

MEDINA POLICE DEPARTMENT GENERAL ORDER

ORDER NO: 2020-048

SUBJECT: DWI & DWAI Enforcement

EFFECTIVE DATE: May 1, 2020 RESCINDS ORDER NO:

DISTRIBUTION: Sworn Police Personnel

PURPOSE: To establish Departmental Policy for the enforcement of the New York State Vehicle & Traffic Law pertaining to Article 31, Section 1192, 1193, 1194 and 1195. Also to ensure uniformity in procedures used in effecting an arrest and in the processing of intoxicated and/or impaired drivers.

POLICY: The following procedures will be followed whenever a person is suspected of a violation of section 1192 of the New York State Vehicle & Traffic Law:

PROCEDURE:

1. Arresting Officers shall:

A. When an Officer has reason to believe the driver of a motor vehicle is impaired, Officers are expected to conduct roadside psychomotor tests, to include standardized field sobriety testing, to assess the condition of the driver, and to provide additional evidence in court. Also, officers may wish to administer an alcohol screening test with the devices provided.

B. If the Officer has probable cause to believe that the driver is impaired, immediately, or as soon as practical, inform the person arrested that he/she is under arrest for 1192-1, 1192-3, or 1192-4 and notify the dispatcher of the arrest. Transport the subject to the appropriate location for chemical testing (i.e. station, hospital, other Department) When appropriate, advise the subject of their Miranda Warnings.

C. Dispose of the suspect's vehicle in accordance with the Department's Policy on "Vehicle Towing/Impound and Inventory Report"

D. Insure the completion or addition of all relevant paperwork into the case file.

2. Testing: The official chemical tests for use by the Medina Police Department listed in order of preference are as follows:

For Alcohol:

1. Breath
2. Blood

For Drugs:

1. Blood
2. Urine

A. In addition to the procedures outlined in this general order, the Medina Police Department does hereby adopt and subscribe to Chapter II, Part 59 of the New York State Department of Health Administration Rules and Regulations pertaining to the chemical analysis of blood, urine, breath or saliva for alcoholic content.

B. Breath Testing:

1. The arresting Officer will determine the most appropriate certified Breath Test Operator (BTO).
 - a. Preferred order of BTOs: On Duty MPD Officer *other than* arresting Officer, Arresting Officer, On Duty OCSD/APD Officer, Off Duty MPD Officer.
 1. Considerations for MPD call in BTOs: Residency, OT List, ETA
 - b. Breath Test Operators shall be certified by the New York State Department of Health and shall possess a valid permit to conduct such tests.
2. The suspect will be kept under close observation by arresting officer, BTO, and/or transporting officers and will not be allowed to place anything in his/her mouth, including smoking, for at least 20 minutes prior to such test. Dentures and tongue piercings should also be removed. Some arrested drivers may require increased attention due to their impaired condition.
3. The certified BTO will:
 - a. Print out and follow the Datamaster DMT operational check list.
 - b. Fill in all blank spaces and check all the boxes on the forms as the procedure is followed.
 - c. Enter the blood alcohol percentage in the appropriate space on the operational check list.
 - d. Provide the original operational checklist and signed breath test results for the arrest package.

C. Blood and Urine testing:

1. Blood and Urine tests are to be used under the following circumstances:
 - a. The defendant is hospitalized.
 - b. The defendant is physically unable to submit to a breath test.
 - c. In cases where the arrest is made for a violation of 1192-4 (D.W.A.I./drugs).
 - d. If requested by the suspect.
 - e. Extenuating circumstances as determined by the arresting Officer.
2. Persons arrested for certain felony offenses of the New York State Vehicle and Traffic Law can be compelled by the order of a Judge to submit to a blood test. If the defendant has been involved in a fatal or serious physical injury MVA, his/her permission to obtain a blood sample is not required. If the defendant refuses permission, the arresting officer should contact the District Attorney for a court order (this may be done by telephone due to the time limits).

3. Administration of Blood Test

- a. Blood samples shall be collected within the two (2) hour time limit and shall be collected only by a physician, a registered professional nurse, a registered physician assistant, or a certified nurse practitioner.
- b. The arresting officer, prior to withdrawal of blood sample, will inform the personnel conducting the blood draw that the defendant is under arrest and request that the proper personnel withdraw sample of blood from the defendant for chemical analysis. The Police Department will provide the blood draw kit.
 1. The consent forms within the blood kit are not required to be signed by the defendant (see refusal section). Hospital staff make require verbal or written consent as part of their documentation/evaluation process.
- c. Arresting officer must witness withdrawal of blood.
- d. If the defendant is unable to give permission (i.e. unconscious), the arresting officer may direct the withdraw of blood under implied consent, and because the defendant is under arrest for D.W.I. If the defendant refuses to allow the blood to be drawn, it should be deemed "failure to submit to a chemical test" and handled and documented according to procedures outlined in the Refusal section of this policy.
- e. The Blood Draw procedures will be as follows:
 1. Use a substance which does not contain alcohol to sterilize the skin in the area from which the blood sample is drawn.
 2. Withdraw two (2) tubes of blood.

