

**MITCHELL COUNTY ORDINANCE NO. 26
OPERATING WHILE INTOXICATED**

26.321J.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Alcohol concentration*" means the number of grams of alcohol per any of the following:
 - a. One hundred milliliters of blood.
 - b. Two hundred ten liters of breath.
 - c. Sixty-seven milliliters of urine.
2. "*Alcoholic beverage*" includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.
3. "*Arrest*" includes but is not limited to taking into custody pursuant to Iowa Code section 232.19.
4. "*Controlled substance*" means any drug, substance, or compound that is listed in Iowa Code sections 124.204 or 124.206, or any metabolite or derivative of the drug, substance, or compound.
5. "*Department*" means the state department of transportation.
6. "*Director*" means the director of transportation or the director's designee.
7. "*Driver's license*" means any license or permit issued to a person to operate a motor vehicle on the highways of this state, including but not limited to a driver's, commercial driver's, temporary restricted, or temporary license and an instruction, chauffeur's instruction, commercial driver's instruction, or temporary permit.
8. "*Peace officer*" means:
 - a. A member of the Iowa state patrol.
 - b. A police officer under civil service as provided in Iowa Code chapter 400.
 - c. A sheriff.
 - d. A regular deputy sheriff who has had formal police training.
 - e. Any other law enforcement officer who has satisfactorily completed an approved course relating to motor vehicle operators under the influence of alcoholic beverages at the Iowa law enforcement academy or a law enforcement training program approved by the department of public safety.
9. "*Serious injury*" means a bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes protracted loss or impairment of the function of any bodily organ or major bodily member, or which causes the loss of any bodily member.

26.321J.1A. Reserved.

26.321J.2 Operating while under the influence of alcohol or a drug or while having an alcohol concentration of .10 or more (OWI).

1. Definition of the Offense. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration of .10 or more.

c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. Punishment. A person who violates subsection 1 violates this ordinance, punishable by all of the following:

(1) Imprisonment in the county jail for not less than forty-eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

(2) Assessment of a fine of one thousand dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, the court may waive up to five hundred dollars of the fine when the defendant presents to the court at the end of the minimum period of ineligibility, a temporary restricted license issued pursuant to Iowa Code section 321J.20. As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service.

(3) Revocation of the person's driver's license pursuant to Iowa Code section 321J.4, subsection 1, Iowa Code section 321J.9, or Iowa Code section 321J.12, which includes a minimum revocation period of one hundred eighty days, including a minimum period of ineligibility for a temporary restricted license of thirty days, and may involve a revocation period of one year.

(4) Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to Iowa Code section 321J.2, subsection 3.

3. Affirmative Defenses. *a.* This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in Iowa Code chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy examiners, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.

b. When charged with a violation of subsection 1, paragraph "c", a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in Iowa Code section 155A.3.

4. **The "Two-Hour" Rule.** In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation.

a. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant's blood or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to show the presence of such controlled substance or other drug in the defendant at the time of driving or being in physical control of the motor vehicle.

c. The department of public safety shall adopt nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances.

5. **Restitution.** a. In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to Iowa Code chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, "emergency response" means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to Iowa Code section 910.3.

6. **Limitation on Charging Alternatives when Test Results do no Equal or Exceed the Per Se Charging Alternatives.** In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph "b" or "c", if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1, paragraph "b" or "c".

26.321J.2A. Reserved.

26.321J.2B. Reserved.

26.321J.3 Substance abuse evaluation or treatment--rules.

In addition to orders issued pursuant to the Mitchell County Ordinance, the court shall order any defendant convicted under the Mitchell County Ordinance to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court-ordered substance abuse treatment is subject to the periodic reporting requirements of Iowa Code section 125.86.

26.321J.4. Reserved.

26.321J.4A. Reserved.

26.321J.4B. Reserved.

26.321J.5 Preliminary screening test.

1. When a peace officer has reasonable grounds to believe that either of the following have occurred, the peace officer may request that the operator provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose:

a. A motor vehicle operator may be violating or has violated Mitchell County Ordinance section 26.321J.2.

b. The operator has been involved in a motor vehicle collision resulting in injury or death.

2. **Limited Use.** The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made or whether to request a chemical test authorized in this chapter, but shall not be used in any court action except to prove that a chemical test was properly requested of a person pursuant to this chapter.

26.321J.6 Implied consent to test.

