified drug recognition expert (DRE) officer has evaluated the suspect and determined that drug impairment is actually present, or in the absence of a DRE evaluation, after the blood/urine has been analyzed. In the latter situation, the City Prosecutor's Office will file this charge. • Without exception, this charge will only be written along with an <u>ARS 28-1381A1</u> violation.
Driving a Commercial Vehicle While Having an Alcohol Concentration of .04 Percent or More <u>ARS 28-1381A4</u>	<p><u>Definition of Commercial Vehicle:</u></p> <ul style="list-style-type: none"> • For the purposes of this charge, a commercial motor vehicle is one that requires a person to obtain a commercial driver's license as defined in <u>ARS 28-3001</u>. • Officers may consult a member of the Phoenix Police Department Commercial Vehicle Squad if they have any questions. <p><u>Charging Criteria:</u></p> <ul style="list-style-type: none"> • Suspects must have been driving or in actual physical control of a commercial motor vehicle. • Suspect must have a blood alcohol concentration of .04 or more at the time of driving or being in actual physical control of a commercial vehicle.
Extreme DUI <u>ARS 28-1382</u>	<ul style="list-style-type: none"> • Suspects must have been driving or in actual physical control of a motor vehicle. • Suspects must have an alcohol concentration of .15 or more within two hours of driving or being in actual physical control of the vehicle.
Aggravated DUI <u>ARS 28-1383</u>	<p>A person is guilty of aggravated driving or actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs if the person does any of the following:</p> <ul style="list-style-type: none"> • Commits a violation of <u>ARS 28-1381</u> or <u>ARS 28-1383</u> while the person's driver's license or privilege to drive is suspended, canceled, revoked, or refused, or in violation of a restriction placed on a driver's license as a result of violating <u>ARS 28-1381</u> or <u>ARS 28-1385</u>. • Commits a violation of <u>ARS 28-1381</u> or <u>ARS 28-1383</u> and has two prior convictions for violations of <u>ARS 28-1381</u> or <u>ARS 28-1383</u> within a period of 60 months prior to this incident – Acts committed in another state, a court of the United States or tribal court also apply. • Commits a violation of <u>ARS 28-1381</u> or <u>ARS 28-1383</u> while a person under 15-years of age is in the vehicle. • Commits a violation of <u>ARS 28-1381</u> or <u>ARS 28-1383</u> and has a previous conviction for a violation of <u>ARS 28-1381</u> or <u>ARS 28-1383</u> and has never applied for a driver's license. • Aggravated DUI committed under paragraphs A (1) or A (2) is a class 4 felony. • Aggravated DUI committed under paragraph A (3) is a class 6 felony.

2. **INVESTIGATION OF DUI VIOLATIONS**

A. Making the Traffic Stop

- (1) Officers will make every effort to prevent intoxicated individuals from driving a vehicle.
- (2) Any driver who appears to be DUI will be stopped immediately if it can be done safely.

B. Standardized Field Sobriety Tests (SFSTs) - Prior to making an arrest for a DUI related offenses, the driver will be offered the opportunity to perform SFSTs as listed in the Alcohol Influence Report, except in those cases where the test/s cannot be administered for the suspect and or officers safety.

C. Horizontal Gaze Nystagmus (HGN)

- (1) Only officers trained in the use of the horizontal gaze nystagmus (HGN) will administer HGN to suspected DUI drivers.
- (2) Only officers who have successfully completed HGN training will make notations on the HGN field sobriety test worksheet of the Alcohol Influence Report.

(3) HGN Log Information:

Maintenance of HGN Logs	<p>All HGN-trained officers will document each administration of HGN in their HGN Log.</p> <ul style="list-style-type: none"> • These logs will be inspected periodically by supervisors and the inspections staff of the Professional Standards Bureau. • HGN certification may be forfeited if the officer fails to maintain the log.
Requests for Copies of Logs	<ul style="list-style-type: none"> • Upon request of a prosecuting agency, or in response to a subpoena, officers will provide any or all of the following documents: <ul style="list-style-type: none"> * An up-to-date copy of their HGN Log * A copy of their AZPOST Certificate of Achievement , if issued one * A copy of their Standardized Field Sobriety Horizontal Gaze Nystagmus Control Sheet • Officers will forward a copy of the requested documents within one week of receiving the request. • If officers are unable to meet this time line, they will immediately notify both the requesting agency and their immediate supervisor and provide an anticipated date when the documents will be forwarded.
Submitting Copies to the City Prosecutor and Maricopa County Attorney's Office	<ul style="list-style-type: none"> • All HGN-certified officers will immediately submit complete copies of their logs and either a copy of their AZPOST Certificate of Achievement or the Standardized Field Sobriety Horizontal Gaze Nystagmus Control Sheet to the Legal Assistance Unit in the City Prosecutor's Office and the Maricopa County Attorney's Office Vehicular Crimes Bureau. • Thereafter, all HGN-certified officers will submit copies of their HGN Logs on a monthly basis showing the prior month's activity, this practice will continue when officers have made a DUI arrest during the prior month. • Copies of logs submitted to the City Prosecutor's Office and the Maricopa County Attorney's Office will not have any information blacked out.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS		Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 03/04	PAGE 3

2. D. Preliminary Breath Test (PBT)

- (1) Preliminary breath testing devices (PBTs) may be used as an investigative tool when an indication exists that a person may be under the influence of intoxicants and is willing to provide a breath sample.
- (2) In impaired driver cases, if possible, the PBT should be used after the driver has been given the opportunity to perform standardized field sobriety tests.
- (3) All PBT devices will be submitted to the Laboratory Services Bureau at least every six months to confirm that the device is functioning properly.
- (4) Authorization for Use of PBT - Ownership of a PBT device is strictly voluntary; they are not required equipment.
 - (a) Only PBT devices authorized by the department's crime lab will be used.
 - (b) PBT device operators must be certified as Department of Health Services breath test operators and be familiar with the operation of the PBT.

