



Apex Police Department General Order



Title Substation Operations – Breath-Testing Area		Order Number 1004-21
Effective Date: December 6, 2021	Amends: 1004-13	
CALEA Standard: 61.1.10, 71.1.1, 71.2.1, 71.3.1, 71.3.2, 71.4.1, 71.4.2, 71.4.3	Rescinds:	
Reference: GO 1003 - DWI Enforcement and Countermeasures Program NCGS 20-16.3	Pages: 5	
Forms:		

Substation Operations – Breath-Testing Area

Purpose

To establish guidelines for the use of a breath-testing instrument in administering alcohol breath tests.

Policy

It will be the policy of the Apex Police Department (APD) to abide by all federal and state laws, as well as all NC Department of Health and Human Services (DHHS) administrative guidelines when operating a breath-testing instrument for alcohol concentration.

Definitions

Alcohol concentration – The concentration of alcohol in a person.

Chemical Analysis – A test of the breath, blood, or other bodily fluid or substance of a person to determine his/her alcohol concentration, performed in accordance with North Carolina General Statute (NCGS) 20-139.1.

Chemical Analyst – A person granted a permit to perform chemical analyses by the DHHS under NCGS 20-139.1.

Impairing Substance – Alcohol; any controlled substance under NCGS, Chapter 90, Article 5; any

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other drug or psychoactive substance capable of impairing a person's physical or mental faculties; or any combination of these substances

Implied Consent Offense – An offense involving impaired driving or an alcohol-related offense subject to the procedures set forth in NCGS 20-16.2, Including:

- Impaired driving under NCGS 20-138.1
- Felony death by vehicle under NCGS 20-141.4
- Second-degree murder under NCGS 14-17 or involuntary manslaughter under NCGS 14-18, when the conviction is based upon impaired driving
- Impaired driving in a commercial vehicle under NCGS 20-138.2
- Driving by persons less than 21 years old after consuming alcohol or drugs under NCGS 20-138.3
- Impaired instruction under NCGS 20-12.1
- Driving while license revoked under NCGS 20-28
- Transporting an open container of alcoholic beverage after consuming alcohol under NCGS 20-138.7
- **NOTE: A driver who operates a vehicle on a highway, street, or public vehicular area thereby gives consent to a chemical analysis if charged with an implied consent offense.**

Under the Influence of an Impairing Substance – The state of a person having his/her mental or physical faculties, or both, appreciably impaired by an impairing substance.

Procedure

General

1. The APD does not have a holding facility. In addition, other department facilities are not constructed to provide for detainee holding or detention.
2. The APD substation located at Apex Public Safety Station 4 (PSS 4), is designated to function as the authorized department facility for testing of suspected impaired drivers. (71.1.1)
3. Officers will notify the Communications Center when they are using the breath testing facility. The Telecommunicator will document the reason for being in the facility, times of arrival and departure, and any other necessary information in the CAD call. (71.3.1 (a))
4. Detainees will be provided access to water, restrooms, and other needs that do not interfere with alcohol-testing procedures. (71.4.1)
5. Meals are not served in the breath-testing facility. (71.3.1 (a))
6. The breath-testing facility does not contain locked spaces for purposes of containing unattended detainees. (71.3.1 (c))

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7. The number of officers permitted in the breath-testing area is limited to those necessary to conduct the test and ensure the safety of the officers and other persons present; however, a minimum of two officers are required when a detainee is present for breath testing.
8. Officers certified to operate a breath-testing instrument will follow all rules, regulations, and laws that pertain to the testing instrument. (61.1.10)
9. If the breath-testing area is not available for any reason, officers may transport detainees to the Wake County Detention facility for breath testing.
10. Male, female, and juvenile detainees will be separated at all times while in the breath-testing facility. (71.3.1 (e))