1. A person who operates a motor vehicle in this county under circumstances which give reasonable grounds to believe that the person has been operating a motor vehicle in violation of Mitchell County Ordinance section 26.321J.2 is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of a controlled substance or other drugs, subject to this section. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was

operating a motor vehicle in violation of Mitchell County Ordinance section 26.321J.2, and if any of the following conditions exist:

a. A peace officer has lawfully placed the person under arrest for violation of Mitchell County Ordinance section 26.321J.2.

b. The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.

c. The person has refused to take a preliminary breath screening test provided by this chapter.

d. The preliminary breath screening test was administered and it indicated an alcohol concentration equal to or in excess of the level prohibited by Mitchell County Ordinance section 26.321J.2.

e. The preliminary breath screening test was administered to a person operating a commercial motor vehicle as defined in Iowa Code section 321.1 and it indicated an alcohol concentration of 0.04 or more.

f. The preliminary breath screening test was administered and it indicated an alcohol concentration less than the level prohibited by Mitchell County Ordinance section 26.321J.2, and the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

g. The preliminary breath screening test was administered and it indicated an alcohol concentration of .02 or more but less than .10 and the person is under the age of twenty-one.

2. The peace officer shall determine which of the three substances, breath, blood, or urine, shall be tested. Refusal to submit to a chemical test of urine or breath is deemed a refusal to submit, and Iowa Code section 321J.9 applies. A refusal to submit to a chemical test of blood is not deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other two substances shall be tested and shall offer the test. If the peace officer fails to offer a test within two hours after the preliminary screening test is administered or refused or the arrest is made, whichever occurs first, a test is not required, and there shall be no revocation under Iowa Code section 321J.9.

3. Notwithstanding subsection 2, if the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a blood or urine test shall be required even after another type of test has been administered. Iowa Code section 321J.9 applies to a refusal to submit to a chemical test of urine or blood requested under this subsection.

26.321J.7. Reserved.

26.321J.8 Statement of officer.

A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:

1. If the person refuses to submit to the test, the person's driver's license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section Iowa Code section 321J.9.

2. If the person submits to the test and the results indicate the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by Mitchell County Ordinance section 26.321J.2, the person's driver's license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under Iowa Code section 321J.12.

3. If the person is operating a commercial motor vehicle as defined in Iowa Code section 321.1 and either refuses to submit to the test or submits to the test and the results indicate an alcohol concentration of 0.04 or more, the person is disqualified from operating a commercial motor vehicle for the applicable period under Iowa Code section 321.208 in addition to any revocation of the person's driver's license or nonresident operating privilege which may be applicable under this chapter.

This section does not apply in any case involving a person described in Iowa Code section 321J.7.

26.321J.9. Reserved.

26.321J.10. Reserved.

26.321J.11 Taking sample for test.

Only a licensed physician, licensed physician assistant as defined in Iowa Code section 148C.1, medical technologist, or registered nurse, acting at the request of a peace officer, may withdraw a specimen of blood for the purpose of determining the alcohol concentration or the presence of a controlled substance or other drugs. However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcohol concentration, or may take a specimen of a person's urine for the purpose of determining the presence of a controlled substance or other drugs. Only new equipment kept under strictly sanitary and sterile conditions shall be used for drawing blood.

The person may have an independent chemical test or tests administered at the person's own expense in addition to any administered at the direction of a peace officer. The failure or inability of the person to obtain an independent chemical test or tests does not preclude the admission of evidence of the results of the test or tests administered at the direction of the peace officer. Upon the request of the person who is tested, the results of the test or tests administered at the direction of the peace officer shall be made available to the person.

26.321J.12. Reserved.

26.321J.13. Reserved.

26.321J.14. Reserved.

26.321J.15 Evidence in any action.

Upon the trial of a civil or criminal action or proceeding arising out of acts alleged to have been committed by a person while operating a motor vehicle in violation of Mitchell County Ordinance section 26.321J.2, evidence of the alcohol concentration or the presence of a controlled substance or other drugs in the person's body substances at the time of the act alleged as shown by a chemical analysis of the person's blood, breath, or urine is admissible. If it is established at trial that an analysis of a breath specimen was performed by a certified operator using a device intended to determine alcohol concentration and methods approved by the commissioner of public safety, no further foundation is necessary for introduction of the evidence.

26.321J.16 Proof of refusal admissible.

If a person refuses to submit to a chemical test, proof of refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motor vehicle in violation of Mitchell County Ordinance section 26.321J.2.

26.321J.17. Reserved.

26.321J.18 Other evidence.

This chapter does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motor vehicle.

26.321J.19. Reserved.

26.321J.20. Reserved.

26.321J.21 Driving while license suspended, denied, revoked, or barred.

1. A person whose driver's license or nonresident operating privilege has been suspended, denied, revoked, or barred due to a violation of Iowa Code Chap 321J and who drives a motor vehicle while the license or privilege is suspended, denied, revoked, or barred commits a serious misdemeanor, and violates this ordinance. In addition to any other penalties, the punishment imposed for a violation of this subsection shall include assessment of a fine of one thousand dollars.

2. In addition to the fine, the department, upon receiving the record of the conviction of a person under this section upon a charge of driving a motor vehicle while the license of the person was suspended, denied, revoked, or barred shall extend the period of suspension, denial, revocation, or bar for an additional like period, and the department shall not issue a new license during the

additional period.

26.321J.22. Reserved.

26.321J.23. Reserved.

26.321J.24. Reserved.

26.321J.25. Reserved.