3. PROCESSING DUI SUSPECTS

- A. The following chart provides information regarding the steps to follow when processing DUI suspects:

PAPERWORK AND PROCEDURES	MISDEMEANOR DUI	AGGRAVATED DUI	AGGRAVATED ASSAULT/HOMICIDE
Alcohol Influence Report	YES	YES	YES
Admin Per Se/ Implied Consent	YES	YES	NO
Citations	YES (1)	NO	NO
PACE DR	NO (6)	YES (2)	YES
Breath Test	YES	YES (3)	YES
Blood Test	YES (4)	YES (4)	YES
DRE Call Out	YES (5)	YES (5)	YES
<p>1 Supervisor approval is required if BAC is .06 to .07 and impairment is visible. If both breath tests are .08 or more, cite for <u>ARS 28-1381A1</u> and <u>ARS 28-1381A2</u>. If both breath tests are .15 or more, cite for <u>ARS 28-1381A1</u>, <u>ARS 28-1381A2</u>, and <u>ARS 28-1382</u>.</p> <p>2 Obtain PACE DR number for DUI visual</p> <p>3 If not hospitalized</p> <p>4 If hospitalized</p> <p>5 If impairment is inconsistent with breath test results</p> <p>6 No PACE DR or DR number unless there is property to be impounded associated with the arrest</p>			

DRIVING UNDER THE INFLUENCE INVESTIGATIONS		Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03	PAGE 4

3. B. Arrest of DUI Suspects

- (1) Officers will arrest, search, and secure DUI suspects in police units as with any other prisoners.
- (2) DUI suspects will be handcuffed behind their backs to expedite breath testing procedures.
- (3) Officers will transport the suspect to the nearest precinct, DUI van, or the northern or southern command stations for processing.
- (4) The period of time that a suspect spends in police custody should be kept to the minimum necessary to properly process the suspect.

C. Telephone Calls

- (1) Suspects will be specifically asked if they wish to make any telephone calls.
- (2) Telephone numbers, times of calls, and unusual responses will be documented.
- (3) The suspect will be given a reasonable amount of privacy during the call.
 - If the suspect requests complete privacy, officers will ensure that it is provided.

D. Records Check - A records check will be conducted on all DUI suspects.

- (1) The records check will include the following:

Driver's License Check	<ul style="list-style-type: none"> • Driver's license checks will be made through radio, the Records and Identification Bureau, or other bureaus with a Police Automated Computer Entry (PACE) terminal.
Prior DUI History	<ul style="list-style-type: none"> • A check of the prior DUI history (past 60 months) will be made on an MDT, a PACE terminal, or through the Records and Identification Bureau.

- (2) The results of the records check will be included on the Alcohol Influence Report.
- (3) The name or employee number of the person providing the information will also be included.
- (4) When officers are unable to verify driver's license history information and no other bookable charges are reasonable, the subject will be cited and released.

E. Interviews

- (1) Suspects will be advised of their rights per Standard Miranda Rights Card prior to interviewing.
- (2) Officers will ask the suspect the questions from the interview section of the Alcohol Influence Report.
- (3) If the suspect requests an attorney during the course of the interview, the interview will end, and the suspect will be permitted access to the telephone.

3. F. Administrative Per Se and Implied Consent

- (1) In all cases where DUI is being charged, suspects **will be** advised that Arizona State Law requires him/her to submit to a chemical test to determine the alcohol concentration or drug content and that their driver's license **will be** suspended in the following circumstances:
 - If they have an alcohol concentration of .08 or more
 - If they refuse to submit to the test/s requested by the officer
- (2) The Implied Consent/Administrative Per Se Affidavit also applies to drivers in violation of the underage drinking and driving law, ARS 4-244.33.
- (3) The Implied Consent/Administrative Per Se Affidavit will be read in all cases where the suspect refuses to submit to tests to determine alcohol concentration and or drug content.
- (4) The implied consent provision applies whether the DUI occurs on private or public property.
- (5) The Admin Per Se/Implied Consent Affidavit (MVD) Form 40-5807 or Spanish version Form 40-5801, will be completed on all suspected DUI drivers with the exception of serious injury and/or fatal collisions, and will include:

Probable Cause	<ul style="list-style-type: none"> • Officers will specify what actions led them to believe the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs. <ul style="list-style-type: none"> * Improper driving * Physical impairment/actions * Odor of intoxicating liquor • If probable cause is not established, MVD will not schedule a hearing and the suspension will be voided.
Failure to Complete Test	<ul style="list-style-type: none"> • If the arrestee refused or failed to successfully complete any test/s, specify the manner in which the refusal or failure occurred by using a factual statement; i.e., "completed one test, refused another" or "refused-stated they would not take any tests."
Serious Physical Injury	<ul style="list-style-type: none"> • Indicate by checking "yes" or "no" if the arrestee caused serious physical injury. • <u>ARS 13-105</u> defines serious physical injury as "physical injury which creates a reasonable risk of death, or which causes serious and permanent disfigurement, or serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb."

- (6) DUI/Drugs or Blood Alcohol Concentration of Less Than .08 – In cases where the suspect has a blood alcohol concentration of less than .08 on any breath test, or the suspect is cited for DUI/drugs, the suspect's responses to the advisement on Implied Consent and Administrative Per Se warnings will still be recorded on the affidavit for evidentiary purposes.
 - In these cases, the top portion of the affidavit must be completed.
 - The original face sheet of the affidavit will be sent to MVD and the blue copy will be attached to the Alcohol Influence Report.
 - The pink and yellow copies may be discarded.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/04 PAGE 6

