



POLICY & PROCEDURE

ELKHART LAKE POLICE DEPARTMENT

SUBJECT: **IMPAIRMENT DUE TO ALCOHOL/
AND OR DRUGS**

SCOPE: All Sworn Personnel
DISTRIBUTION: Policy & Procedure Manual

REFERENCE: WI State Statute: §346.63

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Impaired Motor Vehicle Operation
Intoxicated, Motor Vehicle Operation
Operate Motor Vehicle While Under the Influence
OWI
RCS
Restricted Controlled Substance

PURPOSE: The purpose of this Policy & Procedure is to provide guidelines to Officers of the Elkhart Lake Police Department for the detection, arrest, and successful prosecution of persons under the influence of an intoxicant or controlled substance.

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. SPECIFIC PROCEDURES

- I. It is the policy of the Elkhart Lake Police Department to make roadways within

the Village of Elkhart Lake as safe as possible by arresting impaired operators. The Department takes the enforcement of impaired operators very seriously. Increasing deterrence and decreasing alcohol-related crashes, deaths, and injuries are a priority of the Department.

II. 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 refers to standard field sobriety testing.
- D. DRE refers to Drug Recognition Expert.
- E. WISDOT refers to the Wisconsin Department 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.
- I. RCS refers to Restricted Controlled Substance.

III. SPECIFIC PROCEDURES

- A. 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.)
- B. Officers shall observe the driving behavior of a motor vehicle operator, suspected of being under the influence, to collect sufficient evidence to establish probable cause to stop the vehicle.
- C. 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 or endanger other traffic.
- D. Officers should observe all drivers, stopped for traffic violations or drivers encountered at the scene of a traffic accident, 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 may be dispatched. Back-up officers will assist as required, or until a decision not to arrest is made.

2. Officers shall begin standard field sobriety tests upon arrival of the back-up unit providing one is available. Officers should note, in detail, the actions and behavior of the subject driver, which may indicate signs of intoxication.
 3. If the officer determines that the subject driver is indeed impaired, the driver shall not be allowed to subsequently drive the vehicle for any reason.
- E. Upon arrest and conveyance of the driver, the arresting officer brings the driver to the hospital for a blood test. A breath EC/IR test can also be conducted at the police department. It is preferred that the arresting officer obtain a blood sample.
- F. 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 drivers.
 2. Officers should attempt to conduct SFST, in accordance with their training, at the scene of the traffic stop or accident. The tests should be performed on a flat, well-lit area, away from traffic, such as a sidewalk or parking lot. Officers should conduct the tests in view of the MVARs. 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 at the scene of the incident, the subject should be asked if he/she would voluntarily come into the station for testing. If tests are conducted at the Police Station the tests should be conducted in the sally ports in view of the internal video recording equipment.
 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. The investigating officer should make note of the driver's actions, speech, walking and behavior. After the arrest, no further field sobriety testing should be conducted without first affording Miranda warnings to the subject.
 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 will 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: Probable cause to arrest needs to be determined by review of the totality of the circumstances and that failure to submit to field sobriety tests can constitute evidence of probable cause.

7. Officers may request a PBT test of the subject.

G. 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 hospital in a caged squad car. If the driver is combative the officer will convey the subject to the Sheboygan County Detention Center of Hospital for processing.
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.
4. The Informing the Accused form must be read to the suspect prior to any transporting for all OWI arrests.
 - a) If the suspect gives consent under Implied Consent, there is no need to do anything further than proceed with the testing.
 - b) If the suspect refuses the test, the officer must begin the process for a search warrant for a forced blood draw if the offense is a FELONY or a child under 17 years of age is in the vehicle.
 - (1) If the suspect refuses to answer to Implied Consent, the officer should proceed as a refusal.
 - (2) If the suspect refuses the test and is transported to the hospital and then consents, the officer should proceed under Implied Consent and no search warrant is needed. Documentation of this is critical.
 - (3) If the suspect refuses the test, then consents however when the lab technician arrives to draw the sample and the suspect refuses, the District Attorney should be contacted if section (b) requirements are met. If not it should be considered a refusal.

H. Disposition of the vehicle and passengers.

1. Search of the vehicle:

Commentary:

Under the *Gant* decision, a police officer may perform a search incident arrest of the defendant's vehicle if one of two factors is present:

- The arrestee is within reaching distance of the vehicle's passenger compartment at the time of the search.

This first factor is that the police can do a search incident to arrest of a vehicle when the defendant is still in a position to lunge into a vehicle. This is very counterintuitive, since the term "arrest" suggests that the defendant is already controlled.

