



# TOWN OF MACEDON POLICE DEPARTMENT

<b>General Order:</b> 510	<b>Effective Date:</b> March 1, 2020
<b>Subject:</b> DWI/DWAI/DWAID Evaluations and Procedures	
<b>Reference Standards:</b> 47.5, 64.1	
<b>Rescinds:</b> N/A	
Page 1 of 10	<b>Attachment(s):</b> New York State Department of Health Policy Statement regarding Blood Draws for Law Enforcement

## I. Purpose

- A. To establish Macedon Police Department policy for enforcement of the New York State Vehicle and Traffic Laws pertaining to Article 31, Alcohol and Drug Related Offenses, specifically Sections 1192, 1193, 1194, and 1195.
- B. To ensure uniformity in procedures used when evaluating, arresting and processing impaired and intoxicated drivers.

## II. Chemical test policy

- A. The chemical tests used by the department are listed in order of preference as follows:
  1. For alcohol:
    - a) Breath
    - b) Blood
  2. For drugs:
    - a) Blood
    - b) Urine

## III. Definitions

- A. **Highway:** The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.
- B. **Motor vehicle:** Any vehicle operated or driven upon a public highway which is propelled

by any power other than muscular.

- C. **Operation:** A person operates a motor vehicle when such person drives a vehicle or is sitting behind the wheel of a motor vehicle for the purpose of placing the vehicle in motion, and when the motor vehicle is moving, or even if it is not moving, the engine is running.
- D. **Parking lot** as defined in §1192(7) is: any area or areas of private property, including a driveway, near or contiguous to and provided in connection with premises and used as a means of access to and egress from a public highway to such premises and having a capacity for the parking of four or more motor vehicles. The provisions of this section shall not apply to any area or areas of private property comprising all or part of property on which is situated a one or two family residence.
- E. **Private road.** Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.
- F. **Public highway.** Any highway, road, street, avenue, alley, public place, public driveway or any other public way.

#### IV. General procedures

- A. To substantiate an 1192 offense, an officer must establish that operation of a motor vehicle in an allegedly impaired or intoxicated state occurred upon public highways, private roads open to motor vehicle traffic, or in a parking lot.
- B. Officers will encounter suspected impaired and intoxicated driver's during a variety of situations including but not limited to:
  - 1. Traffic stops
  - 2. Motor vehicle accident investigations
  - 3. Traffic checkpoints
  - 4. Criminal investigations
  - 5. Suspicious vehicle complaints
- C. Officers must ensure that reasonable suspicion exists to initiate a stop of a vehicle.
- D. The following procedures will be followed whenever a driver is suspected of being in an impaired or intoxicated condition. The investigating officer may:
  - 1. Request the driver submit to a series of roadside psychomotor tests consistent with current procedures and practices. Roadside tests must be conducted safely, taking into consideration weather, traffic, and the physical condition of the driver. The officer may have the driver move to a nearby off-road location for the performance of the psychomotor tests.

2. A second officer should be requested to respond to the scene prior to the administration of roadside psychomotor testing. The driver's performance of the roadside tests will be recorded on any subsequent reports and arrest paperwork.
3. Request the driver submit to a roadside pre-screening breath test device such as an Alco-Sensor. Officers issued such a device will make themselves familiar with the operating procedures outlined in the unit's manual. The administration of the breath test will be pursuant to departmental training and procedures.
4. When an officer determines that the person is driving in violation of NYS VTL §1192, advise the person that he/she is being arrested
5. Handcuff and search the defendant according to departmental policy
6. Ensure the defendant is transported to the police department for processing pursuant to General Order 530. Transporting officers should be aware of the possibility of changing moods and physical condition of an intoxicated arrestee and take appropriate action if necessary. Officers should pay special attention to the defendant's position in the police vehicle and avoid any possibility of positional asphyxia.
7. Ensure the removal or security of the defendant's vehicle by:
  - a) Towing and impounding of the vehicle pursuant to General Order 520
  - b) Allowing a non-intoxicated passenger to drive the vehicle
  - c) Securing the vehicle at the scene if in a public parking area
8. The arresting officer will request the defendant submit to a chemical test to determine the alcohol or drug content of the defendant's blood.
  - a) If the defendant agrees to submit to a breath test, the officer must ensure the defendant is kept under close observation and that nothing is placed in the defendant's mouth for at least 20 minutes prior to the administration of a chemical breath test.
  - b) If the defendant refuses to submit to a chemical test, the officer will advise the defendant of the "Commissioner's Warnings" exactly as worded and ask if he/she will submit to a chemical test.
    - 1) If the defendant refuses to take a chemical test, the defendant's exact response of refusal will be noted on the New York State Department of Motor Vehicle "Report of refusal to submit to a chemical test" form AA-134.
    - 2) Within two hours of the arrest time, the officer will re-read the Commissioner's Warnings to the defendant at least two more times and record the exact response of any refusal on form AA-134.
    - 3) The "Report of Refusal to Submit to a Chemical Test" must be fully completed and submitted with the defendant's arrest package.

