

## Traffic

### 500.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidelines for improving public safety through education and enforcement of traffic-related laws.

### 500.2 POLICY

It is the policy of the Town of Cheektowaga Police Department to educate the public on traffic-related issues and to enforce traffic laws. The efforts of the Department will be driven by such factors as the location and/or number of traffic accidents, citizen complaints, traffic volume, traffic conditions and other traffic-related needs. The ultimate goal of traffic law enforcement and education is to increase public safety.

### 500.3 DEPLOYMENT

Enforcement efforts may include such techniques as geographic/temporal assignment of department members and equipment, the establishment of preventive patrols to deal with specific categories of unlawful driving and a variety of educational activities. These activities should incorporate methods that are suitable to the situation; timed to events, seasons, past traffic problems or locations; and, whenever practicable, preceded by enforcement activities.

Several factors will be considered in the development of deployment schedules for department members. State and local data on traffic accidents are a valuable resource. Factors for analysis include, but are not limited to:

- Location.
- Time.
- Day.
- Violation factors.
- Requests from the public.
- Construction zones.
- School zones.
- Special events.

Department members assigned to uniformed patrol or traffic enforcement functions will emphasize the enforcement of violations that contribute to traffic accidents, and also will consider the hours and locations where traffic accidents tend to occur. Members will take directed enforcement action on request, and random enforcement action when appropriate. Members shall maintain high visibility while working general enforcement, especially in areas where traffic accidents frequently occur and at all times officers will follow accepted safety procedures and practices.

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The Department may use speed measuring devices in traffic enforcement operations. Members must be properly trained in the use and operation of such devices. The Department will ensure that all such equipment is properly calibrated and that all necessary records are maintained so as to ensure that speed measurements are legally admissible.

#### **500.4 ENFORCEMENT**

Traffic enforcement will be consistent with applicable laws and take into account the degree and severity of the violation committed. This department does not establish ticket quotas. The number of arrests or tickets issued by any member shall not be used as the sole criterion for evaluating member overall performance.

Traffic enforcement should be focused on the reduction of traffic accidents. At all times, officers will be courteous and professional when dealing with the public.

##### **500.4.1 WARNINGS**

Warnings are a non-punitive option that may be considered by the member when circumstances warrant, such as when a minor violation was inadvertent.

##### **500.4.2 TICKETS**

Tickets should be issued when a member believes it is appropriate. When issuing a ticket for a traffic violation, it is essential that the rights and requirements imposed on motorists be fully explained. At a minimum, motorists should be provided with:

- (a) An explanation of the violation or charge.
- (b) The court appearance procedure, including the optional or mandatory appearance by the motorist.
- (c) A notice of whether the motorist can enter a plea and pay the fine by mail or at the court.

##### **500.4.3 PHYSICAL ARREST**

Physical arrest should generally not be made for a traffic infraction unless the officer cannot verify the driver's identity, has reason to believe that the driver will fail to appear in court or has reason to believe that the driver will continue to violate the law and place others at risk.

Officers should exercise discretion in determining whether a physical arrest is appropriate for criminal traffic offenses (see the Appearance Tickets Policy for additional guidance).

#### **500.5 SUSPENDED OR REVOKED LICENSES**

If an officer contacts a traffic violator who is also driving on a suspended or revoked license, the officer should issue a traffic ticket or make an arrest as appropriate.

An officer shall tow a vehicle for aggravated unlicensed operation of a motor vehicle or operating while registration is suspended or revoked. If the driver is not the owner, the Department is required to notify the owner (Vehicle and Traffic Law § 511-b; Vehicle and Traffic Law § 511-c).

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#### **500.6 TRAFFIC PROCEDURES**

The Traffic Unit Lieutenant is responsible for developing, maintaining and reviewing detailed procedures for the enforcement of traffic laws. Traffic procedures shall include, but are not limited to:

- Roadside safety checks.
- Stopping and approaching vehicles.
- Required information provided to violators.
- High- and unknown-risk traffic stops.

The Traffic Unit Lieutenant is responsible for developing and maintaining violator procedures for traffic law violations committed by, but not limited to:

- Residents
- Non-residents of the department jurisdiction.
- Juveniles.
- Legislators.
- Foreign diplomats and consular representatives (see the Foreign Diplomatic and Consular Representatives Policy).
- Active military members.

#### **500.7 HIGH-VISIBILITY VESTS**

The Department requires patrol officers to purchase an American National Standards Institute (ANSI) Class II high-visibility vest to increase the visibility of department members who may be exposed to hazards presented by passing traffic or by maneuvering or operating vehicles, machinery and equipment (23 CFR 655.601).