It is a very rare circumstance, and an extremely dangerous one, when a police officer will be searching a vehicle while a defendant maintains freedom of movement. The Elkhart Lake Police Department shall not change the way people are arrested, and create unnecessary safety risks, merely to try to "set up" a *Gant* SIA under the first prong.

- The police have "reason to believe" that the vehicle contains evidence supporting the arrest.

The second factor is that the police may conduct a search incident to arrest (SIA) if they have "reason to believe" there is evidence in the vehicle that supports the arrest. This is the more useful prong although it is not clear what is meant by "reason to believe." We interpret "reason to believe" something less than probable cause since if it was probable cause it would not be helpful, because the police could make the search anyway under the Carroll Doctrine. Our interpretation is that this second prong would often allow for an SIA subsequent to a drug arrest or a OWI arrest, but would not be available, for instance, for a search incident to an arrest on a warrant for failure to pay child support, etc.

- a) The vehicle may be searched incident to the arrest (SIA) if the officer can reasonably articulate a concern for drugs or that alcohol might be in the car. The officer must have a strong belief there might be alcohol and/or drugs in the car.

The officer may not look in places where drugs and/or alcohol could not be secreted. In this instance, "reason to believe" is more than reasonable suspicion but less than probable cause.

The Carroll Doctrine holds that if you have probable cause to believe there is evidence or contraband in a vehicle then you may search anywhere in the vehicle where there is a chance to find the items that you are looking for.

The use of Canines: If you arrest a person and have a hunch that there might be drugs in the car but are not sure you have the necessary "reason to believe" you can arrange for a dog to come and do a "sniff". Typically we did not do this after an arrest as we did not need to since we could

already search the vehicle. Officers have no time concerns in waiting for the dog as the subject is already arrested. Officers can even haul the subject away before the sniff is performed. Under Wisconsin law, a dog sniff of the exterior of a car is not a search within the meaning of the 4th amendment. So after the arrest the dog does a non-search sniff and if the dog alerts you can search the car either via Carroll or by getting a search warrant based on the dog's alert.

Tow and Inventory: The Gant decision does not impact the inventory exception to the warrant requirement.

However all inventories must be performed to clearly worded policies and are to be performed on properly impounded property. If officers use this doctrine, it must be done uniformly and consistently pursuant to specific department policy. The purpose of an inventory is to protect the property, protect the department from false claims, and overall safety considerations. (Refer to Policy & Procedure 1.10 Search and Seizure).

Consent: Under Wisconsin law it is permissible to obtain consent from an arrested subject so long as the subject's consent is voluntary. However, it probably is unwise to ask for consent to search from a subject you have arrested for OWI as that seems contradictory to your later claims that the subject had impaired judgment.

Plain View: When officers have a legal right to be in a certain place, any observations made of contraband in plain view *may* result in a seizure. Officers must be in a position where you have a legal right to be when the plain view observation is made. *State v. Amrine*, 460 N.W. 2d 826 (Wis. Ct. App. 1990)

The "plain view" exception is more properly an instance of valid warrantless seizure than warrantless search because no search occurs when an object is in the "plain view" of the officer.

The items seized must be obviously identifiable as contraband or evidence.

The United States Supreme Court has allowed an "order out" of a motorist stopped for a traffic violation. As a motorist opens the door and steps out of the vehicle, the principles of plain view enable the officer to observe the suspect, the suspect's clothing and the inside of the vehicle for criminal evidence. The court viewed the safety factor as justification of the order. Also the United States Supreme Court has allowed an "order out" of passengers in a vehicle which has been lawfully stopped.

An officer may use a flashlight to see at night what would be in plain view in daylight, all else being legal.

b) Frisking a vehicle

Under the United States Supreme Court case of Michigan v. Long it is permissible to frisk an auto for weapons if the police have a reasonable articulable suspicion that there may be weapons in the car. This is not a full-scale search but a quick cursory look for weapons.

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, the next closest tow truck will be requested through the Sheboygan County Communications Center.

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 or public property may be secured and remain on the private/public property, provided consent is given by owner of the vehicle and the owner or resident of the property. If the vehicle is legally parked on public property it may remain unless the arrested person requests it towed. The tow is at the expense of the owner/arrested person.

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 streets during the evening hours.