- c) If the circumstance of the arrest involves a fatal or serious injury accident and the defendant refuses to take a chemical test, a compulsory chemical test may be requested with the assistance of the Wayne County District Attorney's Office (Refer to the NYS V&T Law §1194). For such requests, the arresting officer will notify a supervisor and a member of the Wayne County District Attorney's Office.
- 9. Determine which chemical test is to be offered and follow the procedures as set forth in this order. The test must be offered within two (2) hours of the time of arrest.
  - a) The two-hour time limit may be waived in cases where the officer is found to be acting in good faith in providing the defendant with a timely breath analysis when the defendant agrees to submit to a chemical test.
  - b) This may apply to both a routine breath analysis and blood test and/or a court ordered blood test.
- 10. If the defendant requests to speak to an attorney before the administration of a chemical test, reasonable efforts will be made to allow this. Failure of the defendant to make contact with an attorney does not relieve the defendant of his/her responsibility to submit to a chemical test.
  - a) A defendant's refusal to submit to a chemical test because of his/her failure to contact an attorney will be deemed a failure to submit to a chemical test.
  - b) If the defendant does make contact with an attorney, the arresting officer will record the attorney's name and time of the call on the alcohol influence report. While officers must maintain close supervision of an arrestee, they must make an effort not to listen to the conversation between defendant and an attorney.

## **V. Breath testing procedures**

- A. The primary chemical test used by the department is the breath test.
- B. The breath test instrument utilized is the B.A.C. Datamaster, an instrument meeting the criteria set forth in section 59.4 and 59.5 of chapter 897 of the Laws of State of New York and promulgated in part 59 of the administrative rules and regulations sub-chapter D of chapter 2, Title 10 (Health Law) of the official compilation of codes, rules and regulations of the State of New York. The B.A.C. Datamaster will be certified and calibrated through the NYS DCJS Office of Public Safety on a semi-annual basis.
- C. Breath Test Operators (BTOs) will be certified by the New York State Department of Health and will possess a valid permit to conduct such tests.
- D. If a BTO and instrument are available and the test is appropriate under the circumstances of the arrest, a proper and adequate breath sample will be collected and analyzed.
- E. If testing takes place at the Macedon Police Department the B.A.C. Datamaster Checklist/Supporting Deposition will be filled out completely and accurately. If testing occurs at another agency, the appropriate standardized checklist and/or deposition utilized by that agency will be completed for the instrument used.

## **VI. Blood testing procedures**

- A. The following procedures will be followed when a blood test is to be used under the following circumstances:
  - 1. The defendant is hospitalized
  - 2. The defendant is physically unable to submit to a breath test
  - 3. No breath test instrument or operator is available within the department or at nearby police agencies
  - 4. The defendant is under arrest for violation of §1192-4, DWAI
- B. Blood samples will only be collected by a physician, registered professional nurse, or a registered physician's assistant; or under the supervision and at the direction of a physician; a medical laboratory technician or medical technologist as classified by civil service; a phlebotomist; an advanced emergency medical technician as certified by the department of health; or a medical laboratory technician or medical technologist employed by a clinical laboratory approved under title five of article five of the New York State Public Health Law.
- C. If the defendant consents to the test, the arresting officer will:
  - 1. Inform hospital personnel/Advanced Emergency Medical Technician (AEMT) that the defendant is under arrest and request that the proper personnel withdraw the blood sample from the defendant for chemical analysis. Hospitals/AEMTs will only take a blood sample at the direction of a police officer and if the defendant grants permission by signing a consent form. If the defendant is unable to give permission (i.e., unconscious), the officer may direct the hospital staff/AEMT to draw the blood pursuant to implied consent.
  - 2. Witness the withdrawal of blood
- D. If the defendant is able to sign a consent form but refuses, it should be deemed a failure to submit to a chemical test and documented as such. The arresting officer must then read the defendant the Commissioner's Warnings and document any refusal on form AA-134 as described in § VII (7) of the General Order.
- E. If a defendant refuses to submit to a chemical test blood draw at the hospital, but has blood drawn for medical purposes, the officer may apply for a search warrant for a sample of the defendant's blood. The officer must advise the hospital laboratory staff that he/she is applying for a search warrant for the defendant's blood sample. The officer must provide the staff with the defendant's name and date of birth, and the defendant's hospital ID number if known. The hospital will then maintain custody of any blood samples until the officer obtains a search warrant.