##### **500.7.1 REQUIRED USE**

Except when working in a potentially adversarial or confrontational role, such as during vehicle stops, high-visibility vests should be worn when increased visibility would improve the safety of the department member or when the member will be exposed to the hazards of passing traffic or will be maneuvering or operating vehicles, machinery and equipment.

Examples of when high-visibility vests should be worn include traffic control duties, traffic accident investigations, lane closures and disaster scenes.

When emergency conditions preclude the immediate donning of the vest, members should retrieve and wear the vest as soon as conditions reasonably permit.

Use of the vests shall also be mandatory when directed by a supervisor.

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#### 500.7.2 CARE AND STORAGE

High-visibility vests shall be purchased and maintained, by each individual patrol officer, as part of their required equipment. Before going into service, each member shall ensure that a serviceable high-visibility vest is properly stored in their gear bag.

## Traffic Accidents

### 501.1 PURPOSE AND SCOPE

This policy provides guidelines for responding to and investigating traffic accidents.

### 501.2 POLICY

It is the policy of the Town of Cheektowaga Police Department to respond to traffic accidents and render or summon aid to injured victims as needed. The Department will investigate and prepare reports according to the established minimum reporting requirements with the goal of reducing the occurrence of accidents by attempting to identify the cause of the accident and through enforcing applicable laws. Unless restricted by law, traffic accident reports will be made available to the public upon request.

### 501.3 RESPONSE

Upon arriving at the scene, the responding member should assess the need for additional resources and summon assistance as appropriate. Generally, the member initially dispatched to the scene will be responsible for the investigation and report, if required, unless responsibility is reassigned by a supervisor.

A supervisor should be called to the scene when the incident:

- (a) Is within the jurisdiction of this department and there is:
  - 1. A life-threatening injury.
  - 2. A fatality.
  - 3. A Town vehicle involved.
  - 4. A Town official or employee involved.
  - 5. Involvement of an on- or off-duty member of this department.
- (b) Is within another jurisdiction and there is:
  - 1. A Town of Cheektowaga vehicle involved.
  - 2. A Town of Cheektowaga official involved.
  - 3. Involvement of an on-duty member of this department.

#### 501.3.1 MEMBER RESPONSIBILITIES

Upon arriving at the scene, the responding member should consider and appropriately address:

- (a) Traffic direction and control.
- (b) Proper placement of emergency vehicles, cones, roadway flares or other devices if available to provide protection for members, the public and the scene.
- (c) First aid for any injured parties if it can be done safely.
- (d) The potential for involvement of hazardous materials.

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- (e) The need for additional support as necessary (e.g., traffic control, emergency medical services, fire hazards / department, hazardous materials response, tow vehicles).
- (f) Clearance and cleanup of the roadway.

#### **501.4 NOTIFICATION**

If a traffic accident involves a life-threatening injury or fatality, the responding officer shall notify a supervisor or, if unavailable, the Watch Commander. The Watch Commander or any supervisor may assign a traffic investigator or other appropriate personnel to investigate the incident. The Watch Commander will ensure notification is made to the Traffic Unit Lieutenant, department command staff and in accordance with the Major Incident Notification Policy.

##### **501.4.1 NOTIFICATION NEXT OF KIN**

In the event of a life-threatening injury or fatality, the supervisor responsible for the incident should ensure notification of the victim's immediate family or coordinate such notification with the Medical Examiner, department chaplain or another suitable person. Notification should be made as soon as practicable following positive identification of the victim.

The identity of any person seriously injured or deceased in a traffic accident should not be released until notification is made to the victim's immediate family.

#### **501.5 MINIMUM REPORTING REQUIREMENTS**

An accident report shall be taken when:

- (a) A fatality, any injury (including complaint of pain), property damage in excess of \$1000 to any vehicle or hit-and-run is involved.
- (b) An accident involves a commercial vehicle that has been towed (Vehicle and Traffic Law § 603).
- (c) An on-duty member of the Town of Cheektowaga is involved.
- (d) The accident results in any damage to any Town-owned or leased vehicle.
- (e) The accident involves any other public agency driver or vehicle.
- (f) There is damage to public property.
- (g) There is damage to any vehicle to the extent that towing is required.
- (h) Prosecution or follow-up investigation is contemplated.
- (i) Directed by a supervisor.

##### **501.5.1 PRIVATE PROPERTY**

Generally, reports should not be taken when a traffic accident occurs on private property unless it involves an injury or fatality, a hit-and-run violation or other traffic law violation. Members may provide assistance to motorists as a public service, such as exchanging information and arranging for the removal of the vehicles.

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#### 501.5.2 TOWN VEHICLE INVOLVED

A traffic accident report shall be taken when a Town vehicle is involved in a traffic accident that results in property damage or injury.

