

TOWN OF CHEEKTOWAGA POLICE DEPARTMENT

Effective: July 8, 2015	Subject: Persons Under 21 Having Consumed Alcohol – 1192A VTL
Rescinded:	

GENERAL ORDER O-5-4 (A)

PURPOSE:

The purpose of this policy is to outline procedures and guidelines for the enforcement of this administrative section of the Vehicle and Traffic Law.

POLICY:

The Cheektowaga Police Department will enforce section 1192-A of the Vehicle and Traffic law, Operating a motor vehicle after having consumed alcohol; persons under the age of 21.

This section will only be utilized during the investigation of accidents or in conjunction with violations of the Vehicle and Traffic or Local, State or Federal Law.

GENERAL:

Section 1192-A of the Vehicle and Traffic law makes it a CIVIL VIOLATION for a person under the age of 21 to operate a motor vehicle after having consumed alcohol. This term is defined as operating a vehicle with a blood alcohol content of .02 % or more, but not more than .07 %.

A violation of section 1192-A is neither a crime nor a traffic infraction. **THE STATUTE DOES NOT AUTHORIZE AN ARREST OF THE MOTORIST FOR THIS CHARGE.** Violations of section 1192-A of the Vehicle and Traffic Law are civil violations and are adjudicated by the Department of Motor Vehicles and not the criminal courts. No arrest can be made under this section and a uniform traffic ticket will not be issued.

Since the officer must prove a lawful stop in prosecuting under this section, officers should only use this section in conjunction with other violations of the Vehicle and Traffic Law or violations of other local, state or federal laws.

If the charge is the result of an accident investigation, when no other violations of law are apparent, the person will not be forced into custody as resisting arrest will not apply.

A. Persons arrested for Driving While intoxicated.

1. If an officer stops a person under 21 years old and he/she is intoxicated, the officer should follow the guidelines set down in General order O-5-4, Driving While Intoxicated Cases.

B. Persons under 21 having consumed alcohol.

1. Probable cause must be present for the initial traffic stop.
2. The officer must be able to articulate the reason they suspect the person has consumed an alcoholic beverage. This may be the common law signs of alcohol consumption or a positive breath test, utilizing an alco-sensor or other breath testing instrument.
3. Charge the person with the initial Vehicle and Traffic Law violation or other ~~violation~~ infringement of Local, State or Federal law.
4. The officer must read the person the following warnings. (Do Not read DWI refusal warnings)

A. You are being detained for operating a motor vehicle after having consumed alcohol.

B. A refusal to submit to a chemical test or any portion thereof will result in the revocation of your license or operating privilege, whether or not you are found guilty of operating a motor vehicle after consuming alcohol.

C. Your refusal to submit to a chemical test or any portion thereof can be introduced into evidence against you at any hearing resulting from this charge.

D. Will you submit to a chemical test to determine the alcohol content of your blood?
(Specify blood, breath or urine)

5. The detention and transportation of persons under this section should be accomplished in a manner consistent with officer safety. The person should be patted down for weapons prior to being placed in the patrol car.

Reference to General Order O-11-1 Prisoner Transport B-1; all arrested persons will be handcuffed and said handcuffs will be double locked whenever possible.

6. Towing - officers will follow General Order O-5-8, Towing and Impoundment of Vehicles.

7. Subjects should be released as soon as the paperwork is complete.

C. Commercial Vehicles - a person less than 21 years of age, operating a commercial motor vehicle having a BAC of .04 % or more, but not more than .06 % should be charged with section 1192-5 VTL.

D. If a subject agrees to submit to a chemical test this test will be administered according to departmental standards.

1. Standard chemical test logging and operating procedures will be followed.
2. If the chemical test reading is .02 percent or more but not more than .05 percent the subject will be charged with 1192-a VTL. If the chemical test reading is .06 or .07 the officer may charge 1192a or if the circumstances warrant an officer may charge 1192-1 VTL, Driving While Impaired.
3. If the subject is charged with 1192-a VTL he will be issued:
 - a. One copy of DMV form AA-137A.1 - Notice of Hearing
 - b. Copy of breath test checklist
 - c. Copy of breath test calibration certificate
 - d. Copy of operator's certification certificate
4. Officers notified for a DMV hearing must bring the following:
 - a. Copy of DMV form AA-137A.1 - Notice of Hearing
 - b. Copy of breath test check list
 - c. Copy of latest breath test instrument calibration certificate
 - d. All other forms pertinent to the chemical test.

All forms and copies of the latest calibration will be available in the Traffic Office.

5. The hearing will address the following issues
 - a. The police officer made a lawful stop
 - b. The motorist operated the vehicle
 - c. The motorist is under 21 years
 - d. A valid request was made to submit to a chemical test.
 - e. The chemical test was administered properly
 - f. If the test concluded that the motorist consumed alcohol
 - g. If a police officer fails to appear or fails to bring copies of all forms to the hearing, the Administrative Judge Law may dismiss the charges.
 6. When scheduling the hearing, officers will use the schedule posted in the Breathalyzer room. The law provides that the hearing shall occur not less than 48 hours or more than 30 days from the date the chemical test was either administered or refused.
- E. If the subject refuses to submit to a chemical test:
1. DMV Form AA-137A - Notice of Chemical Test Refusal Hearing will be issued to the subject.
 2. Officers will complete DMV Form AA-134A - Report of Refusal to Submit to Chemical test (under age 21, Section 1194-A)
 3. The refusal hearing will address the following issues:
 - a. The Police Officer made a lawful stop
 - b. The subject was the operator of the vehicle
 - c. The subject is under 21.

- d. The subject was given a proper refusal warning.
- e. The subject refused.
- f. If a police officer fails to appear or fails to bring copies of all forms to the hearing, the Administrative Law Judge may dismiss the charges.

4. When scheduling the hearing, officers will use the schedule posted in the Breath test room. The law provides that the hearing shall occur not less than 48 hours or more than 30 days from the date the chemical test was either administered or refused.

F. For all charges of 1192-A VTL Officers will:

- 1. File a Police Report - 1192-A VTL - Operating a motor vehicle after consuming alcohol.
- 2. Immediately place in the breath test file all DMV copies of forms.
 - a. Notice of Hearing-AA-137A.1
 - b. Notice of Chemical Test Refusal Hearing - AA-137A
 - c. Report of Refusal to Submit to Chemical Test - AA-134A
 - d. Breath test operational checklist.
 - e. CPD 029 – Chemical test record.

G. Release of Persons Under 21:

Subjects charged with 1192A VTL should be released from custody to a competent person, preferably a parent or guardian.

<u>Date:</u>	<u>Chief of Police:</u>
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