F. Wayne County hospitals have agreed to:

1. Withdraw two (2) tubes of blood, if possible, utilizing an approved blood collection kit that does not contain alcohol to sterilize the skin in the area from which the blood sample is drawn. Hospital personnel will place the tubes in a cardboard box and will seal the box. The person who draws the blood must initial the tape. The arresting officer must record the defendant's name, the date and time the sample was taken, and his/her initials on the box.

G. After the blood sample has been obtained, the arresting officer will:

1. Complete a Property Receipt clearly stating the reason for the sample and further stating whether the sample is to be analyzed for alcohol and/or drug content or both. If a particular type of drug is suspected, such drug type should be clearly stated.
2. Properly label and seal the box containing the vials of blood pursuant to General Order 480. A biohazard sticker will be affixed to the packaging.
3. The evidence box will be secured in the evidence refrigerator.
4. The property receipt should be placed in the arrest package, and a copy must be provided to the Property Clerk
5. If a DRE evaluation was completed, a copy of the first page of the Drug Influence Evaluation Report will be included with the arrest package and a copy filed with the blood kit.
6. The evidence will be shipped to the NMS Labs, or contracted facility, as soon as practicable by the Property Clerk or his/her designee.

**VII. Urine Tests**

A. Urine tests will be utilized when an arrest is made for a violation of §1192-4 DWAI and a blood sample cannot be obtained, or at the discretion of the DRE.

B. Urine samples may be collected by any officer. The officer will:

1. Immediately seal and initial the label of the collection bottle, and properly seal the bottle in the collection kit.
2. Affix a property label and a biohazard sticker on the outside of the collection kit pursuant to General Order 480.
3. Secure the urine collection kit in the evidence refrigerator.
4. Complete a property receipt and an NMS Labs requisition form.
5. Leave a copy of the DRE examination report, the property receipt, and the NMS Labs requisition form with the Property Clerk.

- C. The urine sample and associated paperwork will be shipped to the NMS Labs by the Property Clerk or his/her designee.

#### **VIII. Drug Recognition Expert procedures**

- A. Officers suspecting a person to be impaired or intoxicated must first make a determination based on their own training and experience as to whether a subject should be arrested or detained for further investigation.
- B. In a case where an officer has probable cause to believe the operator of a motor vehicle or vessel is intoxicated, the officer should make the arrest for New York State Vehicle and Traffic Law §1192-3. Subsequent to that arrest, the defendant should be taken for a chemical breath test to determine whether alcohol is a contributing or singular factor in the defendant's impairment. If the blood alcohol result is not consistent with the impairment observed, the arresting officer should make request for a DRE.
- C. Any officer may call for the services of a DRE under the following circumstances:
  - 1. The officer has probable cause to believe a person is impaired and cannot determine the impairing substance
  - 2. The officer is investigating a motor vehicle or vessel collision involving serious physical injury or death
- D. In a case where the arresting officer is reasonably certain, based upon his/her investigation, that alcohol is **not** the impairing substance, but marijuana or a controlled substance is, the defendant should be arrested for DWAI. A DRE should be immediately summoned
- E. DREs may, based on current procedures of the DRE Program, utilize properly calibrated pre-screening breath test instruments to determine the presence of alcohol instead of an evidential chemical test, to rule out alcohol as the impairing substance.
- F. A DRE will meet the arresting officer at a location established for DRE evaluations, with the proper facilities and equipment available to conduct the evaluation (Tablet computer, dark room, straight line, DRE kit, etc.), in accordance with current D.R.E. Program procedures.
- G. The arresting officer will be asked to assist the DRE with the evaluation process, including providing information on the circumstances of the arrest or traffic stop, physical evidence found. The arresting officer will assist with recording information as directed by the DRE. The arresting officer will also serve as a cover officer for the DRE during the evaluation process.
- H. At the conclusion of the DRE evaluation, the DRE will render an opinion and advise the arresting officer. If probable cause exists based on the DRE's opinion, the arresting officer then will make the arrest for Driving While Ability Impaired by Drugs, under NYS VTL §1192-4.
- I. The DRE will complete the first page and narrative of the Drug Influence Evaluation Report in a timely fashion and provide the originals to the arresting officer for the arrest package.

