
**Section: THREE
Chapter: THIRTEEN**

SUBJECT: Alcohol and Drug-Related Driving Offenses
ISSUE DATE: 03-13-16
REFERENCE: NYS 47.5

I. PURPOSE

- A. To establish 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 arresting and processing intoxicated drivers.

II. CHEMICAL TEST POLICY

- A. The primary chemical test used by the Department is the breath test. The breath test instrument to be used will be the B.A.C. Data master.

Note: There are circumstances where a breath test is impossible. This order addresses such incidents.

- B. The chemical tests to be used by the department are as follows.
 - 1. For alcohol (in order of preference):
 - a. Breath
 - b. Blood
 - 2. For other drugs:
 - a. Blood

III. GENERAL PROCEDURES

- A. The following procedures will be followed whenever a person is arrested for violation of Section 1192.
- B. Arresting officer:
 - 1. Will follow department procedures for stopping violators.
 - 2. May, if the driver is suspected of being intoxicated, request the driver submit to a series of roadside performance tests and/or a screening test.

Note: Screening test will be according to Department training and procedures.
 - 3. Once determined that the person is driving in violation of Section 1192, advise the person that he/she is being arrested.
 - 4. Handcuff and search the defendant according to departmental policy.
 - 5. Ensure the defendant is transported to the Department for processing. Transporting officers should be aware of the possibility of changing moods (violent, etc.) and physical condition (unconsciousness, etc.) of an intoxicated arrestee and take appropriate action if necessary. (See General Order regarding Prisoner Transports.)

6. Advise the defendant of the "Commissioner's warnings" and ask if he/she will submit to a chemical test.
7. If the defendant agrees to submit to a breath test, ensure they are 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 test.
Note: In cases where the defendant is hospitalized, a blood test shall be requested as soon as possible. The 20 minute observation period will not apply.
8. If the defendant refuses to take a chemical test, the refusal will be noted and he/she will be processed according to Department policy.
Note: Depending on the circumstances (two-hour time limit, required observation period, availability of a breath test operator, etc.) the defendant may be given additional opportunities to submit to a chemical test. These opportunities will be documented and the results, continued refusal or acceptance, will be documented.
9. If the defendant refuses to take a chemical test and depending on the circumstances (serious injury to another, fatality, etc.), a compulsory chemical test may be requested (see Section 1194).
 - a. Notify the on-duty command officer and a member of the Wayne County District Attorney's Office.
 - b. A court-ordered chemical test requires blood to be drawn. In such a case the officer will proceed according to the appropriate sections of part V, Blood Testing Procedures, of this Order.
10. Ensure the removal of the defendant's vehicle. Normally towing and impounding of the vehicle is necessary, however, in certain cases other means are available and can be utilized (a non-intoxicated passenger, etc.). Current directives regarding towing and impounding shall be followed.
11. Determine which chemical test is to be offered and follow procedures as set forth in this order. The test must be administered within two (2) hours of the time of arrest.
Note: In some cases involving a court-ordered test the two hour time limit does not apply.
12. If the defendant requests to speak to an attorney before the administration of a chemical test, he/she will be allowed to do so providing it is made in a reasonable amount of time and does not conflict with the statutory time limit and BTO operator availability.
 - a. Failure by the defendant to make contact with an attorney does not relieve the defendant of his/her responsibility to submit to a chemical test. The defendant's refusal to submit to a chemical test because of his/her failure to contact an attorney shall be deemed a failure to submit to a chemical test.
 - b. If the defendant does make contact with an attorney, the arresting officer shall record the attorney's name and time of the call, on the arrest report.
Note: While officers must maintain close supervision, they must make an effort not to listen to the conversation between defendant and attorney.

IV. BREATH TESTING PROCEDURES

- A. The following procedures shall be followed if:
 1. A breath test operator and instrument are available.
 2. The test is appropriate under the circumstances of the arrest.
- B. An adequate breath sample shall be collected within the two (2) hour limit and shall be analyzed with instruments 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.

- C. Breath test operators (BTO) shall be certified by the New York State Department of Health and shall possess a valid permit to conduct such tests.
- D. If testing takes place at the Clyde Police Department, the appropriate B.A.C. Datamaster checklist/deposition will be utilized and filled out completely and accurately. If testing occurs at another agency, the appropriate, standard checklist or deposition employed by that agency will be used for the instrument being used for testing.