Utilize tubes as requested by the Niagara County Lab; i.e. one tube containing the anti-coagulant EDTA, and one tube which does not contain anti-coagulant.
 3. Seal the tubes with a strip of adhesive tape. The person who withdraws the blood will initial the tape.
 3. Arresting officer must record defendant's name, date and time sample was taken, and his/her initials on the same strip of tape.
- f. After the blood sample has been taken the arresting officer will complete a property index report. A lab submission form will also be completed.
- g. Delivery to the Niagara County Lab should occur as soon as possible. All blood samples shall be stored under refrigeration and handled in accordance with current procedures for the handling of evidence.

3. Refusals

- a. Under New York State's implied consent laws, an officer who has probable cause to believe that an individual was operating a motor vehicle in an impaired condition, the driver is required to submit to chemical testing of blood, breath, or urine for the purpose of determining the amount of alcohol or drugs in the driver's body.
- b. It will be the policy of the Medina Police Department, that Officers attempt to conduct a chemical test on subjects who are arrested for DWI & DWI Drugs.
- c. This testing will be in accordance with the sections above. If a subject refuses to take a chemical test, refusal warnings must be read. The refusal warnings will be read and documented at least **two times**. The exact wording for refusal warnings are as follows:
 1. "You are under arrest for driving while intoxicated (driving while ability impaired by the use of drugs).
 2. "A refusal to submit to a chemical test, or any portion thereof, will result in the immediate suspension and subsequent revocation of your license or operating privilege whether or not you are found guilty of the charge for which you were arrested."
 3. "Your refusal to submit to a chemical test, or any portion thereof, can be introduced into evidence against you at any trial, proceeding or hearing resulting from this arrest."
 4. "Will you submit to a chemical test to determine the alcohol or drug content of your blood?"
- d. If the person charged requests a call to his/her attorney before submitting, he/she will be permitted to call as long as the call is made within a reasonable length of time and does not conflict with the statutory two hour time limit. Failure of the person to reach or contact an attorney and therefore will not agree to be tested because of such inability to contact, shall be deemed a refusal to submit to a chemical test.
- e. A Datamaster DMT test will be run for all refusals. The entry of Refusal should be entered which will be reflected on the test print out.
- f. Upon refusal to submit to a chemical test, the arresting officer will complete a "Report of Refusal to submit to Chemical Test" form. Two copies of the refusal form will be made, one for the arrest packet, one will be forwarded to the NYS Department of Motor Vehicles. :
- g. The on-call Judge will be contacted for arraignment purposes and to begin the driver's license suspension proceedings.

4. Maintenance of the Datamaster DMT

- a. The Datamaster DMT will undergo weekly tests conducted by certified a B.T.O. in accordance with guidelines established by the Bureau for Municipal Police and the Department of Health. The results of such tests will be recorded weekly in the Datamaster DMT log / binder.
- b. The Datamaster DMT will also be calibrated and tested every six months by B.M.P. and the results of same will be recorded in the record manual for each instrument.

5. Release of persons arrested for D.W.I. and D.W.A.I. Drugs

- a. Released on Appearance Tickets / Uniform Traffic Tickets (UTTS) - after prisoner booking and identification the defendant is issued appearance ticket to return to court at a later time and date.
- b. Held for arraignment – in the case of a refusal or additional bailable charges, the subject will be held for appearance before a judge. The on-call judge will be notified and request an arraignment.
- c. If the subject's blood alcohol level following a breath test is .30% or higher the prisoner will be transported by ambulance to the nearest appropriate medical facility. The arresting officer shall respond with the ambulance to the hospital and upon arrival at the hospital either issue the prisoner appearance tickets / UTTS or await with the prisoner to be medically evaluated and discharged, at which time the prisoner will be transported to a court for arraignment.
- d. If a subject whom is being released on appearance tickets / UTTS and has an elevated BAC below .30%, release to a third party may be a prudent option to provide supervision after release. In such cases, the name of the person to whom the suspect is released shall be recorded on the Arrest Report.

6. Leandra's Law

- a. The Medina Police Department understands the danger that exists to children being transported by individuals who are intoxicated. The Medina Police Department will comply and enforce Section 1194 2-a(b) of the NYS penal law, commonly referred to as Leandra's Law.
- b. Subjects who are arrested for operating with a BAC of .08% or higher and who were operating with a child 15 years of age or less, will be charged with the felony of 1192 2a(b).

- c. In the case of a Leandra's Law arrest, the arresting Officer will also make notification to the Statewide Center Register of Child Abuse and Maltreatment hotline.

BY ORDER OF:

Chad Kenward
Chief of Police