3. F. (7) When A Violator's Driver's License is Already Suspended - If the violator's license is already suspended or if the violator's license is not seized (e.g., not in possession, lost, destroyed, etc.), the listed steps will be followed:
- Complete the descriptive sections of the Temporary Driver Permit only.
 - Check the box marked "Permit Not issued Because."
 - Indicate why the permit is not issued (license already suspended, etc.).
 - The violator will still be given the pink and yellow copies.
- G. Breath Testing
- (1) A person to be tested for alcohol concentration will be taken to the nearest station or DUI van, where a breath test will be conducted.
- (a) The breath test should be done within **two hours** of the time the defendant was first seen driving.
- (b) All DUI suspects will be informed that they are under arrest before they are asked to give a breath sample for analysis.
- (c) The precinct/command station or DUI van where the test was conducted and the serial number of the employee who transported the suspect to the station will be noted on the Alcohol Influence Report.
- (2) Persons Authorized to Conduct Breath Tests - Breath tests will be conducted only by officers or laboratory personnel who have been trained by the Laboratory Services Bureau and certified by the Arizona Department of Health Services for the instrument being used.
- (3) Documentation of Breath Test - Data entered into the Intoxilizer 5000 is recorded and saved by the COBRA software system and can be retrieved by contacting the Laboratory Services Bureau.
- (4) Administering the Breath Test
- (a) When a person suspected of DUI asks to contact an attorney prior to taking a breath test, access to a telephone will be permitted.
- Suspects will be given a reasonable amount of privacy during the call.
 - The officer should note in the report the time/s of the suspect's request/s to contact an attorney and whether or not the suspect requested privacy.
 - If a suspect requests privacy, it **will be** provided.
 - If the suspect is unable to reach an attorney after being given a reasonable opportunity to do so, the suspect must decide whether or not to take the test.
- (b) The breath test operator will utilize the approved Department of Health Services (DHS) operational checklist and will initial the appropriate places on this checklist for each test administered.
- (c) Force or restraint will not be used to obtain breath samples.
- (d) The suspect's name, date of birth, violation date, time the breath tests were conducted, officers' initials and serial number will be placed on the suspect's photograph.
- (e) Officers will advise suspects of test results upon completion of the examination.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/04 PAGE 7

DRIVING UNDER THE INFLUENCE INVESTIGATIONS	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03 PAGE 8

3. G. (5) Operation of Breath Test Instruments - Breath tests for alcohol concentration will be conducted on an IR 5000 using the following procedures:
- (a) Conduct a 15-minute deprivation period; the Deprivation Period is defined as a 15-minute period immediately prior to a quantitative duplicate breath test during which time the suspect has not ingested any fluids, vomited, eaten, smoked, or placed any foreign objects in the mouth.
 - (b) Complete and follow, in writing, the Department of Health Services (DHS) standard operational procedure checklist for the specific breath test instrument used.
 - (c) Administer two breath tests **NOT LESS** than five minutes and **NOT MORE** than ten minutes apart.
 - Results of both tests **must be** within .020 alcohol concentration.
 - If the second test is not within .020 alcohol concentration of the first test and not within the specified time limits, perform additional tests until the results of **two consecutive tests** are within .020 alcohol concentration of each other.
 - (d) Advise the suspect of the right to obtain an independent chemical test.
 - (e) **No** additional sample is required to be provided to the suspect when duplicate tests are conducted successfully.
 - (f) Faulty instruments will be immediately reported to the crime laboratory 24 hours a day.
- (6) 15-minute Deprivation Period - The exclusive use of a 15-minute deprivation period followed by duplicate tests is preferred for breath tests performed on the IR 5000.
- (a) In rare cases, officers may use their discretion and conduct a single test after a 20-minute observation period.
 - (b) However, if this option is used, the suspect must be offered a second sample, which must be a blood sample.
- (7) When Refusing Suspects Change Their Mind - If suspects change their mind after an initial test refusal and request a breath test, the breath test will be given under the following conditions:
- (a) There would not be a substantial inconvenience or expense to the department.
 - (b) The suspect is still in custody and the arresting officer is still present.
 - (c) The breath test equipment is readily available and functioning properly (precinct, hospital, etc.)
- H. Request for Blood Sample
- (1) The suspect will be offered the opportunity for a blood sample to be taken in the following situations:
 - (a) When the suspect has only furnished one acceptable breath sample.
 - (b) When the officer has elected to do a single breath test.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS		Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03	PAGE 9

3. H. (2) The Request for Blood Sample Form (80-512D) will be prepared in duplicate and will be signed by the arresting officer and the suspect.
 - If the suspect refuses to sign either section of the form, the arresting officer will write "Refused" above the suspect's signature block in the Request for Blood Sample portion of the form.
 - Officers should document the way the suspect refused the signature.
 - Suspects will be provided the opportunity for a blood sample if they request one, even if no signature was obtained.
 - (3) When suspects waive the right to have a blood sample taken, they will be requested to sign the Waiver of Blood Sample portion of the form.
 - (4) A phlebotomist can be contacted to collect the blood sample via the Communications Bureau's call out list.
 - (5) The original copy of the Request for Blood Sample Form will be stapled to the Alcohol Influence Report, and a copy will be given to the suspect.
- I. Seizure of Driver's License
- (1) BAC of .08 or More/Refusal to Submit or Complete Specified Test/s - If a suspected DUI driver registers a .08 blood alcohol concentration or more on a breath test instrument or refuses to submit to or successfully complete the test offered, the suspect's driver's license will be seized and attached to the original (white) copy of the Implied Consent/Administrative Per Se Affidavit and forwarded to MVD.
 - (a) Valid breath tests must be .08 or more to seize a driver's license except in the case of a .04 or more reading on a commercial motor vehicle charge.
 - (b) Out-of-state licenses or permits **will not** be seized.
 - (c) The Implied Consent/Administrative Per Se Affidavit will be completed and the suspect will be given the appropriate copies.
 - (2) When the Results Are not Known - In cases where a blood sample is taken and the resulting alcohol concentration is not immediately known, the following procedure will be followed:
 - (a) The suspect's driver's license or permit will not be seized.
 - (b) The DUI affidavit will be completed except for the Order of Suspension and Surrender of License sections.
 - (c) All copies of the affidavit will be attached to the Request for Scientific Analysis Form and impounded with the sample.
 - Affidavits should not be listed on the property invoice as an impounded item.
 - (d) If blood is obtained by virtue of ARS 28-1381O and the suspect then refuses to give blood for purposes of implied consent, the affidavit will be processed as a refusal, and the blood will be impounded as evidence for the criminal charges.

3. J. Distribution of the Affidavit

Driver	<ul style="list-style-type: none"> • The pink and yellow copies of the affidavit will be given to the driver. • These copies will serve as the Notice/Order of Suspension and temporary driving permit. • If the driver refuses to sign the affidavit, the word "SERVED" will be written on the arrestee's signature line. • The driver is responsible for reading, understanding, completing, and delivering or mailing if a summary review or hearing is requested.
MVD	<ul style="list-style-type: none"> • The original affidavit and driver's license will be placed in a pre-addressed envelope and sent with the downtown paperwork for mailing to the Motor Vehicle Division (MVD).
Department	<ul style="list-style-type: none"> • The blue copy of the affidavit will be attached to the Alcohol Influence Report.

