

GENERAL ORDER

PORT WASHINGTON POLICE DEPARTMENT

SUBJECT: IMPAIRMENT DUE TO ALCOHOL AND/OR DRUGS		NUMBER:	6.2.3
		ISSUED:	10/29/2009
SCOPE:	All Sworn Personnel	EFFECTIVE:	10/29/2009
DISTRIBUTION:	General Orders Manual	<input type="checkbox"/> RESCINDS	
		<input type="checkbox"/> AMENDS	
REFERENCE:		WILEAG 3 RD EDITION STANDARDS: 6.2.6	

INDEX AS: Alcohol, Motor Vehicle Operation
 Drugs, Motor Vehicle Operation
 Impaired Motor Vehicle Operation
 Intoxicated, Motor Vehicle Operation
 Operate Motor Vehicle while under the Influence
 OWI

PURPOSE: It is the policy of the Department to actively seek and apprehend persons operating/driving vehicles under the influence of intoxicants and/or drugs. This directive is to establish uniform procedures for insuring that officers' actions, while involved in alcohol/drug enforcement efforts, are consistent with applicable state laws and local ordinances while also insuring that proper reporting and investigative techniques are used.

This Order consists of the following numbered sections:

- I. DEFINITIONS
 - II. SPECIFIC PROCEDURES
- I. DEFINITIONS
 - A. **Breath Testing Instrument** refers to the Intoximeter EC/IR
 - B. **OWI** refers to operating or driving under the influence of alcohol or drugs
 - C. **SFST** standard field sobriety testing
 - D. **DRE** refers to Drug Recognition Expert

- E. **WISDOT** refers to the Wisconsin Dept. of Transportation
- F. **BAC** means Blood (or Breath) Alcohol Concentration
- G. **PAC** means Prohibited Alcohol Concentration
- H. **UTC** refers to the official State of Wisconsin uniform traffic citation

II. SPECIFIC PROCEDURES

Officers are to be alert to the driving behaviors of motor vehicles operators, which may indicate that said driver may be under the influence of an intoxicant and/or other drug(s.)

- A. Officers shall observe the driving behavior of a motor vehicle operator, suspected of being under the influence, to collect sufficient evidence to establish reasonable suspicion to stop the vehicle.
- B. Officers shall not allow unsafe driving to continue for an unreasonable length of time so as to endanger the safety of others using the roadway. Officers should perform the motor vehicle stop in an area so as not to interfere with or endanger other traffic.
- C. Officers should observe all drivers stopped for traffic violations or drivers encountered at the scene of a traffic crash, for signs or evidence of alcohol and/or drug intoxication.
 - 1. When an officer suspects the possibility of an intoxicated driver, he/she shall notify the communications center and a back-up unit will be dispatched. Back-up officers will assist as required, or until a decision not to arrest is made. If no back-up officer is available, one can be requested through mutual aid from a nearby department.
 - 2. Officers shall begin standard field sobriety tests upon arrival of the back-up unit. Officers should note, in detail, the actions and behavior of the subject driver, which may indicate signs of intoxication. If no back-up officer is readily available, the officer should still proceed with sobriety testing.
- D. Upon arrest and conveyance of the driver, the arresting officer shall notify an on-duty state certified Intoximeter EC/IR operator, who will administer the evidentiary chemical breath test in the station.
- E. STANDARDIZED FIELD SOBRIETY TESTING (SFST)
 - 1. Standardized Field Sobriety Tests are to be used to determine if the driver's ability to operate a motor vehicle is impaired by the use of alcohol or other drugs. Officers shall attempt to conduct SFST on all suspected impaired drivers.