A general information report may be taken in lieu of a traffic accident report at the direction of a supervisor when the incident occurs entirely on private property or does not involve another vehicle.

Whenever there is damage to a Town vehicle, a vehicle damage report shall be completed and forwarded to the appropriate Captain. The traffic investigator or supervisor at the scene should determine what photographs should be taken of the scene and the vehicle damage.

Members will not investigate an accident in which he/she is involved.

#### 501.5.3 INJURED AND KILLED ANIMALS

Department members should refer to the Animal Control Policy when a traffic accident involves the disposition of an injured animal. The driver of the striking vehicle is required to notify the owner of the animal if it is a horse, dog, cat or animal classified as cattle. If the driver cannot find the owner then he/she is required to notify an officer and provide license, insurance and the vehicle license number (Vehicle and Traffic Law § 601).

In the event a deer, moose or bear is unintentionally killed in a traffic accident, a member may issue a permit to the driver permitting him/her to possess the carcass and transfer it to a designated person. If the driver declines possession, the member may issue the permit to another requesting party (Environmental Conservation Law § 11-0915).

### **501.6 INVESTIGATION**

When a traffic accident meets minimum reporting requirements the investigation should include, at a minimum (Vehicle and Traffic Law § 603-a):

- (a) Identification and interview of all involved parties.
- (b) Identification and interview of any witnesses.
- (c) A determination of whether a violation of law has occurred and the appropriate enforcement action.
- (d) Identification and protection of items of apparent evidentiary value.
- (e) Documentation of the incident as necessary (e.g., statements, measurements, photographs, collection of evidence, reporting) on the appropriate forms.

#### 501.6.1 INVESTIGATION BY OUTSIDE LAW ENFORCEMENT AGENCY

The Traffic Unit Lieutenant or on-duty Watch Commander should request that the New York State Police or other outside law enforcement agency investigate and complete a traffic accident investigation when a life-threatening injury or fatal traffic accident occurs within the jurisdiction of the Town of Cheektowaga Police Department and involves:

- (a) An on- or off-duty member of the Department.

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1. The involved member shall complete the department traffic accident form. If the member is unable to complete the form, the supervisor shall complete it.

- (b) An on- or off-duty official or employee of the Town of Cheektowaga.

Department members shall promptly notify a supervisor when any department vehicle is involved in a traffic accident. The accident investigation and report shall be completed by the agency having jurisdiction.

#### **501.6.2 ACCIDENTS INVOLVING SERIOUS INJURY OR DEATH**

An officer investigating an accident involving a serious injury or death should request a preliminary breath test from any driver involved in the accident if there are reasonable grounds to believe that the driver committed a serious traffic violation as provided in Vehicle and Traffic Law § 603-a. The result of such test or the driver's refusal of such test shall be included in the accident investigation report (Vehicle and Traffic Law § 603-a).

In the event of a positive result from such test, officers shall proceed as provided in the Impaired Driving Policy.

#### **501.7 ENFORCEMENT ACTION**

After a thorough investigation in which physical evidence or independent witness statements indicate that a violation of a traffic law contributed to the accident, authorized members should issue a traffic summons or arrest the offending driver, as appropriate.

More serious violations, such as driving under the influence of drugs or alcohol, vehicular manslaughter or other felonies, shall be enforced. If a driver who is subject to enforcement action is admitted to a hospital, a supervisor shall be contacted to determine the best enforcement option.

#### **501.8 REPORTS**

Department members shall utilize forms approved by the New York State Department of Motor Vehicles (DMV) as required for the reporting of traffic accidents. All such reports shall be forwarded to the Traffic Unit for approval and filing.

Members shall advise persons involved in accidents that they must file a citizen accident report on the appropriate state form with the DMV if there has been an injury, death or property damage in excess of \$1000 to any vehicle and that the report must be filed within 10 days of occurrence (Vehicle and Traffic Law § 605).

##### **501.8.1 REPORT MODIFICATION**

A change or modification of a written report that alters a material fact in the report may be made only by the member who prepared the report, and only prior to its approval and distribution.

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#### 501.8.2 TRAFFIC UNIT LIEUTENANT RESPONSIBILITIES

The responsibilities of the Traffic Unit Lieutenant include, but are not limited to, ensuring the monthly and quarterly reports on traffic accident information and statistics are forwarded to the Patrol Captain or other persons as required.

Investigation reports should be forwarded to the Commissioner of Motor Vehicles within five business days of completion (Vehicle and Traffic Law § 603-a).

## Vehicle Towing

### 502.1 PURPOSE AND SCOPE

This policy provides guidance related to vehicle towing. Nothing in this policy shall require a member of this department to tow a vehicle.