K. Advisement of Right to Independent Chemical Tests - Officers will advise suspects under arrest for DUI that they have the right to arrange and pay for an independent chemical test.

- (1) The advisement will be documented in the appropriate section of the AIR.
- (2) This right applies whether or not the suspect has refused to take the breath test.
- (3) Telephone Calls Reference Independent Chemical Tests - The suspect will be given the opportunity to make a reasonable number of telephone calls to arrange for such tests as soon as practical.
 - (a) Officers should record the telephone number dialed and who, if anyone, was contacted.
 - (b) This information should be included in the report.
 - (c) If suspects are booked, the call will be made prior to transporting them to jail.
- (4) Assistance in Obtaining an Independent Chemical Test
 - (a) Every attempt should be made to cite and release misdemeanor DUI suspects who have requested an independent chemical test.
 - (b) At the discretion of the Madison Street Jail staff, medical personnel may be permitted access to the jail for the purpose of an independent chemical test.

L. Disposition of DUI Vehicle Keys

- (1) When a person is arrested for DUI, the vehicle may be towed if requested by the driver.
 - In this situation, the keys will be left with the vehicle/towing company.
- (2) If the vehicle is not towed, it will be legally parked and secured at or near the scene.

3. L. (3) Required Paperwork - Will be completed by the arresting officer:

Release of Vehicle Information Form (80-150D)	<ul style="list-style-type: none"> • Will be given to the suspect prior to release.
Property Invoice	<ul style="list-style-type: none"> • The property invoice will include: <ul style="list-style-type: none"> * Name of vehicle's registered owner * Name of DUI suspect * Vehicle description * Date and time of arrest * Location of vehicle * Arresting officer's name * Arresting officer's signature • The property invoice and vehicle keys will be placed in an impound envelope and filed at the precinct station.

(4) Advising the Suspect of Disposition of the Keys

- (a) If DUI suspects are to be cited and released, they will be informed that their vehicle keys will remain in storage at the precinct station from which they were released.
- (b) Officers will advise DUI suspects that the keys will not be available for release for a minimum of 10 hours from the time of arrest.

(5) Release of Keys

- (a) Vehicle keys will not be released within 10 hours of the DUI arrest.
- (b) Vehicle keys may be released to the following individuals:
 - DUI suspect
 - Registered owner of the vehicle
 - Person presenting the signed authorization form (80-150D)
- (c) Keys may be released by personnel designated by the precinct commander (police aides, etc.).
- (d) Keys will not be released to any intoxicated person.
 - If a question exists, an officer will be summoned to evaluate the situation.
 - If there is a doubt as to the person's condition, the keys will not be released.
- (e) Those persons taking possession of the vehicle keys will be required to sign the reverse side of the property invoice.
 - If an authorization form (80-150D) has been presented, it will be retained and attached to the property invoice.
 - The invoice and the form will be forwarded to the Property Management Bureau (PMB).

DRIVING UNDER THE INFLUENCE INVESTIGATIONS	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03 PAGE 12

3. L. (6) Keys Held Longer Than 72 Hours - The precinct DUI key file will be checked on a regular basis.
- (a) Keys that have not been released within 72 hours of the DUI arrest will be impounded.
 - (b) The arresting officer's original property invoice will be used for this purpose.
- (7) DUI Suspects Booked into Jail - If the DUI suspect is booked into jail, vehicle keys will be included with the personal property, and no further action is required.
- (8) Exceptions - Exceptions to this policy may be authorized by a supervisor, providing the following conditions are met:
- (a) The person demanding the keys has a legal right to the vehicle, e.g., a registered owner or spouse of the suspect driver.
 - (b) The person has not been drinking, i.e.; there is no evidence of recent alcohol consumption or other impairment.
 - (c) The person accepts responsibility for ensuring that the suspect driver does not drive the vehicle within the 10-hour period.
 - (d) Officers will indicate in the Details of Arrest section of the Alcohol Influence Report the name and address of the person taking possession of the keys.

M. Disposition of DUI Arrests

- (1) General Enforcement Guidelines - DUI suspects will be cited for violations and released on their written promise to appear unless one or more of the following exists:
- (a) The suspect is uncooperative, e.g., refuses to be photographed or fingerprinted.
 - Suspects will not be presumed uncooperative if they refuse to take the breath test.
 - (b) The suspect is not a local resident and has no local business interests.
 - (c) The suspect has an extensive record of "failure to appear".
 - (d) The suspect is driving on a suspended or revoked license, which is an element of ARS 28-1383, and does not include civil traffic complaint suspensions.
 - (e) Suspects are unable to get a responsible person to take them home.
 - (f) The arresting officer believes that the suspect will drive again if released.
 - The officer will document all relevant information supporting that belief in all appropriate reports; e.g., statements made by the suspect, lack of a responsible party to release the suspect to, etc.
- (2) Completion of ATTCS When the Suspect is Booked - When a DUI suspect is booked, both civil and criminal violations will be listed on the same ATTC.
- The suspect **will not** be allowed to sign the ATTC.
 - Officers will write **Served/Booked** in the signature block of the ATTC, and the booking number will be written in the booking number block.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03 PAGE 13

