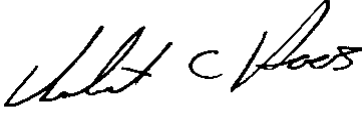
 Cambridge Police Department	POLICY & PROCEDURES		No. 438
	Subject/Title: Drug Recognition Expert Program		
	Issuing Authority:  <hr/> Robert C. Haas Police Commissioner	Review Date: October 13, 2014	Issue Date: November 10, 2014
		Effective Date: November 24, 2014	Rescinds:
		References/ Attachments:	
Accreditation Standards:			

I. PURPOSE:

The Cambridge Police Department, in cooperation with the National Highway Traffic Safety Administration (NHTSA), the International Association of Chiefs of Police (IACP), and the Massachusetts Executive Office of Public Safety and Security/Highway Safety Division (EOPSS/HSD), has established a Drug Evaluation and Classification (DEC) Program. The program requires the use of Drug Recognition Experts (DREs).

II. POLICY:

The general purpose of this program is to promote traffic safety within the City of Cambridge and surrounding cities and towns through the successful arrest and prosecution of subjects found to be driving while impaired by drug(s) and/or alcohol.

III. DEFINITIONS:

- A. Drug Recognition Experts:** Officers who have successfully completed the NHTSA/IACP approved Drug Evaluation and Classification (DEC) Program, as required by the standards set forth for the DEC Program by NHTSA and IACPA. DREs, amongst other things, are qualified to conduct a standardized and systematic evaluation of the subject to determine (a) If the subject exhibits signs of intoxication, (b) If those signs are caused by drug(s) or by some other problem, such as an illness or injury, and (c) If the subject is intoxicated by the introduction of drug(s) into his system while identifying the broad category(s) of drug(s) which are likely to have caused such intoxication.
- B. Drug:** As defined by the program, is any substance which, when taken into the human body, can impair the ability of the person to operate a vehicle safely.

- C. **Categories of Drugs:** As defined by the program, include: (1) Central Nervous System Depressants, (2) Central Nervous System Stimulants, (3) Hallucinogens, (4) Dissociative Anesthetics, (5) Narcotic Analgesics, (6) Inhalants, and (7) Cannabis.

IV. PROCEDURES:

A. Circumstances Involving DRE Evaluation:

1. A DRE shall be called in the event of an arrest for Operating Under the Influence (OUI) of Drugs.
2. A DRE shall be called in the event of a fatal and/or serious bodily injury motor vehicle crash, whether or not impairment by any operator is readily apparent.
3. A DRE should be called any other time expertise is needed in determining impairment by any individual.
4. A DRE may be called to conduct an evaluation if the subject exhibits signs of blood alcohol concentration (BAC), which can be determined through the use of an approved breath testing device (Intoxilyzer 5000, Draeger 7110, approved Preliminary Breath Testing (PBT) device, or if impairment exists, and the subject's BAC is not consistent with the level of impairment.
5. A DRE may be called and/or called out any other time his/her expertise could be of value to the Department (i.e., drug investigations, overdoses, child endangerment).

B. On-duty DRE:

1. If one of the Department's DREs is on duty during one of the aforementioned scenarios, he/she shall be contacted first to assist with determining impairment.
2. The Shift Commander shall ensure that the necessary staffing coverage is arranged if an on-duty DRE is deployed for an evaluation.
3. If responding out of jurisdiction while on-duty, the DRE will notify ECC to create a CAD entry and, where applicable, an Incident Number. ECC will utilize a specific DRE response notation.

C. Off-duty DRE:

1. If none of the Department's DREs are working and a DRE is needed for one of the aforementioned scenarios, the Shift Commander shall attempt to contact one of the Department's DREs by telephone, paging systems and/or Code Red. The Department's DREs will ensure that an up to date list of certified

DREs with the appropriate contact information is maintained in the Shift Commander's Office.

2. If the Shift Commander is unable to reach one of the department's DREs, the Shift Commander shall attempt to contact a DRE from another department. The Department's DREs will ensure that an up to date DRE Call Sheet (attached Form DRE-003) is maintained in the Shift Commander's Office.
3. If responding out of jurisdiction while off-duty, the DRE will notify ECC to create a CAD entry and, where applicable, an Incident Number. ECC will utilize a specific DRE response notation.

D. Process for DRE Evaluation within the City of Cambridge:

1. When an individual has been arrested for operating under the influence or another related offense, the arresting officer shall transport the subject to the Cambridge Police Department booking area.