V. BLOOD TESTING PROCEDURES

- A. The following procedures shall 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.
 - 4. In cases where the arrest is made for violation of Section 1192-4 (drugs other than alcohol).
- B. Blood samples shall be collected within the two (2) hour time limit and shall be collected only 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, prior to withdrawal of blood sample, will:
 - 1. Inform hospital personnel that the defendant is under arrest and request that the proper personnel withdraw sample of blood from the defendant for chemical analysis.
 - 2. Witness the withdrawal of blood.
 - 3. Hospitals will only take a blood sample at the direction of a police officer and if the defendant grants permission by signing a consent form.
 - a. If the defendant is unable to give permission (i.e., unconscious), the officer may direct the hospital staff to withdraw the blood (implied consent).
 - b. 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.
- D. Wayne County hospital(s) have agreed to:
 - 1. Use a substance that does not contain alcohol to sterilize the skin in the area from which the blood sample is drawn.
 - 2. Withdraw two (2) tubes of blood, if possible.
 - 3. Utilize tubes as requested by the Monroe County Lab (i.e., one tube--purple top--containing the anti-coagulant EDTA, and one tube--red top--which does not contain any anti-coagulant).
 - 4. Seal the tubes with a strip of adhesive tape. The person who withdraws the blood should initial the tape.

Note: The arresting officer must record defendant's name, date and time the sample was taken, and his/her initials on the same strip of tape.

- E. After the blood sample has been obtained, the arresting officer will:
1. Complete a property report clearly stating the reason for the sample and further stating whether the sample is to be analyzed for alcohol or drug content or both. A property tag will be completed and properly attached to such evidence.
Note: If a particular type of drug is suspected, such drug type should be clearly stated.
 2. Return to the Department with the evidence and lock same in the containers provided. Place same in the evidence refrigerator until it can be transported to the Monroe County lab. If the evidence cannot be immediately taken to the lab, it will be taken to the lab as soon as practicable by the arresting officer. The property report should be placed with the sample.

VI. CHEMICAL TEST REFUSAL FORM

- A. The arresting officer will read the defendant the "Commissioner's warnings" exactly as worded.
- B. If a defendant refuses to submit to a chemical test, the arresting officer will:
1. Record the defendant's exact response to the warning. This response will be entered on the Report of Refusal to Submit to a Chemical Test.
 2. Complete the Report of Refusal to Submit to a Chemical Test.
- C. Refusal does not in itself cause grounds for immediate arraignment.

VI. NYS DEPARTMENT OF MOTOR VEHICLE RECORDS CHECK

- A. The arresting officer will request a teletype message be sent to NYS DMV requesting data as to prior convictions of defendant for Section 1192.
1. If a teletype response indicates a prior conviction of defendant within the past 10 years (1192-2, 3 or 4), the teletype will serve as a basis for a felony complaint.
 2. The Police Clerk shall forward a request for a certified copy of conviction to NYS DMV. All requests and replies shall be made a part of the defendant's arrest folder.

VII. RELEASE OF INTOXICATED PERSONS FROM DEPARTMENT CUSTODY

- A. Upon completion of all processing, the defendant may be released from custody; upon arraignment, posting of bail or on own recognizance. In this case, if the person is still under the influence of alcohol or other drug, the release should be made to a responsible third party (family member, employer, etc.). The third party should be made aware of the person's condition.
- B. Should the defendant be remanded to the Wayne County Jail and is still under the influence of alcohol or other drug, the transporting officer should be aware of the possibility of changing moods (violent, etc.) and physical condition (unconsciousness, etc.) of an intoxicated arrestee and take appropriate action if necessary. See General Order governing Prisoner Transports. The receiving deputy should be made aware of the defendant's charge and condition.

VIII. OPERATING A MOTOR VEHICLE AFTER CONSUMING ALCOHOL "UNDER THE AGE OF 21" (ZERO TOLERANCE LAW)

Effective November 1, 1996, the New York State Vehicle and Traffic Law has been amended to include section 1192-a "Operating a Motor Vehicle Having Consumed Alcohol (person under 21)" or the ZERO TOLERANCE LAW.

A. The 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 their blood alcohol content (B.A.C.).

1. Nothing under N.Y.S. V&T Law §1192-a precludes an arrest for §1192-1,2,3,4 or 5 where applicable.

B. Section 1192-a allows that a police officer may DETAIN and transport, for the purpose of administering a breath test, the operator of a motor vehicle, who is under the age of 21, who the officer suspects has **consumed** alcohol.