Breath-Testing Area Guidelines at Substation

1. The following procedures will apply to the use of the breath-testing area:
 - Constant Supervision: Officers will not lose sight of any person being tested
 - At least one officer will monitor the detainee at all times (71.3.3 (e)(f))
 - Weapons Control: Officers using the breath-testing area are encouraged to secure their firearm for officer safety
 - This information has been redacted pursuant to N.C. General Statute 132 - Public Records.
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 - Panic or Duress Alarms: Officers needing immediate assistance with a person in the breath-testing area may activate the emergency button on their portable radio for assistance, call for assistance using the radio, or telephone the Communications Center (71.3.3 (b))
 - Escape Prevention: Officers using the breath-testing area will guard against escape attempts during the testing process
 - Officers will exercise due care and diligence in order to prevent detainee escapes by maintaining constant supervision during the testing procedures
 - All movement of detainees will be under the escort of at least one sworn officer
 - Detainees will not be placed near or closest to the exit door (71.3.3 (d))
 - Handcuffing: Officers are prohibited from securing arrestees to any object within the breath-testing area (71.3.1 (d)) (71.3.2)
 - In general, detainees will remain secured in handcuffs with their hands behind their back, palms facing outward with the handcuffs double locked
 - The detainee's handcuffs may be temporarily removed before the breath test so that signatures for required forms can be completed
 - If necessary, the handcuffs may be temporarily removed for detainees to make a phone call, use the restroom, or for any other essential purpose that, in the opinion of the officer, requires the removal of the handcuffs
 - As an escape prevention method, officers are authorized to use leg shackles to secure the detainee's feet before the handcuffs are removed

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- Any deviation from this procedure must be justified by the arresting officer and will be documented in the report narrative
- The officer remains responsible for the security of the detainee and must take all steps necessary to avoid escape (71.3.1 (b))

Fire Prevention/Suppression (71.4.2)

1. In the event of a fire, the fire will be extinguished as quickly as possible with any available fire extinguishers.
 - In the event of a fire, officers will:
 - Evacuate detainees, and any other people, to a safe location outside of the facility
 - Make a notification to the Communications Center immediately for Fire and EMS response, if needed

Guidelines for Use of Breath-Testing Area by an Outside Agency

1. Any law enforcement agency requesting to use the breath-testing area will contact the Communications Center to make the request.
2. An Apex Police Officer will be dispatched to respond, allow access to an authorized law enforcement officer, and remain in the substation until the breath testing is finished and any other agency officers and detainees leave the substation. At no time will the code to the door be released to an outside agency.
3. The Telecommunicator will create a call for service in CAD with the incident code ASSIST OTHER DEPARTMENT (AOD) and include the reason for being in the facility, times of arrival and departure, and any other necessary information. (71.3.1 (a))

Guidelines for Attorney or Witness Access

1. Any attorney or witness who is called to observe a breath test pursuant to applicable NCGS may use the emergency phone located outside the substation near the fire department entrance to notify the Apex Communications Center that they have arrived. The Communications Center will notify the officer who will allow no more than one person (attorney or witness) access.
2. Any person called to witness a breath test is subject to being searched prior to entering the substation.

Facility Inspection and Administrative Review (71.4.3)

1. Annually, the Patrol Division Commander, or his/her designee, will conduct an administrative review of the substation and breath-testing areas, including procedures.

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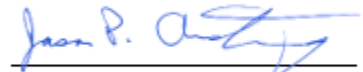
- The review will be completed and submitted to the Chief of Police through the chain of command no later than February 25th of the year following the period subject to review.
2. Monthly, an inspection of all areas within the substation will be conducted by the Special Operations Commander, or his/her designee, and documented in the Patrol Division monthly report.

Training (71.2.1)

1. Initial training on the use of any temporary detention rooms or areas will be conducted for personnel charged with monitoring temporarily detained individuals during new employee orientation and documented in the employee's New Employee Orientation Manual.
2. In-Service Training on the use of any temporary detention rooms or areas will be conducted at least once every four years for applicable personnel.

Text in "Green" denotes a significant change in policy

BY ORDER OF:



Jason P. Armstrong
Chief of Police