I. Investigation at the station.

1. All persons arrested for operating/driving while intoxicated will be conveyed to the hospital. In cases of the subject being non-compliant the Officer may transport them directly to the Sheboygan County Detention Center for processing. Further, uninjured drivers that are arrested for felony OWI offenses shall be conveyed directly to the hospital for a mandatory forced blood draw once the warrant is issued.
2. Upon arrival at the hospital (or the Sheboygan County Detention Center) the arresting officer shall complete the OWI citation and issue the Defendant copy to the arrestee (Preferably before administration of the chemical test.)

3. Citation Issuance:

- All OWI arrests are Mandatory Appearance.
- All second offense or greater OWI's are crimes and processed through Sheboygan County Circuit Court.
- If the arrestee submits to a chemical test, and the results prohibitive, a second UTC shall be issued.

J. Chemical tests for intoxication.

1. The arresting/designated officer shall maintain constant observation of the arrestee for a minimum of twenty (20) minutes prior to the test.
2. State-Certified Intoximeter EC/IR operator shall prepare the Intoximeter EC/IR for the test, in accordance with training and procedure for the instrument.
3. Officers should attempt to obtain all chemical tests for intoxication/impairment within three hours of the last operation of the motor vehicle.
4. The arresting officer shall read all applicable areas of the current State of Wisconsin "**Informing the Accused**" Form to the arrested driver and ask if he/she will submit to an evidentiary chemical test of his/her breath/blood. The appropriate "Yes" or "No" box will be checked on the form. The arresting officer shall give the arrestee the pink copy of this completed form.
5. The informing the accused must be read verbatim for every chemical test requested. Including multiple tests on the same subject. For example if the subject is being tested on the IC/ER and the instrument fails and the officer does a blood draw the officer must read the informing the accused again. If a suspect is hospitalized, even if unresponsive, the informing the accused must be read to the subject. If there is a "no response" it is considered a "yes" under implied consent.
6. Under most circumstances, evidentiary breath testing should be done by the arresting officer.

K. Breath tests.

1. The breath test is the secondary chemical test that this department uses.
2. The breath test operator will follow WISDOT established procedures and will obtain the required amount of breath samples from the operator needed 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 operator 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.

L. Blood Tests.

1. A blood sample draw will be designated as the primary test for all arrests.
 - a) A search warrant must be applied for if the defendant refuses. The officer shall contact the on call District Attorney who will meet you at the hospital to obtain a telephonic search warrant.
 - b) Once the search warrant is granted, the Officer will present the search warrant to the defendant BEFORE the forced blood draw is obtained.
 - c) After the blood is obtained, the Officer shall proceed with the remainder of the OWI process.
 - d) The "Informing the Accused" form should note NO.
 - e) The "Notice of Intent to Revoke Operating Privileges" form should be filled out and served on the defendant in person. This form will then be filed with the Clerk of Court's Office the following morning by a supervisor.
2. A physician, medical technologist, registered nurse, physician assistant or person acting under the direction of a physician will draw blood in the presence of the arresting officer at the medical facility. The person drawing the blood 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, utilizing the designated Blood Kits. The Styrofoam mailer package will be sealed and labeled by the arresting officer. The arresting officer will also write the OWI case number on the Styrofoam mailing container. No other writing shall be allowed on the outside of the Styrofoam mailer, except that a blood sample arising from a drug evaluation by a certified DRE will also be marked "DRE" on the outside of the Styrofoam mailer.
4. The arresting officer will inventory the blood sample by placing the sample on a Department evidence form. The blood sample will be stored in the evidence intake lockers until mailed. The evidence form will be turned over to the Chief of Police.
5. Where to Send Blood Samples:

- **Non-felony OWI Offenses (1st through 3rd offense):** Blood samples must be sent to the Wisconsin State Laboratory of Hygiene (WSLH).*
*Other laboratories that are certified to perform Implied Consent Alcohol testing may be available in certain jurisdictions.
 - **Felony OWI Offenses:** Blood samples should be sent to the State Crime Laboratory in Madison or Milwaukee. This includes all 4th and higher OWI offenses as well as homicide and injury OWI (940.09(1)a-d, 940.25 Wis. Stats.) cases.
 - **Non-OWI Felony Offenses:** Blood samples for all non-OWI cases must be sent to the State Crime Laboratory in Madison or Milwaukee. These samples will be re-directed to the appropriate laboratory if sent to the WSLH.
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 pursuant subsection 5 above.

The arresting officer, or the DRE, shall advise the chemist, in writing, whenever possible, what drugs are suspected of causing the impairment.