### 502.2 POLICY

The Town of Cheektowaga Police Department will tow vehicles when appropriate and in accordance with the law.

### 502.3 REMOVAL OF VEHICLES DUE TO HAZARD

When a vehicle should be towed because it presents a hazard, the owner or operator should arrange for the towing. Department members may assist by communicating requests through Dispatch to expedite the process.

If the owner or operator is unable to arrange for towing and the vehicle presents a hazard, the vehicle may be towed at the direction of the department member (Vehicle and Traffic Law § 1204).

Vehicles that are not the property of the Town should not be driven by department members unless it is necessary to move the vehicle a short distance to eliminate a hazard, prevent the obstruction of a fire hydrant or comply with posted signs.

### 502.4 ARREST SCENES

Whenever the owner or operator of a vehicle is arrested, the arresting officer should provide reasonable safekeeping by leaving the vehicle secured and having the vehicle towed, such as when the vehicle presents a traffic hazard or the vehicle would be in jeopardy of theft or damage if left at the scene.

Officers are not required to investigate whether alternatives to towing a vehicle exist after an arrest. When considering whether to leave a vehicle at the scene, officers should take into consideration public safety as well as the reasonable safety of the vehicle and its contents.

The following are examples of situations where a vehicle could be released at the scene if appropriate:

- The vehicle is parked on private property, on which the arrestee or owner is legally residing, or the property owner does not object to the vehicle being parked at that location.
- The arrestee or owner of the vehicle requests that it be released to a person who is present, willing and able to legally take control of the vehicle.

### 502.5 VEHICLES RELATED TO CRIMINAL INVESTIGATIONS

Officers should tow vehicles that are needed for the furtherance of an investigation or prosecution of a case, or that are otherwise appropriate for seizure as evidence. Officers should make

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reasonable efforts to return a recovered stolen vehicle to its owner rather than have it towed, so long as the vehicle is not needed for evidence and it has been photographed, as per Penal Law Article 450.10-4(C). Photographs may be completed by a Traffic Unit Member, CSI or a Supervisor.

It is the policy of the Police Department that whenever an arrest is made for driving while intoxicated, the vehicle will be towed and/or impounded and held for 12 hours as per Erie County Local law 2-2004. The vehicle may be turned over to a third party owner at any time.

#### **502.6 RECORDS**

Records Management Unit members shall ensure that pertinent data regarding a towed vehicle is promptly entered into the appropriate database.

A vehicle towed after an arrest or upon the issuance of a summons or an appearance ticket for the crime of aggravated unlicensed operation of a motor vehicle shall be entered into the New York Statewide Police Information Network (NYSPIN) (Vehicle and Traffic Law § 511-b).

##### **502.6.1 VEHICLE STORAGE REPORT**

Department members towing a vehicle shall complete a vehicle tow report. The report should be submitted to the Records Management Unit as soon as practicable after the vehicle is towed.

##### **502.6.2 REPORT OF VEHICLES TO NYSPIN**

If the vehicle has been reported stolen, the officer ordering the tow shall ensure the theft, recovery or impound is reported to NYSPIN. The report shall, if possible, include (Vehicle and Traffic Law § 424):

- (a) The VIN.
- (b) The date of theft, recovery and impound of the vehicle.
- (c) The license plate number.
- (d) The name, address and telephone number of the location where the vehicle is being stored.
- (e) The location of the theft and location of the recovery.

#### **502.7 TOWING SERVICES**

Members shall not show preference among towing services that have been authorized for use by the Department. Members will contact the authorized zone towing service as determined by the Chief of Police and the Town Board.

#### **502.8 VEHICLE INVENTORY**

The contents of all vehicles towed at the request of department members shall be inventoried and listed on the inventory report. When reasonably practicable, photographs may be taken to assist in the inventory.

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- (a) An inventory of personal property and the contents of open containers will be conducted throughout the passenger and engine compartments of the vehicle including, but not limited to, any unlocked glove box, other accessible areas under or within the dashboard area, any pockets in the doors or in the back of the front seat, in any console between the seats, under any floor mats and under the seats.
- (b) In addition to the passenger and engine compartments as described above, an inventory of personal property and the contents of open containers will also be conducted in any other type of unlocked compartments that are a part of the vehicle, including unlocked vehicle trunks and unlocked car top containers.
- (c) Any locked compartments including, but not limited to, locked glove compartments, locked vehicle trunks, locked hatchbacks and locked car-top containers should be inventoried, provided the keys are available and released with the vehicle to the third-party towing company or an unlocking mechanism for such compartment is available within the vehicle.
- (d) Closed containers located either within the vehicle or any of the vehicle's compartments will be opened for inventory purposes if the container can be opened without damaging it.