2. Officers should attempt to conduct SFST, in accordance with their training, at the scene of the traffic stop or crash site. The tests should be performed on a flat, well-lit area, away from traffic, such as a sidewalk or parking lot. Officers shall take into consideration the condition of the subject performing SFST so as not to unnecessarily endanger either the officer's or the subject's safety.
3. The officer may decide not to proceed with the SFST tests at the scene of the incident. If the investigating officer determines that weather, terrain conditions or other circumstances are not suitable for SFST to be conducted at the scene of the incident, the subject should be asked if he/she would voluntarily come into the station for testing.
4. If the subject refuses to go into the station for testing, the officer must determine if there is enough probable cause for the arrest and proceed accordingly. The investigating officer should make note of the driver's actions, speech, walking and behavior.
5. The officer will explain and demonstrate each test to the suspect driver in accordance with his SFST trained guidelines before the driver attempts to perform the test. The arresting officer shall note and later document in his report, the driver's ability to comprehend, follow directions, and perform each SFST.
6. Refusal to submit to SFST shall constitute probable cause for an arrest for OWI.
7. If suspect driver is unable to perform test due to injury or disability, officers may use alternative tests.

F. ARREST

1. Following completion of the SFST, the officer will determine if probable cause exists to arrest the driver for operating/driving a motor vehicle while intoxicated. The decision shall be based upon all available information, including, but not limited to, the officer's observations, information provided by witnesses, the driver's physical condition and the physical evidence recovered.
2. If arrested, the suspect driver will be handcuffed, (double-locked & checked for comfort), searched and transported to the station in a squad car equipped with a security screen. If the driver is combative, he should be transported directly to the Sheriff's Dept.
3. If a person is arrested for OWI and there is a passenger in the vehicle under the age of 16 years, it must be noted on the uniform traffic citation that there was A MINOR PASSENGER UNDER AGE 16 AT THE TIME OF ARREST.

G. DISPOSITION OF THE VEHICLE AND PASSENGERS

1. The vehicle shall be searched for evidence related to the violation of operating under the influence. This can include evidence of where the driver was drinking, what he/she was drinking, and whether there is any drug use contributing to intoxication.
2. If there is a passenger or person at the scene who is willing to take responsibility for the vehicle, it may be released under the following conditions:
 - a) The driver or registered owner gives consent for the vehicle to be removed from the scene by the responsible person. The responsible person has a valid driver's license. The responsible person's ability to operate the vehicle is not impaired by an intoxicant and/or drugs.
 - b) It is not necessary to hold the vehicle for evidentiary purposes.
3. If there are no passengers in the vehicle or persons at the scene who can take possession of the vehicle, officers may secure the vehicle on scene as long as it's legally parked. The vehicle should only be towed if it presents a safety hazard or is needed for evidence. A city contracted tow truck may be dispatched to tow the vehicle to the contract tow facility. Officers will make every attempt to return the keys to the vehicle owner (or operator) except for the ignition key, which will remain in the ignition switch of the towed vehicle. Vehicles legally parked on private property may be secured and remain on the private property, provided consent is given by owner of the vehicle and the owner or resident of the property.
4. The assisting officer(s) should attempt to relocate passengers to a safe location. The officers should take into account the time of day or night, the weather, temperature, the sobriety, the gender of the passenger and the neighborhood of the stop location. If at all possible, officers should not abandon vulnerable vehicle passengers to the streets during the evening hours.

H. INVESTIGATION AT THE STATION

1. All persons arrested for operating/driving while under the influence of an intoxicant and/or other drug(s) will be conveyed to the police department, unless there are injuries that require medical attention. Further, uninjured drivers may be conveyed directly to the medical facility for a mandatory blood draw if the officer decides, based upon the circumstance, to change the primary test to blood.
2. Upon arrival at the station (or the medical facility) the arresting officer shall complete the DWI citation and issue the pink copy to the arrestee (Preferably before administration of the chemical test.)

I. CHEMICAL TESTS FOR INTOXICATION

1. The State-Certified Intoximeter EC/IR operator shall prepare the Intoximeter EC/IR for the test, in accordance with training and procedure for the instrument.
2. Officers should attempt to obtain all chemical tests for intoxication/impairment within three hours of the last operation of the motor vehicle.
3. The arresting officer shall read all applicable areas of the current State of Wisconsin "Informing the Accused" Form (SP4197)(Appendix B) to the arrested driver and ask if he/she will submit to an evidentiary chemical test of his/her breath. The arresting officer shall give the arrestee the pink copy of this completed form.
4. The designated observation officer shall observe the arrested person, uninterrupted, for the minimum period of 20 minutes, just prior to the administration of the Intoximeter EC/IR chemical breath test.

