

**BOARD OF PUBLIC WORKS AND SAFETY**  
**Agenda Request Form**

(Form B-01-2012)

*Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard.*

*Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.*

Date Submitted:	June 18, 2015	Requested Meeting Date:	July 06, 2015
		Confirmed Meeting Date:	
Received by:			
<b>Contact Information: Please provide all requested information in the fields below. (Print or Type)</b>			
On Behalf of Organization or Individual:		Franklin Police Department	
Name:	Tim O'Sullivan	Telephone:	317-736-3670
Title or Position:	Chief of Police		
E-Mail:	<a href="mailto:tosullivan@franklin.in.gov">tosullivan@franklin.in.gov</a>		
Address:	2801 N Morton Street		
City:	Franklin	State:	IN
ZIP:	46131		
<b>Who will attend the meeting and present the request?</b>			
Name:	Tim O'Sullivan	Telephone:	317-736-3670
Title or Position:	Chief of Police		
E-Mail:	<a href="mailto:tosullivan@franklin.in.gov">tosullivan@franklin.in.gov</a>		
<b>Please describe the purpose or title of your presentation.</b>			
Updated SOP 1.7.			
<b>Supporting documents: All supporting documents should be submitted with the request form.</b>			
1. Above listed SOP.			
2.			
3.			
4.			

## FRANKLIN POLICE DEPARTMENT STANDARD OPERATING PROCEDURE NO. 1.7

Subject: <b>IMPAIRED/DRUGGED DRIVER INVESTIGATIONS</b>		References:
Special Instructions:		No. of pages: -5-
Distribution: All Units	Effective Date: July 07, 2015	Reevaluation Date:

### 1.7.1 PURPOSE

To establish a good protocol for the handling of all impaired/drugged driver investigations.

### 1.7.2 POLICY

It is the policy of the Franklin Police Department that whenever possible, based on probable cause, an arrest be initiated whenever members of this department investigate an impaired/drugged driver. A minimum of two officers should be present during the investigation.

### 1.7.3 PROCEDURE

When an officer conducts a traffic stop and suspects, or comes to suspect, that the driver may be impaired/drugged that officer shall notify dispatch and have a second unit respond. Upon the arrival of the second unit the driver may be asked to exit the vehicle so that field sobriety can be performed.

Should the suspect vehicle already be stopped when the officer arrives it is the officer's responsibility to establish who was driving and when. For example: An officer discovers a vehicle that has driven off the roadway with a subject outside the vehicle. The officer needs to ask that person if they were driving and how long it has been since they ran off the roadway. This is necessary to show that the driver was impaired while driving. In the event of an O.V.W.I. coupled with an accident, officers should observe for injury patterns consistent with being the operator of the vehicle.

Field sobriety tests shall be performed by only those officers certified in the Standard Field Sobriety Tests, hereupon S.F.S.T.'s. The S.F.S.T.'s shall be performed on all suspected drivers unless circumstances exist which would invalidate the tests such as a medical condition or inclement weather. The officer performing the tests shall complete a log (see attached) which records the results. This log must be completed even if it is determined that the subject is not impaired. The officer will be required to make a copy of the log and turn it into the training officer, designated by the administration, for safekeeping. A second copy shall be included with the arrest packet for the prosecutor. The original shall be kept by the officer and be available for court purposes. A vehicle equipped with an onboard camera system should be utilized to record the tests whenever possible.

If, upon completion of the S.F.S.T.'s, the officer has probable cause to believe that the driver is impaired/drugged he/she shall read the driver the Indiana Implied Consent. The consent shall be read directly from a card provided by the Johnson County Prosecutor's Office, the Franklin Police Department or the Indiana Law Enforcement Academy.

Should the driver agree to a chemical test, and the officer chooses breath, the driver shall be transported to the Johnson County Law Enforcement Center. Upon arrival, the driver's mouth will be checked for any foreign objects and the time noted on the Intox EC/IR II Breath Test Instrument. After waiting a minimum of twenty (20) minutes the test may be performed by a certified breath test operator.

If the driver refuses the chemical test, a search warrant for a blood draw can be obtained. If the charge is a Misdemeanor the warrant is optional. The officer may charge the suspect with a refusal or seek a warrant. If the charge will be a Felony, a search warrant shall be obtained. The procedure for the blood draw is listed below:

1. Completed the O.V.W.I. probable cause affidavit and search warrant.
2. Contact the prosecutor on call. After verifying your probable cause they will conference you with the on call judge.
3. Read the probable cause affidavit to the judge. If the judge finds probable cause he/she will tell you to affix their name to the warrant.
4. Respond to the Johnson Memorial Hospital lab for a blood draw. Request the blood be drawn using one of the prescribed kits. Make sure the chain of custody form in the kit is used. Everyone that handles the sample must be on the chain of custody form. The original form shall be enclosed in the toxicology kit after making a copy for JMH and the officer's file. All other forms will be provided by JMH and officers are encouraged to make copies for their files. Once the warrant is issued the suspect has no right to refuse the blood draw. **Officers are required to complete a search warrant return to the issuing court.**
5. If blood is collected, the collecting officer will leave a message for the Evidence Technician either by department email or department office phone voicemail. Place the sample in the refrigerator located in the supervisor's closet. A property voucher is required.