Members should ask the occupants whether the vehicle contains any valuables or hazardous materials. Responses should be noted in the inventory report.

When practicable and appropriate, cash, jewelry or other small valuables located during the inventory process should be removed from the vehicle and given to the owner, or booked into property for safekeeping, in accordance with the Records Management Unit Policy. A copy of the Records Management Unit property receipt should be given to the person in control of the vehicle or, if that person is not present, left in the vehicle.

These inventory procedures are for the purpose of protecting the vehicle owner's property, providing for the safety of department members and protecting the Department against fraudulent claims of lost, stolen or damaged property.

Towing a vehicle in order to perform an inventory should not be used as a pretext for an evidence search. Nothing in this policy prevents the towing of a vehicle that would occur for reasons independent of any suspicion that the vehicle may contain evidence if it is otherwise justified by law or this policy.

#### **502.9 SECURITY OF VEHICLES AND RETRIEVAL OF PROPERTY**

If the search of a vehicle leaves the vehicle or any property contained therein vulnerable to unauthorized entry, theft or damage, the department member conducting the search shall take such steps as are reasonably necessary to secure or protect the vehicle or property from such hazards.

Unless it would cause an unreasonable delay in towing the vehicle or create an issue of officer safety, reasonable accommodations should be made to permit the owner, operator or occupant

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to retrieve small items of value or personal need (e.g., cash, jewelry, cell phone, prescriptions) that are not considered evidence or contraband.

Members who become aware that a vehicle may have been towed by the Department in error should promptly advise a supervisor. Supervisors should approve, when appropriate, the release of the vehicle without requiring the owner or his/her agent to request a hearing to contest the tow.

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## Impaired Driving

### 503.1 PURPOSE AND SCOPE

This policy provides guidance to those department members who play a role in the detection and investigation of driving while impaired (DWI).

### 503.2 POLICY

The Town of Cheektowaga Police Department is committed to the safety of the roadways and the community and will pursue fair but aggressive enforcement of New York's impaired driving laws.

### 503.3 INVESTIGATIONS

Officers should not enforce DWI laws to the exclusion of their other duties unless specifically assigned to DWI enforcement. All officers are expected to enforce these laws with due diligence.

The Traffic Unit Lieutenant will develop and maintain, in consultation with the district attorney, report forms with appropriate checklists to assist investigating officers in documenting relevant information and maximizing efficiency. Any DWI investigation will be documented using these forms. Information documented elsewhere on the form does not need to be duplicated in the report narrative. Information that should be documented includes, at a minimum (Vehicle and Traffic Law § 603-a; Vehicle and Traffic Law § 1194):

- (a) The field sobriety tests (FSTs) administered and the results.
- (b) The officer's observations that indicate impairment on the part of the individual, and the officer's health-related inquiries that may help to identify any serious health concerns (e.g., diabetic shock).
- (c) Sources of additional information (e.g., reporting party, witnesses) and their observations.
- (d) Information about any audio and/or video recording of the individual's driving or subsequent actions.
- (e) The location and time frame of the individual's vehicle operation and how this was determined.
- (f) Any prior related convictions in New York or another jurisdiction.
- (g) The reasons for the stop and all present charges.
- (h) Whether the subject consumed alcohol after the stop.
- (i) Chemical test information.

If a person is suspected of drug impairment, a drug recognition expert (DRE), will be used when available.

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### **503.4 FIELD TESTS**

The Traffic Unit Lieutenant should identify standardized FSTs and any approved alternate tests for officers to use when investigating violations of DWI laws.

Recommended tests include:

- (a) Horizontal Gaze Nystagmus
- (b) Walk and Turn
- (c) One Leg Stand
- (d) Romberg - Finger to nose
- (e) Alphabet Test
- (f) Count Back
- (g) A pre-screen breath tet may be administered pursuant to section 1194 of the VTL

### **503.5 CHEMICAL TESTS**

A person implies consent under New York law to a chemical test or tests, and to providing the associated chemical sample, under any of the following (Vehicle and Traffic Law § 1194):

- (a) The arresting officer has probable cause to believe the person was driving a motor vehicle while under the influence of alcohol or drugs, including consideration of the results of a portable breath test (PBT), as provided in Vehicle and Traffic Law § 1192.
- (b) An officer has stopped a person under the age of 21 and has probable cause to believe the person was operating a motor vehicle after having consumed alcohol.
  - 1. A person under 21 years of age is presumed to have consumed alcohol only if his/her blood alcohol content is 0.02 percent or more but less than 0.07 percent by weight (Vehicle and Traffic Law § 1192-a).