J. BREATH TESTS

1. The breath test is the primary chemical test of the Port Washington Police Dept. This test will be administered, using the Intoximeter EC/IR. Officers may, with consent of the supervisor or OIC, change the primary test to blood.
2. The breath test operator will follow WISDOT established procedures and will obtain the required amount of breath samples from the operator required for a valid test.
3. It is the responsibility of the breath test operator to determine if a refusal exists, due to the failure of the arrestee to provide two adequate breath samples. In this event, the breath test operator will enter the test as a refusal to submit to chemical test and print the required (4) forms.
4. Officers do have the right to request a blood test even if the suspect submitted to the breath test. This is recommended in cases where the breath results are substantially different from the observation of impairment.

K. BLOOD TESTS

1. A blood sample draw will be designated as the primary test under the following conditions:
 - a) Traffic crashes with serious or fatal injuries.
 - b) In the event the driver has been transported to a hospital for treatment of injuries.
 - c) When the breath test instrument has failed the calibration test or is otherwise out of service.

- d) If the operator is known or suspected of impairment by drug use.
 - e) Other circumstances as approved by the Shift Commander.
2. A medical technician will draw blood in the presence of the arresting officer, at a medical facility, and the officer will seal the sample tubes. All blood samples will be collected utilizing kits and instructions supplied by the Wisconsin State Lab of Hygiene.
 3. The blood sample will be packaged, and the Styrofoam mailer package will be sealed and labeled by the arresting officer.
 4. The arresting officer will place the blood sample in the department's outgoing mail basket. The Administrative Assistant will send the blood via US Certified Mail to the WI State Lab of Hygiene.
 5. Blood samples will be tested at the Wisconsin State Lab of Hygiene.
 6. Only blood, *not urine*, shall be collected from the arrestee and tested for the presence of controlled substances and/or other prescription medications. These tests shall be conducted at the Wisconsin State Lab of Hygiene. The arresting officer, or the DRE, shall advise the chemist, in writing, whenever possible, what drugs are suspected of causing the impairment.

M. TEST RESULTS

1. When test results are received in writing from the State Lab of Hygiene, and the blood/breath alcohol concentration (BAC) is over the statutorily prohibited level, (.08 BAC or more for 1st and 2nd offenses, .08 BAC or more for 3rd offenses, and .02 BAC or more for 4th and subsequent OWI offenses,) the arresting officer shall issue a citation for operating a motor vehicle with a prohibited BAC or for causing injury while operating a motor vehicle with a prohibited BAC.
2. All misdemeanor and felony OWI related arrests shall be referred to the District Attorney.

N. POST CHEMICAL TEST PROCESSING

1. The Alcohol Influence Report, DOT form SP4005, (Appendix C) shall be completed by the arresting officer. A copy of this form is not given to the driver.
2. If the arrestee has a test result with a prohibited BAC, The arresting officer shall issue The Administrative Review Request, DOT Form MV3530 (Appendix D) to him/her.

3. If test results are known, such as breath test results, and they are over the prohibited BAC levels, The "Notice of Intent to Suspend Operating privileges," DOT Form MV3519, (Appendix E) shall be completed by the officer. The instructions are to be read to the driver. A copy of this completed form will be served to the arrestee. However, if the test results are not known, (i.e. a blood or urine sample test,) this form shall be completed, but not served to the driver at the time of the arrest. When the arresting officer later receives the lab test results, he/she shall issue (mail) a citation for operating/driving a motor vehicle with a prohibited BAC, and also serve (mail) the completed Intent to Suspend Operating privileges MV3519 form to the arrestee.
4. If the form is served at the time of the arrest and process, the arresting officer will place the date of service in the "Notice Date" box on the form.
5. In the case of a blood test result, this form will be mailed to the driver/operator as soon as is possible after the arresting officer receives the completed lab analysis report from the Wisconsin State Lab of Hygiene. In this event, the officer will record the date that the form and the Prohibited BAC citation are mailed to the driver in the "Notice Date" blank on the form. The officer will also supplement the incident report, documenting receipt of the lab results and the test results.
6. The operator's license will remain with the report.
7. In all OWI cases, officers are to complete a narrative report of the incident. The narrative report shall include all the specifics of the investigation and arrest. The narrative report shall be kept with the OWI arrest forms in the packet.
8. The Intoximeter EC/IR operator shall also add his observations and the test results to the report in a supplemental narrative report.