### FRANKLIN POLICE DEPARTMENT DWI OBSERVATION NOTES

Case Number: \_\_\_\_\_ Officer: \_\_\_\_\_ Unit#: \_\_\_\_\_  
Date and Time of stop: \_\_\_\_\_ Accident: NONE/ PD/ PI/ F  
Initial reason for stop: \_\_\_\_\_  
Location of stop: \_\_\_\_\_

Last Name: \_\_\_\_\_ First Name: \_\_\_\_\_ Middle \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
OLN: \_\_\_\_\_ DOB: \_\_\_\_/\_\_\_\_/\_\_\_\_ Sex: \_\_\_\_\_  
SSN: \_\_\_\_/\_\_\_\_/\_\_\_\_ HGT: \_\_\_\_\_ WGT: \_\_\_\_\_  
Vehicle Make and Model: \_\_\_\_\_ Year: \_\_\_\_\_  
License: \_\_\_\_\_ State: \_\_\_\_\_ Year: \_\_\_\_\_ Color: \_\_\_\_\_

#### Standardized Field Sobriety Tests

Refused standardized field sobriety tests: YES / NO Time (if yes): \_\_\_\_\_ hrs

##### Gaze Nystagmus (6 clues total, 4 clues is a failure)

Contacts: No or Soft Eyeglasses Off: N/A or Yes Equal Tracking: Yes or No Pupils Equal: Yes or No  
Exhibited Lack of Smooth Pursuit in Left Eye.....Yes or No  
Exhibited Lack of Smooth Pursuit in Right Eye.....Yes or No  
Distinct and Sustained Nystagmus at Maximum Deviation in Left Eye.....Yes or No  
Distinct and Sustained Nystagmus at Maximum Deviation in Right Eye.....Yes or No  
Onset of Nystagmus Prior to 45 Degree Angle in Left Eye.....Yes or No  
Onset of Nystagmus Prior to 45 Degree Angle in Right Eye.....Yes or No  
Total Number of Clues: \_\_\_\_\_ Passed or Failed Test Stopped for Safety: \_\_\_\_\_

##### Nine Step Walk and Turn (8 clues total, 2 clues is a failure)

Lost Balance During the Instruction Phase.....Yes or No Number of Times: \_\_\_\_\_  
Started Walking too Soon.....Yes or No Number of Times: \_\_\_\_\_  
Stopped Walking on Steps..... 1 2 3 4 5 6 7 8 9 out & 1 2 3 4 5 6 7 8 9 in  
Missed Heel to Toe on Steps..... 1 2 3 4 5 6 7 8 9 out & 1 2 3 4 5 6 7 8 9 in  
Raised Arms (6"+) on Steps..... 1 2 3 4 5 6 7 8 9 out & 1 2 3 4 5 6 7 8 9 in  
Stepped Off the Line on Steps..... 1 2 3 4 5 6 7 8 9 out & 1 2 3 4 5 6 7 8 9 in  
Turned Improperly: Yes or No Describe: \_\_\_\_\_  
Took Wrong Number of Steps Out: Yes or No Total Number Taken: \_\_\_\_\_  
Took Wrong Number of Steps In: Yes or No Total Number Taken: \_\_\_\_\_  
Total Number of Clues: \_\_\_\_\_ Passed or Failed Test Stopped for Safety: \_\_\_\_\_

##### One-Leg Stand (4 Clues total, 2 clues is a failure)

Swayed During Test: Yes or No Describe: \_\_\_\_\_  
Put Foot Down on Their Count #'s: \_\_\_\_\_  
Hopped on Their Count #'s: \_\_\_\_\_  
Raised Arms from Side (6"+) on Their Count #'s: \_\_\_\_\_  
Total Number of Clues: \_\_\_\_\_ Passed or Failed Test Stopped for Safety: \_\_\_\_\_

Preliminary Breath Test Result: \_\_\_\_\_ Time: \_\_\_\_\_ hrs  
Read Implied Consent: Yes Time: \_\_\_\_\_ hrs  
Certified Breath Test Result: \_\_\_\_\_ (Start Obsv. \_\_\_\_\_ hrs) Time: \_\_\_\_\_ hrs  
Refused Certified Test: Yes Time: \_\_\_\_\_ hrs

## 260 IAC 2-4-2 Approved Method for Intox EC/IR II breath analysis

The approved method that shall be followed in making an analysis of breath for ethanol using the Intox EC/IR II breath test instrument is as follows:

STEP ONE: The person to be tested must:

- (A) have had nothing to eat or drink;
- (B) not have put any foreign substance into his or her mouth or respiratory tract; and
- (C) not smoke;

within 15 minutes before the time the first breath sample is taken or at any time from the taking of the first breath sample until after the taking of the final breath sample.