NOTE: If the subject is a juvenile, then the booking area must first be cleared of any adult prisoners.
2. The officer shall attempt to obtain a breath specimen from the subject to determine the BAC.
3. If the BAC indicated by the Intoxilyzer 5000 or other approved breath testing device is below .07 or the subject refuses the breath test, and/or the arresting officer reasonably believes the subject to be intoxicated by drug(s) other than alcohol:

- a. The arresting officer may ask the subject to consent to a DRE evaluation. DRE evaluations and, when practicable, collection of toxicological samples will only be conducted by DREs.

NOTE: Refusal to give a urine specimen does not constitute a refusal to give a specimen under the Implied Consent law.

- b. If the subject consents to a DRE evaluation, the arresting officer may then request that a DRE respond to the police station.
- c. If the subject refuses to consent to a DRE evaluation, the DRE may still respond to the station to make any observations that may assist the Department in any investigation relating to the case.
- d. If a DRE is not available, the arresting officer will still request that the subject provide a toxicological sample.
- e. If the supervisor believes a DRE call-out is justified, the Shift Commander will contact one of the department's DREs. If a department DRE is not available, the Shift Commander shall attempt to contact a DRE from another department utilizing the DRE Call Sheet.

4. If a DRE is called to respond, the arresting officer shall be available during the DRE evaluation so that the arresting officer can communicate with the DRE as part of the drug evaluation process.
5. Upon arrival, the DRE will proceed with whatever procedures necessary for his/her investigation.
6. Following the evaluation:
 - a. If the DRE opines the subject to be impaired:
 - 1) The subject, if an adult, will be handled as per department policy.
 - 2) The subject, if a juvenile, will be handled as per department policy, and all applicable juvenile laws and procedures will be adhered to.
 - b. If the DRE opines that the subject is not impaired, then the arresting officer will be notified and a supervisor will be requested to respond.

NOTE: A supervisor may authorize the release of any subject where the evidence fails to support a charge of OUI. However, there may be times when the DRE opines that a subject is not impaired at the time of the evaluation, but probable cause exists that the subject was impaired at the time of the motor vehicle stop. In those cases, the subject shall be held and charged with OUI.

7. *Toxicology Samples:*

- a. As part of the DRE's evaluation, a toxicology sample is requested from the subject. This includes, but is not limited to, blood and/or urine.
- b. A toxicology sample is taken strictly on a voluntary basis with the subject giving the police consent to obtain such a sample, unless other circumstances warrant such taking (body fluids warrant issued by a judge).
SEE BLOOD SPECIMEN COLLECTION

8. Toxicology Handling and Chain of Custody:

- a. Any officer handling any bodily fluids shall take universal precautions (i.e., latex/vinyl gloves). Once a sample has been obtained from the subject, it will be sealed in the proper container(s), along with proper paperwork from the DRE, and placed into evidence. Bodily fluid samples must be stored in a refrigerator until transported to the State Police Crime Lab for testing, unless circumstances exist which would make this impracticable. If refrigeration is not available, the sample(s) shall be stored in a cool secure place in the station. Chain of custody is of the utmost concern, and this department's chain of custody policy shall be followed.

9. *Drug Recognition Expert Forms:*

- a. The DRE is familiar with the proper forms to complete, which include, but are not limited to, the "face sheet" (see attached form). The DRE will complete a full narrative report as soon as reasonably practical. All DRE

narrative reports shall be recorded in the QED records management system with the appropriate DRE form (i.e., “face sheet”) uploaded as attachments. The DRE will maintain the original copies of the forms.

10. The arresting officer will complete the evidence report, listing the toxicology specimen as evidence, and will maintain chain of custody of other property to be logged as evidence.
11. The arresting officer will complete the OUI arrest report and attach all of the required statutory rights forms.

12. *Procedures for Blood Specimen Collection:*

- a. When a defendant is at the hospital for treatment of injuries, a blood sample may be requested.
- b. When consent is given, the DRE will collect a blood sample using the following procedures:
 - 1) Have the defendant sign the departmental consent form: Consent to Toxicology (Form DRE-004 attached);
 - 2) The “Guidelines for Drawing Blood in OUI and Drug Cases” published in the most recent Breath Test Operator Re-certification Manual by the Department of State Police – Office of Alcohol Testing shall be followed;
 - 3) Once the DRE/Arresting Officer (the officer collecting the samples at the hospital) has the sample tubes, they shall ensure the following:
 - Indicate on each tube the subject’s name and the time and date collected;
 - Place the container in a plastic evidence bag;
 - Return to the Cambridge Police Department;
 - Place the State Police Lab Form (Form DRE-002) and the incident report in the evidence bag with the sample;
 - Place the evidence bag and container in the refrigerator;
 - The DRE/Arresting Office shall notify the evidence technicians that toxicological evidence has been placed in the refrigerator to ensure that it transported in a timely fashion (next business day) to the state laboratory (Sudbury).
 - Secure / Lock the refrigerator.
- c. If consent is not given, but the arresting officer or DRE believe that there is probable cause that a sample of the defendant’s blood will provide evidence of the defendant’s impairment, the arresting officer or the DRE, after consultation with his/her supervisor, shall contact the Middlesex District Attorney’s Office Appeals Bureau Search Warrant Team or the