1. The statute does not authorize an arrest. Violations of 1192-a are a civil proceeding adjudicated by the Department of Motor Vehicles, not the criminal courts.

2. The detention and transport of the under age 21 motor vehicle operators will be accomplished in a manner consistent with officer safety and the rules and regulations of the Palmyra Police Department.

3. Although there is no legal authority to arrest someone for resisting an 1192-a detention, as there may be no criminal charge, 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.

C. Under age 21 operator submits to a breath test

1. Where an officer stops an operator of a motor vehicle who is under the age of 21, who is suspected to have consumed alcohol, but their appearance and demeanor preclude an arrest for 1192-1,3 or 4, the officer may:

a. Detain the operator and request that the operator submit to a breath test.

b. If the operator agrees to submit to the breath test the officer will transport the individual to an appropriate location where the breath test will be administered as per this General Order.

c. In the event that the operator's blood alcohol level shows between a .02 % B.A.C. and .07% B.A.C., a NOTICE OF HEARING form AA-137A.1 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. The list of scheduled D.M.V. Wayne County hearings will be periodically updated, and conspicuously posted in the police facility.

NOTE: When the B.A.C. level is a .06 or .07, the officer must decide whether to charge the motorist with a violation of 1192-1 or civil proceeding of 1192-a.

d. The operator may consensually waive the DMV Hearing by completing the rear of form AA-137A.1 WAIVER OF HEARING. The operator must then send the form and his/her driver's license to the DMV Safety Hearing Bureau at the address listed on the front of the form.

E. Under age 21 refuses to submit to breath test

1. Where an officer stops an operator of a motor vehicle who is under the age of 21, who is suspected to have consumed alcohol, but their appearance and demeanor preclude an arrest for 1192-1 or 3, the officer may:
 - a. Detain the individual and request that the individual submit to a breath test.
 - b. In the event that the individual refuses to submit to the breath test, the officer will transport the individual to the Palmyra Police Department where a NOTICE OF CHEMICAL TEST REFUSAL HEARING form, AA-137A, 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.
 - c. The individual may consensually waive the hearing by completing the rear of the form AA-137A WAIVER OF CHEMICAL TEST REFUSAL HEARING and sending the form and their license to the DMV Safety Hearing Bureau at the address listed on the front of the form.
 - d. Where a Refusal to Submit to a Chemical Test has occurred involving a section **1192-a** (only) of the V&T Law, the officer must properly and completely fill out a REPORT OF REFUSAL TO SUBMIT TO A CHEMICAL TEST (Under Age 21, Section 1194-a).

F. Reports

1. When an officer has DETAINED the operator of a motor vehicle under authority of §1192-a of the New York State Vehicle and Traffic Law, the officer will complete an Incident Report, detailing the reason for the vehicle stop and circumstances surrounding the detention, test or refusal, and scheduled DMV hearing.
 - a. The officer will ensure that all of required NYS DMV forms are fully and properly completed.
 - b. Blank NYS DMV forms will be kept in the Forms Cabinet in the Patrol Office.
 - c. Completed DMV forms, pertaining to 1192-a, will be attached to the Incident Report.
2. Forms AA-137A and AA-137A.1 are three-part forms.
 - a. The top (POLICE COPY) copy is kept by the police department.
 - b. The second (SAFETY HEARING COPY) copy will be sent to the DMV.
 - c. The third (MOTORIST COPY) copy is to be given to the operator.
3. Form AA-134A, REPORT OF REFUSAL TO SUBMIT TO A CHEMICAL TEST,(Under Age 21, Section 1194-a) is a three part form.
 - a. The top, green, copy is retained by the police department.
 - b. The second, white, copy is retained by the police department and is to be brought, by the police officer, to the hearing on the scheduled hearing date.
 - c. The third, pink, copy will be mailed to the D.M.V. Safety Hearing Bureau.

IX. ANY INSTRUMENT MAINTAINED BY THE VILLAGE OF PALMYRA POLICE DEPARTMENT, MAY NOT BE USED TO DETERMINE INTOXICATION FOR ANY PURPOSE OTHER THAN TO GATHER EVIDENCE PERTAINING TO AN ARREST FOR DRIVING WHILE INTOXICATED.

By the Order of:

David B. Smith
Chief of Police