STEP TWO: Verify that the instrument is in ready mode, as indicated by the instrument display.

STEP THREE: Press “Enter” key to start subject test.

STEP FOUR: Insert identification card into the barcode reader, or press the “Enter” key and use the keyboard to enter the breath test operator information requested by the instrument display.

STEP FIVE: When requested by the instrument display, enter the beginning date and time of the fifteen (15) minute period described in STEP ONE.

STEP SIX: When requested by the instrument display, select “Y” or “N” to indicate whether the breath test operator is the officer with control of the subject during the fifteen (15) minute period described in STEP ONE.

STEP SEVEN: If “N” is selected in STEP SIX, when requested by the instrument display, enter the information of the officer with control of the subject during the fifteen (15) minute period described in STEP ONE.

STEP EIGHT: Enter incident information requested by the instrument display.

STEP NINE: Enter subject information by:

- (A) inserting the subject’s driver/operator license or identification card into the barcode reader; or
- (B) pressing the “Enter” key and using the keyboard to enter the available subject information requested by the instrument display.

STEP TEN: When “Please blow” appears on the instrument display, place a new mouthpiece in the breath tube. Instruct the subject to deliver a breath sample. Remove mouthpiece when prompted by the instrument display and discard.

STEP ELEVEN: When “Please blow” appears again on the instrument display, place a new mouthpiece in the breath tube. Instruct the subject to deliver a breath sample. Remove mouthpiece when prompted by the instrument display and discard.

STEP TWELVE: Print the instrument report and remove it from the printer; check the instrument report for the numerical value of the subject’s breath ethanol concentration and the correct date and time and sign the instrument report where indicated.

## THE OPERATING ELEMENT IN OVWI

Sometimes there has been confusion about the meaning of “operating” a vehicle for purposes of the OVWI laws. The following should answer most questions on the topic.

There is no statutory definition of “operate.” The statutory definition of “operator” is a person who “drives or is in actual physical control of a motor vehicle upon a highway.” I.C. 9-13-2-118(a). However, the Indiana Court of Appeals has held that OVWI or BAC offenses may occur on private property as well as public because of the State’s “strong interest in protecting citizens from intoxicated drivers.” *Chilcutt v. State*, 544 N.E. 2d 856 (Ind.App. 1989). *See also, Huey v. State*, 503 N.E. 2d 623 (Ind.App. 1987).

Several cases recently decided by the Court of Appeals significantly affect the definition of “operating” for the purposes of a driver found in a parked, running vehicle. The following is a summary of the law based on those case rulings.

In order to prove the element of “operating” when an intoxicated person is found behind the wheel of a motionless vehicle whose engine is running, the State must show by direct or circumstantial evidence that the defendant moved the vehicle or intended to move the vehicle before having been apprehended. *Mordacq v. State*, 585 N.E. 2d 22 (Ind.App. 1992); *Corl v. State*, 544 N.E. 2d 211 (Ind.App. 1989); *Hiegel v. State*, 538 N.E. 2d 265 (Ind.App. 1989).

For example, where evidence indicates that an intoxicated person found sleeping in a running vehicle merely started the vehicle to keep warm after having left a nearby tavern, he has not

“operated” his vehicle for purposes of the OVWI or BAC statutes. *See Corl and Hiegel, supra.*

However, the State can circumstantially prove recent operation or intent to operate where an intoxicated person is found asleep behind the wheel of a vehicle parked with a running engine in the drive-through lane of a restaurant. *McInchak v. State*, 560 N.E. 2d 546 (Ind.App. 1990). The same is true when an intoxicated driver is found behind the wheel of a vehicle with engine running: on the median strip of a four-lane highway, *Bowlin v. State*, 330 N.E. 2d 353 (Ind.App. 1975); stopped in lanes of traffic or county roads, asleep, *Rose v. State*, 345 N.E. 2d 257 (Ind.App. 1976) and *Traxler v. State*, 538 N.E. 2d 268 (Ind.App. 1989); or stuck in a snow bank, *Garland v. State*, 452 N.E. 2d 1021 (Ind.App. 1983).

In *Taylor v. State*, 560 N.E. 2d 100 (Ind.App. 1990), the Court of Appeals found that recent operation had been proven where an intoxicated person was found behind the wheel of a vehicle that was not even running. Evidence showed that the defendant’s vehicle was “rear-ending” a parked car with the intoxicated defendant asleep behind the wheel. His keys were between his legs and the engine, lights and radio were off. The Court of Appeals found that the evidence was sufficient to support the inference that the vehicle was recently operated by the defendant/driver.

If you have more detailed questions on this subject matter, please feel free to contact the Prosecutor’s Office at 736-3750.