If a person withdraws this implied consent the officer should consider implied consent revoked and proceed as though the person has refused to provide a chemical sample.

Chemical testing shall be completed within two hours of arrest, administration of a PBT, or determination that a person under the age of 21 has operated a vehicle after having consumed alcohol. However, if the person consents to the chemical testing within the two-hour period, the time restriction does not apply and the test may be administered outside of the two-hour period.

#### **503.5.1 STATUTORY NOTIFICATIONS**

Officers shall inform a person who is arrested and has refused to take the test, that their driving privilege shall be immediately suspended and subsequently revoked for refusal to submit to a chemical test, or any portion thereof, whether or not the person is found guilty. Persons under 21 years of age shall be informed that their driving privilege shall be revoked for refusal to submit to a chemical test, or any portion thereof, whether or not the person is found guilty (Vehicle and Traffic Law § 1194).

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### 503.5.2 BREATH SAMPLES

The Traffic Unit Lieutenant should ensure that all devices used for the collection and analysis of breath samples are properly serviced and tested, and that a record of such service and testing is properly maintained.

Officers obtaining a breath sample should monitor the device for any sign of malfunction. Any anomalies or equipment failures should be noted in the appropriate report and promptly reported to the Traffic Unit Lieutenant.

### 503.5.3 BLOOD SAMPLES

Only persons authorized by law to draw blood shall collect blood samples. The blood draw should be witnessed by the assigned officer. No officer, even if properly certified, should perform this task.

Officers should inform an arrestee that if he/she chooses to provide a blood sample, a separate sample can be collected for alternate testing from a physician of his/her choosing. Unless medical personnel object, two samples should be collected and retained as evidence, so long as only one puncture is required.

The blood sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

If an arrestee cannot submit to a blood draw because he/she has a bleeding disorder or has taken medication that inhibits coagulation, he/she shall not be required to take a blood test. Such inability to take a blood test shall not be considered a refusal. However, that arrestee may be required to complete another available and viable test.

### 503.5.4 URINE SAMPLES

If a urine test will be performed, the arrestee should be promptly transported to the appropriate testing site. The officer shall follow any directions accompanying the urine evidence collection kit.

Urine samples shall be collected and witnessed by an officer or jail staff member of the same sex as the individual giving the sample. The arrestee should be allowed sufficient privacy to maintain his/her dignity, to the extent possible, while still ensuring the accuracy of the sample.

The sample shall be packaged, marked, handled, stored and transported as required by the testing facility.

## **503.6 REFUSALS**

When an arrestee refuses to provide a chemical sample, officers shall:

- (a) Advise the arrestee of the requirement to provide a sample (Vehicle and Traffic Law § 1194).
- (b) Audio- and/or video-record the admonishment and the response when it is practicable.
- (c) Document the refusal in the appropriate report.
- (d) Provide the refusal report to the court upon arraignment (15 NYCRR § 139.3).

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#### 503.6.1 OFFICER RESPONSIBILITIES UPON REFUSAL

Upon a person's refusal to submit to chemical testing, no test shall be given unless a court order is authorized and obtained. The officer shall prepare a written report on the form prescribed by the New York State Department of Motor Vehicles (DMV) (Vehicle and Traffic Law § 1194; 15 NYCRR § 139.2).

If the person is under 21 and alleged to have operated a vehicle after having consumed alcohol, the officer shall provide the person with an administrative hearing date, a waiver form and any other information the DMV may require (Vehicle and Traffic Law § 1194).

#### 503.6.2 CHEMICAL TESTS WITHOUT CONSENT

A chemical sample may be obtained from a person who refuses a chemical test when a court order has been obtained (Vehicle and Traffic Law § 1194).

#### 503.6.3 FORCED SAMPLES

If an arrestee indicates by word or action that he/she will physically resist a court-ordered test, the officer should request a supervisor to respond.

The responding supervisor should:

- (a) Evaluate whether using force to obtain a sample is appropriate under the circumstances.
- (b) Ensure that all attempts to obtain a sample through force cease if the person agrees to, and completes, a viable form of testing in a timely manner.
- (c) Advise the person of his/her duty to provide a sample (even if this advisement was previously done by another officer), and attempt to persuade the individual to submit to providing such a sample without physical resistance.
  1. This dialogue should be recorded on audio and/or video when practicable.
- (d) Ensure that the court-ordered test is taken in a medically approved manner.
- (e) Ensure that the test is recorded on audio and/or video when practicable.
- (f) Monitor and ensure that the type and level of force applied appears reasonable under the circumstances and approved in the court order:
  1. Unless otherwise provided in the court order, force should generally be limited to handcuffing or similar restraint methods.
  2. In misdemeanor cases, if the arrestee becomes violent or more resistant, no additional force will be used and a refusal should be noted in the report.
  3. In felony cases, force which reasonably appears necessary and approved in the court order to overcome the resistance may be permitted.
- (g) Ensure the use of force and methods used to accomplish the collection sample are documented in the related report.