3. M. (3) Aggravated DUI - Suspects charged with aggravated DUI will not be issued ATTCs.

(4) Enforcement Criteria

BAC of .05 or Less	<ul style="list-style-type: none"> A driver whose blood alcohol concentration is .05 OR LESS will not be charged with the offense of DUI unless drugs are suspected or a commercial vehicle is involved. When the driver is charged with a DUI offense, an ATTC will be issued for violation of <u>ARS 28-1381A1</u>. The ATTC will be worded <u>DUI</u>.
BAC of More than .05 but Less than .08	<ul style="list-style-type: none"> A driver may be charged with DUI if the blood alcohol concentration is MORE than .05 but LESS than .08 and the visual examination indicates strongly that a person is intoxicated. Charging a person with a BAC of .06 to .07 requires the permission of a supervisor. If the officer chooses to charge the driver with DUI, the charge will be <u>ARS 28-1381A1</u>.
BAC of .08 or More	<p>When a driver's blood alcohol concentration is .08 or more on all tests, the driver will be charged with all of the following:</p> <ul style="list-style-type: none"> <u>ARS 28-1381A1</u>, DUI <u>ARS 28-1381A2</u>, Driving (or in Actual Physical Control of) a Motor Vehicle with a Blood Alcohol Concentration of .08 or more
BAC of .15 or More	<p>When a driver's blood alcohol concentration is .15 or more on all tests, the driver will be charged with all of the following:</p> <ul style="list-style-type: none"> <u>ARS 28-1382</u>, Driving (or in Actual Physical Control of) a Motor Vehicle While Under Extreme Influence of Intoxicating Liquor <u>ARS 28-1381A1</u>, DUI <u>ARS 28-1381A2</u>, Driving (or in Actual Physical Control of) a Motor Vehicle with a Blood Alcohol Concentration of .08 or more
BAC of .35 or More	<ul style="list-style-type: none"> When the blood alcohol concentration is .35 or more, a Medical Examination Report (Form 80-22D) will be completed and a doctor's examination conducted before the suspect is booked. When suspects are released, medical attention becomes their responsibility or the responsibility of the person accepting custody. When the blood alcohol concentration is .35 or more, the accepting party will be advised to seek medical attention for the suspect. Applicable reports will indicate that the person accepting custody of the suspect was advised of the suspect's physical condition
Refusal to Submit to Breath Test	<ul style="list-style-type: none"> Cite the suspect for violation of <u>ARS 28-1381A1</u>, DUI.
When a Blood Sample is Obtained for Later Analysis	<ul style="list-style-type: none"> Officers are directed to submit blood evidence for analysis per Operations Order 6.4.3.1.(2). An original PACE DR will be completed for the investigation using a radio code of 390D. All original paperwork, including the Alcohol Influence Report and Accident Report will be sent to Traffic Records. Upon blood analysis the Vehicular Crimes Unit will submit for the appropriate charges. Officers should only cite civil violations.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03 PAGE 14

3. N. Alcohol Influence Report

- (1) Alcohol Influence Reports (Form 80-146D) will be completed in ALL cases where a suspect is arrested or suspected of DUI alcohol or drugs.
 - The report will be printed in medium black ballpoint pen and will be completely filled out, with N/A written in spaces that do not apply.
- (2) Departmental Report (DR) Numbers - If the suspect is being charged for an aggravated DUI, a DR number will be obtained for the Alcohol Influence Report and the Alcohol Influence Report then becomes a DR.
- (3) No DR number is needed on misdemeanor DUI reports.
- (4) Completion of the Alcohol Influence Report (AIR)

Page 1	<p><u>General Description</u> - This page includes the suspect's personal history and interview questions.</p> <p><u>Use of Force Codes</u> - If force was used to take the suspect into custody, the officer will indicate which level of force was used in the Use of Force section on page 1.</p>
Page 2	<p><u>General Description</u> - This page includes documentation to be attached to the AIR:</p> <ul style="list-style-type: none"> • A photograph of the suspect • Breath test results • Records check results • Officer's observations of subject's physical condition • Information concerning phone calls • Witness section <p><u>Breath Test Results</u></p> <ul style="list-style-type: none"> • The officer conducting the breath test will follow the checklist for operating the intoxilyzer on page 2. • The breath test record card will be attached to the upper right hand section of page two. <p><u>Officer's Observations of Suspect</u></p> <ul style="list-style-type: none"> • Although descriptions are supplied on the report pertaining to breath, color of face, attitude, etc., it is recommended that officers add words to more fully describe the suspect's condition. <p><u>Witnesses</u></p> <ul style="list-style-type: none"> • Names of witnesses will be listed on the Alcohol Influence Report in the spaces indicated. • Officers will obtain statements from witnesses in their own handwriting whenever practical. • Witness statements will be attached to the Alcohol Influence Report unless an accident is involved. In the case of an accident, a copy of the witness statements will be attached to the AIR and the original statements will be attached to the accident report.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03 PAGE 15

3. N. (4) Completion of the Alcohol Influence Report (AIR): (Continued)

Page 2 (Continued)	<p><u>Photographs</u></p> <ul style="list-style-type: none"> • A photograph will be taken of the suspect and will be attached to the upper left-hand section of page two of the AIR. • Physical restraints will not be used to obtain photographs, but suspects who refuse or fail to cooperate in having their pictures taken <u>will be booked</u>.
Pages 3 & 4	<p><u>General Description</u> - Cover "Details of Arrest" and include:</p> <ul style="list-style-type: none"> • Standardized Field Sobriety Tests Worksheet • Charge section • Narrative <p><u>Additional Charges</u></p> <ul style="list-style-type: none"> • If there are more charges than the space provided on the report, the narrative space will be used for additional charges. <p><u>Narrative</u></p> <ul style="list-style-type: none"> • A complete narrative of the circumstances surrounding the arrest will be written in the Details Section. • The time the defendant actually stopped driving (unless an actual physical control case) should be plainly noted in the Narrative Section in all cases. <p><u>Fingerprints</u></p> <ul style="list-style-type: none"> • If the suspect is cooperative, the right index fingerprint will be placed on the Alcohol Influence Report, whether the suspect is booked or released. • All felony and misdemeanor DUI suspects must be fingerprinted on the FBI Criminal Fingerprint Card (FD-249) whether they are booked or released. • Fingerprints may be obtained by either of two methods: <ul style="list-style-type: none"> * Inked prints * Live Scan terminals • Fingerprints are essential for identification and should be checked for clarity. • Fingerprint cards will be forwarded to the AFIS Detail of the Records and Identification Bureau via interoffice mail. • If a suspect refuses to submit to being fingerprinted, the suspect will be booked.

4. **COLLISIONS INVOLVING DUI**

- A. In cases involving collisions, based on probable cause, officers will handle drivers suspected of DUI under ARS 13-3883A3 as if the officers had actually witnessed the violation.
- B. Collisions involving impaired drivers may result in criminal prosecutions, i.e., aggravated assault or endangerment.
- Elements to support these charges must be backed by a thorough on-scene investigation.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03 PAGE 16

4. C. Collisions Involving Serious Physical Injury or Death

- (1) In serious injury and/or fatal collision situations when a driver show signs of impairment, the investigating officer must realize the situation is no longer “just a collision” and is now a criminal investigation.
 - Officers will not inform suspects that they are under arrest for DUI.
 - Officers will collect evidence of impairment.
 - Officers will collect any evidence of drugs; to include prescription medication and any illegal drugs and/or drug paraphernalia in the vehicle or in the suspect’s possession.
 - Implied consent warnings will not be given if the collision involves serious physical injury or death.
- (2) DRE certified officers will process all impaired drivers involved in a serious injury and/or fatal collisions.
 - A call-out list will be maintained in the Communications Bureau.
- (3) In those instances where there is doubt as to the elements of the offense, or the investigation requires a greater level of expertise than is readily available, the Vehicular Crimes Unit (VCU) should be contacted for assistance.

