

NIAGARA FALLS POLICE DEPARTMENT

GENERAL ORDER

EFFECTIVE DATE: 09/24/2013	SUBJECT: DRIVING WHILE INTOXICATED	Number 322.00 (NYSLEAP 0-47-5)
RESCINDS: 04/15/2003		Number of pages 6

I. Policy:

- A. It is the policy of the Niagara Falls Police Department to enforce those sections of Vehicle and Traffic Law and Penal Law that relate to driving while intoxicated and related offenses. This enforcement will include the use of Sobriety Checkpoints.

II. General Procedures:

A. Driving While Intoxicated Field Tests:

1. All tests should be given with the safety of the subject and officers in mind.
2. The officer should demonstrate each test.

B. Recommended tests include, but are not limited to:

1. Walk and Turn
2. One Leg Stand
3. Alphabet Test
4. Finger to Nose
5. A Pre-screen Breath Test may be administered pursuant to Section 1194 of the V&T Law

C. Defendant's Vehicle:

1. Whenever an arrest is made for driving while intoxicated and the defendant/operator is alone in the vehicle, the vehicle will be towed and/or impounded and a twelve hour hold attached to the vehicle.

2. The vehicle may be turned over to a third party with the consent of the owner after the twelve hour period.

D. Arrest:

1. Upon placing an operator under arrest for Driving While Intoxicated, the arresting officer will give the operator his/her Miranda Warning and Driving While Intoxicated Chemical Test Warning.
2. The defendant shall be requested to submit to the appropriate chemical test for intoxication. (This test must be completed within two (2) hours of the arrest.)
3. The chemical tests used by the Niagara Falls Police Department to determine the amount of alcohol and/or drugs (in order of preference) shall be:
 - a. For alcohol - Breath or Blood
 - b. For drugs - Urine, Blood, Hair
4. Obtain a record check to determine if the violation is a felony or a misdemeanor.
5. If requested a defendant will be permitted to call his/her attorney before submitting to a chemical test. This call must be made within the statutory two-hour time limit with sufficient time remaining to allow for the administration of the test. The defendant will be advised that refusal to submit because of failure to contact the attorney shall be deemed a refusal to submit to a chemical test.
6. A Court of Appeals ruling, *People v. Washington*, (05/06/2014), now dictates that even if the defendant does not ask to speak to an attorney prior to submitting to a chemical test while in custody, if an attorney calls to consult with the defendant, he/she must be given access to the defendant prior to the administration of the chemical test unless it "unduly interferes" with the administration of the test.
7. In all types of tests, officers must remain aware of the chain of evidence and prompt submission of the sample for testing at the laboratory.
8. The defendant should be permitted an independent chemical test for intoxication at his/her expense.
9. Arrest Records:

- a. Driving while intoxicated arrest records will be prepared by the arresting officer and will include:
 1. NYS Standardized DWI Arrest Instrument (Bill of Particulars); and
 2. Datamaster Operational Check List and Test Record or;
 3. Report of Refusal to Submit to Chemical Test

10. Release of Defendants:

- a. Subjects arrested for Driving While Intoxicated may be released from custody to a competent person.
- b. If medical attention or examination is warranted, officers will follow Department policy for sick or injured prisoners.

E. Chemical Test Procedures: Breath

1. This Department provides a Datamaster terminal for use by its members. This instrument is located in a fixed position at the City Jail.
2. The Datamaster Terminal shall be calibrated weekly by NFPD Crime Scene Unit personnel and annually by the New York State Office of Public Safety.
3. Datamaster maintenance and testing records shall be made available for review by Department members. The Crime Scene Unit will maintain them.
4. If the Defendant agrees to submit to a breath test, the police desk will notify a breath test operator.

NOTE: If the Datamaster Terminal or spare instrument is inoperable, the officer will request to use a breath test instrument from an adjoining jurisdiction and shall transport the prisoner to that jurisdiction for breath testing.

5. Defendants will be kept under observation and will not be permitted to place anything in their mouth, i.e. chewing gum, pills, candy, etc. or to smoke prior to the test.
6. Only a New York State Certified Breath Analysis Operator will administer the test.