O. POST REFUSAL PROCESSING

If the driver refuses a chemical test, the driver shall be transported to the hospital for a mandatory blood draw.

1. The Alcohol Influence Report, DOT form SP4005 or current form, shall be completed by the arresting officer. A copy of this form is not given to the driver.
2. Notice of Intent to Revoke Operating Privileges, DOT Form MV3396 (Appendix F) or current form. The form must be read to the driver. The driver is given a copy of this report form.
3. The Order of Revocation Test Refusal Form, MV3237 or current form (Appendix G) is completed and this form remains with the report. The driver does not receive a copy of this document, as the court of conviction will issue this form.
4. The driver's license remains with the report packet.

5. A notice to appear referral (page 2 of the Notice of Intent to revoke operating privileges) (Appendix I) will also be completed and a copy of this form will be given to the driver.

P. BLOOD ACQUISITIONS

If it becomes necessary to collect blood for evidence in an OWI case where the driver is involved in a crash involving serious injury or an apparent fatality, the following procedure shall be exercised:

1. Always use the implied consent law when it applies, to include reading the Informing the Accused form.
2. It shall be required that the officer obtain blood even if the subject refuses. This requirement also applies if the subject has been arrested for any OWI involving a traffic crash where there is apparent great bodily injury or a fatality. If the subject is combative and cannot be restrained for the blood draw, the duty D.A. shall be contacted for a possible search warrant for blood. Under implied consent, the Informing the Accused form shall be read to the driver even if he/she is unconscious.
3. If the medical staff refuses to draw blood from the subject, the officer should obtain a search warrant for the arrestee's blood draw.

Q. ELEMENTS FOR OBTAINING A SEARCH WARRANT FOR BLOOD

When requesting a search warrant for blood, the officer must give oral testimony to obtain a search warrant for blood which:

1. Must show that there was a crime committed.
2. Explains why the blood draw is needed (to show evidence of intoxication).
3. Must show that the defendant did not cooperate and refused to give blood by consent.
4. States the name of the medical facility at which the blood will be drawn.
5. States how much blood is needed. This should be a sufficient sample to fill the two tubes included in the standard blood collection kit.
6. Requests authorized **reasonable force** to obtain the blood.

R. REPEAT OFFENDERS

1. If a repeat offender is arrested for the second or more times (OWI) within ten years, the Uniform Traffic Citation shall be prepared with the defendant ordered to appear in Ozaukee County Circuit Court. The Ozaukee County D.A. Request for Prosecution form shall also be completed by the officer.
2. Offenders arrested for OWI who have one or more prior OWI convictions shall be held for bail at the Ozaukee County Jail.
3. If the person is arrested for a third offense or more (OWI) in his lifetime, and all said arrests have occurred after January 1st, 1989, the following must be completed (two copies) if the driver is the owner of the vehicle:
 - a) The OWI citation.
 - b) The teletype driver's record.
 - c) The registration of the vehicle used in the offense.

S. BAIL

1. If a person is arrested for a second offense or more in his lifetime and after January 1st, 1989, the offender will be held for cash bail in accordance with the State Uniform Traffic deposit schedule.
2. All penalties double if a passenger in the offender's vehicle is under the age of (16) sixteen. A charge of OWI fifth offense or more, is considered a felony. The offender in these cases must be held for the D.A.'s office.
3. For OWI causing great bodily harm or death, the offender must be held for the D.A.'s office.

T. RELEASE OF INTOXICATED DRIVER AFTER PROCESSING

1. Persons arrested for operating a motor vehicle under the influence of an intoxicant shall be held for (12) twelve hours from the time of the arrest. However, the subject may be released to a responsible person within the (12) hours, with the signing of the release form. In cases where bail is required, it must be posted before the person is released, assuming no other charges are pending.
2. The person taking custody of the subject arrested for OWI, within the (12) twelve hours must read and sign the Responsibility Care Form (Appendix K) prior to release of the subject. This form requires a signature of the Officer authorizing the release.