D. Gathering Evidence at Collision Scenes Involving DUI

- (1) The following evidence must be obtained at collision scenes involving impaired drivers and will be documented in the Alcohol Influence Reports:
 - A complete description of the scene
 - A listing of the victim’s injuries (if serious or life threatening)
 - 35 mm photographs (if serious or life threatening injuries exist)
 - Witness statements
 - Suspect’s injuries
 - Names of medical personnel tending to impaired drivers, if necessary
 - Any evidence that supports the fact that the suspect was driving or in actual physical control of the vehicle at the time of the collision
- (2) Officers will document any evidence that supports the fact that the suspect was driving or in actual physical control of the vehicle at the time of the collision, to include:
 - Identification of witnesses who can place the suspect as the driver
 - Whether the suspect suffered injuries consistent with being in the driver’s seat
 - If all possible drivers on the scene were intoxicated
 - Who had the keys to the suspect vehicle when the officer arrived
 - Who exercised control of the vehicle in deciding disposition; i.e., vehicle parked and locked, towed
 - Any additional information that points to the suspect as the driver
 - Evidence of beer or any other liquor, open or unopened, in the vehicle

DRIVING UNDER THE INFLUENCE INVESTIGATIONS		Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 10/03	PAGE 17

5. **SPECIAL DUI PROCESSING PROCEDURES**

A. Aggravated DUI - All suspects arrested for aggravated DUI will be booked into jail.

- (1) If after being advised of their rights, suspects waive those rights, officers must interview the suspects as to the status of their driver's license.
- (2) The officer must establish certain facts that will be included in the Alcohol Influence Report/DR.
 - The suspect had knowledge of the revocation/suspension.
 - How the suspect became aware of the revocation/suspension.
- (3) A DR number will be obtained for the Alcohol Influence Report and the Felony DUI block will be marked. The report will contain the following information:
 - Suspect's driver's license number listed in the appropriate block, even if it is suspended, revoked, expired, etc.
 - Details that led to the apprehension as well as substantiation for all alleged traffic violations committed by the suspect.
- (4) When processing a suspect for Aggravated DUI with a passenger under the age of fifteen, the arresting officer will ensure a photograph is taken of each child involved and document the following information in the report:
 - Statements indicating the status of the photographs (digital image impounded as evidence, etc.).
 - Complete name, date of birth, current address and telephone number of a parent, guardian, or responsible person who assumed care of the child, (usually the person other than the suspect who can identify the child by name and age).
 - Any statements indicating the suspect's knowledge as to the age of the children involved.
 - Any information regarding the relationship of the child to the suspect.
- (5) ATTCs **will not** be issued for any aggravated DUI.
 - When a DUI-related ATTC is written prior to learning of the aggravated driving violation, the ATTC will be voided in accordance with established procedures.

B. Telephonic/Facsimile Search Warrants for Impaired Drivers

- (1) Responsibility for Completion of Search Warrant - Only officers trained to complete the telephonic/facsimile search warrants will do so.
- (2) Procedures
 - (a) When it is determined that a DUI suspect is refusing to provide blood, breath, or urine evidence, the arresting officer will:
 - Notify his/her supervisor prior to obtaining the warrant
 - Contact an on-duty warrant qualified officer.
 - If a qualified officer is not immediately available, contact the Communications Supervisor and request a DRE.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS		Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 10/03	PAGE 18

5. B. (2) (b) The arresting officer must be able to articulate the following:
- Who witnessed the suspect driving or in actual physical control of the vehicle.
 - All probable cause such as improper driving actions, odor of intoxicating liquor on the suspect's breath, standardized field sobriety test impairment; horizontal gaze nystagmus, etc.
 - Admin Per Se was read and how the suspect refused.
- (c) The arresting officer will ensure that the suspect has been read the Admin Per Se/Implied Consent Form and understands the consequences of refusing the test/s.
- The arresting officer will complete and submit the Implied Consent/Administrative Per Se Affidavit as a refusal.
 - The arresting officer will inform the suspect that a request for a telephonic/facsimile search warrant for blood will be made based on the refusal.
 - If the suspect changes their decision, prior to the search warrant being issued, a breath test will be offered in accordance with routine procedures, the Implied Consent/Administrative Per Se Affidavit will be modified to reflect the change.
- (d) If a suspect requests to speak to an attorney prior to the service of the search warrant, reasonable attempts to accommodate the request will be made.
- A suspect is not guaranteed the right to have counsel present during the actual service of the search warrant, however, it may be allowed if it does not hinder the investigation.
- (e) The arresting officer will be available to assist the responding search warrant-qualified officer during the continuation of the investigation.
- (3) Search Warrant-Qualified Officer Responsibilities
- (a) The search warrant-qualified officer will contact the suspect and confirm that the suspect understands that he/she is under arrest for DUI and that the suspect is refusing to submit to or successfully complete the specified test/s.
- Once facts are established, the qualified officer will advise the suspect that the officer is going to request a telephonic/facsimile search warrant for a biological sample.
 - If the suspect continues to refuse or if there is still no discussion between the qualified officer and the suspect, the process to obtain a search warrant will begin.
 - If a judge grants the search warrant, the qualified officer will be responsible for overseeing the taking of a blood sample from the suspect, even if the suspect continues to refuse.
 - If the suspect opens dialogue, the officer will explain the department's policy and answer questions asked by the suspect, the **entire** conversation will be documented.
 - If the suspect decides to submit to the specified test/s, a Consent Search Form will be completed and signed by the Suspect and two witnesses.
- * A breath, blood, or urine sample will be obtained.
 - * The Implied Consent/Administrative Per Se Affidavit will be modified to reflect consent.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 10/03 PAGE 19