F. Chemical Test Procedures: Blood

1. Blood testing is to be utilized in the following instances:
 - a. The defendant is hospitalized;
 - b. The defendant is physically unable to submit to a breath test;
 - c. In cases of fatal accidents or serious physical injury, blood is a preferred chemical test;
2. If not already hospitalized, transport the defendant to the hospital.
3. Inform hospital authorities of his/her reason for being there stating that the prisoner is under arrest and request that the hospital withdraw a sample of blood from the prisoner for chemical analysis.

NOTE: By law, blood must be drawn per request of police but some area hospitals will only take a blood sample for the police if the prisoner/patient grants permission by signing a release. If the prisoner/patient is unable to grant permission, (i.e. because of lack of consciousness) then the arresting officer may direct the hospital staff to take the blood sample. If the prisoner/patient is able to sign a hospital release but refused, it should be documented as a refusal to submit to a chemical test. One exception to this rule is that instance where the defendant is involved in a fatal or possible fatal motor vehicle accident. In these cases, permission from the defendant is not required; if he/she refuses, the officer should contact the Niagara County District Attorney's Office to obtain a necessary Court Order.

4. Traffic Division personnel may supply blood sample or urine sample kits. Kits will also be stored in the Patrol Captain's office. Kits may also be available at area hospitals. Officers utilizing a kit will follow instructions for its use, care and security of evidence. The box and vials will be sealed, information entered into the NFPD Impact Inventory Module, and the evidence turned over to the Crime Scene Unit. The Crime Scene Unit will turn the evidence over to the Niagara County Sheriff's Department Forensic Laboratory per Department policy.
5. Blood may be withdrawn by a licensed physician, registered professional nurse or registered physician's assistant, or under the supervision and the direction of a physician, medical laboratory technician, medical technologist, phlebotomist or an advanced emergency medical technician. The sample kit has sufficient labels and the kit and vials of blood must be marked with the initials, date and time of person drawing the blood and the arresting officer. If possible the non-alcohol swab used to cleanse the area where blood

was drawn should be enclosed with the kit and submitted with the vials.

6. If possible two tubes of blood will be drawn from the suspect /patient for analysis purposes.
7. If the suspect/patient signs a consent form from the hospital, it is suggested that the arresting officers get a copy of this and submit it with the Court paperwork.

G. Refusal to Submit to a Chemical Test:

1. If a person refuses to submit to a chemical test offered, the arresting officer shall, in addition to other necessary paperwork, complete the New York State Department of Motor Vehicles Report of Refusal to Submit to Chemical Test Form.
2. The officer will be required to bring the notice of hearing along with his copy of the report of refusal to submit to chemical test and all other appropriate paperwork to a scheduled hearing at the Department of Motor Vehicles.

H. Urine Tests/Arrest for Drug Impaired Operation:

1. Urine Tests are necessary for the detection of drugs and all arrests for operating while ability is impaired by drugs. All urine tests shall be given within the two-hour period after arrest as with the other type tests.
2. All warnings should be given as previously outlined.
3. A urine sample kit will be supplied when needed.
4. The sample should be sealed and labeled and the container used to collect the sample submitted with the sample.
5. Officers or professional nurses of the same gender as the defendant should observe the sample being given. It is requested at least twenty-five (25) milliliters be supplied for analysis.
6. The urine sample, complete with all necessary forms will be sent to the Niagara County Sheriff's Department Forensic Laboratory for analysis.

I. Procedures for Chemical Test/Fatal and Serious Injury Accidents

1. In the case of a serious physical injury accident or fatality, if the defendant should refuse a test, steps will be taken to administer a mandatory test under Section 1194-3(a) of the Vehicle and Traffic Law.

J. Sobriety Checkpoints

1. A Sobriety Checkpoint is a designated street location that is operated by police officers with the intention to deter and arrest those persons operating a motor vehicle while under the influence of alcohol or drugs.
2. A supervisor will monitor and control all checkpoints.
3. This supervisor will select the location. Public and officer safety will be considered in sight selection.
4. The method of operation will be determined by the on-site supervisor based on the location, personnel assigned and traffic flow.
5. The on-site supervisor will conduct the checkpoint to insure the safe and orderly flow of traffic. A standard or uniform method will be followed for vehicle stops.
6. The checkpoint will be made known to the public through the use of signs and/or officers explaining to the motorists the reason for the checkpoint.
7. Drivers suspected of violating alcohol, drug or other offenses of the Vehicle and Traffic law will be directed out for additional investigation. Any arrests at this point will be in accordance with normal arrest procedures.
8. A report will be filed by the on-site supervisor.