



# POLICY & PROCEDURE

## PORTAGE POLICE DEPARTMENT

SUBJECT: **IMPAIRED/OMVWI ORCS TRAFFIC ENFORCEMENT**

NUMBER: 6.08

SCOPE: All Department Personnel  
DISTRIBUTION: Policy & Procedure Manual

ISSUED: 05/25/2023  
EFFECTIVE: 05/25/2023

REFERENCE: WI State Statute: §346.63

RESCINDS  
 AMENDS  
WILEAG 5<sup>TH</sup> EDITION  
STANDARDS: 6.2.6

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PURPOSE: The purpose of this Policy & Procedure is to provide guidelines to officers 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. POLICY

- A. **It is the policy of the Portage Police Department to make roadways within the City of Portage as safe as possible through detection and enforcement of impaired drivers.** 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. Operation - refers to the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion
- B. Drive - the exercise of physical control over the speed and direction of a motor vehicle while it is in motion
- C. Under the Influence of an Intoxicant - means that the actor's ability to operate a vehicle is impaired because of their consumption of alcohol, a controlled substance

or controlled substance analog under Chapter 961, of any combination of the above.

- D. Standard Field Sobriety Tests – A battery of exercises, Horizontal Gaze Nystagmus, Walk-and-Turn, and One-Leg Stand, administered and evaluated in a standardized manner to obtain validated indicators of impairment based on National Highway Traffic Safety Administration research.
- E. A.R.I.D.E – Advanced Roadside Impaired Driving Enforcement is a system created to address the gap in training between the Standardized Field Sobriety Testing (SFST) and the Drug Evaluation and Classification (DEC) Program.
- E. Intoxicants- any alcohol beverage, hazardous inhalant, controlled substance, controlled substance analog or other drug, or any combination thereof.
- F. Hazardous Inhalant- a substance that is ingested, inhaled, or otherwise introduced into the human body in a manner that does not comply with any cautionary labeling that is required for the substance under §100.37 or under federal law, or in a manner that is not intended by the manufacturer of the substance, and that is intended to induce intoxication or elation, to stupefy the central nervous system or to change the human audio, visual, or mental processes.

### III. SPECIFIC PROCEDURES

- A. Detection and Enforcement of Operating Under the Influence of an Intoxicant
  - 1. Officers are trained in the process of identifying and gathering evidence to determine whether or not a suspect should be arrested for an OWI violation. This process generally includes observing, or having witnesses to, the operation of a motor vehicle, having personal contact with the operator, and performing standard field sobriety tests.
  - 2. When officers conduct traffic stops or investigate crashes they must be aware that a motorist may be under the influence of intoxicants. An officer should be vigilant for signs of impairment which may include, but are not limited to, slurred speech, disorientation, difficulty walking, blood shot or glassy eyes, and unusual or odd behavior.
  - 3. Officers should be familiar with the applicability of §346.63 which governs operating a motor vehicle while under the influence of intoxicants.
    - a) In addition to being applicable upon highways, §346.63 is applicable upon all premises held out to the public for the use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles, and all premises provided to tenants of rental housing in buildings of four or more units for the use of their motor vehicles.
    - b) There are two elements for the offense of operating under the influence.

They are:

- (1) The person was operating or driving a motor vehicle.
  - (2) The person was under the influence of intoxicants or restricted controlled substances at the time of operation.
4. There are numerous clues and observations that may indicate impaired driving by an individual. When an officer has face-to-face contact with an operator suspected of driving under the influence additional testing such as SFST's shall be completed and documented.
  5. The officer should determine if there is probable cause to arrest for OWI based upon their investigation, observations, and any testing they were able to complete with the operator. If the officer believes they have probable cause for the arrest, then a Preliminary Breath Test (PBT) should be administered in accordance with §343.303 prior to the arrest unless refused or extenuating circumstances exist. If a PBT test is not administered, the reasons why should be documented in the officer's report.
  6. Once the operator is taken into custody the officer shall use the OWI flow chart as a guide in regards to chemical testing and refusal. Officers shall communicate with their supervisor as to where to take the operator if they are willing to consent to a chemical test. Preferably officers will transport to Aspirus Divine Savior, however hospital status or the operator's medical needs may dictate an alternative hospital or facility.
  7. If there are passengers in the vehicle, a valid licensed passenger can drive if they are sober, capable and the owner gives consent. Passengers may need to be transported to some other place of safety if there is no one to operate the vehicle. The operator can give permission for the officer to legally park the vehicle. The vehicle should be towed if it is not/cannot be legally parked.
  8. The defendant should be issued the citation prior to the imposition of any chemical testing although not mandatory.
    - a) Arrests made for Operating with a Detectible Amount of Restricted Controlled Substance per §346.63(1)(am) require that the officer receive the blood results verifying the restricted controlled substance prior to the issuance of a citation.
  9. The Informing the Accused Form §343.305(4) should be read to the defendant verbatim. The officer shall not attempt to interpret this form.

If the defendant has a question, then the relative portion of the form should be reread to them.

- a) If the defendant consents to an evidentiary chemical test of their blood then contact hospital staff for collection of the sample.

- b) Blood is the primary chemical test of the department.
  - c) Breath is the alternate chemical test of the department.
  - d) The officer will be responsible for verifying expiration date and opening the state issued blood kit. Hospital staff shall draw the blood and personally hand the specimens to the officer. The officer will label and seal the blood as evidence.
10. The officer shall attempt to complete the Alcoholic Influence Report Form. The pre-interrogation warnings should not be read to the defendant until after the blood specimen is collected or the defendant refuses.