5. B. (3) (b) The search warrant-qualified officer will complete the Affidavit in Support of Telephonic/Facsimile Search Warrant and the Arizona Duplicate Original Search Warrant with the information obtained from the arresting officer.
- (c) Telephone Search Warrant - Once the forms are completed for a Telephonic Search Warrant the search warrant-qualified officer will contact a judge:
- The **entire** conversation will be tape-recorded.
 - A witness/other officer must be present during the conversation with the judge.
 - The search warrant-qualified officer will be responsible for ensuring that a transcript of a tape of the conversation with the issuing judge is made.
 - The tape recording and the transcript will be impounded as evidence.
 - The search warrant-qualified officer will read the information on the two forms to the judge.
 - With permission from the judge, the search warrant-qualified officer will sign the Arizona Duplicate Original Search Warrant as the affiant and also sign the judge's name.
 - The officer will also indicate the date and time of the signing.
 - The witness/other officer must also sign the warrant.
- (d) Facsimile Search Warrant - Once the forms are completed for a Facsimile Search Warrant the search warrant-qualified officer will contact a judge:
- A witness/other officer must be present during the conversation with the judge.
 - The affiant and witness must sign the Arizona Duplicate Original Search Warrant and the Affidavit in Support of a Telephonic/Facsimile Search Warrant.
 - The search warrant-qualified officer must include a return facsimile telephone number and should include a contact telephone number in case the judge has any additional questions.
- (e) The warrant-qualified officer will contact the list phlebotomist to respond to the location where the suspect is being detained to obtain a blood sample.
- (f) The qualified officer will serve the suspect with a copy of the Arizona Duplicate Original Search Warrant, noting the date and time of service on the warrant.
- (4) Obtaining a Blood Sample From an Uncooperative Suspect - In compelling a suspect to give a blood sample, officers will take all steps necessary to ensure that only reasonable force is used to obtain it.
- (a) The shift commander of the precinct in which the warrant was served will be notified prior to the use of any force to obtain a blood sample.
- The circumstances surrounding the arrest and processing of the suspect will be explained to the shift commander who will make the final determination on whether or not the search warrant will be executed.
- (5) Procedures for Obtaining a Blood Sample
- (a) When a blood sample is obtained, the warrant-qualified officer will be responsible for observing the draw and impounding the blood.
- (b) Upon completion of the blood draw, the qualified officer will write "two tubes of blood taken from (suspect's name)" on both copies of the warrant as property taken.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03 PAGE 20

5. B. (6) Return of the Search Warrant

- (a) The search warrant-qualified officer will return the following completed documents to the issuing judge **within** five days after serving the search warrant:
- Affidavit in Support of a Telephonic/Facsimile Search Warrant
 - Standard Arizona Duplicate Original Search Warrant, if applicable
 - Standard Arizona Search Warrant
 - Standard Arizona Inventory, Affidavit, and Return of Search Warrant
- (b) The qualified officer will ensure that one complete copy of all the search warrant documents is distributed as follows:
- A complete copy will be impounded under the appropriate DR listing the search warrant number and issuing court in the narrative.
 - A complete copy to Traffic Records.
 - A complete copy to the Records and Identification Bureau.
- (c) If officers were unable to execute the search warrant, the reason/s must be documented on the search warrant prior to its return to the issuing judge.

C. Drugs, Toxic Vapors, or Substance Combination Suspected - Procedures for handling DUI/drugs, toxic vapors, or DUI/combination drugs/alcohol/toxic vapors will be the same as for DUI involving alcohol.

(1) Breath Tests

- (a) In those instances where drugs, toxic vapors, or substance combinations are suspected, a breath test will be administered to establish the absence or presence of alcohol concentration.
- (b) Breath test readings above .15 will not be processed for DUI/drugs unless it is an aggravated case.

(2) Drug Recognition Expert (DRE) - A DRE will be requested to assist the arresting officer with processing the suspect whenever drugs, toxic vapors, or any combination is suspected and/or the breath test reading is not consistent with the impairment observed.

- (a) Only certified DRE officers will perform drug evaluations on suspected drug-impaired drivers.
- (b) If a DRE is not available by radio, officers will contact a communications supervisor to request a DRE.
- (c) DRE officers must maintain certification from the International Association of Chiefs of Police (IACP).
- (d) All DRE officers will document each evaluation performed (including rule-outs) in the officer's DRE Log.
- These logs will be inspected periodically by supervisors and the inspection staff of the Professional Standards Bureau.
 - DRE certification may be forfeited if the officer is found to have failed to maintain the log.

DRIVING WHILE UNDER THE INFLUENCE	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03 PAGE 21

5. C. (2) (e) If toxic vapor substances (as defined in ARS 13-3401) are involved, a blood sample must be obtained to confirm the substance.

D. Injured DUI Suspects

(1) If injured DUI suspects are treated and released from a hospital within a reasonable length of time, they will be processed the same as other DUI suspects.

(2) Hospital Follow-Up

(a) If officers suspect a driver is DUI and the driver is being transported to a hospital, officers should make their hospital follow-up as soon as possible.

(b) If follow-up will be delayed, a second unit should be requested to proceed to the hospital to stand by the suspect.

(3) Blood Samples

(a) Per ARS 28-1381O, if a law enforcement officer has probable cause to believe that a person has violated ARS 28-1381 and a sample of blood, urine, or other bodily substance is taken from the person for any reason, even if the suspect does not consent, a portion of the sample will be provided to the officer if requested.

(b) Unconscious Suspects - If the suspect is unconscious or otherwise in a condition rendering the suspect incapable of refusal, it is deemed by ARS 28-1321 that the suspect has not withdrawn consent.

- In this case, if the hospital has taken a sample of the suspect's blood for medical purposes, a portion of that sample may be used by the officer for analysis.
- Officers must document "blood drawn for medical purposes."

(c) Conscious Suspects - If the suspect is conscious and capable of refusing, officers will place the suspect under arrest and ask for consent to obtain blood.

- If consent is given, officers may use a portion of the hospital-drawn blood as implied consent blood.
- If consent is not given, officers may still use a portion of the hospital-drawn blood and the suspect will be processed as a refusal.
- If the officer obtains hospital-drawn blood, the officer will impound the blood as evidence for the criminal charges.

