



POLICY & PROCEDURE

STURGEON BAY POLICE DEPARTMENT

SUBJECT:

**IMPAIRMENT DUE TO ALCOHOL/
AND OR DRUGS**

SCOPE: All Sworn Personnel
DISTRIBUTION: Policy & Procedure Manual

REFERENCE: WI State Statute: §346.63

NUMBER: 6.08

ISSUED: 06/25/2020

EFFECTIVE: 06/25/2020

RESCINDS

AMENDS

WILEAG 5TH EDITION

STANDARDS: 6.2.6

INDEX AS: Absolute Sobriety
Alcohol, Motor Vehicle Operation
Drugs, Motor Vehicle Operation
Impaired Motor Vehicle Operation
Intoxicated, Motor Vehicle Operation
Operate Motor Vehicle While Under the Influence
Restricted Controlled Substance

PURPOSE: It is the policy of the Sturgeon Bay Police Department to actively seek and apprehend persons operating/driving vehicles under the influence of intoxicants and/or drugs. This Policy & Procedure will establish uniform procedures for insuring that officer's actions, while involved in alcohol/drug enforcement, are consistent with applicable state laws and City ordinances while also insuring that proper reporting and investigation techniques are used.

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 Sturgeon Bay Police Department to make roadways within the City of Sturgeon Bay as safe as possible by arrested impaired operators. The Department take 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: 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: The actor's ability to operate a vehicle is materially impaired because of his/her consumption of an alcoholic beverage, of a controlled substance, or controlled substance analog under Chapter 961, or any combination of the above.
- D. STANDARDIZED 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 bases on National Highway Traffic Safety Administration research.
- E. INTOXICANTS: Any alcoholic 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 require 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 standardized 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 operation 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 employer 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:
 - (1) The person was operating or driving a motor vehicle.
 - (2) The person was under the influence of intoxicants 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 shall be completed and documented.
5. The officer should determine if there is probable cause to arrest for OWI. If the officer believes he/she has probable cause for the arrest, a Preliminary Breath Test (PBT) should be administered in accordance with §343.303 prior to the arrest.
6. If the PBT results are consistent with the observations, tell the person that he/she is under arrest, and take them into custody. Transport the operator to an authorized hospital for testing. Authorized hospital is the Door County Medical Center.
7. Officers shall refer to the OWI flowchart for detailed instructions regarding the processing of operators arrested for OWI.
8. The defendant's vehicle should be impounded. If there are passengers in the vehicle, allow a passenger to drive if s/he is capable, and the owner give consent. Passengers may need to be transported to some other place of safety if there is no one to operate the vehicle.

9. The defendant should be issued the citation prior to the imposition of any chemical testing, although it is not mandatory.
 - a) Arrests made for Operating with a Detectible Amount of Restricted Controlled Substance per §346.63(1)(am) require that the officer receives the blood results verifying the restricted controlled substance prior to the issuance of a citation.
10. 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 his/her blood then contact hospital staff.
 - b) Blood is the primary chemical test of the Department.
 - c) Breath is the alternate chemical test of the Department.
 - d) The hospital staff will be responsible for opening the state issued blood kit, and shall draw the blood and personally hand the specimens to the officer. The officer will label and seal the blood as evidence.
11. The Alcohol Influence Report should be completed. 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). Officer 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, are not impaired for purposes of OWI, but there is evidence that an 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 an 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 Sturgeon Bay Municipal Attorney's Office for prosecution. Refusals resulting from criminal arrests will be forwarded to the Door 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 a 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 cases, 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 Door 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 the OWI guide for processing information.
4. All OWI reports must be completed by the end of the arresting officer's shift.

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 for a judge or court commissioner prior to proceeding with the forced blood draw, unless lawful exigent circumstances exists.
 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 a criminal 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 the 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 DRE is recommended.
 2. If an officer is investigating a fatal accident, or a potentially fatal accident, 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. All felony OWI arrests, fatal and near fatal situations require that blood samples be hand delivered to the State Crime Laboratory.
 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 third OWI offense or less may be released to a sober, responsible party.
2. Arrested persons charged with a fourth OWI offense or greater, shall be held for court.
3. Absent of a responsible party, the offender shall be booked into the Door County Jail for a 12-hour hold or release to a responsible party.

Arleigh R. Porter
Chief of Police

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

Initial 06/25/2020