Department's Legal Advisor to assist in drafting the appropriate search warrant. If a sample is obtained pursuant to a search warrant the same collection protocol list above shall be followed.

- d. Officers should also be aware that a blood sample (complete blood count) is often taken by hospital personnel in the normal course of patient treatment. If this occurs, officers should document in the appropriate incident or supplemental report that a blood sample was taken by hospital personnel as part of the normal course of treatment. This will provide notice to the District Attorney's Office to obtain these records as part of any investigation and/or prosecution and will provide documentation that the blood was NOT drawn at the request of law enforcement. The medical records showing the results of these blood tests will be admissible during a trial for OUI-drugs. See Commonwealth v. Ferola, 72 Mass. App. Ct. 170 (2008).

E. Out of Jurisdiction Deployment of DREs and Expert Testimony:

1. Given the limited number of certified DREs in the Commonwealth, it is critical to share resources amongst law enforcement agencies. To that end, the Department is committed, when practical, to deploying DREs to other jurisdictions for DRE evaluations and to allow the Department's DREs to testify as expert witnesses in prosecutions arising from arrests in outside jurisdictions.
2. Out of Jurisdiction Deployment for DRE Evaluation:
 - a. Through the DRE program, a list of certified DREs is published on a form known as the DRE Call Sheet. The Department's DREs are listed on this form, and as such, may be asked to assist an outside agency in a DRE evaluation. These requests may be made directly to the DRE or to the Department in general.
 - b. Regardless of how the request is received, all requests for out of jurisdiction deployment shall be reviewed and approved by the shift commander. Given the collaborative nature of the DRE program and limited number of DREs, the Department will make every effort to honor another agency's request. All out of jurisdiction requests will be honored unless it poses an undue hardship on the Department.
 - c. If a DRE is deployed to another jurisdiction, the DRE is still required to perform all of the reporting requirements listed above in section IV.D. This will allow the Department to track the efficiency and demands of the DRE program and will provide a reliable discovery process for any potential prosecution.
 - d. If a DRE is deployed to another jurisdiction, and the evaluation results in a grand jury investigation and/or prosecution with a motion and/or trial

requiring the testimony of the evaluating DRE, the court summons will be honored without further approval.

3. Expert Testimony for Out of Jurisdiction Cases (Non-percipient Witness):
 - a. In some cases, a DRE will not be deployed to another jurisdiction, but the District Attorney's Office will nonetheless request that one of the Department's DREs testify as an expert witness to aid in the prosecution of a case from another jurisdiction. In these cases, DREs can provide valuable background expertise as well as expert opinions based on hypothetical scenarios.
 - b. When a summons is received from the District Attorney's Office in one of these cases, the Court Prosecutor's Office will forward the summons to the DRE's supervisor. Given the collaborative nature of the DRE program and limited number of DREs, the Department will make every effort to honor the District Attorney's Office request. All such requests will be honored unless it poses an undue hardship on the Department. The DRE shall notify the Court Prosecutor's Office of whether the summons will be honored. If the summons cannot be honored because the DRE's appearance will cause an undue hardship on the Department, the DRE will indicate the same and the reasons why. Either the DRE or the Court Prosecutor will notify will ADA.
 - c. The Court Prosecutor's Office will be required to document all summonses for DRE expert testimony and whether the summons was honored. This will allow the Department to monitor the efficiency and demands of the DRE program.
 - d. The Department's DREs will also document all instances where a DRE was consulted by a local police department and/or district attorney's office in a centralized location on the Department's S drive.

V. DRE CERTIFICATION & TRAINING:

- A. **Training & Recertification:** The Department will make every effort to support the DRE program and the DRE training, certification and re-certification process.
- B. **Submission of Certification Documents:** The DREs will be responsible for maintaining certification and providing all documentation to the Training Unit.
- C. **Loss of DRE Certification:** If a DRE fails to maintain certification, it is the DRE's responsibility to notify the Department and the Department will remove the DRE's name from all active internal DRE lists.