(d) Procedures for Blood Draw

- If blood is drawn, officers will request that the staff use a Phoenix Police Department Blood Alcohol Kit or a preservative vial (gray colored top). If this request is refused, officers will accept the blood sample offered.
- Officers will observe the sample being taken and take custody of the blood sample drawn by hospital personnel.

DRIVING WHILE UNDER THE INFLUENCE		Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03	PAGE 22

5. D. (3) (e) Procedures for Processing Blood Evidence - Officers will mark the sample as evidence and take it directly to the main station.

Blood Samples	<ul style="list-style-type: none"> • Collected blood samples will be refrigerated as soon as possible. • During business hours, blood samples will be sealed in a property envelope and handed directly to the property custodian in the property annex. • During non-business hours, the blood samples will be sealed in a property envelope and impounded in the DRE refrigerator. • One copy of a Request for Scientific analysis and a Property Impound Notice will be left with the blood sample, along with the completed Implied Consent/Administrative Per Se Affidavit (except in refusal cases.)
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- (f) Required Documentation - Officers will document the following information on the Alcohol Influence Report and/or any related reports:

- Name and address of the person drawing the blood
- Name of the hospital staff member who requested the blood
- Type of non-alcohol preparation used (i.e., betadine)
- Date and time the blood was drawn

- (g) Hindering Prosecution - Hospital Staff

- Officers will not arrest or issue an ATTC to hospital staff who refuse to comply.
- A hindering prosecution DR will be made requesting prosecution.
- A copy of the DR, together with a copy of the Alcohol Influence Report (AIR), will be forwarded to the Vehicular Crimes Unit (VCU).

- (h) When an injured DUI suspect at a hospital requests an additional sample, officers will request an additional sample to be provided to the suspect if blood is drawn by hospital personnel.

- (4) Issuing ATTCs to Injured Drivers

- (a) If officers believe that a suspect is DUI based upon probable cause, the suspect will be cited.

- (b) An ATTC may be issued to an injured suspect if a responsible person (spouse, parent, etc.) acknowledges receipt, even though no signature is obtained.

- A signature is not required as long as the ATTC is acknowledged; in such cases an ATTC has the same effect as a summons.
- If an ATTC cannot be acknowledged by the suspect or a responsible person, an ATTC will not be issued.
- Instead a memorandum will be forwarded to VCU providing pertinent information on how, where, and when an ATTC may be issued.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS	Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03 PAGE 23

5. E. Juvenile DUI Suspects

- (1) Appropriate ATTCs will be issued, and the juveniles will be released to a parent or guardian, whenever possible.
- (2) Officers will complete an Alcohol Influence Report and include the name and telephone number of the juvenile's parents or guardian in the narrative.
 - Officers will write "Copy to Juvenile Court" across the top of the AIR.
- (3) Officers will advise parents that the juvenile should be examined by a doctor.
- (4) If juveniles must be detained, a medical release will be obtained.

F. Underage Drinking and Driving, ARS 4-244.33

- (1) This offense **will be** cited any time a driver less than 21 years of age is determined by breath test to have **any** measurable alcohol concentration.
- (2) A defendant must be under arrest for DUI or underage drinking and driving before a breath test can be required; however, an ARS 4-244.33 charge can be made even if a DUI charge is not filed.
- (3) Enforcement Guidelines:

Violators Under 18	<ul style="list-style-type: none"> • Juveniles under the age of 18, who are charged with Underage Drinking and Driving ARS 4-244.33 will be cited into Juvenile Court Center for both criminal and civil citations.
Violators 18 to 21	<ul style="list-style-type: none"> • All misdemeanor DUI violators and underage drinking and driving violators between the ages of 18 and 21 will be cited into the Phoenix Municipal Court.

- (4) Charging for Underage Drinking and Driving Only - If an ARS 4-244.33 charge is made **without** an associated DUI being filed, a DR will be necessary.
 - (a) The DR number will be included on the ATTC and DUI Visual.
 - (b) The DR must include the facts establishing probable cause for a DUI or underage drinking and driving arrest.
 - (c) The DR must also include the checklist and other paperwork associated with the breath test.
 - (d) An AIR may be used as the DR in these situations as long as it is clearly marked to show it is an ARS 4-244.33 and not a DUI.
 - (e) These cases should be treated as a major traffic complaint, such as reckless driving.
 - (f) The arresting officer will issue the ATTC, and forward a copy of the DR (in AIR format) to the City Prosecutor's Office if the suspect is between 18 and 20 years of age.
 - If the suspect is under the age of 18 a copy of the DR (in AIR format) will be forwarded the Juvenile Court Center.

DRIVING UNDER THE INFLUENCE INVESTIGATIONS		Operations Order 6.4
PHOENIX POLICE DEPARTMENT	Rev. 02/03	PAGE 24

5. F. (5) Charging for DUI and Underage Drinking and Driving - A separate DR **will not** be made for underage drinking and driving when charging both ARS 28-1381, DUI and ARS 4-244.33, Underage Drinking and Driving.
- (a) The fact that the ARS 4-244.33 charge is being made, and the basis for it, will be included in the narrative portion of the AIR.
- (b) The ARS 4-244.33 charge will be cited along with the applicable DUI charge/s and submitted to the appropriate court depending on the suspect's age.
- (6) Aggravated DUI - If a person less than 21 years of age is booked on an aggravated (felony) DUI, an ATTC for ARS 4-244.33 **will not** be issued.
- G. Aid and Abet
- (1) A DR will be prepared on all aid and abet DUI arrests.
- (2) When an ATTC for aid and abet is issued, the DR number will be written on the ATTC.
- (3) The wording on an Aid and Abet ATTC will be DUI (Aid and Abet)
- (4) A copy of the aided person's Alcohol Influence Report along with the Aid and Abet DR will be forwarded to the Vehicular Crimes Unit.
- (5) The DR number for the Aid and Abet DUI DR will be written on the Alcohol Influence Report as a cross-reference.
- (6) Examples of DUI aid and abet arrests are:
- Citing the vehicle owner when the owner is a passenger and the driver is obviously intoxicated and it is apparent that the owner knew that the driver was intoxicated.
 - Citing the responsible party who takes custody of a cited DUI suspect and allows the suspect to drive.