7. It is important to carefully read and follow the directions contained in the Implied Consent Collection Kit Blood Alcohol/Controlled Substance.

M. Alternate Test (S.S. 343.305)

1. The Department is required to furnish two chemical tests at the Department's expense. If the arrestee requests an alternate test:
 - a) Once the arrestee submits to a chemical test, if requested, an officer is required to perform an alternate test.
 - b) The officer is required to make a diligent attempt to provide an alternate test. This option is not applicable if the driver refuses the department's primary test.
 - c) The department's alternate test are: Primary Breath>Alternative Blood, Primary Blood> Alternate Breath. Urine is only used with supervisor approval.
 - d) The arrestee must be given a reasonable opportunity to obtain an additional test at their own expense. If the arrestee is released to a responsible adult, this is considered a reasonable opportunity, and we have no obligation to transport the subject anywhere. If the arrestee is not released, the officers shall transport the arrestee to a local hospital for this purpose.
 - e) It is important the officer accurately and clearly lists all times and actions

offered/taken.

N. Test Results.

1. When test results are received in writing from the State Lab of Hygiene/Crime Lab, and the blood/breath alcohol concentration (BAC) is over that statutorily prohibited level, 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. If the driver was originally arrested for a Felony, Causing Great Bodily Harm or Homicide by Intoxicated Use of a Motor Vehicle, the case shall be referred to the District Attorney.

O. Post Chemical Test Processing.

1. If the arrestee has a prohibitive **breath** test, result the officer shall issue the second citation for PAC, 346.63 (1)(a) .
2. The **Alcohol Influence Report** shall be completed by the arresting officer. A copy of this form is not given to the driver.
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,**" shall be completed by the officer. The instructions are to be read to the driver. This form will be served to the arrestee. 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 Intent to Suspend Operating privileges form to the arrestee.
4. If the arrestee has a test result with a prohibited BAC, the arresting officer shall issue The **Administrative Review Request** to him.
5. 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.
6. 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/Crime Lab.

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 arresting officer will also complete a supplement report to include the test results and all actions taken after receipt of the results from the lab.
7. The **operator's license** will remain with the arrested person.

8. 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 case file. Officers shall include a copy of all citations and the driver/vehicle record (10/27/28/29) in the file. The arresting officer shall be responsible for making sure the case file is complete.
9. The Intoximeter EC/IR operator shall also add his observations and the test results in a supplemental report.

P. Refusal Processing.

First offense refusals are processed in Elkhart Lake Municipal court. Second and subsequent refusal offenses are processed in Sheboygan County Circuit court.

If the driver refuses a chemical test, the following must be completed by the arresting officer:

1. The Alcohol Influence Report. A copy of this form is not given to the driver.
2. Notice of Intent to Revoke Operating Privileges. The form must be read to the driver. The driver receives a copy of this report form. Department administration will mail a copy of this form to WDOT DSP Chemical Test PO Box 7912 Madison WI 53707-7912.
3. The driver receives a UTC for the OWI charge.
4. The arresting officer will note in the summary section of the report the test results or that the arrested person has refused the chemical test.

Q. Blood Acquisitions.

If it becomes necessary to collect blood for evidence in an OWI case where the driver is charged with second offense OWI and refuses, involved in an accident involving serious injury or an apparent fatality, the following procedure shall be exercised.

1. Try to obtain consent from the driver.
2. Always use the implied consent law when it applies.
3. When a person is arrested for any criminal OWI offense, it will be required that the officer obtain blood even if the subject refuses (involuntary). This would also apply if the subject has been arrested for any criminal OWI resulting in injury or death. The on duty D.A. shall be contacted in these cases.
4. Second offense or greater OWI refusals shall be conveyed to the Sheboygan

County Detention Center where no blood draw will be taken unless a warrant is obtained.

R. Elements for Obtaining a Search Warrant for Blood.

When requesting a search warrant for blood, advice from the on duty District Attorney should be obtained. The officer must give oral testimony to obtain a search warrant for blood which:

1. Must show that there was a crime.
2. Explains why the blood 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 that will draw the blood.
5. States how much blood is needed. This should be not less than 20 milliliters of blood.
6. Requests authorized **reasonable force** to obtain the blood.

S. 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 at the Sheboygan County Circuit Court.
2. Refer to the "counting OWI offenses" chart to determine priors.

