



Ithaca Police Department

120 East Clinton Street
Ithaca, New York 14850

General Order Number: 506

Arrests of Persons for Driving While Intoxicated and Under the Influence of Drugs

Issuing Authority: Chief John Barber

Effective Date: May 11, 2015

Rescinds/Supersedes: All previously issued directives

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Applicable NYSLEA Standards: 8.1; 47.5; 47.7; 47.8

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I. Purpose

The purpose of this written directive is to establish standardized policies and procedures for the investigation of alcohol and drug related driving offenses and the investigation of motor vehicle crashes where alcohol or drug intoxication or impairment was a contributing factor.

II. Policy

- A. It is the policy of the Ithaca Police Department to actively enforce the Vehicle and Traffic Laws of the State of New York and the City of Ithaca including those provisions which prohibit the operation of a motor vehicle while under the influence or alcohol or drugs.
- B. The Ithaca Police will utilize three (3) primary testing means to determine a suspect's level of intoxication or impairment.
- C. In cases where a defendant demonstrates evidence of intoxication or impairment due to alcohol, the department will utilize breath testing as the primary means of determining the suspect's level of intoxication.
 1. If the defendant agrees to submit to a breath test, the arresting officer, or an on duty staff officer, will secure a qualified Breath Test Operator. If there is no qualified operator on duty with the Ithaca Police Department, or the arresting officer is not a certified Breath Test Operator, the staff officer or the arresting officer shall request an off duty operator from the IPD first. If none are available, a request will be made of the Tompkins County Sheriff's Dept. or the closest available agency.

2. The defendant will be transported to the test site as soon as possible, and advised of the consent law and asked to take the test.

a) Every effort will be made to administer the breath test within two (2) hours of the arrest.

b) If the test is not administered within the two (2) hour limit, the test will still be run.

i. The officer will document in the police report as to the reason(s) why the test was not administered within two (2) hours of the arrest.

ii. If the defendant refuses to take the breath test, but then agrees to the test after the two (2) hour time limit, the test is still to be administered and properly documented.

3. The defendant will be kept under constant and close observation by the arresting officer/transporting officer to insure that the defendant does not place anything in his/her mouth, i.e. gum, cigarettes, pills, candy etc. The defendant will be handcuffed behind his/her back after the arrest, unless there are conditions which make it impractical.

D. In cases where the defendant is incapable of consent or providing a breath sample, due to physical injury or lack of consciousness, a blood test for alcohol will be conducted.

1. Blood tests must also be completed within two (2) hours of the arrest.

2. Blood tests must be taken by a physician or registered nurse.

3. A pre-packaged blood kit should be used to obtain the sample.

4. The physician or registered nurse shall be advised against using an alcohol solution to swab the defendant's arm before withdrawing the blood. All vials shall be used.

5. Officers will label the vials and blood kit box following departmental procedures and in accordance with the departments evidence procedures.

6. The date and time that the blood sample was taken, along with the name of the physician or registered nurse taking the sample and other pertinent information, will be documented in the police report.
7. The blood sample will be sent to the New York State Police lab for testing.

III. Procedures

A. Observed Operation Arrest

1. Officers shall approach each incident of driving while intoxicated as if no chemical test was available to substantiate the charge. Officers must build, through their observations and strict attention to details, a common law case that in and of itself is sufficient for successful prosecution.
2. During all stages of the arrest, from the first observation of the defendant until his/her release from custody or commitment to jail, all actions of the defendant should be carefully observed and documented.
3. Observation of the vehicle includes, but is not limited to:
 - a) Unreasonable speed – too slow or too fast.
 - b) Improper lane usage – weaving, failure to keep right, driving on shoulder, failure to signal, etc.
 - c) Improper passing – crosses double solid line, leaves too much or too little space for clearance, etc.
 - d) Overshooting or disregarding traffic control devices.
 - e) Impaired judgment of turns.
 - f) Containers of alcoholic beverages in and/or around the vehicle.
 - g) Observe the vehicle in motion long enough to be positive of who is driving. Gather evidence to show that the suspected driver is the only person who could have driven the vehicle.