#### B. Enforcement of Prohibited Alcohol Concentration violations

- 1. At times officers will have contact with operators who have consumed alcohol, are not impaired for purposes of OWI, but are above their legal limit. (Ex: the operator is restricted to a .02 BAC legal limit)). Officers shall arrest the operator for the PAC violation: §346.63(1)(b).
- 2. Processing of an operator arrested for PAC is identical to that of an operator for OWI.
- 3. Officers shall refer to the OWI flowchart for detailed instructions regarding the processing of operators arrested for PAC.

#### C. Enforcement of Restricted Controlled Substance violations

- 1. At times officers will have contact with operators who have consumed a Restricted Controlled Substance (RCS), are not impaired for purposes of OWI, but there is evidence that a RCS is in the operator's system. (Ex: the operator smells of the odor of THC, admits to smoking THC recently, and paraphernalia is present) Officers shall arrest the operator for the RCS violation: §346.63(1)(am).
- 2. Processing of an operator arrested for a RCS violation is the same as that of an operator for OWI with one exception: A citation for the offense is not issued until blood results have been received.
- 3. Officers shall refer to the OWI flowchart for detailed instructions regarding the processing of operators arrested for RCS.

#### D. Refusals

- 1. A "*Notice of Intent to Revoke*" form will be initiated when an arrested person refuses the primary chemical test.
- 2. A search warrant shall be obtained prior to forcefully obtaining the arrested person's blood sample for all criminal OWI and non-OWI offenses unless

exigent circumstances dictate otherwise.

- a) Dissipation of alcohol and/or drugs in a suspect's system is no longer by itself a sufficient exigency to justify a warrantless blood draw from a subject who has refused to consent.
- b) Refusals, which occur subsequent to a municipal arrest for OWI, will be forwarded to the City of Portage Municipal Attorney's Office for prosecution. Refusals resulting from criminal arrests will be forwarded to the Columbia County District Attorney's Office.

#### E. Personal Tests

1. An arrested person who submits to the department's primary test and then requests their own test, at their own expense, shall be afforded a reasonable opportunity to have such test conducted within three (3) hours of their arrest.
2. 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.
3. It shall be the arrested person's responsibility to:
  - a) Obtain the necessary authorization from a physician of their choice to obtain the requested sample.
  - b) Have the physician determine the means of processing the sample with the technician collecting the sample. This department assumes no responsibility for collection, processing or chain of evidence relative to a personal sample and state supplied blood kits will not be utilized for personal tests.

#### F. Municipal Charges

1. All first offense OWIs which do not involve an injury accident or a passenger 16 years old or younger, shall be processed as a municipal violation.
  - a) Effective 03/02/2016, 2015 WI Act 183 allows for a search warrant in certain non-criminal case, specifically in first offense OWI and/or refusal cases.
  - b) All absolute sobriety violations shall be processed as a municipal violation.
  - c) Officers shall refer to the OWI guide for detailed instructions regarding the processing of operators arrested for absolute sobriety.

#### G. State Charges

1. All criminal OWI offenses will be referred to the Columbia County District Attorney's office for prosecution.
2. Officers should refer to the OWI flowchart for specific direction and processing of individual offenses.
3. Ignition Interlock Device (IID) Violations- refer to OWI guide for processing information.
4. All OWI reports must be completed by the end of the arresting officer's shift unless given supervisory approval.

#### H. Use of Force to Obtain an Evidentiary Chemical Test

1. Officers must first complete the search warrant template and receive either verbal or written permission from a judge or court commissioner prior to proceeding with the forced blood draw unless lawful exigent circumstances exist.
2. Reasonable force may be used to obtain an evidentiary chemical test if any of the following conditions are present:
  - a) An arrested person for an OWI offense has refused to voluntarily submit to an evidentiary chemical test.
  - b) If the person is the operator of a vehicle that is involved in an accident that causes death or great bodily harm and the officer has reason to believe that the person violated any state or local traffic law.
3. Reasonable force is defined as:
  - a) An Officer(s) shall be permitted to use only the minimal amount of force that is reasonable and necessary to obtain the required evidentiary blood sample under the totality of circumstances present.
  - b) The use of force to obtain an evidentiary blood sample shall not require supervisory approval prior to any force being used.

#### I. Use of a Drug Recognition Expert (DRE)

1. When an officer is investigating an impaired driving offense where drug impairment is suspected, or observations are inconsistent with the results of a preliminary breath test, the use of a Drug Recognition Expert is recommended.
2. If an officer is investigating a fatal accident or a potentially fatal accident where impairment is suspected, a DRE shall be paged. Any operator involved in a fatality or potentially fatal accident should be screened for impairment, utilizing SFST's.

## J. Delivery of Evidentiary Blood Samples

1. Generally, Blood samples should be hand delivered to the State Crime Laboratory involving felony OWI arrests, fatal and near fatal situations.
2. Blood samples from OWI arrests requiring a search warrant shall have a corresponding property inventory listing the blood sample. The misdemeanor evidence can then be mailed to the State Laboratory of Hygiene.
  - a) All other municipal and state charges allow the blood sample to be mailed to the State Laboratory of Hygiene.

## K. Release Options

1. Arrested persons charged with a first OWI offense may be released to a sober, responsible party.
2. Arrested persons charged with a second OWI offense or greater shall be held for court.
3. Absent of a responsible party the offender shall be booked into the Columbia County jail for a 12 hour hold or release to responsible party.

Keith J. Klafke  
Chief of Police

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

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