U. WISDOT REVIEW EXAMINER NOTIFICATION

1. It is the responsibility of the Chief's Administrative Assistant to submit the required forms to the WISDOT Review Examiner in a timely fashion.
2. When the Chief's Administrative Assistant locates a completed OWI packet, and the driver has submitted to a chemical test which resulted in a prohibited BAC, s/he shall review the file report and submit the following forms to the Examiner:
 - a) The yellow copy of the "Informing the Accused," form SP4197.
 - b) The white copy of the, "Notice of Intent to Suspend Operating Privilege, Temporary Driving Permit," form MV 3519.
 - c) The Intoximeter EC/IR report form copy marked, "Review Examiner."
 - d) A completed copy of the Officer's Incident Report.
 - e) The arrestee's valid driver's license.
3. When the Chief's Administrative Assistant locates a completed OWI packet and the driver has refused to submit to a chemical test as required by the Implied Consent law, s/he shall submit the following forms by mail to the Examiner::
 - a) The yellow copy of the "Notice of Intent to Revoke Operating Privilege," form MV3396.
 - b) The arrestee's valid driver's license.
4. If the arrestee's chemical test resulted in a BAC below the statutorily prohibited limit, no reports shall be forwarded to the Review Examiner.
5. Do not forward expired driver's licenses, Wisconsin Photo I.D. cards, or valid Occupational Licenses to the review examiner.

V. SEIZURE OF VEHICLES ON OWI JUDGMENTS

1. The Dayshift Lieutenant will be responsible for the disposition of all vehicles seized by our department.
2. Our department will execute all OWI Vehicles Seizures when an officer has contact with and knowledge of such order.
3. A list of vehicle seizures for our department will be kept in the computer system. The Dayshift Lieutenant(s) will maintain and keep the vehicle seizure log up to date.
4. In circumstances where an investigation of a vehicle discloses that there is a Vehicle Seizure listed on the WISDOT registration teletype, the investigating officer will have

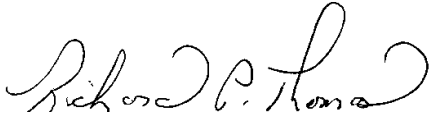
the log checked to see if our agency holds the court order. If it is determined that it is our seizure order, the vehicle will be seized and towed to the police garage.

5. If the investigating officer learns by checking the vehicle seizure log, that there is no seizure listed with our department, the vehicle shall be seized and ordered towed to the City's towing service facility. A police hold shall be placed on the vehicle.
6. In all cases, a memo, along with a copy of the registration teletype with the vehicle seizure notice, shall be directed to the Dayshift Lieutenant advising of the vehicle seizure and the location of the vehicle.
7. On our department's vehicle seizure, the Dayshift Lieutenant shall proceed with the seizure in accordance with the court order.
8. When the seizure is determined to be from another agency, the Dayshift Lieutenant will determine what agency holds the court order for the vehicle seizure. The Dayshift Lieutenant shall contact the agency holding the court order advising of the seizure and the location of the vehicle. The towing service shall be immediately contacted to cancel the hold order by our department. They shall be informed what agency now holds control of the vehicle.

W. Transfer of Recorded data

1. Data recorded during the investigation will be accurately transferred to the required report form as directed. This report form includes the current State of Wisconsin report forms, the current local Incident (narrative) Report, and event number only.
2. The reporting method chosen shall be determined by the standards set by the State of Wisconsin standards for reporting.
3. Reports must be completed and forwarded in a timely manner, preferably being completed within 72 hours following the completion of the investigation.
4. If the investigation requires additional follow up, a report containing all of the information obtained thus far, should be completed to the fullest extent possible by the investigating officer. This includes all the state forms and police department Incident Report.

APPROVED:



Chief Richard Thomas

Revised 6/9/10
Revised 5/7/10
Revised 12/1/09

DATE:

6/9/10