4. Observations of the operator shall include, but not be limited to:

- a) Odor of intoxicants on breath or about him/her.
- b) Speech – slurred, thick tongued, slobbers, poor enunciation, etc.
- c) Face coloring – pale, flushed, ruddy, or otherwise unusual.
- d) Clothing – dirty, disheveled, sloppy or unkempt appearance.
- e) Eyes – bloodshot, watery, glassy, squinty, etc.
- f) Demeanor – belligerent, excited, sleepy, polite, fighting, crying, etc.
- g) Orientation – as to time and place.
- h) Psycho motor ability: Difficulties encountered stepping from vehicle or when attempting to produce license and registration, continue to make observation until defendant leaves your presence and control.
- i) Whenever possible, conduct the following Standardized Field Sobriety Tests (SFST's), per departmental training:
 - i. Horizontal Gaze Nystagmus, if trained and certified.
 - ii. Walk and turn
 - iii. One leg stand
- j) In addition to the above SFST's, other field sobriety tests may be administered and documented, such as:
 - i. Reciting the alphabet
 - ii. Finger to nose
 - iii. Modified Romberg

- k) If possible and ONLY after all field sobriety tests have been performed, the subject should be asked to submit to a preliminary field breath screening device. Such test shall be conducted in accordance with the manufacturer's instructions.
 - i. The test results shall be documented on the departmental DWI Field Notes Card.
 - ii. If a subject refuses to submit to the field screening device a charge of 1194.1b VTL should be levied against the operator whether or not he/she is charged with a violation of Section 1192 of the VTL.

5. The defendant will be advised of his/her "Miranda" rights when:

- a) He/she is in a "custodial atmosphere" (includes being in the back seat of a patrol vehicle).
- b) He/she has become a suspect.
- c) He/she is being questioned for the purpose of eliciting self-incriminating statements.

6. The defendant will be asked to submit to a chemical test.

- a) If the defendant refuses to submit to a chemical test, the officer will advise him/her of the DWI warning by reading the warning from the DWI warning card used by the IPD. This card can then be introduced as an exhibit at a trial or administrative hearing.
- b) The defendant must make a persistent and knowing refusal, so several warnings are recommended, and the times and exact words of the refusal noted on the refusal report.
 - i. If the defendant persists in the refusal, information necessary for the refusal report will be noted.
 - ii. After three documented refusals by the defendant, it will be considered a refusal.
- c) Every effort should be made to obtain a chemical test since the results present sound evidence and may permit additional charges.

- d) The defendant is required to answer in the affirmative or negative. Ambiguous replies such as, "Maybe I will and maybe I won't," shall be considered a refusal.
- e) Should the defendant request the right to consult an attorney; he/she shall be allowed a reasonable amount of time to do so. This reasonable amount of time shall not interfere with the two-hour time limit for securing the test sample. If the defendant is unable to contact counsel, he/she must make the decision.
- f) Should the defendant agree to the chemical test, the test will be administered as soon as practical.

B. Motor Vehicle Accident - Driving While Intoxicated Arrest - Defendant at Scene

1. The procedures of an accident Driving While Intoxicated arrest are the same as those for observed operation arrests.
2. The Vehicle and Traffic Law allows you to arrest for Driving While Intoxicated when it is coupled with an accident, even though you did not witness the accident and you don't have a warrant. The following elements are essential to an investigation:
 - a) Proof of Physical Control and Impairment of Driving Ability
 - i. At any accident scene, before the question of intoxication has entered, the normal procedure is to locate the driver or drivers. If the defendant has come forward in response to the question, "Who is the driver?" his/her statement should be considered as use for an oral admission and documented in a 710.30 notice.
 - ii. The officer shall secure as many witnesses as possible that can place the defendant behind the wheel of the vehicle and testify as to the operator's apparent intoxication. Voluntary statements should be obtained from the witnesses either at the scene or at the IPD.
 - iii. Statements made by both the defendant and the witnesses can be used to determine the whereabouts of the defendant between the time of the accident and the arrest.

b) Physical Evidence At Scene

- i. Point of impact on wrong side of road.
- ii. Lack of skid marks indicating depreciation in reaction, especially when visibility is good.
- iii. Excessive skid marks combined with force of resistance on impact, indicating a high rate of speed.

c) Additional Elements

- i. In cases where the defendant suffers injury, be careful to note all your observations of such.
- ii. At all accident scenes, where the defendant has consented to a chemical test, it is advisable to have the defendant transported immediately for the chemical test, rather than holding the defendant at the scene while the accident investigation is completed.
- iii. Prolonged retention of the defendant at the accident scene will normally result in a lower test and may well affect the relevance of the chemical test evidence, even if the arrest is made sometime after the occurrence of the accident. In all cases, it is advisable to obtain the chemical test as soon as possible.
- iv. In the event a defendant is involved in a fatal or serious personal injury accident, a blood test should be taken rather than a Data Master test.