T. Absolute Sobriety

1. Commercial Motor Vehicles

a) WI Statue 346.63(7)(a): no person may drive or operate or be on duty time with respect to a commercial motor vehicle under any of the following circumstances:

- While having measured alcohol concentration above 0.0
- Within 4 hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content
- While possessing an intoxicating beverage, regardless of its alcohol content, unless the beverage is unopened and is manifested and transported as part of the shipment.

b) A violation will result in the issuance of a 24 – hour out of service order; MV3546, the 24 hour Out of Service order & MV3558, the classified

License receipt. When issuing these documents to an individual, copies shall be sent to:

Revocation & Suspension Unit
P.O. Box 7917
Madison, WI 53707-7917
Phone: (608)-267-2088

- c) When issuing a 24 hour Out of Service Order, all traffic citations shall be listed on the form, not just the OWI citation.
 - d) Questions may be directed to the DOT Revocation & Suspension section. Phone 608-266-2261
2. Drivers under 21
- a) When a person under the age of 21 is stopped while operating a motor vehicle and the officer detects the odor of an intoxicant, the officer shall proceed in the same manner as with any other person who is suspected of operating a motor vehicle while under the influence of an intoxicant.
 - b) Administer field sobriety tests, including a PBT if available.
 - c) If the driver is impaired, process the same as a typical OWI & charge under 346.63(1)
 - d) If probable cause does not indicate that the subject is impaired, charge with a violation of 346.63(2m) Absolute sobriety. If the subject submits to a test and blows over .08, cite for PAC as well.
 - e) Absolute Sobriety citations require a mandatory court appearance.
3. In Absolute Sobriety cases where the arrestee is an adult they should be release to a responsible, sober adult.
4. Officers should check for passengers under age 16 and add enhancers to the charge, if appropriate.

U. Release of Intoxicated Driver after Processing.

- 1. Persons arrested for operating a motor vehicle under the influence of an intoxicant shall be released to a responsible sober party or held at the Sheboygan County Jail until their alcohol level is a .04. Officers shall indicate on the booking sheet the subject is only being held until released to a responsible party or their alcohol level is .04. The booking sheet shall only contain the charge of OWI unless there are additional criminal charges associated.

2. The responsible party must read and sign the Responsibility Agreement prior to the subjects release from custody.

V. Impairment due to drugs: (Drug Recognition Expert).

Commentary: Elkhart Lake Police Department can request a DRE from the Sheboygan County Sheriff's Office, or any other agency known to have a DRE.

1. When there is evidence of drug usage and impairment, **and** the Intoximeter EC/IR result is **below** the statutorily prohibited BAC level for the respective offense (.08 BAC 1st, 2nd, 3rd, and .02 BAC 4th & subsequent offenses,) the arresting officer may notify a DRE to respond to the station, to assist him/her in his/her investigation.

- a) Officers shall note the indicators, such as strong odor of marijuana smoke, residue, admissions, etc.
- b) Arrest and secure subject.
- c) Secure vehicle and search as permitted by law.
- d) Issue citation for "Operating a Motor Vehicle while under the influence of alcohol or controlled substance" prior to the blood test.
- e) Complete the informing the accused and specify blood as the primary test.
- f) It is imperative to get a blood sample as soon as possible a speak concentration of drugs may occur within one half hour to one hour after use.
- g) If arrestee refuses, flow the refusal procedures.
- h) If specific drugs are known, enclose a list on the form with the blood kit.
- i) Submit the sample the State Lab of Hygiene. Special handling is required if LSD or Cocaine is suspected. These substances break down quickly when exposed to heat or light. Blood sample must be refrigerated, and forward to the Hygiene lab by the quickest means possible.
- j) When blood tests are returned, issue Restricted Substance citation 346.63 (1)(am) or 346.63(1)(B) if results show one or both statutes have been violated. The penalty for RCS is the same as PAC in this situation. Issue notice of intent to suspend for either violation. Hand deliver copies to defendant or send via certified mail. Complete a supplement report with lab results attached.

2. Detectable Amount of a Controlled Substance

- a) If an officer suspects drug use by a subject operating a motor vehicle, an arrest can be made under the “Restricted Controlled Substance” statute, 346.63(1)(am). Probable cause to believe there is a RCS violation can exist there is not enough to arrest for OWI. Some example could be a cloud of smoke in the car, a pipe with residue which is still warm, or an admission.