A copy of the first page will be included with the toxicology sample, if any. A copy of the evaluation report and narrative will be forwarded to the Regional DRE Coordinator, and a copy maintained by the DRE in his own records.

- J. If no Macedon Police Department DRE is on duty, the Wayne County 9-1-1 Center may facilitate contacting an on-duty DRE from another local law enforcement agency.
- K. If no on-duty DRE is available, a Macedon Police Department DRE may be called in from home at the discretion of the supervisor on-duty.
- L. If no D.R.E. is available through any means, and the arresting officer believes he has sufficient probable cause to make the arrest based on his investigation, the defendant may be asked to submit to a blood test as above.

#### **IX. NYS Department of Motor Vehicles records check**

- A. The arresting officer will ensure a NYS DMV Driver License history request and a DMV registered vehicle inquiry for the defendant are submitted. The officer will check the Driver License history for:
  - 1. Alcohol related convictions. If the history response indicates the defendant had a prior conviction for a violation of § 1192 subdivision 2,3 or 4 within the past ten (10) years, the DMV history report will serve as a basis for a felony complaint. A Felony Arrest package must then be completed.
  - 2. Alcohol related suspensions
  - 3. Ignition interlock requirements
- B. The DMV history will be utilized as the basis for any additional charges against the defendant
- C. The Records Division will subsequently forward a request for a certified copy of the Driver License history transcript to NYS DMV.
- D. All requests and replies will be made a part of the defendant's arrest jacket.

#### **X. Release of intoxicated persons from custody**

- A. Upon completion of all processing, the defendant may be released from custody or arraigned by a Judge.
  - 1. If the defendant is still under the influence of alcohol or drugs, any release from custody will be made to a responsible third party. The third party will be made aware of the person's condition.

#### **XI. OPERATING A MOTOR VEHICLE AFTER CONSUMING ALCOHOL**

- A. Zero Tolerance



1. N.Y.S. Vehicle & Traffic Law §1192-a allows that when the operator of a motor vehicle who is under the age of 21 is suspected of having consumed alcohol, the officer may request that the operator submit to a chemical test to determine his/her blood alcohol content (BAC). Section 1192-a allows that a police officer may **detain** and **transport** the operator of a motor vehicle, for the purpose of administering a breath test. The statute does not authorize an arrest. Violations of 1192-a are civil proceedings adjudicated by the DMV, not the criminal courts.
  - a) The detention and transport of the under age 21 motor vehicle operator will be accomplished in a manner consistent with officer safety and the rules and regulations of the Macedon Police Department.
  - b) An individual who is legally being detained under this section and resists the lawful detention or attempts escape may be charged with Obstructing Governmental Administration, § 195.05 of the NYS Penal Law.
2. The officer will transport the individual to an appropriate location where the breath test will be administered by a certified BTO pursuant to § VIII of this General Order.
3. In the event that the operator's blood alcohol level shows between a .02 % B.A.C. and .07% B.A.C. a DMV Form AA-137A.1 "Notice of Hearing/operating a Motor Vehicle after Consuming Alcohol Form" will be properly completed, listing all pertinent information along with the date, time, and location of the next available DMV scheduled hearing in Wayne County.
4. If the operator's BAC level is a .06% or .07%, the officer must decide whether to charge the motorist with a violation of 1192-1 or the civil proceeding of 1192-a.
5. If the operator refuses to submit to a breath test, the officer must properly and completely fill out a DMV Form AA-134A "Report of Refusal to Submit to a Chemical Test (under age 21, §1194-a)" and a DMV Form AA-137A "Notice of Hearing/Chemical test Refusal Hearing (Under Age 21, §1194-a)"
6. The DMV forms will be issued in the following manner:
  - a) Forms AA-137A and AA-137A.1 are three-part forms.
    - 1) The top copy, labeled Police Copy, is kept by the police department.
    - 2) The second, labeled Safety Hearing Copy, will be sent to the DMV.
    - 3) The third copy, labeled Motorist Copy, will be given to the operator.
  - b) Form AA-134A, is a three-part form.
    - (a) The first page, green copy, is retained by the police department.
    - (b) The second page, white copy, is retained by the police department and is to be brought by the police officer to the hearing.

- (c) The third page, pink copy, will be mailed to the DMV Safety Hearing Bureau.

## **XII. Reports**

- A. When an officer has detained the operator of a motor vehicle under authority of § 1192-a of the NYS VTL, the officer will complete the applicable alcohol influence report listed in General Order 615. The officer will also complete any other required reports and forms.

By Order of the Chief of Police

  
John P Colella (Mar 1, 2020)

John P. Colella  
Chief of Police  
Dated this 1st day of March, 2020