C. Motor Vehicle Accident - Driving While Intoxicated Arrest - Defendant Not on Scene

1. Defendant transported to a medical facility.
 - a) The procedures of an accident Driving While Intoxicated arrest when the defendant has left the scene include most of those followed when he/she is present.
 - i. If the defendant is conscious, but is to be admitted, he/she should be told he/she is under arrest, advised of the consequences of a refusal, and requested to submit to a chemical test, plus issued the traffic summons.
 - a. The person need not be "taken into custody" and the arraignment date on the summons should be set at a time which would coincide with his/her release from the hospital.
 - b. An interview with the attending physician will aid in ascertaining the approximate date of release.
 - ii. If the defendant is to be treated, but not admitted, allow a reasonable amount of time for the treatment and then proceed as if the defendant was taken into custody at the scene.
 - b) If there are serious personal injuries to others or fatality, blood should be taken with or without the defendant's consent, pursuant to the provisions of Section 1994 VTL. In this case, contact the District Attorney, or his/her designee, who shall apply for a search warrant for the withdrawal of blood.
2. Defendant has left scene on his/her own.
 - a) If the operator has left the scene and his/her whereabouts are known, the officer shall proceed to such place and affect the arrest.

- b) If the operator's whereabouts are not known or circumstances are such that immediate apprehension is not possible, normal misdemeanor arrest procedures will be followed. These procedures shall include obtaining a warrant. Consideration should be given to the fact that the officer did not have the opportunity to observe the defendant; therefore, statements are imperative.
- c) If the defendant has left the scene and is located at their residence or a place where alcoholic beverages are served and it appears that the defendant has consumed alcohol after the occurrence of the accident and/or prior to arrest, the officer should determine the amount of alcohol consumed by the defendant. If the defendant has consumed alcohol in this fashion, the chemical test should be administered as soon as possible to minimize absorption of the alcohol in the blood stream. The facts relevant to the defendant's consumption of alcohol after an accident should be noted in the report. The fact that there has been consumption of alcohol by the defendant after an accident will not result in a non-prosecutable DWI charge if the proper steps are taken.
- d) If it appears that the defendant is claiming that he/she was not an operator or gives any indication that an "alibi" defense may be raised, it is imperative that the officer advises the District Attorney's Office of the details so that an alibi defense notice can be served upon the defendant or his/her counsel within twenty (20) days of arraignment, as required by §250.20 C.P.L.

D. Driving While Impaired by Drugs Arrest

1. Any instances where a member of this department suspects that a driver is driving under the influence of drugs shall follow all of the procedures outlined within this policy, with the exception that a blood test must be conducted to determine what drug the defendant has ingested or inhaled.
 - a) Members are reminded that they must have a reasonable idea of what specific drug the defendant has used. There is currently no universal blood screening test to determine drug type.
 - b) Members should make an attempt to use a Drug Recognition Expert (DRE) from another department within this, or an adjoining, county.

- c) Officers must have a subject under arrest and ruled out alcohol for the apparent intoxication before contacting a DRE. Officers should follow the procedures consistent with their training.

E. Basic Rules for all Driving While Intoxicated/Impaired by Drugs Arrests

1. With observed operation arrests, a lawful search of the interior of the defendant's vehicle (not including the trunk), for contraband weapons etc., would be incidental to the lawful arrest.
2. All provisions of this procedure shall apply whether the defendant is a resident or nonresident of this state.
3. All arrests should include a follow up investigation to obtain additional witnesses. A case is never so strong that additional witnesses could not add to its strength.
4. At time of arrest, the officer shall request a DMV computer check to ascertain whether a felony DWI has been committed. If the defendant has been previously convicted of Driving While Intoxicated within the past ten (10) years, the present offense becomes a felony.
 - a) A Felony DWI Complaint/Information will be completed along with the UTT in any such cases.
 - b) When the chemical test is refused, members shall also submit a "Report of Refusal Form" with the case.
 - c) All defendants will be handcuffed behind their backs to prevent them from putting anything in their mouth. Once handcuffed, they will be searched and transported in accordance with departmental procedures.
5. With any arrest that results in a refusal or Felony charge, an attempt will be made to have the defendant arraigned on the charges before his/her release.

F. Release of Defendants

1. Whenever possible, any person arrested for a charge of Driving While Intoxicated shall not be released, except under the following circumstances:
 - a) Remanded to jail by competent authority
 - b) Released to a sober adult third party
2. Any defendant with a documented alcohol content of 0.30% or more will be asked to consent to transportation to a health care facility for a voluntary evaluation.
 - a) If the defendant refuses to voluntarily be evaluated, he/she will remain in custody and transported to a health care facility under section 22.09 of the New York State Mental Hygiene Law.
 - b) The department's Uniform Mental Hygiene Information Form will be completed with the original form given to the health care facility and a copy attached to the incident report.

G. Towing of Defendant's Vehicle

1. Whenever a vehicle is stopped in connection with a Driving While Intoxicated case and the driver is subsequently arrested, the vehicle involved will be towed pursuant to departmental policies.
2. The vehicle will not be released to anyone for a minimum of eight (8) hours. After that time period, any licensed driver, including the owner, may redeem the vehicle.
3. In the event a charge of Aggravated Unlicensed Operation in either the First or Second Degree is lodged, along with an 1192 related charge, the vehicle shall only be released to a licensed operator.