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If a supervisor is unavailable, officers are expected to use sound judgment and perform the duties of a supervisor, as set forth above.

#### **503.7 ARREST AND INVESTIGATION**

##### **503.7.1 ARREST AUTHORITY**

In addition to arrest authority under CPL § 140.10, an officer may arrest for a DWI violation coupled within an accident regardless of whether the DWI violation occurred in the officer's presence (Vehicle and Traffic Law § 1194).

A person under the age of 21 alleged to have operated a vehicle after having consumed alcohol in violation of Vehicle and Traffic Law § 1192-a, shall not be arrested but may be temporarily detained solely for the purpose of administering chemical tests (Vehicle and Traffic Law § 1194).

##### **503.7.2 RIGHT TO ATTORNEY CONTACTS**

The arrestee has no absolute right to consult with an attorney prior to conducting FSTs or a chemical test. However, the officer shall allow the arrestee to consult with an attorney if requested and the attorney is present or can be readily reached by phone as long as it does not hinder the investigation. Officers shall not intentionally prevent an arrestee from communication with an attorney. Officers who are aware that an attorney is attempting to communicate with an arrestee shall inform the arrestee of that fact. Officers should document all of the above information in the related case report.

##### **503.7.3 CHILD PROTECTIVE SERVICES**

If the person arrested for an aggravated DWI violation is the parent, custodian or legal guardian of an occupant of the vehicle who is 15 years of age or younger, the officer shall contact the Office of Children and Family Services, Child Protective Services (CPS) and file an appropriate report (Vehicle and Traffic Law § 1192). Officers shall also make other such reports as required by the Child Abuse Policy.

#### **503.8 ADMINISTRATIVE HEARINGS**

The Records Management Lieutenant and or the Traffic Lieutenant will ensure that all appropriate reports and documents related to administrative license suspensions are reviewed and forwarded to the DMV.

Any officer who receives notice of required attendance at a DWI refusal hearing or an administrative license suspension hearing should promptly notify the prosecuting attorney.

An officer called to testify at an administrative hearing should document the hearing date and the DMV file number in a supplemental report. Specific details of the hearing generally should not be included in the report unless errors, additional evidence or witnesses are identified.

## Traffic and Parking Tickets

### 504.1 PURPOSE AND SCOPE

This policy outlines the responsibilities for issuing, correcting, and voiding traffic and parking tickets.

### 504.2 POLICY

It is the policy of the Town of Cheektowaga Police Department to enforce traffic laws fairly and equally. Authorized members may issue a traffic ticket, parking ticket, or written or verbal warning based upon the circumstances of the contact and in the best interest of the motoring public and community safety.

### 504.3 ACCOUNTABILITY

The Traffic Lieutenant shall be responsible for the supply and accounting of all traffic and parking tickets issued to members of this department. Tickets will be kept in a secure location and issued to members by the Accident Investigation Unit. Members will sign for the ticket books when issued or upon return of unused tickets.

Members of the Town of Cheektowaga Police Department shall only use department-approved traffic and parking ticket forms.

#### 504.3.1 WRITTEN OR VERBAL WARNINGS

Written or verbal warnings may be issued when the department member believes it is appropriate.

### 504.4 TRAFFIC TICKETS

Carbon copy T-Sleds are ordered and maintained by the Traffic Unit Lieutenant and issued by the NYS Department of Motor Vehicles. Upon receipt of the UTT's the supervisor will verify the inventory and maintain a sign out log for their distribution. This hand written ticket may be used when the primary TraCS system is unavailable or when there is a violation not listed in TraCS. Officers issuing hand written T-Sleds will issue the yellow copy to the offender, white copy will be forwarded to the AIU division and the remainder of the UTT will be submitted to the court for processing.

#### 504.4.1 CORRECTION & VOIDING

Voiding a traffic ticket may occur when the ticket has not been completed or when it is completed but not issued, or needs a correction and has to be reissued. All copies of voided tickets will be submitted to the Traffic Lieutenant.

#### 504.4.3 DISPOSITION

Upon separation from appointment or employment with this department, all members who were issued traffic ticket books shall return any unused tickets to the Accident Investigation Unit.

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### *Traffic and Parking Tickets*

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#### 504.4.4 JUVENILE TICKETS

Juveniles caught violating the Vehicle and Traffic Law will be taken either to the Cheektowaga Police Department and their parent or guardian notified to respond to the Police Department to take custody of the juvenile; or the juvenile will be taken home and released to a responsible adult. No traffic summons will be issued to any juveniles in regards to any traffic offense.

