



CITY OF AKRON, OHIO
POLICE DIVISION
KENNETH R. BALL II, CHIEF OF POLICE

NUMBER P-2020-019	EFFECTIVE DATE February 6, 2020	RESCINDS P-10-019 Issued 5-19-10
SUBJECT Driving Under Suspension/Wrongful Entrustment		ISSUING AUTHORITY Chief Kenneth R. Ball II

I. POLICY

Disregard for laws prohibiting driving under suspension often represents a threat to the safety and well-being of motorists and pedestrians alike. Therefore, officers will determine if a suspension exists and, if so, what type, in order to apply the appropriate enforcement action.

II. DEFINITIONS

- A. BMV2255 – This is an all-purpose reporting form developed by the Bureau of Motor Vehicles (BMV). It is used to report Operating a Vehicle While Under the Influence (OVI,) Operating a Vehicle After Underage Consumption (OVUAC) or physical control arrests, chemical test results or refusals, Administrative License Suspension (ALS), pretrial seizure, forfeiture, and Commercial Driver’s License (CDL) out-of-service orders. The back of the form contains the implied consent consequences that must be shown and read to the offender. The back also contains all required notifications to the offender and the vehicle owner.
- B. Driving Under Suspension (DUS) – A person’s privilege to drive has been temporarily or permanently revoked by a court or the Bureau of Motor Vehicles.
- C. Financial Responsibility Act (FRA) – The statutes and rules governing motor vehicle insurance within the State of Ohio.
- D. Forfeiture – Vehicle ownership relinquished at sentencing for specific offenses pursuant to the court’s order.
- E. Operate – To cause or have caused movement of a vehicle on any public or private property used by the public for purposes of vehicular traffic or parking.
- F. Pretrial Seizure – The immediate impoundment and immobilization of a vehicle for specific offenses. Seizure is executed by the officer at the time of arrest or citation and is in effect until the offender’s initial court appearance.

III. PROCEDURE

- A. DRIVING UNDER SUSPENSION

1. Non-OVI and Non-FRA Suspensions
 - a. Issue a citation in lieu of arrest.
 - b. A court appearance within seven calendar days is mandatory.
 - c. Tow the vehicle. **If** the offender is the registered owner of the vehicle, a pretrial seizure is **mandatory**.
 - 1) Issue a citation but do not tow for random selection suspension (RS).
 - 2) There is no pretrial seizure for a twelve-point suspension (SI).
2. No Operator's License
 - a. Issue a citation in lieu of arrest.
 - b. A court appearance within seven calendar days is mandatory.
 - c. Tow the vehicle unless it is expired less than six months.
3. OVI, OVUAC, ALS, FRA Suspensions
 - a. OVI suspension
 - 1) This is a court suspension and it will be listed on the offender's driving record.
 - 2) If the offender is the registered owner of the vehicle, a BMV2255 and pretrial seizure is mandatory.
 - 3) Issue a traffic citation for OVI/DUS with a mandatory court appearance within four calendar days.
 - b. OVUAC suspension
 - 1) This is a court suspension and will be listed on the driving record.
 - 2) Issue a citation. If the offender is an adult a court appearance within four calendar days is mandatory.
 - 3) A BMV2255 is required but not a pretrial seizure.
 - c. Administrative License Suspension (ALS)
 - 1) The offender has a pending OVI case and either had an illegal alcohol level or refused to submit to chemical testing; or

- 2) The offender was arrested for physical control and refused chemical testing. However there is no ALS if the offender submits to a chemical test.
 - 3) Issue a traffic citation with a mandatory court appearance within four calendar days.
 - 4) Tow the vehicle.
 - 5) If the offender is the registered owner of the vehicle, a BMV2255 is mandatory. License plates of the vehicle are to be seized for immobilization.
- d. FRA suspensions
- 1) Imposed for violating the insurance statutes or rules.
 - 2) If the offender is the owner of the vehicle, a BMV2255 is mandatory and a pretrial seizure is required.
 - 3) Issue a citation with a mandatory court appearance within seven calendar days.
 - 4) FRA (SF) listed with a twelve-point suspension.
 - a) This suspension will be listed on the driving record.
 - b) **Do not** execute a pretrial seizure and the BMV2255 is not required.
 - c) Tow the vehicle.

B. WRONGFUL ENTRUSTMENT

1. This is an ORC (4511.203) offense committed by a vehicle owner or person with custody of a vehicle and
 - a. Who knows or should have reasonable cause to believe that the driver has no right to drive and permits them to drive their vehicle. Prima-facie evidence: offender and driver live in the same household and are related by blood or marriage; or
 - b. The driver is under suspension, cancellation, or not properly licensed or the vehicle is under an immobilization, impoundment or forfeiture order. Prima-facie evidence: offender and driver live in the same household and the offender has reasonable cause to believe the driver is under suspension; or
 - c. The vehicle owner knows or has reasonable cause to believe that the operator by driving is violating OVI laws. Prima-facie evidence: the offender and the driver of the vehicle occupy the vehicle together at the time of the offense.

- d. Issue a citation to the owner or the person with custody of the vehicle.
- e. A BMV2255 is mandatory and a pretrial seizure is required.

C. VEHICLE DISPOSITION

1. OVI and FRA Suspensions

- a. Review the driving record for the preceding six years for OVI suspension and the preceding five years for FRA suspensions.
- b. If the offender is the registered owner, the vehicle will be towed and a pretrial seizure is mandatory.
- c. If there are two or more previous convictions and the offender is the registered owner, the vehicle is subject to forfeiture.
- d. OVI suspension convictions and FRA type suspension convictions cannot be combined to qualify a vehicle for forfeiture.

2. Pretrial Seizure

- a. The vehicle and the license plates will be seized only when the offender is the registered owner of the vehicle. Whenever the offender is not the registered owner, the vehicle will be towed, but the license plates will not be removed.
- b. Procedure for executing a pretrial seizure.
 - 1) Complete a BMV2255.
 - 2) The reason for hold field on the Tow Report shall be marked pretrial seizure.
 - 3) Direct the tow company driver to remove the license plates.
 - 4) Take the BMV2255, license plates, and the Tow Report to the Clerk of Court.
 - 5) The clerk will time stamp the Tow Report, make a copy for the case file, and return the report to the officer.
 - 6) For OVI, OVUAC, and physical control cases the clerk must sign and seal the BMV2255 and will only retain the pink court copy. The officer will return all copies to the Traffic Office.

3. Forfeiture

- a. Mandatory when any of the following circumstances exist and the offender is the registered owner of the vehicle.
 - 1) The offender's fourth OVI within six years.
 - 2) The offender's sixth OVI within twenty years.
 - 3) The offender's third offense of driving under an OVI or OVUAC suspension within six years.
 - 4) The offender's third offense for driving under any FRA suspension within five years.
 - 5) The owner or person in custody of a vehicle has a third conviction for wrongful entrustment at any time.
 - 6) Leased vehicles do not apply to forfeitures.
- b. Initiate the pretrial seizure process.
- c. "Vehicle subject to forfeiture" must be written on the citation.
- d. This forfeiture is part of mandatory sentencing and is not related to criminal felony forfeitures.

By Order Of,

Kenneth R. Ball II
Chief of Police

Date _____