Probable cause to believe there is detectable level of controlled substance in the system is the key. Offices don’t need to see impairment. The mere presence of drugs and/or paraphernalia without indications of recent use probably does not amount to the probable cause to charge this statute. The following procedures should be followed for a RCS arrest:

- Determine impairment utilizing field sobriety tests and a PBT.
 - If impairment is present follow the steps under the previous section V,1.
 - If no impairment, determine if the drug you suspect is covered in the RCS statute , which is basically all the controlled substances listed in the 961 schedule I: including THC, cocaine, and its metabolites, methamphetamine, and Delta-9 Tetrahydrocannabinols (THC)
 - Determine if the subject has valid prescription and ask to see it.
 - Make the arrest if the controlled substance is covered in the statute and the subject does not have a valid prescription.
 - Complete the informing the accused form.
 - The primary test for a RCS violation is Blood; secondary would be urine.
 - If the subject refuses the test, follow the refusal procedures and force a blood draw for all offenses.
 - Indicate what specific drugs are known and suspected. Enclose a list on the form with the blood kit.
 - Submit the sample to the State Lab of hygiene. Special handling is required if LSD or Cocaine is suspected. These substances break down quickly when exposed to heat or light. Blood sample must be refrigerated, and forward to the Hygiene lab/Crime lab by the quickest means possible.
 - When blood tests are returned, issue RCS citation 346.63 (1)(am) and issue the notice of intent to suspend if there is evidence the statute has been violated. The penalty for RCS is the same as the OWI penalties in the same situation. Hand deliver copies to defendant or send via certified mail.
 - Complete a supplement report with lab results attached. RCS violations count as a prior OWI conviction.
3. If it is a 1st, 2nd or 3rd OWI offense, when breath is the primary test, and the test results are below .08 BAC, *and* there is impairment present that is not consistent with the breath test results, the arresting officer shall read and complete a 2nd, “Informing the accused,” form.

If the arrestee is compliant, immediately convey the arrestee to the medical facility for a blood sample draw. If the suspect refuses this test, it is considered a refusal to submit to the chemical test.

4. The DRE will interview the arresting officer to become familiar with the facts of the case and the arresting officer's reasons for suspecting that drug ingestion is the partial or sole cause of the impairment exhibited.
5. After the arresting officer returns from the medical facility/jail with the arrestee, the DRE will administer The Drug Influence Evaluation, which will conform to DRE training guidelines and which will be witnessed by the arresting officer. The DRE will complete the Drug Influence Evaluation face sheet and a written narrative, compiling his findings during the evaluation. This report will become part of the OWI arrest report case file.
6. The DRE will also forward a copy of his completed report to WISDOT Bureau of Transportation Safety.

W. WISDOT Review Examiner Notification.

1. It is the responsibility of a supervisor to review the OWI reports, to submit the proper forms to the WISDOT Review Examiner in a timely fashion.
2. When the supervisor locates a completed OWI packet, and the driver has submitted to a chemical test which resulted in a prohibited BAC, he/she shall review the narrative report and submit, by mail/electronic, 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) The yellow copy of the Alcoholic Influence Report, form SP 4005.
 - e) A completed copy of the Officer's Narrative Report.
3. When the supervisor locates a completed OWI packet and the driver has refused to submit to a chemical test as required by the Implied Consent law, the supervisor shall submit the following forms by mail:
 - a) A copy of the "Notice of Intent to Revoke Operating Privilege," form MV3396 to:

WDOT DSP Chemical Test

P.O. Box 7912
Madison WI, 53707-7912

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 driver's licenses, expired driver's licenses, Wisconsin Photo I.D. cards, or valid Occupational Licenses to the review examiner.

X. Seizure of Vehicles on OWI Judgments.

1. A supervisor will be responsible for the disposition of all vehicles seized by our Department.
2. The 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 the Department will be kept in the computer system.
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. In all cases, a memo, along with a copy of the registration teletype with the vehicle seizure notice, shall be directed to a supervisor advising of the vehicle seizure and the location of the vehicle.
6. On the Department's vehicle seizure, the supervisor shall proceed with the seizure in accordance with the court order.
7. When the seizure is determined to be from another agency, the supervisor will determine what agency holds the court order for the vehicle seizure.

The supervisor shall contact the agency holding the court order advising of the seizure and the location of the vehicle. The issuing agency of the seizure order shall be informed of the seizure.

Y. Required Report.

1. Reports must be completed and forwarded to Support Services in a timely manner, preferably by the end of the officer's shift. Refer to the Elkhart Lake Police Departments Report Writing Guide.

2. If the investigation requires 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 narrative report.

Michael Meeusen
Chief of Police

This Policy & Procedure cancels and supersedes any and all written directives relative to the subject matter contained herein.

Initial 06/01/2015