When a juvenile is involved in a traffic offense that requires the towing of the vehicle, that vehicle will not be released to friends or other members of the party, unless one is a responsible adult and / or family member.

#### 504.4.5 DATA COLLECTION

The Town of Cheektowaga Police Department automatically submits data to the commissioner of the New York State Department of Motor Vehicles, via the TraCS program. The reporting shall contain a summary as to the status of all traffic tickets issued by the Town of Cheektowaga Police Department. (15 NYCRR § 91.10).

Any lost tickets or ticket packets that are listed in the above report must be supported with a written report by the member who lost the ticket or ticket packet (15 NYCRR § 91.11).

#### **504.5 PARKING TICKET APPEALS**

Parking tickets may be appealed in accordance with local and state law.

#### **504.6 ELECTRONIC TICKET SYSTEM PROCEDURES**

Patrol Officers will primarily use the TraCS system for issuing traffic summonses. Each officer will have their own password protected login for which they are responsible.

##### 504.6.1 ELECTRONIC TICKET SYSTEMS ADMINISTRATOR

The Chief of Police has designated the Traffic Lieutenant as the Electronic Ticket Systems Administrator and all traffic summonses.

##### 504.6.2 ACCOUNTABILITY & DUTIES OF THE ADMINISTRATOR

The electronic ticket system administrator is accountable for:

- Coordinating routine and periodic software updates of the ticketing software.
- Updating the system databases including, but not limited to, all violation codes in use, bail schedule and court appearance information.
- Completing routine maintenance and damage repair of devices.
- Overseeing the periodic upgrade and replacement of devices as wear and system requirements mandate.
- Monitoring data transfers from the ticketing devices to the Town of Cheektowaga Police Department servers, to the courts of jurisdiction for the issued ticket and to any state-mandated receiver. This includes the timely transmittal of the data as per the defined schedule.
- Reviewing data on common user error and providing feedback for use at briefings.

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- Analyzing data on common system errors and providing feedback to the system vendor for correction.
- Reviewing TraCS logs on a regular basis for any voided or unsent ticket and make necessary corrections.
- Reconciliation of DMV and Department records for any discrepancies. Said records will be maintained according to NYS and Departmental retention schedules.

#### 504.6.3 VOIDING AN ELECTRONIC TICKET (TRACS)

Once an electronic ticket is generated it may not be deleted from the system or device. If a member generates a ticket in error, the member will notify their immediate supervisor or the Traffic Lieutenant, within 72 hours of issuance. The police officer will give an explanation as to the reason why. When the electronic ticket system administrator receives a request for deletion, the administrator will validate the request with the member's supervisor and complete the void process.

#### **504.7 DIPLOMATIC IMMUNITY**

When a person with diplomatic immunity is involved in a traffic violation the officer will proceed as per the foreign and diplomatic consular representative policy.

## Disabled Vehicles

### 505.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for department members who provide assistance to motorists in disabled vehicles within the primary jurisdiction of the Town of Cheektowaga Police Department.

### 505.2 POLICY

It is the policy of the Town of Cheektowaga Police Department to assist motorists with disabled vehicles until those vehicles are safely removed from the roadway. Members should take appropriate action to mitigate potential problems when a vehicle constitutes a traffic hazard or the safety of the motorist is a concern.

### 505.3 RESPONSIBILITIES

When an on-duty member of this department sees a disabled vehicle on the roadway, the member should make a reasonable effort to provide assistance. If this is not reasonably possible, the dispatcher should be advised of the location of the disabled vehicle and the need for assistance. The dispatcher should then assign another department member to respond as soon as practicable.

### 505.4 ASSISTANCE

In most cases, a disabled motorist will require assistance. After arrangements for assistance are made, continued involvement by department members will be contingent on the time of day, the location, the availability of department resources and the vulnerability of the disabled motorist.

#### 505.4.1 MECHANICAL REPAIRS

Department members shall not make mechanical repairs to a disabled vehicle.

#### 505.4.2 RELOCATION OF DISABLED VEHICLES

The relocation of disabled vehicles by members of this department by pushing or pulling a vehicle should only occur when the conditions reasonably indicate that immediate movement is necessary to reduce a hazard presented by the disabled vehicle.

#### 505.4.3 RELOCATION OF DISABLED MOTORIST

The relocation of a disabled motorist should only occur with the person's consent and should be suggested when conditions reasonably indicate that immediate movement is necessary to mitigate a potential hazard. The department member may stay with the disabled motorist or transport him/her to a safe area to await pickup.