

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

503.4.1 FIELD TEST ADMINISTRATION

See Cheektowaga Police Department Procedure 503 Impaired Driving Field Test Procedures

503.4.2 DRUG RECOGNITION EXPERTS

Drug Recognition Experts (DRE) who are certified by the State of New York may be used to investigate cases in which impairment due to drugs is suspected.

If a department DRE is not available, a request for a DRE in a county wide chatter message may be sent out with permission of the Watch Commander to conduct an evaluation.

All evaluations will be documented on authorized DRE forms.

If another agency requests a DRE, an on duty department DRE may assist the other agency with the investigation with supervisor approval.

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.

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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).

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.

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

503.5.5 GENERAL TESTING REQUIREMENTS

Requirements for testing include:

- (a) Only a New York State-certified breath test operator will administer a test to obtain a breath sample.
- (b) Testing shall be done in accordance with the operator's training and New York State Department of Health rules and regulations, as applicable.
- (c) Testing equipment must be certified.
- (d) All testing and results will be documented in the appropriate report.

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).

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.

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- (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.

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 and released to a responsible third party (Vehicle and Traffic Law § 1194) (see the Temporary Custody of Juveniles Policy).

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

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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.